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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 760

RIN 0560–AI11

Crop Assistance Program

AGENCY: Farm Service Agency, USDA.

ACTION: Interim rule.

SUMMARY: The Crop Assistance Program (CAP) will provide emergency assistance to reestablish the purchasing power of eligible producers of rice, cotton, soybeans, and sweet potatoes in specified counties for which a Secretarial disaster designation was issued based on excessive moisture and related conditions for the 2009 crop year. This rule specifies the eligibility requirements, payment calculations, and application procedures for CAP. CAP will provide up to $550 million to eligible producers. This rule also proposes a new information collection for the payment application.

DATES: *Effective date:* October 22, 2010.

Comment date: We will consider comments that we receive by November 24, 2010.

Application Deadline: We will consider applications that we receive by December 9, 2010.

ADDRESSES: We invite you to submit comments on this interim rule. In your comment, please specify RIN 0560–AI11 and include the volume, date, and page number of this issue of the **Federal Register**. You may submit written comments by any of the following methods:

- *E-mail: capcomments@wdc.usda.gov.*
- *Fax:* (202) 690–2130.
- *Mail:* Director, Production, Emergencies, and Compliance Division, FSA, U.S. Department of Agriculture (USDA), Mail Stop 0517, Rm. 4750–S, 1400 Independence Ave., SW., Washington, DC 20250–0517.
- *Hand Delivery or Courier:* Deliver comments to the above address.
- *Federal Rulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

All written comments will be available for public inspection at the above address during business hours from 8 a.m. to 5 p.m., Monday through Friday. A copy of this rule is available through the FSA home page at *http://www.fsa.usda.gov/.*

FOR FURTHER INFORMATION CONTACT: Steve Peterson, Chief, Disaster Assistance Branch, FSA, USDA, Mail Stop 00517, 1400 Independence Ave., SW., Washington, DC 20250–0517; telephone: (202) 720–7641; fax: (202) 690–2130; e-mail: *steve.peterson@wdc.usda.gov*. Persons with disabilities who require alternative means for communications (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

Due to the nature and severity of disasters resulting from excessive moisture and related conditions in 2009, the Secretary of Agriculture determined that producers of rice, upland cotton, soybeans, and sweet potatoes would be provided limited financial assistance under the authority of clause 3 of section 32 of the Agricultural Adjustment Act of 1935 (Pub. L. 74–320, 7 U.S.C. 612c, as amended, referred to as "section 32") due to losses that growers of those crops suffered. That clause of Section 32 provides authority for the Secretary of Agriculture to use funds to "reestablish farmers' purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption." FSA has used this authority in the past to provide assistance to producers whose purchasing power was negatively impacted by unusual market conditions. Through CAP, FSA will use up to $550 million in section 32 funds to help reestablish the purchasing power of eligible producers of rice, upland cotton, soybeans, and sweet potatoes.

CAP is a limited one-time program to reestablish producer purchasing power that was diminished by 2009 crop year losses. The CAP payment is intended to address reestablishing producer purchasing power, not to reimburse producers for specific losses.

To expedite implementation of CAP, to simplify producer application for CAP payments, and to timely distribute CAP payments to eligible producers, FSA has already identified the relevant disaster counties, has producer acreage and ownership shares on file, and has determined the payment rate for each crop. Each of these items is explained in this interim rule.

For CAP, FSA identified the 953 counties in the following 34 States that received Secretarial disaster designations due to excessive moisture and related conditions in 2009: Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Texas, Wisconsin, and Wyoming. The following map shows the counties; a list of the counties is available on the FSA Web site and at FSA county offices.

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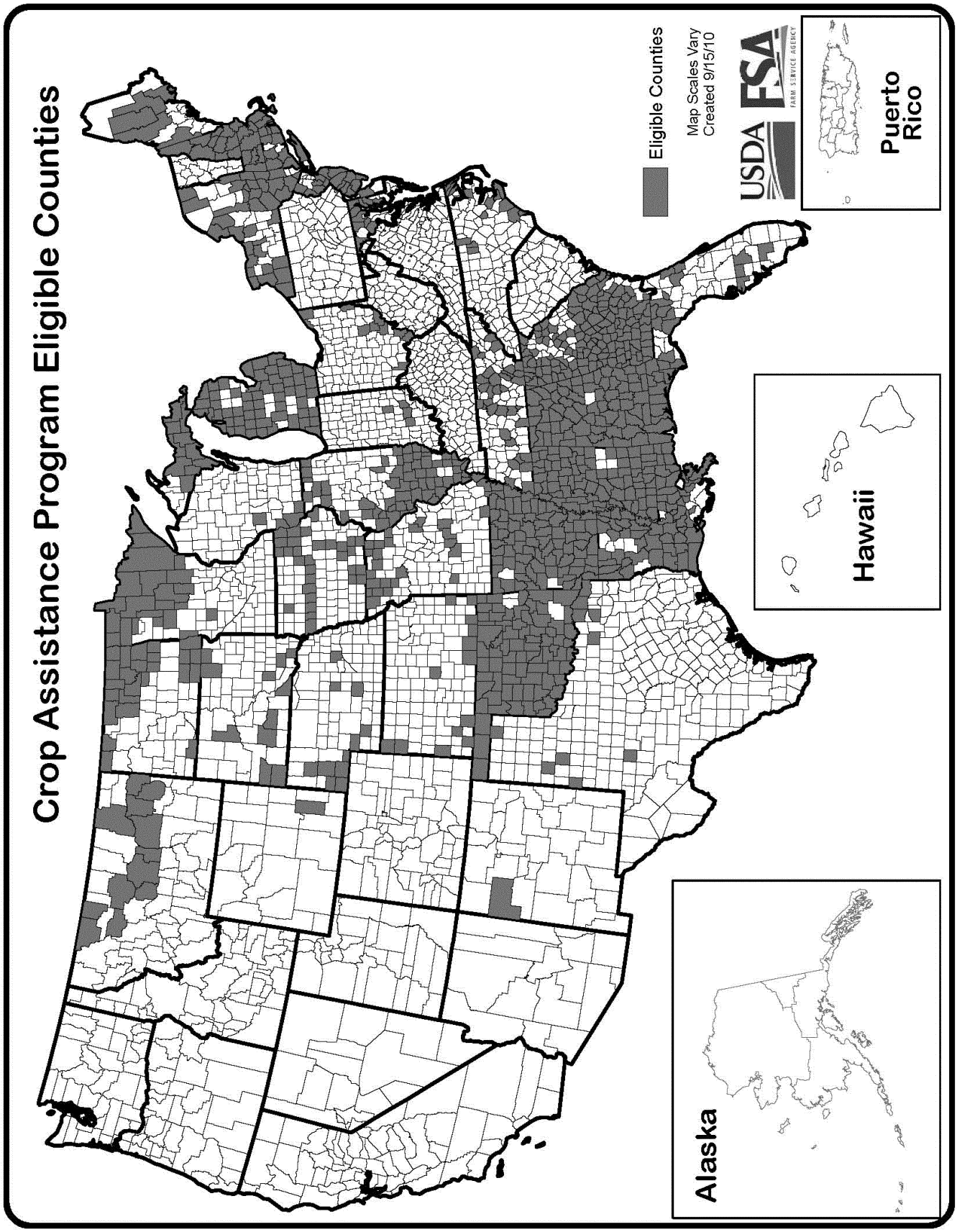

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Producer Eligibility Requirements

There are several requirements for producers to be eligible for CAP payments. Producers must meet all of the following requirements to be eligible for a CAP payment:

(1) The producer must have on file an existing 2009 crop year form FSA–578, "Report of Acreage," as planted or considered planted, and that acreage report must have been on file with FSA prior to the publication of this interim rule;

(2) The producer's 2009 form FSA–578, Report of Acreage, must specify the producer's ownership share of a 2009 crop of upland cotton, long grain rice, medium or short grain rice, soybeans, or sweet potatoes, and the amount of acres of those crops planted or considered planted;

(3) The producer's eligible crop acreage must be located in a primary county for which a Secretarial disaster designation was issued based on excessive moisture and related conditions for the 2009 crop year;

(4) The producer must have had a five percent or greater loss in crop quality or quantity of the 2009 crop of upland cotton, long grain rice, medium or short grain rice, soybeans, or sweet potatoes, for which the producer applies for a CAP payment; the loss must be due to a disaster, as defined in this rule, and the five percent loss is a minimum threshold for CAP eligibility; greater losses do not qualify producers for a larger payment; and

(5) The producer must apply for a CAP payment by December 9, 2010 certifying that the loss which was due to disaster in 2009 was greater than or equal to the five percent threshold; the loss threshold must be met for each crop for which the producer requests a CAP payment.

The identified disaster counties are primary disaster counties only; crop acreage in contiguous counties that are not declared disaster counties is not eligible for CAP.

Five Percent Loss Threshold Required for Payment Eligibility

To be eligible for payment, a producer must have had a loss of five percent or greater on a farm in the eligible disaster county in quality or quantity as compared to historic or expected production for that farm to the crop of upland cotton, long grain rice, medium or short grain rice, soybeans, or sweet potatoes planted or considered planted in 2009 for which the producer is applying for a CAP payment.

The five percent loss threshold is a per producer per crop on a farm minimum threshold for 2009; it is not just a per farm threshold. The individual producer's share of the crop on the farm must have suffered the loss, independent of what other producers of the crop on that farm may have produced or their loss. The producer will need to calculate quantity losses based on historical or expected production of the crop. The producer will need to certify that the loss was at least five percent and will need to maintain verifiable and reliable documentation to justify the certification.

For example, if a producer has a share in a farm with 2009 cotton and rice crops, but only suffered a five percent or greater loss for the rice crop, that producer can be eligible for a payment on the rice crop, but not the cotton crop. Similarly, if a farm had both cotton and corn crops in 2009, only a cotton crop loss can meet the eligibility requirement for a CAP payment, regardless of what, if any, losses there were for the corn or the farm as a whole because corn is not an eligible commodity under CAP.

The determination by a producer that a crop suffered a five percent or greater loss is based on the producer's self-certification. Producers must be able to document, if requested by FSA, how they determined that the five percent loss threshold was met. For quantity losses, the calculation must use historic yield and expected production as defined in this rule. FSA will provide county average yield data on request. At time of application, a producer will not be required to submit documentation of production, expected production, quality, or loss. However, a producer who applies for CAP will be required to retain documentation in support of their application for 3 years after the date of application. If documentation is not submitted when required by FSA or if documentation cannot demonstrate that the minimum loss was suffered as claimed for a crop and farm, the producer will be required to refund the payment to FSA.

Crop Acreage and Ownership Share; Acreage Report Information

The amount of acreage for each crop that will be used to determine the amount of the CAP payment (payment acres) and the producer's ownership share of the crop will be the amount previously reported to FSA by the producer for the 2009 crop year form FSA–578, Report of Acreage, that is on file in FSA as of October 22, 2010.

For the purposes of CAP, a producer cannot revise a crop acreage report for the 2009 crop year (such reports are filed using form FSA–578, Report of Acreage) after submitting the CAP application to increase the payment or to create an eligibility. If a producer needs to amend or correct the 2009 FSA–578 for other programs, they may be able to do so, subject to the rules pertaining to those programs. However, no amended 2009 FSA–578 that includes increased crop acreage on a farm will be considered in calculating CAP payments.

Payment Calculation

CAP payments will be calculated by multiplying the total number of acres of the crop planted or considered planted on the farm by that crop's per-acre payment rate. FSA determined the rates based on average per-acre revenue losses on the 2009 crop due to moisture-related disasters. The payment rate, which is based on USDA data of average per acre 2009 crop losses and limited by available funding, cannot be greater than actual losses for producers.[1] The payment rates are as follows:

Crop	Per acre payment rate
Long grain rice	$31.93
Medium or short grain rice	52.46
Upland cotton	17.70
Soybeans	15.62
Sweet potatoes	155.41

The CAP payment will be based on the producer's share of the reported or determined planted or considered planted acres of the crop times the per acre payment rate for the crop. If there is more than one eligible producer on a farm that shared in the crop, each producer may apply for a payment based on their share in the crop.

For example, Producer A has a 100 percent share interest of 2009 upland cotton and sweet potatoes. Producer A planted 1,000 acres of 2009 crop upland cotton and certifies a production loss of over five percent due to disaster. Upland cotton's payment rate is $17.70 per acre. Producer A also planted 100 acres of sweet potatoes and certifies a production loss of over five percent of the crop due to a disaster. The sweet potato payment rate is $155.41 per acre. The payment calculation would be as follows: 1,000 acres (upland cotton planted) times $17.70 (payment rate for upland cotton) = $17,700 CAP payment for upland cotton. For sweet potato, 100 acres (sweet potatoes planted) times $155.41 (payment rate for sweet potatoes) = $15,541 CAP payment for

[1] For more information about the development of the payment rates, see the Cost Benefit Analysis for this rule, which is available upon request (*see* **FOR FURTHER INFORMATION CONTACT** above).

sweet potatoes. The producer would receive the sum of those two payments, or $17,700 + $15,541 = $33,241, subject to payment limitations and other restrictions in the regulation.

Disaster Counties

To be eligible for CAP, a producer must have had a loss on a farm in a disaster county that was declared a disaster because of excess moisture or a related condition as specified in the regulation. To identify the disaster counties for CAP, FSA identified those counties that had a Secretarial disaster designation based on flood, flash flooding, excessive rain, moisture, humidity, severe storms, thunderstorms, ground saturation or standing water, hail, winter storms, ice storms, snow, blizzard, hurricane, typhoons, tropical storms, or cold wet weather.

Additional Eligibility Considerations

Only a producer who has an ownership share and risk of loss in the crop will qualify for CAP. Any verbal or written agreement that precludes a producer from having an ownership share disqualifies the producer for CAP, regardless of whether the producer is listed on a form FSA–578, Report of Acreage, or any other program document, as having a share of the crop. For example, a contract grower would be ineligible.

A person ineligible for 2009 crop year benefits because of fraud or any other program violation in any other FSA or Commodity Credit Corporation (CCC) program is ineligible for CAP to the extent otherwise provided in law.

There is no requirement to have crop insurance coverage or coverage under the Noninsured Crop Disaster Assistance Program (NAP) in order to be eligible for CAP. Producers who received NAP payments for a loss of a 2009 crop of long grain rice, medium or short grain rice, upland cotton, soybeans, or sweet potatoes are eligible for CAP benefits, subject to meeting all other eligibility requirements for CAP; the multiple benefit exclusion provisions of 7 CFR 1437.13 do not apply. Producers can receive NAP payments and CAP payments for the same 2009 crop. NAP payments are for specific crop losses, whereas CAP payments are to help reestablish farmers' purchasing power. Therefore, CAP payments are not duplicate payments.

Payment Limitations and Other General Requirements

General eligibility requirements that apply to other FSA and CCC programs also apply to CAP. Specifically, recordkeeping requirements and compliance with Highly Erodible Land Conservation and Wetland Conservation provisions in this rule are similar to those for previous ad hoc crop disaster programs. Records documenting 2009 losses must be kept for 3 years after the application is filed. CAP applicants must have been in compliance with the provisions of 7 CFR part 12, "Highly Erodible Land and Wetland Conservation," during the 2009 crop year. Those regulations provide for a denial of benefits for failing to comply with general requirements regarding the handling of highly erodible cropland and wetlands.

CAP payments will be treated as 2009 revenue under the Supplemental Revenue Assistance Payments (SURE) Program, which is specified in 7 CFR part 760, subpart G.

The payment limits and adjusted gross income (AGI) limits that apply to other CCC and FSA programs apply to CAP. Specifically, no person or legal entity (excluding a joint venture or general partnership), as defined and determined by the regulations in 7 CFR part 1400 may receive, directly or indirectly, more than $100,000 in CAP benefits. For the payment limit, both indirect and direct benefits are counted by attribution; the total amount of payments are attributed to a person by taking into account the direct and indirect ownership interests of the person in a legal entity that is eligible to receive payments. In the case of a legal entity, the same payment is attributed to the direct payee in the full amount and to those that have an indirect interest to the amount of that indirect interest. This is the same way attribution is done for other FSA and CCC programs.

Payment and average adjusted gross income (AGI) limits will be determined as using the standards of 7 CFR part 1400 in the same manner as for CCC programs governed by that part. In applying the limitation on AGI for 2009, a person or legal entity with an average adjusted gross nonfarm income, as defined in 7 CFR 1400.3, that exceeds $500,000 for the 3 taxable years preceding 2008 (2005–2007) will not be eligible to receive CAP payments. Likewise, if a person with an indirect interest in a legal entity has an average nonfarm AGI over $500,000, then the payment to the legal entity will be commensurately reduced based on the interest of that person in the legal entity receiving the payment.

The regulations in 7 CFR 1400.105 specify how payments will be attributed. Attribution will be tracked through four levels of ownership in legal entities. In addition, the 2008 Farm Bill imposed limitations on payments to foreign persons; FSA adopted those limits for CAP as specified in this rule.

The regulations in 7 CFR part 760 subpart B that provide general provisions for other recent FSA disaster assistance programs also apply for CAP.

Application Process

This rule announces a 45-day period for submitting CAP applications, beginning the day this rule is published in the **Federal Register**. Specifically, the application deadline is December 9, 2010. This deadline allows sufficient time for FSA to include CAP payments in 2009 SURE payment calculations.

During the application period, producers may apply in person at FSA county offices during regular business hours. Applications may also be submitted to FSA by mail or fax. CAP application forms may be obtained in person, by mail, telephone, and fax from any FSA county office or via the Internet at *http://www.sc.egov.usda.gov.* If there is more than one producer on a farm, only the producers on a farm who sign the application will be eligible to receive payment. Producers may receive payment from shares of eligible crops on multiple farms if they sign an application for each farm, subject to the $100,000 payment limit that is per person or legal entity, not per farm or per crop.

An application must include the specific application form for CAP, FSA–860, and the following forms, which for most producers will already be on file at the FSA county office:

(1) CCC–902, Farm Operating Plan for Individual or Legal Entity;

(2) CCC–926, Average Adjusted Gross Income Statement for 2009;

(3) AD–1026, Highly Erodible Land Conservation (HELC) and Wetland Conservation Certification; and

(4) FSA–578, Report of Acreage, for 2009, which must already be on file at the FSA county office.

See the Paperwork Reduction Act section below for more information about the application.

Any application received by FSA after December 9, 2010 will be ineligible for payment.

Information provided on applications and supporting documentation will be subject to verification by FSA; however, FSA is under no obligation to perform spot checks within any specific time frame and applicants are responsible for producing documents substantiating their application when requested by FSA.

In the event that FSA finds that a payment was issued based on inaccurate

information on a certification submitted by a producer, FSA will require a refund of that payment. Producers determined to have made any false certifications or adopted any misrepresentation, scheme, or device that defeats the program's purpose will be required to refund any payments issued through the CAP, including interest on such payments, and may be subject to other civil, criminal, or administrative remedies.

Each producer on the farm applies separately for their own CAP payment.

Notice and Comment

Because this rule involves discretionary disaster relief and authorities it was determined that under these circumstances it would be contrary to the public interest to withhold relief for prior public comment. The Administrative Procedures Act (5 U.S.C. 553) provides generally that before rules are issued by Government agencies, the rule must be published in the **Federal Register**, and interested persons must be given an opportunity to participate in the rulemaking through submission of data, views, or arguments. The law exempts from this requirement rules, such as this one, relating to public property, loans, grants, benefits, and contracts. However, the Secretary of Agriculture published in the **Federal Register** on July 24, 1971 (36 FR 13804), a Statement of Policy that USDA would publish a notice of proposed rulemaking for such rules. USDA is committed to providing the public reasonable opportunity to participate in rulemaking, and is therefore providing the public 30 days to comment on the provisions of this interim rule.

Executive Order 12866

The Office of Management and Budget (OMB) designated this interim rule as economically significant under Executive Order 12866, and, therefore OMB reviewed this rule. A cost-benefit analysis of this rule is summarized below and is available from the contact listed above.

Cost Benefit Analysis Summary

The Crop Assistance Program is intended to reestablish purchasing power to producers of 2009 crop of rice, upland cotton, soybeans, or sweet potatoes who grew those crops in specified counties for which a Secretarial disaster designation was issued based on excessive moisture and related conditions for the 2009 crop year. Payments will be calculated based on acreage reported for 2009 crops. The per acre rate payment was set by FSA based on each crop's national average revenue per harvested acre in 2009; the payment rate was determined by dividing each crop's total value of production (revenue) by the amount of production, and then multiplying the product by 3.7 percent. National Agricultural Statistics Service (NASS) data was used for the amount of production and World Agricultural Supply and Demand Estimates (WASDE) data was used for price (value) of production. In summary, producers will be paid based on their reported 2009 acreage for each crop, multiplied by a payment rate that represents 3.7 percent of average revenue per acre.

The total cost to the government, and the corresponding benefit to producers, for CAP will be between $137 million and $543 million, depending upon how many producers in disaster counties apply for payment. The low end of the range was estimated using NASS data of actual yield losses in 2009 as compared to 2004 through 2008 yields; it represents the cost if only producers in counties with five percent or greater yield losses apply. (Yield data was not available for sweet potatoes; the average loss of similar crops was used as an estimate). The high end of the range is estimated using total acres of eligible crops in primary disaster counties in 2009; it represents the costs and benefits if all producers in disaster counties with eligible crops apply for payment.

CAP payments will be considered revenue for the purpose of calculating payments for the SURE program. CAP payments are estimated to decrease total 2009 SURE payments by $50 million to $107 million, depending on how many producers who apply for CAP also had sufficient losses (and met other requirements) to qualify for 2009 SURE program payments.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking for this rule. As noted above in the Notice and Comment section, CCC is using the good cause justification of the Administrative Procedures Act to issue an interim rule effective on publication with an opportunity for comment.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799). CAP solely provides financial assistance to reestablish purchasing power to eligible producers who suffered an eligible loss during the 2009 crop year for specific commodities. Therefore, FSA has determined that no environmental assessment or environmental impact statement will be prepared consistent with 7 CFR 799.10(b)(2)(x).

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

Executive Order 12988

This rule has been reviewed under Executive Order 12988. The provisions of this proposed rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. The rule will not have retroactive effect. Before any judicial action may be brought regarding this rule, all administrative remedies must be exhausted.

Executive Order 13132

The policies contained in this rule will not have any substantial direct effect on States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Nor would this proposed rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

The policies contained in this rule do not have tribal implications that preempt tribal law. FSA provided the opportunity for government-to-government consultation with Tribal governments on CAP prior to the publication of this interim rule. The Tribal consultation was available through a teleconference. Leadership from all Federally recognized Tribes that have lands within the affected counties were invited to the consultation, which was held on October 12, 2010. The FSA Deputy Administrator for Farm Programs with representation from the FSA Administrator's office as well as the USDA Office of Tribal Relations

participated in the call and were available to consult on CAP. No Tribes participated in the call. In response to the invitation to the conference call, no comments were received.

Unfunded Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) for State, local, or tribal governments, or the private sector. In addition, FSA is not required to publish a notice of proposed rulemaking for this rule. Therefore, this interim rule is not subject to the requirements of sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

This rule has been determined to be major under SBREFA (Pub. L. 104–121). SBREFA normally requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. Section 808 of SBREFA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. FSA finds for the reasons given earlier with respect to Notice and Comment that it would be contrary to the public interest to delay implementation of this rule because it would significantly delay assistance to the producers affected by disasters in 2009 addressed by this rule. Therefore, this rule is effective immediately.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), FSA submitted the information collection request for CAP to OMB under the emergency procedure in accordance with the Paperwork Reduction Act so FSA can begin the sign-up period upon publication of this rule.

FSA is making payments to eligible producers of 2009 upland cotton, long grain rice, medium or short grain rice, soybeans, and sweet potatoes. CAP is for producers who had at least a five percent loss due to disaster in counties having a Secretarial disaster designation for 2009 due to excessive moisture or related conditions.

Title: Crop Assistance Program (CAP).

OMB Number: 0560–NEW.

Type of Request: New information collection.

Abstract: This information collection is needed for FSA to identify eligible upland cotton, long grain rice, medium or short grain rice, soybean, and sweet potato producers and to make payments to those producers through CAP. FSA requires producers to submit an application on a form specified by FSA to the FSA county office for the farm where they had a 2009 crop planted or considered planted acreage of upland cotton, long grain rice, medium or short grain rice, soybeans, and sweet potatoes.

For an application to be accepted and approved, the producer will be required to provide the following information: producer telephone number (optional), whether eligible crops suffered a five percent or greater loss, whether each claimed loss was due to quantity or quality loss, and producer's signature.

The following estimated burden also includes an average travel time of one hour for the producer's travel to the FSA county office. The majority of producers will only need to submit one application form (FSA–860) because the rest of their information will already be on-file and up to date in the FSA county office. However, approximately 673 respondents will also need to complete forms AD–1026, CCC–902 and CCC–926 if FSA does not have them on file.

Respondents: Producers.

Estimated Annual Number of Applicants: 279,091.

Estimated Annual Number of Forms per Applicant: 1.

Estimated Average Time to Respond: 30 minutes (0.5 hours).

Estimated Total Annual Burden Hours: 350,210.

E-Government Act Compliance

CCC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government Information and services, and for other purposes.

List of Subjects in 7 CFR Part 760

Dairy products, Indemnity payments, Pesticides and pests, Reporting and recordkeeping requirements.

■ For the reasons discussed in the preamble, the Farm Service Agency (USDA) adds 7 CFR part 760, subpart H, to read as follows:

PART 760—INDEMNITY PAYMENT PROGRAMS

Subpart H—Crop Assistance Program

Sec.
760.701 Applicability.
760.702 Definitions.
760.703 Producer eligibility requirements.
760.704 Time and method of application.
760.705 Payment rates and calculation of payments.
760.706 Availability of funds.
760.707 Proof of loss.
760.708 Miscellaneous provisions and limitations.

Authority: 7 U.S.C. 612c.

Subpart H—Crop Assistance Program

§ 760.701 Applicability.

(a) This subpart specifies the eligibility requirements and payment calculations for the Crop Assistance Program (CAP), which will be administered using funds authorized by Section 32 of the Agricultural Adjustment Act of 1935 (7 U.S.C. 612c, as amended).

(b) CAP, within the limits of the funds made available by the Secretary for this program, is intended to help reestablish purchasing power to producers of long grain rice, medium or short grain rice, upland cotton, soybeans, and sweet potatoes who suffered a five percent or greater loss in the 2009 crop year due to disaster.

(c) Only producers who have a share in a farm located in a disaster county (a county that is the primary county that is the subject of a Secretarial disaster designation for 2009 crop year due to excessive moisture and related conditions, as determined by FSA) are eligible for CAP benefits.

§ 760.702 Definitions.

The following definitions apply to CAP. The definitions in parts 718, 760, and 1400 of this title also apply, except where they conflict with the definitions in this section.

Acceptable production records means verifiable or reliable production records deemed acceptable by FSA.

Application means the CAP application form.

Application period means the 45-day period established by the Deputy Administrator for producers on farms in disaster counties to apply for CAP that ends December 9, 2010.

Approved yield means the amount of production per acre, computed in accordance with FCIC's Actual Production History (APH) Program at part 400, subpart G of this title or, for crops not included under part 400, subpart G of this title, the yield used to determine the guarantee. For crops covered under NAP, the approved yield is established according to part 1437 of this title.

Considered planted means acreage approved as prevented planted or failed in accordance with § 718.103 of this chapter.

Crop means the reported or determined 2009 crop year planted and considered planted acres of long grain rice, medium or short grain rice, upland cotton, soybean, or sweet potatoes as reflected on 2009 crop year form FSA–578, Report of Acreage, for a producer

in a disaster county as of October 22, 2010. Subsequent crops, replacement crops, reseeded crops, and replanted crops are not eligible crops under this part and no revision of the Report of Acreage that would increase an eligibility for payment will be permitted to produce that effect.

Crop year means for 2009:

(1) For insurable crops, the crop year as defined according to the applicable crop insurance policy;

(2) For NAP covered crops, the crop year as provided in part 1437 of this title.

Disaster means excessive moisture or related condition, resulting from any of the following: flood, flash flooding, excessive rain, moisture, humidity, severe storms, thunderstorms, ground saturation or standing water, hail, winter storms, ice storms, snow, blizzard, hurricane, typhoons, tropical storms, and cold wet weather. A disaster does not include brownouts or power failures.

Disaster county means a county included in the geographic area covered by a qualifying natural disaster designation under section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961(a)). For CAP, the term "disaster county" is limited to those primary counties declared a disaster by the Secretary for excessive moisture or a related condition, which are limited to designations based on any of the following: flood, flash flooding, excessive rain, moisture, humidity, severe storms, thunderstorms, ground saturation or standing water, hail, winter storms, ice storms, snow, blizzard, hurricane, typhoons, tropical storms, and cold wet weather.

Expected production means, for a producer on a farm who attempts to determine what the producer might produce for an eligible crop on a farm, the historic yield multiplied by the producer's share of planted and considered planted acres of the crop for the farm. Expected production may be used to assist producers in determining whether the producer has a crop or crops that suffered a qualifying loss of five percent and to determine whether that crop is eligible for CAP benefits.

Historic yield means, for a producer on a farm, the higher of the county average yield or the producer's approved yields for eligible crops on the farm.

(1) An insured producer's yield will be the higher of the county average yield listed or the approved federal crop insurance APH, for the disaster year.

(2) A NAP producer's yield will be the higher of the county average yield or NAP approved yield for the disaster year.

Replacement crop means the planting or approved prevented planting of any crop for harvest following the failed planting or prevented planting of a crop of long grain rice, medium or short grain rice, upland cotton, soybeans, or sweet potatoes not in a recognized double-cropping sequence. Replacement crops are not eligible for CAP.

Reseeded or replanted crop means the second planting of a crop of long grain rice, medium or short grain rice, upland cotton, soybeans, or sweet potatoes on the same acreage after the first planting of that same crop that failed.

§ 760.703 Producer eligibility requirements.

(a) A producer must meet all of the requirements in this subpart to be eligible for a CAP payment.

(b) To be eligible, a producer must be an individual or entity who is entitled to an ownership share of an eligible crop and who has the production and market risks associated with the agricultural production of the crop on a farm. An eligible producer must be a:

(1) Citizen of the United States;

(2) Resident alien, which for purposes of this subpart means "lawful alien" as defined in 7 CFR part 1400;

(3) Partnership of citizens of the United States; or

(4) Corporation, limited liability corporation, or other farm organizational structure organized under State law.

(c) To be eligible, a producer must have:

(1) Produced a 2009 crop year planted or considered planted long grain rice, medium or short grain rice, upland cotton, soybean, or sweet potato crop in a 2009 eligible disaster county, and

(2) Suffered a five percent or greater loss in an eligible disaster county in 2009. A list of the disaster counties for CAP is available on the FSA Web site and at FSA county offices.

§ 760.704 Time and method of application.

(a) To request a CAP payment, the producer must submit a CAP application on the form designated by FSA to the FSA county office responsible for administration of the farm.

(b) Producers submitting an application for a crop must certify that they suffered a five percent or greater loss of the crop on the farm in a disaster county and that they have documentation to support that certification as required in § 760.713.

(c) Once submitted by a producer, the application is considered to contain information and certifications of and pertaining to the producer's crop and farm regardless of who entered the information on the application.

(d) Producers requesting benefits under CAP must certify the accuracy and truthfulness of the information provided in the application as well as with any documentation that may be provided with the application or documentation that will be provided to FSA in substantiation of the application. All certifications and information are subject to verification by FSA.

(e) Producers applying for CAP must certify that they have an eligible ownership share interest in the 2009 crop acreage that sustained a five percent or greater loss. The determination and certification by a producer that a crop suffered the requisite five percent or greater farm crop loss is the expected quantity of production of the crop less the actual production of the crop.

(f) In the event that the producer does not submit documentation in response to any request of FSA to support the producer's application or documentation furnished does not show a crop loss of at least five percent as claimed, the application for that crop will be disapproved in its entirety. For quantity losses, producers need to apply a standard similar to the historic yield provisions used under previous ad hoc disaster programs. Those provisions provided that a historic yield was the higher of a county average yield or a producer's approved yield. Thus, if an applicant is determining whether a farm has a crop that suffered a loss of five percent or greater on the farm's planted and considered planted acreage, the applicant could compare the amount successfully produced in 2009 from those planted and considered planted acres to what the participant expected to produce from that acreage using either the county average yield (which may be obtained from FSA by request) or based on analysis of approved actual production history yields that may exist for producers of the crop on the farm.

(g) Unless otherwise determined necessary by FSA, producers will not be required to submit documentation of farm crop production or loss at time of application. FSA's decision not to require proof, documentation, or evidence in support of any application at time of application is not to be construed as a determination of a producer's eligibility.

(h) Producers who apply are required to retain documentation in support of their application for three years after the date of application in accordance with § 760.713.

(i) The application submitted in accordance with this section is not considered valid and complete for issuance of payment under this part unless FSA determines all the applicable eligibility provisions have been satisfied and the producer has submitted all the required forms. In addition to the completed, certified application form, if the information for the following forms or certifications is not on file in the FSA county office or is not current for 2009, the producer must also submit:

(1) Farm operating plan for individual or legal entity;

(2) Average adjusted gross income statement for 2009; and

(3) Highly erodible land conservation (HELC) and wetland conservation certification.

(j) Application approval and payment by FSA does not relieve a producer from having to submit any form, records, or documentation required, but not filed at the time of application or payment, according to paragraph (h) of this section.

§ 760.705 Payment rates and calculation of payments.

(a) CAP payments will be calculated by multiplying the total number of reported or determined acres of an eligible crop by the per acre payment rate for that crop. Payment rates are as follows:

(1) Long grain rice, $31.93 per acre;

(2) Medium or short grain rice, $52.46 per acre;

(3) Upland cotton, $17.70 per acre;

(4) Soybeans, $15.62 per acre; and

(5) Sweet potatoes, $155.41 per acre.

(b) Payments will be calculated based on the 2009 crop year reported or determined planted or considered planted acres of an eligible crop on a farm in a disaster county as reflected on a form FSA–578, Report of Acreage, on file in FSA as of October 22, 2010.

§ 760.706 Availability of funds.

(a) Payments specified in this subpart are subject to the availability of funds. The total available program funds are $550 million. In order to keep payments within available funds, the Deputy Administrator may pro-rate payments, to the extent the Deputy Administrator determines that necessary.

(b) Funds for CAP are being made available only for the 2009 crop year reported and determined eligible crop acreage in disaster counties as reflected on a form FSA–578, Report of Acreage, as of October 22, 2010.

§ 760.707 Proof of loss.

(a) All certifications, applications, and documentation are subject to spot check and verification by FSA. Producers must submit documentation to FSA if and when FSA requests documentation to substantiate any certified application.

(b) Producers are responsible for retaining or providing, when required, verifiable or reliable production or loss records available for the crop. Producers are also responsible for summarizing all the production or loss evidence and providing the information in a manner that can be understood by the county committee.

(c) Any producer receiving payment under this subpart agrees to maintain any books, records, and accounts supporting any information or certification made according to this part for 3 years after the end of the year following application.

(d) Producers receiving payments or any other person who furnishes such information to FSA must permit FSA or authorized representatives of USDA and the General Accounting Office during regular business hours to inspect, examine, and to allow such persons to make copies of such books, records or other items for the purpose of confirming the accuracy of the information provided by the producer.

§ 760.708 Miscellaneous provisions and limitations.

(a) A person ineligible under § 1437.15(c) of this title concerning violations of the Noninsured Crop Disaster Assistance Program for the 2009 crop year is ineligible for benefits under this subpart.

(b) A person ineligible under § 400.458 of this title for the 2009 crop year concerning violations of crop insurance regulations is ineligible for CAP.

(c) In the event that any request for CAP payment resulted from erroneous information or a miscalculation, the payment will be recalculated and the producer must refund any excess to FSA with interest to be calculated from the date of the disbursement to the producer. If for whatever reason the producer signing a CAP application overstates the loss level of the crop when the actual loss level determined by FSA for the crop is less than the level claimed, or where the CAP payment would exceed the producer's actual loss, the application will be disapproved for the crop and the full CAP payment for that crop will be required to be refunded with interest from date of disbursement. The CAP payment cannot exceed the producer's actual loss.

(d) The liability of anyone for any penalty or sanction under or in connection with this subpart, or for any refund to FSA or related charge is in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to: 18 U.S.C. 286, 287, 371, 641, 651, 1001, and 1014; 15 U.S.C. 714; and 31 U.S.C. 3729.

(e) The regulations in parts 11 and 780 of this title apply to determinations under this subpart.

(f) Any payment to any person under this subpart will be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or its proceeds.

(g) Any payment made under this subpart will be considered farm revenue for 2009 for the Supplemental Revenue Assistance Payments Program.

(h) The average AGI limitation provisions in part 1400 of this title relating to limits on payments for persons or legal entities, excluding joint ventures and general partnerships, with certain levels of average adjusted gross income (AGI) apply to each applicant for CAP. Specifically, a person or legal entity with an average adjusted gross nonfarm income, as defined in § 1404.3 of this title, that exceeds $500,000 is not eligible to receive CAP payments.

(i) No person or legal entity, excluding a joint venture or general partnership, as determined by the rules in part 1400 of this title may receive, directly or indirectly, more than $100,000 in payments under this subpart.

(j) The direct attribution provisions in part 1400 of this title apply to CAP. Under those rules, any payment to any legal entity will also be considered for payment limitation purposes to be a payment to persons or legal entities with an interest in the legal entity or in a sub-entity. If any such interested person or legal entity is over the payment limitation because of direct payment or their indirect interests or a combination thereof, then the payment to the actual payee will be reduced commensurate with the amount of the interest of the interested person in the payee. Likewise, by the same method, if anyone with a direct or indirect interest in a legal entity or sub-entity of a payee entity exceeds the AGI levels that would allow a producer to directly receive a CAP payment, then the payment to the actual payee will be reduced commensurately with that interest. For CAP, unless otherwise specified in part 1400 of this title, the AGI amount will be that person's or legal entity's average AGI for the three taxable years that precede the 2008 taxable year (that is 2005, 2006, and 2007).

(k) For the purposes of the effect of lien on eligibility for Federal programs (28 U.S.C. 3201(e)), FSA waives the

restriction on receipt of funds under CAP but only as to beneficiaries who, as a condition of such waiver, agree to apply the CAP payments to reduce the amount of the judgment lien.

(l) For CAP, producers are either eligible or ineligible. Therefore, the provisions of § 718.304 of this chapter, "Failure to Fully Comply," do not apply to this subpart.

(m) The regulations in subpart B apply to CAP. In addition to those regulations that specifically include subpart H or apply to this part, the following sections specifically apply to this subpart: §§ 760.113(a), 760.114, and 760.116(a).

Signed in Washington, DC, on October 19, 2010.

Carolyn B. Cooksie,

Administrator, Farm Service Agency.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS–2010–0077]

Change in Disease Status of Japan Because of Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations governing the importation of certain animals, meat, and other animal products by removing Japan from the list of regions considered to be free of foot-and-mouth disease (FMD) and also from the list of FMD-free regions that are subject to certain import restrictions on meat and meat products because of their proximity to or trading relationships with FMD- or rinderpest-affected countries. We are taking this action because the existence of FMD has been confirmed in Japan. This action restricts the importation of ruminants and swine and the fresh meat and other animal products of ruminants and swine from that country and is necessary to prevent the introduction of FMD into the United States.

DATES: This interim rule is effective October 25, 2010. However, we are imposing this restriction retroactively to April 20, 2010. We will consider all comments that we receive on or before December 27, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0077* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2010–0077, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0077.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Kelly Rhodes, Senior Staff Veterinarian, Regionalization Evaluation Services—Import, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

Foot-and-mouth disease (FMD) is a severe and highly contagious viral infection affecting cloven-hoofed ruminants, including cattle, deer, goats, sheep, swine, and other animals. The disease is highly communicable and is characterized by fever and blister-like lesions on the tongue and lips, in the mouth, on the teats, and between the hooves. It causes severe losses in the production of meat, milk, and other dairy products. Although many animals survive the disease, it leaves them debilitated. FMD is endemic to more than two-thirds of the world and is considered to be widespread in parts of Africa, Asia, Europe, and South America. Because of the highly communicable nature of FMD, it is necessary to protect livestock that are free of the disease from any animals, animal products, or other articles that might be contaminated with the FMD virus.

Although FMD was eradicated in the United States in 1929, the virus could be reintroduced by a single infected animal, animal product, or person carrying the virus. Once introduced, FMD can spread quickly through exposure to aerosols from infected animals, direct contact with infected animals, contact with contaminated feed or equipment, ingestion of animal products, or contact with humans harboring the virus or carrying the virus on their clothing.

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various animal diseases, including rinderpest and FMD. Section 94.1 of the regulations lists regions of the world that are considered free of rinderpest and FMD. Japan has been listed in § 94.1 as a region considered free of rinderpest and FMD. Section 94.11 lists regions of the world considered free of rinderpest and FMD but from which the importation of meat and other animal products into the United States is subject to additional restrictions because of those regions' proximity to or trading relationships with FMD-affected regions. Japan has been listed in § 94.11 as one of the regions from which meat and other animal products of ruminants and swine are subject to additional restrictions.

On April 20, 2010, the Ministry of Agriculture, Forestry, and Fisheries of Japan reported an outbreak of FMD in that country to the World Organization for Animal Health (OIE). In response, APHIS administratively issued temporary restrictions on commodities from Japan that could harbor FMD virus. Since that date, Japan has reported FMD on a total of 292 premises. No new cases have been diagnosed since July 4, 2010. We are amending the regulations in § 94.1(a)(1) to remove Japan from the list of regions free of rinderpest and FMD and are amending the regulations in § 94.1(a)(3) to add Japan to the list of regions free of rinderpest. We are also amending the regulations in § 94.11 to remove Japan from the list of regions considered free of rinderpest and FMD but from which the importation of meat and other animal products of ruminants and swine into the United States is subject to additional restrictions.

Additionally, we are making a nonsubstantive change to § 94.27 to clarify our intent regarding that section. The provisions of § 94.27 allow the importation from Japan of whole cuts of boneless beef derived from cattle that meet specified conditions to mitigate the risk of introducing bovine