

SUBCHAPTER D—SPECIAL PROGRAMS

PART 750—SOIL BANK

EDITORIAL NOTE: Part 750 (formerly part 485 of title 6), published at 21 FR 6289, Aug. 22, 1956, and redesignated at 26 FR 5788, June 29, 1961, is no longer carried in the Code of Federal Regulations. This deletion does not relieve any person of any obligation or liability incurred under these regulations, nor deprive any person of any rights received or accrued under the provisions of this part. For FEDERAL REGISTER citations affecting this part, see the "List of CFR Sections Affected, 1949–1963, 1964–1972, and 1973–1985," published in seven separate volumes.

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AUTHORITY: 7 U.S.C. 612c; Pub. L. 106–387, 114 Stat. 1549; Pub. L. 107–76, 115 Stat. 704; Title III, Pub. L. 109–234, 120 Stat. 474; 16 U.S.C. 3801, note; and Title IX, Pub.L. 110–28.

Subpart A—Dairy Indemnity Payment Program

AUTHORITY: Pub. L. 106–387, 114 Stat. 1549, and Pub. L. 107–76, 115 Stat. 704.

SOURCE: 43 FR 10535, Mar. 14, 1978, unless otherwise noted.

PROGRAM OPERATIONS

§ 760.1 Administration.

This indemnity payment program will be carried out by FSA under the direction and supervision of the Deputy Administrator. In the field, the program will be administered by the State and county committees.

§ 760.2 Definitions.

For purposes of this subject, the following terms shall have the meanings specified:

(a) *Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the U.S. Department of Agriculture to whom he has delegated, or to whom he may hereafter delegate, authority to act in his stead.

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(b) *FSA* means the Farm Service Agency, U.S. Department of Agriculture.

(c) *Deputy Administrator* means the Deputy Administrator for Farm Programs, FSA.

(d) *State committee* means the FSA State committee.

(e) *County committee* means the FSA county committee.

(f) *Pesticide* means an economic poison which was registered pursuant to the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135 through 135k), and approved for use by the Federal Government.

(g) *Chemicals or Toxic Substances* means any chemical substance or mixture as defined in the Toxic Substances Control Act (15 U.S.C. 2602).

(h) *Nuclear Radiation or Fallout* means contamination from nuclear radiation or fallout from any source.

(i) *Violating Substance* means one or more of the items defined in paragraphs (f), (g), and (h) of this section.

(j) *Public agency* means any Federal, State or local public regulatory agency.

(k) *Affected farmer* means a person who produces whole milk which is removed from the commercial market any time from:

(1) Pursuant to the direction of a public agency because of the detection of pesticide residues in such whole milk by tests made by a public agency or under a testing program deemed adequate for the purpose by a public agency, or

(2) Pursuant to the direction of a public agency because of the detection of other residues of chemicals or toxic substances residues, or contamination from nuclear radiation or fallout in such whole milk by tests made by a public agency or under a testing program deemed adequate for the purpose by a public agency.

(l) *Affected manufacturer* means a person who manufactures dairy products which are removed from the commercial market pursuant to the direction of a public agency because of the detection of pesticide residue in such dairy products by tests made by a public agency or under a testing program

deemed adequate for the purpose by a public agency.

(m) *Milk handler* means the marketing agency to or through which the affected dairy farmer marketed his whole milk at the time he was directed by the public agency to remove his whole milk from the commercial market.

(n) *Person* means an individual, partnership, association, corporation, trust, estate, or other legal entity.

(o) *Application period* means any period during which an affected farmer's whole milk is removed from the commercial market pursuant to direction of a public agency for a reason specified in paragraph (k) of this section and for which application for payment is made.

(p) *Pay period* means (1) in the case of an affected farmer who markets his whole milk through a milk handler, the period used by the milk handler in settling with the affected farmer for his whole milk, usually biweekly or monthly, or (2) in the case of an affected farmer whose commercial market consists of direct retail sales to consumers, a calendar month.

(q) *Whole milk* means milk as it is produced by cows.

(r) *Commercial market* means (1) the market to which the affected farmer normally delivers his whole milk and from which it was removed because of detection therein of a residue of a violating substance(s) or (2) the market to which the affected manufacturer normally delivers his dairy products and from which they were removed because of detection therein of pesticide residue.

(s) *Removed from the commercial market* means (1) produced and destroyed or fed to livestock, (2) produced and delivered to a handler who destroyed it or disposed of it as salvage (such as separating whole milk, destroying the fat, and drying the skim milk), or (3) produced and otherwise diverted to other than the commercial market.

(t) *Payment subject to refund* means a payment which is made by a milk handler to an affected farmer, and which such farmer is obligated to refund to the milk handler.

(u) *Base period* means the calendar month or 4-week period immediately

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preceding removal of milk from the market.

[43 FR 10535, Mar. 14, 1978, as amended by Amdt. 1, 44 FR 36360, July 22, 1979; 52 FR 17935, May 13, 1987; 53 FR 44001, Nov. 1, 1988; 56 FR 1358, Jan. 14, 1991; 61 FR 18485, Apr. 26, 1996; 71 FR 27190, May 10, 2006]

PAYMENTS TO DAIRY FARMERS FOR MILK

§ 760.3 Indemnity payments on milk.

An indemnity payment for milk may be made to an affected farmer who is determined by the county committee to be in compliance with all the terms and conditions of this subpart in the amount of the fair market value of his normal marketings for the application period, as determined in accordance with §§ 760.4 and 760.5, less (a) any amount he received for whole milk marketed during the applications period, and (b) any payment not subject to refund which he received from a milk handler with respect to whole milk removed from the commercial market during the application period.

[43 FR 10535, Mar. 14, 1978, as amended at 47 FR 24689, June 8, 1982]

§ 760.4 Normal marketings of milk.

(a) The county committee shall determine the affected farmer's normal marketings which, for the purposes of this subpart, shall be the sum of the quantities of whole milk which such farmer would have sold in the commercial market in each of the pay periods in the application period but for the removal of his whole milk from the commercial market because of the detection of a residue of a violating substance.

(b) Normal marketings for each pay period are based on the average daily production during the base period.

(c) Normal marketings determined in paragraph (b) of this section are adjusted for any change in the daily average number of cows milked during each pay period the milk is off the market compared with the average number of cows milked daily during the base period.

(d) If only a portion of a pay period falls within the application period, normal marketings for such pay period shall be reduced so that they represent

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only that part of such pay period which is within the application period.

[43 FR 10535, Mar. 14, 1978, as amended by Amdt. 1, 44 FR 36360, July 22, 1979]

§ 760.5 Fair market value of milk.

(a) The county committee shall determine the fair market value of the affected farmer's normal marketings, which, for the purposes of this subpart, shall be the sum of the net proceeds such farmer would have received for his normal marketings in each of the pay periods in the application period.

(b) The county committee shall determine the net proceeds the affected farmer would have received in each of the pay periods in the application period (1) in the case of an affected farmer who markets his whole milk through a milk handler, by multiplying the affected farmer's normal marketings for each such pay period by the average net price per hundred-weight of whole milk paid during the pay period by such farmer's milk handler in the same area for whole milk similar in quality and butterfat test to that marketed by the affected farmer in the base period used to determine his normal marketings, or (2) in the case of an affected farmer whose commercial market consists of direct retail sales to consumers, by multiplying the affected farmer's normal marketings for each such pay period by the average net price per hundredweight of whole milk, as determined by the county committee, which other producers in the same area who marketed their whole milk through milk handlers received for whole milk similar in quality and butterfat test to that marketed by the affected farmer during the base period used to determine his normal marketings.

(c) In determining the net price for whole milk, the county committee shall deduct from the gross price therefor any transportation, administrative, and other costs of marketing which it determines are normally incurred by the affected farmer but which were not incurred because of the removal of his whole milk from the commercial market.

§ 760.6 Information to be furnished.

The affected farmer shall furnish to the county committee complete and accurate information sufficient to enable the county committee or the Deputy Administrator to make the determinations required in this subpart. Such information shall include, but is not limited to:

(a) A copy of the notice from, or other evidence of action by, the public agency which resulted in the removal of the affected farmer's whole milk from the commercial market.

(b) The specific name of the violating substance causing the removal of his whole milk from the commercial market, if not included in the notice or other evidence of action furnished under paragraph (a) of this section.

(c) The quantity and butterfat test of whole milk produced and marketed during the base period. This information must be a certified statement from the affected farmer's milk handler or any other evidence the county committee accepts as an accurate record of milk production and butterfat tests during the base period.

(d) The average number of cows milked during the base period and during each pay period in the application.

(e) If the affected farmer markets his whole milk through a milk handler, a statement from the milk handler showing, for each pay period in the application period, the average price per hundred-weight of whole milk similar in quality to that marketed by the affected farmer during the base period used to determine his normal marketings. If the milk handler has information as to the transportation, administrative, and other costs of marketing which are normally incurred by producers who market through the milk handler but which the affected farmer did not incur because of removal of his whole milk from the market, the average price stated by the milk handler shall be the average gross price paid producers less any such costs. If the milk handler does not have such information, the affected farmer shall furnish a statement setting forth such costs, if any.

(f) The amount of proceeds, if any, received by the affected farmer from the

marketing of whole milk produced during the application period.

(g) The amount of any payments not subject to refund made to the affected farmer by the milk handler with respect to the whole milk produced during the application period and removed from the commercial market.

(h) To the extent that such information is available to the affected farmer, the name of any pesticide, chemical, or toxic substance used on the farm within 24 months prior to the application period, the use made of the pesticide, chemical, or toxic substance, the approximate date of such use, and the name of the manufacturer and the registration number, if any, on the label on the container of the pesticide, chemical, or toxic substance.

(i) To the extent possible, the source of the pesticide, chemical, or toxic substance that caused the contamination of the whole milk, and the results of any laboratory tests on the feed supply.

(j) Such other information as the county committee may request to enable the county committee or the Deputy Administrator to make the determinations required in this subpart.

[43 FR 10535, Mar. 14, 1978, as amended by Amdt. 1, 44 FR 36360, June 22, 1979]

§ 760.7 Other requirements for affected farmers.

An indemnity payment for milk may be made under this subpart to an affected farmer only under the following conditions:

(a) If the pesticide, chemical, or toxic substance, contaminating the milk was used by the affected farmer, he established each of the following:

(1) That the pesticide, chemical or toxic substance, when used, was registered (if applicable) and approved for use as provided in § 760.2(f);

(2) That the contamination of his milk was not the result of his failure to use the pesticide, chemical, or toxic substance, according to the directions and limitations stated on the label;

(3) That the contamination of his milk was not otherwise his fault.

(b) If the pesticide, chemical, or toxic substance contaminating the milk was not used by the affected farmer, he establishes each of the following:

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(1) He did not know or have reason to believe that any feed which he purchased and which contaminated his milk contained a harmful residue of a pesticide, a chemical, or a toxic substance or was contaminated by nuclear radiation or fallout.

(2) None of the milk was produced by dairy cattle which he knew, or had reason to know at the time he acquired them, were contaminated with residues of pesticides, chemicals or toxic substances, or by nuclear radiation or fallout.

(3) The contamination of his milk was not otherwise his fault.

(c) The affected farmer has adopted recommended practices for eliminating residues of pesticides, chemicals, or toxic substances or contamination from nuclear radiation or fallout from his milk as soon as practicable following the discovery of the initial contamination.

[43 FR 10535, Mar. 14, 1978, as amended at 47 FR 24689, June 8, 1982]

§ 760.8 Application for payments for milk.

The affected farmer or his legal representative, as provided in §§ 760.25 and 760.29, must sign and file an application for payment on a form which is approved for that purpose by the Deputy Administrator. The form must be filed with the county FSA office for the county where the farm headquarters are located no later than December 31 following the end of the fiscal year in which the loss occurred, or such later date as the Deputy Administrator may specify. The application for payment shall cover application periods of at least 28 days, except that, if the entire application period, or the last application period, is shorter than 28 days, applications for payment may be filed for such shorter period. The application for payment shall be accompanied by the information required by § 760.6 as well as any other information which will enable the county committee to determine whether the making of an indemnity payment is precluded for any of the reasons set forth in § 760.7. Such information shall be submitted

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on forms approved for the purpose by the Deputy Administrator.

[43 FR 10535, Mar. 14, 1978, as amended at 51 FR 12986, Apr. 17, 1986; 52 FR 17935, May 13, 1987]

§ 760.9 Other legal recourse.

(a) No indemnity payment shall be made for contaminated milk resulting from residues of chemicals or toxic substances if, within 30 days after receiving a complete application, the Deputy Administrator determines that other legal recourse is available to the farmer. An application shall not be deemed complete unless it contains all information necessary to make a determination as to whether other legal recourse is available to the farmer. However, notwithstanding such a determination, the Deputy Administrator may reopen the case at a later date and make a new determination on the merits of the case as may be just and equitable.

(b) In the event that a farmer receives an indemnity payment under this subpart, and such farmer is later compensated for the same loss by the person (or the representative or successor in interest of such person) responsible for such loss, the indemnity payment shall be refunded by the farmer to the Department of Agriculture: *Provided*, That the amount of such refund shall not exceed the amount of other compensation received by the farmer.

[Amdt. 1, 44 FR 36361, June 22, 1979]

PAYMENTS TO MANUFACTURERS AFFECTED BY PESTICIDES

§ 760.20 Payments to manufacturers of dairy products.

An indemnity payment may be made to the affected manufacturer who is determined by the Deputy Administrator to be in compliance with all the terms and conditions of this subpart in the amount of the fair market value of the product removed from the commercial market because of pesticide residues, less any amount the manufacturer receives for the product in the form of salvage.

NOTE: Manufacturers are not eligible for payment when dairy products are contaminated by chemicals, toxic substances (other

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than pesticides) or nuclear radiation or fallout.

[43 FR 10535, Mar. 14, 1978, as amended at 47 FR 24689, June 8, 1982]

§ 760.21 Application for payments by manufacturers.

The affected manufacturer, or his legal representatives, shall file an application for payment with the Deputy Administrator, FSA, Washington, D.C., through the county office serving the county where the contaminated product is located. The application for payment may be in the form of a letter or memorandum. Such letter or memorandum, however, must be accompanied by acceptable documentation to support such application for payment.

§ 760.22 Information to be furnished by manufacturer.

The affected manufacturer shall furnish the Deputy Administrator, through the county committee, complete and accurate information sufficient to enable him to make the determination as to the manufacturer's eligibility to receive an indemnity payment. Such information shall include, but is not limited to:

(a) A copy of the notice or other evidence of action by the public agency which resulted in the product being removed from the commercial market.

(b) The name of the pesticide causing the removal of the product from the commercial market and, to the extent possible, the source of the pesticide.

(c) A record of the quantity of milk or butterfat used to produce the product for which an indemnity payment is requested.

(d) The identity of any pesticide used by the affected manufacturer.

(e) Such other information as the Deputy Administrator may request to enable him to make the determinations required in this subpart.

§ 760.23 Other requirements for manufacturers.

An indemnity payment may be made under this subpart to an affected manufacturer only under the following conditions:

(a) If the pesticide contaminating the product was used by the affected manufacturer, he establishes each of the fol-

lowing: (1) That the pesticide, when used, was registered and recommended for such use as provided in § 760.2(f); (2) that the contamination of his product was not the result of his failure to use the pesticide in accordance with the directions and limitations stated on the label of the pesticide; and (3) that the contamination of his product was not otherwise his fault.

(b) If the pesticide contaminating the product was not used by the affected manufacturer: (1) He did not know or have reason to believe that the milk from which the product was processed contained a harmful level of pesticide residue, and (2) the contamination of his product was not otherwise his fault.

(c) In the event that a manufacturer receives an indemnity payment under this subpart, and such manufacturer is later compensated for the same loss by the person (or the representative or successor in interest of such person) responsible for such loss, the indemnity payment shall be refunded by the manufacturer to the Department of Agriculture: *Provided*, That the amount of such refund shall not exceed the amount of other compensation received by the manufacturer.

[43 FR 10535, Mar. 14, 1978, as amended at 47 FR 24689, June 8, 1982; 51 FR 12987, Apr. 17, 1986; 52 FR 17935, May 13, 1987]

GENERAL PROVISIONS

§ 760.24 Limitation of authority.

(a) County executive directors and State and county committees do not have authority to modify or waive any of the provisions of the regulations in this subpart.

(b) The State committee may take any action authorized or required by the regulations in this subpart to be taken by the county committee when such action has not been taken by the county committee. The State committee may also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations in this subpart, or (2) require a county committee to withhold taking any action which is not in accordance with the regulations in this subpart.

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(c) No delegation herein to a State or county committee shall preclude the Deputy Administrator or his designee from determining any question arising under the regulations in this subpart or from reversing or modifying any determination made by a State or county committee.

§ 760.25 Estates and trusts; minors.

(a) A receiver of an insolvent debtor's estate and the trustee of a trust estate shall, for the purpose of this subpart, be considered to represent an insolvent affected farmer or manufacturer and the beneficiaries of a trust, respectively, and the production of the receiver or trustee shall be considered to be the production of the person or manufacturer he represents. Program documents executed by any such person will be accepted only if they are legally valid and such person has the authority to sign the applicable documents.

(b) An affected dairy farmer or manufacturer who is a minor shall be eligible for indemnity payments only if he meets one of the following requirements:

(1) The right of majority has been conferred on him by court proceedings or by statute; (2) a guardian has been appointed to manage his property and the applicable program documents are signed by the guardian; or (3) a bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had he been an adult.

(2) [Reserved]

§ 760.26 Appeals.

The appeal regulations issued by the Administrator, FSA, part 780 of this chapter, shall be applicable to appeals by dairy farmers or manufacturers from determinations made pursuant to the regulations in this subpart.

§ 760.27 Setoffs.

(a) If the affected farmer or manufacturer is indebted to any agency of the United States and such indebtedness is listed on the county debt record, indemnity payments due the affected farmer or manufacturer under the regulations in this part shall be applied, as provided in the Secretary's setoff

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regulations, part 13 of this title, to such indebtedness.

(b) Compliance with the provisions of this section shall not deprive the affected farmer or manufacturer of any right he would otherwise have to contest the justness of the indebtedness involved in the setoff action, either by administrative appeal or by legal action.

§ 760.28 Overdisbursement.

If the indemnity payment disbursed to an affected farmer or to a manufacturer exceeds the amount authorized under the regulations in this subpart, the affected farmer or manufacturer shall be personally liable for repayment of the amount of such excess.

§ 760.29 Death, incompetency, or disappearance.

In the case of the death, incompetency, or disappearance of any affected farmer or manufacturer who would otherwise receive an indemnity payment, such payment may be made to the person or persons specified in the regulations contained in part 707 of this chapter. The person requesting such payment shall file Form FSA-325, "Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent," as provided in that part.

[43 FR 10535, Mar. 14, 1978, as amended at 47 FR 24689, June 8, 1982]

§ 760.30 Records and inspection thereof.

(a) The affected farmer, as well as his milk handler and any other person who furnished information to such farmer or to the county committee for the purpose of enabling such farmer to receive a milk indemnity payment under this subpart, shall maintain any existing books, records, and accounts supporting any information so furnished for 3 years following the end of the year during which the application for payment was filed. The affected farmer, his milk handler, and any other person who furnishes such information to the affected farmer or to the county committee shall permit authorized representatives of the Department of Agriculture and the General Accounting Office, during regular business hours, to

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inspect, examine, and make copies of such books, records, and accounts.

(b) The affected manufacturer or any other person who furnishes information to the Deputy Administrator for the purposes of enabling such manufacturer to receive an indemnity payment under this subpart shall maintain any books, records, and accounts supporting any information so furnished for 3 years following the end of the year during which the application for payment was filed. The affected manufacturer or any other person who furnishes such information to the Deputy Administrator shall permit authorized representatives of the Department of Agriculture and the General Accounting Office, during regular business hours, to inspect, examine, and make copies of such books, records, and accounts.

§ 760.31 Assignment.

No assignment shall be made of any indemnity payment due or to come due under the regulations in this subpart. Any assignment or attempted assignment of any indemnity payment due or to come due under this subpart shall be null and void.

§ 760.32 Instructions and forms.

The Deputy Administrator shall cause to be prepared such forms and instructions as are necessary for carrying out the regulations in this subpart. Affected farmers and manufacturers may obtain information necessary to make application for a dairy indemnity payment from the county FSA office. Form FSA-373—Application for Indemnity Payment, is available at the county ASC office.

[43 FR 10535, Mar. 14, 1978, as amended at 47 FR 24689, June 8, 1982]

§ 760.33 Availability of funds.

Payment of indemnity claims will be contingent upon the availability of funds to the Department to pay such claims. With respect to claims filed

after October 1, 1982, if the Department determines that the amount of claims to be filed under the program will exceed the funds available to the Department, to pay such claims payments will be made so that each eligible claimant will receive a pro rata share of the remaining funds available to the Department to pay dairy indemnity claims.

(Approved by the Office of Management and Budget under control number 0560-0045)

[48 FR 40367, Sept. 7, 1983 and 49 FR 8906, Mar. 9, 1984]

§ 760.34 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR part 760) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0560-0045.

[49 FR 29564, July 23, 1984]

Subpart B—General Provisions for the 2005 Section 32 Hurricane Disaster Programs

SOURCE: 72 FR 878, Jan. 9, 2007, unless otherwise noted.

§ 760.101 Eligible counties, hurricanes and disaster periods.

Producers who have suffered certain losses due to 2005 Hurricanes Dennis, Katrina, Ophelia, Rita, and Wilma (2005 hurricanes) in the following counties (eligible counties) are eligible to enroll in the programs made available under subparts B through F of this part. The 'Disaster Period' is the time period in which losses occurred that would be considered eligible for the programs under subparts B through F of this part. Funds for the programs in subparts B through G are made available under Section 32 of the Act of August 24, 1935, as amended (Section 32).

State	County	Disaster period				
		DENNIS	KATRINA	OPHELIA	RITA	WILMA
Alabama	Autauga	7/10/05-9/8/05	8/29/05-10/28/05			
Alabama	Baldwin	7/10/05-9/8/05	8/29/05-10/28/05			
Alabama	Bibb					
Alabama	Butler	7/10/05-9/8/05				
Alabama	Chambers	7/10/05-9/8/05				
Alabama	Choctaw	7/10/05-9/8/05	8/29/05-10/28/05			
Alabama	Clarke	7/10/05-9/8/05	8/29/05-10/28/05			
Alabama	Clay					
Alabama	Cleburne	7/10/05-9/8/05				
Alabama	Coffee	7/10/05-9/8/05				
Alabama	Colbert		8/29/05-10/28/05			
Alabama	Conecuh	7/10/05-9/8/05				
Alabama	Covington	7/10/05-9/8/05				
Alabama	Crenshaw	7/10/05-9/8/05				
Alabama	Cullman		8/29/05-10/28/05			
Alabama	Dallas					
Alabama	Escambia	7/10/05-9/8/05				
Alabama	Geneva	7/10/05-9/8/05				
Alabama	Greene	7/10/05-9/8/05	8/29/05-10/28/05			
Alabama	Hale	7/10/05-9/8/05	8/29/05-10/28/05			
Alabama	Henry	7/10/05-9/8/05				
Alabama	Houston	7/10/05-9/8/05				
Alabama	Jefferson		8/29/05-10/28/05			
Alabama	Lamar		8/29/05-10/28/05			
Alabama	Lauderdale		8/29/05-10/28/05			
Alabama	Lowndes	7/10/05-9/8/05				
Alabama	Madison	7/10/05-9/8/05				
Alabama	Macon					
Alabama	Marion	7/10/05-9/8/05	8/29/05-10/28/05			
Alabama	Marion					
Alabama	Mobile	7/10/05-9/8/05	8/29/05-10/28/05			
Alabama	Monroe	7/10/05-9/8/05	8/29/05-10/28/05			
Alabama	Perry	7/10/05-9/8/05	8/29/05-10/28/05			
Alabama	Pickens		8/29/05-10/28/05			
Alabama	Pike	7/10/05-9/8/05				
Alabama	Randolph	7/10/05-9/8/05				
Alabama	Sumter	7/10/05-9/8/05	8/29/05-10/28/05			
Alabama	Tuscaloosa	7/10/05-9/8/05	8/29/05-10/28/05			
Alabama	Washington	7/10/05-9/8/05	8/29/05-10/28/05			
Alabama	Wilcox	7/10/05-9/8/05	8/29/05-10/28/05			
Alabama	Winston		8/29/05-10/28/05			
Florida	Bay	7/10/05-9/8/05	8/24/05-10/23/05			10/23/05-12/22/05
Florida	Brevard					10/23/05-12/22/05
Florida	Broward		8/24/05-10/23/05			10/23/05-12/22/05
Florida	Calhoun	7/10/05-9/8/05				10/23/05-12/22/05
Florida	Charlotte					10/23/05-12/22/05
Florida	Collier		8/24/05-10/23/05			10/23/05-12/22/05

Florida	Dixie	7/10/05-9/8/05	8/24/05-10/23/05						
Florida	Escambia	7/10/05-9/8/05	8/24/05-10/23/05						
Florida	Franklin	7/10/05-9/8/05	8/24/05-10/23/05						
Florida	Gadsden	7/10/05-9/8/05							10/23/05-12/22/05
Florida	Glades	7/10/05-9/8/05							10/23/05-12/22/05
Florida	Gulf	7/10/05-9/8/05	8/24/05-10/23/05						10/23/05-12/22/05
Florida	Hardee								10/23/05-12/22/05
Florida	Henry								10/23/05-12/22/05
Florida	Highlands								10/23/05-12/22/05
Florida	Holmes	7/10/05-9/8/05							10/23/05-12/22/05
Florida	Indian River								10/23/05-12/22/05
Florida	Jackson	7/10/05-9/8/05							10/23/05-12/22/05
Florida	Jefferson	7/10/05-9/8/05							10/23/05-12/22/05
Florida	Lee								10/23/05-12/22/05
Florida	Leon	7/10/05-9/8/05							10/23/05-12/22/05
Florida	Levy	7/10/05-9/8/05							10/23/05-12/22/05
Florida	Liberty	7/10/05-9/8/05							10/23/05-12/22/05
Florida	Martin								10/23/05-12/22/05
Florida	Miami-Dade		8/24/05-10/23/05						10/23/05-12/22/05
Florida	Monroe	7/10/05-9/8/05	8/24/05-10/23/05						10/23/05-12/22/05
Florida	Okaloosa	7/10/05-9/8/05	8/24/05-10/23/05						10/23/05-12/22/05
Florida	Okeechobee								10/23/05-12/22/05
Florida	Palm Beach								10/23/05-12/22/05
Florida	St. Lucie								10/23/05-12/22/05
Florida	Santa Rosa								10/23/05-12/22/05
Florida	Sarasota	7/10/05-9/8/05	8/24/05-10/23/05						10/23/05-12/22/05
Florida	Taylor								10/23/05-12/22/05
Florida	Wakulla	7/10/05-9/8/05							10/23/05-12/22/05
Florida	Walton	7/10/05-9/8/05							10/23/05-12/22/05
Florida	Washington	7/10/05-9/8/05	8/24/05-10/23/05						10/23/05-12/22/05
Louisiana	Acadia		8/29/05-10/28/05					9/23/05-11/22/05	
Louisiana	Allen		8/29/05-10/28/05					9/23/05-11/22/05	
Louisiana	Ascension		8/29/05-10/28/05					9/23/05-11/22/05	
Louisiana	Assumption		8/29/05-10/28/05					9/23/05-11/22/05	
Louisiana	Avoyelles		8/29/05-10/28/05					9/23/05-11/22/05	
Louisiana	Beauregard		8/29/05-10/28/05					9/23/05-11/22/05	
Louisiana	Bienville		8/29/05-10/28/05					9/23/05-11/22/05	
Louisiana	Bossier		8/29/05-10/28/05					9/23/05-11/22/05	
Louisiana	Caddo		8/29/05-10/28/05					9/23/05-11/22/05	
Louisiana	Calcasieu		8/29/05-10/28/05					9/23/05-11/22/05	
Louisiana	Caldwell		8/29/05-10/28/05					9/23/05-11/22/05	
Louisiana	Cameron		8/29/05-10/28/05					9/23/05-11/22/05	
Louisiana	Catahoula		8/29/05-10/28/05					9/23/05-11/22/05	
Louisiana	Claiborne		8/29/05-10/28/05					9/23/05-11/22/05	
Louisiana	Concordia		8/29/05-10/28/05					9/23/05-11/22/05	
Louisiana	De Soto		8/29/05-10/28/05					9/23/05-11/22/05	
Louisiana	East Baton Rouge		8/29/05-10/28/05					9/23/05-11/22/05	
Louisiana	East Carroll		8/29/05-10/28/05					9/23/05-11/22/05	
Louisiana	East Feliciana		8/29/05-10/28/05					9/23/05-11/22/05	
Louisiana	Evangeline		8/29/05-10/28/05					9/23/05-11/22/05	

State	County	Disaster period			
		DENNIS	KATRINA	OPHELIA	RITA
Louisiana	Franklin		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Grant		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Iberia		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Iberville		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Jackson		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Jefferson		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Jefferson Davis		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Lafayette		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Lafourche		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	La Salle		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Lincoln		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Livingston		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Madison		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Morehouse		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Natchitoches		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Orleans		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Ouachita		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Plaquemines		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Pointe Coupee		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Rapides		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Red River		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Richland		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Sabine		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	St. Bernard		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	St. Charles		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	St. Helena		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	St. James		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	St. John the Baptist		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	St. Landry		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	St. Martin		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	St. Mary		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	St. Tammany		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Tangipahoa		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Tensas		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Terrebonne		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Union		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Vermilion		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Vernon		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Washington		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Webster		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	West Baton Rouge		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	West Carroll		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	West Feliciana		8/29/05-10/28/05		9/23/05-11/22/05
Louisiana	Winn		8/29/05-10/28/05		9/23/05-11/22/05
Mississippi	Adams		8/29/05-10/28/05		9/23/05-11/22/05
Mississippi	Alcorn		8/29/05-10/28/05		9/23/05-11/22/05

Mississippi	Armita	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Attala	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Benton	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Boivar	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Calhoun	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Carroll	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Chickasaw	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Choctaw	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Claiborne	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Clarke	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Clay	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Coahoma	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Copiah	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Covington	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	De Soto	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Forrest	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Franklin	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	George	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Greene	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Grenada	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Hancock	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Harrison	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Hinds	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Holmes	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Humphreys	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Issaquena	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Itawamba	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Jackson	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Jasper	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Jefferson	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Jefferson Davis	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Jones	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Kemper	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Lafayette	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Lamar	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Lauderdale	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Lawrence	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Leake	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Lee	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Leflore	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Lincoln	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Lowndes	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Madison	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Marion	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Marshall	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Monroe	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Montgomery	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Neshoba	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Newton	8/29/05-10/28/05	9/23/05-11/22/05	
Mississippi	Noxubee	8/29/05-10/28/05	9/23/05-11/22/05	

State	County	Disaster period				
		DENNIS	KATRINA	OPHELIA	RITA	WILMA
Mississippi	Oktibbeha		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Panola		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Pearl River		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Perry		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Pike		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Pontotoc		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Prenitiss		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Quitman		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Rankin		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Scott		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Sharkey		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Simpson		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Smith		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Stone		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Sunflower		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Tallahatchie		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Tate		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Tippah		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Tishomingo		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Tunica		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Union		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Walthall		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Warren		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Washington		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Wayne		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Webster		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Wilkinson		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Winston		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Yalobusha		8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Yazoo		8/29/05-10/28/05		9/23/05-11/22/05	
North Carolina	Brunswick			9/11/05-11/10/05		
North Carolina	Carteret			9/11/05-11/10/05		
North Carolina	Craven			9/11/05-11/10/05		
North Carolina	Dare			9/11/05-11/10/05		
North Carolina	Hyde			9/11/05-11/10/05		
North Carolina	Jones			9/11/05-11/10/05		
North Carolina	New Hanover			9/11/05-11/10/05		
North Carolina	Onslow			9/11/05-11/10/05		
North Carolina	Pamlico			9/11/05-11/10/05		
North Carolina	Pender			9/11/05-11/10/05		
Texas	Angelina				9/23/05-11/22/05	
Texas	Brazoria				9/23/05-11/22/05	
Texas	Chambers				9/23/05-11/22/05	
Texas	Cherokee				9/23/05-11/22/05	
Texas	Fort Bend				9/23/05-11/22/05	
Texas	Galveston				9/23/05-11/22/05	

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Texas	Gregg	9/23/05-11/22/05				
Texas	Hardin	9/23/05-11/22/05				
Texas	Harris	9/23/05-11/22/05				
Texas	Harrison	9/23/05-11/22/05				
Texas	Houston	9/23/05-11/22/05				
Texas	Jasper	9/23/05-11/22/05				
Texas	Jefferson	9/23/05-11/22/05				
Texas	Liberty	9/23/05-11/22/05				
Texas	Marion	9/23/05-11/22/05				
Texas	Montgomery	9/23/05-11/22/05				
Texas	Nacogdoches	9/23/05-11/22/05				
Texas	Newton	9/23/05-11/22/05				
Texas	Orange	9/23/05-11/22/05				
Texas	Panola	9/23/05-11/22/05				
Texas	Polk	9/23/05-11/22/05				
Texas	Rusk	9/23/05-11/22/05				
Texas	Sabine	9/23/05-11/22/05				
Texas	San Augustine	9/23/05-11/22/05				
Texas	San Jacinto	9/23/05-11/22/05				
Texas	Shelby	9/23/05-11/22/05				
Texas	Trinity	9/23/05-11/22/05				
Texas	Tyler	9/23/05-11/22/05				
Texas	Walker	9/23/05-11/22/05				

§ 760.102

§ 760.102 Applicability.

(a) This part establishes the terms and conditions under which the following programs will be administered with respect to producers affected by 2005 hurricanes in eligible counties:

- (1) Hurricane Indemnity Program (HIP);
 - (2) Feed Indemnity Program (FIP);
 - (3) Livestock Indemnity Program (LIP);
 - (4) Tree Indemnity Program (TIP);
- and

(5) Aquaculture grants to States.

(b) The amount that may be expended for payments under subparts B through G of this part shall not exceed the amount of Section 32 funds made available by the Secretary for the administration of these programs.

(c) To be eligible for payments under these programs, producers must comply with all applicable provisions under subparts B through G of this part and, in the case of State grants, by the State.

§ 760.103 Administration of HIP, FIP, LIP, and TIP.

(a) These programs are administered under the general supervision of the Administrator, FSA.

(b) FSA representatives do not have authority to modify or waive any of the provisions of the regulations of subparts B through F of this part.

(c) The State FSA committee shall take any action required by the regulations of subparts B through F of this part that the county FSA committee has not taken. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with the regulations of subparts B through F of this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with subparts B through F of this part.

(d) No provision or delegation to a State or county FSA committee shall preclude the Administrator, FSA, Deputy Administrator for Farm Programs, FSA or a designee or other such person, from determining any question arising under the program or from reversing or modifying any determina-

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tion made by a State or county FSA committee.

§ 760.104 Definitions.

The following definitions in this section apply to the programs in subparts B through G of this part. The terms defined in part 718 of this chapter and parts 1400 and 1437 of this title shall also be applicable, except where they conflict with the definitions set forth in this section.

Application means the '2005 Hurricane Disaster Programs Application' form issued by FSA.

Application period means the date established by the Deputy Administrator for producers to apply for program benefits.

Bush means a thick densely branched woody shrub grown for the production of an annual crop for commercial market for human consumption.

Commercial use means used in the operation of a business activity engaged in as a means of livelihood for profit by the eligible producer.

Crop insurance means an insurance policy reinsured by the Federal Crop Insurance Corporation under the provisions of the Federal Crop Insurance Act, as amended.

Farming operation means a business enterprise engaged in the production of agricultural products.

Fruit tree means a woody perennial plant having a single main trunk, commonly exceeding 10 feet in height and usually devoid of branches below, but bearing a head of branches and foliage or crown of leaves at the summit that is grown for the production of an annual crop, including nuts, for commercial market for human consumption.

Owner means one who had legal ownership of the trees, bushes, vines, or livestock for which benefits are being requested under subparts B through F, on the day such plant or livestock perished or suffered losses due to an eligible hurricane as set forth § 760.101.

Stand means a contiguous acreage of the same crop of trees, bushes, or vines, and excludes container-grown crops.

Tier means the geographic bands of damage generally correlating to the severity of damage caused by the maximum sustained winds of the applicable hurricanes.

Vine means a plant from which an annual fruit crop is produced for commercial market for human consumption, such as grape, kiwi, or passion fruit, that has a flexible stem supported by climbing, twining, or creeping along a surface.

§ 760.105 Application for payment.

(a) A producer who applies for any program under subparts B through F shall file an application and any required supporting documentation in the county FSA office serving the county where the eligible loss occurred; or in the case of FIP, where the eligible livestock were physically located on the applicable date.

(b) The application must be filed during the application period announced by FSA.

(c) Payments may be made for eligible losses suffered by an eligible producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer signs the application for payment. Proof of authority to sign for the deceased producer or dissolved entity must be provided. If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

(d) Data furnished by the applicant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without all required data program benefits will not be approved or provided.

(e) A minor child shall be eligible to apply for program benefits so long as all eligibility requirements are met and one of the following conditions exist:

(1) The right of majority has been conferred upon the minor by court proceedings or statute;

(2) A guardian has been appointed to manage the minor's property, and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which a surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 760.106 Limitations on payments and other benefits.

(a) Separate payment limitations apply to HIP, FIP, LIP, and TIP. No 'person' as determined under part 1400 of this title shall receive more than \$80,000 under each of these programs.

(b) An individual or entity whose adjusted gross income is in excess of \$2.5 million, as determined under part 1400 of this title, shall not be eligible to receive benefits under this part for HIP, FIP, LIP, and TIP; except that the individual or entity may be considered to meet the adjusted gross income requirement if not less than 75 percent of the individual's or entity's average adjusted gross income for the three tax years immediately preceding the applicable crop year is derived from farming or ranching operations.

(c) As a condition to receive benefits under subparts B through F, a producer must have been in compliance with the provisions of parts 12 and 718 of this title for the 2005 crop year and must not otherwise be barred from receiving benefits under any law.

(d) An individual or entity determined to be a foreign person under part 1400 of this title shall not be eligible to receive benefits under subparts B through F of this part.

§ 760.107 Appeals.

The appeal regulations set forth at parts 11 and 780 of this title apply to determinations made pursuant to subparts B through F of this part.

§ 760.108 Offsets, assignments, and debt settlement.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any producer shall be made without regard to questions of title under State law and without regard to any claim or lien against the commodity, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 792 of this chapter apply to payments

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made under subparts B through F of this part.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing the assignment of payments found at part 1404 of this title.

§ 760.109 Records and inspection thereof.

Producers receiving payments under the programs in subparts B through F or any other person who furnishes information for the purposes of enabling such producer to receive a payment under subparts B through F of this part shall maintain any books, records, and accounts supporting any information so furnished for 3 years following the end of the year during which the application for payment was filed. Producers receiving payments or any other person who furnishes such information to FSA shall permit 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, and to enter upon, inspect and verify all applicable livestock and acreage in which the applicant has an interest for the purpose of confirming the accuracy of the information provided by the applicant.

§ 760.110 Refunds; joint and several liability.

In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under subparts B through F of this part, and if any refund of a payment to FSA shall otherwise become due in connection with this part, all payments made in regard to such matter shall be refunded to FSA together with interest and late-payment charges as provided for in part 792 of this chapter.

§ 760.111 Paperwork Reduction Act assigned number.

The information collection required to support the regulations of subparts B through F of this part has been approved by OMB and assigned OMB control number 0560-0257.

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Subpart C—Hurricane Indemnity Program

SOURCE: 72 FR 878, Jan. 9, 2007, unless otherwise noted.

§ 760.201 Applicability.

This subpart sets forth the terms and conditions applicable to the Hurricane Indemnity Program (HIP). Benefits will be provided under this subpart to producers who have received a crop insurance indemnity from the Risk Management Agency (RMA) based on the associated loss criteria set forth in § 760.202(a)(1) as provided to FSA by RMA; and to producers who have received Noninsured Crop Disaster Assistance Program (NAP) payments under part 1437 of this title based on the provisions of § 760.202(a)(1). HIP benefits will be provided under this subpart to eligible producers who suffered losses due to 2005 hurricanes as set forth in § 760.101.

§ 760.202 Producer eligibility.

A producer who applies for benefits under this subpart will be eligible to receive a payment if both of the following apply:

(a) The producer received a crop insurance indemnity from RMA or a NAP payment under part 1437 of this title for crop losses:

- (1) In an eligible county;
- (2) Recorded by RMA or FSA as being due to a 2005 hurricane and the loss occurred during a disaster period as set forth in § 760.101; and
- (3) Were due to any of the following causes of loss:

- (i) Excessive moisture, precipitation, and/or rain;
 - (ii) Flood;
 - (iii) Excessive wind;
 - (iv) Cyclone;
 - (v) Tornado;
 - (vi) Tropical depression;
 - (vii) Storm surge; or
 - (viii) Salinity due to salt water intrusion; and
- (b) An application is filed in accordance with § 760.105.

§ 760.203 Payment calculation.

The disaster benefits under this subpart will be equal to the smaller of:

(a) 30 percent of the RMA crop insurance indemnity or 30 percent of the NAP payment for eligible crop losses as provided in §760.202(a)(1), and adding the crop insurance premium for the indemnity as provided in §760.202(a)(1); or

(b) 95 percent of the expected value of the crop in the absence of a disaster, as determined by RMA for insured crops, using information from the crop policy; and by FSA for NAP crops, using the producer's price and yield, minus the following:

(1) The value of the production as counted by RMA for insured crops to establish the indemnity and by FSA for NAP crops to establish the NAP payment;

(2) The crop's eligible indemnity or NAP payment for eligible crop losses determined in accordance with §760.202(a)(1); and

(3) Adding the crop insurance premium for the indemnity as provided in §760.202(a)(1).

Subpart D—Feed Indemnity Program

SOURCE: 72 FR 878, Jan. 9, 2007, unless otherwise noted.

§ 760.301 Applicability.

This subpart sets forth the terms and conditions applicable to the Feed Indemnity Program (FIP). FIP benefits will be provided under this subpart to eligible owners and cash lessees, but not both, for the same livestock, for feed losses or increased feed costs that occurred in eligible counties during the disaster period as set forth in §760.101.

§ 760.302 Definitions.

The following definitions are applicable for all purposes of administering FIP.

Adult beef bulls means male bovine animals that were at least 2 years old and used for breeding purposes on the beginning date of the applicable disaster period as set forth in §760.101.

Adult beef cows means female bovine animals that had delivered one or more offspring before the beginning date of the applicable disaster period as set forth in §760.101. A first-time bred beef heifer shall also be considered an adult beef cow if it was pregnant on the be-

ginning date of the applicable disaster period as set forth in §760.101.

Adult buffalo and beefalo bulls means male animals of those breeds that were at least 2 years old and used for breeding purposes on the beginning date of the applicable disaster period as set forth in §760.101.

Adult buffalo and beefalo cows means female animals of those breeds that had delivered one or more offspring before the beginning date of the applicable disaster period as set forth in §760.101. A first-time bred buffalo or beefalo heifer shall also be considered to be an adult buffalo or beefalo cow if it was pregnant on the beginning date of the applicable disaster period as set forth in §760.101.

Adult dairy bulls means male bovine animals of a breed used for producing milk for human consumption that were at least 2 years old and used for breeding dairy cows on the beginning date of the applicable disaster period as set forth in §760.101.

Adult dairy cows means female bovine animals used for the purpose of providing milk for human consumption, that had delivered one or more offspring before the beginning date of the applicable disaster period as set forth in §760.101. A first-time bred dairy heifer shall also be considered an adult dairy cow if it was pregnant on the beginning date of the applicable disaster period as set forth in §760.101.

Goats means domesticated, ruminant mammals of the genus *Capra*, including Angora goats.

Horses means domesticated horses, and does not include donkeys, mules or other large solid-hoofed herbivorous mammals.

Non-adult beef cattle means male, female or neutered male bovine animals that weighed 500 pounds or more on the beginning date of the applicable disaster period as set forth in §760.101, but do not meet the definition of adult beef cows or bulls.

Non-adult buffalo/beefalo means male, female or neutered male animals of those breeds that weighed 500 pounds or more on the beginning date of the applicable disaster period as set forth in §760.101, but do not meet the definition of an adult buffalo or beefalo cow or bull.

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Non-adult dairy cattle means male, female or neutered male bovine livestock, of a breed used for the purpose of providing milk for human consumption, that weighed 500 pounds or more on the beginning date of the applicable disaster period as set forth in § 760.101, but do not meet the definition adult dairy cows or bulls.

Sheep means domesticated, ruminant mammals of the genus *Ovis*.

§ 760.303 Eligible livestock and producers.

(a) To be considered eligible, livestock must meet all the following conditions:

(1) Be adult or non-adult dairy cattle, beef cattle, buffalo, beefalo, horses, sheep, goats or deer as defined in § 760.302;

(2) Been physically located in an eligible county on the beginning date of the applicable disaster period as set forth in § 760.101;

(3) Been maintained for commercial use as part of a farming operation on the beginning date of the applicable disaster period as set forth in § 760.101;

(4) Not have been produced and maintained for reasons other than commercial use as part of a farming operation. Such excluded uses include, but are not limited to wild free roaming animals or animals used for recreational purposes, such as pleasure, hunting, pets, or for show.

(b) To be considered an eligible livestock producer, a producer must have:

(1) Owned or cash-leased, but not both for the same livestock, eligible livestock on the beginning date of the applicable disaster period as provided in § 760.101; and

(2) Suffered a feed loss or an increased feed cost during the applicable disaster period as set forth in § 760.101 with respect to feed used for the eligible livestock.

§ 760.304 Application process.

(a) Applicants must submit to FSA a completed application in accordance with § 760.105, and any other supporting documentation as determined by FSA to be necessary to make a determination of the eligibility of the applicant. Supporting documents include but are not limited to: Purchase records; vet-

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erinarian records; bank or other loan papers; rendering truck receipts; Federal Emergency Management Agency and National Guard records; written contracts; production records; Internal Revenue Service (IRS) records; property tax records; private insurance documents; and other similar documents.

§ 760.305 Payment calculation.

(a) FIP payments are calculated by multiplying the national payment rate for each of the following livestock categories by the number of eligible livestock in each category. The payment rate represents the cost of the amount of corn needed to maintain 1 animal unit for a specified period of time.

(b) The eligible livestock categories are:

(1) Adult beef cows or bulls;

(2) Non-adult beef cattle;

(3) Adult buffalo or beefalo cows or bulls;

(4) Non-adult buffalo or beefalo;

(5) Adult dairy cows or bulls;

(6) Non-adult dairy cattle;

(7) Goats;

(8) Sheep;

(9) Horses; and

(10) Deer.

Subpart E—Livestock Indemnity Program

SOURCE: 72 FR 878, Jan. 9, 2007, unless otherwise noted.

§ 760.401 Applicability.

(a) This subpart sets forth the terms and conditions applicable to the Livestock Indemnity Program (LIP). Benefits will be provided under this subpart to eligible livestock owners and contract growers, but not both for the same livestock loss, for certain livestock deaths that occurred in eligible counties during the disaster period as set forth in § 760.101.

(b) Eligible livestock owners and contract growers will be compensated in accordance with § 760.405 for eligible livestock deaths that occurred in eligible counties during the disaster period as set forth in § 760.101.

§ 760.402 Definitions.

The following definitions are applicable for all purposes of administering LIP.

Adult beef bull means a male bovine animal that was at least 2 years old and used for breeding purposes before it died.

Adult beef cow means a female bovine animal that had delivered one or more offspring before dying. A first-time bred beef heifer shall also be considered an adult beef cow if it was pregnant at the time it died.

Adult buffalo and beefalo bull means a male animal of those breeds that was at least 2 years old and used for breeding purposes before it died.

Adult buffalo and beefalo cow means a female animal of those breeds that had delivered one or more offspring before dying. A first-time bred buffalo or beefalo heifer shall also be considered an adult buffalo or beefalo cow if it was pregnant at the time it died.

Adult dairy bull means a male bovine animal of a breed used for producing milk for human consumption that was at least 2 years old and used for breeding dairy cows before it died.

Adult dairy cow means a female bovine animal used for the purpose of providing milk for human consumption that had delivered one or more offspring before dying. A first-time bred dairy heifer shall also be considered an adult dairy cow if it was pregnant at the time it died.

Buck means a male goat.

Contract means, with respect to contracts for the handling of livestock, a written agreement between a livestock owner and another individual or entity setting the specific terms, conditions and obligations of the parties involved regarding the production of livestock or livestock products.

Doe means a female goat.

Equine animal means a domesticated horse, mule or donkey.

Ewe means a female sheep.

Goat means a domesticated, ruminant mammal of the genus *Capra*, including Angora goats. Goats will be further delineated by sex (bucks and does) and age (kids).

Kid means a goat less than 1 year old.

Lamb means a sheep less than 1 year old.

Non-adult beef cattle means male, female or neutered male bovines that do not meet the definition of adult beef cows or bulls. *Non-adult beef cattle* is further delineated by weight categories of less than 400 pounds, and 400 pounds or more at the time they died.

Non-adult buffalo or beefalo means a male, female or neutered male animal of those breeds that do not meet the definition of adult buffalo/beefalo cow or bull. *Non-adult buffalo or beefalo* is further delineated by weight categories of less than 400 pounds, and 400 pounds or more at the time of death.

Non-adult dairy cattle means male, female or neutered male bovine livestock, of a breed used for the purpose of providing milk for human consumption, that do not meet the definition of adult dairy cows or bulls. *Non-adult dairy cattle* is further delineated by weight categories of less than 400 pounds, and 400 pounds or more at the time they died.

Poultry means domesticated chickens, turkeys, ducks and geese. *Poultry* will be further delineated by sex, age and purpose of production, as determined by FSA.

Ram means a male sheep.

Sheep means domesticated, ruminant mammals of the genus *Ovis*. *Sheep* will be further delineated by sex (rams and ewes) and age (lambs).

Swine means domesticated omnivorous pigs, hogs, and boars. *Swine* will be further delineated by sex and weight as determined by FSA.

§ 760.403 Eligible owners, contract growers and livestock.

(a) To be considered eligible, a livestock owner must have had legal ownership of the eligible livestock on the day the livestock died.

(b) To be considered eligible, a contract grower on the day the livestock died must have had:

(1) A written agreement with the owner of eligible livestock setting the specific terms, conditions and obligations of the parties involved regarding the production of livestock; and

(2) Control of the livestock that died.

(c) To be considered eligible, livestock must meet all the following:

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(1) Be adult or non-adult dairy cattle, beef cattle, buffalo, beefalo, equine, sheep, goats, swine, poultry or deer.

(2) Died as a direct result of an applicable disaster, in an eligible county and during the applicable disaster period as set forth in § 760.101;

(3) Been maintained for commercial use as part of a farming operation on the day they died; and before dying;

(4) Not have been produced or maintained for reasons other than commercial use as part of a farming operation, including but not limited to wild free roaming animals or animals used for recreational purposes, such as pleasure, hunting, pets, or for show.

§ 760.404 Application process.

(a) Applicants must submit to FSA a completed application in accordance with § 760.105 and other supporting documents as determined by FSA to be necessary for making determinations of the eligibility of the applicant. Supporting documents must show: evidence of loss; current physical location of livestock in inventory; and physical location of claimed livestock at the time of death.

(b) Applicants must provide adequate proof that the death of the eligible livestock occurred during the applicable disaster period, and the death was a direct result of the occurrence of a 2005 hurricane as provided in § 760.101. The quantity and kind of livestock that died as a direct result of the applicable disaster may be documented by: Purchase records; veterinarian records; bank or other loan papers; rendering truck receipts; Federal Emergency Management Agency and National Guard records; written contracts; production records; IRS records; property tax records; private insurance documents; and any other similar documents.

(c) Certifications of livestock deaths by third parties may be accepted only if both the following conditions are met:

(1) The livestock owner or livestock contract grower, as applicable, certifies in writing:

(i) That there is no other documentation of death available;

(ii) The number of livestock, by category as determined by the Deputy Ad-

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ministrator, in inventory at the time the applicable disaster occurred;

(iii) Other details necessary for FSA to determine the certification acceptable; and

(2) The third party has provided to FSA their telephone number and address, and a statement containing:

(i) Specific details about their knowledge of the livestock deaths;

(ii) Their affiliation to the livestock owner or contract grower; and

(iii) The accuracy of the deaths claimed by the livestock owner or contract grower; and

(iv) Other details necessary for FSA to determine the certification acceptable.

§ 760.405 Payment calculation.

(a) Under LIP, separate payment rates are established for eligible livestock owners and eligible contract growers in accordance with paragraphs (b) and (c) of this section. LIP payments are calculated by multiplying the national payment rate, as determined in paragraphs (b) and (c) of this section, by the number of eligible livestock in each category, as provided in paragraph (d) of this section. The payment calculated for an eligible contract grower for an eligible livestock category shall be reduced by the amount of any compensation received from the contractor for the loss of income from the dead livestock.

(b) The LIP payment rate for eligible livestock owners is based on 75 percent of the average fair market value of the livestock.

(c) The LIP payment rates for eligible contract growers is based on 75 percent of the average income loss sustained by the contract grower with respect to the dead livestock.

(d) The categories of eligible livestock are as follows:

- (1) Adult beef cows;
- (2) Adult beef bulls;
- (3) Non-adult beef cattle;
- (4) Adult buffalo or beefalo cows;
- (5) Adult buffalo or beefalo bulls;
- (6) Non-adult buffalo/beefalo;
- (7) Adult dairy cows;
- (8) Adult dairy bulls;
- (9) Non-adult dairy cattle;
- (10) Swine, sows, boars, barrows, gilts over 150 pounds;

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- (11) Swine, sows, boars, barrows, gilts 50 to 150 pounds;
- (12) Swine, feeder pigs under 50 pounds;
- (13) Goats, bucks;
- (14) Goats, does;
- (15) Goats, kids;
- (16) Sheep, rams;
- (17) Sheep, ewes;
- (18) Sheep, lambs;
- (19) Deer;
- (20) Chickens, layers, roasters;
- (21) Chickens, broilers, pullets;
- (22) Chickens, chicks;
- (23) Turkeys, toms, fryers, roasters;
- (24) Turkeys, poult;
- (25) Ducks;
- (26) Ducks, ducklings;
- (27) Geese, goose;
- (28) Geese, gosling; and
- (29) Equine.

Subpart F—Tree Indemnity Program

SOURCE: 72 FR 878, Jan. 9, 2007, unless otherwise noted.

§ 760.501 Applicability.

(a) This subpart sets forth the terms and conditions applicable to the Tree Indemnity Program (TIP). Benefits will be provided under this subpart for eligible fruit trees, bushes, and vines that were lost or damaged during the disaster period as set forth in § 760.101.

(b) Compensation will be based on expenses incurred for replanting, rehabilitation, cleanup, and debris removal.

(c) No benefits shall be provided when the loss:

- (1) Occurred in any county other than an eligible county, or
- (2) Was not the result of an eligible disaster as set forth in § 760.101.

§ 760.502 Eligible producers and stands.

(a) An eligible fruit tree, bush, and/or vine producer is one who bears financial responsibility and who has incurred costs of at least \$90 per acre for replanting, rehabilitation, cleanup, or debris removal, excluding crop production.

(b) An eligible stand must:

- (1) Be physically located in an eligible county;

- (2) Have been impacted during a 2005 hurricane as set forth in § 760.101; and
- (3) Be grown for commercial use.

§ 760.503 Application process.

(a) Applicants must submit a completed application and report of acreage identifying the geographic location and number of acres in the disaster-affected stand of claimed fruit trees, bushes, and vines in accordance with part 718 of this chapter, and any other supporting documentation for FSA to determine the eligibility of the applicant.

(b) Applicants must certify and provide adequate proof that the expenses incurred to eligible fruit trees, bushes, or vines occurred during the applicable disaster period and that the loss or damage was a direct result of a 2005 hurricane, as set forth in § 760.101.

(c) The quantity and kind of fruit trees, bushes, or vines that died or were damaged as a result of the applicable disaster may be documented by; purchase records; bank or other loan documents; Federal Emergency Management Agency and National Guard records; IRS records; property tax records; private insurance documents; and similar documents.

§ 760.504 Payment calculation.

(a) TIP payments shall be calculated by multiplying the following national payment rate for the applicable tier by the number of eligible acres, excluding but not limited to such things as drainage ditches and canals, in a stand of fruit trees, bushes, or vines by the producer's share in such crop:

- (1) Tier I—\$750;
- (2) Tier II—\$300;
- (3) Tier III—\$200; and
- (4) Tier IV—\$90.

(b) If the actual expenses incurred for damage are greater than the value associated with the tier based on the location of the stand, the applicant may submit documentation to FSA to request the stand be placed in the next lower-numbered tier which represents a greater level of loss and a higher payment rate. Regardless of the expenses incurred the stand can only be placed in the next lower-numbered tier.

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Subpart G—Aquaculture Program

bers that constitute the general partnership or joint venture.

§ 760.601 Funds availability.

[72 FR 878, Jan. 9, 2007]

FSA will provide block grants to the states of Alabama, Florida, Louisiana, Mississippi, North Carolina and Texas where aquaculture was adversely affected by 2005 hurricanes as set forth in § 760.101. Producers in eligible counties in those states who raise aquaculture species in a controlled environment as part of a farming operation and who have not received assistance under other disaster programs for the same aquaculture losses are eligible to receive these funds. Funds provided by a State to a farming operation under such a grant shall not exceed \$80,000.

Subpart I—2005–2007 Crop Disaster Program

SOURCE: 72 FR 72867, Dec. 21, 2007, unless otherwise noted.

[72 FR 878, Jan. 9, 2007]

Subpart H—2006 Livestock Assistance Grant Program

§ 760.800 Applicability.

This part sets forth the terms and conditions for the 2005–2007 Crop Disaster Program (2005–2007 CDP). CDP makes emergency financial assistance available to producers who have incurred crop losses in quantity or quality for eligible 2005, 2006, or 2007 crop years due to disasters as determined by the Secretary under provisions of Title IX of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28). However, to be eligible for assistance, the crop subject to the loss must have been planted or existed before February 28, 2007, or, in the case of prevented planting, would have been planted before February 28, 2007.

§ 760.701 Funds availability.

§ 760.801 Administration.

FSA will administer a limited program to provide assistance to livestock producers where forage was adversely affected by drought in counties reaching D3 or D4 Drought on the U.S. Drought Monitor, during March 7 to August 31, 2006, in the States of: Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Wisconsin and Wyoming. Under the Livestock Assistance Grant Program, FSA will provide grants to the State governments of these States to assist livestock producers who suffered forage losses as part of a farming operation in eligible counties. The amount of each grant will be based on the number of adult beef cattle and sheep from each eligible county uniformly prorated to insure that available funding is not exceeded. Producers in eligible counties in those States who suffered forage losses as part of a farming operation are eligible for assistance under these grants. Among other conditions of these grants, assistance provided by a State under such a grant to an applicant shall not exceed \$10,000, except for general partnerships and joint ventures in which case assistance shall not exceed \$10,000 times the number of mem-

(a) The program will be administered under the general supervision of the Deputy Administrator for Farm Programs and will be carried out in the field by FSA State and county committees.

(b) State and county committees and representatives do not have the authority to modify or waive any of the provisions of this part.

(c) The State committee will take any action required by this part that has not been taken by a county committee. The State committee will also:

(1) Correct, or require a county committee to correct, any action taken by that FSA county committee that is not in accordance with this part; and

(2) Require a county committee to withhold taking or reverse any action that is not in accordance with this part.

(d) No provision or delegation to a State or county committee will prevent the Deputy Administrator for Farm Programs from determining any

question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs may authorize State and county committees to waive or modify non-statutory deadlines or other program requirements in cases where lateness or failure to meet such does not adversely affect the operation of the program.

§ 760.802 Definitions.

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

Actual production means the total quantity of the crop appraised, harvested, or assigned, as determined by the FSA State or county committee in accordance with instructions issued by the Deputy Administrator for Farm Programs.

Administrative fee means an amount the producer must pay for Noninsured Crop Disaster Assistance Program (NAP) enrollment for non-insurable crops.

Affected production means, with respect to quality losses, the harvested production of an eligible crop that has a documented quality reduction of 25 percent or more on the verifiable production record.

Appraised production means production determined by FSA, or a company reinsured by the Federal Crop Insurance Corporation (FCIC), that was unharvested but was determined to reflect the crop's yield potential at the time of appraisal.

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. Only the approved yields based on production evidence submitted to FSA prior to May 25, 2007 will be used for purposes of the 2005–2007 CDP.

Aquaculture means a value loss crop for the reproduction and rearing of aquatic species in controlled or selected environments including, but not limited to, ocean ranching, except private ocean ranching of Pacific salmon for profit in those States where such ranching is prohibited by law.

Aquaculture facility means any land or structure including, but not limited to, a laboratory, concrete pond, hatchery, rearing pond, raceway, pen, incubator, or other equipment used in aquaculture.

Aquaculture species means any aquaculture species as defined in part 1437 of this title.

Average market price means the price or dollar equivalent on an appropriate basis for an eligible crop established by FSA, or CCC, or RMA, as applicable, for determining payment amounts. Such price will be based on historical data of the harvest basis excluding transportation, storage, processing, packing, marketing, or other post-harvesting expenses. Average market prices are generally applicable to all similarly situated participants and are not established in response to individual participants. Accordingly, the established average market prices are not appealable under parts 11 or 780 of this title.

Catastrophic risk protection means the minimum level of coverage offered by FCIC.

CCC means the Commodity Credit Corporation.

Controlled environment means, with respect to those crops for which a controlled environment is expected to be provided, including but not limited to ornamental nursery, aquaculture (including ornamental fish), and floriculture, an environment in which everything that can practicably be controlled with structures, facilities, growing media (including, but not limited to, water, soil, or nutrients) by the producer, is in fact controlled by the producer.

Crop insurance means an insurance policy reinsured by FCIC under the provisions of the Federal Crop Insurance Act, as amended.

Crop year means:

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

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

Damaging weather means drought, excessive moisture, hail, freeze, tornado, hurricane, typhoon, excessive wind, excessive heat, weather-related saltwater intrusion, weather-related irrigation water rationing, and earthquake and volcanic eruptions, or any combination. It also includes a related condition that occurs as a result of the damaging weather and exacerbates the condition of the crop, such as crop disease, and insect infestation.

Deputy Administrator means the Deputy Administrator for Farm Programs, Farm Service Agency, U.S. Department of Agriculture or designee.

Eligible crop means a crop insured by FCIC as defined in part 400 of this title, or included under NAP as defined under part 1437 of this title for which insurance or NAP coverage was obtained timely for the year which CDP benefits are sought.

End use means the purpose for which the harvested crop is used, such as grain, hay, or seed.

Expected production means, for an agricultural unit, the historic yield multiplied by the number of planted or prevented acres of the crop for the unit.

FCIC means the Federal Crop Insurance Corporation, a wholly owned Government Corporation within USDA.

Final planting date means the latest date, established by the Risk Management Agency (RMA) for insured crops, by which the crop must initially be planted in order to be insured for the full production guarantee or amount of insurance per acre. For NAP covered crops, the final planting date is as provided in part 1437 of this title.

Flood prevention means:

(1) For aquaculture species, placing the aquaculture facility in an area not prone to flood;

(2) In the case of raceways, devices or structures designed for the control of water level; and

(3) With respect to nursery crops, placing containerized stock in a raised area above expected flood level and providing draining facilities, such as

drainage ditches or tile, gravel, cinder, or sand base.

Good nursery growing practices means utilizing flood prevention, growing media, fertilization to obtain expected production results, irrigation, insect and disease control, weed, rodent and wildlife control, and over winterization storage facilities.

Ground water means aqueous supply existing in an aquifer subsurface that is brought to the surface and made available for irrigation by mechanical means such as by pumps and irrigation wells.

Growing media means:

(1) For aquaculture species, media that provides nutrients necessary for the production of the aquaculture species and protects the aquaculture species from harmful species or chemicals or

(2) For nursery crops, a well-drained media with a minimum 20 percent air pore space and pH adjustment for the type of plant produced designed to prevent "root rot."

Harvested means:

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

(2) For NAP covered single harvest crops, that a crop has been removed from the field, either by hand or mechanically, or by grazing of livestock;

(3) For NAP covered crops with potential multiple harvests in 1 year or harvested over multiple years, that the producer has, by hand or mechanically, removed at least one mature crop from the field during the crop year;

(4) For mechanically-harvested NAP covered crops, that the crop has been removed from the field and placed in a truck or other conveyance, except hay is considered harvested when in the bale, whether removed from the field or not. Grazed land will not be considered harvested for the purpose of determining an unharvested or prevented planting payment factor. A crop that is intended for mechanical harvest, but subsequently grazed and not mechanically harvested, will have an unharvested factor applied.

Historic yield means, for a unit, the higher of the county average yield or the participant's approved yield.

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

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

Insurable crop means an agricultural crop (excluding livestock) for which the producer on a farm is eligible to obtain a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501-1524).

Marketing contract means a legally binding written contract between a purchaser and grower for the purpose of marketing a crop.

Market value means:

(1) The price(s) designated in the marketing contract; or

(2) If not designated in a marketing contract, the rate established for quantity payments under § 760.811.

Maximum average loss level means the maximum average level of crop loss to be attributed to a participant without acceptable production records (verifiable or reliable). Loss levels are expressed in either a percent of loss or yield per acre, and are intended to reflect the amount of production that a participant would have been expected to make if not for the eligible disaster conditions in the area or county, as determined by the county committee in accordance with instructions issued by the Deputy Administrator.

Multi-use crop means a crop intended for more than one end use during the calendar year such as grass harvested for seed, hay, and grazing.

Multiple cropping means the planting of two or more different crops on the same acreage for harvest within the same crop year.

Multiple planting means the planting for harvest of the same crop in more than one planting period in a crop year on different acreage.

NASS means the National Agricultural Statistics Service.

Net crop insurance indemnity means the indemnity minus the producer paid premium.

NAP covered means a crop for which the participants obtained assistance under section 196 of the Federal Agri-

culture Improvement and Reform Act of 1996 (7 U.S.C. 7333).

Normal mortality means the percentage of dead aquaculture species that would normally occur during the crop year.

Person means person as defined in part 1400 of this title, and all rules with respect to the determination of a person found in that part are applicable to this part. However, the determinations made in this part in accordance with part 1400, subpart B, Person Determinations, of this title will also take into account any affiliation with any entity in which an individual or entity has an interest, regardless of whether or not such entities are considered to be actively engaged in farming.

Planted acreage means land in which seed, plants, or trees have been placed, appropriate for the crop and planting method, at a correct depth, into a seedbed that has been properly prepared for the planting method and production practice normal to the USDA plant hardiness zone as determined by the county committee.

Prevented planting means the inability to plant an eligible crop with proper equipment during the planting period as a result of an eligible cause of loss, as determined by FSA.

Production means quantity of the crop or commodity produced expressed in a specific unit of measure including, but not limited to, bushels or pounds.

Rate means price per unit of the crop or commodity.

Recording county means, for a producer with farming interests in only one county, the FSA county office in which the producer's farm is administratively located or, for a producer with farming interests that are administratively located in more than one county, the FSA county office designated by FSA to control the payments received by the producer.

Related condition means, with respect to a disaster, a condition that causes deterioration of a crop, such as insect infestation, plant disease, or aflatoxin, that is accelerated or exacerbated as a result of damaging weather, as determined in accordance with instructions issued by the Deputy Administrator.

Reliable production records means evidence provided by the participant that

is used to substantiate the amount of production reported when verifiable records are not available, including copies of receipts, ledgers of income, income statements of deposit slips, register tapes, invoices for custom harvesting, and records to verify production costs, contemporaneous measurements, truck scale tickets, and contemporaneous diaries that are determined acceptable by the county committee.

Repeat crop means, with respect to production, a commodity that is planted or prevented from being planted in more than one planting period on the same acreage in the same crop year.

RMA means the Risk Management Agency.

Salvage value means the dollar amount or equivalent for the quantity of the commodity that cannot be marketed or sold in any recognized market for the crop.

Secondary use means the harvesting of a crop for a use other than the intended use.

Secondary use value means the value determined by multiplying the quantity of secondary use times the FSA or CCC-established price for that use.

State committee means the FSA State committee.

Surface irrigation water means aqueous supply anticipated for irrigation of agricultural crops absent an eligible disaster condition impacting either the aquifer or watershed. Surface irrigation water may result from feral sources or from irrigation districts.

Tropical crops has the meaning assigned in part 1437 of this title.

Tropical region has the meaning assigned in part 1437 of this title.

Unharvested factor means a percentage established for a crop and applied in a payment formula to reduce the payment for reduced expenses incurred because commercial harvest was not performed. Unharvested factors are generally applicable to all similarly situated participants and are not established in response to individual participants. Accordingly established unharvested factors are not appealable under parts 11 and 780 of this title.

Unit means, unless otherwise determined by the Deputy Administrator, basic unit as defined in part 457 of this

title that, for ornamental nursery production, includes all eligible plant species and sizes.

Unit of measure means:

(1) For all insured crops, the FCIC-established unit of measure;

(2) For all NAP covered crops, the established unit of measure, if available, used for the 2005, 2006, or 2007 NAP price and yield;

(3) For aquaculture species, a standard unit of measure such as gallons, pounds, inches, or pieces, established by the State committee for all aquaculture species or varieties;

(4) For turfgrass sod, a square yard;

(5) For maple sap, a gallon;

(6) For honey, pounds; and

(7) For all other crops, the smallest unit of measure that lends itself to the greatest level of accuracy with minimal use of fractions, as determined by the State committee.

United States means all 50 States of the United States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, and to the extent the Deputy Administrator determines it to be feasible and appropriate, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the former Trust Territory of the Pacific Islands, which include Palau, Federated States of Micronesia, and the Marshall Islands.

USDA means the United States Department of Agriculture.

USDA Plant Hardiness Zone means 11 regions or planting zones as defined by a 10 degree Fahrenheit difference in the average annual minimum temperature.

Value loss crop has the meaning assigned in part 1437 of this title.

Verifiable production record means:

(1) For quantity losses, evidence that is used to substantiate the amount of production reported and that can be verified by FSA through an independent source; or

(2) For quality losses, evidence that is used to substantiate the amount of production reported and that can be verified by FSA through an independent source including determined quality factors and the specific quantity covered by those factors.

Yield means unit of production, measured in bushels, pounds, or other unit

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of measure, per area of consideration, usually measured in acres.

§ 760.803 Eligibility.

(a) Participants will be eligible to receive disaster benefits under this part only if they incurred qualifying quantity or quality losses for the 2005, 2006, or 2007 crops, as further specified in this part, as a result of damaging weather or any related condition. Participants may not receive benefits with respect to volunteer stands of crops.

(b) Payments may be made for losses suffered by an eligible participant who, at the time of application, is a deceased individual or is a dissolved entity if a representative, who currently has authority to enter into a contract for the participant, signs the 2005, 2006, or 2007 Crop Disaster Program application. Participants must provide proof of the authority to sign legal documents for the deceased individual or dissolved entity. If a participant is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

(c) As a condition to receive benefits under this part, the Participant must have been in compliance with the Highly Erodible Land Conservation and Wetland Conservation provisions of part 12 of this title for the 2005, 2006, or 2007 crop year, as applicable, and must not otherwise be precluded from receiving benefits under parts 12 or 1400 of this title or any law.

§ 760.804 Time and method of application.

(a) The 2005, 2006, 2007 Crop Disaster Program application must be submitted on a completed FSA-840, or such other form designated for such application purpose by FSA, in the FSA county office in the participant's control county office before the close of business on a date that will be announced by the Deputy Administrator.

(b) Once signed by a participant, the application for benefits is considered to contain information and certifications of and pertaining to the participant regardless of who entered the information on the application.

(c) The participant requesting benefits under this program certifies the accuracy and truthfulness of the information provided in the application as well as any documentation filed with or in support of the application. All information is subject to verification by FSA. For example, as specified in § 760.818(f), the participant may be required to provide documentation to substantiate and validate quality standards and marketing contract prices. Refusal to allow FSA or any agency of the Department of Agriculture to verify any information provided will result in the participant's forfeiting eligibility under this program. Furnishing required information is voluntary; however without it, FSA is under no obligation to act on the application or approve benefits. Providing a false certification to the government is punishable by imprisonment, fines, and other penalties.

(d) FSA may require the participant to submit any additional information it deems necessary to implement or determine any eligibility provision of this part. For example, as specified in § 760.818(f), the participant may be required to provide documentation to substantiate and validate quality standards and marketing contract prices.

(e) The application submitted in accordance with paragraph (a) of 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 participant has submitted all of following completed forms:

(1) If Item 16 on FSA-840 is answered "YES," FSA-840M, Crop Disaster Program for Multiple Crop—Same Acreage Certification;

(2) CCC-502, Farm Operating Plan for Payment Eligibility;

(3) CCC-526, Payment Eligibility Average Adjusted Gross Income Certification;

(4) AD-1026, Highly Erodible Land Conservation (HELIC) and Wetland Conservation Certification; and

(5) FSA-578, Report of Acreage.

(f) Application approval and payment by FSA does not relieve a participant

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from having to submit any form required, but not filed, according to paragraph (e) of this section.

§ 760.805 Limitations on payments and other benefits.

(a) A participant may receive benefits for crop losses for only one of the 2005, 2006, or 2007 crop years as specified under this part.

(b) Payments will not be made under this part for grazing losses.

(c) Payments determined to be issued are considered due and payable not later than 60 days after a participant's application is completed with all information necessary for FSA to determine producer eligibility for benefits.

(d) FSA may divide and classify crops based on loss susceptibility, yield, and other factors.

(e) No person, as defined by part 1400 subpart B of this title, may receive more than a total of \$80,000 in disaster benefits under this part. In applying the \$80,000 per person payment limitation, regardless of whether 2005, 2006, or 2007 crop year benefits are at issue or sought, the most restrictive "person" determination for the participant in the years 2005, 2006, and 2007, will be used to limit benefits.

(f) No participant may receive disaster benefits under this part in an amount that exceeds 95 percent of the value of the expected production for the relevant period as determined by FSA. Accordingly, the sum of the value of the crop not lost, if any; the disaster payment received under this part; and any crop insurance payment or payments received under the NAP for losses to the same crop, cannot exceed 95 percent of what the crop's value would have been if there had been no loss.

(g) An individual or entity whose adjusted gross income is in excess of \$2.5 million, as defined by and determined under part 1400 subpart G of this title, is not eligible to receive disaster benefits under this part.

(h) Any participant in a county eligible for either of the following programs must complete a duplicate benefits certification. If the participant received a payment authorized by either of the following, the amount of that payment

will be reduced from the calculated 2005-2007 CDP payment:

(1) The Hurricane Indemnity Program (subpart B of this part);

(2) The Hurricane Disaster Programs (subparts D, E, F, and G of part 1416 of this title);

(3) The 2005 Louisiana Sugarcane Hurricane Disaster Assistance Program; or

(4) The 2005 Crop Florida Sugarcane Disaster Program.

§ 760.806 Crop eligibility requirements.

(a) A participant on a farm is eligible for assistance under this section with respect to losses to an insurable commodity or NAP if the participant:

(1) In the case of an insurable commodity, obtained a policy or plan of insurance under the Federal Crop Insurance Act for the crop incurring the losses; or

(2) In the case of a NAP covered crop, filed the required paperwork and paid the administrative fee by the applicable filing deadline, for the noninsurable commodity under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 for the crop incurring the losses.

(b) The reasons a participant either elected not to have coverage or did not have coverage mentioned in paragraphs (a)(1) or (2) of this section are not relevant to the determination of the participant's ineligibility under this section. In addition, such reasons for not having crop insurance coverage have no bearing for consideration under part 718, subpart D of this chapter.

§ 760.807 Miscellaneous provisions.

(a) A person is not eligible to receive disaster assistance under this part if it is determined by FSA that the person has:

(1) Adopted any scheme or other device that tends to defeat the purpose of this part;

(2) Made any fraudulent representation;

(3) Misrepresented any fact affecting a program determination;

(4) Is ineligible under § 1400.5 of this title; or

(5) Does not have entitlement to an ownership share of the crop.

(i) Growers growing eligible crops under contract for crop owners are not eligible unless the grower can be determined to have a share of the crop.

(ii) Any verbal or written contract that precludes the grower from having an ownership share renders the grower ineligible for benefits under this part.

(b) A person ineligible under §1437.15(c) of this title for any year is likewise ineligible for benefits under this part for that year or years.

(c) A person ineligible under §400.458 of this title for any year is likewise ineligible for benefits under this part for that year or years.

(d) All persons with a financial interest in the operation receiving benefits under this part are jointly and severally liable for any refund, including related charges, which is determined to be due FSA for any reason.

(e) In the event that any request for assistance or payment under this part resulted from erroneous information or a miscalculation, the assistance or payment will be recalculated and any excess refunded to FSA with interest to be calculated from the date of the disbursement to the producer.

(f) The liability of anyone for any penalty or sanction under or in connection with this part, 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.

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

(h) Any payment to any person 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.

(i) 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 or benefits under this program but only as to beneficiaries who, as a condition of such waiver, agree to apply the benefits received under this part to reduce the amount of the judgment lien.

(j) Under this program, participants are either eligible or ineligible. Par-

ticipants in general, do not render performance or need to comply. They either suffered eligible losses or they did not. Accordingly, the provisions of §718.304 of this chapter do not apply to this part.

§ 760.808 General provisions.

(a) For calculations of loss, the participant's existing unit structure will be used as the basis for the calculation established in accordance with:

(1) For insured crops, part 457 of this title; or

(2) For NAP covered crops, part 1437 of this title.

(b) County average yield for loss calculations will be the average of the 2001 through 2005 official county yields established by FSA, excluding the years with the highest and lowest yields, respectively.

(c) County committees will assign production or reduce the historic yield when the county committee determines:

(1) An acceptable appraisal or record of harvested production does not exist;

(2) The loss is due to an ineligible cause of loss or practices, soil type, climate, or other environmental factors that cause lower yields than those upon which the historic yield is based;

(3) The participant has a contract providing a guaranteed payment for all or a portion of the crop; or

(4) The crop was planted beyond the normal planting period for the crop.

(d) The county committee will establish a maximum average loss level that reflects the amount of production producers would have produced if not for the eligible damaging weather or related conditions in the area or county for the same crop. The maximum average loss level for the county will be expressed as either a percent of loss or yield per acre. The maximum average loss level will apply when:

(1) Unharvested acreage has not been appraised by FSA, or a company reinsured by FCIC; or

(2) Acceptable production records for harvested acres are not available from any source.

(e) Assignment of production or reduction in yield will apply for practices that result in lower yields than those for which the historic yield is based.

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§ 760.809 Eligible damaging conditions.

(a) Except as provided in paragraphs (b) and (c) of this section, to be eligible for benefits under this part the loss of the crop, or reduction in quality, or prevented planting must be due to damaging weather or related conditions as defined in § 760.802.

(b) Benefits are not available under this part for any losses in quantity or quality, or prevented planting due to:

- (1) Poor farming practices;
- (2) Poor management decisions; or
- (3) Drifting herbicides.

(c) With the exception of paragraph (d) of this section, in all cases, the eligible damaging condition must have directly impacted the specific crop or crop acreage during its planting or growing period.

(d) If FSA has determined that there has been an eligible loss of surface irrigation water due to drought and such loss of surface irrigation water impacts eligible crop acreage, FSA may approve assistance to the extent permitted by section 760.814.

§ 760.810 Qualifying 2005, 2006, or 2007 quantity crop losses.

(a) To receive benefits under this part, the county committee must determine that because of eligible damaging weather or related condition specifically impacting the crop or crop acreage, the participant with respect to the 2005, 2006, or 2007 crop:

- (1) Was prevented from planting a crop;
- (2) Sustained a loss in excess of 35 percent of the expected production of a crop; or
- (3) Sustained a loss in excess of 35 percent of the value for value loss crops.

(b) Qualifying losses under this part do not include losses:

- (1) For the 2007 crop, those acres planted, or in the case of prevented planting, would have been planted, on or after February 28, 2007;
- (2) That are determined by FSA to be the result of poor management decisions, poor farming practices, or drifting herbicides;
- (3) That are the result of the failure of the participant to re-seed or replant the same crop in the county where it is

customary to re-seed or replant after a loss;

(4) That are not as a result of a damaging weather or a weather related condition specifically impacting the crop or crop acreage;

(5) To crops not intended for harvest in crop year 2005, 2006, or 2007;

(6) Of by-products resulting from processing or harvesting a crop, such as cottonseed, peanut shells, wheat, or oat straw;

(7) To home gardens;

(8) That are a result of water contained or released by any governmental, public, or private dam or reservoir project if an easement exists on the acreage affected for the containment or release of the water; or

(9) If losses could be attributed to conditions occurring outside of the applicable crop year growing season.

(c) Qualifying losses under this part for nursery stock will not include losses:

(1) For the 2007 crop, that nursery inventory acquired on or after February 28, 2007;

(2) Caused by a failure of power supply or brownouts;

(3) Caused by the inability to market nursery stock as a result of lack of compliance with State and local commercial ordinances and laws, quarantine, boycott, or refusal of a buyer to accept production;

(4) Caused by fire unless directly related to an eligible natural disaster;

(5) Affecting crops where weeds and other forms of undergrowth in the vicinity of the nursery stock have not been controlled; or

(6) Caused by the collapse or failure of buildings or structures.

(d) Qualifying losses under this part for honey, where the honey production by colonies or bees was diminished, will not include losses:

(1) For the 2007 crop, for production from those bees acquired on or after February 28, 2007;

(2) Where the inability to extract was due to the unavailability of equipment, the collapse or failure of equipment, or apparatus used in the honey operation;

(3) Resulting from storage of honey after harvest;

(4) To honey production because of bee feeding;

(5) Caused by the application of chemicals;

(6) Caused by theft, fire, or vandalism;

(7) Caused by the movement of bees by the producer or any other person; or

(8) Due to disease or pest infestation of the colonies.

(e) Qualifying losses for other value loss crops, except nursery, will not include losses for the 2007 crop that were acquired on or after February 28, 2007.

(f) Loss calculations will take into account other conditions and adjustments provided for in this part.

§ 760.811 Rates and yields; calculating payments.

(a)(1) Payments made under this part to a participant for a loss of quantity on a unit with respect to yield-based crops are determined by multiplying the average market price times 42 percent, times the loss of production which exceeds 35 percent of the expected production, as determined by FSA, of the unit.

(2) Payments made under this part to a participant for a quantity loss on a unit with respect to value-based crops are determined by multiplying the payment rate established for the crop by FSA times the loss of value that exceeds 35 percent of the expected production value, as determined by FSA, of the unit.

(3) As determined by FSA, additional quality loss payments may be made using a 25 percent quality loss threshold. The quality loss threshold is determined according to § 760.817.

(b) Payment rates for the 2005, 2006, or 2007 year crop losses will be 42 percent of the average market price.

(c) Separate payment rates and yields for the same crop may be established by the State committee as authorized by the Deputy Administrator, when there is supporting data from NASS or other sources approved by FSA that show there is a significant difference in yield or value based on a distinct and separate end use of the crop. Despite potential differences in yield or values, separate rates or yields will not be established for crops with different cultural practices, such as those grown organically or hydroponically.

(d) Production from all end uses of a multi-use crop or all secondary uses for multiple market crops will be calculated separately and summarized together.

(e) Each eligible participant's share of a disaster payment will be based on the participant's ownership entitlement share of the crop or crop proceeds, or, if no crop was produced, the share of the crop the participant would have received if the crop had been produced. If the participant has no ownership share of the crop, the participant is ineligible for assistance under this part.

(f) When calculating a payment for a unit loss:

(1) An unharvested payment factor will be applied to crop acreage planted but not harvested;

(2) A prevented planting factor will be applied to any prevented planted acreage eligible for payment; and

(3) Unharvested payment factors may be adjusted if costs normally associated with growing the crop are not incurred.

§ 760.812 Production losses; participant responsibility.

(a) Where available and determined accurate by FSA, RMA loss records will be used for insured crops.

(b) If RMA loss records are not available, or if the FSA county committee determines the RMA loss records are inaccurate or incomplete, or if the FSA county committee makes inquiry, participants are responsible for:

(1) Retaining or providing, when required, the best verifiable or reliable production records available for the crop;

(2) Summarizing all the production evidence;

(3) Accounting for the total amount of unit production for the crop, whether or not records reflect this production;

(4) Providing the information in a manner that can be easily understood by the county committee; and

(5) Providing supporting documentation if the county committee has reason to question the damaging weather event or question whether all production has been accounted for.

(c) In determining production under this section, the participant must supply verifiable or reliable production records to substantiate production to the county committee. If the eligible crop was sold or otherwise disposed of through commercial channels, production records include: commercial receipts; settlement sheets; warehouse ledger sheets; load summaries; or appraisal information from a loss adjuster acceptable to FSA. If the eligible crop was farm-stored, sold, fed to livestock, or disposed of in means other than commercial channels, production records for these purposes include: truck scale tickets; appraisal information from a loss adjuster acceptable to FSA; contemporaneous diaries; or other documentary evidence, such as contemporaneous measurements.

(d) Participants must provide all records for any production of a crop that is grown with an arrangement, agreement, or contract for guaranteed payment.

§760.813 Determination of production.

(a) Production under this part includes all harvested production, unharvested appraised production, and assigned production for the total planted acreage of the crop on the unit.

(b) The harvested production of eligible crop acreage harvested more than once in a crop year includes the total harvested production from all these harvests.

(c) If a crop is appraised and subsequently harvested as the intended use, the actual harvested production must be taken into account to determine benefits. FSA will analyze and determine whether a participant's evidence of actual production represents all that could or would have been harvested.

(d) For all crops eligible for loan deficiency payments or marketing assistance loans with an intended use of grain but harvested as silage, ensilage, cobbage, hay, cracked, rolled, or crimped, production will be adjusted based on a whole grain equivalent as established by FSA.

(e) For crops with an established yield and market price for multiple intended uses, a value will be calculated by FSA with respect to the intended use or uses for disaster purposes based

on historical production and acreage evidence provided by the participant and FSA will determine the eligible acres for each use.

(f) For crops sold in a market that is not a recognized market for the crop with no established county average yield and average market price, 42 percent of the salvage value received will be deducted from the disaster payment.

(g) If a participant does not receive compensation based upon the quantity of the commodity delivered to a purchaser, but has an agreement or contract for guaranteed payment for production, the determination of the production will be the greater of the actual production or the guaranteed payment converted to production as determined by FSA.

(h) Production that is commingled between units before it was a matter of record or combination of record and cannot be separated by using records or other means acceptable to FSA will be prorated to each respective unit by FSA. Commingled production may be attributed to the applicable unit, if the participant made the unit production of a commodity a matter of record before commingling and does any of the following, as applicable:

(1) Provides copies of verifiable documents showing that production of the commodity was purchased, acquired, or otherwise obtained from beyond the unit;

(2) Had the production measured in a manner acceptable to the county committee; or

(3) Had the current year's production appraised in a manner acceptable to the county committee.

(i) The county committee will assign production for the unit when the county committee determines that:

(1) The participant has failed to provide adequate and acceptable production records;

(2) The loss to the crop is because of a disaster condition not covered by this part, or circumstances other than natural disaster, and there has not otherwise been an accounting of this ineligible cause of loss;

(3) The participant carries out a practice, such as multiple cropping, that generally results in lower yields than the established historic yields;

(4) The participant has a contract to receive a guaranteed payment for all or a portion of the crop;

(5) A crop was late-planted;

(6) Unharvested acreage was not timely appraised; or

(7) Other appropriate causes exist for such assignment as determined by the Deputy Administrator.

(j) For peanuts, the actual production is all peanuts harvested for nuts, regardless of their disposition or use, as adjusted for low quality.

(k) For tobacco, the actual production is the sum of the tobacco: marketed or available to be marketed; destroyed after harvest; and produced but unharvested, as determined by an appraisal.

§ 760.814 Calculation of acreage for crop losses other than prevented planted.

(a) Payment acreage of a crop is limited to the lesser of insured acreage or NAP covered acreage of the crop, as applicable, or actual acreage of the crop planted for harvest.

(b) In cases where there is a repeat crop or a multiple planted crop in more than one planting period, or if there is multiple cropped acreage meeting criteria established in paragraph (c) or (d) of this section, each of these crops may be considered separate crops if the county committee determines that all of the following conditions are met:

(1) Were planted with the intent to harvest;

(2) Were planted within the normal planting period for that crop;

(3) Meet all other eligibility provisions of this part including good farming practices; and

(4) Could reach maturity if each planting was harvested or would have been harvested.

(c) In cases where there is multiple-cropped acreage, each crop may be eligible for disaster assistance separately if both of the following conditions are met:

(1) The specific crops are approved by the State committee as eligible multiple-cropping practices in accordance with procedures approved by the Deputy Administrator and separately meet all requirements, including insurance or NAP requirements ; and

(2) The farm containing the multiple-cropped acreage has a history of successful multiple cropping more than one crop on the same acreage in the same crop year, in the year previous to the disaster, or at least 2 of the 4 crop years immediately preceding the disaster crop year based on timely filed crop acreage reports.

(d) A participant with multiple-cropped acreage not meeting the criteria in paragraph (c) of this section may be eligible for disaster assistance on more than one crop if the participant has verifiable records establishing a history of carrying out a successful multiple-cropping practice on the specific crops for which assistance is requested. All required records acceptable to FSA as determined by the Deputy Administrator must be provided before payments are issued.

(e) A participant with multiple-cropped acreage not meeting the criteria in paragraphs (c) or (d) of this section must select the crop for which assistance will be requested. If more than one participant has an interest in the multiple cropped acreage, all participants must agree to the crop designated for payment by the end of the application period or no payment will be approved for any crop on the multiple-cropped acreage.

(f) Benefits under this part apply to irrigated crops where, in cases determined by the Deputy Administrator, acreage was affected by a lack of surface irrigation water due to drought or contamination of ground water or surface irrigation water due to saltwater intrusion. In no case is a loss of ground water, for any reason, an eligible cause of loss.

§ 760.815 Calculation of prevented planted acreage.

(a) When determining losses under this part, prevented planted acreage will be considered separately from planted acreage of the same crop.

(b) For insured crops, or NAP covered crops, as applicable, disaster payments under this part for prevented planted acreage will not be made unless RMA or FSA, as applicable, documentation indicates that the eligible participant received a prevented planting payment

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under either NAP or the RMA-administered program.

(c) The participant must prove, to the satisfaction of the county committee, an intent to plant the crop and that such crop could not be planted because of an eligible disaster. The county committee must be able to determine the participant was prevented from planting the crop by an eligible disaster that:

(1) Prevented other producers from planting on acreage with similar characteristics in the surrounding area;

(2) Occurred after the previous planting period for the crop; and

(3) Unless otherwise approved by the Deputy Administrator, began no earlier than the planting season for that crop.

(d) Prevented planted disaster benefits under this part do not apply to:

(1) Acreage not insured or NAP covered;

(2) Any acreage on which a crop other than a cover crop was harvested, hayed, or grazed during the crop year;

(3) Any acreage for which a cash lease payment is received for the use of the acreage the same crop year, unless the county committee determines the lease was for haying and grazing rights only and was not a lease for use of the land;

(4) Acreage for which the participant or any other person received a prevented planted payment for any crop for the same acreage, excluding share arrangements;

(5) Acreage for which the participant cannot provide verifiable proof to the county committee that inputs such as seed, chemicals, and fertilizer were available to plant and produce a crop with the expectation of producing at least a normal yield; and

(6) Any other acreage for which, for whatever reason, there is cause to question whether the crop could have been planted for a successful and timely harvest, or for which prevented planting credit is not allowed under the provisions of this part.

(e) Prevented planting payments are not provided on acreage that had either a previous or subsequent crop planted in the same crop year on the acreage, unless the county committee deter-

mines that all of the following conditions are met:

(1) There is an established practice of planting two or more crops for harvest on the same acreage in the same crop year;

(2) Both crops could have reached maturity if each planting was harvested or would have been harvested;

(3) Both the initial and subsequent planted crops were planted or prevented planting within the normal planting period for that crop;

(4) Both the initial and subsequent planted crops meet all other eligibility provisions of this part including good farming practices; and

(5) The specific crops meet the eligibility criteria for a separate crop designation as a repeat or approved multiple cropping practice set out in §760.814.

(f)(1) Disaster benefits under this part do not apply to crops where the prevented planted acreage was affected by a disaster that was caused by drought unless on the final planting date or the late planting period for non-irrigated acreage, the area that was prevented from being planted had insufficient soil moisture for germination of seed and progress toward crop maturity because of a prolonged period of dry weather;

(2) Verifiable information collected by sources whose business or purpose is to record weather conditions, including, but not limited to, local weather reporting stations of the U.S. National Weather Service.

(g) Prevented planting benefits under this part apply to irrigated crops where adequate irrigation facilities were in place before the eligible disaster and the acreage was prevented from being planted due to a lack of water resulting from drought conditions or contamination by saltwater intrusion of an irrigation supply resulting from drought conditions.

(h) For NAP covered crops, prevented planting provisions apply according to part 718 of this chapter.

(i) Late-filed crop acreage reports for prevented planted acreage in previous years are not acceptable for CDP purposes.

§ 760.816 Value loss crops.

(a) Notwithstanding any other provisions of this part, this section applies to value loss crops and tropical crops. Unless otherwise specified, all the eligibility provisions of part 1437 of this title apply to value loss crops and tropical crops under this part.

(b) For value loss crops, benefits under this part are calculated based on the loss of value at the time of the damaging weather or related condition, as determined by FSA.

(c) For tropical crops:

(1) CDP benefits for 2005 are calculated according to general provisions of part 1437, but not subpart F, of this title.

(2) CDP benefits for 2006 and 2007 are calculated according to part 1437, subpart F of this title.

§ 760.817 Quality losses for 2005, 2006, and 2007 crops.

(a) Subject to other provisions of this part, assistance will be made available to participants determined eligible under this section for crop quality losses of 25 percent or greater of the value that all affected production of the crop would have had if the crop had not suffered a quality loss.

(b) The amount of payment for a quality loss will be equal to 65 percent of the quantity of the crop affected by the quality loss, not to exceed expected production based on harvested acres, multiplied by 42 percent of the per unit average market value based on percentage of quality loss for the crop as determined by the Deputy Administrator.

(c) This section applies to all crops eligible for 2005, 2006, and 2007 crop disaster assistance under this part, with the exceptions of value loss crops, honey, and maple sap, and applies to crop production that has a reduced economic value due to the reduction in quality.

(d) Participants may not be compensated under this section to the extent that such participants have received assistance under other provisions of this part, attributable in whole or in part to diminished quality.

§ 760.818 Marketing contracts.

(a) A marketing contract must meet all of the conditions outlined in paragraphs (b), (c), and (d) of this section.

(b) A marketing contract, at a minimum, must meet all of the following conditions:

(1) Be a legal contract in the State where executed;

(2) Specify the commodity under contract;

(3) Specify crop year;

(4) Be signed by both the participant, or legal representative, and the purchaser of the specified commodity;

(5) Include a commitment to deliver the contracted quantity;

(6) Include a commitment to purchase the contracted quantity that meets specified minimum quality standards and other criteria as specified;

(7) Define a determinable quantity by containing either a:

(i) Specified production quantity or

(ii) A specified acreage for which production quantity can be calculated;

(8) Define a determinable price by containing either a:

(i) Specified price or

(ii) Method to determine such a price;

(9) Contain a relationship between the price and the quality using either:

(i) Specified quality standards or

(ii) A method to determine such quality standards from published third party data; and

(10) Have been executed within 10 days after:

(i) End of insurance period for insured crops or

(ii) Normal harvest date for NAP covered crops as determined by FSA.

(c) The purchaser of the commodity specified in the marketing contract must meet at least one of the following:

(1) Be a licensed commodity warehouseman;

(2) Be a business enterprise regularly engaged in the processing of a commodity, that possesses all licenses and permits for marketing the commodity required by the State in which it operates, and that possesses or has contracted for facilities with enough equipment to accept and process the

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commodity within a reasonable amount of time after harvest; or

(3) Is able to physically receive the harvested production.

(d) In order for the commodity specified in the marketing contract to be considered sold pursuant to the marketing contract, the commodity must have been produced by the participant in the crop year specified in the contract, and at least one of the following conditions must be met:

(1) Commodity was sold under the terms of the contract or

(2) Participant attempted to deliver the commodity to the purchaser, but the commodity was rejected due to quality factors as specified in the contract.

(e) The amount of payment for affected production, as determined in §760.817(b), sold pursuant to one or more marketing contracts will take into consideration the marketing contract price as determined by FSA.

(f) County committees have the authority to require a participant to provide necessary documentation, which may include, but is not limited to, previous marketing contracts fulfilled, to substantiate and validate quality standards in paragraph (b)(9) of this section and marketing contract price received for the commodity for which crop quality loss assistance is requested. In cases where the county committee has reason to believe the participant lacks the capacity or history to fulfill the quality provisions of the marketing contract the county committee will require such documentation.

§760.819 Misrepresentation, scheme, or device.

(a) A person is ineligible to receive assistance under this part if it is determined that such person has:

(1) Adopted any scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent representation under this program;

(3) Misrepresented any fact affecting a program or person determination; or

(4) Has violated or been determined ineligible under §1400.5 of this title.

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§760.820 Offsets, assignments, and debt settlement.

(a) Except as provided in paragraph (b) of this section, any payment to any person will be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this title apply to any payments made under this part.

(b) Any participant entitled to any payment may assign any payments in accordance with regulations governing the assignment of payments found at part 1404 of this title.

(c) A debt or claim may be settled according to part 792 of this chapter.

§760.821 Compliance with highly erodible land and wetland conservation.

(a) The highly erodible land and wetland conservation provisions of part 12 of this title apply to the receipt of disaster assistance for 2005, 2006, and 2007 crop losses made available under this authority.

(b) Eligible participants must be in compliance with the highly erodible land and wetland conservation compliance provisions for the year for which financial assistance is requested.

Subpart J—2005–2007 Livestock Indemnity Program

SOURCE: 72 FR 72867, Dec. 21, 2007, unless otherwise noted.

§760.900 Administration.

(a) The regulations in this subpart specify the terms and conditions applicable to the 2005–2007 Livestock Indemnity Program (2005–2007 LIP), which will be administered under the general supervision and direction of the Administrator, FSA.

(b) FSA representatives do not have authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State FSA committee will take any action required by the regulations of this subpart that the county

FSA committee has not taken. The State FSA committee will also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this subpart; or

(2) Require a county committee to withhold taking any action that is not in accordance with this subpart.

(d) No delegation to a State or county FSA committee will preclude the Deputy Administrator for Farm Programs from determining any question arising under the program or from reversing or modifying any determination made by a State or county FSA committee.

§ 760.901 Applicability.

(a) This subpart establishes the terms and conditions under which the 2005–2007 LIP will be administered under Title IX of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28) for eligible counties as specified in § 760.902(a).

(b) Eligible livestock owners and contract growers will be compensated in accordance with § 760.909 for eligible livestock deaths that occurred in eligible counties as a direct result of an eligible disaster event. Drought is not an eligible disaster event except when anthrax, as a related condition that occurs as a result of drought, results in the death of eligible livestock.

§ 760.902 Eligible counties and disaster periods.

Counties are eligible for agricultural assistance under the 2005–2007 LIP if they received a timely Presidential designation, a timely Secretarial declaration, or a qualifying Administrator's Physical Loss Notice (APLN) determination in a county otherwise the subject of a timely Presidential declaration, or are counties contiguous to such counties. Presidential designations and Secretarial declarations will be considered timely only if made after January 1, 2005, and before February 28, 2007. Eligible counties, disaster events, and disaster periods are listed at <http://disaster.fsa.usda.gov>.

§ 760.903 Definitions.

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

Adult beef bull means a male beef bovine animal that was at least 2 years old and used for breeding purposes before it died.

Adult beef cow means a female beef bovine animal that had delivered one or more offspring before dying. A first-time bred beef heifer is also considered an adult beef cow if it was pregnant at the time it died.

Adult buffalo and beefalo bull means a male animal of those breeds that was at least 2 years old and used for breeding purposes before it died.

Adult buffalo and beefalo cow means a female animal of those breeds that had delivered one or more offspring before dying. A first-time bred buffalo or beefalo heifer is also considered an adult buffalo or beefalo cow if it was pregnant at the time it died.

Adult dairy bull means a male dairy breed bovine animal at least 2 years old used primarily for breeding dairy cows before it died.

Adult dairy cow means a female bovine animal used for the purpose of providing milk for human consumption that had delivered one or more offspring before dying. A first-time bred dairy heifer is also considered an adult dairy cow if it was pregnant at the time it died.

Agricultural operation means a farming operation.

Application means the “2005–2007 Livestock Indemnity Program” form.

Application period means the date established by the Deputy Administrator for Farm Programs for participants to apply for program benefits.

Buck means a male goat.

Catfish means catfish grown as food for human consumption by a commercial operator on private property in water in a controlled environment.

Commercial use means used in the operation of a business activity engaged in as a means of livelihood for profit by the eligible producer to apply for program benefits.

Contract means, with respect to contracts for the handling of livestock, a

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written agreement between a livestock owner and another individual or entity setting the specific terms, conditions, and obligations of the parties involved regarding the production of livestock or livestock products.

Controlled environment means an environment in which everything that can practicably be controlled by the participant with structures, facilities, and growing media (including, but not limited to, water and nutrients) and was in fact controlled by the participant at the time of the disaster.

Crawfish means crawfish grown as food for human consumption by a commercial operator on private property in water in a controlled environment.

Deputy Administrator means the Deputy Administrator for Farm Programs, Farm Service Agency, U.S. Department of Agriculture or the designee.

Doe means a female goat.

Equine animal means a domesticated horse, mule, or donkey.

Ewe means a female sheep.

Farming operation means a business enterprise engaged in producing agricultural products.

Goat means a domesticated, ruminant mammal of the genus *Capra*, including Angora goats. Goats are further defined by sex (bucks and does) and age (kids).

Kid means a goat less than 1 year old.

Lamb means a sheep less than 1 year old.

Livestock owner means one having legal ownership of the livestock for which benefits are being requested on the day such livestock died due to an eligible disaster.

Non-adult beef cattle means a bovine that does not meet the definition of adult beef cow or bull. Non-adult beef cattle are further delineated by weight categories of less than 400 pounds, and 400 pounds or more at the time they died.

Non-adult buffalo or beefalo means an animal of those breeds that does not meet the definition of adult buffalo/beefalo cow or bull. Non-adult buffalo or beefalo are further delineated by weight categories of less than 400 pounds, and 400 pounds or more at the time of death.

Non-adult dairy cattle means a bovine livestock, of a breed used for the pur-

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pose of providing milk for human consumption, that do not meet the definition of adult dairy cow or bull. Non-adult dairy cattle are further delineated by weight categories of less than 400 pounds, and 400 pounds or more at the time they died.

Poultry means domesticated chickens, turkeys, ducks, and geese. Poultry are further delineated by sex, age, and purpose of production as determined by FSA.

Ram means a male sheep.

Sheep means a domesticated, ruminant mammal of the genus *Ovis*. Sheep are further defined by sex (rams and ewes) and age (lambs).

Swine means a domesticated omnivorous pig, hog, and boar. Swine are further delineated by sex and weight as determined by FSA.

§760.904 Limitations on payments and other benefits.

(a) A participant may receive benefits for livestock losses for only one of the 2005, 2006, or 2007 calendar years as specified under this part.

(b) A "person" as determined under part 1400 of this title may receive no more than \$80,000 under this subpart. In applying the \$80,000 per person payment limitation, regardless of whether 2005, 2006, or 2007 calendar year benefits are at issue or sought, the most restrictive "person" determination for the participant in the years 2005, 2006, and 2007, will be used to limit benefits.

(c) The provisions of part 1400, subpart G, of this title relating to limits to payments for individuals or entities with certain levels of adjusted gross income apply to this program.

(d) As a condition to receive benefits under this subpart, a participant must have been in compliance with the provisions of parts 12 and 718 of this title and must not otherwise be precluded from receiving benefits under any law.

(e) An individual or entity determined to be a foreign person under part 1400 of this title is not eligible to receive benefits under this subpart.

§ 760.905 Eligible owners and contract growers.

(a) To be considered eligible, a livestock owner must have had legal ownership of the eligible livestock, as provided in § 760.906(a), on the day the livestock died.

(b) To be considered eligible, a contract grower on the day the livestock died must have had:

(1) A written agreement with the owner of eligible livestock setting the specific terms, conditions, and obligations of the parties involved regarding the production of livestock; and

(2) Control of the eligible livestock, as provided in § 760.906(b), on the day the livestock died.

§ 760.906 Eligible livestock.

(a) To be considered eligible livestock for livestock owners, livestock must be adult or non-adult dairy cattle, beef cattle, buffalo, beefalo, catfish, crawfish, equine, sheep, goats, swine, poultry, deer, or reindeer and meet all the conditions in paragraph (c) of this section.

(b) To be considered eligible livestock for contract growers, livestock must be poultry or swine as defined in § 760.903 and meet all the conditions in paragraph (c) of this section.

(c) To be considered eligible, livestock must meet all of the following conditions:

(1) Died in an eligible county as a direct result of an eligible disaster event;

(i) After January 1, 2005, but before February 28, 2007;

(ii) No later than 60 calendar days from the ending date of the applicable disaster period, but before February 28, 2007; and

(iii) In the calendar year for which benefits are being requested.

(2) The disaster event that caused the loss must be the same event for which a natural disaster was declared or designated.

(3) Been maintained for commercial use as part of a farming operation on the day they died; and

(4) Before dying, not have been produced or maintained for reasons other than commercial use as part of a farming operation, including, but not limited to, wild free roaming animals or animals used for recreational purposes,

such as pleasure, hunting, roping, pets, or for show.

(d) In those counties in § 760.902, the following types of animals owned by a livestock owner are eligible livestock:

- (1) Adult beef bulls;
- (2) Adult beef cows;
- (3) Adult buffalo or beefalo bulls;
- (4) Adult buffalo or beefalo cows;
- (5) Adult dairy bulls;
- (6) Adult dairy cows;
- (7) Catfish;
- (8) Chickens, broilers, pullets;
- (9) Chickens, chicks;
- (10) Chickens, layers, roasters;
- (11) Crawfish;
- (12) Deer;
- (13) Ducks;
- (14) Ducks, ducklings;
- (15) Equine;
- (16) Geese, goose;
- (17) Geese, gosling;
- (18) Goats, bucks;
- (19) Goats, does;
- (20) Goats, kids;
- (21) Non-adult beef cattle;
- (22) Non-adult buffalo/beefalo;
- (23) Non-adult dairy cattle;
- (24) Reindeer
- (25) Sheep, ewes;
- (26) Sheep, lambs;
- (27) Sheep, rams;
- (28) Swine, feeder pigs under 50 pounds;
- (29) Swine, sows, boars, barrows, gilts 50 to 150 pounds;
- (30) Swine, sows, boars, barrows, gilts over 150 pounds;
- (31) Turkeys, poult; and
- (32) Turkeys, toms, fryers, and roasters.

(e) In those counties in § 760.902, the following types of animals are eligible livestock for contract growers:

- (1) Chickens, broilers, pullets;
- (2) Chickens, layers, roasters;
- (3) Geese, goose;
- (4) Swine, boars, sows;
- (5) Swine, feeder pigs;
- (6) Swine, lightweight barrows, gilts;
- (7) Swine, sows, boars, barrows, gilts; and
- (8) Turkeys, toms, fryers, and roasters.

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§ 760.907 Application process.

(a) To apply for 2005–2007 LIP, submit a completed application to the administrative county FSA office that maintains the farm records for your agricultural operation, a copy of your grower contract, if you are a contract grower, and other supporting documents required for determining your eligibility as an applicant. Supporting documents must show:

- (1) Evidence of loss,
- (2) Current physical location of livestock in inventory, and
- (3) Physical location of claimed livestock at the time of death.

(b) The application must be filed during the application period announced by the Deputy Administrator.

(c) A minor child is eligible to apply for program benefits if all eligibility requirements are met and one of the following conditions exists:

(1) The right of majority has been conferred upon the minor by court proceedings or statute;

(2) A guardian has been appointed to manage the minor's property, and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which a surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

(d) The participant must provide adequate proof that the death of the eligible livestock occurred in an eligible county as a direct result of an eligible disaster event during the applicable disaster period. The quantity and kind of livestock that died as a direct result of the eligible disaster event may be documented by: purchase records; veterinarian records; bank or other loan papers; rendering truck receipts; Federal Emergency Management Agency records; National Guard records; written contracts; production records; Internal Revenue Service records; property tax records; private insurance documents; and other similar verifiable documents as determined by FSA.

(e) Certification of livestock deaths by third parties may be accepted only if both the following conditions are met:

(1) The livestock owner or livestock contract grower, as applicable, certifies in writing:

(i) That there is no other documentation of death available;

(ii) The number of livestock, by category determined by FSA, were in inventory at the time the applicable disaster event occurred; and

(iii) Other details required for FSA to determine the certification acceptable; and

(2) The third party provides their telephone number, address, and a written statement containing:

(i) Specific details about their knowledge of the livestock deaths;

(ii) Their affiliation with the livestock owner;

(iii) The accuracy of the deaths claimed by the livestock owner; and

(iv) Other details required by FSA to determine the certification acceptable.

(f) Data furnished by the participant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without all required data program benefits will not be approved or provided.

§ 760.908 Deceased individuals or dissolved entities.

(a) Payments may be made for eligible losses suffered by an eligible participant who is now a deceased individual or is a dissolved entity if a representative, who currently has authority to enter into a contract, on behalf of the participant, signs the application for payment.

(b) Legal documents showing proof of authority to sign for the deceased individual or dissolved entity must be provided.

(c) If a participant is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

§ 760.909 Payment calculation.

(a) Under this subpart separate payment rates are established for eligible livestock owners and eligible livestock contract growers in accordance with paragraphs (b) and (c) of this section. Payments for the 2005–2007 LIP are calculated by multiplying the national payment rate for each livestock category, as determined in paragraphs (b)

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and (c) of this section, by the number of eligible livestock in each category, as provided in §760.906. Adjustments will be applied in accordance with paragraphs (d) and (e) of this section.

(b) The 2005–2007 LIP national payment rate for eligible livestock owners is based on 26 percent of the average fair market value of the livestock.

(c) The 2005–2007 LIP national payment rate for eligible livestock contract growers is based on 26 percent of the average income loss sustained by the contract grower with respect to the dead livestock.

(d) The 2005 payment calculated under 2005–2007 LIP for eligible livestock owners will be reduced by the amount the participant received under:

(1) The Livestock Indemnity Program (subpart E of this part);

(2) The Aquaculture Grant Program (subpart G of this part); and

(3) The Livestock Indemnity Program II (part 1416, subpart C of this title).

(e) The 2005 payment calculated under 2005–2007 LIP for eligible livestock contract growers will be reduced by the amount the participant received:

(1) Under the Livestock Indemnity Program (subpart E of this part);

(2) For the loss of income from the dead livestock from the party who contracted with the producer to grow the livestock; and

(3) Under the Livestock Indemnity Program II (part 1416, subpart C of this title).

§ 760.910 Appeals.

The appeal regulations set forth at parts 11 and 780 of this title apply to determinations made pursuant to this subpart.

§ 760.911 Offsets, assignments, and debt settlement.

(a) Any payment to any participant will be made without regard to questions of title under State law and without regard to any claim or lien against the commodity, or proceeds, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 792 of this

chapter apply to payments made under this subpart.

(b) Any participant entitled to any payment may assign any payment in accordance with regulations governing the assignment of payments found at part 1404 of this title.

§ 760.912 Records and inspections.

Participants receiving payments under this subpart or any other person who furnishes information for the purposes of enabling such participant to receive a payment under this subpart must maintain any books, records, and accounts supporting any information so furnished for 3 years following the end of the year during which the application for payment was filed. Participants receiving payments or any other person who furnishes such information to FSA must allow authorized representatives of USDA and the General Accountability Office, during regular business hours, to inspect, examine, and make copies of such books or records, and to enter upon, inspect and verify all applicable livestock and acreage in which the participant has an interest for the purpose of confirming the accuracy of information provided by or for the participant.

§ 760.913 Refunds; joint and several liability.

In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under this subpart, and if any refund of a payment to FSA will otherwise become due in connection with this subpart, all payments made in regard to such matter must be refunded to FSA together with interest and late-payment charges as provided for in part 792 of this chapter.

Subpart K—General Provisions for 2005–2007 Livestock Compensation and Catfish Grant Programs

SOURCE: 72 FR 72881, Dec. 21, 2007, unless otherwise noted.

§ 760.1000 Applicability.

(a) This subpart establishes the terms and conditions under which the

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following programs will be administered under Title IX of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 for participants affected by eligible disaster events and located in counties that are eligible as specified in § 760.1001:

(1) The 2005–2007 Livestock Compensation Program (2005–2007 LCP); and

(2) The 2005–2007 Catfish Grant Program (2005–2007 CGP).

(b) Farm Service Agency (FSA) funds as are necessary for the programs in subparts L and M of this part are available under Title IX of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007.

§ 760.1001 Eligible counties, disaster events, and disaster periods.

(a) Except as provided in this subpart, FSA will provide assistance under the programs listed in § 760.1000 to eligible participants who have suffered certain losses due to eligible disaster events in eligible disaster counties provided in paragraph (c) of this section.

(b) The “Disaster Period” is the time period in which losses occurred for the particular disaster that may be considered eligible for the programs under subparts L and M of this part. The start and end dates for each eligible disaster period are specified at <http://disaster.fsa.usda.gov>.

(c) Eligible counties are those primary counties declared by the Secretary or designated for the applicable loss by the President, including counties contiguous to those counties, between January 1, 2005, and February 28, 2007 (that is after January 1, 2005 and before February 28, 2007). The listing is provided at <http://disaster.fsa.usda.gov>. For counties where there was an otherwise timely Presidential declaration, but the declarations do not cover agricultural physical loss, the subject counties may still be eligible if the counties were the subject of an approved Administrator's Physical Loss Notice (APLN) when the APLN applies to a natural disaster timely designated by the President.

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§ 760.1002 Definitions.

The following definitions apply to the programs in subpart L and M of this part. The definitions in parts 718 and 1400 of this title also apply, except where they conflict with the definitions in this section.

Commercial use means a use performed as part of the operation of a business activity engaged in as a means of livelihood for profit by the eligible producer.

Farming operation means a business enterprise engaged in producing agricultural products.

§ 760.1003 Limitations on payments and other benefits.

(a) A participant may receive benefits for eligible livestock feed losses, including additional feed costs, for only one of the 2005, 2006, or 2007 calendar years under 2005–2007 LCP, subpart L of this part, or under the CGP of subpart M of this part.

(b) As specified in § 760.1106(c), the payment under the 2005–2007 LCP may not exceed the smaller of the calculated payment in § 760.1106(a) or the value of the producer's eligible feed loss, increased feed costs, or forage or grazing loss.

(c) A person may receive no more than \$80,000 under 2005–2007 LCP, subpart L of this part. In applying the \$80,000 per person payment limitation, regardless of whether the 2005, 2006, or 2007 calendar year benefits are at issue or sought, the most restrictive “person” determination for the participant in the years 2005, 2006, and 2007, will be used to limit benefits. The rules and definitions of part 1400 of this title apply in construing who is a qualified separate “person” for purposes of this limit. All payment eligibility requirements of part 1400 as they apply to any other payments, also apply to payments under subpart L of this part.

(d) For payments under 2005–2007 CGP, a farming operation may receive no more than \$80,000, except for general partnerships and joint ventures, in which case assistance will not exceed \$80,000 times the number of eligible members of the general partnership or joint venture. This limit must be enforced by the state government administering the grant program.

(e) The provisions of part 1400, subpart G, of this title apply to these programs. That is the rules that limit the eligibility for benefits of those individuals or entities with an adjusted gross income greater than a certain limit will be applied in the same manner to payments under subparts L and M of this part.

(f) As a condition to receive benefits under subparts L and M of this part, a participant must have been in compliance with the provisions of parts 12 and 718 of this title for the calendar year for which benefits are being requested and must not otherwise be precluded from receiving benefits under any law.

(g) An individual or entity determined to be a foreign person under part 1400 of this title is not eligible to receive benefits under subparts L and M of this part.

(h) In addition to limitations provided in subparts L and M of this part, participants cannot receive duplicate benefits under subparts L and M of this part for the same loss or any similar loss under:

(1) An agricultural disaster assistance provision contained in the announcement of the Secretary on January 26, 2006, or August 29, 2006;

(2) The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Pub. L. 109-234; 120 Stat. 418); or

(3) Any other disaster assistance program.

Subpart L-2005-2007 Livestock Compensation Program

SOURCE: 72 FR 72881, Dec. 21, 2007, unless otherwise noted.

§ 760.1100 Applicability.

This subpart sets forth the terms and conditions applicable to the 2005-2007 Livestock Compensation Program (LCP).

§ 760.1101 Administration.

(a) This program is administered under the general supervision of the Administrator, Farm Service Agency (FSA).

(b) FSA representatives do not have authority to modify or waive any of

the provisions of the regulations of this subpart.

(c) The State FSA committee must take any action required by the regulations of this subpart that the county FSA committee has not taken. The State committee must also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this subpart; or

(2) Require a county committee to withhold taking any action that is not in accordance with this subpart.

(d) No provision or delegation to a State or county FSA committee will preclude the FSA Deputy Administrator for Farm Programs (Deputy Administrator), or a designee of such, from determining any question arising under the program or from reversing or modifying any determination made by a State or county FSA committee.

(e) The Deputy Administrator for Farm Programs may authorize state and county committees to waive or modify nonstatutory deadlines or other program requirements in cases where lateness or failure to meet such does not adversely affect the operation of the program.

§ 760.1102 Definitions.

The following definitions apply to this subpart.

Adult beef bull means a male beef bovine animal that was at least 2 years old and used for breeding purposes on the beginning date of the disaster period.

Adult beef cow means a female beef bovine animal that had delivered one or more offspring before the disaster period. A first-time bred beef heifer is also considered an adult beef cow if it was pregnant on the beginning date of the disaster period.

Adult buffalo and beefalo bull means a male animal of those breeds that was at least 2 years old and used for breeding purposes on the beginning date of the disaster period.

Adult buffalo and beefalo cow means a female animal of those breeds that had delivered one or more offspring before the beginning date of the applicable disaster period. A first-time bred buffalo or beefalo heifer is also considered

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to be an adult buffalo or beefalo cow if it was pregnant on the beginning date of the disaster period.

Adult dairy bull means a male dairy bovine breed animal at least 2 years old used primarily for breeding dairy cows on the beginning date of the disaster period.

Adult dairy cow means a female bovine animal used for the purpose of providing milk for human consumption that had delivered one or more offspring before the beginning date of the applicable disaster period. A first-time bred dairy heifer is also considered an adult dairy cow if it was pregnant on the beginning date of the disaster period.

Agricultural operation means a farming operation.

Application means the “2005/2006/2007 Livestock Compensation Program” form.

Application period means the date established by the Deputy Administrator for Farm Programs for participants to apply for program benefits.

Disaster period means the applicable disaster period specified in §760.1001.

Equine animal means a domesticated horse, mule, or donkey.

Goat means a domesticated, ruminant mammal of the genus *Capra*, including Angora goats.

Non-adult beef cattle means a bovine animal that weighed 500 pounds or more on the beginning date of the disaster period, but does not meet the definition of an adult beef cow or bull.

Non-adult buffalo/beefalo means an animal of those breeds that weighed 500 pounds or more on the beginning date of the disaster period, but does not meet the definition of an adult buffalo or beefalo cow or bull.

Non-adult dairy cattle means a bovine livestock, of a breed used for the purpose of providing milk for human consumption, that weighed 500 pounds or more on the beginning date of the disaster period, but does not meet the definition of an adult dairy cow or bull.

Owner means one who had legal ownership of the livestock for which benefits are being requested under this subpart on the beginning date of the applicable disaster period as set forth in §760.1001.

Poultry means a domesticated chicken, turkey, duck, or goose. Poultry are further delineated by sex, age and purpose of production, as determined by FSA.

Sheep means a domesticated, ruminant mammal of the genus *Ovis*.

Swine means a domesticated omnivorous pig, hog, and boar. Swine are further delineated by sex and weight as determined by FSA.

§760.1103 Eligible livestock and producers.

(a) To be considered eligible livestock to generate benefits under this subpart, livestock must meet all the following conditions:

(1) Be adult or non-adult dairy cattle, beef cattle, buffalo, beefalo, equine, poultry, elk, reindeer, sheep, goats, swine, or deer;

(2) Been physically located in the eligible disaster county on the beginning date of the disaster period;

(3) Been maintained for commercial use as part of the producer’s farming operation on the beginning date of the disaster period; and

(4) Not have been produced and maintained for reasons other than commercial use as part of a farming operation. Such excluded uses include, but are not limited to, wild free roaming animals or animals used for recreational purposes, such as pleasure, roping, hunting, pets, or for show.

(b) To be considered an eligible livestock producer, the participant’s eligible livestock must have been located in the eligible disaster county on the beginning date of the disaster period. To be eligible, also, the livestock producer must have:

(1) Owned or cash-leased eligible livestock on the beginning date of the disaster period (provided that if there is a cash lease, only the cash lessee and not the owner will be eligible); and

(2) Suffered any of the following:

(i) A grazing loss on eligible grazing lands physically located in the eligible disaster county, where the forage was damaged or destroyed by an eligible disaster event, and intended for use as feed for the participant’s eligible livestock;

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(ii) A loss of feed from forage or feedstuffs physically located in the eligible disaster county, that was mechanically harvested and intended for use as feed for the participant's eligible livestock, that was damaged or destroyed after harvest as the result of an eligible disaster event;

(iii) A loss of feed from purchased forage or feedstuffs physically located in the eligible disaster county, intended for use as feed for the participant's eligible livestock, that was damaged or destroyed by an eligible disaster event; or

(iv) Increased feed costs incurred in the eligible disaster county, due to an eligible disaster event, to feed the participant's eligible livestock.

(c) The eligible livestock categories are:

- (1) Adult beef cows or bulls;
- (2) Non-adult beef cattle;
- (3) Adult buffalo or beefalo cows or bulls;
- (4) Non-adult buffalo or beefalo;
- (5) Adult dairy cows or bulls;
- (6) Non-adult dairy cattle;
- (7) Goats;
- (8) Sheep;
- (9) Equine;
- (10) Reindeer;
- (11) Elk;
- (12) Poultry; and
- (13) Deer.

(d) Ineligible livestock include, but are not limited to, livestock:

(1) Livestock that were or would have been in a feedlot regardless of whether there was a disaster or where such livestock were in a feedlot as part of a participant's normal business operation, as determined by FSA;

- (2) Emus;
- (3) Yaks;
- (4) Ostriches;
- (5) Llamas;
- (6) All beef and dairy cattle, and buffalo and beefalo that weighed less than 500 pounds on the beginning date of the disaster period;

(7) Any wild free roaming livestock, including horses and deer;

(8) Livestock produced or maintained for reasons other than commercial use as part of a farming operation, including, but not limited to, livestock produced or maintained for recreational purposes, such as:

- (i) Roping,
- (ii) Hunting,
- (iii) Show,
- (iv) Pleasure,
- (v) Use as pets, or
- (vi) Consumption by owner.

§ 760.1104 Application for payment.

(a) To apply for 2005-2007 LCP, an application and required supporting documentation must be submitted to the administrative county FSA office.

(b) The application must be filed during the application period announced by the Deputy Administrator for Farm Programs.

(c) Payments may be made for eligible losses suffered by an eligible livestock producer who is now a deceased individual or is a dissolved entity if a representative who currently has authority to enter into a contract, on behalf of the livestock producer, signs the application for payment. Legal documents showing proof of authority to sign for the deceased individual or dissolved entity must be provided. If a participant is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

(d) Data furnished by the participant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without all required data program benefits will not be approved or provided.

(e) A minor child is eligible to apply for program benefits if all eligibility requirements are met and one of the following conditions exists:

(1) The right of majority has been conferred upon the minor by court proceedings or statute;

(2) A guardian has been appointed to manage the minor's property, and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which a surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 760.1105 Application process.

(a) Participants must submit to FSA:

(1) A completed application in accordance with § 760.1104;

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(2) Adequate proof, as determined by FSA, that the feed lost:

(i) Was for the claimed eligible livestock;

(ii) Was lost as a direct result of an eligible disaster event during an eligible disaster period specified in §760.1001;

(iii) Was lost after January 1, 2005, but before February 28, 2007; and

(iv) Occurred in the calendar year for which benefits are being requested; and

(3) Any other supporting documentation as determined by FSA to be necessary to make a determination of eligibility of the participant. Supporting documents include, but are not limited to: verifiable purchase records; veterinarian records; bank or other loan papers; rendering truck receipts; Federal Emergency Management Agency records; National Guard records; written contracts; production records; Internal Revenue Service records; property tax records; private insurance documents; sales records, and similar documents determined acceptable by FSA.

(b) [Reserved]

§760.1106 Payment calculation.

(a) Preliminary, unadjusted LCP payments are calculated for a producer by multiplying the national payment rate for each livestock category, as provided in paragraph (c) of this section, by the number of eligible livestock for the producer in each category. The national payment rate represents the cost of the amount of corn needed to maintain the specific livestock for 30 days, as determined by FSA. As provided in subpart K of this part, a producer may receive benefits for only one of the three program years, 2005, 2006, or 2007. The producer must indicate which year has been chosen. Payments are available only with respect to disaster-related feed losses in the period from January 2, 2005 through February 27, 2007, in eligible counties for losses during the times specified for the disaster periods as specified in §760.1001(b).

(b) The preliminary LCP payment calculated in accordance with paragraph (a) of this section:

(1) For 2005 LCP provided for under this subpart will be reduced by the amount the participant received for

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the specific livestock under the Feed Indemnity Program in accordance with subpart D of this part and LCP for the 2005 hurricanes under subpart B of part 1416 of this title; and

(2) For 2006 LCP under this subpart will be reduced by the amount the participant received for the same or similar loss under the Livestock Assistance Grant Program in accordance with subpart H of this part.

(c) Subject to such other limitations as may apply, including those in paragraph (b) of this section, the payment under the 2005-2007 LCP may not exceed for the relevant year chosen by the producer the smaller of either the:

(1) Payment calculated in paragraph (a) of this section for that year; or

(2) Value of the producer's eligible feed loss, increased feed costs, or forage or grazing loss as determined by FSA for that year.

(d) The actual payment to the producer will be the amount provided for in paragraph (c) of this section subject to the adjustments and limits provided for in this section or in this part.

§760.1107 Appeals.

The appeal regulations in parts 11 and 780 of this title apply to determinations made under this subpart.

§760.1108 Offsets, assignments, and debt settlement.

(a) Any payment to any participant will be made without regard to any claim or lien against the commodity, or proceeds, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings in parts 792 and 1403 of this title apply to payments made under this subpart.

(b) Any participant entitled to any payment may assign any payments in accordance with regulations governing the assignment of payments in part 1404 of this chapter.

§760.1109 Recordkeeping and inspections.

Participants receiving payments under this subpart or any other person who furnishes information for the purposes of enabling the participant to receive a payment under this subpart must maintain any books, records, and

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accounts supporting that information for a minimum of 3 years following the end of the year during which the application for payment was filed. Participants receiving payments or any other person who furnishes the information to FSA must allow authorized representatives of USDA and the General Accounting Office, during regular business hours, and to enter upon, inspect, examine, and make copies of the books or records, and to inspect and verify all applicable livestock and acreage in which the participant has an interest for the purpose of confirming the accuracy of the information provided by or for the participant.

§ 760.1110 Refunds; joint and several liability.

In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under this subpart, and if any refund of a payment to FSA will otherwise become due in connection with this subpart, all payments made in regard to such matter must be refunded to FSA together with interest and late-payment charges as provided for in part 792 of this title, provided that interest will run from the date of the disbursement of the refund to the producer.

Subpart M—2005–2007 Catfish Grant Program

SOURCE: 72 FR 72881, Dec. 21, 2007, unless otherwise noted.

§ 760.1200 Administration.

FSA will administer a limited 2005–2007 CGP to provide assistance to catfish producers in eligible counties that suffered catfish feed and related losses between January 1, 2005, and February 28, 2007, that is after January 1, 2005, and before February 28, 2007. Under the 2005–2007 CGP, FSA will provide grants to State governments in those States that have catfish producers that are located in eligible counties and that have agreed to participate in the 2005–2007 CGP. The amount of each grant will be based on the total value of catfish feed and related losses suffered in eligible counties in the subject state. Each State must submit a work plan pro-

viding a summary of how the State will implement the 2005–2007 CGP.

§ 760.1201 Application for payment.

Application procedures for 2005–2007 CGP will be as determined by the State governments.

§ 760.1202 Eligible producers.

(a) To be considered an eligible catfish producer, a participant must:

(1) Raise catfish in a controlled environment and be physically located in an eligible county on the beginning date of the disaster period;

(2) Maintain the catfish for commercial use as part of a farming operation;

(3) Have a risk in production of such catfish; and

(4) Have suffered one of the following types of losses relating to catfish feed as a direct result of the county's disaster event that occurred in that year:

(i) Physical loss of feed that was damaged or destroyed,

(ii) Cost to the extent allowed by FSA, associated with lost feeding days, or

(iii) Cost associated with increased feed prices.

(b) [Reserved]

§ 760.1203 Payment calculation.

(a) Producers must be paid for feed losses of higher costs only for one of the three years, 2005, 2006, or 2007, and the loss must be for eligible catfish feed losses in an eligible county, as determined pursuant to subpart K of this part. Further, the feed loss or higher costs must be caused by the disaster that caused the county to qualify as an eligible county. The loss, moreover, to qualify for payment, must have occurred during the allowable time period provided in this part, namely the period beginning on January 2, 2005 and ending February 27, 2007. The producer must pick the year of the benefits sought.

(b) Subject to all adjustments and limits provided for in this part the amount of assistance provided to each participant from the State will be equal to the smaller of:

(1) Depending on the year chosen by the producer, the value of the participant's 2005, 2006, or 2007 catfish feed and related losses as a direct result of an

eligible disaster event, as determined by the State or

(2) Result of multiplying:

(i) Total tons of catfish feed purchased by the participant in depending on the year chosen by the producer 2005 (entire year), 2006 (entire year), or 2007 (through February 27, 2007, only), times,

(ii) Catfish feed payment rate for 2005, 2006, or 2007, as applicable, as set by FSA.

(c) The catfish feed rate represents 61 percent of the normal cost of a ton of feed for a year divided by six to reflect the normal feeding price for catfish.

PART 761—GENERAL PROGRAM ADMINISTRATION

Subpart A—General Provisions

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AUTHORITY: 5 U.S.C. 301 and 7 U.S.C. 1989.

SOURCE: 72 FR 63285, Nov. 8, 2007, unless otherwise noted.

Subpart A—General Provisions

§ 761.1 Introduction.

(a) The Administrator delegates the responsibility to administer Farm Loan Programs of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*) to the Deputy Administrator for Farm Loan Programs subject to any limitations established in 7 CFR 2.16(a)(2) and 7 CFR 2.42.

(b) The Deputy Administrator may:

- (1) Redelegate authorities received under subparagraph (a); and
- (2) Establish procedures for further redelegation of authority.

(c) Parts 761 through 767 describe the Agency's policies for its Farm Loan Programs. The objective of these programs is to provide supervised credit and management assistance to eligible farmers to become owners or operators, or both, of family farms, to continue such operations when credit is not available elsewhere, or to return to normal farming operations after sustaining substantial losses as a result of a designated or declared disaster. These regulations apply to loan applicants, borrowers, lenders, holders, Agency personnel, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans.

(d) This part describes the Agency's general and administrative policies for its guaranteed and direct Farm Loan Programs. In general, this part addresses issues that affect both guaranteed and direct loan programs.

§ 761.2 Abbreviations and definitions.

The following abbreviations and definitions are applicable to the Farm