

# Proposed Rules

Federal Register

Vol. 70, No. 190

Monday, October 3, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1437

RIN 0560 AH19

#### Noninsured Crop Disaster Assistance Program—Tropical Regions

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would change the handling of claims for specified “tropical” regions for the Noninsured Crop Disaster Assistance Program (NAP). The specified area includes Hawaii, Puerto Rico and specified additional areas. The proposed changes are intended to reduce the burden on program participants and ease program administration in the affected areas.

**DATES:** Comments on the proposed rule, or alternatives to this proposal, must be received on or before November 2, 2005 to be assured of consideration. Comments received after this date may be considered to the extent practicable. Comments on the information collections in this rule must be received on or before December 2, 2005 to be assured of consideration. Comments received after this date will be considered to the extent practicable.

- *Electronic Mail:* Send comments to [John.Newcomer@usda.gov](mailto:John.Newcomer@usda.gov).
- *Fax:* Submit comments by facsimile transmission to (202) 690-3646.
- *Mail:* Send comments to John Newcomer, Program Specialist, Noninsured Crop Disaster Assistance Program, Farm Service Agency, United States Department of Agriculture (USDA), STOP 0517, Room 3638-S, 1400 Independence Avenue, SW., Washington, DC 20250-0517.
- *Hand Delivery or Courier:* Deliver comments to the above address.
- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Comments may be inspected in the Office of the Branch Chief, Noninsured Assistance Program Branch, Room 3638-S, 1400 Independence Avenue, SW., Washington, DC 20250-0517. All comments will become a matter of public record, including the name, mailing address, and e-mail address of the commenting party.

**FOR FURTHER INFORMATION CONTACT:** John Newcomer, phone: (202) 720-6157. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

#### SUPPLEMENTARY INFORMATION:

#### Background

Current NAP regulation requires that when annual crops are planted multiple times in a crop year, individual planting periods must be used to determine planted acres, production and requisite loss. When multiple planting periods are used, producers pay multiple NAP service fees for that crop year. Because of the unique climate in tropical regions, planting periods there tend to be continuous. This proposed rule would make changes to reflect that difference and to provide special loss compensation provisions to address the special conditions in those areas. Also for tropical regions, as defined in the rule, the proposed rule provides for covered crops that “prevented planting” credit will not be allowed except in exceptional cases. Usually, plantings can still be made after the disaster condition has passed. Further, the rule provides that payable losses on covered crops will generally be limited to tropical storms and related types of events. This is because of general conditions in the region and the lack of resources in some tropical areas to assess other kinds of losses.

The tropical region is identified in the rule to include Hawaii and Puerto Rico, Guam, the former Trust Territory of the Pacific Islands, the U.S. Virgin Islands, and American Samoa. Outside of Hawaii and Puerto Rico, the extension of NAP to these areas is discretionary under the authority of Title 48 of the United States Code, Chapter 10, Section 1469d(c). The extension of the program to those areas is, under the statute, subject to such additional limits on eligibility as are determined to be appropriate.

The proposed rules would apply beginning with 2006 crops in the tropical region, as that region as defined in the rule, except for “value-loss” crops as they are otherwise defined in subpart D of the existing program regulations. The “value-loss” crops are crops which do not lend themselves to calculations based on loss yields and include, as defined in subpart D, among others, crops like ornamental nursery crops and mushrooms. Essentially, under the proposed rule, for perennial crops all of the production for the crops in the ground at the time of the disaster event would be counted against the loss for that production so long as the production, whether before or after the disaster, takes place in the same calendar year. For other covered crops, all production for the plants which were in the ground at the time of the disaster, damaged or not, would be counted, whether that production was before or after the disaster, and irrespective of whether it was in the same crop year. That is, such production for those crops covers the full life of the plants that are in place when the disaster occurs (even if that production carries over into the next calendar year). For all covered crops, perennial and non-perennial, producers would be required to harvest all such countable production, report it accurately, and have it count in the calculation of whether there was, or was not, sufficient damage to allow for a payment. Irrespective of whether there is not a loss, producers with coverage would be required to keep records at all times of their acreage and production and file yearly reports. The rule provides that person failing to file proper reports may be ineligible for benefits and may be treated as having lower yields for future calculations of eligibility. For covered crops, the crop year would be the calendar year and coverage would be for all plants existing during the calendar year. Accordingly, since the rule proposes that the new provisions would begin with the “2006 crops,” the coverage of the rule would begin with those covered crops in the ground on or after January 1, 2006. The rule would allow the agency to modify rules, to the extent otherwise permitted by law, if needed to provide for a reasonable transition to the new requirements.

## Public Comments

A 30 day comment period is allowed. Because this rule is expected to reduce paperwork for farmers, it has been determined to delay the effective date of the rule to allow for a longer comment period is unnecessary and contrary to the public interest. At the end of the comment period it will be determined whether the provisions should be made final.

## Executive Order 12866

This rule is issued in conformance with Executive Order 12866, was determined to be not significant, and was not reviewed by the Office of Management and Budget (OMB).

## Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because CCC is not required to publish a notice of proposed rulemaking for the subject matter of this rule.

## Environmental Assessment

The environmental impacts of this rule have been considered consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR part 799. FSA has initiated the completion of an environmental assessment (EA) to determine the potential impacts of this action upon the human and natural environments. A copy of the draft EA will be made available to the public upon its completion.

## Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule preempts State and other local laws that are inconsistent with it. Before any legal action may be brought regarding a determination under this rule, the administrative appeal provisions set forth at 7 CFR parts 11 and 780 must be exhausted.

## Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. "States" for this purpose included the 50 States and other areas addressed in the rule. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

## Unfunded Mandates Reform Act of 1995

The rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

## Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995, FSA intends to request approval by OMB of a revision to the information collection made by this proposed rule. Copies of the information collection may be obtained from Linda Turner, the Agency Information Collection Coordinator, by calling (202) 690–1855.

*Title:* Noninsured Crop Disaster Assistance Program.

*OMB Control Number:* 0560–0175.

*Type of Request:* Revision of a Currently Approved Information Collection.

*Abstract:* 7 U.S.C. 7333 specifies that the Secretary (of Agriculture) shall operate a noninsured crop disaster assistance program to provide coverage equivalent to the catastrophic risk protection otherwise available under 7 U.S.C. 1508(b). Producers must submit an application, pay a service fee, and provide annual records of crop acreage, yields, and production for each crop by the designated acreage reporting date for the crop and location, to be eligible for assistance.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 55 minutes per response.

*Respondents:* Producers of crops and agricultural commodities (except livestock).

*Estimated Number of Respondents:* 291,500.

*Estimated Number of Responses per Respondent:* 6.

*Estimated Total Annual Burden on Respondents:* 2,140,000.

Proposed topics for comment include:

(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 collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to John Newcomer, Farm Service Agency, United States Department of Agriculture (USDA), STOP 0517, Room 3638–S, 1400 Independence Avenue, SW., Washington, DC 20250–0517.

## Executive Order 12612

This rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. This rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government. "States" for this purpose included the 50 States and other areas addressed in the rule.

## Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom To E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program are available electronically for downloading or electronic submission through the USDA eForms Web site at <http://forms.sc.egov.usda.gov/eforms>.

## Federal Assistance Programs

The title and number of the Federal assistance program found in the Catalog of Federal Domestic Assistance to which this final rule applies is Noninsured Assistance, 10–451.

## List of Subjects in 7 CFR Part 1437

Agricultural commodities, Disaster assistance, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, it is proposed that 7 CFR part 1437 be amended to read as follows:

## PART 1437—NONINSURED CROP DISASTER ASSISTANCE PROGRAM

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

**Authority:** 7 U.S.C. 7333; 15 U.S.C. 714 *et seq.*; and 48 U.S.C. 1469.

2. Add Subpart F to read as follows:

### Subpart F—Determining Coverage in the Tropical Region

*Sec.*

- 1437.501 Applicability; definition of "tropical region" and other additional definitions.
- 1437.502 Coverage periods and fees for the tropical region.
- 1437.503 Covered losses and recordkeeping requirements for the tropical region.
- 1437.504 Notice of loss for covered tropical crops.
- 1437.505 Application for payment for the tropical region.

### Subpart F—Determining Coverage in the Tropical Region

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

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

(b) For purposes of this subpart:

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

(2) *2006 and subsequent crops* means those crops in the ground on or after January 1, 2006.

(3) *Covered tropical crops* means those crops and commodities in the tropical region that are governed by this subpart those being all crops and commodities in the tropical region that are otherwise eligible for generating a benefit claim under this part, except for value-loss crops as defined elsewhere in this part.

(c) To the extent determined necessary by the Deputy Administrator, the Deputy Administrator may adjust requirements for assistance so as to provide a fair transition from previous rules for crop covered by this subpart to those provisions which are provided for in this subpart.

#### § 1437.502 Coverage periods and fees for the covered tropical crops.

(a) The crop year for all covered tropical crops is the calendar year (January 1 through December 31).

(b) The application closing date for all covered tropical crops is December 1 of the calendar year before the applicable crop year.

(c) For covered tropical crops, per crop year, a maximum service fee of \$100.00 is required for coverage of:

(1) For annual and biennial crops, all plantings of the same crop planted during the crop year, as determined by CCC.

(2) For perennial crops, all acreage of the crop existing during the crop year, as determined by CCC.

(d)(1) Multiple planting periods and final planting dates are not applicable for covered tropical crops. However, nothing in this section shall prohibit assigning different production expectations to different fields.

(2) The coverage period for perennial and other crops covered by this subpart begins on January 1 of the relevant crop year and ends on December 31 of that year.

#### § 1437.503 Covered losses and recordkeeping requirements for covered tropical crops.

(a) Prevented planting coverage is not available for covered tropical crops, other than in Hawaii and Puerto Rico, except as approved by the Deputy Administrator in special cases.

(b) Except in Hawaii and Puerto Rico, or as otherwise approved by the Deputy Administrator in individual cases, eligible causes of loss for covered tropical crops will only include hurricanes, typhoons, and named tropical storms.

(c) Producers who have applied for coverage for covered tropical crops must maintain for the full coverage period contemporaneous records.

Contemporaneous records are those created at the time of planting and harvesting of the crop for which the application for coverage is filed and for such period of time as may follow the coverage period to the extent production during that additional period would count against a loss in the event that there was or could have been such a loss.

(1) Producers may be selected on a random or targeted basis to check for compliance with this requirement and any other requirements that may apply to this program.

(2) A failure to maintain acceptable contemporaneous records throughout the crop year may be treated by the Commodity Credit Corporation as grounds for ineligibility for benefits under this part.

#### § 1437.504 Notice of loss for covered tropical crops.

(a) The provisions of § 1437.10(c) regarding late filed notice of loss do not apply to covered tropical crops.

(b) Where a notice of loss for covered tropical crops is provided according to § 1437.10, producers must provide records, as maintained according to § 1437.503(c) required by this subpart, of the:

(1) Number of acres or other basis of measurement, as applicable, of the crop from which production could be achieved existing on the day the eligible natural disaster occurred or, for prolonged natural disasters, such as a drought and similar damage where applicable, existing on the day the notice of loss is filed.

(2) Amount, including zero, as applicable, of production harvested, before or after the disaster, from those crop plantings (damaged or undamaged) which were in existence on the farm at the time of the disaster including production from the covered plantings (in existence at the time of the loss event) that may occur after the loss event even when, to the extent provided for in paragraph (c) of this section, the harvest occurs after the end of the crop year. Crop acreage of the covered crop that is in existence at the time of the loss event that can be harvested after the eligible natural disaster must be harvested, or continue to be harvested, and the harvested acres and production reported to FSA according to this subpart, except that for perennial crops the requirement ends with the end of the crop year. For non-perennial crops the obligation to harvest ends with the end of the life-cycle for the plantings that were in existence at the time of the loss event.

(i) Except as otherwise determined by the Farm Service Agency, such production, before or after the loss event, will be taken into account in computing eligibilities.

(ii) Production that must be reported under paragraph (b)(2)(i) of this section includes, except in the case of perennial plants, all production irrespective of whether the production occurs in the same crop year.

(iii) For perennial plants, only production in the same crop year must be reported.

(iv) All production that must be reported for covered tropical crops will, except as specified by the Deputy Administrator, be taken into account in the loss determinations made under this part. The producer is obligated to maximize that production. That is, harvesting and other production activities for the plants in the ground at

the time of the disaster must be undertaken or continue to be undertaken, to the maximum extent possible, for the full reporting period, that being the period for which production could count against a loss as indicated in this subpart.

(3) Failure to keep sufficient records to allow the computations provided for in this subpart is grounds for denial of the claim.

(c) Producers with coverage of a covered tropical crop for a crop year must, by the earlier of 90 calendar days after the crop year ends or the date a notice of loss is filed, file a certified report setting out the:

(1) Collective acres of the crop acreage planted or in the ground during the crop year.

(2) Total production harvested from the crop acreage for the full crop year in the case of a perennial plant and for the full life of the plants for other crops.

(d) With respect to the report required in paragraph (c) of this section:

(1) If a report is filed before the end of the crop year, an updated crop report must be filed within 90 days of the end of the crop year to supplement the original report;

(2) If the report is for any annual or biennial crops where production continued or could have continued beyond the period covered in the reports otherwise filed under this section, an additional report of production must be filed within 30 days of the end of the last countable production for the covered crop or 30 days after the last date on which such production could have been obtained, whichever is later.

(3) A failure to file an adequate report where a report is required by this section may result in the producer being treated as having a zero yield capability for the crop year involved for purposes of constructing a crop history. Alternatively, the Deputy Administrator may assign another sanction for that failure. In addition to other sanctions as may apply, a failure to file such reports may be grounds for denial of a claim. The Deputy Administrator may adjust crop histories as determined appropriate to create, to the extent practicable, a fair crop history for loss computation purposes.

(4) Such reports as are provided for in this subsection must be filed for every crop year for which there is coverage, irrespective of whether a claim is filed for that year.

(e) Unless otherwise specified by the Deputy Administrator, appraisals are not required of crop acreage for covered tropical crops on Guam, Virgin Islands, American Samoa, and the

Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(f) All crop acreage for covered tropical crops for which a notice of loss is filed must not be replanted or otherwise destroyed until authorized by CCC.

#### **§ 1437.505 Application for payment for the tropical region.**

(a) For producers of covered tropical crops in Guam, Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau, an application for payment must be filed at the same time as the filing of the notice of loss required under §§ 1437.10 and 1437.504.

(b) For producers in Puerto Rico and Hawaii, an application for payment for such crops must be filed by the later of:

(1) The date on which the notice of loss is filed in accordance with §§ 1437.10 and 1437.502(i), and

(2) The date of the completion of the countable harvest of the specific crop acreage that existed at the time of loss for which the notice of loss was filed.

Signed in Washington, DC, September 14, 2005.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 05-19671 Filed 9-30-05; 8:45 am]

**BILLING CODE 3410-05-U**

## **DEPARTMENT OF THE TREASURY**

### **Internal Revenue Service**

#### **26 CFR Parts 1 and 301**

**[REG-108524-00]**

**RIN 1545-BD80**

#### **Section 1446 Regulations; Withholding on Effectively-Connected Taxable Income Allocable to Foreign Partners; Hearing**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Change of date of public hearing.

**SUMMARY:** This document changes the date of a public hearing on proposed regulations relating to the circumstances under which a partnership may take partner-level deductions and losses into account in computing its withholding tax obligation with respect to a foreign partner's allocable share of effectively connected taxable income.

**DATES:** The public hearing originally scheduled for Monday, October 3, 2005, at 10 a.m. is rescheduled for Wednesday, November 16, 2005, at 10 a.m. Outlines of topics to be discussed at the public hearing were due by September 12, 2005.

**ADDRESSES:** The public hearing is being held in the IRS auditorium, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance.

#### **FOR FURTHER INFORMATION CONTACT:**

Richard A. Hurst, (202) 622-7180 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Wednesday, May 18, 2005 (70 FR 28743), announced that a public hearing on proposed regulations relating to circumstances under which a partnership may take partner-level deductions and losses into account in computing its withholding tax obligation with respect to a foreign partner's allocable share of effectively connected taxable income would be held on Monday, October 3, 2005, beginning at 10 a.m. in the IRS auditorium, 1111 Constitution Avenue NW., Washington, DC.

The date of the hearing has changed. The hearing is scheduled for Wednesday, November 16, 2005, beginning at 10 a.m. in the IRS auditorium, 1111 Constitution Avenue NW., Washington, DC. Because of the controlled access restrictions, attendants will not be admitted beyond the lobby area of the Internal Revenue Building until 9:30 a.m. The IRS will prepare an agenda showing the scheduling of the speakers after the outlines are received from the persons testifying and make copies available free of charge at the hearing.

**Cynthia Grigsby,**

*Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).*

[FR Doc. 05-19623 Filed 9-30-05; 8:45 am]

**BILLING CODE 4830-01-P**