consumption, will be considered as marketable for juice. The percent of damage will be determined by relating the juice content of the damaged fruit to:

(1) The average juice content of the fruit produced on the unit for the three previous crop years based on your records, if they are acceptable to us; or

(2) The following juice content, if acceptable records are not furnished:

(i) Type I—52 pounds of juice per box
(ii) Type II—54 pounds of juice per box
(iii) Type III—45 pounds of juice per box
(iv) Type VI—43 pounds of juice per box

(f) Any citrus fruit on the ground that is not collected and marketed will be considered as 100 percent damaged if the damage was due to an insured cause.

(g) Any citrus fruit that is unmarketable either as fresh fruit or as juice because it is immature, unwholesome, decomposed, adulterated, or otherwise unfit for human consumption due to an insured cause will be considered as 100 percent damaged.

(h) Citrus fruit of Types IV, V, and VII that are unmarketable as fresh fruit due to serious damage from hail as defined in the applicable United States Standards for Grades of Florida fruit will be considered totally lost.

11. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply to us in writing for each written agreement no later than the sales closing date, except as provided in section 11(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved by us, the written agreement will include all variable terms of the contract, including, but not limited to, crop type and variety, the guarantee, premium rate, and price election;

(d) Each written agreement will be valid for one year (if the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, DC, on December 20, 1996.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 96–33068 Filed 12–30–96; 8:45 am]

BILLING CODE 3410–FA–P

Federal Crop Insurance Corporation

7 CFR Part 404

Commodity Credit Corporation

7 CFR Part 1437

RIN 0560–AE85

Implementation of the Noninsured Crop Disaster Assistance Program Provisions of the Federal Agriculture Improvement and Reform Act of 1996

AGENCIES: Commodity Credit Corporation, Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule moves the noninsured crop disaster assistance program (NAP) provisions currently in 7 CFR part 404 to 7 CFR part 1437, and implements the amendments to NAP made in Title I of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act). The 1996 Act changes the administration of the program from the Federal Crop Insurance Corporation (FCIC) to the Secretary through the Commodity Credit Corporation. The NAP program will continue to be operated through the Farm Service Agency (FSA). Other amendments include the addition of seed crops and aquaculture (including ornamental fish) as crops eligible for benefits under this part, and relaxes the acreage and production reporting requirements.

EFFECTIVE DATE: December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Leona Dittus, Director, Emergency and Noninsured Assistance Program Division, FSA, USDA, AG Box 0526, P. O. Box 2415, Washington, D.C. 20013–2415. Telephone (202) 720–3168.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined to be significant and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because neither FSA nor the CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12778

The final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are not retroactive. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require 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).

Unfunded Mandates

The provisions of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because neither FSA nor CCC is 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.

Small Business Regulatory Enforcement Fairness Act of 1996

The Agency gave notice of the proposed rule and accepted comments from the public prior to the publication of the final rule. After the publication of the final rule, Congress passed both the 1996 Act and the Small Business Regulatory Enforcement Fairness Act of 1996. Due to fact that this rule makes slight changes to a rule that was already final when Congress passed these two Acts, it has been determined in accordance with section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, that it is impracticable, unnecessary and contrary to the public interest to require this rule to conform to the requirements of section 801 of that Act. Accordingly, this rule is effective upon publication in the Federal Register.

Paperwork Reduction Act

The amendments to 7 CFR 1437 set forth in this final rule involve a change in the existing information collection requirements. In accordance with the Paperwork Reduction Act of 1995, CCC received approval from OMB for the

collection of information in this rule that is not related to acreage reports. That collection was cleared as a revision to OMB docket number 0563–0016 at the time this rule was proposed. No comments were received regarding information collections contained in OMB docket 0563–0016.

Upon analysis of the current clearances of information collections associated with the Noninsured Crop Disaster Assistance Program (NAP), CCC found that information collection of acreage reports for this program are not currently approved by OMB. The agency has submitted an emergency information collection request (ICR) to OMB for the approval of these reports as necessary for the proper functioning of the program.

A copy of this emergency ICR, with applicable supporting documentation, may be obtained from Sean O'Neill, FSA, ENAPD, NAB, room 6701–S, STOP 0526, P.O. Box 2415, Washington, DC 20013–2415. Comments and questions about the ICR listed below should be directed to the Office of Information and Regulatory Affairs, Attn. OMB Desk Officer for Agriculture, Office of Management and Budget, Room 10202, Washington, DC 20503 ((202) 395–7340).

Title: Annual Certification Requirements, Assignment of Payments, and Power of Attorney (7 CFR Parts 12, 718, 1437, and 720).

OMB Control Number: 0560–0004.

Description: To be eligible for NAP benefits, producers must report all acreage in the county of the eligible crop (for each planting in the event of multiple planting) in which the producer has a share. Because NAP assistance is calculated on a unit basis, similar to catastrophic risk protection, it is necessary that producers report all acreage of the crop in which they have an interest in the county, not just the acreage which suffered a loss. The 1996 Act mandates the use of a producer's actual production history over a four to ten year period, necessitating precise records. The FSA–578 acreage report form is used under the NAP to collect data used to determine a producer's production of a crop and loss of production (on a yield basis) in the event a disaster occurs. The acreage report is also used in determining the estimated NAP area loss for a crop. If the annual planted acreage were not known the task of determining area, crop, crop production, and producer eligibility for the NAP could be difficult.

Executive Order 12612

It has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Federal Assistance Programs

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Background

Title I of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) enacted on April 4, 1996, changes the administration of the noninsured crop disaster assistance program (NAP) from Federal Crop Insurance (FCIC) to the Secretary of Agriculture through the Commodity Credit Corporation. NAP will continue to be operated through the Farm Service Agency. Because the program will now be administered by the Commodity Credit Corporation (CCC), the NAP regulations will be moved from 7 CFR part 404 to 7 CFR part 1437. Upon publication of this rule, the current provision for NAP will be removed from part 404 and that part will be reserved.

The regulation reflects a change in references from FCIC and FCIC Manager to CCC and Executive Vice President, CCC, or a designee. Other major changes include:

(1) Section 1437.11 is amended to include seed crops and aquacultural species (including ornamental fish) as crops eligible for benefits under this part.

(2) Section 1437.17 is amended to provide that producers are required to report production for acreage previously reported to CCC as being planted by the immediately subsequent crop year acreage reporting date for the crop.

List of Subjects in 7 CFR Parts 404 and 1437

Agricultural commodities, Disaster assistance, reporting and recordkeeping requirements.

For reasons set out in the Preamble and under the authority of 5 U.S.C. 553, 7 CFR Chapters IV and XIV are amended as set forth below:

CHAPTER XIV—[AMENDED]

1. Chapter XIV is amended by adding part 1437 to read as follows:

Part 1437—NONINSURED CROP DISASTER ASSISTANCE PROGRAM REGULATIONS FOR THE 1996 AND SUCCEEDING CROP YEARS

Sec.

1437.1 Applicability.
1437.2 Administration.
1437.3 Definitions.
1437.4 Eligibility.
1437.5 Assistance
1437.6 Area.
1437.7 Yield Determinations.
1437.8 Acreage and Production Reports.
1437.9 Loss Requirements.
1437.10 Application for Payment and Notice of Loss.
1437.11 Payments for Reduced Yield and Prevented Planting.
1437.12 Multiple Benefits.
1437.13 Payment and income limitations.
1437.14 Violations of Highly Erodible Land and Wetland Conservation Provisions
1437.15 Violations Regarding Controlled Substances.
1437.16 Misrepresentation and scheme or device.
1437.17 Refunds to the Corporation.
1437.18 Offsets and assignments.
1437.19 Cumulative Liability.
1437.20 Appeals.
1437.21 Estates, trusts, and minors.
1437.22 Death, incompetence, or disappearance.
1437.23 OMB control numbers.

Authority: 15 U.S.C. 714b and 714c; and 7 U.S.C. 7333

§ 1437.1 Applicability.

For the 1996 and susbsequent crop years, NAP is intended to provide eligible producers of eligible crops with protection comparable to the catastrophic risk protection plan of crop insurance. NAP is also designed to help reduce production risks faced by producers of crops for which Federal crop insurance under the Federal Crop Insurance Act, as amended, is not available. NAP will reduce financial losses that occur when natural disasters cause a catastrophic loss of production or prevented planting of an eligible crop. Payment eligibility is based on an expected yield for the area and the producer's approved yield based on actual production history, or a transitional yield if sufficient production records are not available. Production for both the applicable area expected yield and the individual producer approved yield for the unit must fall below specified percentages in order to be eligible for payments under this part.

The provisions contained in this part are applicable to each eligible producer and each eligible crop for which catastrophic coverage is not otherwise available.

§ 1437.2 Administration.

(a) NAP is administered under the general supervision of the Executive Vice-President, CCC (Administrator, Farm Service Agency), and shall be carried out by State and county FSA committees (State and county committees).

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

(c) The State committee shall take any action required by these regulations that the county 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 this part; or

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

(d) No provision or delegation 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.

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

(f) The State committee will, in accordance with this part, recommend the geographical size and shape of the area where a natural disaster has occurred, and whether the area eligibility requirement has been satisfied. The recommendation of eligibility must be approved by the Executive Vice President, CCC, or a designee.

(g) The Executive Vice President, CCC, or a designee, will determine all yields and prices under this part.

§ 1437.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the noninsured crop disaster assistance program. The terms defined in part 718 of this title and 1400 of this chapter shall also be applicable, except where those definitions conflict with the definitions set forth in this section.

Act means the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127 (7 U.S.C. 7201 et seq).

Actual production history means the history determined in accordance with part 400, subpart G, of this title, except that when referring to NAP the terms of subpart G will mean as follows:

Insurance terms	NAP terms
Agent	Local office representative.
Claim	Application for payment.
Claim for indemnity	Application for payment.
Indemnity payment	NAP payment.
Insurable acreage	Eligible acreage.
Insurable cause	Natural disaster.
Insurable crop	Eligible crop.
Insurance company	Provider.
Insurance purposes	NAP purposes.
Insured	Eligible producer.
Insured producer	Eligible producer.
Uninsurable acreage	Ineligible acreage.
Uninsurable production.	Ineligible production.
Uninsured cause of loss.	Assigned production appraisal
Uninsured production	Ineligible production

Approved yield means an actual production history yield calculated and approved by CCC, used to determine any NAP payment in accordance with part 400, subpart G, of this title.

Aquacultural species means any species of aquatic organism grown as food for human consumption, or fish raised as feed for fish that are consumed by humans, or ornamental fish propagated and reared in an aquatic medium by a commercial operator on private property in water in a controlled environment.

Area means the geographic region recommended by the State FSA committee, and approved by CCC in accordance with § 1437.6, where a natural disaster has occurred which may qualify producers in the area for NAP payments.

Assigned yield means a yield assigned for a crop year in the base period, in accordance with part 400, subpart G, of this title, if the producer does not file an acceptable production report by the production reporting date.

Average market price means the price, or dollar equivalent on an appropriate basis; for example, pound, bushel, ton, for an eligible crop established by CCC for determining NAP payments. Such price will be on a harvested basis without the inclusion of transportation, storage, processing, packing, marketing or other post-harvest expenses and will be based, in part, on historical data.

Catastrophic coverage means a catastrophic risk protection plan of insurance offered by FCIC in accordance with part 402 of this title.

CCC means the Commodity Credit Corporation, a wholly owned Government corporation within the United States Department of Agriculture.

County expected yield means the eligible crop yield established by the State FSA committee and approved by CCC for the county. Such yield information may be obtained from National Agricultural Statistics Service, Cooperative States Research, Education, and Extension Service, credible nongovernmental studies, yields in similar areas, and similar reference material. For planted annual crops, such yield will be based on the acreage planted for harvest.

Crop year means the period of time within which the crop is normally grown and designated by the calendar year in which the crop is normally harvested in the area. For crops harvested over two calendar years, the crop year will be the calendar year in which the majority of the crop would have been harvested. For crops grown over more than two calendar years, each year in the growing period will be considered as a separate crop year designated by the calendar year in which the crop sustained a loss. For crops for which catastrophic coverage is available, the crop year will be as defined by such coverage.

Eligible crop means an agricultural commodity for which catastrophic coverage is not available and which is commercially produced for food or fiber as specified in this part. Eligible crop shall also include floricultural, ornamental nursery, and Christmas tree crops, turfgrass sod, seed crops, aquaculture (including ornamental fish), and industrial crops. In the case of a crop that historically has multiple plantings in the same crop year that are planted or are prevented from being planted, each planting may be considered a different crop for determining payments under this part. In the case of a crop that has different varieties or types, each variety or type may be considered a separate crop for determining payments under this part, if CCC determines there is a significant difference in price or yield between the varieties or types.

Expected area yield means the eligible crop yield established and approved by CCC for the geographic area.

Forage means land covered with grass or other vegetation, produced under such range management practices as are necessary to sustain sufficient quality and quantity of grass or vegetation each year to be suitable for grazing or mechanical harvest to feed livestock in a commercial operation. NAP benefits

for forage produced on any Federal or state owned lands are available only for seeded forage.

Good farming practices means the cultural practices generally used in the area for the crop to make normal progress toward maturity and produce at least the individual unit approved yield. The practices are normally those recognized by Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the area.

Harvested means a single harvest crop is considered harvested when the producer has, by hand or mechanically, removed the crop from the field. Crops with multiple harvests in one year or harvested over multiple years are considered harvested when the producer has, by hand or mechanically, removed at least one mature crop from the field. The crop is considered harvested once it is removed from the field and placed in a truck or other conveyance, except:

(1) Hay is considered harvested when in the bale, whether removed from the field or not; and

(2) Grazing is not considered harvesting for the purpose of determining a payment rate factor.

Livestock means any farm or other animal excluding aquacultural species and, including but not limited to domestic avian, ruminant, equine, and swine species grown or maintained for any purpose.

Local office means the FSA office or other USDA office designated by CCC.

Native forage means grass or other vegetation occurring naturally without seeding.

Natural disaster means damaging weather, including but not limited to drought, hail, excessive moisture, freeze, tornado, hurricane, excessive wind, or any combination thereof; or adverse natural occurrence such as earthquake, flood, or volcanic eruption; or related condition, including but not limited to heat, insect infestation, or disease, which occurs as a result of an adverse natural occurrence or damaging weather occurring prior to or during harvest that directly causes, accelerates, or exacerbates the destruction or deterioration of an eligible crop, as determined by the Secretary.

Ornamental fish means a decorative fish produced in a commercial fishery for sale.

Ornamental nursery crop means a decorative plant grown in a container or controlled environment for commercial sale.

Prevented planting means the inability to plant a crop with proper equipment during the planting period for the crop or commodity. A producer must prove that the producer intended to plant the eligible crop and that such crop could not be planted due to natural disaster reasonably related to the basis for the area designation under § 1437.6, as determined by the Executive Vice President. The natural disaster that caused the prevented planting must have occurred after the final planting date for the previous crop year and before the final planting date for the crop year in which a request for NAP payment was made. For crops with multiple plantings in a single crop year and one crop has been harvested, the natural disaster must occur, after the harvest of the harvested crop and before the end of the planting period for the next planting of the crop.

Production report means a written record showing the commodity's annual production and used to determine the producer's yield for NAP purposes. The report contains yield history by unit, if applicable, including planted acreage for annual crops, eligible acreage for perennial crops, and harvested and FCIC or CCC appraised production for the previous crop years. This report must be supported by verifiable written records, measurement of farm-stored production, or by other records of production approved by CCC. Information contained in an application for payment is considered a production report for the unit for the crop year for which the application was filed.

Qualifying gross revenues means:

(1) With respect to a person who receives more than 50 percent of such person's gross income from farming, ranching, and forestry operations, the annual gross income for the taxable year from such operations; and

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

Reseeded or replanted crop means the same crop planted on the same acreage after the first planting of the crop has failed.

Seed crop means a crop produced for the purpose of, or intended for use as, commercial propagation for sale.

Seeded forage means acreage which is mechanically seeded with grasses or other vegetation at regular intervals, at least every 7 years, in accordance with good farming practices.

Share means the producer's percentage of interest in the eligible crop as an owner, operator, or tenant. For the purpose of determining eligibility for payments under this part, the producer's share will not exceed the producer's share at the earlier of the time of loss or the beginning of harvest. Acreage or interest attributed to a spouse, child, or member of the same household may be considered part of the producer's share unless such individual is considered to be a separate person under part 1400 of this chapter.

Type or Variety means a scientifically recognized subspecies of a crop or commodity having a particular characteristic or set of characteristics.

Unit means, for NAP, all acreage of the eligible crop in the county for the crop year:

(1) In which the person has 100 percent crop share; or

(2) Which is owned by one person and operated by another person on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the crop on such land will be considered as owned by the lessee. No unit other than that stated herein will be permitted.

§ 1437.4 Eligibility.

(a) Eligible crops are any commercial agricultural crop (excluding livestock and their by-products), commodity, or acreage of a commodity grown for food or fiber for which catastrophic coverage is not available under part 402 of this title. Different types or varieties of a crop or commodity may be treated as a separate eligible crop, if CCC determines there is a significant difference in price or yield.

(b) NAP payments will be made available for:

(1) Any commercial crop grown for food;

(2) Any commercial crop planted and grown for livestock consumption, including but not limited to grain and forage crops;

(3) Any commercial crop grown for fiber, excluding trees grown for wood, paper, or pulp products;

(4) Any commercially produced aquacultural species (including ornamental fish);

(5) Floriculture crops;

(6) Ornamental nursery crops;

(7) Christmas tree crops;

(8) Turfgrass sod;

(9) Industrial crops;

(10) Seed Crops; and

(11) Any crop, for which crop insurance under the Federal Crop Insurance Act is available in the county, that is affected by a natural disaster that is not named as an insurable peril under the producer's crop insurance policy.

(c) NAP payments will not be available for any acreage in any area for any crop for which catastrophic coverage is available, unless the loss

was caused by a natural disaster that is not covered by catastrophic coverage and all other eligibility requirements under this part are satisfied.

§ 1437.5 Assistance.

(a) Producers who are eligible to receive NAP payments for crop years 1996 through 1998 will receive assistance against loss in yield greater than 50 percent of the producer's approved yield for the eligible crop payable at 60 percent of the established average market price for the crop.

(b) Producers who are eligible to receive NAP payments after crop year 1998 will receive assistance against loss in yield greater than 50 percent of the producer's approved yield for the eligible crop payable at 55 percent of the established average market price for the crop.

(c) CCC will adjust the NAP payment rate for crops that are produced with significant and variable expenses that are not incurred because the crop acreage was prevented from being planted or planted but not harvested.

(d) NAP payments will be determined by unit based on all the acreage and production of the crop and eligible prevented from being planted acreage of the crop.

(e) Each producer's NAP payment will be based on the producer's share of the eligible crop.

§ 1437.6 Area.

(a) For the purposes of this part, acreage affected by a natural disaster, or any adjustment thereto, will be included in the area recommended by the state FSA committee and submitted to CCC for approval, regardless of whether the commodity produced on the affected acreage suffered a loss.

(b) Except for eligible areas identified in paragraph (f) of this section, an approved area shall include at least five producers of crops on separate and distinct farms for which the area has been approved for NAP payments. Notwithstanding this provision, CCC may approve an area having fewer than five producers if the Executive Vice President, or a designee, determines that such area will suffer significant economic consequences as a result of the disaster.

(c) An area may be designated as follows:

(1) A county;

(2) Aggregated acreage that is at least 320,000 acres; or

(3) Aggregated acreage with not less than $80 million average value for all crops produced annually.

(d) If the aggregated acreage affected by the natural disaster does not meet the minimum requirement specified in paragraph (c) (2) or (3) of this section, the aggregated acreage will be expanded by adding acres from around the affected acreage, until the minimum requirement is met.

(e) The area may not be defined in any manner that intentionally includes or excludes producers or crops.

(f) Notwithstanding the provisions of paragraphs (a) and (c) of this section, for areas outside the 50 states of the United States, the area shall include 10 or more producers of the crop except CCC may approve an area outside the 50 United States having fewer than 10 producers of the crop for which the area is requested if the Executive Vice President determines that such area will suffer significant economic consequences as a result of the disaster.

§ 1437.7 Yield determinations.

(a) CCC will establish expected area yields for eligible crops for each county or area for which the NAP is available, using available information, which may include, but is not limited to, National Agricultural Statistics Service data, Cooperative State Research, Education, and Extension Service records, Federal Crop Insurance Corporation data, credible nongovernment studies, yields in similar areas, and reported approved yield data. For planted annual crops, such yields will be based on the acreage planted for harvest.

(b) CCC may make county yield adjustments taking into consideration different yield variations due to different farming practices in the county such as: irrigated, nonirrigated, organic, nonorganic, different types and varieties of a crop and intended use.

(c) In establishing expected area yields for eligible crops:

(1) If the approved area corresponds to a single county, the expected area yield will be the yield established by CCC for that county, including any adjustments permitted by this section;

(2) If the approved area encompasses portions of counties or more than one county, the expected area yield will be the weighted average of the yields established by CCC for those counties in the area, including any adjustments permitted by this section; and

(3) CCC may adjust expected area yields if:

(i) The cultural practices, including the age of the planting or plantings, are different from those used to establish the yield; or

(ii) The expected area yield established on a state or county level is determined to be incorrect for the area.

(d) CCC will establish approved yields for purposes of providing assistance under this part. Approved yields for the eligible crop will be based on the producer's actual production history in accordance with the provisions of part 400, subpart G, of this title.

(e) The approved yield established for the producer for the year in which the NAP payments are offered will be equal to the average of the consecutive crop year yields, as established by CCC, reported and certified by that producer for that eligible crop.

(f) If a producer receives an assigned yield for a year of natural disaster because production records were not submitted by the production reporting deadline, the producer will be ineligible to receive an assigned yield for the year of the next natural disaster unless adequate production records for the eligible crop from all the interim crop years are provided to the local office. The producer shall receive a zero yield for those years the producer is ineligible to receive an assigned yield.

(g) CCC will select certain producers on a random or targeted basis and require those selected to provide records acceptable to CCC to support the information provided. Producers may also be required to support the yield certification at the time of loss adjustment or on post-audit. Each certification must be supported by records acceptable to CCC. Failure to produce records acceptable to CCC will result in CCC establishing the yield in accordance with actual production history and may subject the producer to criminal and civil false claims actions under various Federal statutes as well as refund of any amount received. In addition, sanctions, as set out at § 1437.16, may be imposed for false certification.

(h) Records acceptable to CCC may include:

(1) commercial receipts, settlement sheets, warehouse ledger sheets, or load summaries if the eligible crop was sold or otherwise disposed of through commercial channels provided the records are reliable or verifiable; and

(2) Such documentary evidence as is necessary in order to verify the information provided by the producer if the eligible crop has been sold, fed to livestock, or otherwise disposed of other than through commercial channels such as contemporaneous measurements, truck scale tickets, and contemporaneous diaries, provided the records are reliable or verifiable.

(i) Any producer who has a contract to receive a guaranteed payment for production, as opposed to delivery, of an eligible crop will have the production adjusted upward by the amount of the production corresponding

to the amount of the contract payment received.

(j)(1) Producers will not be eligible to receive an assigned yield if the acreage of the crop in a county for the crop year has increased by more than 100 percent over any year in the preceding seven crop years, unless:

(i) The producer provides adequate records of production costs, acres planted, and yield for the crop year for which NAP payments are being sought; or

(ii) CCC determines that the records provided under this paragraph are inadequate. CCC may require proof that the eligible crop could have been marketed at a reasonable price had the crop been harvested.

(2) The provisions of this section will not apply if:

(i) The crop has been inspected prior to the occurrence of a loss by a third party acceptable to CCC; or

(ii) The FSA county executive director, with the concurrence of the FSA state director, makes a recommendation for an exemption from the requirements and such recommendation is approved by CCC.

§ 1437.8 Acreage and production reports.

(a) Producers must file one or more acreage reports at the local office no later than the date specified by CCC for each crop the producer wants to insure future eligibility for the NAP program. The acreage report may be filed by the farm operator. Any producer will be bound by the acreage report filed by the farm operator unless the producer files a separate acreage report prior to the acreage reporting date.

(b) Acreage reports required by paragraph (a) must include all of the following information:

(1) All acreage in the county of the eligible crop (for each planting in the event of multiple planting) in which the producer has a share;

(2) The producer's share at the time of planting or the beginning of the crop year;

(3) The FSA farm serial number;

(4) The crop, practice, and intended use;

(5) All persons sharing in the crop (including the identity of any person having an interest in the crop as producer) and the person's employer identification number or social security number, if the person wishes to receive any payment under the Act;

(6) The date the crop was planted; and

(7) Acreage prevented from being planted.

(c) For each crop for which an acreage report is filed in accordance with this section, the producer must report the production for that acreage by the immediately subsequent crop year acreage reporting date for the crop.

(d) A person's failure to submit the required information by the designated acreage reporting dates may result in the denial of payments under this part. If there is a change of ownership, operation, or share within the farming operation after the acreage reporting date, the local office must be notified not later than 30 calendar days after the change and proof of the change must be provided to maintain eligibility for payments under this part.

§ 1437.9 Loss requirements.

(a) To qualify for payment under this part, the loss or prevented planting of the eligible crop must be due to a natural disaster.

(b) Assistance under this part will not cover losses due to:

(1) The neglect or malfeasance of the producer;

(2) The failure of the producer to reseed or replant to the same crop in the county where it is customary to reseed or replant;

(3) The failure of the producer to follow good farming practices for the commodity and practice;

(4) 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;

(5) Failure or breakdown of irrigation equipment or facilities; or

(6) Except for tree crops and perennials, inadequate irrigation resources at the beginning of the crop year.

(c) A producer of an eligible crop will not receive payments under this part unless the projected average or actual yield for the crop, or an equivalent measurement if yield information is not available, in the area falls below 65 percent of the expected area yield. Once this area, and all other, eligibility requirements have been satisfied:

(1) A reduced yield payment will be made to a producer if the total quantity of the eligible crop that the producer is able to harvest on the unit is less than 50 percent of the approved yield for the crop due to natural disaster reasonably related to the basis for the area designation under § 1437.6, factored for the share of the producer for the crop. Production from the entire unit will be used to determine whether the producer qualifies for a payment under this part. The quantity will not be reduced for any quality consideration unless a zero value is established; and

(2) A prevented planting payment under this part will be made if the producer is prevented from planting more than 35 percent of the total eligible acreage intended for planting to the eligible crop. Producers must have intended to plant the crop and prove that they were prevented from planting the crop due to natural disaster reasonably related to the basis for the area designation under § 1437.6, and the producer may be required to prove that such producer had the resources available to plant, grow, and harvest the crop, as applicable.

(d) NAP payments under this part for prevented planting will not be available for:

(1) Tree crops and other perennials, unless the producer can prove resources were available to plant, grow, and harvest the crop, as applicable;

(2) Land that planting history or conservation plans indicate would remain fallow for crop rotation purposes; or

(3) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by USDA, including the Conservation Reserve Program and Wetland Reserve Program.

§ 1437.10 Application for payment and notice of loss.

(a) Any person with a share in the eligible crop who would be entitled to a payment under this part must provide a notice of damage or loss within 15 calendar days after the occurrence of the prevented planting (the end of the planting period) or recognizable damage to the crop. The notice must be filed at the local office serving the area where the producer's unit is located. The farm operator may provide the notice for all producers with an interest in the crop. All producers on a farm will be bound by the operator's filing or failure to file the application for payment unless the individual producers elect to timely file their notice.

(b)(1) Applications for payments under this part must be filed, on Form FCI–74, by the applicant with the local office no later than the first acreage reporting date for the crop in the crop year immediately following the crop year in which the loss occurred.

(2) If the producer chooses not to harvest the crop, all eligible acres and crop units for which the producer intends to make an application for payment must be left intact until the units have been appraised or released by an FCIC or CCC approved loss adjuster.

(3) If the producer harvests the crop, the producer must provide such documentary evidence of crop production as CCC may require which

may include leaving representative samples of the crop for inspection.

(c) Failure to make timely application or to supply the required documentary evidence shall result in the denial of payments under this part.

§ 1437.11 Payments for reduced yields and prevented planting.

In the event that the area loss requirement has been satisfied for the crop and either:

(a) The producer has sustained a loss in yield in excess of 50 percent of the producer's approved yield established for the crop, the NAP low yield payment will be determined by:

(1) Multiplying the producer's approved yield by the total eligible acreage planted to the eligible crop;

(2) Multiplying the product of paragraph (a)(1) by 50 percent;

(3) Subtracting the total production from the total eligible acreage from the result in paragraph (a)(2);

(4) Multiplying the product of paragraph (a)(3) by the producer's share of the eligible crop;

(5) Multiplying the result of paragraph (a)(4) by the applicable payment factor in accordance with § 1437.5(c); and

(6) Multiplying the result in paragraph (a)(5) by:

(i) For the 1996 through 1998 crop years, 60 percent of the average market price, as determined by CCC, or any comparable coverage, as determined by CCC; or

(ii) For the 1999 and subsequent years, 55 percent of the average market price, as determined by CCC, or any comparable coverage, as determined by CCC; or

(b) The producer has been unable to plant at least 35 percent of the acreage intended for the eligible crop, the NAP payment will be determined by:

(1) Multiplying the producer's acreage intended to be planted to the eligible crop by 35 percent;

(2) Subtracting the result in (b)(1) from the number of eligible prevented planting acres as determined in § 1437.9(c)(2);

(3) Multiplying the result of (b)(2) by the producer's share of the eligible crop;

(4) Multiplying the producer's approved yield by the result of (b)(3);

(5) Multiplying the result of (b)(4) by the approved prevented planting payment factor in accordance with § 1437.5(c); and

(6) Multiplying the result of (b)(5) by:

(i) For the 1996 through 1998 crop years, 60 percent of the average market price, as determined by CCC, or any comparable coverage, as determined by CCC; or

(ii) For the 1999 and subsequent years, 55 percent of the average market price, as determined by CCC, or any comparable coverage, as determined by CCC.

§ 1437.12 Multiple benefits.

If a producer is eligible to receive payments under this part and benefits under any other program administered by the Secretary for the same crop loss, the producer must choose whether to receive the other program benefits or payments under this part. The producer is not eligible for both. Such election does not relieve the producer from the requirements of making a production and acreage report. However, if the other USDA program benefits are not available until after an application for benefits has been filed under this part, the producer may refund the total amount of the payment to the local office from which the payment was received.

§ 1437.13 Payment and income limitations.

(a) NAP payments shall not be made:

(1) In excess of $100,000 per person per crop year under this part, or

(2) To a person who has qualifying gross revenues in excess of $2 million for the most recent tax year preceding the year for which assistance is requested.

(b) Simple interest on payments to the producer which are delayed will be computed on the net payments ultimately found to be due, from and including the 31st day after the latter of the date the producer signs, dates, and submits a properly completed application for payment on the designated form, the date disputed applications are adjudicated, or the date the area and crop is approved for NAP payments. Interest will be paid unless the reason for failure to timely pay is due to the producer's failure to provide information or other material necessary for the computation or payment.

§ 1437.14 Violations of Highly Erodible Land and Wetland Conservation Provisions.

The provisions of part 12 of this title, apply to this part.

§ 1437.15 Violations Regarding Controlled Substances.

The provisions of § 718.11 of this title apply to this part.

§ 1437.16 Misrepresentation and scheme or device.

(a) If CCC determines that any producer has misrepresented any fact or has knowingly adopted, participated in, or benefitted from, any scheme or device that has the effect of defeating, or is designed to defeat the purpose of this part, such producer will not be eligible to receive any payments applicable to the crop year for which the scheme or device was adopted.

(b) If any misrepresentation, scheme or device, or practice has been employed for the purpose of causing CCC to make a payment which otherwise would not make under this part:

(1) CCC will withhold all or part of the payment that would otherwise be due.

(2) All amounts paid by CCC to any such producer, applicable to the crop year in which the offense occurred, must be refunded to CCC together with interest and other amounts as determined in accordance with this part.

(3) CCC may impose such other penalties or administrative sanctions as authorized by section § 1437.19.

(c) Scheme and device may include, but is not limited to:

(1) Concealing any information having a bearing on the application of the rules of this part;

(2) Submitting false information to the CCC or any county or state FSA committee; or

(3) Creating fictitious entities for the purpose of concealing the interest of a person in the farming operation.

§ 1437.17 Refunds to the CCC.

In the event that there is a failure to comply with any term, requirement, or condition for payment made in accordance with this part, or the payment was established as a result of erroneous information provided by any person, or was erroneously computed, all such payments or overpayments will be refunded to CCC on demand, plus interest determined in accordance with part 1403 of this chapter.

§ 1437.18 Offsets and assignments.

(a) Except as provided in paragraph (b), any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, 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 1403 of this chapter shall be applicable to payments under this part.

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

§ 1437.19 Cumulative liability.

(a) The liability of any producer for any payment or refunds, which is

determined in accordance with this part to be due to CCC will be in addition to any other liability of such producer under any civil or criminal fraud statute or any other statute or provision of law including, but not limited to, 15 U.S.C. 714; 18 U.S.C. 286, 287, 371, 641, 651, 1001, 1014; 15 U.S.C. 714m; and 31 U.S.C. 3729.

(b) All producers on the unit receiving payments under this part will be jointly and severally liable to repay any unearned payments under this part.

§ 1437.20 Appeals.

The appeal, reconsideration, or review of all determinations made under this part, except the eligibility provisions for crops, areas, or producers for which there are no appeal rights because they are determined rules of general applicability, must be in accordance with part 780 of this title.

§ 1437.21 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible will be eligible for payments under this part only if such person meets one of the following requirements:

(1) The minor establishes that the right of majority has been conferred on the minor by court proceedings or by 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 the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1437.22 Death, incompetence, or disappearance.

In the case of death, incompetence or disappearance of any person who is eligible to receive payments under this part, such payments will be disbursed in accordance with part 18 of this title.

§ 1437.23 OMB control numbers.

These regulations amend the information collection requirements previously approved by the Office of Management and Budget (''OMB'') under OMB control number 0563–0016.

Chapter IV [AMENDED]

Part 404 [REMOVED]

2. 7 CFR part 404 is removed.

Signed at Washington, D.C., on December 24, 1996.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

Signed at Washington, D.C., on December 27, 1996.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 96–33264 Filed 12–30–96; 8:45 am]

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Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV96–905–2FR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Procedures to Limit the Volume of Small Florida Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adds a section to the rules and regulations currently prescribed under the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida. The marketing order is administered locally by the Citrus Administrative Committee (committee). This rule establishes procedures for limiting the volume of small red seedless grapefruit entering the fresh market during the first 11 weeks of each season. The committee believes these procedures could be used, when necessary, to help stabilize the market and improve grower returns.

EFFECTIVE DATE: January 30, 1997.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (941) 299–4770, Fax: (941) 299–5169; or Caroline Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2522–S, Washington, D.C. 20090–6456; telephone: (202) 720–8139, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 905 (7 CFR Part 905), as amended, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers subject to regulation under the marketing order and approximately 11,000 producers of citrus in the regulated area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (13 CFR