

**§ 1437.402**

**7 CFR Ch. XIV (1-1-11 Edition)**

govern for all claims including forage for mechanical harvest.

(b) Producers of forage must, in addition to the records required in §1437.7, specify the intended method of harvest of all acreage intended as forage for livestock consumption as either mechanically or grazed.

(c) Producers must, in the administrative FSA office for the unit, request an appraisal prior to the onset of grazing of any intended mechanically harvested forage acreage that will be both mechanically harvested and grazed.

(d) Forage acreage reported to CCC as intended to be mechanically harvested, but which is, instead, subsequently grazed, will be considered, for crop definition purposes, as mechanically harvested. Expected production of the specific acreage will be calculated on the basis of carrying capacity. The loss of such grazed forage shall be determined according to paragraph (f) of this section. Except, beginning with the 2005 crop year, for acreage intended to be mechanically harvested which is instead, subsequently grazed, the loss of intended mechanically harvested forage may alternatively be determined based on a review of acceptable production evidence or appraisal of the specific crop acreage. As part of the payment computation for this loss, intended mechanically harvested forage crop acreage that is not mechanically harvested, but instead grazed, shall be deemed to be un-harvested for the purposes of determining a payment factor.

(e) Small grain forage is the specific acreage of wheat, barley, oats, triticale, or rye intended for use as forage. Small grain forage shall be considered separate crops and distinct from any other forage commodities and other intended uses of the small grain commodity. In addition to the records required in §1437.7 producers must specify whether the intended forage crop is intended for fall/winter, spring, or total season forage. In addition to other eligibility requirements, CCC will consider other factors, such as, water sources and available fencing, and adequate fertilization to determine small grain forage eligibility, yields, and production.

(f) CCC will establish forage losses of acreage intended to be grazed includ-

ing, in some cases, acreage intended to be mechanically harvested but instead subsequently grazed, on the basis of:

(1) The percentages of loss of similar mechanically-harvested forage acreage on the farm, or on similar farms in the area when approved yields have been calculated to determine loss, or

(2) Where there is no similar mechanically-harvested forage acreage on the farm or similar farms in the area, the collective percentage of loss as determined by CCC for the geographical region after consideration of at least two independent assessments of grazed forage acreage conditions. The assessments shall be completed by forage or range specialists in Federal, State, and local government agencies, educational institutions, and private companies not having a financial interest in the outcome of the assessment. Neither the assessments themselves, nor collective loss percentages established pursuant thereto are subject to appeal. CCC's determinations of geographical area for assessments and collective grazing loss are generally applicable to all similarly situated participants farming in such defined geographical region.

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13746, Mar. 17, 2006]

**§ 1437.402 Carrying capacity.**

(a) CCC will establish a carrying capacity for all grazed forage present in the county for purposes of administering this program and to that end:

(1) Multiple carrying capacities may be determined for a specific vegetation if factors, such as soil type, elevation, and topography, result in a significant difference of carrying capacity within the county.

(2) CCC may establish separate carrying capacities for irrigated and non-irrigated forage acreage when acreage of traditionally irrigated forage (forage actually irrigated 3 of the last 5 crop years) is present in the county.

(b) Producers may provide evidence that unit forage management and maintenance practices are improvements over those practices generally associated with the established carrying capacity. Based on this evidence, CCC may adjust the expected AUD for the specific forage acreage upward for

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the crop year NAP assistance is requested by:

(1) Three percent when at least 1 practice was completed at least 1 time in the previous 5 crop years and such practice can be expected to have a positive impact on the forage's carrying capacity in the crop year NAP assistance is requested;

(2) Five percent when 2 or more practices were completed at least 1 time in the previous 5 crop years and such practices can be expected to have a positive impact on the forage's carrying capacity in the crop year NAP assistance is requested; and

(3) Greater than 5 percent when producers provide acceptable records, as determined by CCC, of higher forage production or an increase in animal units supported on the specific forage acreage in 3 of the 5 crop years immediately before the crop year NAP assistance is requested.

### § 1437.403 Determining payments.

Subject to payment limits, availability of funds, and other limits as may apply, payments for losses of forage reported to FSA as intended to be grazed will be determined by:

(a) Multiplying the eligible acreage by the producer's share;

(b) Dividing the result from paragraph (a) of this section by the carrying capacity or adjusted per day carrying capacity established for the specific acreage, as determined by CCC;

(c) Multiplying the result from paragraph (b) of this section by the number of days established as the grazing period;

(d) Adding adjustments of AUD for practices and production to the product of paragraph (c) of this section;

(e) Multiplying the result from paragraph (d) of this section by the applicable percentage of loss established by CCC;

(f) Multiplying the amount of assigned AUD, as determined by CCC, by the producer's share;

(g) Subtracting the result from paragraph (f) of this section from the result from paragraph (e) of this section;

(h) Multiplying the result from paragraph (d) of this section by 0.50;

(i) Subtracting the result from paragraph (h) of this section from the re-

sult from paragraph (g) of this section; and

(j) Multiplying the result from paragraph (i) of this section by the final payment price established in accordance with §1437.11.

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13747, Mar. 17, 2006]

### § 1437.404 Information collection requirements under the Paperwork Reduction Act; OMB control number.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for the regulation in this part is 0560-0175.

## Subpart F—Determining Coverage in the Tropical Region

SOURCE: 71 FR 52739, Sept. 7, 2006, unless otherwise noted.

### § 1437.501 Applicability; definition of "tropical region" and additional definitions.

(a) This subpart shall only apply to covered tropical crops in the tropical region for the 2006 and subsequent crop years, as those terms are defined in this subpart. Benefits under this part may be extended to those crops only to the extent that they are otherwise eligible for assistance under this part. Covered crops shall not apply to "value loss" crops, as defined elsewhere in this part. For those crops that are covered by this subpart, loss and payment determinations for the program covered in this part shall be determined by the rules that otherwise apply to the program subject to the modifications provided by this subpart. The rules that otherwise apply include, but are not limited to, limitations on payments that appear elsewhere in this part.

(b) For purposes of this subpart:

(1) *Tropical region* includes, as may be further limited by the Deputy Administrator: Hawaii, American Samoa, Guam, the U.S. Virgin Islands, Puerto Rico, and the former Trust Territory of the Pacific Islands (the Commonwealth of the Northern Mariana Islands, the