

Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Republic of the Marshall Islands, and the Federated States of Micronesia.

§ 1219.102 Registration.

An eligible producer or importer of Hass avocados, as defined in this subpart, at the time of the referendum and during a representative period, who chooses to vote in any referendum conducted under this subpart, shall register with the referendum agent prior to the voting period, after receiving notice from the referendum agent concerning the referendum under § 1219.104(b). Registration information shall be confidential under § 1219.108.

§ 1219.103 Voting.

(a) Each eligible producer and eligible importer who registers to vote in the referendum shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce Hass avocados, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer or importer, or an administrator, executor, or trustee or an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail or fax, as instructed by the referendum agent.

§ 1219.104 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast (voting period).

(b) Notify producers and importers of the voting period for the referendum

and the requirement to register to vote in the referendum at least 30 days in advance by utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio.

(c) Develop the ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(d) Develop a list of producers and importers who register to vote.

(e) Mail to registered voters the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order.

(f) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(g) Prepare a report on the referendum.

(h) Announce the results to the public.

§ 1219.105 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1219.106 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1219.107 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to the

analysis of the referendum and its results.

§ 1219.108 Confidential information.

The list of registered voters, ballots, and all other information or reports that reveal, or tend to reveal, the identity or vote of voters in the referendum shall be strictly confidential and shall not be disclosed.

§ 1219.109 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 is OMB control number 0581-0197.

Dated: February 12, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1439

RIN 0560-AG33

Livestock Indemnity Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 related to the Livestock Indemnity Program-2000 (LIP-2000). This final rule announces the program's availability and requirements. The Commodity Credit Corporation (CCC) published a proposed rule on March 7, 2001, (66 FR 13679) seeking public comment. No comments were received and the proposed rule is adopted as final with a minor change to reflect a statutory reduction in program funding.

EFFECTIVE DATE: February 19, 2002.

FOR FURTHER INFORMATION CONTACT: Sharon Biastock, Production, Emergencies, and Compliance Division, Farm Service Agency (FSA), U.S. Department of Agriculture, 1400 Independence Ave. SW., Stop 0517, Washington, DC 20250-0540, telephone (202) 720-6336; e-mail address: sharon_biastock@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of final 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).

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Unfunded Mandates Reform Act of 1995

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are 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 final rulemaking with respect to the subject matter of this rule. Further, in any case, these provisions do not impose any mandates on State, local or tribal governments, or the private sector.

Paperwork Reduction Act

In accordance with section 3507 (j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this final rule were submitted for emergency approval to the Office of Management and Budget (OMB). OMB assigned control number

0560-0179 to the information collection and recordkeeping requirements.

Background

This final rule implements Sec. 813 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Pub. L. 106-387) related to the Livestock Indemnity Program-2000 (LIP-2000). The statute provides that the Secretary of Agriculture (the Secretary) use up to \$10 million of the funds of the Commodity Credit Corporation to make livestock indemnity payments to producers on a farm for qualifying livestock losses occurring in the period beginning on January 1, 2000, and ending on December 31, 2000. A government-wide rescission of appropriated funds required by the Consolidated Appropriations Act, 2001, (Pub. L. 106-554, section 1403) reduces the funds available by 0.22 percent. Funding available for LIP-2000 is therefore \$9.978 million. Section 1439.207, Availability of Funds is amended to reflect the enactment of this legislation. A proposed rule published on March 7, 2001 sets out rules to implement this new program. No comments were received and on further review it has been decided to implement the rule as published with the exception of a few minor revisions for clarity and precision. Further background for this action was set out in the preamble which accompanied this rule.

List of Subjects in 7 CFR Part 1439

Animal feeds, Disaster assistance, Livestock, Pasture, Reporting and record keeping requirements.

For the reasons set out in the preamble, 7 CFR part 1439 is amended as follows:

PART 1439—EMERGENCY LIVESTOCK ASSISTANCE

1. The authority citation for part 1439 is revised to read as follows:

Authority: 7 U.S.C. 1427a; 15 U.S.C. 714 *et seq.*; Sec. 1103, Pub. L. 105-277, 112 Stat. 2681-42-44; Pub. L. 106-31, 113 Stat. 57; Pub. L. 106-78, 113 Stat. 1135; Pub. L. 106-113, 113 Stat. 1501; Sec. 257, Pub. L. 106-224, 114 Stat. 358; Secs. 802, 806, 813, Pub. L. 106-387, 114 Stat. 1549, and Sec. 1403, Pub. L. 106-554, 114 Stat. 2763.

2. Revise Subpart C of part 1439 to read as follows:

Subpart C—Livestock Indemnity Program

Sec.

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 C—Livestock Indemnity Program**§ 1439.201 Applicability.**

(a) This subpart sets forth the terms and conditions applicable to the Livestock Indemnity Program for 2000 (LIP-2000). Benefits will be provided under this subpart only for losses (deaths) of livestock occurring as a result of:

- (1) Natural disasters, except drought;
- (2) Fires; or
- (3) Anthrax.

(b) Losses due to natural disasters and fires (except drought) will be considered eligible for benefits in counties included in the geographic area covered by a qualifying natural disaster declaration, excluding contiguous counties, issued by the President of the United States or the Secretary of Agriculture of the United States if such declaration was requested and approved for the period of January 1, 2000, through December 31, 2000, inclusive.

(c) A Presidential declaration or Secretarial designation is not required for losses due to anthrax.

(d) Owners will be compensated by livestock category as established by CCC. The owner's loss must be the result of the declared disaster or anthrax and in excess of the normal losses, established by CCC, for the owner's livestock operation. Losses to livestock due to drought conditions are deemed to have been avoidable and are not eligible for benefits under LIP-2000.

§ 1439.202 Administration.

Where circumstances preclude compliance with § 1439.204 due to circumstances beyond the applicant's control, the FSA 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. Although, the terms defined in § 1439.3 shall also be applicable, the definitions set forth in this section shall govern for

all purposes of administering this subpart.

Anthrax means a disease of animals caused by bacillus anthracis.

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

Eligible disasters are any natural disasters occurring in 2000 that are named in the Presidential declaration or Secretarial designation, except drought.

Fires means wild fires that occurred in forests, brush, etc., and, as a result, livestock was killed when it was caught in these fires or in structures that burned in these fires. It does not include structure fires that were not the result of a wild fire.

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 maintained on the same basis and in the same manner as beef cattle maintained for commercial slaughter.

Livestock owner means a person who has legal ownership of the 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 owners. Any Native American tribe (as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638, 88 Stat. 2203)); any Native American organization 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 may be considered livestock owners 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 FSA county office serving the county where the livestock loss occurred. All applications must be filed in the FSA county office prior to the close of business on such date as determined and announced by the Deputy Administrator.

§ 1439.205 Proof of loss.

(a) In the case of fires or natural disasters, livestock owners must, in

accordance with instructions issued by the Deputy Administrator, provide adequate proof that the death of the eligible livestock occurred during the recognized natural disaster period, as provided in § 1439.201(b); or was reasonably related to the disaster.

(b) The livestock owner shall provide any available supporting documents that will assist the county committee, or is requested by the county committee, in verifying:

(1) The quantity of eligible livestock that perished in the natural disaster including, but 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; and

(2) That the loss was reasonably related to the recognized disaster in the declaration or designation, including, but not limited to, newspaper articles or other media reports, photographs of disaster damage, veterinarian records, and any other documents available to confirm that the disaster occurred and was responsible for the livestock losses.

(c) Livestock owners requesting benefits for losses due to anthrax shall provide documentation verifying the quantity of livestock deaths that was caused by anthrax.

(d) Certifications by third parties or the owner and other such documentation as the county committee determines to be necessary in order to verify the information provided by the owner must also be submitted. Third-party verifications may be accepted only if the owner 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.

(e) Livestock owners 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 owners, based on the owner's share of the livestock, who file an application for the specific livestock

category in accordance with instructions issued by the Deputy Administrator, if:

(1) The livestock owner submits an approved proof of loss in accordance with § 1439.205; and

(2) The FSA county or State committee determines that because of an eligible disaster condition the livestock owner 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 owner'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 paragraph (b) of this section. Adjustments, if necessary, shall apply in accordance with § 1439.207.

§ 1439.207 Availability of funds.

(a) In the event that the total amount of eligible claims submitted under this subpart exceeds \$9.978 million, then each payment shall be reduced by a uniform national percentage.

(b) Such payment reductions shall be applied after the imposition of applicable per-person payment limitation provisions.

§ 1439.208 Limitations on payments.

(a) The provisions of §§ 1439.10 and 1439.11 apply to LIP-2000.

(b) Payments earned under other programs contained in this part shall not reduce the amount payable under this subpart.

(c) Disaster benefits under this part are not subject to administrative offset. See section 842 of Public Law 106-387.

(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.

Signed in Washington, D.C., on February 11, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

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