



# Federal Register

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**Thursday,  
June 8, 2000**

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**Part III**

## **Department of Agriculture**

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**Commodity Credit Corporation**

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**7 CFR Part 1400 et al.  
Agricultural Disaster and Market  
Assistance; Interim Final Rule**

**DEPARTMENT OF AGRICULTURE****Commodity Credit Corporation**

**7 CFR Parts 1400, 1411, 1427, 1439, 1464, 1479**

**RIN 0560-AG14**

**Agricultural Disaster and Market Assistance**

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Interim rule and final rule.

**SUMMARY:** This rule implements agricultural disaster and market assistance provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000 and the Omnibus Consolidated Appropriations Act, 2000. It will implement statutory provisions related to cottonseed market loss, a competitiveness program for extra long staple (ELS) cotton, warehouse-stored tobacco loss assistance, pasture recovery, oilseeds marketing loss, livestock disaster assistance for contract growers and emergency assistance for Harney County, Oregon. It will also define the base quality for upland cotton, finalize existing regulations for the Livestock Indemnity and American Indian Livestock Feed Programs and reorganize all of the Emergency Livestock Assistance regulations to remove obsolete regulations. Certain provisions of this rule will be implemented as interim rules and others as final rules. See **SUPPLEMENTARY INFORMATION** for details.

**DATES:** This rule is effective June 1, 2000, except for the amendments to § 1427.25, which is effective August 1, 2000.

Comments on the provisions of this interim rule related to cottonseed assistance, the competitiveness program for ELS cotton, and flood assistance for Harney County, Oregon must be received by July 10, 2000 to be assured of consideration. Comments on the information collections for these programs must be received by August 7, 2000.

**ADDRESSES:** Comments on the regulations should be sent to: Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Farm Service Agency (FSA), U.S. Department of Agriculture, STOP 0540, 1400 Independence Ave., SW, Washington, DC, 20250-0540, telephone (202)205-5851, or by e-mail to: tom\_witzig@wdc.fsa.usda.gov. Comments can be inspected in Room

6734 South Building, Washington, DC, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments on the information collection should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Tom Witzig at the address above.

**FOR FURTHER INFORMATION CONTACT:** Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, FSA, USDA, STOP 0540, 1400 Independence Avenue, SW, Washington, D.C. 20250-0540, Telephone: (202) 205-5851; e-mail: tom\_witzig@wdc.fsa.wdc.gov.

**SUPPLEMENTARY INFORMATION:****Notice and Comment**

Section 824 of Pub. L. 106-78 requires that the regulations necessary to implement Title VIII, Subtitle A of Pub. L. 106-78 be issued as soon as practicable and without regard to the notice and comment provisions of 5 U.S.C. 553, or the Statement of Policy of the Secretary of Agriculture (the Secretary) effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking, or the Paperwork Reduction Act. The provisions of this interim rule related to tobacco warehouse assistance, pasture recovery, oilseeds assistance, and livestock assistance for contract growers implement provisions of Subtitle A and thus are issued as final and are effective immediately.

The provisions of this interim rule related to the Livestock Indemnity and the American Indian Livestock Feed Programs finalize regulations for which interim rules were previously issued and are thus issued as final. The public comments to those interim rules are addressed in the Background section of this rule.

The provisions of this interim rule related to 7 CFR 1400 and 7 CFR 1427.25 are simply technical amendments to clarify the existing regulations for consistent and efficient administration and are thus issued as final.

The provisions of this interim rule related to the reorganization of 7 CFR 1439, Emergency Livestock Assistance, simply remove obsolete regulations and are thus issued as final.

The provisions of this interim rule related to cottonseed assistance, the competitiveness program for ELS cotton, and flood assistance for Harney County, Oregon are not exempt from the notice and comment requirements, and are issued as interim rules, effective

immediately, but public comments are requested and will be considered before the regulations are issued as final. Comments on the provisions of this interim rule related to cottonseed assistance, the competitiveness program for ELS cotton, and flood assistance for Harney County, Oregon must be received by July 10, 2000 to be assured of consideration. Comments on the information collections for these programs must be received by August 7, 2000.

**Executive Order 12866**

This final rule is issued in conformance with Executive Order 12866 and has been determined to be economically significant and has been reviewed by the Office of Management and Budget. A cost-benefit assessment was completed and is summarized after the background section explaining the actions this rule will take.

**Federal Assistance Programs**

The titles and numbers of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: Commodity Loan Deficiency Payments—10.051; Production Flexibility Payments for Contract Commodities—10.055; Conservation Reserve Program—10.069, Disaster Reserve Assistance—10.452.

**Regulatory Flexibility Act**

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because USDA is not 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 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 Title II of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because

the USDA is not 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.

#### **Small Business Regulatory Enforcement Fairness Act of 1996**

Section 824 of Pub. L. 106-78 requires that the regulations necessary to implement Title VIII, Subtitle A of Pub. L. 106-78 be issued as soon as practicable and without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. It also requires that the Secretary use the provisions of 5 U.S.C. 808 (the Small Business Regulatory Enforcement Fairness Act (SBREFA)), which provides that a rule may take effect at such time as the agency may determine if the agency finds for good cause that public notice is impracticable, unnecessary, or contrary to the public purpose, and thus does not have to meet the requirements of § 801 of SBREFA requiring a 60-day delay for Congressional review of a major regulation before the regulation can go into effect. This interim rule is considered a major rule for the purposes of SBREFA. However, the regulations for tobacco warehouse assistance, pasture recovery, oilseeds assistance, and livestock assistance for contract growers implement provisions of Subtitle A of Pub. L. 106-78. These regulations affect the incomes of a large number of agricultural producers who have been hit hard by natural disasters and poor market conditions. Accordingly, because it would be contrary to the public interest to delay those provisions of this rule, as expressed in Pub. L. 106-78, they are issued as final and are effective immediately.

The provisions of this interim rule for cottonseed assistance, the competitiveness program for ELS cotton, and flood assistance for Harney County, Oregon are not exempt from the notice and comment or the Congressional Review requirements. With respect to these items, for which public comment will be sought, it has been determined that the new regulations should be made effective immediately as in each one of the cases further delay in making benefits available would delay legislated emergency relief. In the case of the provision for extra long staple cotton, the rule merely codifies a statutory formula for relief. In the case of cottonseed payments, the rule will allow recovery in a timely manner for

damages that have already been suffered, as will also be the case with the relief provide for Harney County producers. The new regulations, however, are flexible enough to allow the agency to suspend the new provisions for these three new programs in the event that cause for doing so should appear in the comments. In the meantime, however, should no such cause appear, making the regulations effective will allow the regulations to proceed to be used to provide what could be much needed and timely relief for the parties involved, just as relief for others has been provided through a number of other new programs provided for in recent legislation. Likewise, with respect to the Small Business Regulatory Enforcement Fairness Act (SBREFA), which allows for a pre-issuance Congressional review period for some rules, it has been determined that this rule should be made effective immediately on all of its provisions as a delay in implementing the rule would be impracticable and contrary to the public interest.

#### **Paperwork Reduction Act**

Section 824 of Pub. L. 106-78 requires that the regulations implementing the provisions of Subtitle A, Title VIII of Pub. L. 106-78 are to be promulgated without regard to the Paperwork Reduction Act. This means that the normal 60-day public comment period and OMB approval of the information collections required by this rule are not required before the regulations may be made effective. However, the 60-day public comment period and OMB approval under the provisions of 44 U.S.C. chapter 35 are still required after the rule is published. The provisions of this rule that are not mandated by Subtitle A are subject to the normal requirements of the Paperwork Reduction Act. Those provisions are cottonseed assistance, the competitiveness program for ELS cotton, and flood assistance for Harney County, Oregon. Information Collection Packages and requests for emergency approval for those provisions have been submitted to OMB and are summarized as follows:.

*Title:* Emergency Assistance for Harney County, Oregon (7 CFR part 1478)

*OMB Control Number:* 0560-NEW  
*Type of Request:* Approval of a new information collection.

*Abstract:* Emergency Assistance for Harney County, Oregon is authorized under H.R. 3194, P.L. 106-113 (113 Stat. 1501). To determine benefits due to eligible producers requesting assistance in accordance with regulations, FSA

proposes to use the CCC-454 (Flood Compensation Program). The CCC-454 will be used to document the verification of loss of production because of flooding in 1999.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 2 hours per producer.

*Respondents:* Producers of Harney County, Oregon

*Estimated Number of Respondents:* 40

*Estimated Number of Responses per Respondents:* 1

*Estimated Total Annual Burden on Respondents:* 80 hours

Copies of the information collection may be obtained from Helen Smith, USDA-FSA-PECD, 1400 Independence Avenue, S.W., STOP 0517, Washington, D.C. 20250-0515; Telephone (202) 720-7954 or e-mail

*helen\_smith@wdc.fsa.usda.gov.*

*Title:* Cottonseed Payment Program Application/Certification

*OMB Control Number:* 0560-NEW

*Type of Request:* Approval of a new information collection.

*Abstract:* This new collection instrument is the application and certification form to be used by cotton gins to request payments under the Cottonseed Payment Program. The information requested will be used to determine the national payment rate and to compute individual program payment amounts for each applicant.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 40 minutes per producer.

*Respondents:* Cotton Gins

*Estimated Number of Respondents:* 1,100

*Estimated Number of Responses per Respondent:* 1

*Estimated Total Annual Burden on Respondents:* 733 hours

Copies of the information collection may be obtained from Gene Rosera, USDA-FSA-PSD, 1400 Independence Avenue, S.W., STOP 0512, Washington, D.C. 20250; Telephone (202) 720-8481 or e-mail *gene\_rosera@wdc.fsa.usda.gov.*

*Title:* ELS Cotton Competitiveness Payment Program

*OMB Control Number:* 0560-NEW

*Type of Request:* Approval of a new information collection

*Abstract:* This collection will enroll Extra Long Staple (ELS) cotton exports and textile manufacturers in the ELS Cotton Competitiveness Payment Program and allow them to report their activity with respect to ELS cotton so that proper payments can be made to them. The ELS competitive payment program was authorized by the Consolidated Appropriations Act for

Fiscal Year 2000, Pub.L. 106-113, and was mandated to begin October 1, 1999. A method has been devised to determine each Tuesday whether a payment should be made during the following Wednesday-through-Tuesday week and rate per pound of any payment. In the period since October 1, 1999, were triggered only during the period April 4, 2000, through May 2, 2000. Clearance of CCC-1045A (ELS Cotton Exporter/Domestic User Agreement) would facilitate enrollment of the exporters and textile manufacturing firms who wish to participate.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 30 minutes per respondent.

*Respondents:* Cotton Exports and Textile Manufacturers

*Estimated Number of Respondents:* 40

*Estimated Number of Responses per Respondents:* 58

*Estimated Total Annual Burden on Respondents:* 780 hours

Copies of the information collection may be obtained from Wayne BJORLIE, USDA-FSA-EPAS, 1400 Independence Avenue, S.W., STOP 0515, Washington, D.C. 20250-0515; Telephone (202) 720-7954 or e-mail [wayne\\_bjorlie@wdc.fsa.usda.gov](mailto:wayne_bjorlie@wdc.fsa.usda.gov).

Proposed topics for comments for each of the three information collections are: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Tom WITZIG, USDA-FSA-ORAS, 1400 Independence Avenue, S.W., STOP 0540, Washington, D.C. 20250-0540; Telephone (202) 205-5851 or e-mail [tom\\_witzig@wdc.fsa.usda.gov](mailto:tom_witzig@wdc.fsa.usda.gov).

## Background

This rule will implement requirements of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies

Appropriations Act, 2000, (Pub. L. 106-78), and the Omnibus Consolidated Appropriations Act, 2000 (Pub. L. 106-113) related to agricultural disaster and market assistance for agricultural producers. It will also implement several other provisions of those and other Acts that are related to but not in themselves crop or market loss assistance provisions. Crop and market assistance provisions of the Acts that are being implemented are the Cottonseed Market Loss Assistance Program, the competitiveness program for ELS cotton, Warehouse-Stored Tobacco Loss Assistance, the Pasture Recovery Program, the Oilseeds Program, emergency assistance for Harney County, Oregon, and livestock assistance for contract growers. This rule will also finalize the existing regulations for the Livestock Indemnity and American Indian Livestock Feed Programs, reorganize 7 CFR 1439, Livestock Disaster Assistance, and make clarifying amendments to 7 CFR 1400. Descriptions of this rule's provisions follow.

### 1. 7 CFR Part 1400—Payment Limitation and Payment Eligibility

Amendments are being made to 7 CFR part 1400 to supplement and clarify the existing regulations for consistent and efficient administration. The revisions are not considered significant in that no additional requirements are imposed upon the producers and no additional responsibilities are placed on the Farm Service Agency or USDA to administer the provisions of this part. The table in § 1400.1(g) is being amended to include the applicable limitation on cost-share payments for conservation practices under the Environmental Quality Incentives Program (EQIP). Section 1400.2 is being amended to include the requirement that all necessary forms be submitted and applicable determinations made before any payments can be issued for the programs subject to this part. The section is further amended to include a provision for the review of the applicable forms and information submitted by producers for the determination of compliance with this part.

### 2. 7 CFR Part 1411—Oilseeds Program

Section 804 of Pub. L. 106-78 provides generally that the Secretary shall use \$475 million of funds of the Commodity Credit Corporation (CCC) to make payments to producers of the 1999 crop of oilseeds who are eligible to obtain a marketing assistance loan under § 131 of the Agricultural Market Transition Act (7 U.S.C. 7231). Section

804 further provides that a payment to producers on a farm under that section for an oilseed shall be equal to the product obtained by multiplying (1) the payment rate determined by the Secretary, by (2) the acreage of the producers on the farm for the oilseed, as determined under the statute, by (3) the producers' yield for the oilseed, as determined under the statute. With respect to acreage, the statute provided generally that the payment acreage of the producers on the farm for an oilseed shall be equal to the greater of (1) the number of acres planted to the oilseed by the producers on the farm during the 1997 crop year, as reported by the producers on the farm to the Secretary (including any acreage reports that are filed late), or (2) the number of acres planted to the oilseed by the producers on the farm during the 1998 crop year, as reported by the producers on the farm to the Secretary (including any acreage reports that are filed late). As an exception, however, the statute provides that in the case of producers on a farm that planted acreage to an oilseed during the 1999 crop year but did not plant that oilseed in the 1997 or 1998 crop years, the acreage of such "new" producers for that oilseed shall be equal to the number of acres planted to the oilseed by the producers on the farm during the 1999 crop year, as reported by the producers on the farm to the Secretary (including any acreage reports that are filed late). With respect to yield, the statute provides that in the case of soybeans, the yield of established eligible producers (those with 1999 production and production in 1997 or 1998) on a farm shall be equal to the greatest of (1) the average county yield per harvested acre for each of the 1994 through 1998 crop years, excluding the crop year with the highest yield per harvested acre and the crop year with the lowest yield per harvested acre, (2) the actual yield of the producer for the 1997 crop year; or (3) the actual yield of the producer for the 1998 crop year. For other oilseeds the statute provides that the yield of established producers shall be equal to the greatest of (1) the average national yield per harvested acre for each of the 1994 through 1998 crop years, excluding the crop year with the highest yield per harvested acre and the crop year with the lowest yield per harvested acre, (2) the actual yield of the producer for the 1997 crop year; or (3) the actual yield of the producer for the 1998 crop year. For new producers, for all oilseeds, the statute provides that the yield will be the greater of (1) the average county yield per harvested acre for each of the 1994 through 1998 crop

years, excluding the crop year with the highest yield per harvested acre and the crop year with the lowest yield per harvested acre; or (2) the actual yield of the producers on the farm for the 1999 crop. Finally, the statute provides that to the maximum extent available, the Secretary shall use data provided by the National Agricultural Statistics Service to carry out the new program.

As provided in the legislation, only those producers who planted an eligible oilseed for the 1999 crop year will be eligible for benefits under this program and no more than \$475 million may be expended, subject further to such administrative deductions as may apply.

Benefits will be determined by multiplying the eligible producer's payment acreage times the applicable yield by the applicable payment rate. The final payment rate will be determined by the Secretary after the sign-up period, to allow the Secretary to establish a rate that will limit total payments to not more than the allocated amount. Because proration can only be made if all claims are made in a timely fashion, no late-filed applications will be permitted. Deadlines will be announced by press release and information about the program will be available at local Farm Service Agency offices.

If the producer is considered to be a "new" producer, the producer's qualifying acreage will be all acreage planted by the producer on all farms in which the producer has an interest for the 1999 crop, adjusted to reflect partial interests where there is more than one producer on the same acreage. If the producer is considered to be an "established" producer, the acreage, similarly adjusted for partial interests, will be the producer's highest acreage use in 1997 or 1998 at all locations for that oilseed. In all cases, however, for all oilseeds, the producer, in order to be eligible for payment, must have actually planted that particular oilseed for the 1999 crop year. Producers are eligible to receive payments on more than one oilseed so long as the producer shared in the production of each such oilseed for the 1999 crop year. A producer is considered to be a new producer of an oilseed if the producer shared in the production of the oilseed for the 1999 crop year, but did not share in the production of the oilseed on any farm for the 1998 or 1997 crop years. The producer is not considered to be a new producer of an oilseed if the producer shared in the production of an oilseed on any farm in which the producer had an interest in the 1999 crop year, and shared in the production of that specific oilseed in either or both of the 1998 or

1997 crop years. Acreage not planted to an oilseed crop, even if that acreage was approved as acreage for prevented-planting credit for some other purpose (that is, was acreage on which planting was prevented by circumstances beyond the producer's control, so called "prevented-planting acreage") does not qualify for any benefit calculation under this new program. That is, that acreage will not qualify the producer for a payment.

With respect to yields, the Secretary will announce average soybean yields for each county, and, for minor oilseeds, a national average yield will be announced. Producers may substitute actual yields for average yields and, if subject to a spot check, shall document oilseed disposition on FSA-658 for all planted acres for the year in question or by providing RMA documentation with proven yield information for all of the planted acres in question. All documentation must be approved by the county committee. New producers may receive an oilseed payment based on the higher of the applicable average yield of the control county for soybeans or national average yield for all other eligible oilseeds, or the producer's actual yield for all acreage for the 1999 crop year (if established to the county committee's satisfaction). An oilseed producer who is not a new producer may receive an oilseed payment based on the higher of the applicable average yield for the producer's control county, for soybeans or national average yield for all other eligible oilseeds, or the higher actual yield for all the producer's planted acreage of the oilseed for either the 1997 or 1998 crop year (regardless of which of those two years was used to set the qualifying acreage).

As provided for in the statute, producers are entitled to receive a payment amount equal to the result of multiplying the payment acreage, times the payment yield, times the final payment rate determined by the Secretary. All persons must meet all eligibility requirements and must, to receive payments, be in compliance with the provisions for highly-erodible land, wetland conservation, and with those regarding controlled substances that are found in 7 CFR part 12 and 7 CFR 718.11. Additionally, a producer who is determined to have intentionally misrepresented any fact affecting a program determination will not be entitled to oilseed payments and must refund all payments, plus interest, and be subject to such other remedies as may be allowed by law.

While the statute involved may be open to several interpretations on significant questions, these rules are

intended to provide for an efficient administration of the program consistent with the provisions of the statute itself. Thus, for example, while the references in the legislation to producers "on a farm" could suggest that the program was to be interpreted as allowing producers to qualify separately farm-by-farm, rather than qualify on the basis of all farms in which they have an interest, such an interpretation would produce a windfall for some producers (at the expense of other producers) and would not seem to be consistent with the intent of the statute to have producers share in the program based on actual production levels. That is, while there are references in the statute to "producers on the farm" the statute does not itself specify that the calculation of production history will be limited to what the producer produced on a particular farm. There is a chance for a windfall with a different interpretation in that if a farmer produced soybeans for 1997 and 1998 on two different farms in rotation or otherwise, that farm would be able to receive a double benefit if the producer could qualify for benefits for each farm separately. Such a doubling of benefit would be to the detriment of other soybean producers who are to share in the finite amount of money available for the program, including those that maybe have grown an equal amount of soybeans in 1997 and 1998 but did so on the same "farm."

Also, with respect to yields for new producers of oilseeds other than soybeans, the statute does call for using a county average yield if the producer cannot prove a higher yield. However, because county data for these other oilseeds is limited, so as to raise doubts about its reliability, national average data will be considered to establish the county yield for these oilseeds unless there is adequate proof of a county yield to the contrary, as determined by the local county committee with State Committee approval.

Also, this rule contains a special rule with respect to powers of attorney. In those instances in which, prior to the issuance of this regulation, a producer has signed a power of attorney on an approved FSA form FSA-211 for a person or entity indicating that such power shall extend to "all above programs", without limitation, such power will be considered to extend to this program unless within 14 days of the issuance of this regulation the person granting the power shall notify the local FSA office that the grantee of the power is not authorized to handle transactions for this program for the grantor. This will allow payments to be

made quickly and efficiently while also allowing a mechanism for the grantor of the power to make program decisions directly.

*3. 7 CFR Part 1427—Cottonseed Payment and Extra Long Staple Cotton Competitiveness Payment Programs and Definition of Base Quality for Upland Cotton*

**A. Cottonseed Market Assistance**

Section 104(a) of Pub. L. 106–113 provides authority for the Secretary to provide assistance to producers or first handlers of the 1999 crop of cottonseed. This authority is being used to implement a new program because of the continuing low prices of cottonseed that, in some cases, have been passed along to cotton producers in the form of increased ginning fees. Specifically, in Pub. L. 106–113, Congress provided that of the funds made available under § 802 of Pub. L. 106–78 that were not otherwise needed to fully implement that section, the Secretary may use up to \$4.7 million to carry out title IX of Pub. L. 106–78. Further, however, Congress provided that of the funds made available under § 802 of Pub. L. 106–78 (excluding any funds authorized by to carry out title IX of Pub. L. 106–78) and under § 1111 of Pub. L. 105–277 not otherwise needed to fully implement those sections, the Secretary may provide assistance to producers or first-handlers for the 1999 crop of cottonseed. Both of those sections provided for market loss assistance through the making of supplemental payments to person with contracts under the Production Flexibility Contract program operated by the Department. Finally, in this respect the Congress provided that if any funds remained, the Secretary could use the funds to provide for a new program for extra long staple cotton, which is addressed later in this rule.

Consistent with the legislation, funding for the cottonseed program is provided from a portion of the residual funds authorized for Pub. L. 106–78 and Pub. L. 105–277. Because outlays for this program will be limited to a fixed amount, all payments will be made only after the total eligible quantity of cottonseed can be determined from approved applications.

The major provisions of this program are as follows. CCC will announce an application period during which U.S. cotton gins may apply for cottonseed payments based on the number of bales of cotton and weight of lint ginned from the 1999 cotton crop.

At the close of the application period, based on the number of bales for which

payment is requested, CCC will estimate the total national quantity of cottonseed for payment. The payment rate per ton of cottonseed and payments to applicants will then be determined based on total available program funds. The resulting payments to cotton gins will not be subject to any per-person payment limitation. Applicants must agree to share any payment received with the producer of the cotton that was the basis of the payment to the extent that the effect of low cottonseed prices was borne by the producer rather than the gin. To the extent such funds will go to individual producers, those funds will be considered to have been received by the applicant on behalf of such producers. The recourse for producers dissatisfied with the distribution by the gin will be to make use of whatever private civil remedies they may possess against the gin. This distribution has been settled upon in light of the impossibility of making timely, reasonable, and effective individual determinations for each gin and each bale of cotton as to how the effect of cottonseed prices was actually distributed. This is consistent with the precise wording of the statute, which appears to contemplate a distribution to gins alone. In that regard, the statute allows for payments to gins “or” producers, rather than to gins “and” producers.

**B. Extra Long Staple Cotton Competitiveness Payment Program**

As indicated above, Congress authorized the use of a particular source of funds for a cottonseed program and allowed any remaining funds to be used for a new program for extra long staple cotton. Specifically, within those limits, Congress provided for this new program by adding a new section, 136A, to the Agricultural Market Transition Act. That new section specifies that, within funding limits, notwithstanding any other provision of law, during the period beginning October 1, 1999, and ending July 31, 2003, the Secretary shall carry out a program to maintain and expand the domestic use of extra long staple cotton produced in the United States, to increase exports of extra long staple cotton produced in the United States, and to ensure that extra long staple cotton produced in the United States remains competitive in world markets. Under the program, the statute provides, the Secretary shall make payments available whenever (1) for a consecutive 4-week period, the world market price for the lowest priced competing growth of extra long staple cotton (adjusted to United States quality and location and for other factors

affecting the competitiveness of such cotton), as determined by the Secretary, is below the prevailing United States price for a competing growth of extra long staple cotton; and (2) the lowest-priced competing growth of extra long staple cotton (adjusted to United States quality and location), as determined by the Secretary, is less than 134 percent of the loan rate for extra long staple cotton. Further, § 136 provides that the Secretary shall make payments available under this section to domestic users of extra long staple cotton produced in the United States and exporters of extra long staple cotton produced in the United States who enter into an agreement with CCC to participate in the program. Payments are, by the statute, to be based on the amount of the difference in the prices as determined for the last week of the qualifying period multiplied by the amount of documented purchases by domestic users and sales for export by exporters made in the week following such 4-week period. Finally, the statute provides payments shall be made through the issuance of cash or marketing certificates, at the option of eligible recipients of the payments. As set out in the statute and as implemented in the regulations provided for in this rule, the program is designed so that payments would trigger in response to a deterioration in the competitive position of U.S.-grown ELS cotton in relation to foreign ELS cotton growths. If non-U.S. prices move sufficiently lower, or if U.S. spot prices move sufficiently higher, payments to exporters of U.S.-grown ELS cotton would be triggered after four weeks during which the U.S. spot price for a specific quality of ELS cotton exceeds the lowest adjusted foreign price quotation for a comparable quality. Exporters then would receive the payment on every eligible bale shipped while the program is triggered. U.S. domestic mills also would receive the payment on every eligible bale of U.S.-grown ELS cotton opened during that time.

**C. Definition of Base Quality for Upland Cotton**

A base quality for upland cotton must be defined so that a bale of upland cotton showing any deviation from the base quality may be properly valued for purpose of determining a loan rate under the marketing assistance loan program for upland cotton. In an effort to improve the quality of American raw cotton for spinning, the cotton industry recommended a redefinition of base fiber strength and the introduction of the length uniformity percentage for

purposes of the marketing loan. The regulation at 7 CFR 1427.25 is being revised to conform to the schedule of loan premiums and discounts for the 2000 crop. Beginning August 1, 2000, the definition of base strength will be changed and a definition of base length uniformity will be introduced. The changes bring the regulation and the loan schedule back into balance, reestablishing the base quality at zero premium/discount so that no additional program cost will result.

#### 4. 7 CFR Part 1439—Emergency Livestock Assistance

##### A. Pasture Recovery Program

Section 805 of Pub. L. 106–78 provides that the Secretary shall use \$325 million of CCC funds to provide assistance directly to livestock and dairy producers, in a manner determined appropriate by the Secretary, to compensate the producers for economic losses incurred during 1999. Further, in § 825 of the same legislation Congress provided that of the funds provided in §§ 801 and 805 of that Act, no less than \$200 million in assistance would be required to be made in the form of assistance to livestock producers for losses due to drought or other natural disasters. In § 801 of that Act, Congress, without limitation to particular kinds of production, authorized the use of \$1.2 billion in Commodity Credit Corporation funds to make emergency financial assistance available to producers on farms that have incurred losses in a 1999 crop due to a disaster, as determined by the Secretary. Pub. L. 106–113 appropriated an additional \$186 million to the sum provided for in § 801 of Pub. L. 106–113.

Pursuant to the authority contained in Pub. L. No. 106–78, new Livestock Indemnity and Livestock Assistance Programs for losses incurred during 1999 were provided for in an omnibus rule published on February 16, 2000 (65 FR 7942).

However, it has been further decided that additional relief should be provided for livestock interests under the authority contained in Pub. L. 106–78. To that end, this rule uses the authorities set forth above to provide for a new Pasture Recovery Program (PRP) that is to be included in 7 CFR part 1439 and will provide payments to owners and operators of pasture land on which livestock is normally grazed who suffered pasture losses due to drought during calendar year 1999. Eligible producers must agree to reestablish the forage crop and maintain the crop for three full years after the calendar year of installation. PRP payments will be

authorized only in counties determined eligible for the most recent Livestock Assistance Program and approved for assistance for 1999 losses due to drought under the Emergency Conservation Program that is provided for in 7 CFR part 701. For the land to be eligible, it must be established pasture land on which livestock is normally grazed but that was so damaged or destroyed by drought or related conditions that seeding is required to reestablish a cover. Hayland and rangeland will not be eligible, nor will land operated by the Federal or a State Government or a political subdivisions of a State. To be an eligible recipient of program benefits, the applicant must be an owner or operator of eligible land damaged or destroyed in 1999 who normally grazes livestock on such land and such applicant must be the person who will restore and maintain the property for three full years after the calendar year of installation.

All conditions must be satisfied if a person is to be eligible for a PRP payment. For example, if an owner leases pasture land to an operator for grazing the operator's livestock, then the operator is eligible for a PRP payment only if the operator reestablishes the forage crop on the leased pasture land and has a lease and the equipment necessary to maintain the forage crop for one full year after the calendar year of installation. If an owner leases pasture land to an operator who normally grazes the operator's livestock but the owner agrees to reestablish the forage crop on the pasture land, then neither the operator nor the owner are eligible for PRP benefits because neither can meet all of the eligibility requirements. The owner is ineligible because the owner does not normally graze livestock on the pasture land, and the operator is ineligible because the operator did not reestablish the forage crop on the pasture land. Other restrictions will apply as well in the administration of the program. Among them, the land must be in a county that was approved for participation in the 1999 Livestock Assistance Program (LAP), which was provided for by a rule published on February 16, 2000, and that county must have had a 120-day payment period for purposes of the 1999 LAP. Further, the county in which the land is located must be a county that, based on 1999 drought-induced losses, was approved for participation in the Emergency Conservation Program (ECP) by virtue of an application submitted prior to March 1, 2000. The ECP is provided for in 7 CFR part 701.

This program will be subject to the general provisions for emergency livestock assistance programs found in what will now be Subpart A of part 1439. That subpart is republished in this rule. That subpart provides for limitations on payments that are effectively adopted in this rule by not exempting the PRP from those provisions. In addition limits on payments are provided in the rules themselves.

Accordingly, and in order to efficiently maximize the use of program funds for those farmers most in need of relief, this new program, like others in part 1439, will not be available to a person whose annual gross revenue is in excess of \$2.5 million. Further, however, benefits are limited to \$2,500 per "person" determined according to the "person" determination regulations at 7 CFR part 1400 applicable to a number of other USDA programs.

In order to receive payments, applicants will be required to certify that pasture land to be enrolled in the PRP was so damaged or destroyed by drought or related conditions during calendar year 1999 that seeding is required to reestablish the forage crop. State Farm Service Agency (FSA) committees will establish per-acre payment rates equal to 50 percent of the eligible area's average cost of reestablishing the approved forage crop on eligible pasture land not to exceed \$75 per acre. The FSA Deputy Administrator for Farm Programs may approve higher per-acre payment rates not to exceed \$125 per acre. In no case will per-acre payment rates exceed \$125 per acre. Seeding and related fertilizing requirements will be required to be carried out according to standards for agronomic practices and applicable environmental laws and regulations. Payments may be issued upon certification by the participant that approved practices to reestablish the forage crop have been completed. Certifications are subject to spot check by FSA.

Signup periods for this new program will be announced by CCC, but are expected to be conducted no later than the spring 2000 planting season for affected regions. It is expected that all seeding will be required to be completed in calendar year 2000 by a date announced by CCC. Because this new program is operated under authority contained in Pub. L. 106–78, it is subject to the exemptions from rulemaking and from the Paperwork Reduction Act that are contained in Pub. L. 106–78.

### B. Livestock Indemnity Program for Contract Growers

Title I of Pub. L. 106–113 provided an additional \$10 million for the livestock assistance authorized by § 805 of Pub. L. 106–78 and specified that this additional amount could be used to provide assistance to persons who raise livestock owned by other persons so as to provide relief for income losses sustained with respect to such livestock during 1999, if the Secretary finds that such losses are the result of natural disasters. In order to make use of that authority, a new subpart for 7 CFR part 1439 is provided for in this rule that will establish regulations for such relief. The new Livestock Indemnity Program for Contract Growers (CG–LIP) would provide benefits to eligible livestock producers who, due to a natural disaster in calendar year 1999, sustained a loss of income handling livestock in which they did not have an ownership interest. The loss must have been suffered in an area that was the subject of a Presidential or Secretarial disaster declaration. Producers in contiguous counties that were not designated as a disaster area are not eligible for benefits. Eligible livestock for purposes of the program are beef and dairy cattle, sheep, goats, swine, poultry (including egg-producing poultry), equine animals used for food or in the production of food, and buffalo and beefalo when maintained on the same basis as beef cattle. Such livestock must have been handled pursuant to a contract between the producer and owner. Applications for benefits must be submitted at the local county FSA office by May 1, 2000, or such other date as established by CCC. Livestock producers must provide adequate proof of loss and of the corresponding reduction in income. Subject to the availability of funds, payments shall be made in an amount determined by multiplying the national payment rate for the livestock category as determined by CCC by the qualifying loss. If the claims exceed the allotted funds, claims may be prorated or otherwise adjusted to account for the limited funds. For the same reasons as for the new Pasture Recovery Program, the \$2.5 million gross revenue test will apply, as will a \$40,000 per-person payment limit. FSA may, as needed, reduce benefits to avoid duplication with other programs and may exclude those claimants who were related to, or affiliated with the owners of the livestock so as to limit the program to those contract producers who were truly separate from the owners of the livestock and thus did not benefit directly or indirectly from other

livestock programs, which were owner-focused.

### C. General Revision of 7 CFR Part 1439

This rule also finalizes other amendments recently made to part 1439. In a final rule published on March 19, 1999 (64 FR 13497), part 1439 was generally reorganized. Also, that rule provided for a new LAP program. Thereafter, an interim rule was published on August 31, 1999 (64 FR 47358), which provided for a new Flood Compensation Program (FCP). Likewise, the FCP was codified in part 1439. That rule was followed in turn by an interim rule published on November 1, 1999 (64 FR 58766), which provided for a new Livestock Indemnity Program. In the meantime, as indicated, Pub. L. 106–78 was enacted, which allowed for new relief for livestock interests and led to a new rule published on February 16, 2000 (65 FR 7942) that updated the LIP and LAP regulations so as to provide for the new LIP and LAP provisions.

The March 19, 1999 rule reorganizing part 1439 took into account the existence of the regulations published on November 27, 1998 (63 FR 65524), creating, by an interim rule, the American Indian Livestock Feed Program (AILFP), but did not finalize those regulations. Hence, prior to this time, there have been three interim rules pending for part 1439: (1) The AILFP rule of November 27, 1998, (2) the FCP rule of August 31, 1999, and (3) the LIP rule of November 1, 1999. For all three interim rules, the comment periods are closed and those rules are made final in this rule.

With respect to comments, none were received for the LIP and FCP rules. Accordingly, and on further review, no changes were needed in those regulations. For the AILFP two comments were received. First, the comments suggested that the benefits of the AILFP should not be limited to tribal-governed land but should include non-dependent lands that are now held by private persons but were formerly reservation. The AILFP is a very limited program with very limited funds. This comment was not adopted in light of the limited funds available and also because the limitations contained in the program reflected the sovereign-to-sovereign nature of this special program. Also, citing Executive Order No. 13804, § 3(b), a comment suggested that the tribes be compensated for their AILFP efforts. This comment was not adopted because the program is not a regulatory program but a voluntary program to which the Executive Order does not apply. Also, however, on reviewing the rule, it was determined that a definition of

“dependent Indian community” should be added. Under the interim rule, a “dependent Indian community” is one of the categories of land that are considered under the rule to be “tribal governed land.” In this new rule, that phrase would be defined to mean a limited category of Indian lands that are neither reservations nor allotments and are found by FSA to be: (a) Land set aside by the Federal Government for the use of Indians as Indian land; and (b) under Federal superintendence.

With respect to the FCP, as all claims in that program are past claims, there does not appear to be a good reason to republish the regulations. Hence, they are removed by this rule, though such removal will not affect any past, pending, or future claims under that program. Also, with respect to the AILFP regulations, a provision has been added to § 1439.902 so that the regulations for that program will, except for the change noted above, be the same as they were in substance despite the reorganization of part 1439. Also, for consolidation purposes, the LIP regulations have been renumbered. Conforming amendments to existing rules have also been added as needed to reflect the reorganization of part 1439. The language dealing with the application deadline for the 1999 LAP program was changed because of changed circumstances. Also at various places in the regulations provisions have been added to make explicit that nothing in the regulations will require expenditures for programs beyond that which is deemed appropriate by CCC with respect to overall funding levels, taking into account statutory limits.

### 5. 7 CFR Part 1464—Assistance for Losses of Certain Warehouse-Stored Tobacco

Section 803 of Pub. L. 106–78 authorized the Secretary to use \$328 million of CCC funds to make payments to States with tobacco producers whose 1999 poundage quotas or acreage allotments for tobacco were reduced from 1998 crop year levels due to a drop in the national marketing quote or poundage quota for their kind of tobacco. In addition, Pub. L. 106–78 made provision for a number of other programs, which were implemented by a final rule published in the **Federal Register** on February 16 (65 FR 7942). The provisions dealing with the \$328 million for tobacco producers were codified at 7 CFR Part 1464, Subpart C. Those regulations call for the funds to be distributed by the individual States with qualifying persons. This follows the language of § 803, which basically calls for the distribution of the funds to



be made in the same way that state trusts are making \$5 billion available to tobacco growers using the so-called "Phase II" funds made available by tobacco companies.

Section 803(c) of Pub. L. 106-78 defines those persons who were eligible to receive the tobacco payments as being those persons who own or operate, or produce tobacco on, a farm: (A) For which the quantity of quota allotted to the farm under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 *et seq.*) was reduced from the 1998 crop year to the 1999 crop year; and (B) that was used for the production of tobacco during the 1998 or 1999 crop year. As for the distribution of the funds and amounts, § 803 called for the funds to be distributed in the same way as the States were or are distributing the so-called "Phase II" funds made available by tobacco companies to producers through state trusts.

While Pub. L. 106-78 was being considered there was a series of severe weather conditions in the flue-cured tobacco growing area of North Carolina. In particular, there were three hurricanes that hit in quick succession, leading to widespread flooding in that area. That flooding destroyed some 1999-crop tobacco that had been delivered to warehouses for sale by producers under the customary auction warehouse system. Some of this tobacco had not yet, however, been sold at auction and producers still held the risk of loss on that tobacco even though the tobacco had been harvested and thus was not eligible for coverage under the normal crop loss programs run by the Department.

Subsequently, Pub. L. 106-113, provided an additional \$2.8 million for tobacco assistance authorized by § 803(c)(1) of Pub. L. 106-78 and provided "that the definition of eligible persons in § 803(c)(2) of Pub. L. 106-78 shall include producers who have suffered quality or quantity losses due to natural disasters on crops harvested and placed in a warehouse and not sold." The quoted language constitutes essentially the entirety of the statutory provision.

Literally, the new language would only seem to simply add an additional amount to the \$328 provided for in § 803 without, as such, changing the distribution method called for in § 803, and would seem to be limited to a technical adjustment of the eligibility definition contained in § 803(c)(3). However, the intent of the language seems clearly, instead, given the background set forth above and other factors, to provide relief to those flue-

cured producers who had tobacco that was still theirs in the flooded warehouses but that was lost. This would follow from the nature of the language adopted, from the timing of the bill and from the amount allotted. The original \$328 million roughly corresponded to a dollar per pound for all tobacco that met the eligibility criteria of the original legislation and the additional \$2.8 million corresponds to roughly a dollar per pound for the amount of producer tobacco that internal Department assessments made prior to the passage of Pub. L. 106-113 indicated had been lost in flue-cured warehouses in North Carolina as the result of the three hurricanes. Damage of the kind covered by the legislation appears to be limited to North Carolina. Furthermore, simply adding to the definition of 803(c)(3) would not seem to be purposeful in and of itself if that addition was not meant to indicate a separate kind of payment, since, presumably all of the persons who lost tobacco in the warehouses during the natural disaster were persons who already met the definition in 803(c)(3). Rather, the addition only appears to make sense as a method of indicating a separate form of recovery for producers whose incomes for the tobaccos covered by § 803 were reduced by the warehouse disasters caused by the floods. Of the tobaccos covered in § 803 (those which, nationally, had reduced quotas or allotment for 1999), the only tobacco that appears to have had any sort of widespread 1999-crop loss in warehouses due to a natural disaster at or near the time that Pub. L. 106-113 enacted was flue-cured tobacco.

In addition, there is a limited amount of funds made available by Pub. L. 106-113, and no payment formula is specified. Accordingly there is some discretion involved in deciding which claims to honor and how the funds will be distributed. Further, timely decision must be made about the distribution of the funds so that the universe of claims can be determined and the funds apportioned.

To that end, this rule provides for the \$2.8 million to be distributed directly by the Department and provides that, except as determined by the Deputy Administrator for Farm Program of the Farm Service Agency upon petition, payable only on flue-cured tobacco and only for those losses in North Carolina as a result of the recent hurricanes. Because material damage appears to be limited to North Carolina, normal signup will be limited to that State. However, there are references in the rule to the ability of persons to petition the Deputy Administrator for relief so as to

provide the leeway necessary in the event that there are meritorious circumstances of which the Department is not aware that were widespread and that should be considered to assure that all claims are reviewed. In all cases, requests for relief must meet the deadlines provided for in the regulations that are published in this rule.

#### *6. 7 CFR Part 1479—Flood Assistance for Harney County, Oregon*

In Pub. L. No. 106-113 Congress also provided that CCC could use up to \$1.09 million of its funds to provide emergency assistance to producers on farms located in Harney County, Oregon, who suffered flood-related crop and forage losses in 1999 and several previous years and are expected to suffer continuing economic losses until the flood waters recede. Congress provided that any amounts made available should be for such losses for such years as determined appropriate by the Secretary to compensate such producers for hay, grain, and pasture losses due to the floods and for related economic losses.

General regulations for programs of this type are provided for in 7 CFR part 1478, 1999 Crop Disaster Program, published on February 16, 2000 (65 FR 7942), which was a new part intended to allow for a single-year disaster program in accordance with Pub. L. 106-7.

The regulations set out in this rule will provide for Harney County, in a new part, 7 CFR part 1479, compensation to producers whose land was not usable from January 1, 1999 through December 31, 1999. To be eligible for benefits, producers in Harney County, Oregon, must have owned or leased land that was intended to be used for crop or forage production or grazing during crop year 1999, and which was subject to flooding January 1, 1999, through December 31, 1999, and for which it is determined that due to flood-related losses, the land was unfit for crop or forage production, or grazing, at all times during CY 1999. Producers will be required to certify that the acreage was unable to be used due to flooding. In the new program, no "person", as "person" is defined in the applicable regulations, will be able to receive over \$40,000 in program payments and no person can receive any payment if that person's gross revenue for 1998 was in excess of \$2.5 million. These limits will also insure the most efficient use of funds for the producers most in need. The applicant must be the owner or lessee of the affected property under a binding lease during the 1999

crop year, and must still be the owner or lessee of the land. Other restrictions apply as well, including a requirement that the land must have been unusable for at least one other crop year in the years 1994 through 1998, and must be land that actually produced a crop, or that was actually used for pasture, on or after 1990.

Unadjusted payment rates will be based on the average local rental rates for crop land and pasture land, using, where possible, 5-year data of the National Agricultural Statistics Service.

**Cost-Benefit Assessment**

*Summary*

Outlays under the programs implemented by this rule will total approximately \$616.5 million, of which approximately \$604 million will be direct payments to producers. The outlays for the Livestock Indemnity Program and the American Indian Livestock Feed Program, totaling \$15.5 million, have, for the most part already been made, and therefore do not represent a new funding commitment. The table summarizes the outlays and the discussion following summarizes the Cost/Benefit Assessments for each program.

SUMMARY OF OUTLAYS

Program	Outlays
Oilseeds Program .....	1 462.6
Cottonseed Payment Program .....	74.0
ELS Cotton Competitiveness Program .....	<sup>2</sup> 6.0
Pasture Recovery Program .....	<sup>3</sup> 40.0
Livestock Indemnity Program for Contract Growers .....	42.0
Finalization of Existing Livestock Regulations .....	<sup>5</sup> 15.5
Warehouse-Stored Tobacco Assistance .....	2.8
Harney Co., Ore. Emergency Assistance .....	1.09
<b>Total .....</b>	<b>603.99</b>

<sup>1</sup> After administrative expenses of approximately \$12.4 million.

<sup>2</sup> Total of actual outlays up to May 4, 2000 and maximum expected outlays through September 30, 2000.

<sup>3</sup> Reallocated from funding previously attributed to the 1999 Crop Disaster Program.

<sup>4</sup> After administrative expenses of approximately \$100,000.

<sup>5</sup> Includes \$3 million for LIP in FY 1999 and \$12.5 million for AILFP for FY's 1997 and subsequent years.

*1999 Oilseed Market Loss Assistance Program*

U.S. oilseed producers are experiencing serious financial hardship as a result of low oilseed prices. The farm-level market value of oilseed production has dropped substantially

since the mid-1990's. In fact, the farm value of the 1999 U.S. oilseed crop was down an estimated \$5 billion, or 27 percent from the previous 5-year high set in 1996, despite a 12-percent increase in production. Some producers have also had their financial problems exacerbated by isolated weather problems that reduced their 1999 production.

Section 804 of Pub. L. 106-78 authorized the use of \$475 million in Commodity Credit Corporation funds to assist oilseed producers suffering from reduced farm income as a result of large supplies and low prices. To be eligible for payments from these funds, a producer must have produced an oilseed in 1999 that is eligible to obtain a marketing assistance loan under § 131 of the Agricultural Market Transition Act (7 U.S.C. 7231). These oilseeds include: soybeans, safflower seed, canola, rapeseed, mustard seed, sunflower seed, flaxseed, and crambe.

The payment rate determined by the Secretary must consider the number of eligible payment acres and payment yields as well as the fixed amount of Commodity Credit Corporation funds authorized by Congress for the Oilseed Program. Section 822 of Pub. L. 106-78 provides that the Secretary may reserve up to \$56 million of the amounts made available under subtitle A to cover administrative costs incurred by the Farm Service Agency directly related to carrying out that subtitle. For the Oilseed Program the authorized amount of \$475 million will be reduced by approximately \$12.4 million to cover administrative costs. After accounting for administrative costs, direct payments to producers under the Oilseed Program are expected to total approximately \$462.6 million. Of this total about \$442.7 million (96 percent) is expected to go to soybean producers. The remaining \$19.9 million will be split among the producers of the other minor oilseeds eligible for marketing assistance. Payments to producers of those oilseed are estimated to be \$13.2 million for sunflower seed producers, \$3.8 million for canola producers, \$1.7 million for safflower producers, \$938,923 for flaxseed producers, \$172,471 for mustard seed producers, \$112,990 for crambe producers, and \$16,260 for rapeseed producers. Because assistance will be in the form of direct payments, the program is expected to result in a dollar-for-dollar increase in farm income for oilseed producers.

Pre-enrollment estimates of per-unit payment rates are expected to be highest for safflower seed and mustard seed at 34 and 31 cents per hundredweight (cwt.), respectively. The lowest per unit

rate is expected to be for flaxseed at 22 cents per cwt. (12 cents per bushel). The pre-enrollment estimate for the soybean payment rate is 24 cents per cwt. (14 cents per bushel). On a per-acre basis, the safflower seed payment will be highest among the various crops at \$6.13 per acre. The pre-enrollment payment for soybeans is estimated at \$5.92 per acre. For the remaining oilseeds, pre-enrollment estimates indicate that per-acre payments will range from a low of \$2.55 for flaxseed to a high of \$3.69 for rapeseed.

*Cottonseed Market Loss Assistance*

The cottonseed support payment program is designed to provide payments to cotton ginners in response to a severe decline in the price of cottonseed in the 1999 crop year. Throughout the Cotton Belt, in most years, the value of the cottonseed that is the by-product of the ginning process has been accepted by cotton ginners as payment in full for the cost of ginning seed cotton. Unless they are members of a co-operative gin (many are) or they own or are partners in a gin, farmers do not secure any benefit from the seed other than to have their ginning costs canceled.

This season, the average price of cottonseed has dropped by about \$48 per ton (37 percent) from the average level received last year, and about \$36 per ton (31 percent) from the average of 1994 through 1998. In the 1999 season, cottonseed prices in many parts of the Cotton Belt do not cover the cost of ginning.

Cottonseed prices this season equate to about \$34 worth of seed per bale of cotton lint produced, on a national average. The national average ginning cost for 1999 is estimated at \$46 per bale. Thus, the national average value of cottonseed falls about \$12 short of the cost of ginning a bale of cotton. That is the equivalent of about 2.5 cents per pound of lint. For ginning services, some farmers are being asked to pay in cash to the ginner an additional 2 or 3 cents per pound of cotton lint beyond the value of the seed, while, in other cases, ginners are holding ginning bills until they see how this payment program will be implemented.

The most viable option to assist cotton producers is a direct payment program in which payments are made to ginners. There are between 1,000 and 1,100 gins in the United States. About 25 percent of those are co-operatives. Another 50 percent are owned as corporations by farmers who gin their own and their neighbors' cotton. About 25 percent are independent gins.

Thus, farmers have a direct interest in about 75 percent of the gins and can be expected to receive nearly the full benefit of payments made to the gins. In the other 25 percent of gins where farmers do not directly operate or share in the ownership of the gins, farmers still may be expected to receive a substantial portion of the program benefits because the gins may have held the ginning bills pending the implementation of this program, the gins may rebate to farmers any ginning bill already paid, or competition among gins may dictate that any payments beyond those needed to cover the shortfall in seed prices will be rebated to the gins customers.

Funding for this program is provided from a portion of the residual funds authorized for Pub. L. 106-78 and Pub. L. 105-277. Approximately \$74 million of those funds will be available for cottonseed payments for crop year 1999. This will allow payments of approximately \$4 per bale of lint, or about 1 cent per lb.

#### *Extra Long Staple Cotton Competitiveness Program*

The program is designed so that payments trigger in response to a reduction in other world prices, as specified in the legislation. In the period since October 1, 1999, were triggered only during the period April 4, 2000, through May 2, 2000.

It is not possible to predict whether there will be further reductions in foreign prices, nor how large they will be, nor how long they will last. There would be no theoretical maximum payment rate. However, during the 6-week period April 4, 2000, through May 2, 2000, in which payments were triggered, outlays were less than \$1 million. For the remainder of FY 2000 (mid-May through September), the program could incur from \$3 million to \$5 million in outlays if there is no drastic change in price relationships currently being observed and if it operates every week until September 30.

It is projected that ELS competitiveness payments could increase domestic use of American Pima cotton by about 5,000 bales (about 3 percent) per year and exports by 25,000 bales (about 6 percent) per year. This increase in disappearance could add about 2 cents to the average price of American Pima and reduce net lending costs to CCC by about \$25 million. Farm receipts would rise by about \$4 million for the 1999 crop.

Funding for this program is provided from a portion of the residual funds authorized for Pub. L. 106-78 and Pub. L. 105-277. Approximately \$10 million

of those funds will be available for the ELS Cotton Competitiveness Payment Program.

#### *Pasture Recovery Program*

Weather-related disasters in calendar year 1999 exacerbated the financial crisis affecting the Nation's agricultural sector. Prolonged drought, predominantly in the Mid-Atlantic and Northeastern United States, left livestock producers with destroyed or severely damaged pasture. The purpose of the Pasture Recovery Program (PRP) is to provide payments to owners and operators of pasture who suffered pasture losses due to drought in 1999 and who reestablish the forage crop on their pastures.

Funds to reestablish pasture damaged by drought will be allocated from funds provided for crop and livestock loss assistance under Pub. L. 106-78 and Pub. L. 106-113 that otherwise would be committed to the Crop Disaster Program, the Livestock Assistance Program, or the Livestock Indemnity Program.

PRP payments will be authorized only in counties determined eligible for the Livestock Assistance Program and approved for the Emergency Conservation Program. As of mid-January, 2000, about 400 counties met both of these requirements and about 30,000 producers had applied for the 1999 LAP. The funding level of \$40 million will be met if slightly more than half of the 30,000 eligible producers receive the maximum payment of \$2,500 per person. To be eligible, land must be established pasture land on which livestock are normally grazed and that was so damaged by drought that seeding is required to reestablish a cover crop. Neither hay land nor rangeland is eligible.

Payment rates per acre will equal 50 percent of the eligible area's average cost of reestablishing the approved forage crop and are not to exceed \$125 per acre. FSA's Deputy Administrator for Farm Programs must approve payment rates above \$75 per acre.

The cost to reestablish pastures is estimated to be between \$100 and \$250 per acre, depending on the tillage and fertilization rates required. Most are expected to fall between \$100 and \$150 per acre, which will allow producers a payment rate of \$50-\$75 per acre. At an average payment rate of \$62.50 per acre and subject to the \$2,500 limitation producers could reestablish pasture on a maximum of 40 acres.

The Pasture Recovery Program will provide benefits to livestock producers who graze animals on land that has been damaged by drought. It will partially

offset the cost of reestablishing a forage crop where cover has been destroyed, which will provide some reduction in soil erosion due to wind and water.

Funding for the program will provide payments for livestock producers who have suffered losses due to drought. Payments will be reduced for some producers in some programs in order to provide payments under PRP. Some funding will be shifted from crop programs to livestock producers and some will be shifted from other livestock producers to those using pastures affected by drought.

#### *Livestock Indemnity Program for Contract Growers*

Contract livestock growers are eligible for assistance through the Livestock Indemnity Program for Contract Growers (CG-LIP) if livestock or poultry lost on the farm exceeds normal nationally-determined mortality rates, and if the livestock or poultry lost were on a farm in a region affected by a natural disaster between January 1, 1999, and December 31, 1999.

The CG-LIP program will be administered in a manner similar to the 1999 LIP program for livestock owners. However, owing to the differing financial interests between the owners of livestock and poultry and contract growers of the lost livestock and poultry, payment rates will need to be adjusted to reflect the losses suffered by the contract growers. Generally, payment rates per animal lost for contract growers are expected to be less than for the livestock and poultry owners, reflecting the smaller per-animal investment (and loss) by contract growers. Contract growers will be paid on those losses exceeding normal mortality. Based on the numbers of livestock lost, claims are expected to be approximately \$2 million, well short of the \$10 million available. Consequently, it is unlikely that payments will be factored. On a sectoral basis, the payments represent a small fraction of the total value of livestock production.

However, for those contract growers who actually suffered the losses, the impact on their equity and cash flow positions is significant. Indemnity payments will assist contract growers affected by the disaster in meeting their financial obligations for inputs used in the production of the lost livestock and poultry, replace lost income, and to service debt. It is assumed, in part as a result of the CG-LIP, that contract producers affected by the disaster would remain in business and rebuild their contract growing operations to their previous size.

*Finalization of Existing Regulations for the Livestock Indemnity Program and American Indian Livestock Feed Program*

The Livestock Indemnity Program (LIP) provides financial assistance to livestock producers who suffered significant financial losses due to natural disasters between May 2, 1998, and May 21, 1999. The impact of the indemnity payments on livestock and milk market prices and consumers is not expected to be measurable. Farm income was expected to be \$3 million higher, equaling the amount of indemnity payments. Federal outlays would also increase by the indemnity payment of \$3 million.

For those producers who actually suffered the losses, the impact on their equity and cash flow positions is significant. Indemnity payments assist producers affected by the disaster in meeting their financial obligations for inputs used in the production of the lost livestock and to replace breeding stock. It is assumed, in part as a result of LIP, that producers affected by the disaster would remain in business and rebuild their foundation herds to their previous size.

The American Indian Livestock Feed Program (AILFP) provides assistance to eligible livestock producers who have suffered significant loss of livestock feed production for 1997 and subsequent years. These funds will help eligible producers to meet financial obligations against feed stocks purchased to maintain livestock as a result of lost feed production. It is expected that up to 45,000 livestock producers will receive assistance and be able to maintain their herds. The impact of the program on livestock and feed prices is not expected to be measurable. Aggregate American Indian farm income losses will be somewhat reduced by AILFP payments. Federal outlays for the 1997 and subsequent crop years might total around \$12.5 million, which will be funded from the Feed Grain Disaster Reserve.

*Warehouse-Stored Tobacco Loss Assistance*

During the late summer and early fall of 1999, three major hurricanes dropped an unprecedented amount of rain in North Carolina. A substantial amount of warehouse-stored tobacco was destroyed in the flooding that resulted. Some producers, because they had placed their tobacco in warehouses and it had not been sold, suffered flood losses to that tobacco. However, because the tobacco had been harvested and placed in a warehouse, those producers

were not eligible for disaster assistance under FSA's normal crop-loss programs and the producers therefore incurred the entire financial burden of the loss. Pub. L. 106-113 appropriated an additional \$2.8 million to the assistance authorized by § 803 of Pub. L. 106-78, which authorized the Secretary to use \$328 million of CCC funds to make payments to States for the reduction of quota or acreage allotted farms from the 1998 crop year to the 1999 crop year, provided that producers who suffered quality or quantity losses due to natural disasters on crops harvested and placed in a warehouse and not sold shall also be eligible.

The \$2.8 million will assist quota holders and growers to roughly defray production costs for crops lost in crop year 1999 due to the flooding in auction warehouses. The Tobacco Disaster Assistance Program (TDAP) will pay producers approximately \$1 for each pound of unsold 1999-crop tobacco lost to warehouses flooded by the hurricanes. Due to program provisions, producers may carry these unmarketed pounds over to crop year 2000.

Most tobacco operations are small family-owned affairs. The tobacco program run by the U.S. Department of Agriculture, along with topological limitations, limit the size of the typical farm and substitutability of competing crops. Accordingly, there currently may be few alternatives for tobacco. With no crop alternatives and little diversification in tobacco-growing regions, cash from the tobacco crop is vital to these producers. To the extent that the \$2.8 million payment to producers and quota-holders defrays tobacco production costs, the TDAP enhances solvency. The production short-fall caused by the flooding is expected to be made up in the following year. In the short-term, the cost to the government roughly equals the benefits to the producers. In the longer term, to the extent that these disaster payments protect producers from bankruptcy, there is a net benefit.

*Flood Assistance for Harney County, Oregon*

Pub. L. 106-113 provides that the Secretary may use no more than \$1.09 million for disaster assistance to Harney County. High precipitation during the winter of 1998 and 1999 led to flooding in the areas around Harney Lake and Malheur Lake in Harney County, Oregon. Heavy flooding began in February 1999 and continued until June when snow pack runoff slowed.

Such flooding can change the basic character of the land and render the land ineligible for other benefits or for

enrollment in programs like the Conservation Reserve Program (CRP). Generalized conditions of that sort can produce tertiary effects in the local community and accordingly, problems such as those in Harney County have been the source of considerable attention and concern with respect to the exercise of discretionary authorities that may be available to the Secretary of Agriculture.

The impact on ranches in Harney County has been a loss of approximately 43,000 acres of pasture, 11,000 acres of native grass hay, 200 acres of alfalfa hay, and 200 acres of barley that were prevented from being planted. Approximately forty producers in Harney County are expected to be eligible for the program. Assistance therefore will average about \$25,000 each if total claims meet or exceed \$1.09 million. The expected average is well below the per-person payment limit of \$40,000. Assistance will be in addition to assistance provided under other FSA programs.

For further information, the following individuals may be contacted regarding the different parts of the Cost/Benefit Assessment:

Livestock and Pasture Recovery—Dan Colacicco, 202-720-6733  
Cotton—Wayne Bjorlie, 202-720-7954  
Cottonseed—Gene Rosera, 202-720-8481  
Harney County, Oregon—Brad Karmen, 202-720-4635  
Oilseeds—Phil Sronce, 202-720-2711  
Tobacco—Dan Stevens, 202-720-5291

**List of Subjects**

*Part 1400*

Agriculture, Grant programs—agriculture, Loan programs—agriculture, Price support programs, Reporting and recordkeeping requirements.

*Part 1411*

Oilseeds, Production Flexibility Contracts.

*Part 1427*

Cotton, Cottonseed, Loan programs/ agriculture, Price support programs, Reporting and recordkeeping requirements, Warehouses.

*Part 1439*

Animal feeds, Disaster assistance, Livestock, Reporting and recordkeeping requirements.

*Part 1464*

Imports, Loan programs—agriculture, Price support programs, Reporting and recordkeeping requirements, Tobacco.

*Part 1479*

Crop insurance, Disaster assistance, Floods, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 7 CFR Chapter XIV is amended as set forth below.

## **PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY**

1. The authority citation continues to read as follows:

**Authority:** 7 U.S.C. 1308, 1308–1, and 1308–2; 16 U.S.C. 3834.

### **§ 1400.1 [Amended]**

2. Amend the table in § 1400.1(g) by adding a line to read, in the first column, “Environmental Quality Incentives Program (EQIP)”, and, in the second column, “10,000”.

3. Amend § 1400.2 by redesignating paragraphs (e) and (f) as (f) and (g), respectively, and adding new paragraphs (e) and (h) to read as follows:

### **§ 1400.2 Administration**

\* \* \* \* \*

(e) Benefits from programs subject to this part may not be issued until all required forms and necessary payment eligibility and payment limitation determinations are made.

\* \* \* \* \*

(h) Reviews of farming operations and corresponding documentation submitted by program participants may be conducted to determine compliance with applicable statutes and regulations.

4. Add part 1411 to subchapter B of 7 CFR XIV to read as follows:

## **PART 1411—OILSEEDS PROGRAM**

### **Subpart A—General Provisions**

Sec.

- 1411.101 Applicability.
- 1411.102 Administration.
- 1411.103 Definitions.
- 1411.104 Misinformation and misaction.
- 1411.105 Appeals.

### **Subpart B—Eligibility Determinations**

- 1411.201 Eligible producers.
- 1411.202 Violations, misrepresentation, or scheme or device.
- 1411.203 Payment amount.
- 1411.204 Payment acreage.
- 1411.205 Payment yield.

### **Subpart C—Application for Payment**

- 1411.301 Signup period.
- 1411.302 Submitting application.
- 1411.303 Late-filed acreage reports.

### **Subpart D—Miscellaneous**

- 1411.401 Limitation of payments.
- 1411.402 Offsets and Assignments; Powers of Attorney.

**Authority:** Sec. 804, Pub. L. 106–78, 113 Stat. 1178.

### **Subpart A—General Provisions**

#### **§ 1411.101 Applicability.**

This part implements the oilseed provisions enacted in section 804 of the Agriculture, Rural Development, Food and Drug Administration, and Related Appropriations Act, 2000 (Public Law 106–78). That section provided funds to allow for payments to producers who planted eligible oilseeds in 1999 and who meet other conditions of eligibility.

#### **§ 1411.102 Administration.**

(a) This part shall be administered by CCC through the Farm Service Agency Deputy Administrator for Farm Programs under the general direction and supervision of the Executive Vice President, CCC. The program shall be carried out in the field by State and county committees of the Farm Service Agency of the U.S. Department of Agriculture.

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

(c) The State committee shall take any action required by this part that has not been taken by the county committee.

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

(d) No delegation in this section 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. The Deputy Administrator may waive or modify deadlines or other program requirements of this part to the extent that such a waiver or modification is otherwise permitted by law and is determined to be appropriate on the ground that it serves the goals of the program or other goals, and does not adversely affect the operation of the program.

#### **§ 1411.103 Definitions.**

The definitions set forth in this section shall be applicable for all purposes of administering the 1999 Oilseeds Program, and shall be used for Oilseeds Program purposes only. Definitions contained in parts 718 and 1412 of this title shall also apply but to

the extent that they conflict, the definitions in this section govern with respect to the Oilseeds Program in this part.

*Actual yield* means an oilseed yield certified by the producer on CCC–780, and if subject to spot check, documented by acceptable production evidence provided by the producer for all the producer’s planted acreage of the oilseed for the year in which the yield is proven. If subject to a certified yield spot check, the producer must document an actual yield on form FSA–658 or present RMA documentation indicating actual yields for all of the producer’s planted acreage of the oilseed for the year in which the yield is proven.

*Control county* means the county that for FSA administrative purposes will be considered to be controlling for purposes of making payment determinations with respect to particular applicants under the program provided for in this part.

*County average soybean yield* means an average yield approved by DAFP using an Olympic average of the county’s average soybean yield for each of the crop years 1994 through 1998 as determined by the State committee. To the extent such data is available, data from NASS shall be used.

*DAFP* means the Deputy Administrator for Farm Programs, FSA.

*Deputy Administrator* means DAFP.

*Eligible oilseed* means one of the following kinds of oilseeds: soybeans, safflower seed, canola, rapeseed, mustard seed, sunflower seed (oil and confectionary), flaxseed, and crambe.

*Established producer* means a producer who planted an oilseed for the 1999 crop year, and shared in the production of that specific oilseed in 1997 or 1998.

*National average oilseed yield* means the Olympic average yield for an eligible oilseed using the National average yields for the oilseed for the years 1994 through 1998. Such yields shall be considered valid only if approved by DAFP.

*New producer* means a producer who planted an eligible oilseed for crop year 1999, but did not plant or share in the production of that oilseed in 1997 or 1998. A producer may be a new producer of one eligible oilseed, while being an established producer for another oilseed.

*Oilseed Program Application* means form CCC–780.

*Olympic average yield* means the average yield for the stated period, after dropping the highest and lowest yields of that period.

*RMA* means the Risk Management Agency of the United States Department of Agriculture.

*Sunflower seed acreage* means the total acreage planted to sunflower seed on the farm in the applicable crop year without regard to the type of market to which the sunflower seed will be committed, oil or confectionary use.

**§ 1411.104 Misinformation and misaction.**

The provisions of § 718.8 of this title are applicable to this part, with respect to performance based upon advice or action of county or State committees.

**§ 1411.105 Appeals.**

A producer may obtain reconsideration and review of any adverse determination made under this part in accordance with the appeal regulations found at parts 11 and 780 of this title.

**Subpart B—Eligibility Determinations**

**§ 1411.201 Eligible producers.**

(a) Section 804 of Public Law 106–78 authorizes the Secretary to make payments to a producer who planted an eligible oilseed in 1999. Accordingly, producers of the 1999 crop of oilseeds identified in § 1411.203 are eligible to receive 1999 Oilseeds Program benefits, providing the producer meets the requirements of this part, and is in compliance with part 12 of this title regarding the conservation and protection of highly erodible lands and wetlands, and § 718.11 of this title regarding denials of program benefits for activities relating to the use of controlled substances.

(b) Eligibility determinations made under this part will be made for each producer separately for each specific eligible oilseed planted by that producer in 1999. A producer is not eligible for payment with respect to an oilseed that the producer did not plant in 1999 regardless of whether the producer did or did not plant that oilseed in 1997 or 1998.

**§ 1411.202 Violations, misrepresentation, or scheme or device.**

Any person who is determined to have intentionally misrepresented any fact affecting a program determination made in accordance with this part shall not be entitled to oilseed payments under this part and must refund all payments, plus interest determined in accordance with part 1403 of this chapter (relating to debt settlement policies and procedures).

**§ 1411.203 Payment amount.**

Subject to the availability of funds, eligible persons can receive a payment

under this part. The payment amount shall be equal to the payment rate established under this part multiplied by the producer's payment acreage multiplied, in turn, by the producer's payment yield. The payment rate shall be determined by DAFP after the level of program participation is known with sufficient clarity to allow for the calculation of the amount of payment that can be made, by unit of production, within the limits of the available funds. To the extent practicable, separate payment rates may be established for separate eligible oilseeds. Payments can be made only with respect to the production of eligible oilseeds.

**§ 1411.204 Payment acreage.**

(a) The oilseed payment acreage for an established producer shall, for a particular oilseed, be the higher of the two acreage amounts determined by calculating, for the 1997 and 1998 crops separately, the acreage determined to be equal to the producer's acreage for that oilseed at all locations for that crop year, adjusted to reflect interests that are only partial interests in such acreage.

(b) The payment acreage for a new producer of an eligible oilseed will be the producer's acreage for that oilseed for the 1999 crop at all locations, adjusted to reflect interests that are only partial interests in such acreage.

(c) Acreage not planted to an oilseed crop because of weather, or because of crop rotation practices or other management decisions, or because of any other reason, shall not be treated as qualifying production for determining a person's general eligibility for payment, a person's payment acreage, or for any other reason under this part.

**§ 1411.205 Payment yield.**

(a) For purposes of making yield determinations, under this part and for purposes of this section in particular, a producer's "applicable average yield" shall be, with respect to soybeans, the county average soybean yield. In the case of other oilseeds, the "applicable average yield" shall, for all persons qualifying for payment, be the national average oilseed yield for that oilseed. National and county average yields may be announced in advance of signup by DAFP.

(b) A new producer's payment yield with respect to a particular eligible oilseed shall be the higher of the:

(1) Applicable average yield for that oilseed or

(2) Producer's actual yield for the 1999 crop year.

(c) For established producers, the producer's payment yield for a particular oilseed shall be the higher of:

(1) Applicable average yield; or  
(2) The higher for the 1997 and 1998 crops of the producer's actual yield respectively for those crop years for all acres of the oilseed planted by the producer.

(d) In making determinations under paragraph (c) of this section for established producers, the choice of a crop year history will not be limited to the same history year chosen to set the producer's payment acres.

(e) Where actual yields are used for purposes of establishing the producer's payment yields, the producer, if subject to a yield spot check or otherwise asked to do so, must document those actual yields using form FSA–658 and must establish those yields to the satisfaction of the county committee.

(f) In making yield determinations, the producer's yields and payments may be adjusted by DAFP and the county and state committees, as necessary and practicable to reflect instances in which the producer has different yields at different locations and to reflect partial interests that the producer may have in some acreages.

**Subpart C—Application for Payment**

**§ 1411.301 Signup period.**

A signup period shall be announced by the Secretary. Late-filed applications shall not be accepted so that DAFP may establish, to the extent practicable, a final payment rate that will limit total payments to not more than the allocated amount, which shall be, unless determined otherwise by DAFP, \$475 million minus such administrative expenses as can be deducted by law and minus such reserve as may be determined needed to resolve disputes and problematic claims.

**§ 1411.302 Submitting application.**

(a) Producers shall properly complete, sign and file the application Form CCC–780, and submit the application to the Farm Service Agency during the signup period.

(b) A separate CCC–780 is required for each producer.

(c) For a producer to be considered to have properly filed the application, such applications must be filed by the producer in the FSA county office established as the control county for that producer at the time of application.

**§ 1411.303 Late-filed acreage reports.**

Late-filed acreage reports may be submitted for Oilseed Program purposes no later than February 18, 2000, or as determined by DAFP, provided that the producer shall submit sufficient documentation to verify the acreage to the satisfaction of the county committee.

**Subpart D—Miscellaneous**

**§ 1411.401 Limitation of payments.**

(a) No more than the allotted funds may be used for payments under this part. However, no “per-person” limit on payments shall apply nor shall there be a gross revenue test as a condition of payment for a person or entity.

(b) No person shall receive a payment under this part except upon a properly completed application properly submitted to the Farm Service Agency during the signup period announced by the Secretary.

**§ 1411.402 Offsets and assignments; powers of attorney.**

(a) Except as provided in paragraph (b) of this section, 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 contract payments.

(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.

(c) In those instances in which, prior to the issuance of this part, a producer has signed a power of attorney on an approved FSA-211 for a person or entity indicating that such power shall extend to “all above programs”, without limitation, such power will be considered to extend to this program unless by June 22, 2000 the person granting the power notifies the local FSA office for the control county that the grantee of the power is not authorized to handle transactions for this program for the grantor.

**PART 1427—COTTON**

5. The authority citation for 7 CFR part 1427 is revised to read as follows:

**Authority:** 7 U.S.C. 7231–7235–7237; 15 U.S.C. 714b and 714c; sec. 813 of Pub. L. 106–78, 113 Stat 1182; and sec. 104, Pub. L. 106–113.

6. In § 1427.25 revise paragraphs (c)(1)(ii), (c)(2), (d)(1) introductory text, (d)(2)(i), (d)(3)(ii), and (f)(2)(ii) to read as follows:

**§ 1427.25 Determination of the prevailing world market price and the adjusted world price for upland cotton.**

\* \* \* \* \*  
(c) \* \* \*  
(1) \* \* \*

(ii) The average price of M 1<sup>3</sup>/<sub>32</sub> inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton as quoted each Thursday in the designated U.S. spot markets.

\* \* \* \* \*

(2) The price determined in accordance with paragraph (c)(1) of this section shall be adjusted to reflect the price of Strict Low Middling (SLM) 1<sup>1</sup>/<sub>16</sub> inch, leaf 4, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton (U.S. base quality) by deducting the difference, as announced by CCC, between the applicable loan rate for a crop of upland cotton for M 1<sup>3</sup>/<sub>32</sub> inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton and the loan rate for a crop of upland cotton of the U.S. base quality.

\* \* \* \* \*

(d) \* \* \*

(1) If the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted for M 1<sup>3</sup>/<sub>32</sub> inch cotton C.I.F. northern Europe and the average price of M 1<sup>3</sup>/<sub>32</sub> inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton as quoted each Thursday in the designated U.S. spot markets for any week is:

\* \* \* \* \*

(2) \* \* \*

(i) May use the available northern Europe quotation to determine the difference between the average price quotations for the U.S. Memphis territory and the California/Arizona territory as quoted for M 1<sup>3</sup>/<sub>32</sub> inch, cotton C.I.F. northern Europe and the average price of M 1<sup>3</sup>/<sub>32</sub> inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton as quoted each Thursday in the designated U.S. spot markets for that week, or

\* \* \* \* \*

(3) \* \* \*

(ii) the average price of M 1<sup>3</sup>/<sub>32</sub> inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton as quoted in the designated U.S. spot markets, that week will not be taken into consideration.

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(ii) The difference between the applicable loan rate for a crop of upland cotton for M 1<sup>3</sup>/<sub>32</sub> inch, leaf 3, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton and the loan rate for a crop of upland cotton for SLM 1<sup>1</sup>/<sub>16</sub> inch, leaf 4, (micronaire 3.5 through 3.6 and 4.3 through 4.9, strength 26.5 through 28.4 grams per tex, length uniformity 81 percent) cotton.

\* \* \* \* \*

7. Add subpart F to 7 CFR part 1427 to read as follows:

**Subpart F—Cottonseed Payment Program**

Sec.	
1427.1100	Applicability.
1427.1101	Administration.
1427.1102	Definitions.
1427.1103	Eligible cottonseed.
1427.1104	Eligible first handlers.
1427.1105	Payment application.
1427.1106	Total available program funds.
1427.1107	Applicant payment quantity.
1427.1108	Total payment quantity.
1427.1109	Payment Rate.
1427.1110	Payment calculation and form.
1427.1111	Liability of first handler.

**§ 1427.1100 Applicability.**

(a) The regulations in this subpart are applicable to the 1999 crop of cottonseed. These regulations set forth the terms and conditions under which the Commodity Credit Corporation (CCC) shall provide payments to first handlers who have applied to participate in the cottonseed payment program in accordance with section 104(a) of the Omnibus Consolidated Appropriations Act, 2000 (Public Law 106–113). Additional terms and conditions may be set forth in the payment application that must be executed by participants to receive cottonseed payments.

(b) Payments shall be available only for cottonseed produced and ginned in the United States.

**§ 1427.1101 Administration.**

(a) The cottonseed payment program shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA), or a designee and shall be carried out by FSA’s Kansas City Management Office (KCMO) and Price Support Division (PSD).

(b) The KCMO and PSD representatives and employees thereof do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) No provision or delegation herein to KCMO or PSD 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 KCMO or PSD.

(d) The Executive Vice President, CCC, or a designee, may authorize KCMO or PSD to waive or modify deadlines and other non-statutory program requirements in cases where lateness or failure to meet such other requirements do not affect adversely the operation of the cottonseed payment program. The Executive Vice President may suspend the program should cause to do so appear as a result of a public rulemaking or otherwise.

(e) A representative of CCC may execute cottonseed payment program applications and related documents only under the terms and conditions determined and announced by CCC.

(f) Payment applications and related documents not executed in accordance with the terms and conditions determined and announced by CCC, including any purported execution prior to the date authorized by CCC, shall be null and void.

(g) The Deputy Administrator for Farm Programs, FSA, may waive or modify non-statutory deadlines and other non-statutory program requirements in cases where lateness or failure to meet such other program requirements does not adversely affect the operation of the cottonseed payment program.

(h) This subpart shall be administered only to the extent that it is determined by the Executive Vice President, CCC, that it is lawful and appropriate to commit funds to the program from sources specifically identified in the authorizing legislation.

#### § 1427.1102 Definitions.

The definitions set forth in this section shall be applicable for purposes of administering the 1999 cottonseed payment program. The terms applied in §§ 1427.3, 1427.52, and 1427.102 shall be applicable to this subpart.

*Cottonseed* means the seed from any variety of upland cotton and extra long staple (ELS) cotton produced and ginned in the United States.

*Gin* means a person (*i.e.*, an individual, partnership, association, corporation, cooperative marketing association, estate, trust, State or political subdivision or agency thereof, or other legal entity) that removes cottonseed from cotton lint in commercial quantities as determined by CCC.

*Number of bales* means the absolute number of ginned cotton bales based on individual bale weights unadjusted to a uniform bale weight.

*Olympic average* means the average for the stated period after excluding the highest and lowest values.

*Ton* means a unit of weight equal to 2,000 pounds avoirdupois (907.18 kilograms).

#### § 1427.1103 Eligible cottonseed.

To be eligible for payments under this subpart, cottonseed must:

(a) Have been grown in the United States during the 1999-crop production period.

(b) Have been ginned by the applicant from 1999-crop cotton.

(c) Not have been destroyed or damaged by fire, flood, or other events such that its loss or damage was compensated by other local, State, or Federal government or private or public insurance or disaster relief payments.

#### § 1427.1104 Eligible first handlers.

(a) For the purpose of this subpart, an eligible first handler of cottonseed shall be a gin that ginned 1999-crop cotton.

(b) Applicants must comply with the terms and conditions set forth in this subpart and instructions issued by CCC, and sign and submit an accurate, legible and complete Cottonseed Payment Program Application/Certification.

(c) Applicants must agree to share any payment received with the producer of the cotton that was the basis of the payment to the extent that the effect of low cottonseed prices was borne by the producer rather than the gin. To the extent that such funds will go to individual producers, those funds will be considered to have been received by the applicant on behalf of such producers.

#### § 1427.1105 Payment application.

(a) Payments in accordance with this subpart shall be made available to eligible first handlers of cottonseed based on information provided on a Cottonseed Payment Program Application/Certification.

(b) Payment applications must be received within the program application period announced by CCC. Applications received after such application period will not be accepted for payment.

(c) Cottonseed Payment Program Application/Certifications may be obtained from the CCC as announced by news release. In order to participate in the program authorized by this subpart, first handlers of cottonseed must execute the Cottonseed Payment Program Application/Certification and forward the original according to announced instructions.

#### § 1427.1106 Total available program funds.

The total available program fund shall be determined by CCC based on the

funds available under section 802 of Public Law 106-78 (excluding any funds authorized to carry out title IX of Public Law 106-78) and under section 1111 of Public Law 105-277 not otherwise needed to fully implement those sections.

#### § 1427.1107 Applicant payment quantity.

(a) The applicant's payment quantity of cottonseed will be determined by CCC based on the eligible number of ginned cotton bales and cotton lint weight indicated on the Cottonseed Payment Application/Certification and/or obtained by from the Agricultural Marketing Service.

(b) The applicant's payment quantity of cottonseed shall be calculated by multiplying:

(1) The applicant's eligible weight of lint, in tons, for which payment is requested, as approved by CCC, by

(2) 1.59 (the 1994-98 Olympic average ratio of estimated pounds of cottonseed per pound of ginned cotton lint).

#### § 1427.1108 Total payment quantity.

(a) The total quantity of 1999-crop cottonseed produced in the United States is eligible for payment under this subpart. The total payment quantity of cottonseed will be the total of eligible quantities of cottonseed for which applications for payment are received within the application period announced by CCC.

(b) The total payment quantity of cottonseed shall be calculated by multiplying:

(1) The eligible weight of cotton lint, in tons, for which payment is requested by all applicants, as approved by CCC, by

(2) 1.59 (the 1994-98 Olympic average ratio of estimated pounds of cottonseed per pound of ginned cotton lint).

#### § 1427.1109 Payment rate.

The payment rate (dollars per ton) for the purpose of calculating payments made available in accordance with this subpart shall be determined by CCC by dividing the total available program funds, as determined by CCC, by

(a) The higher of:

(1) The total payment quantity, or

(2) The total quantity of 1999-crop cottonseed, as estimated by CCC, or by

(b) A quantity of cottonseed determined by CCC to provide applicants with payments at a level consistent with the statutory objectives.

#### § 1427.1110 Payment calculation and form.

(a) Payments in accordance with this subpart shall be determined for individual applicants by multiplying:

(1) The payment rate, determined in accordance with § 1427.1109, by



(2) The eligible payment quantity of the applicant, determined in accordance with § 1427.1107.

(b) After receipt of the application for payment, together with required supporting documents, CCC will issue payments to the applicant, at the option of the applicant, to the applicant's mail address or by electronic deposit to the applicant's account.

**§ 1427.1111 Liability of first handler.**

(a) If a first handler makes any fraudulent representation in obtaining a cottonseed payment, such payment shall be refunded upon demand by CCC. The first handler shall be liable for the amount of the payment and applicable interest on such payment, as determined by CCC.

(b) Persons executing a joint payment application will be jointly and severally liable for any program violation, ineligibility, or refund due CCC, and each such person shall be and remain liable for the repayment of the entire payment of any amount due to CCC until the payment is fully repaid, without regard to such person's claimed share in the cottonseed payment.

(c) If the payment recipient is suspected by CCC to have knowingly: adopted any scheme or device to defeat the purposes of this program; made any fraudulent representation; or misrepresented any fact affecting a determination under this application, CCC will notify the appropriate investigating agencies of the United States and take steps as deemed necessary to protect the interests of the government.

(d) If the payment applicant receives a payment in excess of the entitled payment, the applicant shall refund to CCC an amount equal to the excess payment, plus interest thereon, as determined by CCC.

(e) From the date of the payment application until the earlier of three years after the date of the application or July 31, 2003, the applicant shall keep records and furnish such information and reports relating to the application as may be requested by CCC. After that time, destruction of records shall be at the party's own risk. CCC may require the retention of the records for a longer period of time as the need arises. Such records shall be available at all reasonable times for an audit or inspection by authorized representatives of CCC, the United States Department of Agriculture, or the Comptroller General of the United States. Failure to keep, or make available, such records may result in refund to CCC of all payments received, plus interest thereon, as determined by CCC.

(f) Unless otherwise approved by CCC, no Member or Delegate of Congress or Resident Commissioner shall be admitted to any share or part of payments provided under this program or to any benefit to arise therefrom, except that this provision shall not be construed to extend to their interest in any incorporated company, if the payment is for the general benefit of such company, or to any benefit in which it is determined by CCC such person's interest is that of a producer of cotton.

8. Add subpart G to 7 CFR Part 1427 to read as follows:

**Subpart G—Extra Long Staple (ELS) Cotton Competitiveness Payment Program**

Sec.

1427.1200	Applicability.
1427.1201	Administration.
1427.1202	Definitions.
1427.1203	Eligible ELS cotton.
1427.1204	Eligible domestic users and exporters.
1427.1205	ELS Cotton Domestic User/Exporter Agreement.
1427.1206	Form of payment.
1427.1207	Payment rate.
1427.1208	Payment.

**Subpart G—Extra Long Staple (ELS) Cotton Competitiveness Payment Program**

**§ 1427.1200 Applicability.**

(a) Except as specified by CCC, the regulations in this subpart are applicable to the period beginning June 8, 2000, unless the Executive Vice President, CCC, shall apply the regulations to an earlier period, but not earlier than October 1, 1999, consistent with the authorizing statute. These regulations set forth the terms and conditions under which CCC shall make payments, in the form of commodity certificates or cash, to eligible domestic users and exporters of extra long staple (ELS) cotton who have entered into an ELS Cotton Domestic User/Exporter Agreement with CCC to participate in the ELS cotton competitiveness payment program in accordance with section 136A(c) of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104-127).

(b) During the effective period of these regulations, CCC may issue marketing certificates or cash payments to domestic users and exporters, at the option of the recipient, in accordance with this subpart in any week following a consecutive 4-week period in which:

(1) The lowest adjusted Wednesday through Tuesday average price quotation for foreign growths (LFQ), as quoted for ELS cotton, delivered C.I.F. (cost, insurance and freight) Northern

Europe is less than the Wednesday through Tuesday adjusted average domestic spot price quotation for U.S. Pima cotton, grade 3, staple 44, micronaire 3.5 or higher, uncompressed, F.O.B. warehouse; and

(2) The LFQ, determined in accordance with § 1427.1207, is less than 134 percent of the current crop year loan level for the ELS cotton grade 3, staple 44, micronaire 3.5 or higher.

(c) Additional terms and conditions may be set forth in the ELS Cotton Domestic User/Exporter Agreement, which must be executed by the domestic user or exporter in order to receive such payments.

(d) Forms that are used in administering the ELS cotton competitiveness payment program shall be prescribed by CCC.

**§ 1427.1201 Administration.**

(a) The ELS cotton competitiveness payment program shall be administered under the general supervision of the Executive Vice-President, CCC (Administrator, FSA), or a designee and shall be carried out by FSA's Kansas City Commodity Office (KCCO) and Kansas City Management Office (KCMO).

(b) The KCCO and KCMO, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) No provision or delegation herein to KCCO or KCMO 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 KCCO or KCMO.

(d) The Executive Vice President, CCC, or a designee, may authorize KCCO or KCMO to waive or modify non-statutory deadlines and other non-statutory program requirements in cases where lateness or failure to meet such other requirements do not affect adversely the operation of the ELS cotton competitiveness payment program. In addition, the Executive Vice President may suspend the program to the extent that cause to do so may appear as a result of a public rulemaking or otherwise.

(e) A representative of CCC may execute ELS cotton competitiveness payment program applications, ELS Cotton Domestic User/Exporter Agreements and related documents only under the terms and conditions determined and announced by CCC.

(f) Payment applications, ELS Cotton Domestic User/Exporter Agreements and related documents not executed in accordance with the terms and

conditions determined and announced by CCC, including any purported execution prior to the date authorized by CCC, shall be null and void.

(g) This program shall only be administered to the extent that it is determined by the Executive Vice President, CCC, that it is lawful and appropriate to commit funds to this program from those sources specifically identified as the funding source in the authorizing legislation.

#### § 1427.1202 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in §§ 1427.3 and 1427.52 of this part and part 1413 of this chapter shall also be applicable.

*Adjusted spot price* means the spot price adjusted to reflect any lack of data for grade 3 or staple 44 to make the adjusted spot price comparable to a spot price assuming grade 3 and staple 44. If grade 3 spot price data are not available, spot prices for grade 2, grade 1, or grade 4 will be used and will be adjusted by the average difference between spot prices for grade 3 and those for grade 2, grade 1 or grade 4, as the case may be, over the available observations during the previous 12 months. If spot prices for staple 44 are not available, spot prices for staple 46 may be used and will be adjusted by the average difference between spot prices for staple 44 and those for staple 46 over the available observations during the previous 12 months.

*Bale opening* means the removal of the bagging and ties from a bale of eligible ELS cotton in the normal opening area, immediately prior to use, by a manufacturer in a building or collection of buildings where the cotton in the bale will be used in the continuous process of manufacturing raw cotton into cotton products in the United States.

*Consumption* means, the use of eligible ELS cotton by a domestic user in the manufacture in the United States of ELS cotton products.

*Cotton product* means any product containing cotton fibers that result from the use of an eligible bale of ELS cotton in manufacturing.

*Current shipment price* means, during the period in which two daily price quotations are available for the LFQ for the foreign growth quoted C.I.F. Northern Europe, the price quotation for cotton for shipment no later than August/September of the current calendar year.

*Forward shipment price* means, during the period in which two daily price quotations are available for the

LFQ for foreign growths quoted C.I.F. Northern Europe, the price quotation for cotton for shipment no earlier than October/November of the current calendar year.

*LFQ* means, during the period in which only one daily price quotation is available for the growth, the lowest average for the preceding Wednesday-through-Tuesday week of the price quotations for foreign growths of ELS cotton, quoted C.I.F. Northern Europe, after each respective average is adjusted for quality differences between the respective foreign growth and U.S. Pima, grade 3, staple 44, micronaire 3.5 and higher, provided that the lowest adjusted quotation becomes the LFQ after it is further adjusted to reflect the estimated cost of transportation between an average U.S. location and northern Europe.

(1) *Current LFQ* means the average for the preceding Wednesday through Tuesday of the current shipment prices for the lowest adjusted foreign growth, C.I.F. Northern Europe.

(2) *Forward LFQ* means the average for the preceding Wednesday through Tuesday of the forward shipment prices for the lowest adjusted foreign growth quoted C.I.F. Northern Europe.

*Spot price* means the Wednesday-Tuesday weekly average of the domestic spot prices reported by the Agricultural Marketing Service, USDA, for U.S. Pima, grade 3, staple 44, micronaire 3.5 or higher, uncompressed, F.O.B. warehouse, for the San Joaquin and Desert Southwest markets. When both San Joaquin Valley and Desert Southwest spot quotations are available, the U.S. quotation will be the average of the two quotations. If only one quotation is available, that quotation will be used.

#### § 1427.1203 Eligible ELS cotton.

(a) For the purposes of this subpart, eligible ELS cotton is domestically produced baled ELS cotton that is—

(1) Opened by an eligible domestic user on or after October 1, 1999, or,

(2) Exported by an eligible exporter on or after October 1, 1999, during a Wednesday through Tuesday period in which a payment rate, determined in accordance with § 1427.1207, is in effect, and that meets the requirements of paragraphs (b) and (c) of this section;

(b) Eligible ELS cotton must be either—

(1) Baled lint, including baled lint classified by USDA's Agricultural Marketing Service as Below Grade;

(2) Loose;

(3) Semi-processed motes that are of a quality suitable, without further

processing, for spinning, papermaking or bleaching;

(4) Reginned (processed) motes.

(c) Eligible ELS cotton must not be—

(1) ELS Cotton with respect to which a payment, in accordance with the provisions of this subpart, has been made available;

(2) Imported ELS cotton;

(3) Raw (unprocessed) motes;

(4) Semi-processed motes that are not of a quality suitable, without further processing, for spinning, papermaking or bleaching;

(5) Textile mill wastes; or

(6) Semi-processed or reginned (processed) motes that have been blended with textile mill waste or other fibers.

#### § 1427.1204 Eligible domestic users and exporters.

(a) For the purposes of this subpart, the following persons shall be considered to be eligible domestic users and exporters of ELS cotton:

(1) A person regularly engaged in the business of opening bales of eligible ELS cotton for the purpose of manufacturing such cotton into cotton products in the United States ("domestic user"), who has entered into an agreement with CCC to participate in the ELS cotton competitiveness payment program; or

(2) A person, including a producer or a cooperative marketing association approved in accordance with part 1425 of this chapter, regularly engaged in selling eligible ELS cotton for exportation from the United States ("exporter"), who has entered into an agreement with CCC to participate in the ELS cotton competitiveness payment program.

(b) Applications for payment in accordance with this subpart must contain documentation required by the provisions of the ELS Cotton Domestic User/Exporter Agreement and instructions issued by CCC.

#### § 1427.1205 ELS Cotton Domestic User/Exporter Agreement.

(a) Payments in accordance with this subpart shall be made available to eligible domestic users and exporters who have entered into an ELS Cotton Domestic User/Exporter Agreement with CCC and who have complied with the terms and conditions set forth in this subpart, the ELS Cotton Domestic User/Exporter Agreement and instructions issued by CCC.

(b) ELS Cotton Domestic User/Exporter Agreements may be obtained from the Cotton and Rice Branch, Warehouse Contract Division, Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141-

6205. Telephone requests for copies of the agreement will be accepted at (816) 926-6662. In order to participate in the program authorized by this subpart, domestic users and exporters must execute the ELS Cotton Domestic User/Exporter Agreement and forward the original and one copy to KCCO.

**§ 1427.1206 Form of payment.**

Payments in accordance with this subpart shall be made available in the form of commodity certificates issued in accordance with part 1470 of this chapter, or in cash, at the option of the participant, as determined and announced by CCC.

**§ 1427.1207 Payment rate.**

(a) The payment rate for purposes of calculating the payments made in accordance with this subpart shall be determined as follows:

(1) Beginning the Tuesday following August 1 and ending the week in which the current LFQ and the forward LFQ may first become available, the payment rate shall be the difference between the U.S. Pima spot price and the LFQ in the fourth week of a consecutive 4-week period in which the U.S. Pima spot price exceeded the LFQ each week, and the LFQ was less than 134 percent of the current crop year loan level for U.S. Pima cotton, grade 3, staple 44, micronaire 3.5 or higher in all weeks of the 4-week period; and

(2) Beginning the Wednesday through Tuesday week after the week in which the current LFQ and the forward LFQ may first become available and ending the Tuesday following July 31, the payment rate shall be the difference between the U.S. Pima spot price and the current LFQ in the fourth week of a consecutive 4-week period in which the U.S. Pima spot price exceeded the current LFQ each week, and the current LFQ was less than 134 percent of the current crop year loan level for U.S. Pima grade 3, staple 44, micronaire 3.5 or higher in all weeks of the 4-week period. If the current LFQ is not available, the payment rate may be the difference between the U.S. Pima spot price and the forward LFQ.

(b) Whenever a 4-week period under paragraph (a) of this section contains a combination of LFQ for only for one to three weeks and current LFQ and forward LFQ only for one to three weeks, such as may occur in the spring when the LFQ price is succeeded by the current LFQ and the forward LFQ ("Spring transition") and at the start of a new marketing year when the current LFQ and the forward LFQ are succeeded by the LFQ ("marketing year transition"), under paragraphs (a)(1) and

(a)(2) of this section, during both the spring transition and the marketing year transition periods, to the extent practicable, the current LFQ in combination with the LFQ shall be taken into consideration during such 4-week periods to determine whether a payment is to be issued. During both the spring transition and the marketing year transition periods, if the current LFQ is not available, the forward LFQ in combination with the LFQ shall be taken into consideration during such 4-week periods to determine whether a payment is to be issued.

(c) For purposes of this subpart, with respect to the determination of the U.S. Pima spot price, the LFQ, the current LFQ and the forward LFQ:

(1) If daily quotations are not available for one or more days of the 5-day period, the available quotations during the period will be used;

(2) If the U.S. Pima spot price is not available or if none of the LFQ, current LFQ or forward LFQ is available, the payment rate shall be zero and shall remain zero unless and until sufficient U.S. Pima spot prices and/or LFQ again become available, the U.S. Pima spot price exceeds the LFQ, the current LFQ or the forward LFQ, as the case may be, and the LFQ, the current LFQ, or the forward LFQ, as the case may be, is less than 134 percent of the current crop year loan rate for U.S. Pima for 4 consecutive weeks.

(d) Payment rates for loose, reginned motes and semi-processed motes that are of a quality suitable, without further processing, for spinning, papermaking or bleaching shall be based on a percentage of the basic rate for baled lint, as specified in the ELS Cotton Domestic User/Exporter Agreement.

**§ 1427.1208 Payment.**

(a) Payments in accordance with this subpart shall be determined by multiplying:

(1) The payment rate, determined in accordance with § 1427.127, by

(2) The net weight (gross weight minus the weight of bagging and ties) determined in accordance with paragraph (b) of this section, of eligible ELS cotton bales that are opened by an eligible domestic user or sold for export by an eligible exporter during the Wednesday through Tuesday period following a week in which a payment rate is established.

(b) For the purposes of this subpart, the net weight shall be determined based upon:

(1) For domestic users, the weight on which settlement for payment of the ELS cotton was based ("landed mill weight");

(2) For reginned motes processed by an end user who converted such motes, without rebaling, to an end use in a continuous manufacturing process, the net weight of the reginned motes after final cleaning;

(3) For exporters, the shipping warehouse weight or the gin weight if the ELS cotton was not placed in a warehouse, of the eligible cotton unless the exporter obtains and pays the cost of having all the bales in the shipment reweighed by a licensed weigher and furnishes a copy of the certified reweights.

(c) For the purposes of this subpart, eligible ELS cotton will be considered—

(1) Purchased by the domestic user on the date the bale is opened in preparation for consumption; and

(2) Exported by the exporter on the date that CCC determines is the date on which the cotton is shipped for export.

(d) Payments in accordance with this subpart shall be made available upon application for payment and submission of supporting documentation, including proof of purchases and consumption of eligible ELS cotton by the domestic user or proof of export of eligible ELS cotton by the exporter, as required by the provisions of the ELS Cotton Domestic User/Exporter Agreement issued by CCC.

9. Revise 7 CFR part 1439 to read as follows:

**PART 1439—EMERGENCY LIVESTOCK ASSISTANCE**

**Subpart A—General Provisions**

Sec.	
1439.1	Applicability and general statement.
1439.2	Administration.
1439.3	Definitions.
1439.4	Liens and claims of creditors.
1439.5	Assignments of payments.
1439.6	Appeals.
1439.7	Misrepresentation, scheme or device.
1439.8	Refunds to CCC; joint and several liability.
1439.9	Cumulative liability.
1439.10	Benefits limitation.
1439.11	Gross revenue limitation.
1439.12	Maintenance of books and records.

**Subpart B—1998-99 Livestock Assistance Program**

1439.101	Applicability.
1439.102	Definitions.
1439.103	Application process.
1439.104	County committee determinations of general applicability.
1439.105	Loss criteria.
1439.106	Livestock producer eligibility.
1439.107	Calculation of assistance.
1439.108	Availability of funds.

**Subpart C—Livestock Indemnity Program**

1439.201	Applicability.
1439.202	Administration.

- 1439.203 Definitions.
- 1439.204 Sign-up period.
- 1439.205 Proof of loss.
- 1439.206 Indemnity benefits.
- 1439.207 Availability of funds.
- 1439.208 Limitations on payments.

#### Subpart D—Pasture Recovery Program

- 1439.301 Administration.
- 1439.302 Definitions.
- 1439.303 General description.
- 1439.304 Eligible persons.
- 1439.305 Eligible land.
- 1439.306 Duration of contracts.
- 1439.307–1439.319 [Reserved]
- 1439.320 Obligations of participant.
- 1439.321 Obligations of the Commodity Credit Corporation.
- 1439.322 Eligible practices.
- 1439.323–1439.329 [Reserved]
- 1439.330 Signup.
- 1439.331 Applications for PRP contracts.
- 1439.332 PRP contract.
- 1439.333 Contract modifications.
- 1439.334–1439.339 [Reserved]
- 1439.340 Payments.
- 1439.341 Levels and rates for payments.
- 1439.342 Method of payment.
- 1439.344–1439.349 [Reserved]
- 1439.350 Payments to participants.
- 1439.351 Violations.
- 1439.352 Executed PRP contract not in conformity with regulations.
- 1439.353 Performance based upon advice or action of the Department.
- 1439.354 Access to land under contract.
- 1439.355 Miscellaneous.

#### Subpart E—Livestock Indemnity Program for Contract Growers

- 1439.401 Applicability.
- 1439.402 [Reserved]
- 1439.403 Definitions.
- 1439.404 Application period.
- 1439.405 Proof of loss.
- 1439.406 Indemnity benefits.
- 1439.407 Proration of claims.
- 1439.408 Miscellaneous provisions.

#### Subparts F–H [Reserved]

#### Subpart I—American Indian Livestock Feed Program

- 1439.900 [Reserved]
- 1439.901 Applicability.
- 1439.902 Administration.
- 1439.903 Definitions.
- 1439.904 Region.
- 1439.905 Responsibilities.
- 1439.906 Program availability.
- 1439.907 Eligibility.
- 1439.908 Payment application.
- 1439.909 Payments.
- 1439.910 Program suspension and termination.
- 1439.911 Appeals.
- 1439.912–1439.915 [Reserved]

**Authority:** 15 U.S.C. 714b and 714c9; Pub. L. 105–277, 112 Stat. 2681–42 through 44; Pub. L. 106–31, 113 Stat. 57; Pub. L. 106–78, 113 Stat. 1135; and Pub. L. 106–113, 113 Stat. 1501.

### Subpart A—General Provisions

#### § 1439.1 Applicability and general statement.

(a) The regulations in this part set forth the terms and conditions applicable to programs that may be made available to livestock producers under various statutory provisions. Unless otherwise specified, the regulations in this subpart shall apply to all programs operated under this part.

(b) The regulations in this part 1439 in effect prior to March 17, 1999, (See 7 CFR Parts 1200 to 1599, revised as of January 1, 1999) are applicable with respect to any emergency livestock assistance program that existed prior to March 17, 1999. The part 1439 regulations in effect on January 1, 2000 (See 7 CFR Parts 1200 to 1599, revised as of January 1, 2000) for the Flood Compensation Program shall continue to apply to all pending or new matters under that program.

(c) Nothing in this subpart shall be read as to require any expenditure of funds for a program in an overall amount greater than that determined to be appropriate by CCC.

#### § 1439.2 Administration.

(a) This part shall be administered by CCC through, and as delegated to the Deputy Administrator for Farm Programs under the general direction and supervision of the Executive Vice President, CCC. The program shall be carried out in the field by State and county committees of the Farm Service Agency of the U.S. Department of Agriculture.

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

(c) The State committee shall take any action required by this part that has not been taken by the county committee. 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 this part; or
- (2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No delegation in this section 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. The Deputy Administrator may waive or modify deadlines or other program requirements of this part to the

extent that such a waiver or modification is otherwise permitted by law and is determined to be appropriate, serves the goals of the program, and does not adversely affect the operation of the program.

#### § 1439.3 Definitions.

The definitions set forth in this section shall be applicable to all subparts contained in this part unless otherwise noted, or unless the definitions conflict with the definitions in subparts other than this subpart A, in which case they shall not apply.

*Carrying capacity* means the number of acres of pasture required to provide 15.7 pounds of feed grain equivalent per day for one animal unit during the period the pasture is normally grazed.

*CCC* means the Commodity Credit Corporation.

*Deputy Administrator or DAFP* means the Deputy Administrator for Farm Programs, Farm Service Agency (FSA), or a designee.

*Equine animals used for food or in the production of food* means horses, mules, and donkeys that are:

- (1) Used commercially for human food;
- (2) Maintained for commercial sale to processors of food for human consumption; or
- (3) Used in the production of food and fiber on the owner's farm, such as draft horses, or cow ponies.

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

*FSA* means the Farm Service Agency.

*Livestock producer* means a person who is determined to receive 10 percent or more of the person's gross income, as determined by the Secretary, from the production of livestock and is:

- (1) A citizen of, or legal resident alien in the United States; or
- (2) A farm cooperative, private domestic corporation, partnership, or joint operation in which a majority interest is held by members, stockholders, or partners who are citizens of, or legal resident aliens in the United States; any Indian tribe under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*); any Indian organization or entity chartered under the Indian Reorganization Act (25 U.S.C. 461 *et seq.*) or entity chartered under the Indian Reorganization Act; any tribal organization under the Indian Self-Determination and Education Assistance Act; and any economic enterprise under the Indian Financing Act of 1974 (25 U.S.C. 1451 *et seq.*).

*Natural disaster* means a generalized disease, insect infestation, flood,

drought, fire, hurricane, earthquake, storm, hot weather, or other natural disaster.

*Person* means an individual or entity, including any organization, of any kind, provided that for per-person payment limitations the rules in part 1400 of this chapter shall be determinative in defining who is considered to be a separate person for such purposes.

*Poultry* means domesticated chickens, including egg-producing poultry, ducks, geese and turkeys.

*Secretary* means the Secretary of Agriculture or a designee of the Secretary.

*Seeded small grain forage crops* means wheat, barley, oats, rye, and triticale.

*State committee, State office, county committee, or county office*, means the respective FSA committee or office.

*United States* means all fifty states of United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and the District of Columbia.

#### **§ 1439.4 Liens and claims of creditors.**

Any payment or benefit 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.

#### **§ 1439.5 Assignments of payments.**

Payments that are earned by a person under this part may be assigned in accordance with the provisions of part 1404 of this chapter and the applicable FSA or CCC forms for assignments.

#### **§ 1439.6 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 parts 780 and 11 of this title.

#### **§ 1439.7 Misrepresentation, scheme or device.**

A person shall be ineligible to receive assistance under any program under this part, and be subject to such other remedies as may be allowed by law, if, with respect to such program, it is determined by the State committee or the county committee or an official of FSA that such person has:

(a) Adopted any scheme or other device that tends to defeat the purpose of a program operated under this part;

(b) Made any fraudulent representation with respect to such program; or

(c) Misrepresented any fact affecting a program determination.

#### **§ 1439.8 Refunds to CCC; joint and several liability.**

(a) In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under this part, and if any refund of a payment to CCC shall otherwise become due in connection with this part, all payments made in regard to such matter shall be refunded to CCC, together with interest as determined in accordance with paragraph (b) of this section and late-payment charges as provided for in part 1403 of this chapter.

(b) All persons with a financial interest in the operation or in an application for payment shall be jointly and severally liable for any refund, including related charges, that is determined to be due CCC for any reason under this part.

(c) Interest shall be applicable to refunds required of the livestock owner or other party receiving assistance or a payment if CCC determines that payments or other assistance were provided to the owner and the owner was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges CCC for funds, as of the date CCC made such benefits. Such interest that is determined to be due CCC shall accrue from the date such benefits were made available by CCC to the date of repayment or the date interest increases in accordance with part 1403 of this chapter. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any action of the livestock owner or other individual or entity receiving benefits.

(d) Interest otherwise determined due in accordance with paragraph (c) of this section may be waived with respect to refunds required of the owner or other program recipient because of unintentional misaction on the part of the owner or other individual or entity, as determined by CCC.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in part 1403 of this chapter.

(f) Individuals or entities who are a party to any program operated under this part must refund to CCC any excess payments made by CCC with respect to such program.

(g) In the event that any request for assistance or payment under this part was established as a result of erroneous information or a miscalculation, the assistance or payment shall be

recomputed and any excess refunded with applicable interest.

#### **§ 1439.9 Cumulative liability.**

The liability of any person for any penalty under this part or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 651, 1001 and 1014; 15 U.S.C. 714m; and 31 U.S.C. 3729.

#### **§ 1439.10 Benefits limitation.**

The total amount of benefits that a person, as determined in accordance with part 1400 of this chapter, shall be entitled to receive under any subpart may not exceed \$40,000 for any one loss or year. Also, the Deputy Administrator may take such action as needed, whether or not specifically provided for, to avoid a duplication of benefits under the several programs provided for in this part and may impose such cross-program payment limitations as may be consistent with the intent of this section and this part.

#### **§ 1439.11 Gross revenue limitation.**

A person, as defined in part 1400 of this chapter, who has annual gross revenue in excess of \$2.5 million shall not be eligible to receive assistance under this part. For the purpose of this determination, annual gross revenue means:

(a) With respect to a person who receives more than 50 percent of such person's gross income from farming and ranching, the total gross revenue received from such operations; and

(b) With respect to a person who receives 50 percent or less of such person's gross income from farming and ranching, the total gross revenue from all sources.

#### **§ 1439.12 Maintenance of books and records.**

Livestock producers or any other individual or entity seeking or receiving assistance under this part shall maintain and retain financial books and records that will permit verification of all transactions with respect to the provisions of this part for at least 3 years following the end of the calendar year in which assistance was provided, or for such additional period as CCC may request. Destruction of records after that date shall be at the risk of the producer or other person receiving assistance. An examination of such books and records by a duly authorized representative of the United States Government shall be permitted at any time during business hours.

## Subpart B—1998–99 Livestock Assistance Program

### § 1439.101 Applicability.

(a) This subpart sets forth the terms and conditions applicable to the 1998 Livestock Assistance Program authorized by Public Law 105–277 and the 1999 Livestock Assistance Program authorized by the Public Law 106–78. Benefits will be provided to eligible livestock producers in the United States but only in counties where a natural disaster occurred, and that were subsequently approved for relief under this part by the Deputy Administrator for Farm Programs. For purposes of reference, the program authorized by Public Law 105–277 shall be referred to in this subpart as the 1998 LAP program and that administered under Public Law 106–78 shall be referred to in this subpart as the 1999 LAP program.

(b) The two LAP programs provided for in this part will be treated as separate programs for purposes of payment limitations and for other purposes relating to eligibility.

(c) A county must have suffered a 40-percent or greater grazing loss for 3 consecutive months during the 1998 calendar year for 1998 LAP or for 3 consecutive months during the 1999 calendar year for the 1999 LAP, as a result of damage due to a natural disaster as determined by the Deputy Administrator for Farm Programs, or a designee. Grazing losses must have occurred on native and improved pasture with permanent vegetative cover and other crops planted specifically for the sole purpose of providing grazing for livestock, but such losses do not include losses on, or with respect to, seeded small grain forage crops.

(d) To be eligible for assistance under this subpart, a livestock producer's pastures in an eligible county must have suffered at least a 40-percent loss of normal carrying capacity for a minimum of 3 consecutive months during the relevant calendar year. The percent of loss eligible for compensation shall not exceed the maximum percentage of grazing loss for the county as determined by the county committee. In addition, the producer will not be compensated for that part of any loss that would represent payment of a loss greater than 80 percent.

(e) Unless otherwise specified or determined by the Deputy Administrator, a livestock producer is not eligible to receive payments for the same loss under both this subpart and another Federal program.

### § 1439.102 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering this subpart. The definitions in § 1439.3 shall also be applicable, except where those definitions conflict with the definitions set forth in this subpart.

*Application* means the Form CCC–740, Livestock Assistance Program Application. The CCC–740 is available at county FSA offices.

*LAP* means, depending on the context, either the 1998 Livestock Assistance Program provided for in this subpart, the 1999 Livestock Assistance Program provided for in this subpart, or the overall 1998–99 Livestock Assistance Program provided for in this subpart.

*Livestock* means beef and dairy cattle, buffalo and beefalo (when maintained on the same basis as beef cattle), sheep, goats, swine, and equine animals where such equine animals are used commercially for human food or kept for the production of food or fiber on the owner's farm.

### § 1439.103 Application process.

(a) Livestock producers must submit a completed application prior to the close of business on March 31, 1999, for the 1998 LAP or, for the 1999 LAP, such other date as established by the Deputy Administrator, or by prior rule. The application and any other supporting documentation shall be submitted to the county FSA office with administrative authority over a producer's eligible grazing land or to the county FSA office that maintains the farm records for the livestock producer.

(b) Livestock producers shall certify as to the accuracy of all the information contained in the application, and provide any other information to CCC that the county FSA office or committee deems necessary to determine the livestock producer's eligibility.

### § 1439.104 County committee determinations of general applicability.

(a) County committees shall determine whether due to natural disasters their county has suffered a 40-percent loss affecting pasture and normal grazing crops for at least 3 consecutive months during the calendar year 1998 for the 1998 LAP or calendar year 1999 for the 1999 LAP. In making this determination, county committees, using the best information available from sources including but not limited to: the Extension Service, the Natural Resources Conservation Service; the Palmer Drought Index; and general knowledge of local rainfall data, pasture losses, grazing livestock movement out

of county, abnormal supplemental feeding practices for livestock on pasture and liquidation of grazing livestock, shall determine the percentage of grazing losses for pastures on a county wide basis. The county committee shall submit rainfall data, percentage of grazing losses for each general type of pasture, and the weighted average percentage of grazing loss for the county, with State Committee concurrence, to the Deputy Administrator on Form CCC–654. The maximum grazing losses the county committees shall submit on Form CCC–654 is 80 percent. These determinations shall be subject to review and approval of the Deputy Administrator. For purposes of this subpart, such counties are called "eligible counties."

(b) In each county, the county committee shall determine a LAP crop year. The LAP crop year shall be that period of time in a calendar year that begins with the date grazing of new growth pasture normally begins and ends on the date grazing without supplemental feeding normally ends in the county.

(c) In and for each eligible county, the county committee shall determine normal carrying capacities for each type of grazing or pasture during the LAP crop year. The normal carrying capacity for the LAP crop year shall be the normal carrying capacity the county committee determines could be expected from pasture and normal grazing crops for livestock for the LAP crop year if a natural disaster had not diminished the production of these grazing crops.

(d) In each eligible county, the county committee shall determine the payment period for the county. The payment period for the county shall be the period of time during the county's LAP crop year where for 3 consecutive months during 1998 for the 1998 LAP or during 1999 for the 1999 LAP, the carrying capacity for grazing land or pasture was reduced by 40 percent or more from the normal carrying capacity.

### § 1439.105 Loss criteria.

(a) The grazing land for which a livestock producer requests benefits must be within the physical boundary of the eligible county. Livestock producers in unapproved counties contiguous to an eligible county will not receive benefits under this subpart.

(b) To be eligible for benefits under this subpart, a livestock producer in an eligible county must have suffered a loss of grazing production equivalent to at least a 40-percent loss of normal carrying capacity for a minimum of 3 consecutive months.

(c) A producer shall certify each type of pasture and percentage of loss suffered by each type on the application. In establishing the percentage of grazing loss, producers shall consider the amount of available grazing production during the LAP crop year, whether more than the normal acreage of grazing land was required to support livestock during the LAP crop year, and whether supplemental feeding of livestock began earlier or later than normal.

(d) The county committee shall determine the producer's grazing loss and shall consider the amount of available grazing production during the LAP crop year, whether more than the normal acreage of grazing land was required to support livestock during the LAP crop year, and whether supplemental feeding of livestock began earlier or later than normal. The county committee shall request the producer to provide proof of loss of grazing production if the county committee determines the producer's certified loss exceeds other similarly situated livestock producers.

(e) The percentage of loss claimed by a livestock producer shall not exceed the maximum allowable percentage of grazing loss for the county as determined by the county committee in accordance with § 1439.104(a). Livestock producers will not receive benefits under this subpart for any portion of their loss that exceeds 80 percent of normal carrying capacity.

(f) Conservation Reserve Program acres released for haying and/or grazing and seeded small grain forage crops shall not be used to calculate losses under this subpart.

#### **§ 1439.106 Livestock producer eligibility.**

(a) Only one livestock producer will be eligible for benefits under this subpart with respect to an individual animal.

(b) Only owners of livestock who themselves provide the pasture or grazing land, including cash leased pasture or grazing land, for the livestock may be considered as livestock producers eligible to apply for benefits under this subpart.

(c) An owner of livestock who uses another person to provide pasture or grazing land on a rate-of-gain basis is not considered to be the livestock producer eligible to apply for benefits under this subpart.

(d) An owner who pledges livestock as security for a loan shall be considered as the person eligible to apply for benefits under this subpart if all other requirements of this part are met. Livestock leased under a contractual

agreement that has been in effect at least 3 months and establishes an interest for the lessee in such livestock shall be considered as being owned by the lessee.

(e) Livestock must have been owned for at least 3 months before becoming eligible for payment.

(f) The following entities are not eligible for benefits under this subpart:

(1) State or local governments or subdivisions thereof; or

(2) Any individual or entity who is a foreign person as determined in accordance with the provisions of §§ 1400.501 and 1400.502 of this chapter.

#### **§ 1439.107 Calculation of assistance.**

(a) The value of LAP assistance determined with respect to a livestock producer for each type and weight class of livestock owned or leased by such producer shall be the lesser of the amount calculated under paragraph (b) of this section (the total value of lost feed needs for eligible livestock) or calculated under paragraph (c) of this section (the total value of lost eligible pasture).

(b) The total value of lost feed needs shall be the amount obtained by multiplying:

(1) The number of days in the payment period the livestock are owned or, in the case of purchased livestock, meet the 3-month ownership requirement; by

(2) The daily feed grain equivalent per animal (15.7 pounds of corn necessary for a beef cow, factored for the weight class and type of livestock, as determined by CCC); by

(3) The 5-year national average market price for corn (1998 LAP: \$2.56 per bushel, or \$.0457 per pound; 1999 LAP: \$2.47 per bushel or \$.0441 per pound); by

(4) The number of eligible animals of each type and weight range of livestock owned or leased by the person; by

(5) The percent of the producer's grazing loss during the relevant period as certified by the producer and approved by the county committee in accordance with § 1439.105.

(c) The total value of lost eligible pasture shall be the amounts for each type of pasture calculated by:

(1) Dividing the number of acres of each pasture type by the carrying capacity established for the pasture; and multiplying;

(2) The result of paragraph (c)(1) of this section for each pasture type; by

(3) The daily feed grain equivalent per animal (15.7 pounds of corn necessary for a beef cow, factored for the weight class and type of livestock, as determined by CCC); by

(4) The 5-year national average market price for corn (1998 LAP: \$2.56 per bushel, or \$.0457 per pound; 1999 LAP: \$2.47 per bushel or \$.0441071 per pound); by

(5) The applicable number of days in the LAP payment period; by

(6) The percent of the producer's grazing loss during the relevant period as certified by the producer and approved by the county committee in accordance with § 1439.105.

(d) The final payment shall be the smaller of paragraph (b) of this section or paragraph (c) of this section multiplied by the national factor if required under § 1439.108. The final payment shall not exceed 50 percent of the smaller of paragraph (b) or (c) of this section determined prior to applying the national factor provided for in § 1439.108.

(e) Seeded small grain forage crops shall not be counted as grazing land under paragraph (c) of this section with respect to supporting eligible livestock.

(f) The number of equine animals that are used to calculate benefits under this subpart and in paragraph (a) of this section are limited to the number actually needed to produce food and fiber on the producer's farm or to breed horses and mules to be used to produce food and fiber on the owner's farm, and shall not include animals that are used for recreational purposes or are running wild or uncontrolled on land owned or leased by the owner.

#### **§ 1439.108 Availability of funds.**

In the event that the total amount of claims submitted under this subpart shall in the case of the 1998 LAP exceed \$270 million or in the case of the 1999 LAP exceed the amount determined appropriate by the Deputy Administrator, then such payments under such program shall be reduced by a uniform national percentage. Such payment reductions shall be after the imposition of applicable payment limitation provisions. Total 1999 LAP payments shall be prorated with payments for the Livestock Indemnity Program, Phase II provided for in this part such that total payments under the two programs shall not exceed \$200 million minus, as deemed appropriate, other assistance provided to livestock producers unless CCC makes additional funds available.

#### **Subpart C—Livestock Indemnity Program**

##### **§ 1439.201 Applicability.**

(a) This subpart sets forth the terms and conditions applicable to the original 1999 Livestock Indemnity Program

(hereafter "1999 Livestock Indemnity Program, Phase I") and the 1999 Livestock Indemnity Program, Phase II. Benefits will be provided under this subpart only for losses (deaths) of livestock occurring as a result of a natural disasters in counties included in the geographic area covered by a qualifying natural disaster declaration:

(1) With respect to the 1999 Livestock Indemnity Program ("LIP"), Phase I, issued by the President of the United States or the Secretary of Agriculture of the United States in the period from May 2, 1998, through May 21, 1999, or

(2) With respect to the 1999 Livestock Indemnity Program ("LIP"), Phase II, issued by the President of the United States or the Secretary of Agriculture, which declaration was requested between May 22, 1999, through December 31, 1999, inclusive, and subsequently approved.

(b) Losses in contiguous counties, or any other counties not the subject of the declaration, will not be compensable. Producers will be compensated by livestock category as established by CCC. The producer's loss must be the result of the declared disaster and in excess of the normal losses, established by CCC, for the producer's livestock operation. Losses to livestock due to drought conditions are deemed to have been avoidable and are not eligible for benefits under the 1999 LIP, Phase II.

#### § 1439.202 Administration.

Where circumstances preclude compliance with § 1439.204 due to circumstances beyond the applicant's control, the county or State committee may request that relief be granted by the Deputy Administrator under this section. In such cases, except for statutory deadlines and other statutory requirements, the Deputy Administrator may, in order to more equitably accomplish the goals of this subpart, waive or modify deadlines and other program requirements if the failure to meet such deadlines or other requirements does not adversely affect operation of the program and are not prohibited by statute.

#### § 1439.203 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering this subpart. The terms defined in § 1439.3 shall also be applicable, except where those definitions conflict with the definitions set forth in this subpart. The following terms shall have the following meanings:

*Application* means the Form CCC-661, Livestock Indemnity Program Application.

*Livestock* means beef and dairy cattle, sheep, goats, swine, poultry (including egg-producing poultry), equine animals used for food or in the production of food, and buffalo and beefalo when such buffalo and beefalo are maintained on the same basis and in the same manner as beef cattle maintained for commercial slaughter.

*Livestock producer* means one who possesses a beneficial interest in eligible livestock as defined in this subpart, has a financial risk in the eligible livestock, and is a citizen of, or legal resident alien in, the United States. A farm cooperative, private domestic corporation, partnership, or joint operation in which a majority interest is held by members, stockholders, or partners who are citizens of, or legal resident aliens in, the United States, if such cooperative, corporation, partnership, or joint operation owns or jointly owns eligible livestock or poultry, will be considered livestock producers. Any Native American tribe (as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act and Education Assistance Act); any Native American organization or entity chartered under the Indian Reorganization Act or chartered under the Indian Reorganization Act; any tribal organization under the Indian Self-Determination and Education Assistance Act; and any economic enterprise under the Indian Financing Act of 1974 will be considered livestock producers so long as they meet the terms of the definition.

#### § 1439.204 Sign-up period.

A request for benefits under this subpart must be submitted to the CCC at the Farm Service Agency county FSA office serving the county where the livestock loss occurred. All applications and supporting documentation must be filed in the county FSA office prior to the close of business on:

(a) November 1, 1999, or such other date as established by CCC for 1999 LIP, Phase I, or

(b) February 18, 2000, or such other date as established by CCC for 1999 LIP, Phase II.

#### § 1439.205 Proof of loss.

(a) Livestock producers must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof that the:

(1) Loss of eligible livestock occurred in an eligible county in the area of Presidential designation or Secretarial declaration;

(2) That the death of the eligible livestock was reasonably related to the recognized natural disaster; and

(3) The death of the livestock occurred:

(i) Between May 2, 1998, and May 21, 1999 inclusive for 1999 LIP, or

(ii) For 1999 LIP, Phase II, due to a disaster that was the subject of a Presidential or Secretarial disaster declaration, that was requested between May 22, 1999, and December 31, 1999, inclusive, and was subsequently approved.

(b) The livestock producer shall provide any available supporting documents that will assist the county committee, or is requested by the county committee, in verifying the loss and quantity of eligible livestock that perished in the natural disaster.

Examples of supporting documentation include, but are not limited to: purchase records, veterinarian receipts, bank loan papers, rendering truck certificates, Federal Emergency Management Agency and National Guard records, auction barn receipts, and any other documents available to confirm the presence of the livestock and subsequent losses.

Certifications by third parties or the producer and other such documentation as the county committee determines to be necessary in order to verify the information provided by the producer must also be submitted. Third-party verifications may be accepted only if the producer certifies in writing that there is no other documentation available.

Third-party verification must be signed by the party that is verifying the information. Failure to provide documentation that is satisfactory to the county committee will result in the disapproval of the application by the county committee.

(c) Livestock producers shall certify the accuracy of the information provided. All information provided is subject to verification and spot checks by the CCC. A failure to provide information requested by the county committee or by agency officials is cause for denial of any application filed under this part.

#### § 1439.206 Indemnity benefits.

(a) Livestock indemnity payments for losses of eligible livestock as determined by CCC are authorized to be made to livestock producers who file an application for the specific livestock category in accordance with instructions issued by the Deputy Administrator, if the:

(1) Livestock producer submits an approved proof of loss in accordance with § 1439.205; and



(2) County or State committee determines that because of an eligible disaster condition the livestock producer had a loss in the specific livestock category in excess of the normal mortality rate established by CCC, based on the number of animals in the livestock category that were in the producer's inventory at the time of the disaster.

(b) If the number of losses in the animal category exceeds the normal mortality rate established by CCC for such category, the loss of livestock that shall be used in making a payment shall be the number of animal losses in the animal category that exceed the normal mortality threshold established by CCC.

(c) Payments shall be calculated by multiplying the national payment rate for the livestock category as determined by CCC, by the number of qualifying animals determined under (b) of this section. Adjustments, if necessary, shall apply in accordance with § 1439.207.

(d) Payments that are earned by a person under the livestock indemnity program may be assigned in accordance with the provisions of part 1404 of this chapter.

#### § 1439.207 Availability of funds.

(a) In the event that the total amount of eligible claims submitted under this subpart exceeds the amount available as specified in paragraph (b) of this section, then each payment shall be reduced by a uniform national percentage.

(b) Amounts available for payments under this subpart shall be:

(1) \$3 million for 1999 LIP, Phase I or  
(2) The amount determined to be appropriate such that payments for LIP, Phase II and the 1999 Livestock Assistance Program provided for in this part do not exceed \$200 million as specified in § 1439.108 minus other adjustments as may be appropriate.

(c) Such payment reductions shall be applied after the imposition of applicable per-person payment limitation provisions. Notwithstanding any other provision of law, the payment limits for Phase I and II shall be considered separate limits except to the extent, if any, that a producer's recovery under the 2 phases are for losses from the same disaster.

#### § 1439.208 Limitations on payments.

(a) No person, as determined in accordance with part 1400 of this chapter, may receive benefits for livestock losses in excess of:

(1) \$50,000 for 1999 LIP, or  
(2) \$40,000 for 1999 LIP, Phase II.

(b) No person may receive payments under this subpart for the same losses

that the producer has received or will receive compensation under any other program provided for in this part. Payments under this part for other losses shall not, however, reduce the amount payable under this part. As provided for in § 1439.11, no person shall be eligible to receive any payment under this subpart if such person's annual gross revenue exceeds \$2.5 million.

(c) Disaster benefits under this part are not subject to administrative offset under § 1403.8 of this chapter except as otherwise provided by the Deputy Administrator.

(d) No interest will be paid or accrue on disaster benefits under this part that are delayed or are otherwise not timely issued unless otherwise mandated by law.

### Subpart D—Pasture Recovery Program

#### § 1439.301 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, CCC, and the Administrator, Farm Service Agency (FSA), through the Deputy Administrator. In the field, the regulations in this part will be administered by the State and county FSA committees ("State committees" and "county committees", respectively).

(b) State executive directors, county executive directors, and State and county committees do not have the authority to modify or waive any of the provisions in this part unless specifically authorized by the Deputy Administrator.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee that has not been taken by such committee, such as:

(1) Correct or require a county committee to correct any action taken by such county committee that is not in accordance with this part; or  
(2) Require a county committee to withhold taking any action that is not in accordance with this part.

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

(e) Data furnished by the applicants will be used to determine eligibility for program benefits. Although participation in the PRP is voluntary, program benefits will not be provided

unless the participant furnishes the appropriate data.

(f) CCC may consult with other Federal agencies, State agencies, or other non-USDA sources for such assistance as is determined by CCC to be necessary to implement this part.

#### § 1439.302 Definitions.

The following definitions shall be applicable to this subpart:

*Applicant* means, unless the context indicates otherwise, the owner or operator.

*Contract Period* means the period of time the PRP contract is in effect.

*Federally-owned land* means land owned by the Federal Government or any department, bureau, or agency thereof, or any corporation whose stock is wholly owned by the Federal Government.

*Forage crop* means a perennial stand of grasses or legumes that are intended for use by livestock for grazing and are customarily used for that purpose by local producers.

*Hayland* means land that was or has been routinely used to produce hay.

*Livestock* means beef and dairy cattle, buffalo and beefalo (when maintained on the same basis as beef cattle), sheep, goats, swine, and equine animals used commercially for human food or kept for the production of food or fiber.

*Local FSA office* means the FSA office in the local USDA service center in which the FSA records are maintained for the farm or ranch that includes the pasture land that the applicant is seeking to enroll in the PRP.

*Operator* means a person who is in general control of the farming operation on the farm, as determined by FSA for CCC.

*Owner* means a person or entity who is determined by FSA to have sufficient legal ownership of the land, including a person who is buying the acreage under a purchase agreement; each spouse in a community property State; each spouse when spouses own property jointly; and a person who has life-estate in the property.

*Participant* means an owner or operator or tenant who has entered into a PRP contract.

*Pasture land* means generally enclosed land devoted to a perennial forage crop used and suitable for grazing of livestock.

*Payment* means, unless the context indicates otherwise, the payment specified in the PRP contract that, subject to the availability of funds, is made to a participant to compensate such participant for reestablishing an approved forage crop on eligible pasture land in the PRP.

*Practice* means with respect to practices to be approved for relief under this subpart, an approved measure to cost-effectively reseed pasture, and, in conjunction with seeding, as necessary, fertilize to reestablish a forage crop on eligible pasture land damaged or destroyed by drought, as determined by CCC.

*Rangeland* means land having indigenous, unimproved vegetation that may be used or suitable for open roaming and grazing of livestock.

*State-owned land* means land owned by a State Government or any department, bureau, or agency thereof, including political subdivision of a State, as determined by CCC.

*State Technical Committee* means that committee established pursuant to 16 U.S.C. 3861 to provide information, analysis, and recommendations to the Department of Agriculture.

*Technical assistance* means the assistance provided in connection with the PRP to owners or operators by FSA or other authorized designee of the Secretary in determining the eligibility of land and implementing and certifying eligible practices.

#### **§ 1439.303 General description.**

Under the PRP, the CCC will enter into contracts with eligible producers to provide payments to assist producers to reestablish the damaged or destroyed pasture land to an approved forage crop. Contracts will require the producer to maintain the new crop for three full years after the calendar year of installation.

#### **§ 1439.304 Eligible persons.**

In order to be eligible to enter into a PRP contract in accordance with this part, a person must be an owner or operator of eligible pasture land that was damaged or destroyed by drought or related conditions during calendar year 1999 and:

(a) Must normally graze livestock on such pasture land; and

(b) If an operator of eligible land that the operator does not own, must provide satisfactory evidence that such operator will be in control of such eligible pasture land for the full term of the PRP contract period.

#### **§ 1439.305 Eligible land.**

(a) Except as otherwise provided in this section, as determined by CCC or the Deputy Administrator, to be eligible for the PRP, land must be pastureland that:

(1) As determined by CCC, is located within a county that was:

(i) Approved for participation in the 1999 Livestock Assistance Program;

(ii) Had a 1999 LAP payment period of at least 120 days; and

(iii) As of March 1, 2000, was approved for assistance under the Emergency Conservation Program provided for in 7 CFR part 701 because of a 1999 drought designation, or was later approved for such participation based upon an application filed by March 1, 2000, and based upon drought damage suffered in 1999.

(2) Has been established pasture land on which livestock is normally grazed or on which the forage crop was so damaged or destroyed by drought or related conditions in calendar year 1999 that the forage crop will not return in the 2000 grazing year, and seeding is required to reestablish the forage crop, as determined by the Deputy Administrator;

(b) Notwithstanding paragraph (a) of this section, land, as determined by CCC or the Deputy Administrator, shall be ineligible for enrollment if the pasture land is:

(1) Federal-operated land;

(2) State-operated land;

(3) Hayland; or

(4) Rangeland, as determined by the Deputy Administrator.

#### **§ 1439.306 Duration of contracts.**

Contracts under this subpart and their forage crop maintenance requirements shall run through December 31, 2003; provided further that the installation of the practice must be completed no later than December 31, 2000.

#### **§§ 1439.307–1439.319 [Reserved]**

#### **§ 1439.320 Obligations of participant.**

All participants subject to a PRP contract must agree to:

(a) Carry out the terms and conditions of the PRP contract including carrying out all approved practices and meeting the schedule of dates for seeding and for maintenance measures provided for in the contract to establish and maintain the approved forage crop;

(b) Comply with all requirements of part 12 of this title;

(c) Do whatever else is necessary to establish and maintain the required forage crop according to the required practice requirements on the land subject to that contract and take such other actions that may be required by CCC throughout the PRP contract period as needed to insure that the purposes of the contract are met;

(d) Comply with noxious weed laws of the applicable State or local jurisdiction on such land;

(e) Control, subject to the contract, all weeds, insects, pests and other undesirable species to the extent

necessary to ensure that the establishment and maintenance of the approved forage crop is adequately protected, as determined by CCC;

(f) Not harvest the re-seeded cover crop at any time during the contract period; and,

(g) Be jointly and severally responsible with other persons qualifying for payments under this program on the same land for compliance with such contract and the provisions of this part and for any refunds, payment adjustments, or liquidated damages that may be required for violations of any of the terms and conditions of the PRP contract.

#### **§ 1439.321 Obligations of the Commodity Credit Corporation.**

Subject to the availability of funds, CCC shall:

(a) Upon establishment of the required forage crop, and provided all other eligibility criteria have been met, make PRP payments to participants in accordance with the provisions of this part; and

(b) Provide such technical assistance as it determines necessary to assist the participant in carrying out the PRP contract.

#### **§ 1439.322 Eligible practices.**

Eligible practices are those practices specified in the contract that meet all quantity and quality standards needed to cost-effectively:

(a) Reestablish the approved forage crop, as determined by the Deputy Administrator, on acreage subject to the contract, including reseeding;

(b) Meet environmental laws and regulations, as applicable, for the contract period; and

(c) Accomplish other purposes of the program as determined by the Deputy Administrator.

#### **§§ 1439.323–1439.329 [Reserved]**

#### **§ 1439.330 Signup.**

Only applications for contracts submitted during designated signup periods as announced by CCC will be approved.

#### **§ 1439.331 Applications for PRP contracts.**

Applicants may submit applications to participate in the PRP subject to § 1439.330 of this part. Applications may be automatically accepted upon certification by the applicant that:

(a) The land meets the eligibility requirements of § 1439.305; and

(b) The applicant meets the eligibility requirements of § 1439.304; and

(c) The applicant certifies that the pasture land to be enrolled in the PRP

was damaged or destroyed by drought or related conditions in calendar year 1999 so that seeding is required to reestablish the qualifying forage crop.

**§ 1439.332 PRP contract.**

(a) In order to enroll land in the PRP, the participant must enter into a contract with CCC.

(b) The PRP contract will be comprised of:

(1) The terms and conditions for participation in the PRP; and

(2) Any other materials or agreements determined necessary by CCC.

(c) In order to enter into a PRP contract, the applicant must submit an application to participate at the local FSA office in the USDA service center.

(d) The PRP contract must, within the dates established by CCC, be signed by the applicant.

(e) The Deputy Administrator is authorized to approve PRP contracts on behalf of CCC.

(f) As determined by CCC, PRP contracts may be terminated before the expiration date when:

(1) The owner loses control of, or transfers, all or part of the acreage under contract and the new owner does not wish to continue the contract;

(2) The participant(s) voluntarily request in writing to terminate the contract and obtains the approval of CCC subject to such conditions on approval as may be imposed by CCC;

(3) The participant(s) are not in compliance with the terms and conditions of the contract;

(4) The same acreage is later enrolled in another State, Federal, or local conservation program, unless the Deputy Administrator approves otherwise;

(5) The PRP practice fails after a certain time period, as determined by the Deputy Administrator, and the CCC determines the cost of restoring the cover outweighs the benefits received from the restoration; or

(6) The PRP contract was approved based on erroneous eligibility determinations.

(g) When a PRP contract is terminated, the participant must, except as agreed to by CCC, refund all or part of the payments made with respect to such contract plus interest thereon, as determined by CCC, and shall pay liquidated damages as provided for in such contract. CCC, in its discretion, may permit a lesser payment to the extent that such a reduction will not impair program operations.

**§ 1439.333 Contract modifications.**

By mutual agreement between CCC and the participant, a PRP contract may be modified in order to:

(a) Decrease acreage in the PRP;

(b) Facilitate the practical administration of the PRP; or

(c) Accomplish the goals and objectives of the PRP, as determined by the Deputy Administrator.

**§ 1439.334–1439.339 [Reserved]**

**§ 1439.340 Payments.**

(a) Payments shall be made available upon a determination by CCC that an eligible practice, or an identifiable unit thereof, has been established in compliance with the appropriate standards and specifications. Payments will be prorated if requests for assistance exceed available funding.

(b) Except as otherwise provided for in this part, payments may be made under the PRP only for the cost-effective establishment or installation of an eligible practice.

(c) Subject to the availability of funds, payments shall be made in such amount and in accordance with such time schedule as may be agreed upon and specified in the PRP contract.

(d) Payment shall be made on a per-acre basis.

(e) The payment shall be divided among the participants on a single contract in the manner agreed upon in such contract.

(f) The maximum amount of all payments that a person may receive under the PRP shall not exceed \$2,500. The regulations set forth at part 1400 of this chapter shall be applicable in making certain eligibility and "person" determinations as they apply to payment limitations under this part.

(g) Payments shall be limited as needed or appropriate to account for mandatory or discretionary limits on payments.

**§ 1439.341 Levels and rates for payments.**

(a) As determined by the Deputy Administrator, CCC shall pay not more than 50 percent of the average cost of reestablishing the approved forage crop, including reseeding, on eligible land.

(b) The average cost of performing a practice may be determined by CCC based on recommendations from the State Technical Committee or on such other basis as it deemed appropriate. Such cost may be the average cost in a State, a county, or a part of a county or counties, as determined by the Deputy Administrator.

(c) Notwithstanding paragraph (a) or (b) of this section, no payment shall exceed \$75 per acre without approval of the Deputy Administrator. In no case shall a payment exceed \$125 per acre.

**§ 1439.342 Method of payment.**

Payments made by CCC under this part may be made in cash, in kind, in commodity certificates, or any combination of such methods of payment in accordance with part 1401 of this chapter, unless otherwise specified by CCC.

**§§ 1439.343–1439.349 [Reserved]**

**§ 1439.350 Payments to participants.**

Payments shall be made to the participants responsible for the establishment of the practice.

**§ 1439.351 Violations.**

(a) If a participant fails to carry out the terms and conditions of a PRP contract, CCC may terminate the PRP contract.

(b) If the PRP contract is terminated by CCC in accordance with this section then, in addition to all such other remedies as may be provided for in this subpart or elsewhere:

(1) The participant shall forfeit all rights to payments under such contract and refund all payments previously received together with interest; and

(2) Pay liquidated damages to CCC in such amount as specified in the contract.

(c) If the Deputy Administrator determines such failure does not warrant termination of such contract, the Deputy Administrator may authorize relief as the Deputy Administrator deems appropriate.

(d) CCC may also terminate a PRP contract without sanction if the participant agrees to such termination and CCC determines such termination to be in the public interest.

(e) CCC may reduce a demand for a refund under this section to the extent CCC determines that such relief would be appropriate and will not deter the accomplishment of the goals of the program.

**§ 1439.352 Executed PRP contract not in conformity with regulations.**

If, after a PRP contract is approved by CCC, CCC discovers that the PRP contract is not in conformity with the provisions of this part, the provisions of the regulations shall prevail and the contract may be terminated.

**§ 1439.353 Performance based upon advice or action of the Department.**

The provisions of § 718.8 of this title relating to performance based upon the action or advice of a representative of the Department shall be applicable to this part.

**§ 1439.354 Access to land under contract.**

(a) The applicant or participant shall, as requested, provide all representatives

or designees of CCC with access to all land that is:

(1) The subject of an application for a contract under this part; or

(2) Under contract or otherwise subject to this part.

(b) With respect to such land identified in paragraph (a) of this section, the participant or applicant shall provide such representatives with access to examine records with respect to such land for the purpose of determining compliance with the terms and conditions of the PRP.

**§ 1439.355 Miscellaneous.**

(a) Any remedies permitted CCC under this part shall be in addition to any other remedy, including, but not limited to criminal remedies, or actions for damages in favor of CCC, or the United States, as may be permitted by law.

(b) Absent a scheme or device to defeat the purpose of the program, when an owner loses control of PRP acreage due to foreclosure, the Deputy Administrator may waive the demand that could otherwise be made for refunds.

(c) Payments under this subpart are subject to provisions contained in Subpart A of this part including, but not limited to provisions concerning misrepresentations, payment limitations, limitations on eligibility tied to the person's gross income, and refunds to CCC, liens, assignment of payments, and appeals, and maintenance of books and records. In addition other parts of this chapter and of chapter VII relating to payments in event of death, the handling of claims, and other matters may apply, as may other provisions of law and regulation.

(d) Any payments not earned that have been paid must be returned with interest subject to such other remedies as may be allowed by law.

(e) No interest will be paid or accrue on benefits under this subpart that are delayed or otherwise not timely issued unless otherwise mandated by law.

(f) Nothing in this subpart shall require a commitment of funds to this subpart in excess of that determined to be appropriate by the Deputy Administrator and/or CCC.

(g) Any payment otherwise due under this subpart will be reduced to the extent that it is determined that such payment produces a duplicate benefit under another program operated by the Department of Agriculture and that to make such duplicate payment would be contrary to the purposes of the program.

(h) In no instance, unless approved by the Deputy Administrator in accordance with law, may the amount expended

under this subpart exceed an amount that, when added to the amounts expended for the 1999 LAP payments and for the Livestock Indemnity Program, Phase II, exceeds \$200 million.

(i) Payments under this subpart 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 contract payments except to the extent that an exemption if provided for by the Executive Vice President, CCC.

(j) 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.

(k) In those instances in which, prior to the issuance of this regulation, a producer has signed a power of attorney on an approved FSA-211 for a person or entity indicating that such power shall extend to "all above programs", without limitation, such power will be considered to extend to this program unless by June 22, 2000 the person granting the power notifies the local FSA office for the control county that the grantee of the power is not authorized to handle transactions for this program for the grantor.

**Subpart E—Livestock Indemnity Program for Contract Growers**

**§ 1439.401 Applicability.**

This subpart sets forth the terms and conditions of the Livestock Indemnity Program for Contract Growers. Under Title I of the Supplemental Appropriations Act (Public Law 106-113, 113 Stat. 1501), the Secretary is specifically authorized to use \$10 million to provide assistance to persons who raise livestock owned by other persons for income losses sustained with respect to livestock during 1999 if the Secretary finds that such losses are the result of natural disasters. Utilizing that authority, this subpart, accordingly, allows for benefits to be paid, up to that amount, to eligible producers that sustained a loss of income directly attributed to a reduction in the production of livestock and livestock products from livestock that were entirely owned by others, due to or as a result of natural disasters that occurred from January 1 through December 31, 1999, in those areas for which a Presidential or Secretarial Declaration was approved. Producers in contiguous counties that were not

designated as a disaster area in their own right are not eligible for benefits under this part. Benefits will be provided with respect to eligible livestock where the death occurred in the disaster area during January 1 through December 31, 1999, and where the death was reasonably related to the disaster that prompted the disaster declaration as determined by the Deputy Administrator of Farm Programs, or designee. The livestock had to be in possession of the applicant during the time in which the disaster occurred.

**§ 1439.402 [Reserved]**

**§ 1439.403 Definitions.**

The definitions set forth in this section shall be applicable for all purposes of administering this Livestock Indemnity Program for Contract Growers. Definitions in § 1439.3 shall also be applicable, except where those definitions conflict with the definitions set forth in this subpart. The following terms shall have the following meanings:

*Application* means the request for benefits and the necessary documentation supporting such a request.

*Contract* means, with respect to contracts for the handling of livestock, an agreement between the livestock producer or grower and the livestock owner setting forth the specific terms, conditions and obligations of the parties involved regarding the production of livestock and livestock products.

*Deputy Administrator* means Deputy Administrator for Farm Programs, Farm Service Agency (FSA), or a designee.

*Eligible livestock* means livestock that are:

(1) Beef and dairy cattle, sheep, goats, swine, poultry (including egg-producing poultry), equine animals used for food or in the production of food, and buffalo and beefalo when buffalo and beefalo are maintained on the same basis as beef cattle, and

(2) Was produced by the applicant subject to a contractual agreement between the such producer or grower and the livestock owner.

*Eligible livestock producer* means, with respect to particular livestock, one, other than the owner of the livestock, who possesses an independent financial interest in the eligible livestock or products derived from such eligible livestock, as defined and limited by the terms and conditions of a contractual agreement with the livestock owner; and is a citizen or a legal resident alien of the United States. Such producer may be individual or may be a farm cooperative, private domestic

corporation, partnership, or joint operation in which the majority interest is held by members, stockholders, or partners who are citizens of, or legal resident aliens in, the United States, if such cooperative, corporation, partnership, or joint operation possesses a financial interest, but not as owner, in the eligible livestock or products derived from such eligible livestock. Also such producer may also be an Indian tribe (as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act and Education Assistance Act); an Indian organization or entity chartered under the Indian Reorganization Act or chartered under the Indian Self-Determination and Education Assistance Act; or an economic enterprise under the Indian Financing Act of 1974.

**§ 1439.404 Application period.**

(a) A request for benefits under this subpart must be submitted to CCC at the county FSA office serving the county where the loss occurred. All requests for benefits and supporting documentation must be filed in the county FSA office by May 1, 2000, or such other date as established by CCC.

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

**§ 1439.405 Proof of loss.**

(a) Livestock producers must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof that the loss of eligible livestock or livestock products, and the corresponding reduction of income, occurred in the area of a Presidential designation or Secretarial declaration referred to in § 1439.401 and that the death of the eligible livestock was reasonably related to the recognized natural disaster. The documentary evidence of loss, quantity of the loss, and type of eligible livestock claimed for payment, shall be reported to CCC together with any supporting documentation under paragraph (b) of this section.

(b) The livestock producer shall provide any available supporting documents that will assist the county committee in verifying the loss and the quantity of eligible livestock that perished in the natural disaster. Examples of supporting documentation include, but are not limited to: written contracts, production records, veterinarian receipts, bank loan papers, rendering truck receipts, Federal Emergency Management Agency and

National Guard records, and any other documents available to confirm the presence of the livestock and the subsequent losses. Certification of third parties or the producer and other such documentation as the county committee determines to be necessary for the verification of the information provided by the applicant may be submitted, subject to review and approval of the county committee. Failure to provide documentation that is satisfactory to the county committee can result in disapproval of the application by the county committee.

(c) In all circumstances, livestock producers shall certify to the accuracy of the information provided. As provided by various statutes, providing a false certification to the government is punishable by imprisonment, fines and other penalties. All such remedies, as well as all civil remedies, may be applied. All information provided is subject to verification and spot check by the CCC.

**§ 1439.406 Indemnity benefits.**

(a) Payment under this part shall only be made to livestock producers who file a Certification of Livestock Losses for Eligible Disaster—Contract Growers, Form CCC-661B, for the specific livestock category for which relief is sought and file such form in accordance with instructions issued by the Deputy Administrator. In addition, payment may be made only if:

(1) The livestock producer submits a proof of loss that meets the requirements of § 1439.405; and

(2) The county or State committee determines that because of an eligible disaster condition the livestock producer had a loss in the specific category in excess of the normal mortality rate established by CCC, based on the number of animals in the livestock category that were in the livestock producer's inventory at the time of the disaster event.

(b) If the number of losses in the animal category exceeds the normal mortality rate established by CCC for such category, the loss of eligible livestock that shall be used in making a payment shall be the number of animal losses in the category that exceed the normal mortality threshold established by CCC.

(c) Subject to the availability of funds, payments shall be made in an amount determined by multiplying: the national payment rate for the livestock category as determined by CCC by the amount specified in paragraph (b) of this section.

**§ 1439.407 Proration of claims.**

In the event that the funds made available to satisfy claims shall be less than the demand for such funds, the Deputy Administrator may reduce all claims by a uniform percentage to account for the level of available funds, or may take such other measures as he deems appropriate to apportion the funds among the claimants. Such payment reductions as are made shall be applied after the imposition of applicable payment limitation provisions.

**§ 1439.408 Miscellaneous provisions.**

(a) Payments under this subpart are subject to provisions contained in subpart A of this part including, but not limited to provisions concerning misrepresentations, payment limitations, limitations on eligibility tied to the person's gross income, and refunds to CCC, liens, assignment of payments, and appeals, and maintenance of books and records. In addition other parts of this chapter and of chapter VII of this title relating to payments in event of death, the handling of claims, and other matters may apply, as may other provisions of law and regulation.

(b) Any payments not earned that have been paid must be returned with interest subject to such other remedies as may be allowed by law.

(c) No interest will be paid or accrue on benefits under this subpart that are delayed or otherwise not timely issued unless otherwise mandated by law.

(d) Nothing in this subpart shall require a commitment of funds to this subpart in excess of that determined to be appropriate by the Deputy Administrator and/or CCC.

(e) The Deputy Administrator can deny or adjust claims in those instances in which the party seeking relief was affiliated with or related to the owner of the livestock if it is determined by the Deputy Administrator that such action is consistent with the purposes of this subpart and may take such action as is deemed appropriate to avoid overlap with relief available under other subparts in this part.

(f) In no instance, unless otherwise approved by the Deputy Administrator, will the amount to be expended under this program exceed \$10 million.

**Subparts F-H [Reserved]****Subpart I—American Indian Livestock Feed Program****§ 1439.900 [Reserved].****§ 1439.901 Applicability.**

This subpart sets forth the terms and conditions of a government-to-government program titled the American Indian Livestock Feed Program (AILFP). The AILFP has been allocated a budget of \$12.5 million. Assistance will be available in those regions that CCC determines have been affected by natural disaster, and where a determination is made by the Deputy Administrator for Farm Programs that a livestock feed emergency exists on tribal land. Funds made available under the AILFP shall be available beginning in crop year 1997 and in subsequent crop years. Payments may become available as contracts with tribal governments are approved. If any other benefits are received from the Department of Agriculture for the same loss, then payments under this part will be reduced accordingly. Payments will terminate when funds have been exhausted, without respect to the date of any application, or of when any contract has been entered into by any tribal government and CCC. Applicants will receive benefits on a first-come, first-served basis.

**§ 1439.902 Administration.**

(a) This subpart shall be administered by CCC under the general supervision of the Deputy Administrator for Farm Programs, Farm Service Agency (FSA). This program shall be carried out in the field as prescribed in these regulations and as directed in the contract executed between the applicable tribal government and CCC, except that in the event any contract provision conflicts with these regulations, the regulations shall apply.

(b) Tribal governments, their representatives, and employees do not have authority to modify or waive any provisions of the regulations of this subpart.

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

(d) The Deputy Administrator may authorize State and county committees to waive or modify deadlines, and other program requirements in cases where the applicant or tribe, as applicable, show that circumstances beyond the applicant's or tribe's control precluded compliance with the deadline and

where lateness or failure to meet such other requirements does not adversely affect the operation of the program.

(e) The tribal government will, in accordance with this part and in coordination with the U.S. Department of the Interior, Bureau of Indian Affairs (BIA) and FSA State and county committees, recommend the geographical size and shape of the region where the natural disaster has occurred, and whether the regional eligibility requirement has been satisfied. Documentation to support the reported natural disaster shall be provided by the State FSA office and shall accompany the recommendation. The recommendation of eligibility must be acted on by the Deputy Administrator.

(f) The Deputy Administrator will determine all prices with respect to implementing the AILFP.

(g) The FSA State committee will determine crop yields and livestock carrying capacity with respect to implementing the AILFP.

(h) Participation in the AILFP by a tribal government for either the tribal government's benefits or for the benefit of any eligible owner is voluntary and is with the understanding that CCC will not reimburse the tribal government or its members for any administrative costs associated with the administration or implementation of the program.

(i) The provisions of subpart A shall not apply to this part; however the following provisions of 7 CFR part 1439, as in effect on January 1, 1999 (see 7 CFR Parts 1200 to 1599, revised as of January 1, 1999) shall apply in the conduct of this program: §§ 1439.3, 1439.11 through 1439.22, 1439.24 as well as §§ 1439.6(i)(1)(i), 1439.8(a), and 1439.9(d) through (f). Further, from those same regulations, the provisions of §§ 1439.10(a) and 1439.15, as in effect on January 1, 1999 (see 7 CFR Parts 1200 to 1599, revised as of January 1, 1999) shall apply as set forth in §§ 1439.908 and 1439.909.

**§ 1439.903 Definitions.**

The definitions set forth in this section shall be applicable to the program authorized by this subpart. The terms defined in § 1439.3 shall also be applicable except where those definitions conflict with the definitions set forth in this subpart. The following terms shall have the following meanings:

*Animal Unit (AU)* means a standard expression of livestock based on a net energy maintenance requirement equal to 13.6 megacalories per day.

*Animal Unit Day (AUD)* means an expression of expected or actual stocking rate equal to one day.

*Approving official* means a representative of the tribal government who is authorized to approve an application for assistance made in accordance with this subpart.

*Carrying capacity* means the stocking rate expressed as acres per animal unit that is consistent with maintaining or improving vegetation or related resources.

*Dependent Indian Community* means a limited category of Indian lands that are neither reservations nor allotments and is:

(1) Land set aside by the Federal Government for the use of Indians as Indian land, and

(2) Under Federal superintendence.

*Deputy Administrator* means the Deputy Administrator for Farm Programs, FSA, or designee.

*Disaster period* means the length of time that damaging weather, adverse natural occurrence, or related condition has a detrimental affect on the production of livestock feed.

*Eligible feed for assistance* means any type of feed (feed grain, oilseed meal, premix, or mixed or processed feed, liquid or dry supplemental feed, roughage, pasture, or forage) that provides net energy megacalories and that is consistent with acceptable feeding practices and was not produced by the owner.

*Eligible livestock* means beef and dairy cattle; buffalo and beefalo maintained on the same basis as beef cattle; equine animals used for food or used directly in the production of food; sheep; goats; and swine.

*Eligible owner* means an individual or entity, including the tribe, eligible to participate in this program, who:

(1) Contributes to the production of eligible livestock or their products;

(2) Has such contributions at risk;

(3) Meets the criteria set forth in § 1439.907; and

(4) Meets eligibility criteria set forth by the tribal government in an approved contract.

*Livestock feed emergency* means a situation in which a natural disaster causes more than a 35-percent reduction in the feed produced in a region determined in accordance with § 1439.904 for a defined period, as determined by CCC. Any loss of feed production attributable to overgrazing or other factors not considered to be a natural disaster as specified in this subpart shall not be included in the loss used to determine if a livestock feed emergency occurred.

*Natural disaster* means damaging weather, including but not limited to

drought, hail, excessive moisture, freeze, tornado, hurricane, excessive wind, or any combination thereof; or an adverse natural occurrence such as earthquake, flood, or volcanic eruption; or a related condition, including but not limited to heat, or insect infestation, that occurs as a result of aforementioned damaging weather or adverse natural occurrence prior to or during the crop year that directly causes, accelerates, or exacerbates the reduction of livestock feed production.

*Net energy maintenance* means the appropriate amount of net energy needed to meet the daily maintenance needs for livestock based on the weight range by type of eligible livestock as

provided in this section, as determined by CCC.

*Region* means a geographic area suffering a livestock feed emergency because of natural disaster as determined by a tribal government in accordance with § 1439.904.

*Tribal Governed Land* means:

- (1) All land within the limits of any Indian reservation;
- (2) Dependent Indian communities;
- (3) Any lands title to which is either held in trust by the United States for the benefit of an Indian tribe or Indian, or held by an Indian tribe or Indian subject to a restriction by the United States on alienation; and

(4) Land held by an Alaska Native, Alaska Native Village or village or regional corporation under the provisions of the Alaska Native Claim Settlement Act or other Act relating to Alaska Natives.

*Tribe* means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

*Type and weight range* means the weight range by type of livestock and appropriate amount of energy required to provide the daily maintenance needs for livestock, as follows:

Kind/type	Weight range (lbs.)	Daily energy requirement
(1) Beef cattle (Buffalo/Beefalo):		
Beef .....	Less than 400 .....	3.01 NEm Mcal.
Beef .....	400-799 .....	5.59 NEm Mcal.
Beef .....	800-1099 .....	7.31 NEm Mcal.
Beef .....	1100+ .....	10.75 NEm Mcal.
Beef, cow .....	All .....	13.60 NEm Mcal.
Beef, bull .....	1000+ .....	11.18 NEm Mcal.
(2) Dairy cattle:		
Dairy .....	Less than 400 .....	3.01 NEm Mcal.
Dairy .....	400-799 .....	5.59 NEm Mcal.
Dairy .....	800-1099 .....	7.31 NEm Mcal.
Dairy .....	1100+ .....	10.75 NEm Mcal.
Dairy, cow .....	Less than 1100 .....	23.22 NEI Mcal.
Dairy, cow .....	11-1299 .....	26.66 NEI Mcal.
Dairy, cow .....	1300-1499 .....	28.38 NEI Mcal.
Dairy, cow .....	1500+ .....	29.67 NEI Mcal.
Dairy, bull .....	1000+ .....	12.47 NEm Mcal.
(3) Equine:		
Equine .....	Less than 450 .....	6.2 DE Mcal.
Equine .....	450-649 .....	8.9 DE Mcal.
Equine .....	650-874 .....	11.6 DE Mcal.
Equine .....	875+ .....	17.3 DE Mcal.
(4) Swine:		
Swine .....	Less than 45 .....	780 DE Kcal.
Swine .....	45-124 .....	1630 DE Kcal.
Swine .....	125+ .....	2867 DE Kcal.
Swine, sow .....	235+ .....	9854 DE Kcal.
Swine, boar .....	235+ .....	5446 DE Kcal.
(5) Sheep:		
Sheep .....	Less than 44 .....	0.34 NEm Mcal.
Sheep .....	44-82 .....	0.77 NEm Mcal.
Sheep .....	83+ .....	0.95 NEm Mcal.
Sheep, ewe .....	150+ .....	2.66 NEm Mcal.
Sheep, ram .....	150+ .....	1.46 NEm Mcal.
(6) Goats:		
Goats .....	Less than 44 .....	0.43 NEm Mcal.
Goats .....	44-82 .....	0.95 NEm Mcal.
Goats .....	83+ .....	1.29 NEm Mcal.
Goats, doe .....	125+ .....	3.00 NEm Mcal.
Goats, doe, dairy 1994 and subsequent crop years.	125+ .....	4.47 NEm Mcal.
Goats, buck .....	125+ .....	1.80 NEm Mcal.

**§ 1439.904 Region.**

(a) The size of a region will consist of:

- (1) An entire reservation, even if the reservation is less than 320,000 acres; or

- (2) Contiguous acreage of at least 320,000 acres and include land acreage of an Indian reservation or tribal governed land. If a region is delineated

based on minimum size of 320,000 acres, the region shall be delineated without regard to the boundary of a reservation or tribal governed land. If

the acreage affected by the natural disaster does not meet the minimum acreage requirement specified in this paragraph (a)(2), acreage will be added from surrounding land until the minimum requirement is met.

(b) The region must:

(1) Include acreage affected by the natural disaster that is the basis for the region's designation;

(2) Correspond to the shape of the natural disaster to the maximum extent possible;

(3) Be defined in a manner that does not intentionally include or exclude owners or crops;

(4) Contain some acreage of tribal governed land; and

(5) Have suffered a livestock feed emergency as defined in § 1439.903.

#### § 1439.905 Responsibilities.

(a) During the operation of this program, CCC shall:

(1) Provide weather data, crop yields and carrying capacities to tribes requesting such information;

(2) Review contracts submitted by tribal governments requesting disaster regions; and

(3) Act as an agent for disbursing payments to eligible livestock owners in approved disaster regions.

(b) Tribal governments shall be responsible for:

(1) Approaching CCC to obtain a contract to participate in the AILFP based on the tribe's voluntary decisions that participation will benefit its members;

(2) Gathering, organizing, and reporting accurate information regarding disaster conditions and region;

(3) Advising livestock owners in an approved region that they may be eligible for payments, in addition to the method and requirements for filing applications;

(4) Accepting applications for payment from individual livestock owners;

(5) Determining that the information provided by individual livestock owners on payment applications is accurate and complete and that the owner is eligible for payments under this program;

(6) Submitting only accurate and complete payment applications to the designated FSA office acting as an agent for disbursing payments to eligible livestock owners.

(c) The owner or authorized representative, shall:

(1) Furnish all the information specified on the payment application, as requested by CCC;

(2) Provide any other information that the tribal government deems necessary to determine the owner's eligibility; and

(3) Certify that purchased feed was or will be fed to the owner's eligible livestock.

#### § 1439.906 Program availability.

(a) When a tribal government determines that a livestock feed emergency exists due to a natural disaster, the tribal government may submit a properly completed contract requesting approval of a region. All contracts requesting region approval must be submitted by the later of December 28, 1998, or 30 days after the end of the disaster period specified on the contract.

(b) Properly completed contracts shall consist of:

(1) A completed form CCC-453, Contract To Participate; and

(2) A completed form CCC-648, Region Designation And Feed Loss Assessment; and

(3) Supportive documentation as determined by CCC including, but not limited to:

(i) A map of the region delineated in accordance with § 1439.904;

(ii) Historical production data and estimated or actual production data for the disaster year;

(iii) Climatological data provided by the State FSA office; and

(iv) A report of an on-site survey.

(c) The Deputy Administrator shall make a determination as to whether a livestock feed emergency exists not later than 30 days after receipt of a properly completed contract made in accordance with this subpart and shall notify the tribal government and State FSA office of such determination as applicable.

(d) The feeding period provided in the approved contract will be for a term not to exceed 90 days, except as provided in paragraph (e) of this section. The feeding period shall not be extended if the livestock feed emergency no longer exists. Notwithstanding the duration of any feeding period, assistance under this subpart terminates immediately and without notice when program funds are exhausted as specified in § 1439.901.

(e) The tribal government may request to extend the feeding period not to exceed an additional 90 days for each extension if disaster conditions have not diminished significantly and a livestock feed emergency continues.

#### § 1439.907 Eligibility.

(a) An eligible owner must own or jointly own the eligible livestock for which payments under this subpart are requested. Notwithstanding any other provision of this subpart, livestock leased under a contractual agreement that has been in effect at least 6 months prior to the date of application for

assistance made under this subpart shall be considered as being owned by the lessee if the lease:

(1) Requires the lessee to furnish the feed for such livestock; and

(2) Provides for an interest in such livestock, such as the right to market a share of the increase in weight of livestock.

(b) A State or non-tribal local government or subdivision thereof, or any individual or entity determined to be ineligible in accordance with § 1400.501 of this chapter are not eligible for benefits under this subpart.

(c) Any eligible owner of livestock, including the tribe, may file a CCC-approved AILFP payment application with the tribal government. When such a payment application is filed, the owner and an authorized tribal government representative shall execute the certification contained on such payment application no later than the deadline established by CCC upon approval of the region.

(d) To be eligible for benefits under this subpart, livestock owners must own or lease tribal governed land in the delineated region; and have had livestock on such land at the time of disaster that is the basis for the region's designation.

(e) Eligible livestock owners shall be responsible for providing information to the tribal government that accurately reflects livestock feed purchases for eligible livestock during the feeding period. False or inaccurate information may affect the owner's eligibility.

#### § 1439.908 Payment application.

(a) Except as provided in paragraph (d) of this section, payment applications from interested eligible owners must be:

(1) Submitted to the tribal government by the owner no later than a date announced by the tribe, such date being no later than the applicable date in § 1439.907(c); and

(2) Submitted by the tribal government to the office designated by CCC no later than a date announced by CCC; and

(3) Accompanied by valid receipts substantiating purchase of eligible feed for assistance. Valid receipts must also be accompanied by the certification referenced in § 1439.907(d)(3) and shall contain:

(i) The date of feed purchase, which must fall within the eligible feeding period as approved on the contract;

(ii) The names and addresses of the buyer and the vendor;

(iii) The type of feed purchased;

(iv) The quantity of the feed purchased;

(v) The cost of the feed; and



(vi) The vendor's signature if the vendor is not licensed to conduct this type of business transaction.

(b) The tribal government shall review each payment application, as specified by CCC, for completeness and accuracy. Except as provided in paragraphs (c) and/or (d) of this section, the tribal government shall approve those eligible owners and applications meeting the requirements of this subpart.

(c) No approving tribal government member shall review and approve a payment application for any operation for which such member has a direct or indirect interest. Such payment application may be reviewed for approval by a member of the tribal government who is not related to the applicant by blood or marriage.

(d) Tribal governments do not have the authority to approve a payment application for any operation for which the tribe has a direct or indirect interest. Payment applications for tribal owned livestock shall contain an original signature of a member of the tribal government, signing as representing all owners of the tribal owned livestock, who possesses the authority to sign documents on behalf of the tribe and shall be submitted to an office designated by the Secretary for approval.

(e) No payment application, as specified by CCC, shall be approved unless the owner meets all eligibility requirements. Information submitted by the owner and any other information, including knowledge of the tribal government concerning the owner's normal operations, shall be taken into consideration in making recommendations and approvals. If either the payment application is incomplete or information furnished by the owner is incomplete or ambiguous and sufficient information is not otherwise available with respect to the owner's farming operation in order to make a determination as to the owner's eligibility, the owner's payment application, as specified by CCC, shall be denied. The tribal government shall be responsible for notifying the owner of the reason for the denial and shall provide the owner an opportunity to submit additional information as requested.

(f) All payment applications, as specified by CCC, approved by the tribal government will be submitted to a designated FSA office for calculation of payment.

#### **§ 1439.909 Payments.**

(a) Provided all other eligibility requirements of this subpart are met and funds are available, all eligible payment

applications submitted to the designated FSA office shall have payments issued to the applicant by CCC.

(b) If any term, condition, or requirement of these regulations or contract are not met, payments and benefits previously provided by CCC that were not earned under the provisions of the application shall be refunded.

(c) Each owner's share of the total payment shall be indicated on the application, and each owner shall receive benefits or final payment from CCC according to benefits or payments earned under the provisions of the application.

(d) CCC may reduce the benefits payable to an applicant under this program if CCC has made assistance available to such applicant under any other CCC program with respect to the same natural disaster.

(e) The amount of assistance provided to any owner shall not exceed the smaller of either:

(1) The dollar amount of eligible livestock feed purchased, as documented by acceptable purchase receipts, less the dollar amount of any sale of livestock feed (whether purchased or produced) by the owner during the feeding period; or

(2) 30 percent of the amount computed by multiplying:

(i) The number of animal units determined on the basis of the number of eligible livestock of each type and weight range; by

(ii) The smaller of the number of days the owners provided feed to eligible livestock or the total days in the contract's feeding period; by

(iii) The Animal Unit Day value, as established by the Deputy Administrator for Farm Programs, less the dollar amount of any sale of livestock feed (whether purchased or produced) by the owner during the feeding period.

(f) Payments issued in conjunction with this program will not be subject to offset for debts incurred through participation in any other program conducted by the Department of Agriculture.

#### **§ 1439.910 Program suspension and termination.**

(a) The tribal government that requested the AILFP assistance, may at any time during the operation of a program recommend suspension or termination of the program.

(b) The Deputy Administrator may suspend or terminate the program at any time if:

(1) The tribal government requests termination or suspension; or

(2) Funding is exhausted.

#### **§ 1439.911 Appeals.**

Any person who is dissatisfied with a CCC determination made with respect to this subpart may make a request for reconsideration or appeal of such determination in accordance with part 780 of this chapter. Any person who is dissatisfied with a determination made by the tribal authority should seek reconsideration of such determination with the tribe. Decisions and determinations made under this subpart not rendered by CCC or FSA are not appealable to the National Appeals Division.

#### **§§ 1439.912–1439.915 [Reserved].**

### **PART 1464—TOBACCO**

10. The authority citation for 7 CFR part 1464 continues to read as follows:

**Authority:** 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1 and 1445–2; 15 U.S.C. 714b, 714c.

11. Amend 7 CFR part 1464 by adding a new subpart D to read as follows:

#### **Subpart D—Tobacco Disaster Assistance Program**

Sec.

1464.300	[Reserved]
1464.301	Applicability and basic terms for payment.
1464.302	Administration.
1464.303	Definitions.
1464.304	Loss requirements.
1464.305	Signup.
1464.306	Proof of loss.
1464.307	Benefits.
1464.308	[Reserved]
1464.309	Offsets and assignments.
1464.310	Misrepresentation and scheme or device.
1464.311	Refunds to CCC.
1464.312	Cumulative liability.
1464.313	Estate, trusts, and minors.
1464.314	Death, incompetence, or disappearance.
1464.315	Appeals.

#### **Subpart D—Tobacco Disaster Assistance Program**

##### **§ 1464.300 [Reserved]**

##### **§ 1464.301 Applicability and basic terms for payments.**

(a) This subpart sets forth the terms and conditions of the Tobacco Disaster Assistance Program (TDAP) authorized by Public Law 106–113. That legislation provides \$2.8 million to the Commodity Credit Corporation (CCC) to be made available to eligible persons who have suffered quality or quantity losses due to natural disasters on tobacco crops harvested and placed in a warehouse and not sold.

(b) Payments from the \$2.8 million allotted to this program shall be made to eligible persons in proportion, as determined by the Executive Vice President of CCC, to each person's

relative quantity of qualifying tobacco losses suffered due to natural disasters on crops harvested and placed in a warehouse and not sold.

**§ 1464.302 Administration.**

(a) This subpart shall be administered by CCC under the general supervision of the Executive Vice President of the CCC and the Deputy Administrator for Farm Programs of the Farm Service Agency of the Department of Agriculture (who shall be hereafter referred to in this part as the "Deputy Administrator"). The program shall be carried out in the field by State and county Farm Service Agency committees (State and county committees).

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

(c) The State committee shall take any action required by this part that has not been taken by the county committee. 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 this part; or

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

(d) No delegations 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.

**§ 1464.303 Definitions.**

The definitions set forth in this section shall be applicable for all purposes of administering the Tobacco Disaster Assistance Program of this subpart. The terms defined in § 723.104 of this title shall also be applicable, except where those definitions conflict with the definitions set forth in this subpart. The following terms shall have the following meanings:

*Deputy Administrator* means the Deputy Administrator for Farm Programs, Farm Service Agency (FSA), or a designee.

*Eligible tobacco* means 1999 marketing year flue-cured tobacco, (types 11, 12, 13 and 14).

*Tobacco producer* means one who possesses a beneficial interest in eligible tobacco as defined in this subpart.

**§ 1464.304 Loss requirements.**

Except as otherwise determined by the Deputy Administrator consistent

with the provisions of Public Law. 106-113 authorizing the payment of the \$2.8 million, to qualify for payment under this part, the person seeking the payment must have had a loss of eligible tobacco in 1999 in North Carolina due to hurricanes Dennis, Floyd or Irene and such loss must have been a quality or quantity loss on crops harvested and placed in a warehouse and not yet sold at the time that the loss occurred in the warehouse.

**§ 1464.305 Signup.**

(a) For losses in North Carolina (as provided for in § 1464.304) a request for benefits under this subpart must be submitted to the CCC at the county FSA office that is designated as the administrative office for the farm on which the tobacco was produced. All requests for benefits and supporting documentation must be filed in the county FSA office by the date established by the Deputy Administrator. However, parties seeking an exception to the normal rules of eligibility in § 1464.304 shall, in lieu of filing a claim with the county committee, file a petition directly with the Deputy Administrator. Such petitions for exception must be filed by the date established by the Deputy Administrator for filing requests for benefits and supporting documentation, or fifteen days after the date of the publication of this regulation, whichever is later, in order to be considered.

(b) Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be provided.

**§ 1464.306 Proof of loss.**

(a) Tobacco producers must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof that they suffered the claimed loss. The documentary evidence of the loss, quantity of the loss and type of tobacco claimed for payment shall be reported to CCC together with any supporting documentation as may be required under paragraph (b) of this section.

(b) The tobacco producer shall provide any available supporting documents that may be requested by the Farm Service Agency county committee for purposes of verifying the loss. Examples of supporting documentation include, but are not limited to: auction barn floor sheets, transportation receipts, and any other documents available to confirm the presence of the tobacco on the warehouse floor and the subsequent losses. Certifications of third

parties or the producer and other such documentation as the county committee determines to be necessary in order to verify the information provided by the producer may be requested and be subject to review by the county committee. Failure to provide documentation that is satisfactory to the county committee will result in disapproval of the application by the county committee.

(c) In all circumstances, tobacco producers shall certify the accuracy of the information provided.

**§ 1464.307 Benefits.**

The payment amount shall be determined by apportioning the available funds on a poundage basis among the timely claims that are filed, with an allowance for a reserve to handle disputes. The Deputy Administrator may make a preliminary payment before making a final payment in which case later adjustments may be made and a refund may be due from the payee to the CCC after such an adjustment.

**§ 1464.308 [Reserved]**

**§ 1464.309 Offsets and assignments.**

(a) Except as provided in paragraph (b) of this section, 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 that the regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to payments made under this part and such offsets and withholdings may be taken against such payments.

(b) Any producer entitled to any payment may assign the right to receive such payments, in whole or in part, as provided in part 1404 of this chapter.

**§ 1464.310 Misrepresentation and scheme or device.**

(a) A producer who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to payments and must refund all payments, plus interest determined in accordance with part 1403 of this chapter.

(b) A producer who is determined to have knowingly:

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

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination, shall refund to

CCC all payments, plus interest determined in accordance with part 1403 of this chapter received by such producer with respect to all applications and the producer's interest in all applications shall be terminated.

**§ 1464.311 Refunds to CCC.**

(a) Persons who are party to the tobacco disaster assistance program application must refund to CCC any excess payments made by CCC with respect to such application.

(b) In the event that a benefit under this subpart was established as the result of erroneous information provided by any person, the benefit must be repaid with any applicable interest.

**§ 1464.312 Cumulative liability.**

The liability of any person for any penalty under this part or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729.

**§ 1464.313 Estate, 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 a producer shall be eligible for assistance under this subpart only if such person meets one of the following requirements:

(1) 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.

**§ 1464.314 Death, incompetence, or disappearance.**

In the case of death, incompetence, or disappearance, of any person 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.

**§ 1464.315 Appeals.**

The appeal, reconsideration, or review of all determinations made under this part, except the eligibility provisions for kinds of tobacco and others for which there are no appeal rights because they involve matters of

general applicability, shall be allowed in accordance with parts 11 and 780 of this title.

12. Add part 1479 to subchapter B of 7 CFR chapter XIV to read as follows:

**PART 1479—HARNEY COUNTY FLOOD ASSISTANCE**

Sec.

1479.1 Applicability.

1479.2 Administration.

1479.3 Definitions.

1479.4 Application process.

1479.5 County committee determinations of general applicability.

1479.6 Loss criteria.

1479.7 Producer eligibility.

1479.8 Calculation of assistance.

1479.9 Availability of funds; payments.

**Authority:** Sec. 207, Pub. L. 106–113, 113 Stat. 1501.

**§ 1479.1 Applicability.**

This subpart sets forth the terms and conditions applicable to flood assistance for Harney County, Oregon. Benefits will be provided to eligible producers in Harney County, Oregon, on land where flooding occurred during the 1999 crop year, and has been subject to flooding, one of the years 1994 through 1998.

**§ 1479.2 Administration.**

(a) This program shall be, to the extent practicable and to the extent not inconsistent with the provisions of this part, be administered in the same manner as the program provided for in 7 CFR part 1478 utilizing the regulations effective in that part as of March 1, 2000.

(b) The program will be administered under the general supervision of the Executive Vice President, Commodity Credit Corporation (CCC), and shall be carried out in the field by State and county Farm Service Agency (FSA) committees.

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

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

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

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

(e) No delegation herein to a State or county FSA committee shall prevent the Deputy Administrator from determining any question arising under the program or from reversing or modifying any

determination made by a State or county FSA committee.

(f) The Deputy Administrator may authorize the State and county committees to waive or modify deadlines or other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the program or when, in his or her discretion, it is determined that an exception should be allowed to provide for a more equitable distribution of benefits consistent with the goals of the program provided for in this part.

**§ 1479.3 Definitions.**

Terms in this part shall have the same meanings as those defined in § 1478.1 of this chapter. In addition, for purposes of this part and notwithstanding any contrary definitions in part 718 of this title or part 1478 of this chapter:

*Application* means the Form CCC–454, which was previously used for the Flood Compensation Program formerly provided for in this chapter, which form shall now be used for the program provided for in this part. The CCC–454 shall be used to collect the information necessary to determine the total acres flooded for purposes of this program.

*Calendar year 1999* means January 1, 1999 through December 31, 1999.

*Cropland* means cropland as defined in part 718 of this chapter.

*Forage* means growing vegetation used for food for domestic animals.

*NASS* means the National Agricultural Statistics Service.

**§ 1479.4 Application process.**

(a) Producers must submit a completed application by the date established by the Deputy Administrator. The application and any supporting documentation shall be submitted to the county FSA office with administrative authority over a producer's eligible flooded land or to the county FSA office that maintains the farm records for the producer.

(b) Producers shall certify as to the accuracy of all the information being requested in the application, and provide any other information to CCC that the county FSA office or committee deems necessary to determine the producer's eligibility.

**§ 1479.5 County committee determinations of general applicability.**

(a) County committees shall determine whether land that is the subject of the application is land that has suffered flood-related production losses during calendar year 1999, and is at the same time land to which the following apply:

(1) It is land that otherwise would have been used for crops or for pasture and could not be used because it was inaccessible, incapable of production, or the production was unusable during CY 1999, due to flooding;

(2) The land was inaccessible, incapable of production, or the production was unusable any one of the years 1994 through 1998, due to flooding; and

(3) The land has, otherwise, a history of actual crop production or use as pastureland at some time since 1990.

(b) In making the determination called for in paragraph (a) of this section, the County committee shall use what it considers to be the best information available including but not limited to: Extension Service; Natural Resources Conservation Service; aerial photography; rainfall data; and general knowledge of losses due to flooding.

(c) If the county Committee makes an affirmative determination under paragraph (a) of this section, the producer with the affected acreage shall be considered an "eligible producer" for purposes of this part.

(d) For purposes of setting rental rates for calculations required to be made elsewhere in this part the county committee shall use the established rental rates for Harney County, for cropland and pasture-land. These rates shall be reviewed by the State Committee and may be equal to the estimated 5-year average rental rates for all such land of each type in the county. The State Committee may take into account rates established for the Conservation Reserve Program operated under 7 CFR part 1410 and ensure, subject to paragraph (e) of this section, that the rates are comparable. The Deputy Administrator shall review and may adjust the rates for reasonableness and consistency.

(e) Except as provided by the Deputy Administrator, rental rates shall be established based on NASS data, if available for 1999.

#### § 1479.6 Loss criteria.

(a)(1) The flooded land for which a producer requests benefits must be within the physical boundary of Harney County, Oregon.

(b) To be eligible for benefits under this subpart, a producer in Harney County and contiguous counties must

have a tract of land that meets all the following criteria:

(1) The land is cropland or pasture land intended to be used for the production of feed for livestock (haying, grazing, or feed grain production) or other agricultural use in CY 1999 and one of the years 1994 through 1998;

(2) The land, for calendar year 1999, was inaccessible or unable to be used for crop production, grazing, or haying, or the production was unusable because of flooding;

(3) The land has been owned, leased or under a binding cash lease by the producer for crop year 1999;

(4) The land is a contiguous parcel of land with an area equal to one acre or more;

(5) The land actually produced a crop, or was used for pasture, during or after the 1990 crop year.

(c) On the CCC-454 producers shall be required to certify on each farm the number of flooded cropland and non-cropland acres for the farm in 1999.

(d) All determinations as to the amount of land eligible for enrollment and compensation under this subpart are subject to approval by the county committee.

(e) The county committee may use any available documentation to make the determinations under paragraphs (b) and (c) of this section, including but not limited to: maps, acreage reports, slides, precipitation data, water table levels and disaster reports.

#### § 1439.7 Producer eligibility.

(a) Producers in Harney County will be eligible to receive benefits under this part only if they have suffered 1999-crop losses of eligible crops as a result of flooding.

(b) Payments made for losses suffered by eligible producers under this subpart shall be subject to the provisions of §§ 1478.4 through 1478.12 of this chapter, and their successor regulations, except as otherwise provided in this subpart.

(d) No person as defined and determined under part 1400 of this chapter may receive more than \$40,000 under this subpart.

(e) No person as defined and determined under part 1400 of this chapter will be eligible for payment under this subpart if that person's annual gross receipts for the 1998 tax

year were in excess of \$2.5 million. That determination shall be made in the manner provided for in § 1478.6 of this chapter.

(f) The following entities are not eligible for benefits under this subpart:

(1) State or local governments or subdivisions thereof; or

(2) Any individual or entity who is a foreign person as determined in accordance with the provisions of § 1400.501 and § 1400.502 of this chapter.

#### § 1479.8 Calculation of assistance.

(a) The unadjusted value of this emergency assistance determined with respect to the flooded land in Harney County for each producer shall not exceed the amount obtained by adding paragraphs (b) and (c) of this section.

(b) For each eligible producer with respect to the applicable qualifying cropland, the number of qualifying acres will be multiplied by the established local payment rate for cropland, as determined by the county Committee in accordance with instructions of the Deputy Administrator.

(c) For each eligible producer with respect to the applicable qualifying pastureland or other land that does not meet the FSA definition of "cropland," the number of qualifying acres will be multiplied by the established payment rate for "non-cropland" acres.

#### § 1479.9 Availability of funds; payments.

In the event that the total amount of claims submitted under this subpart exceeds the \$1.09 million appropriated for the program provided for in this part, payments otherwise calculated under § 1478.8 shall be reduced by a uniform percentage to allow for a proration of claims within the appropriated amount. Such payment reductions shall be after the imposition of applicable payment limitation provisions. Applications for payment must be submitted by the time and in the manner specified by the Deputy Administrator.

Signed at Washington, DC, on May 30, 2000.

**Keith Kelly,**

*Executive Vice President, Commodity Credit Corporation.*

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