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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1477 and 1478

RIN 0560–AE31

Disaster Payment Program for 1990 Through 1994

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations for the 1990, 1991, 1992, and 1993, Disaster Payment Programs and adds the 1994 Disaster Payment Program and the 1994 Tree Assistance Program (TAP) to implement statutory requirements. Also, this amendment makes technical corrections because of the consolidation of the Agricultural Stabilization and Conservation Service, with personnel of the Federal Crop Insurance Corporation, and the farm loan programs of the Farmers Home Administration into the Consolidated Farm Service Agency (CFSA).

EFFECTIVE DATE: October 4, 1995.

FOR FURTHER INFORMATION CONTACT: 7 CFR part 1477 contact: Diane Sharp, Consolidated Farm Service Agency (CFSA), United States Department of Agriculture (USDA), Room 3644–S, P.O. Box 2415, Washington, DC 20013–2415, telephone: (202) 720–4696.

7 CFR part 1478 contact: Robert Stephenson, USDA, CFSA, Room 4714–S, P.O. Box 2415, Washington, DC 20013–2415, telephone: (202) 720–5295.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be economically significant and was viewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Final Regulatory Impact Analysis

Final Regulatory Impact Analysis have been prepared with respect to the 1993 and 1994 disaster programs. Copies of the analyses are available to the public from the Economic and Policy Analysis Staff, CFSA–USDA, Room 3090, South Agriculture Building, 14th and Independence, P.O. Box 2415, Washington, DC 20013–2415.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. The final Regulatory Impact Analysis referred to above determined, under the TAP, and damaging weather or related conditions in 1993 and 1994 (as defined in section 2251 of Pub. L. 101–624), this rule will have no significant economic impact on, a substantial number of small entities because the regulatory burden on the affected entities would remain the same regardless of the determinations made by this action. Thus, CCC certifies that this amendment will have no significant economic impact on a substantial number of small entities.

Environmental Evaluation

An Environmental Evaluation with respect to the Disaster Payment Program and TAP has been completed. It has been determined that this action is not expected to have a significant impact on the quality of the human environment. In addition, it has been determined that this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The titles and numbers of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Cotton Production Stabilization—10.052; Feed Grain Production Stabilization—10.055; Wheat Production Stabilization—10.058; and Rice Production Stabilization—10.065.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the Paperwork Reduction Act of 1980 and assigned control numbers 0560–0050 and 0560–0082.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule preempt State law to the extent that such laws are inconsistent with the provisions of this rule. The provisions of this rule are retroactive. Before any judicial action may be brought regarding the provisions of this final rule, the administrative appeal remedies at 7 CFR part 780 or regulations published by the National Appeals Division which ever is applicable must be exhausted.

Background

This rule provides for payments to producers of 1993, 1994, and 1995 crops of papayas that would have been harvested if not destroyed by Hurricanes Andrew or Iniki or Typhoon Omar, and the papaya plants would not have produced fruit for a lifetime total of more than 3 crop years based on normal practices. In addition, this rule provides payment for losses of trees, shrubs, or nursery stock and inventory being grown for commercial sale, if such stock or inventory would normally have been sold in 1993, 1994, or 1995. The application must have been made by April 13, 1994, and all production data must have been submitted by May 27, 1994.

This final rule amends the Tree Assistance Program (TAP) and the Disaster Assistance Program regulations for the 1990, 1991, 1992, 1993, and 1994 crop years as authorized by the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Act), the Dire Emergency Supplemental Appropriations Act of 1992, Public Law 102–229, Public Law 102–368, Public Law 101–624, Public Law 103–50,

Public Law 103–75, Public Law 103–211, and Public Law 103–330.

The TAP and disaster regulations are being amended to: (1) Add new provisions that relate to the application period for 1994 crop, which began on December 1, 1994, (disaster), and November 21 (TAP), and continued through March 31, 1995 or other such date as determined by CCC; (2) allowed producers of papayas and producers of trees, shrubs, or nursery stock and inventory that was being grown for commercial sale to file their application by May 11, 1994, (3) and provide production records by May 27, 1994; (4) provide payments for losses in 1994 for aquaculture, excluding ornamental fish, (5) provide that producers of target price commodities can be paid at the target price rather than the loan rate for acreage that is produced in excess of the permitted and is commonly referred to as flex acreage in accordance with 7 CFR 1413.43, (6) provide payments to producers of orchards if they had losses to their orchards due to freezing conditions that occurred between January 1, 1994, and March 31, 1994, and federal crop insurance was not available for such losses; (7) provide for the manner in which disbursement of the funds will be made; and (8) provide that all related documentation must be provided to the county CFSA office no later than July 15, 1995, for TAP assistance to eligible producers who incurred losses in 1994 caused by damaging weather. Other provisions of this final rule provide for: (1) Allowing county committees to reduce yields for nonprogram crops; (2) determining producer shares for disaster purposes; (3) specifying that owners of tobacco and peanut farms must sign the disaster application; (4) specifying that sod, sprigs, turf, trees, and shrubs must be dead before they are eligible for a disaster program payment; (5) making the rules that were applicable for the 1993 disaster program applicable for 1994, and (6) making certain technical corrections.

The provisions of this final rule: (1) Include losses in 1993 of nursery inventory of non-tree plants as well as tree and tree seedlings, and seedlings grown from seedbeds, and losses in 1994 of forest tree seedlings, orchard trees, and nursery inventory; (2) makes technical changes to TAP to enhance the administration of the program; and (3) sets forth the manner in which the application period for disbursement of the funds made available by the Acts will be conducted.

In accordance with Public Law 101–624, Public Law 102–229, Public Law 102–368, Public Law 103–211 and Public Law 103–311, TAP is required to be offered for 1993 losses of nursery inventory, including non-tree plants as well as tree seedlings and trees; and, 1994 losses of nursery inventory, orchard trees planted to produce annual crops and all commercial forest tree seedlings planted to produce timber, pulp or Christmas trees that were lost due to damaging weather or related conditions in 1993 or 1994.

Payments are provided for the amount of loss on each individual stand that exceeds 35 percent of the stand, adjusted for normal mortality. Payments provide 65 percent of the cost to replant or rehabilitate that portion of the loss that exceeds this 35 percent plus the normal mortality. Also, in accordance with the 1993 Act (Pub. L. 103–75) and Public Law 101–624, a 1993 TAP is authorized for orchard trees, forest tree seedlings, and nursery inventory losses resulting from damaging weather or related conditions (as defined in section 2251 of Public Law 101–624), in 1993.

List of Subjects

7 CFR Part 1477

Agriculture commodities, Disaster assistance, Fraud, Grant programs/agriculture, Reporting and recordkeeping requirements.

7 CFR Part 1478

Disaster assistance, Grant programs/agriculture, Reporting and recordkeeping requirements, Trees.

Accordingly, 7 CFR parts 1477 and 1478 are amended as set forth below.

PART 1477—DISASTER PAYMENT PROGRAM FOR 1990 AND SUBSEQUENT YEARS

1. **Authority:** 15 U.S.C. 714b and 714c; 104 Stat. 3359, 105 Stat. 1701; 106 Stat. 117; 107 Stat. 241; 107 Stat. 739; 108 Stat. 3; 108 Stat. 2435; and 108 Stat. 3178.

2. Section 1477.1 is revised to read as follows:

§ 1477.1 General statement.

This part implements a Disaster Payment Program for the 1990 through 1994 crop years. The purpose of the program is to make disaster payments available to eligible producers on a farm that has suffered a loss of production or quality of 1990, 1991, or 1992 crops, not to exceed 2 different crop years, and of 1993 and 1994 crops due to damaging weather, to make payments for 1993, 1994, and 1995 crop losses due to Hurricanes Andrew and Iniki and Typhoon Omar for nursery crops, aquaculture, and tree crops including papaya, and make payments on 1993 losses of trees, shrubs, or nursery stock affected by disaster in 1993 that would have been sold in either 1993, 1994 or 1995, or related condition affecting the crop year for the crop for which a disaster application is made. This rule provides for 1994 crop losses from natural disasters including acquaculture, except ornamental fish, and provides payments to producers for 1995 through 1996 orchard crop losses due to freezing if the loss occurred between January 1, 1994, and March 31, 1994.

3. Section 1477.2 is revised to read as follows:

§ 1477.2 Administration.

(a) The program will be administered under the general supervision of the Executive Vice President, CCC, and shall be carried out in the field by State and county CFSA committees.

(b) State and county CFSA committees and representatives and employees thereof do not have the authority to modify or waive any of the provisions of this part as amended or supplemented.

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

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

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

(d) CCC shall determine all yields and prices determined under this part and may utilize any agency of the USDA in making such determinations. To the extent practicable, CCC will use data provided by the National Agricultural Statistical Service (NASS) and the CFSA. Any reference in this part to NASS shall not restrict CCC from using data from other sources.

(e) No delegation herein to a State or county CFSA committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county Consolidated Farm Service Agency committee.

4. Section 1477.3 is amended to add the following definitions ''CCC'', ''CFSA'', ''Contract Payments'', ''Crop signup period (1994)'', ''Deputy Administrator'', ''Doublecropping'', ''Orchards'', ''Ornamental fish'' in alphabetical order; to revise the definitions ''Actual production'', ''Aquaculture'', ''Aquaculture facility'', ''Crop year'', ''Eligible crop'',

''Nonprogram crop''; to remove the definition of ''Double-cropped'' and to amend the definition of ''Disaster payment yield'' by revising paragraph (5) to read as follows:

§ 1477.3 Definitions.

* * * * *

Actual production means the quantity of the crop actually harvested or which could have been harvested as determined by the county or State CFSA committee in accordance with instructions issued by the Deputy Administrator. In the case of sugarcane, the quantity of sugar produced from such crop shall exclude acreage harvested for seed. For the crops listed below, an appraisal will be required on any unharvested production. If a producer has any harvested production of the crop, the de minimis yield is not applicable. The appraisal must show that the yield would be equal to or less than the de minimis yield for the de minimis yield provision to apply. If an eligible producer has appraised production equal to or less than the specified quantity for the following commodities, such production shall be considered to be zero:

(1) Wheat—4 bushels per acre.

(2) Corn—9 bushels per acre.

(3) Grain Sorghum—6 bushels per acre.

(4) Barley—5 bushels per acre.

(5) Oats—7 bushels per acre.

(6) Upland cotton—66 pounds per acre.

(7) ELS cotton—33 pounds per acre.

(8) Rice—628 pounds per acre.

(9) Soybeans—2 bushels per acre.

(10) Sunflower, Oil—100 pounds per acre.

(11) Sunflower, Confectionery—100 pounds per acre.

(12) Safflower—50 pounds per acre.

(13) Flax—1 bushel per acre.

(14) Canola—50 pounds per acre.

(15) Rapeseed—50 pounds per acre.

(16) Mustard seed—50 pounds per acre.

Aquaculture means the propagation and rearing of aquatic species from a commercial operation conducted on private land or in private waters and in 1994 excludes ornamental fish.

Aquaculture facility for 1994 means a commercial operation conducted on private land or in private waters.

CCC means the Commodity Credit Corporation.

CFSA means the Consolidated Farm Service Agency.

Contract payments means a guaranteed payment for production, as opposed to delivery of a crop pursuant to a contract.

Crop signup period (1994) means the signup period ending March 31, 1995 (or other such date established by CCC), for assistance for eligible producers who have incurred 1994 crop losses.

Crop year means the year harvest begins for the crop. However, for valencia oranges harvested in 1991, 1992, 1993, and 1994, the crop shall be considered to be a 1990, 1991, and 1993 crop respectively.

Deputy Administrator means the CFSA Deputy Administrator for Farm Programs (Previously the Deputy Administrator, State and County Operations (DASCO)).

Disaster payment yield means:

* * * * *

(5) For nonprogram crops (including honey per hive), the average of the actual yields for the 3 years prior to the applicable disaster year, in accordance with instructions issued by the CFSA, if eligible producers are able to provide production evidence of actual crop yields for any of the applicable years. If a producer is not able to provide adequate production evidence for the 3 previous years, the county committee shall use a yield that is equivalent to 65 percent of the average county yield for the years without adequate records. The county average yield shall be the average of the county average yields for the 5 years prior to the applicable disaster year, as determined by NASS, excluding the year in which the yield was the highest and the year in which the yield was the lowest. Crop yields for the 1994 Disaster Assistance Program may be the same yield that was established for the crop for 1993 unless the State committee finds a better source to establish yields. In establishing county average yields for nonprogram crops, the State committee shall use the best available information concerning yields. Such information may include: NASS data, extension service records, credible nongovernment studies, and yields for the crop in similar counties. In the case of sod, sprigging turf, and trees and shrubs, the crop must be dead to be eligible for a disaster payment. For all nonprogram crops, the county committee may reduce the yields set by the State committee for the county or an area of the county, to what the county committee considers a normal yield if:

(i) Cultural practices, including the age of the planting or plantings, are determined to be different from those that were used to establish the yield; or

(ii) The yield was established on a State or area level and it is determined that it was too high for the county or an area of the county.

Doublecropping means the planting and harvesting of two or more different crops on the same acreage during a crop year, as determined by the county committee in accordance with instructions issued by the Deputy Administrator.

Eligible crop for crop production losses means any of the 1990 through 1994 crops of wheat, feed grains, upland cotton, extra long staple cotton, rice, peanuts, oilseeds, sugarcane, sugar beets, tobacco, or nonprogram crops including ornamental crops, nursery crops, and for 1990 through 1992, and for 1994, aquaculture production, excluding ornamental fish for 1994.

Nonprogram crop means a crop including ornamentals such as flowering shrubs, flowering trees, field or container grown roses, or turf, and sweet potatoes produced on a farm for sale or exchange on a commercial basis in a large enough quantity to have a substantial impact on the producer's income, as determined by the county committee in accordance with the instructions issued by the Agency, which is not a crop of a target price commodity, quota or additional peanuts, sugarcane, sugar beets, tobacco subject to marketing quotas, soybeans, or sunflowers. For 1990 through 1992, and 1994 aquaculture production is considered to be a nonprogram crop.

Orchards means an area of land devoted to the cultivation of fruit trees and nut trees.

Ornamental fish for 1994 disaster purposes means any species of fish not being grown for market as food or bait.

* * * * *

5. Section 1477.4 is amended by revising paragraph (c)(2), redesignating paragraph (d) as paragraph (e), adding new paragraph (d), and revising redesignated paragraph (e) to read as follows:

§ 1477.4 Availability of disaster payments.

* * * * *

(c) * * *

(2) Producers requesting 1993 through 1995 loss benefits in accordance with §§ 1477.22 and 1477.23.

(d) Eligible producers with a loss of production on a crop in excess of 65 percent of expected production, and who are requesting 1994 crop loss benefits, or 1994 through 1996 losses on orchards, must agree to obtain crop insurance, if available in the county, any time during the disaster application period, as required under the Federal Crop Insurance Act, as a condition of eligibility to receive such disaster benefits. The requirement to purchase crop insurance for the 1995 crop year when there has been a loss in excess of 65 percent of the 1994 crop or losses for 1994 through 1996 losses on orchards does not supersede the requirement to

purchase crop insurance as set forth in 7 CFR part 402.

(e) The requirements of paragraphs (b) and (c) of this section are waived if one of the following exists:

(1) Crop insurance is not available for the commodity for which a disaster payment is requested;

(2) The amount of the producer's annual premium rate is greater than 125 percent of the average premium rate on that commodity in the county in which the producer is located;

(3) The amount of the premium is greater than 25 percent of the amount of the disaster payment, deficiency forgiveness, or CFSA loans; or

(4) The county committee determines, based on an appeal by the producer, that the purchase of crop insurance would impose an undue financial hardship on the producer.

6. Section 1477.5 is amended by revising paragraphs (a) introductory text, (a)(1) through (a)(3), (b)(5), (c)(1), and (c)(2) adding a new paragraph (c)(6); revising paragraph (f); redesignating paragraph (g) as paragraph (h) and revising it; and adding new paragraph (g) to read as follows:

§ 1477.5 Disaster benefits.

(a) Disaster payments for prevented planting, prevented harvest, and law yield losses for eligible crops are authorized to be made to producers who file an Application for Disaster Benefits (Form CCC–441) in accordance with instructions issued by the Deputy Administrator if:

(1) The farm operator, or a producer with an interest in the crop, submits an Application for Disaster Credit (Form ASCS–574) in accordance with instructions issued by the Deputy Administrator;

(2) The farm operator, or a producer with an interest in the crop, submits a report of production and disposition (Form ASCS–658) in accordance with § 1477.9;

(3) The farm operator, or a producer with an interest in the crop, submits a Certification of Crop Insurance (Form CCC–440) in accordance with § 1477.9;

* * * * *

(b) * * *

(5) For purposes of determining the total quantity of 1990 through 1993 nonprogram crops and the total quantity of all 1994 crops that producers on a farm are able to harvest, commodities which the county committee determines cannot be sold in normal commercial channels of trade are excluded.

* * * * *

(c) * * *

(1) The established target price for the applicable year's target price commodities including acreage on farms enrolled in the applicable year's acreage reduction program in accordance with 7 CFR 1413.49;

(2) The basic county loan rate for the applicable year's target price commodities for producers on farms not enrolled in the applicable year's acreage reduction program.

* * * * *

(6) The CFSA State committee may adjust downward the payment rate established by the State committee for a crop by a factor established by State committee using the following criteria:

(i) If a crop is produced with a significant and variable harvesting expense, the factor will reflect the decreasing cost in the production cycle of the crop that is:

(A) Harvested;

(B) Planted but not harvested; and

(C) Prevented from being planted because of drought, flood, or other natural disaster.

(ii) [Reserved]

* * * * *

(f) Each eligible producer's share of a disaster payment shall be based on the producer's share of the eligible crop loss. County committees are authorized to establish a different division of the disaster payment than stated above if they believe that the circumstances warrant a different share.

(g) A producer who produces a crop under contract and receives a guaranteed payment for production, as opposed to delivery of a crop pursuant to a contract, shall have the production assigned to the crop by the county committee equal to the amount of the contract payment received. Such production amount shall be determined by dividing the payment amount by the established basic rate for the crop.

(h) Crops and land use for which disaster benefits are not applicable include:

(1) Crops not intended for harvest in the year for which disaster benefits are requested.

(2) By-products resulting from processing or harvesting an eligible crop, such as cotton seed, peanut hulls, and wheat or oat straw.

(3) Except for nursery crops, plants that produce an eligible crop, such as strawberry plants and orange trees.

(4) Acreage intended for haying or grazing and designated as ACR or CU for payment.

(5) Crops which the county committee has determined are not eligible for acreage reduction program benefits as a result of failure to comply with contract provisions.

(6) Crops planted as replacement crops on failed or prevented from planted program crop acreage.

(7) Resource conserving use crops as ACR or CU for payment.

(8) Home gardens.

7. Section 1477.6 is revised to read as follows:

§ 1477.6 Establishment of different payment rates and yields for the same nonprogram crop.

If any crop yield established for a county or other producing area includes irrigated production, the State committee shall:

(a) establish a nonirrigated yield reflecting the expected yield for the crop without irrigation. Such yield shall not exceed the NASS yield. The State committee may set the nonirrigated yield to zero if no production is expected without irrigation. A separate irrigated yield shall not be established.

(b) (1) Producers of nonprogram crops, (except for soybeans, minor oil seeds, sugar beets, sugarcane, quota and nonquota tobacco, peanuts and hay) must provide actual production evidence and production costs for the current year.

(2) Exceptions to paragraph (b)(1) of this section:

(i) If production evidence and production costs cannot be provided for the current year, then 1 of the 3 previous years production and production costs may be considered.

(ii) The payment yield shall be reduced to not less than 65 percent of the established yield if just 1 of the 3 previous years evidence is used.

(3) If production evidence or costs cannot be provided for the current year or 1 of the 3 previous years, the payment yield shall be reduced to zero, unless one of the following exceptions apply:

(i) If evidence is provided that a market was available for current year production by providing one of the following:

(A) A contract for all expected production or all acres for which disaster benefits are requested; or

(B) Some other acceptable evidence of a market such as a written agreement with a grocer, retailer, wholesaler, or processor.

(ii) The county committee or Federal Crop Insurance Corporation verifies physical evidence of the crops and determines the crop was cared for in a workmanlike manner.

(4) If a producer meets either of the exceptions in paragraphs (3)(i) and (3)(ii) of this section, the county committee has the authority to reduce the yield to not less than 65 percent of the established yield.

(5) The county committee may assign production based on similar farms. The producer must file Form ASCS–574 within 15 calendar days of the disaster occurrence. If no spot check was conducted, the county committee must have personal knowledge of the disaster condition that affected the crop.

8. Section 1477.7 is amended by revising paragraph (a), redesignating paragraphs (b)(7) through (b)(9) as paragraphs (b)(8) through (b)(10) and adding a new paragraph (b)(7) to read as follows:

§ 1477.7 Filing application for payment.

(a) Applications for payment shall be filed by the applicant with the local CFSA office serving the county where the producer's farm is located for administrative purposes.

(b) * * *

* * * * *

(7) Applications for payments made during the 1994 crop signup period with respect to 1994 crop losses, low quality losses, and 1994 through 1996 losses resulting from freeze damage occurring from January 1, 1994, through March 31, 1994, must be filed by March 31, 1995.

* * * * *

9. Section 1477.9 is amended by revising paragraphs (a)(1) and (a)(3) to read as follows:

§ 1477.9 Report of acreage, production disposition, and indemnity payments.

(a) (1) Eligible producers shall report, in accordance with instructions issued by the Deputy Administrator, the acreage, production, and disposition of all commodities produced in an applicable year on any acreage for which an application for a disaster payment is filed. Such production reports submitted with respect to the 1994 signup period must be submitted by April 14, 1995; with respect to the 1993 signup period by March 27, 1994; and with respect to the 1990 through the 1992 crop quality and curley top virus conditions in sugar beets must be submitted by September 30, 1993; and with respect to 1993 through 1995 losses because of Hurricanes Andrew and Iniki and Typhoon Omar must be submitted by October 8, 1993.

* * * * *

(3) If there has been a disposition of crop production other than through commercial channels, the eligible producer must furnish such documentary evidence as the county CFSA committee determines to be necessary in order to verify the information provided by the producer.

* * * * *

10. Section 1477.10 is amended by revising paragraph (d)(2) and introductory paragraph (e) to read as follows:

§ 1477.10 Payment limitations.

* * * * *

(d) * * *

(2) Persons filing an application during the 1994 crop signup period who are subject to the provisions of paragraph (d)(1) of this section must elect the provisions under which such payments or benefits shall be received by notifying the county office of the election by April 14, 1995.

(e) All disaster program applications within a specific signup period submitted in accordance with this part, except 1993 or 1994 crop applications, shall be totaled at the end of the signup period. In order to ensure that there is no duplication of benefits, deficiency payments made in accordance with part 1413 of this chapter and emergency livestock feed program benefits made in accordance with part 1475 of this chapter shall not be made with respect to any loss of production for which assistance is requested under this part. Accordingly, the quantity of the loss of production otherwise eligible for disaster assistance under this part on which a producer had previously obtained a deficiency payment or an emergency livestock feed program benefit shall be reduced. In order to make such a reduction, the deficiency payments and emergency livestock feed program benefits, except those payments applicable to the 1993 or 1994 crop year, shall be adjusted by a national factor obtained by:

* * * * *

11. Section 1477.11 is amended by adding new paragraph (c) to read as follows:

§ 1477.11 Special provisions for burley and flue-cured tobacco, and peanuts.

* * * * *

(c) All operators and owners of tobacco or peanut farms must sign the application for disaster.

12. Section 1477.13 is amended by revising paragraph (d) to read as follows:

§ 1477.13 Refunds to CCC.

* * * * *

(d) In the event that the loss of production was established as a result of erroneous information provided by any person to the county CFSA office or was erroneously computed by such office, the loss of production shall be recomputed and the payment due shall be corrected as necessary. Any refund of payments which are determined to be required as a result of such recomputation shall be remitted to CCC.

13. Section 1477.19 is amended by redesignating paragraphs (h) through (m) as paragraphs (i) through (n) and adding new paragraphs (h) and (o) to read as follows:

§ 1477.19 Other regulations.

* * * * *

(h) Part 791 of this title, Authority to Make Payments When There Has Been a Failure to Comply Fully with the Program;

* * * * *

(o) Part 402 of this title, Catastrophic Risk Protection Endorsement.

14. Section 1477.21 is amended to revise the introductory text, redesignate paragraphs (b) through (e) as paragraphs (c) through (f) and add a new paragraph (b) to read as follows:

§ 1477.21 Adjustment to crop production.

Notwithstanding any other provisions of this part, the following provisions are applicable to producers of 1990 through 1994 crops of: wheat, corn, barley, oats, grain sorghum, upland cotton, rice, soybeans, sunflowers, peanuts, sugar beets, tobacco, and ELS cotton, whose production has been affected by low quality due to an eligible disaster.

* * * * *

(b) A request for assistance under this section must be submitted to CCC at the CFSA office in the county where the farm is administratively located by March 31, 1995, for 1994 crops.

* * * * *

15. Section 1477.22 is amended by revising paragraph (a)(1) introductory text and adding new paragraph (a)(3) to read as follows:

§ 1477.22 1993, 1994, and 1995 crop losses due to Hurricanes Andrew and Iniki and Typhoon Omar.

* * * * *

(a) * * *

(1) For nursery and aquaculture crops except papaya, CCC shall:

* * * * *

(3) For papaya, CCC shall determine the loss for each year 1993 through 1995 based on expected production and the recovery period as determined by CCC.

(i) A request for assistance under this section must be submitted to CCC at the county office in the county where the farm is administratively located by April 13, 1994, and production data must be submitted May 27, 1994, or such other dates as determined by CCC.

(ii) For papaya crops, the CCC shall determine the loss for each year 1993 through 1995 based on expected production and that the papaya plants would not have produced fruit for a lifetime total of more than 3 crop years based on normal cultivation practices.

(iii) The county committee has determined that papaya can be harvested:

(A) Between 12 and 16 months after planting; or

(B) For a lifetime total of 3 years based on normal cultivating practices.

(iv) The calculated payment shall be prorated to each year 1993 through 1995, for limiting payments according to § 1477.10, based on the percent of production that would have been sold in each of the years 1993 through 1995.

(v) Any producer entitled to any payment may assign any such payments in accordance with part 1404 of this chapter if the assignment is made after December 1, 1994.

* * * * *

16. New § 1477.23 is added to read as follows:

§ 1477.23 1993 losses of trees, shrubs, or nursery stock and inventory.

The following provisions apply for 1993 losses of trees, shrubs, or nursery stock and inventory grown for commercial sale that would have been sold in either 1993, 1994, or 1995, but which were affected by damaging weather or related condition.

(a) A request for assistance under this section and production evidence must be submitted to the county office in the county where the farm is administratively located by May 27, 1994.

(b) For trees, shrubs, or nursery crops and inventory, the county committee shall:

(1) Determine one loss for 1993 through 1995 by reducing from the inventory on hand at the time of the disaster, the inventory remaining immediately after the disaster occurred; and calculate payments using a rate based on the value of the product at the time of the loss.

(2) The calculated payment shall be prorated to each year 1993 through 1995, for limiting payments in accordance with § 1477.10, based on the percent of production that would have been sold in each of the years.

(c) Any producer entitled to a payment may assign any such payments in accordance with part 1404, if the assignment is made after September 9, 1994.

(d) Producers cannot receive tree assistance program benefits and disaster assistance payments on the same production.

17. New § 1477.24 is added to read as follows:

§ 1477.24 1995 and 1996 orchard crop losses.

To be eligible for disaster assistance payments, losses to orchard crops must have resulted from a freeze that occurred between January 1, 1994, and March 31, 1994, and crop insurance was not available for affected orchard crop producers in the county or area.

(1) CCC shall determine the loss for each year 1995 and 1996 based on expected production and the recovery period, as determined by the county committee.

(b) A request for assistance under this section must be submitted to the county office in the county where the orchard is administratively located by March 31, 1995, and production data must be submitted by April 14, 1995, or other dates as determined by CCC.

(c) For such orchards subject to frost, the CFSA county committee shall determine the loss for each of the years 1995 and 1996 based on expected production for the orchard.

(d) The calculated payment shall be determined separately for 1994, 1995, and 1996. A separate application shall be taken for each year. However, payments will be limited in accordance with § 1477.10.

(e) Any producer entitled to any payment may assign any such payments in accordance with part 1404 of this chapter if the assignment is made after September 30, 1994.

§ 1477.25 [Redesignated as § 1477.26]

18. Section 1477.25 is redesignated as § 1477.26.

PART 1478—TREE ASSISTANCE PROGRAM

19. The authority citation for 7 CFR part 1478 is revised to read as follows:

Authority: 7 U.S.C. 1421 note; 15 U.S.C. 714b and 714c; 104 Stat. 3359; 105 Stat. 1701; 106 Stat. 117; 107 Stat. 739; 108 Stat. 3; and 108 Stat. 2435.

20. Section 1478.1 is revised to read as follows:

§ 1478.1 General statement.

(a) The regulations in this part set forth the terms and conditions of the Tree Assistance Program (TAP) authorized by title XXII of the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act). Within specified limits, CCC is authorized by the 1990 Act to:

(1) Reimburse eligible owners for part of the cost of replanting, reseeding, or repairing eligible trees to offset losses by an eligible orhardist for trees that were planted in any year to produce annual crops for commercial purposes but were lost due to damaging weather, or related condition in 1994; and

(2) Reimburse eligible owners for part of the cost of replanting, reseeding, or repairing seedlings which would have produced trees to be harvested for commercial purposes which were planted in 1992 or 1993 and were lost in 1993 (1993 losses) and planted in 1993 or 1994 for 1994 losses, due to damaging weather, or related condition in 1993 and 1994. However;

(i) Such trees, seedlings or nursery inventory must be planted for commercial purposes and may not be:

(A) Open-field-grown sod, grasses, legumes, and other plants, that are grown in a manner that does not allow them to be counted individually or by using statistical sampling; or

(B) Plants grown for shelterbelts and wildlife enhancement plantings; and

(ii) If the request for assistance is for:

(A) Trees planted to produce annual crops, the losses must be due to damaging weather or related condition;

(B) Seedlings planted to produce trees for harvest, the losses must be due to damaging weather or related condition;

(C) Nursery inventory, the losses must be due to damaging weather or related condition;

(D) Aquatic plants, the losses must be due to damaging weather or related condition; and

(E) Owners must elect whether trees which qualify as either nursery inventory or orchard trees may be enrolled as either but not be enrolled as both nursery inventory and orchard trees.

(3) Reimburse eligible owners for an individual stand of nursery trees or nursery plants.

(b) Such assistance may not exceed 65 percent of the eligible reseeding costs and may be based on average costs or the actual costs for the replanting practices, as determined by CCC, which, after adjustments for normal mortality, exceed a 35 percent loss.

(c) Unless an extension, not to exceed 24 months is granted by the State CFSA committee, all 1993 and 1994 TAP practices must be completed within 24 months of the last day of the applicable signup. The State CFSA committee shall only approve up to an additional 24 months when delays are beyond the control of the applicants.

21. Section 1478.2 is amended by revising paragraph (a), adding new paragraphs (c) (3) and (4) and revising paragraph (d) to read as follows:

§ 1478.2 Administration.

(a) This part shall be administered by CCC under the general direction and supervision of the Executive Vice President, CCC. The program shall be carried out in the field by CFSA State

and county committees (State and county committees).

* * * * *

(c) * * *

(3) Require the county committee to approve late-filed requests received after signup ends only for those owners who applied late due to circumstances beyond their control as determined by the county committee.

(4) Require the county committee to approve applications only for those owners of trees and plants who actually owned the trees at time of the eligible disaster at the time of application.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

22. Section 1478.3 is revised to read as follows:

§ 1478.3 Definitions.

(a) In determining the meaning of the provisions of this part, unless the context indicates otherwise, words importing the singular include and apply to several persons and things, words importing the plural include the singular, words importing the masculine gender include the feminine, and words used in the present tense include the future as well as the present.

(b) The following terms contained in this part shall have the following meanings:

Annual gross revenue means with respect to a person, as defined in part 1497 of this chapter:

(1) For a person who receives more than 50 percent of such person's gross income from farming, ranching, and forestry operations, the total gross income received from such operations.

(2) For a person who receives 50 percent or less of such person's gross income from farming, ranching, and forestry operations, the total gross income from all sources.

(3) The determinations made in accordance with 7 CFR 1497.3 shall include all entities in which an individual or entity has an interest, whether or not such entities are engaged in farming.

(4) The year for which the annual gross income shall be received for the purpose of this definition shall be the tax year preceding the year during which the losses occurred.

Approving official means a representative of CCC who is authorized by the Executive Vice President, CCC, to approve an application for assistance made in accordance with this part.

CCC means the Commodity Credit Corporation.

CFSA means the Consolidated Farm Service Agency.

County means a county or similar geographic area as determined by CCC.

Deputy Administrator, or Deputy Administrator, CFSA, U.S. Department of Agriculture.

Eligible owner means an individual, partnership, corporation, association, estate, trust, or other business enterprise or legal entity and includes any Indian tribe under the Indian Self-Determination and Education Assistance Act; any Indian organization or entity chartered under the Indian Reorganization Act; any tribal organization under the Indian Self-Determination and Assistance Act; and, any economic enterprise under the Indian Financing Act of 1974 which meets the requirements of this part. Federal, State, and local governments and agencies and political subdivisions thereof are specifically excluded. In determining whether an individual or other entity is an eligible owner, such person, as determined under part 1497 of this chapter, must own 1,000 acres or less of trees which: produce annual crops for commercial purposes; or are grown for harvest for commercial purposes. Such person, as determined under part 1497, must also have annual gross revenue of $2.0 million or less, as determined under this part. Such person must also have owned the trees when the natural disaster occurred and when the application is submitted. As successor-in-interest, the applicant is allowed to receive TAP benefits if an otherwise eligible person:

(1) Acquires ownership of land or trees for which TAP benefits have been applied;

(2) Agrees to complete all practices which the original owner has not completed;

(3) Agrees to maintain the practice during the lifespan;

(4) Agrees to receive any remaining payments and assumes full responsibility for all provisions of TAP, including refund of payments made to the original participant, if necessary; and

(5) Agrees to provide a signed and dated written agreement to county committee for approval of any successor-in-interest.

Eligible trees means:

(1) For, 1993 and 1994 losses, nursery inventory which are determined by CCC to have been planted for commercial sale.

(2) For the 1993 and 1994 losses, forest tree seedlings, orchard trees, and nursery inventory, including non-tree plants.

Executive Vice President means the Executive Vice President, CCC, or a designee of the Executive Vice President.

Harvest means the removal of the tree from the ground by the cutting and removal of the whole tree at its base in a manner which separates the tree from its root system.

Natural Disaster means damaging weather or related condition in 1993 for nursery inventory; and, 1994 for nursery inventory, orchard trees and forest tree seedlings, including the Midwest Floods of 1993. Losses of plants caused by damaging weather must be directly caused by the weather to be eligible for TAP.

Individual stand means an area of eligible trees which are tended by an eligible owner as a single operation, whether or not such trees or plants are planted in the same field or similar location, as determined by CCC.

Differing species of trees or plants in the same field or similar area may be considered to be separate individual stands if CCC determines that the species have significantly differing levels of freeze, drought, earthquake, hurricane, or typhoon susceptibility.

Local county office means with respect to individual stands of eligible trees which are grown on a farm:

(1) Which has been assigned an CFSA farm serial number, the county CFSA office which services such farm; or

(2) Which has not been assigned an CFSA farm serial number, the county office which services the county in which such stand is located.

Normal mortality means:

(1) With respect to a request for relief for trees planted to produce annual crops the average extent of plant death on the individual stand which normally would have occurred with respect to eligible seedlings during the 12 months previous to the loss with respect to which assistance is requested under this part without regard to any detrimental conditions which do not regularly effect seedling of tree survival rates in the local area, as determined by the county committee in accordance with instructions issued by CFSA.

(2) With respect to a request for relief for seedlings planted to produce trees for harvest the average extent of plant death on the individual stand which normally would have occurred with respect to eligible seedlings during the period between the time of planting and the time of the loss with respect to which assistance is requested under this part without regard to any detrimental conditions which do not regularly effect

seedling or tree survival rates in the local area, as determined by the county committee in accordance with instructions of the Deputy Administrator.

(3) With respect to nursery inventory planted for commercial purposes, the average extent of plant death on the individual stand which normally would have occurred with respect to eligible nursery inventory during the 12 months previous to the loss with respect to which assistance is requested under this part without regard to any detrimental conditions which do not regularly affect nursery inventory survival rates in the local area, as determined by the county committee in accordance with instructions issued by CFSA.

Nursery inventory means all commercial nursery plants grown for transplant or sale, including aquatic plants, ornamental, field or container grown plants, excluding open grown field grown sod, grasses, legumes, and similar plants as determined by the Deputy Administrator.

Operator means a person who is in general control for the tree farming operations as determined by CCC.

Seedling means a tree or plant which was planted in the ground for commercial purposes.

State means any State of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, or Guam.

State committee, State office, county, committee, or county office, means the respective CFSA committee or CFSA office.

Subsequent signup period means the signup period for assistance for 1993 and 1994 losses which will be held only when the President declares an economic emergency as specified in Public Law 103–211 and Public Law 103–330.

(c) In the regulations in this part and in all instructions, terms, and documents in connection therewith, all other words and phrases specifically relating to CFSA operations shall, unless the context of the subject matter otherwise requires, have the meanings assigned to them in the regulations governing reconstitution of farms, allotments, and bases in part 719 of this title.

23. Section 1478.4 is revised to read as follows:

§ 1478.4 Program availability.

(a) A request for assistance under this part made available during the initial signup period must be submitted to CCC at the county office in the county where the farm is administered by March 31, 1995.

(b) Final signup period means the signup period beginning on May 9, 1994, and ending on July 29, 1994, for 1993 nursery losses; November 21, 1994, through March 31, 1995, for 1994 losses; or other such date as established by CCC. All related documentation shall be submitted no later than July 15, 1995, for assistance to eligible producers who have incurred losses in 1994 caused by damaging weather.

24. Section 1478.5 is amended by revising paragraphs (a), (c), and (d) and adding a new paragraph (e) to read as follows:

§ 1478.5 Qualifying loss.

(a) A person shall be eligible to receive assistance under this part with respect to losses due to damaging weather, including but not limited to drought, freeze, earthquake, or related conditions in 1993 or 1994; in addition, losses due to hurricane, typhoon, or related conditions in 1993 or 1994; only if such owner is an eligible owner, as defined in this part and has sustained a qualifying loss of eligible trees, tree seedlings, or nursery inventory as determined by CCC. The only type of losses which may be considered qualifying are the following:

(1) A qualifying loss of an individual stand of trees on which the total mortality rate exceeded 35 percent plus the normal mortality rate by an eligible owner, who is an orchardist and who is the owner of the eligible trees planted in any year for commercial purposes, which are lost as a result of a freeze, earthquake, or related conditions in 1993 or 1994, or freeze, earthquake, hurricane, typhoon, or related conditions in 1993 or 1994 or damaging weather or related conditions in 1993 or 1994 as determined by the county committee in accordance with the instructions of the Deputy Administrator;

(2) A qualifying loss of an individual stand of trees on which the total mortality rate exceeds 35 percent plus the normal mortality rate by an eligible owner who grows trees for harvest for commercial purposes and is the owner of the eligible tree seedlings which were either planted in 1993 or 1994 and were lost due to drought, earthquake, or related conditions in 1993 or 1994 or planted in 1993 or 1994 and were lost due to damaging weather, including drought, earthquake, hurricane, typhoon, or related conditions in 1993 or 1994, as determined by the county committee in accordance with instructions of the CFSA; or

(3) A loss by an eligible owner who grows nursery inventory for commercial purposes which is lost as a result of damaging weather, or related conditions in 1993 for nurseries, and 1994 for nurseries, orchards and forest trees, as determined by the county committee in accordance with instructions of the Deputy Administrator.

* * * * *

(c) When visible evidence of losses no longer exists on the site where the trees were planted, acceptable evidence as determined in accordance with instructions issued by the Deputy Administrator must be established for the county committee to qualify the individual stand for the program.

(d) Losses from 1994 disasters with respect to nursery inventory plants that produced an annual crop which was also lost are eligible if assistance was not provided with respect to such plant under part 1477 of this chapter. Payment under TAP is also authorized for owners who replant or rehabilitate orchard trees when the crop from such trees are also enrolled for benefits under part 1477 of this chapter. A person shall be eligible to receive assistance under this part for 1993 crop losses (forest tree seedlings, orchard trees, and nursery inventory) resulting from damaging weather or related conditions as associated with the conditions (as defined in sec. 2251 of Public Law 101–624) in 1993, Public Law 103–211 in 1993 and Public Law 103–330 in 1994. Also, a person shall be only eligible to receive assistance on that portion of nursery inventory plants enrolled under part 1477 of this chapter that did not receive direct benefits under part 1477 of this chapter. The portion which did not receive direct benefits under part 1477 of this chapter shall be that portion of the loss for which no compensation is made because loss levels had not reached the minimum threshold required before any payment can be earned.

(e) Eligible plants exclude plants:

(1) That were planted under the Conservation Reserve Program; and

(2) That were the subject of any cost-share assistance or other assistance under any other Federal program, unless approved in writing by the CFSA.

25. Section 1478.6 is amended by revising paragraph (a) and adding a new paragraph (e) to read as follows:

§ 1478.6 Eligible costs.

(a) Payments under this part shall be made by CCC and may be made only to the extent that payment is specifically provided for in this part. CCC shall, under this part, to the extent of the availability of funds, reimburse an eligible owner for 65 percent of the eligible costs of re-establishing seedlings, trees, or nursery plants, not in

excess of the number of seedlings, trees, or nursery plants constituting the qualifying loss. Such reimbursement may be based on average costs or the actual costs for the replanting, reseeding, or repairing practices, as determined by CCC. Producers with trees, or nursery plants, who are eligible for both disaster and TAP payments must choose from which program they want to receive payment. That portion of plants enrolled under part 1477 of this chapter that did not receive direct benefits are eligible for TAP. The first 35 to 40 percent uninsured mortality for which part 1477 of this chapter benefits are not provided is defined as not receiving direct payment and may be eligible for TAP. If the costs are to replace lost trees, or nursery plants, the costs shall only be for replacement seedlings or plants of a size and quality determined by CCC to be sufficient for that purpose. The costs for which cost-sharing shall be permitted shall only be the costs of the seedlings or nursery plants, tree or plant rehabilitation measures, site preparation measures, and debris handling measures that are normal cultural practices for the type of individual stand being re-established and necessary to ensure successful plant survival; chemicals and nutrients if needed to ensure successful plant survival; labor used to physically plant or rehabilitate such seedlings as based on standard labor rates as determined by the county committee; and nursery plant containers and tree wraps. Eligible costs specifically exclude items such as fencing, irrigation, irrigation equipment, measures to protect seedlings from wildlife, and general land and tree stand improvements, and re-establishing greenhouse structures and windscreens.

* * * * *

(e) Payments made shall be at the minimum level needed to re-establish the individual stand, as determined by the State committee or, if redelegated, by the county committee.

26. Paragraph (b) in § 1478.7 is amended by removing ''DASCO'' and adding in its place ''Deputy Administrator.''

27. Section 1478.8 is amended by revising paragraph (b)(4) and paragraph (c) and (d) to read as follows:

§ 1478.8 Obligations of an eligible owner.

* * * * *

(b) * * *

(4) Maintain the practice for either 5 years after installation, unless CCC determines that a shorter period is necessary, or 10 years if the trees established on acreage received previous Federal cost-share assistance for tree establishment. Nursery inventory has no practice maintenance requirement.

(c) In the event of a determination by CCC that a person was erroneously determined to be eligible or has become ineligible for all or part of a payment made under this part for any reason, including a failure to comply with the terms and conditions of this part, or other condition for payment imposed by the county or State CFSA committee or the Deputy Administrator such person shall refund any payment paid under this part together with interest. Such interest shall be charged at the rate determined for late payment charges under part 1403 of this chapter and computed from the date of disbursement by CCC of the payment to the date of the refund.

(d) Eligible owners who have been paid but choose not to implement their practices by the final practice expiration date shall refund their payments with interest. Interest on these refunds shall be calculated beginning on the date the payment was disbursed. Such refund amounts may be reduced by CCC, at CCC's discretion, when only part of the required replanting practice is not implemented.

* * * * *

28. Section 1478.9 is revised to read as follows:

§ 1478.9 Payment limitations.

(a) The amount of payments which any person, as determined in accordance with part 1497 of this chapter, may receive under this part in connection with losses of orchard trees planted for an annual crop of fruit, nuts, syrup, or other related commercial products shall not exceed $25,000 for 1990 losses due to freeze, earthquake, or related condition; $25,000 for 1991 losses due to freeze, earthquake, or related condition; $25,000 for 1992 losses due to freeze, earthquake, or related condition; $25,000 for 1992 losses due to hurricane, typhoon, or related condition; $25,000 for 1993 losses resulting from damaging weather or related conditions; $25,000 for 1994 losses resulting from damaging weather or related conditions associated with the conditions (as defined in sec. 2251 of Public Law 101–624. Participants may elect not to replant the maximum amount of eligible trees because of the limitation being reached for payment limitation purposes or any other reason. If an original owner has entered into TAP and the ownership of land or trees is transferred to another owner, county offices shall not pay an increased amount for the trees covered by the original agreement because of an increase in the number of ''persons'' associated with the new ownership.

(b) The amount of payments which any person, as determined in accordance with part 1497 of this chapter, may receive under this part in connection with losses of forest tree seedlings planted to produce trees for harvest shall not exceed $25,000 for 1990 losses due to drought, earthquake, or related conditions; $25,000 for 1991 losses due to drought, earthquake, or related conditions; and $25,000 for 1992 losses due to drought, earthquake, or related conditions; and $25,000 for 1992 losses due to hurricane, typhoon, or related conditions; $25,000 for 1993 losses resulting from damaging weather or related conditions; $25,000 for 1994 losses due to damaging weather or related conditions associated with the condition (as defined in sec. 2251 of Public Law 101–624. Participants may elect not to replant the maximum amount of eligible trees because of the limitation being reached for payment limitation purposes or any other reason. If an original owner has entered into TAP and the ownership of land or trees is transferred to another owner, county offices shall not pay an increased amount for the trees covered by the original agreement because of an increase in the number of ''persons'' associated with the new ownership.

(c) The amount of payments which any person, as determined in accordance with part 1497 of this chapter, may receive under this part in connection with losses of nursery inventory shall not exceed $25,000 for 1992 for losses due to hurricane, typhoon, and related conditions; for $25,000 for 1993 for losses due to damaging weather or related conditions; and $25,000 for 1994 for losses due to damaging weather or related conditions.

29. Section 1478.10 is revised to read as follows:

§ 1478.10 Liens and claims of creditors; set-offs.

Any payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any person except agencies of the U.S. Government. The regulations governing set-offs and withholdings found at part 1403 of this chapter shall be applicable to this part.

30. Section 1478.11 is revised to read as follows:

§ 1478.11 Appeals.

Any person who is dissatisfied with a determination made with respect to this part may make a request for

reconsideration or appeal of such determination in accordance with the appeal regulations set forth at part 780 of this title or as established by the National Appeals Division, USDA whichever is applicable.

31. Section 1478.12 is revised to read as follows:

§ 1478.12 Misrepresentation and scheme or device.

(a) A person who is determined by the State committee or the county committee to have:

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

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination shall be ineligible to receive assistance under this program.

(b) All moneys paid by CCC under this part to any such person or to any other person as a result of such person's actions shall be refunded to CCC with interest together with such other sums as may become due. The party engaged in acts prohibited by this section and the party receiving payment shall be jointly and severally liable for any refund due under this section and for related charges. The remedies provided to CCC in this part shall be in addition to other civil, criminal, or administrative remedies which may apply.

32. Section 1478.14 is revised to read as follows:

§ 1478.14 Death, incompetency, or disappearance.

In the case of death, incompetency or disappearance of any owner who is eligible to receive assistance in accordance with this part, such person or persons specified in part 707 of this title may receive such assistance.

33. Section 1478.16 is revised to read as follows:

§ 1478.16 Paperwork Reduction Act assigned numbers.

The information collection requirements of this part have been submitted to the Office of Management and Budget (OMB) for purposes of the Paperwork Reduction Act and the OMB Number 0560–0082 has been assigned.

Signed at Washington, DC, on October 3, 1995.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 95–24915 Filed 10–4–95; 2:53 pm]

BILLING CODE 3410–05–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–56–AD; Amendment 39–9380; AD 95–20–02]

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300–600 series airplanes, that requires inspections to detect cracks in bolt holes where parts of the main landing gear (MLG) are attached to the rear spar, and repair, if necessary. This amendment is prompted by a report that cracks emanating from bolt holes in the rear spar were found during full-scale fatigue testing. The actions specified by this AD are intended to prevent unnecessary degradation of the structural integrity of the airframe due to cracks in the rear spar.

DATES: Effective November 9, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 9, 1995.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Phil Forde, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2146; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300–600 series airplanes was published in the **Federal Register** on July 12, 1994 (59 FR 35488). That action proposed to require repetitive high frequency eddy current (HFEC) rototest inspections to detect cracks in certain bolt holes where the main landing gear (MLG) forward pick-up fitting and the MLG rib 5 aft are attached to the rear spar, and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

Another commenter, the Air Transport Association (ATA) of America on behalf of one of its members, requests that the proposed repetitive inspection intervals be revised, since they are more stringent (shorter) for airplanes on which Modification 07716 has been accomplished. ATA advises that it has contacted the manufacturer to ask that the repetitive inspections specified in Airbus Service Bulletin A300–57–6017, dated November 22, 1993 (which is referenced in the proposal as the appropriate source of service information), be reviewed and changed if correction is necessary. ATA requests that the FAA revise the final rule to incorporate such changes that the manufacturer may be considering.

The FAA does not concur that the repetitive inspection requirements need to be changed. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has assured the FAA that the repetitive intervals, although unusual, are appropriate for identifying the subject cracking in a timely manner. Modification 07716 involves oversizing the bolt holes; therefore if a crack were to develop, it could reach critical length sooner than a crack would on an airplane on which that modification has not been accomplished. Additionally, the DGAC has advised the FAA that, although modification 07716 provides additional fatigue life, the inspection interval as cited in the final rule would allow detection of further cracking before a crack reaches a critical length.

However, the DGAC also has advised the FAA that the use of HFEC techniques to detect cracking, as specified in the proposed rule, may not accurately measure crack lengths as short as 1 mm (.039 inch). The FAA concurs with these DGAC findings. Since the issuance of that proposal, Airbus has issued Service Bulletin A300–57–6017, Revision 1, dated July 25, 1994, which describes procedures for oversizing the bolt holes before performing the HFEC in order to accurately detect any cracking. The DGAC classified this service bulletin as mandatory. The final rule has been changed to reference this revised service bulletin as the appropriate source of service information, in order to ensure