

# Rules and Regulations

Federal Register

Vol. 72, No. 5

Tuesday, January 9, 2007

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## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 760

RIN 0560-AH45

#### 2005 Section 32 Hurricane Disaster Programs; 2006 Livestock Assistance Grant Program

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule sets forth the Farm Service Agency (FSA) regulations for the 2005 Section 32 Hurricane Disaster Programs in response to emergency agricultural situations caused by the 2005 hurricanes Dennis, Katrina, Ophelia, Rita, and Wilma in certain counties in Alabama, Florida, Louisiana, Mississippi, North Carolina, and Texas. The rule establishes four hurricane disaster programs to provide funds to eligible producers who suffered eligible losses, and a grant program that will provide funds to the respective States to enable them to assist aquaculture producers having losses related to the aforementioned hurricanes. This final rule also sets forth provisions related to the 2006 Livestock Assistance Grant Program.

**DATES:** This final rule is effective January 8, 2007.

**FOR FURTHER INFORMATION CONTACT:** Diane Sharp, Director, Production, Emergencies, and Compliance Division; Farm Service Agency; United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250-0517; telephone (202) 720-7641; e-mail [Diane.Sharp@wdc.usda.gov](mailto:Diane.Sharp@wdc.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Discussion of Final Rule

In 2005 hurricanes Dennis, Katrina, Ophelia, Rita, and Wilma, in applicable

counties in Alabama, Florida, Louisiana, Mississippi, North Carolina, and Texas, destroyed and damaged trees, killed livestock, and adversely impacted crop production, including aquaculture, thus severely limiting the purchasing power of farmers engaged in the production of agricultural commodities. Section 32 of the Act of August 24, 1935, as amended (Section 32), provides discretionary authority for the Secretary of Agriculture (the Secretary) to use Section 32 funds to reestablish farmers' purchasing power by making payments to them in connection with the normal production of agricultural commodities produced for domestic consumption.

The FSA published an interim final rule on May 10, 2006, with a 30-day comment period which ended on June 9, 2006. The interim final rule provided that the Secretary would use an estimated \$250 million in funds available under Section 32 to restore purchasing power to farmers affected by the significant and widespread destruction caused by the named hurricanes, in those counties in the named States that received a Presidential or Secretarial Designation as a primary county. Accordingly, for eligible losses suffered as a result of the aforementioned hurricanes, the Secretary determined that assistance would be provided by establishment of four hurricane disaster programs to provide direct payments to eligible producers who suffered eligible losses; and one grant program that will provide funds to the named States in order to enable these States to assist aquaculture producers. These programs include: (1) Hurricane Indemnity Program (HIP), (2) Feed Indemnity Program (FIP), (3) Livestock Indemnity program (LIP), (4) Tree Indemnity Program (TIP), and (5) Aquaculture Grant Program. These programs operate under regulations codified in 7 CFR part 760.

#### Comments and Changes to Final Rule

Seven respondents provided comments to FSA during the 30-day comment period. One comment was received from an individual, four comments were received from associations representing various producer interests, and two comments were received from advocacy organizations. All comments received were in support of the 2005 Section 32 Hurricane Disaster Programs and

expressed the need for the programs because of the losses caused by hurricane destruction. Some of the commenters addressed issues about other, already existing regulations and issues which were not part of the interim final rule for which no comments were invited. Therefore, these issues are not addressed. A few editorial changes have been made in the text of the regulation for clarity and to facilitate the application of the regulations. The definition of deer has been removed because it, as provided in the interim rule, did not include all categories of eligible deer.

*Comment:* Three commenters expressed concern that the disaster programs were not available to producers in DeSoto County, Florida.

*Response:* This rule addressed the hurricane destruction only in those counties in the named States that received a Presidential or Secretarial Designation as a primary county. DeSoto County was not so designated and therefore the disaster programs are not available for losses in that county. No change to the final rule was made as a result of these comments.

*Comment:* One commenter expressed concern that payments under TIP would be paid only to eligible owners.

*Response:* The text of the background of the interim rule did state that TIP payments would be provided to eligible owners. However, the regulatory text at 760.502 is actually broader in that TIP payments are also made to those who bear financial responsibility and who have incurred costs, which includes lessees. Accordingly, no change to the final rule was made as a result of this comment.

*Comment:* Two commenters sought clarification of the provisions which describe the exclusion from these disaster programs of individuals or entities whose adjusted gross income (AGI) is in excess of \$2.5 million without including the stipulation that individuals or entities are eligible if 75% or more of the \$2.5 million is earned from agricultural enterprises.

*Response:* A change to the final rule will be made to clarify the provision that an individual or entity may be considered to meet the AGI requirements if not less than 75% of the individual's or entity's average AGI for the three tax years immediately

preceding the applicable crop year is derived from farming or ranching operations.

*Comment:* One commenter suggested that the initial breeding and raising of horses should be deemed part of agricultural production, and that horses are an agricultural product regardless of the activity in which the horse may be used. Therefore, the definitions of "commercial use" and "farming operation" should be modified to indicate a commercial horse breeding operation, by itself, would satisfy the applicable definitions.

*Response:* FSA does not agree that a horse, or any animal, is an agricultural product without regard to the purpose, use, or activity for which it is used. Regardless of whether the animal is a horse, goat, sheep, cattle or other livestock, no animal is automatically considered an agricultural product based solely on the kind of livestock. No change to the final rule was made as a result of this comment.

*Comment:* One commenter questioned why FIP excludes " \* \* \* donkeys, mules, or other large solid-hoofed herbivorous mammals" but LIP includes " \* \* \* mule or donkey."

*Response:* Each of these two livestock programs was designed to be consistent with previous livestock programs implemented by FSA. Administering similar programs in a consistent manner reduces the burden placed on producers and ensures that these programs are consistent with similar previous FSA programs. Accordingly, FSA determined to include equine animals (horses, donkeys, and mules) as an eligible category under LIP, and determined to include horses as an eligible category of livestock because of the change in the definition of livestock included in Public Law 109-97. No change to the final rule was made as a result of this comment.

*Comment:* One commenter suggested that the word "produced" be removed from the requirements for eligibility under both FIP and LIP as it pertains to animals because, the commenter claimed, animals such as race horses would thus not be eligible if they were produced for reasons other than commercial use as part of a farming operation.

*Response:* The purpose and use of any animal, including a horse, is critical to determining whether the requirements of Section 32 are met. Any animal, including a horse, which was produced and maintained for reasons other than commercial use as part of a farming operation would not meet the criteria required under the authority provided by Section 32. No change to the final

rule was made as a result of this comment.

*Comment:* One commenter requested clarification as to what FSA deems to be farming or ranching activities for these disaster programs.

*Response:* FSA defers to how the producer classified and reported the income of the farming enterprise to IRS. The producer decision of how to report such income reflects the business practices of that enterprise. FSA determinations about such farming or ranching activities, when necessary, will be determined by documents filed with IRS for the applicable year. No change to the final rule was made as a result of this comment.

*Comment:* Two commenters expressed concern about HIP providing disaster benefits to eligible producers who receive either a Federal Crop Insurance Program or the Non Insured Crop Disaster Assistance Program (NAP) payment. One commenter asked that FSA let "small and limited farmers and ranchers participate in this program without regard to having received \* \* \*" such a payment. Another commenter asked that FSA waive the requirement for those who agree to obtain coverage in the future, stating that the limitations of HIP payments to those who receive either a crop insurance or NAP payment places a disproportionate impact upon limited resource and socially disadvantaged farmers.

*Response:* Of the 5 disaster programs offered under the 2005 Section 32 Hurricane Disaster Programs, only HIP benefits are predicated on participants having received a crop insurance or NAP payment. HIP is a "top up" program that will supplement crop insurance or NAP payments because of emergency agricultural situations that crop insurance or NAP payments did not adequately meet. Because HIP is intended to supplement crop insurance or NAP payments, waiving this requirement for those who agree to obtain coverage in the future would delay implementation of the program. Also, both NAP and the catastrophic level of crop insurance are available at no cost to limited resource producers who request that the fees for same be waived. Further, some previous disaster programs have had the stipulation that payments be made based on the proviso that future coverage be obtained and in many instances such future coverage was not obtained. No change to the final rule was made as a result of this comment.

*Comment:* One commenter stated that under HIP there seemed no need for FSA to determine that a producer who applies for benefits will be eligible to

receive a payment if damage occurred due to an eligible hurricane and due to a cause of loss which includes hurricanes.

*Response:* A change to section 760.202(a)(3)(vi) in the final rule will be made to delete "hurricane."

• *Comment:* One commenter stated concern that no rationale is offered for excluding FIP assistance for losses of beef cattle, buffalo/beefalo, and dairy cattle weighing less than 500 pounds and that because many producers have realized drastically lower-than-projected income from their 2005 calves, FIP assistance for these producers for all of their livestock losses is critical to restoring their buying power.

*Response:* The purpose of FIP is to provide monetary assistance to eligible livestock owners, or cash lessees, for feed losses or increased feed costs that occurred as a result of an applicable hurricane. The program is not designed or authorized to provide assistance for the loss or reduction of projected income. In general, livestock under a certain weight are normally still nursing and obtaining most of their nutrition from their mother. Therefore, generally, there is no, or minimal, feed loss associated with respect to such animals. No change to the final rule was made as a result of this comment.

• *Comment:* One commenter expressed concern that there would be insufficient funds to cover all losses, thus producing a 'first-come, first-serve' allocation system that would favor the most informed producers without accounting for less informed producers who are at least equally in need of assistance.

*Response:* FSA is confident that sufficient funds are available to cover all eligible losses. These programs are available to all eligible producers on an equal basis. No change to the final rule was made as a result of this comment.

• *Comment:* One commenter urged FSA to provide for producers who suffered eligible losses in multiple counties to apply for disaster benefits in one county office; and absent this provision, to make the date a producer files his first application in any county office the application date for his filings in all other county offices.

*Response:* Based on the fact that severe devastation occurred, very little documentation is available to support reported losses. Therefore FSA determined to require producers to apply in each county where loss occurred in order to enable each FSA county office to validate the loss in that county and to maintain the integrity of the program. As stated previously, FSA

is confident that sufficient funds are available to cover all losses so there is no need for time-stamping when an application is filed. No change to the final rule was made as a result of this comment.

• *Comment:* One commenter asks that payments under these Section 32 programs not be subject to administrative offset.

*Response:* The Debt Collection Improvement Act of 1996 requires that, with only limited exceptions such as loan proceeds from the federal Farm Loan Program, all federal disbursements be subject to administrative offset. No change to the final rule was made as a result of this comment.

• *Comment:* One commenter asked that the dates of the application period be included in the rule.

*Response:* The application period for the disaster programs began on May 17, 2005, prior to the comment period deadline. As yet no end date has been established. To arbitrarily include an end date for the application period in the final rule might limit the time during which applications can be taken, to the detriment of some eligible producers. No change to the final rule was made as a result of this comment. Producers will be notified of the end of the enrollment period through the issuance of press releases and newsletters.

• *Comment:* One commenter stated that the tomato is a fruit grown on a vine and thus meets the definition of vine and should be eligible for benefits under the disaster programs.

*Response:* The tomato plant grows with a weak, woody, inflexible stem and, is traditionally considered to be a vegetable for farm program purposes.

#### **2006 Section 32 Livestock Assistance Grant Program**

Since the issuance of the interim rule that established the 2005 Section 32 Disaster Programs, USDA has determined that significant losses of forage have occurred in several States as the result of severe droughts. As a result of this determination, and taking into account the limited availability of Section 32 funds, FSA will administer a limited program to provide assistance to livestock producers where forage was adversely affected by drought in counties reaching D3 or D4 Drought on the U.S. Drought Monitor, during March 7 to August 31, 2006, in the States of: Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Wisconsin and Wyoming. Under the

Livestock Assistance Grant Program, FSA will provide grants to the State governments of these States to assist livestock producers who suffered forage losses as part of a farming operation in eligible counties. Among other conditions in the grant, the amount of each grant will be based on the number of adult beef cattle and sheep from each eligible county uniformly prorated to insure that available funding is not exceeded. Accordingly, a new Subpart H is added to 7 CFR Part 760.

#### **Executive Order 12866**

This rule has been determined to be economically significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget. A Cost-Benefit Analysis was completed and is summarized below. It is also available from the contact person cited above.

#### **Executive Order 12372**

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

#### **Executive Order 12612**

This rule does not have Federalism implications that 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.

#### **Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988. This rule is not retroactive and it does not preempt State law. Before any judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

#### **Unfunded Mandates Reform Act of 1995**

This rule contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local, and tribal government or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995, the Office of Management and Budget (OMB) has approved the information collection

required to support this program and assigned it OMB Control number 0560-0257. Copies of the information collection may be obtained from Debbie O'Donoghue, phone: (202)720-6605; e-mail: [Debbie.Odonoghue@wdc.usda.gov](mailto:Debbie.Odonoghue@wdc.usda.gov).

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

The Small Business Regulatory Enforcement Fairness Act of 1996, (Pub. L. 104-121) (SBREFA) requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. This rule has not been determined to be major under SBREFA. In addition, section 808 of SBREFA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. Accordingly, FSA finds that it would be contrary to the public interest to delay implementation of this rule because it would significantly delay assistance to the many people affected by the hurricane disasters addressed by this rule. This rule is thus effective immediately.

#### **Environmental Evaluation**

The environmental impacts of this rule have been considered consistent with 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 regulations of the Farm Service Agency (FSA) of the Department of Agriculture (USDA) for compliance with NEPA, 7 CFR part 799. A Programmatic Environmental Assessment (PEA) was completed and it was determined that the Proposed Action does not have the potential to significantly impact the quality of the human environment, and, therefore, FSA has issued a Finding of No Significant Impact (FONSI) with respect to the 2005 Hurricane Assistance programs which include the Hurricane Indemnity Program, Feed Indemnity Program, Livestock Indemnity program, Tree Indemnity Program, Aquaculture Grant Program, and the 2006 Livestock Assistance Grant Program. A copy of the Final PEA and FONSI are on file and available to the public in the Administrative Record at the address specified in the **ADDRESSES** section of this 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 regulation is available at <http://www.fsa.usda.gov> under the heading 'Other Partners.' Applications may be submitted at the FSA county offices.

**E-Government Act Compliance**

CCC is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-GOV compliance related to this rule, please contact the person named above under the information contact section.

**Summary of Economic Impacts**

As a result of 2005 hurricanes, 261 counties in Alabama, Florida, Louisiana, Mississippi, North Carolina, and Texas were designated as Presidential and Secretarial primary disaster counties. A wide variety of crops were damaged because of the diversity of production in the affected areas. Damaged crops include feed grains, soybeans, upland cotton, rice, sugarcane, nursery plants, fruits, vegetables, pecans, pasture, livestock, poultry, and aquaculture. In response to this situation, FSA established four hurricane disaster programs for producers and a grant program for affected States. Their respective impacts are summarized as follows:

1. *HIP.* HIP payments are expected to be about \$59 million. This estimate is based on 30 percent of the sum of the total payments reported by the RMA and total payment estimates for the NAP program. According to RMA, crop loss indemnities are estimated at \$187 million. Based on the participation rates in the hurricane impacted States, it is estimated that approximately \$10 million will be issued under NAP. Thus, HIP payments are estimated to total about \$56 million (.30 x \$187 million) plus about \$3 million (.30 x \$10 million). Therefore, crop loss payments are estimated to total about \$59 million.

2. *FIP.* The value of expected claims under the 2005 FIP is approximately \$5 million. For those producers who have suffered losses due to the 2005 hurricanes, and qualify for payments under the 2005 FIP, their farm income losses will be somewhat offset or reduced by these payments, and they and their local communities will benefit accordingly.

3. *LIP.* The value of expected claims under the 2005 LIP is \$25 million based on projections from applications on file as of September 5, 2006. The impacts of the LIP on any sector of the economy, including livestock feed prices, livestock prices, and consumer prices, are not expected to be measurable. However, for those producers who have suffered losses due to the 2005 hurricanes, and qualify for payments under the LIP, their farm income losses will be somewhat offset or reduced by these payments, and they and their local communities will benefit accordingly.

4. *TIP.* FSA estimates the cost of the TIP to be between \$31.6 million and \$56.6 million with a point estimate of \$35.1 million. Over 90 percent of the program funds will go to the Florida citrus industry.

5. *Aquaculture grants* were provided as follows: Alabama, \$5,037,500; Florida, \$3,662,500; Louisiana, \$4,512,500; Mississippi, \$10,762,500; North Carolina, \$312,500; and Texas, \$712,500. Funding of \$25 million was expended.

6. *Livestock Grant Program.* To provide assistance to livestock producers whose forage has been adversely impacted by severe drought in 2006, \$50 million has been allocated for block grants to States. Based on the counties declared drought disaster areas and NASS statistics on the number of livestock in each applicable county of each State, funds are being distributed as follows:

**LIVESTOCK ASSISTANCE GRANT PROGRAM**

State	Grant amount (\$)
Alabama .....	976,011
Arizona .....	2,405,043
Arkansas .....	2,015,485
Colorado .....	1,283,883
Florida .....	149,705
Georgia .....	11,391
Kansas .....	948,511
Louisiana .....	958,437
Minnesota .....	704,980
Mississippi .....	759,916
Missouri .....	2,726,909
Montana .....	933,443
Nebraska .....	3,627,091
New Mexico .....	1,512,932
North Dakota .....	1,807,850
Oklahoma .....	6,594,374
South Dakota .....	4,299,137
Texas .....	16,101,487
Wisconsin .....	575,062
Wyoming .....	1,608,352
Grand Total .....	50,000,000

**List of Subjects for 7 CFR Part 760**

Disaster assistance, Hurricane, Indemnity payments, Livestock.

■ For the reasons set forth above, the interim rule of May 10, 2006, amending 7 CFR part 760 is adopted as final with the following changes:

**PART 760—INDEMNITY PAYMENT PROGRAMS**

■ 1. The authority citation for part 760 continues to read as follows:

**Authority:** 7 U.S.C. 612c; Pub. L. 106–387, 114 Stat. 1549; Pub. L. 107–76, 115 Stat. 704.

■ 2. Subparts B through G are revised and subpart H is added to read as follow:

**Subpart B—General Provisions for the 2005 Section 32 Hurricane Disaster Programs**

- Sec.
- 760.101 Eligible counties, hurricanes and disaster periods.
- 760.102 Applicability.
- 760.103 Administration of HIP, FIP, LIP, and TIP.
- 760.104 Definitions.
- 760.105 Application for payment.
- 760.106 Limitations on payments and other benefits.
- 760.107 Appeals.
- 760.108 Offsets, assignments, and debt settlement.
- 760.109 Records and inspections thereof.
- 760.110 Refunds; joint and several liability.
- 760.111 Paperwork Reduction Act assigned number.

**Subpart C—Hurricane Indemnity Program**

- 760.201 Applicability.
- 760.202 Producer eligibility.
- 760.203 Payment calculation.

**Subpart D—Feed Indemnity Program**

- 760.301 Applicability.
- 760.302 Definitions.
- 760.303 Eligible livestock and producers.
- 760.304 Application process.
- 760.305 Payment calculation.

**Subpart E—Livestock Indemnity Program**

- 760.401 Applicability.
- 760.402 Definitions.
- 760.403 Eligible owners, contract growers and livestock.
- 760.404 Application process.
- 760.405 Payment calculation.

**Subpart F—Tree Indemnity Program**

- 760.501 Applicability.
- 760.502 Eligible producers and stands.
- 760.503 Application process.
- 760.504 Payment calculation.

**Subpart G—Aquaculture program**

- 760.601 Funds availability.

**Subpart H—2006 Livestock Assistance Grant Program**

- 760.701 Funds availability.

**Subpart B—General Provisions for the 2005 Section 32 Hurricane Disaster Programs**

**§ 760.101 Eligible counties, hurricanes and disaster periods.**

Producers who have suffered certain losses due to 2005 Hurricanes Dennis,

Katrina, Ophelia, Rita, and Wilma (2005 hurricanes) in the following counties (eligible counties) are eligible to enroll in the programs made available under subparts B through F of this part. The ‘Disaster Period’ is the time period in which losses occurred that would be

considered eligible for the programs under subparts B through F of this part. Funds for the programs in subparts B through G are made available under Section 32 of the Act of August 24, 1935, as amended (Section 32).

State	County	Disaster period				
		DENNIS	KATRINA	OPHELIA	RITA	WILMA
Alabama	Autauga	7/10/05–9/8/05				
Alabama	Baldwin	7/10/05–9/8/05	8/29/05–10/28/05			
Alabama	Bibb		8/29/05–10/28/05			
Alabama	Butler	7/10/05–9/8/05				
Alabama	Chambers	7/10/05–9/8/05				
Alabama	Choctaw	7/10/05–9/8/05	8/29/05–10/28/05			
Alabama	Clarke	7/10/05–9/8/05	8/29/05–10/28/05			
Alabama	Clay	7/10/05–9/8/05				
Alabama	Cleburne	7/10/05–9/8/05				
Alabama	Coffee	7/10/05–9/8/05				
Alabama	Colbert		8/29/05–10/28/05			
Alabama	Conecuh	7/10/05–9/8/05				
Alabama	Covington	7/10/05–9/8/05				
Alabama	Crenshaw	7/10/05–9/8/05				
Alabama	Cullman		8/29/05–10/28/05			
Alabama	Dallas	7/10/05–9/8/05				
Alabama	Escambia	7/10/05–9/8/05				
Alabama	Geneva	7/10/05–9/8/05				
Alabama	Greene	7/10/05–9/8/05	8/29/05–10/28/05			
Alabama	Hale	7/10/05–9/8/05	8/29/05–10/28/05			
Alabama	Henry	7/10/05–9/8/05				
Alabama	Houston	7/10/05–9/8/05				
Alabama	Jefferson		8/29/05–10/28/05			
Alabama	Lamar		8/29/05–10/28/05			
Alabama	Lauderdale		8/29/05–10/28/05			
Alabama	Lowndes	7/10/05–9/8/05				
Alabama	Macon	7/10/05–9/8/05				
Alabama	Marengo	7/10/05–9/8/05	8/29/05–10/28/05			
Alabama	Marion		8/29/05–10/28/05			
Alabama	Mobile	7/10/05–9/8/05	8/29/05–10/28/05			
Alabama	Monroe	7/10/05–9/8/05	8/29/05–10/28/05			
Alabama	Perry	7/10/05–9/8/05	8/29/05–10/28/05			
Alabama	Pickens		8/29/05–10/28/05			
Alabama	Pike	7/10/05–9/8/05				
Alabama	Randolph	7/10/05–9/8/05				
Alabama	Sumter	7/10/05–9/8/05	8/29/05–10/28/05			
Alabama	Tuscaloosa	7/10/05–9/8/05	8/29/05–10/28/05			
Alabama	Washington	7/10/05–9/8/05	8/29/05–10/28/05			
Alabama	Wilcox	7/10/05–9/8/05	8/29/05–10/28/05			
Alabama	Winston		8/29/05–10/28/05			
Florida	Bay	7/10/05–9/8/05	8/24/05–10/23/05			
Florida	Brevard					10/23/05–12/22/05
Florida	Broward		8/24/05–10/23/05			10/23/05–12/22/05
Florida	Calhoun	7/10/05–9/8/05				
Florida	Charlotte					10/23/05–12/22/05
Florida	Collier		8/24/05–10/23/05			10/23/05–12/22/05
Florida	Dixie	7/10/05–9/8/05				
Florida	Escambia	7/10/05–9/8/05	8/24/05–10/23/05			
Florida	Franklin	7/10/05–9/8/05	8/24/05–10/23/05			
Florida	Gadsden	7/10/05–9/8/05				
Florida	Glades					10/23/05–12/22/05
Florida	Gulf	7/10/05–9/8/05	8/24/05–10/23/05			
Florida	Hardee					10/23/05–12/22/05
Florida	Hendry					10/23/05–12/22/05
Florida	Highlands					10/23/05–12/22/05
Florida	Holmes	7/10/05–9/8/05				
Florida	Indian River					10/23/05–12/22/05
Florida	Jackson	7/10/05–9/8/05				
Florida	Jefferson	7/10/05–9/8/05				
Florida	Lee					10/23/05–12/22/05
Florida	Leon	7/10/05–9/8/05				
Florida	Levy	7/10/05–9/8/05				
Florida	Liberty	7/10/05–9/8/05				

State	County	Disaster period				
		DENNIS	KATRINA	OPHELIA	RITA	WILMA
Florida	Martin					10/23/05–12/22/05
Florida	Miami-Dade		8/24/05–10/23/05			10/23/05–12/22/05
Florida	Monroe	7/10/05–9/8/05	8/24/05–10/23/05			10/23/05–12/22/05
Florida	Okaloosa	7/10/05–9/8/05	8/24/05–10/23/05			
Florida	Okeechobee					10/23/05–12/22/05
Florida	Palm Beach					10/23/05–12/22/05
Florida	St. Lucie					10/23/05–12/22/05
Florida	Santa Rosa	7/10/05–9/8/05	8/24/05–10/23/05			
Florida	Sarasota					10/23/05–12/22/05
Florida	Taylor	7/10/05–9/8/05				
Florida	Wakulla	7/10/05–9/8/05				
Florida	Walton	7/10/05–9/8/05	8/24/05–10/23/05			
Florida	Washington	7/10/05–9/8/05				
Louisiana	Acadia		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Allen		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Ascension		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Assumption		8/29/05–10/28/05			
Louisiana	Avoyelles		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Beauregard		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Bienville		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Bossier		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Caddo		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Calcasieu		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Caldwell		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Cameron		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Catahoula		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Claiborne		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Concordia		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	De Soto		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	East Baton Rouge		8/29/05–10/28/05			
Louisiana	East Carroll		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	East Feliciana		8/29/05–10/28/05			
Louisiana	Evangeline		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Franklin		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Grant		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Iberia		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Iberville		8/29/05–10/28/05			
Louisiana	Jackson		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Jefferson		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Jefferson Davis		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Lafayette		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Lafourche		8/29/05–10/28/05			
Louisiana	La Salle		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Lincoln		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Livingston		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Madison		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Morehouse		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Natchitoches		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Orleans		8/29/05–10/28/05			
Louisiana	Ouachita		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Plaquemines		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Pointe Coupee		8/29/05–10/28/05			
Louisiana	Rapides		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Red River		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Richland		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Sabine		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	St. Bernard		8/29/05–10/28/05			
Louisiana	St. Charles		8/29/05–10/28/05			
Louisiana	St. Helena		8/29/05–10/28/05			
Louisiana	St. James		8/29/05–10/28/05			
Louisiana	St. John the Baptist		8/29/05–10/28/05			
Louisiana	St. Landry		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	St. Martin		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	St. Mary		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	St. Tammany		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Tangipahoa		8/29/05–10/28/05			
Louisiana	Tensas		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Terrebonne		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Union		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Vermilion		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Vernon		8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Washington		8/29/05–10/28/05			



State	County	Disaster period				
		DENNIS	KATRINA	OPHELIA	RITA	WILMA
Mississippi	Tallahatchie	8/29/05-10/28/05	8/29/05-10/28/05	9/23/05-11/22/05	9/23/05-11/22/05	9/23/05-11/22/05
Mississippi	Tate	8/29/05-10/28/05	8/29/05-10/28/05	9/23/05-11/22/05	9/23/05-11/22/05	9/23/05-11/22/05
Mississippi	Tippah	8/29/05-10/28/05	8/29/05-10/28/05	9/23/05-11/22/05	9/23/05-11/22/05	9/23/05-11/22/05
Mississippi	Tishomingo	8/29/05-10/28/05	8/29/05-10/28/05	9/23/05-11/22/05	9/23/05-11/22/05	9/23/05-11/22/05
Mississippi	Tunica	8/29/05-10/28/05	8/29/05-10/28/05	9/23/05-11/22/05	9/23/05-11/22/05	9/23/05-11/22/05
Mississippi	Union	8/29/05-10/28/05	8/29/05-10/28/05	9/23/05-11/22/05	9/23/05-11/22/05	9/23/05-11/22/05
Mississippi	Walthall	8/29/05-10/28/05	8/29/05-10/28/05	9/23/05-11/22/05	9/23/05-11/22/05	9/23/05-11/22/05
Mississippi	Warren	8/29/05-10/28/05	8/29/05-10/28/05	9/23/05-11/22/05	9/23/05-11/22/05	9/23/05-11/22/05
Mississippi	Washington	8/29/05-10/28/05	8/29/05-10/28/05	9/23/05-11/22/05	9/23/05-11/22/05	9/23/05-11/22/05
Mississippi	Wayne	8/29/05-10/28/05	8/29/05-10/28/05	9/23/05-11/22/05	9/23/05-11/22/05	9/23/05-11/22/05
Mississippi	Webster	8/29/05-10/28/05	8/29/05-10/28/05	9/23/05-11/22/05	9/23/05-11/22/05	9/23/05-11/22/05
Mississippi	Wilkinson	8/29/05-10/28/05	8/29/05-10/28/05	9/23/05-11/22/05	9/23/05-11/22/05	9/23/05-11/22/05
Mississippi	Winston	8/29/05-10/28/05	8/29/05-10/28/05	9/23/05-11/22/05	9/23/05-11/22/05	9/23/05-11/22/05
Mississippi	Yalobusha	8/29/05-10/28/05	8/29/05-10/28/05	9/23/05-11/22/05	9/23/05-11/22/05	9/23/05-11/22/05
Mississippi	Yazoo	8/29/05-10/28/05	8/29/05-10/28/05	9/23/05-11/22/05	9/23/05-11/22/05	9/23/05-11/22/05
North Carolina	Brunswick			9/11/05-11/10/05		
North Carolina	Carteret			9/11/05-11/10/05		
North Carolina	Craven			9/11/05-11/10/05		
North Carolina	Dare			9/11/05-11/10/05		
North Carolina	Hyde			9/11/05-11/10/05		
North Carolina	Jones			9/11/05-11/10/05		
North Carolina	New Hanover			9/11/05-11/10/05		
North Carolina	Onslow			9/11/05-11/10/05		
North Carolina	Pamlico			9/11/05-11/10/05		
North Carolina	Pender			9/11/05-11/10/05		
Texas	Angelina				9/23/05-11/22/05	
Texas	Brazoria				9/23/05-11/22/05	
Texas	Chambers				9/23/05-11/22/05	
Texas	Cherokee				9/23/05-11/22/05	
Texas	Fort Bend				9/23/05-11/22/05	
Texas	Galveston				9/23/05-11/22/05	
Texas	Gregg				9/23/05-11/22/05	
Texas	Hardin				9/23/05-11/22/05	
Texas	Harris				9/23/05-11/22/05	
Texas	Harrison				9/23/05-11/22/05	
Texas	Houston				9/23/05-11/22/05	
Texas	Jasper				9/23/05-11/22/05	
Texas	Jefferson				9/23/05-11/22/05	
Texas	Liberty				9/23/05-11/22/05	
Texas	Marion				9/23/05-11/22/05	
Texas	Montgomery				9/23/05-11/22/05	
Texas	Nacogdoches				9/23/05-11/22/05	
Texas	Newton				9/23/05-11/22/05	
Texas	Orange				9/23/05-11/22/05	
Texas	Panola				9/23/05-11/22/05	
Texas	Polk				9/23/05-11/22/05	
Texas	Rusk				9/23/05-11/22/05	
Texas	Sabine				9/23/05-11/22/05	
Texas	San Augustine				9/23/05-11/22/05	
Texas	San Jacinto				9/23/05-11/22/05	
Texas	Shelby				9/23/05-11/22/05	
Texas	Trinity				9/23/05-11/22/05	
Texas	Tyler				9/23/05-11/22/05	
Texas	Walker				9/23/05-11/22/05	

**§ 760.102 Applicability.**

(a) This part establishes the terms and conditions under which the following programs will be administered with respect to producers affected by 2005 hurricanes in eligible counties:

- (1) Hurricane Indemnity Program (HIP);
- (2) Feed Indemnity Program (FIP);
- (3) Livestock Indemnity Program (LIP);
- (4) Tree Indemnity Program (TIP); and
- (5) Aquaculture grants to States.

(b) The amount that may be expended for payments under subparts B through G of this part shall not exceed the amount of Section 32 funds made available by the Secretary for the administration of these programs.

(c) To be eligible for payments under these programs, producers must comply with all applicable provisions under subparts B through G of this part and, in the case of State grants, by the State.

**§ 760.103 Administration of HIP, FIP, LIP, and TIP.**

(a) These programs are administered under the general supervision of the Administrator, FSA.

(b) FSA representatives do not have authority to modify or waive any of the provisions of the regulations of subparts B through F of this part.

(c) The State FSA committee shall take any action required by the regulations of subparts B through F of this part that the county FSA committee

has not taken. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with the regulations of subparts B through F of this part; or

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

(d) No provision or delegation to a State or county FSA committee shall preclude the Administrator, FSA, Deputy Administrator for Farm Programs, FSA or a designee or other such person, from determining any question arising under the program or from reversing or modifying any determination made by a State or county FSA committee.

#### § 760.104 Definitions.

The following definitions in this section apply to the programs in subparts B through G of this part. The terms defined in part 718 of this chapter and parts 1400 and 1437 of this title shall also be applicable, except where they conflict with the definitions set forth in this section.

*Application* means the '2005 Hurricane Disaster Programs Application' form issued by FSA.

*Application period* means the date established by the Deputy Administrator for producers to apply for program benefits.

*Bush* means a thick densely branched woody shrub grown for the production of an annual crop for commercial market for human consumption.

*Commercial use* means used in the operation of a business activity engaged in as a means of livelihood for profit by the eligible producer.

*Crop insurance* means an insurance policy reinsured by the Federal Crop Insurance Corporation under the provisions of the Federal Crop Insurance Act, as amended.

*Farming operation* means a business enterprise engaged in the production of agricultural products.

*Fruit tree* means a woody perennial plant having a single main trunk, commonly exceeding 10 feet in height and usually devoid of branches below, but bearing a head of branches and foliage or crown of leaves at the summit that is grown for the production of an annual crop, including nuts, for commercial market for human consumption.

*Owner* means one who had legal ownership of the trees, bushes, vines, or livestock for which benefits are being requested under subparts B through F, on the day such plant or livestock

perished or suffered losses due to an eligible hurricane as set forth § 760.101.

*Stand* means a contiguous acreage of the same crop of trees, bushes, or vines, and excludes container-grown crops.

*Tier* means the geographic bands of damage generally correlating to the severity of damage caused by the maximum sustained winds of the applicable hurricanes.

*Vine* means a plant from which an annual fruit crop is produced for commercial market for human consumption, such as grape, kiwi, or passion fruit, that has a flexible stem supported by climbing, twining, or creeping along a surface.

#### § 760.105 Application for payment.

(a) A producer who applies for any program under subparts B through F shall file an application and any required supporting documentation in the county FSA office serving the county where the eligible loss occurred; or in the case of FIP, where the eligible livestock were physically located on the applicable date.

(b) The application must be filed during the application period announced by FSA.

(c) Payments may be made for eligible losses suffered by an eligible producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer signs the application for payment. Proof of authority to sign for the deceased producer or dissolved entity must be provided. If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

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

(e) A minor child shall be eligible to apply for program benefits so long as all eligibility requirements are met and one of the following conditions exist:

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

#### § 760.106 Limitations on payments and other benefits.

(a) Separate payment limitations apply to HIP, FIP, LIP, and TIP. No 'person' as determined under part 1400 of this title shall receive more than \$80,000 under each of these programs.

(b) An individual or entity whose adjusted gross income is in excess of \$2.5 million, as determined under part 1400 of this title, shall not be eligible to receive benefits under this part for HIP, FIP, LIP, and TIP; except that the individual or entity may be considered to meet the adjusted gross income requirement if not less than 75 percent of the individual's or entity's average adjusted gross income for the three tax years immediately preceding the applicable crop year is derived from farming or ranching operations.

(c) As a condition to receive benefits under subparts B through F, a producer must have been in compliance with the provisions of parts 12 and 718 of this title for the 2005 crop year and must not otherwise be barred from receiving benefits under any law.

(d) An individual or entity determined to be a foreign person under part 1400 of this title shall not be eligible to receive benefits under subparts B through F of this part.

#### § 760.107 Appeals.

The appeal regulations set forth at parts 11 and 780 of this title apply to determinations made pursuant to subparts B through F of this part.

#### § 760.108 Offsets, assignments, and debt settlement.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any producer shall be made without regard to questions of title under State law and without regard to any claim or lien against the commodity, 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 792 of this chapter apply to payments made under subparts B through F of this part.

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

#### § 760.109 Records and inspection thereof.

Producers receiving payments under the programs in subparts B through F or any other person who furnishes information for the purposes of enabling such producer to receive a payment under subparts B through F of this part shall maintain any books, records, and

accounts supporting any information so furnished for 3 years following the end of the year during which the application for payment was filed. Producers receiving payments or any other person who furnishes such information to FSA shall permit authorized representatives of USDA and the General Accounting Office during regular business hours to inspect, examine, and to allow such persons to make copies of such books, records, and to enter upon, inspect and verify all applicable livestock and acreage in which the applicant has an interest for the purpose of confirming the accuracy of the information provided by the applicant.

**§ 760.110 Refunds; joint and several liability.**

In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under subparts B through F of this part, and if any refund of a payment to FSA shall otherwise become due in connection with this part, all payments made in regard to such matter shall be refunded to FSA together with interest and late-payment charges as provided for in part 792 of this chapter.

**§ 760.111 Paperwork Reduction Act assigned number.**

The information collection required to support the regulations of subparts B through F of this part has been approved by OMB and assigned OMB control number 0560-0257.

**Subpart C—Hurricane Indemnity Program**

**§ 760.201 Applicability.**

This subpart sets forth the terms and conditions applicable to the Hurricane Indemnity Program (HIP). Benefits will be provided under this subpart to producers who have received a crop insurance indemnity from the Risk Management Agency (RMA) based on the associated loss criteria set forth in § 760.202(a)(1) as provided to FSA by RMA; and to producers who have received Noninsured Crop Disaster Assistance Program (NAP) payments under part 1437 of this title based on the provisions of § 760.202(a)(1). HIP benefits will be provided under this subpart to eligible producers who suffered losses due to 2005 hurricanes as set forth in § 760.101.

**§ 760.202 Producer eligibility.**

A producer who applies for benefits under this subpart will be eligible to receive a payment if both of the following apply:

(a) The producer received a crop insurance indemnity from RMA or a

NAP payment under part 1437 of this title for crop losses:

- (1) In an eligible county;
  - (2) Recorded by RMA or FSA as being due to a 2005 hurricane and the loss occurred during a disaster period as set forth in § 760.101; and
  - (3) Were due to any of the following causes of loss:
    - (i) Excessive moisture, precipitation, and/or rain;
    - (ii) Flood;
    - (iii) Excessive wind;
    - (iv) Cyclone;
    - (v) Tornado;
    - (vi) Tropical depression;
    - (vii) Storm surge; or
    - (viii) Salinity due to salt water intrusion; and
- (b) An application is filed in accordance with § 760.105.

**§ 760.203 Payment calculation.**

The disaster benefits under this subpart will be equal to the smaller of:

- (a) 30 percent of the RMA crop insurance indemnity or 30 percent of the NAP payment for eligible crop losses as provided in § 760.202(a)(1), and adding the crop insurance premium for the indemnity as provided in § 760.202(a)(1); or
- (b) 95 percent of the expected value of the crop in the absence of a disaster, as determined by RMA for insured crops, using information from the crop policy; and by FSA for NAP crops, using the producer's price and yield, minus the following:
  - (1) The value of the production as counted by RMA for insured crops to establish the indemnity and by FSA for NAP crops to establish the NAP payment;
  - (2) The crop's eligible indemnity or NAP payment for eligible crop losses determined in accordance with § 760.202(a)(1); and
  - (3) Adding the crop insurance premium for the indemnity as provided in § 760.202(a)(1).

**Subpart D—Feed Indemnity Program**

**§ 760.301 Applicability.**

This subpart sets forth the terms and conditions applicable to the Feed Indemnity Program (FIP). FIP benefits will be provided under this subpart to eligible owners and cash lessees, but not both, for the same livestock, for feed losses or increased feed costs that occurred in eligible counties during the disaster period as set forth in § 760.101.

**§ 760.302 Definitions.**

The following definitions are applicable for all purposes of administering FIP.

*Adult beef bulls* means male bovine animals that were at least 2 years old and used for breeding purposes on the beginning date of the applicable disaster period as set forth in § 760.101.

*Adult beef cows* means female bovine animals that had delivered one or more offspring before the beginning date of the applicable disaster period as set forth in § 760.101. A first-time bred beef heifer shall also be considered an adult beef cow if it was pregnant on the beginning date of the applicable disaster period as set forth in § 760.101.

*Adult buffalo and beefalo bulls* means male animals of those breeds that were at least 2 years old and used for breeding purposes on the beginning date of the applicable disaster period as set forth in § 760.101.

*Adult buffalo and beefalo cows* means female animals of those breeds that had delivered one or more offspring before the beginning date of the applicable disaster period as set forth in § 760.101. A first-time bred buffalo or beefalo heifer shall also be considered to be an adult buffalo or beefalo cow if it was pregnant on the beginning date of the applicable disaster period as set forth in § 760.101.

*Adult dairy bulls* means male bovine animals of a breed used for producing milk for human consumption that were at least 2 years old and used for breeding dairy cows on the beginning date of the applicable disaster period as set forth in § 760.101.

*Adult dairy cows* means female bovine animals used for the purpose of providing milk for human consumption, that had delivered one or more offspring before the beginning date of the applicable disaster period as set forth in § 760.101. A first-time bred dairy heifer shall also be considered an adult dairy cow if it was pregnant on the beginning date of the applicable disaster period as set forth in § 760.101.

*Goats* means domesticated, ruminant mammals of the genus *Capra*, including Angora goats.

*Horses* means domesticated horses, and does not include donkeys, mules or other large solid-hoofed herbivorous mammals.

*Non-adult beef cattle* means male, female or neutered male bovine animals that weighed 500 pounds or more on the beginning date of the applicable disaster period as set forth in § 760.101, but do not meet the definition of adult beef cows or bulls.

*Non-adult buffalo/beefalo* means male, female or neutered male animals of those breeds that weighed 500 pounds or more on the beginning date of the applicable disaster period as set forth in § 760.101, but do not meet the

definition of an adult buffalo or beefalo cow or bull.

*Non-adult dairy cattle* means male, female or neutered male bovine livestock, of a breed used for the purpose of providing milk for human consumption, that weighed 500 pounds or more on the beginning date of the applicable disaster period as set forth in § 760.101, but do not meet the definition adult dairy cows or bulls.

*Sheep* means domesticated, ruminant mammals of the genus *Ovis*.

#### § 760.303 Eligible livestock and producers.

(a) To be considered eligible, livestock must meet all the following conditions:

(1) Be adult or non-adult dairy cattle, beef cattle, buffalo, beefalo, horses, sheep, goats or deer as defined in § 760.302;

(2) Been physically located in an eligible county on the beginning date of the applicable disaster period as set forth in § 760.101;

(3) Been maintained for commercial use as part of a farming operation on the beginning date of the applicable disaster period as set forth in § 760.101;

(4) Not have been produced and maintained for reasons other than commercial use as part of a farming operation. Such excluded uses include, but are not limited to wild free roaming animals or animals used for recreational purposes, such as pleasure, hunting, pets, or for show.

(b) To be considered an eligible livestock producer, a producer must have:

(1) Owned or cash-leased, but not both for the same livestock, eligible livestock on the beginning date of the applicable disaster period as provided in § 760.101; and

(2) Suffered a feed loss or an increased feed cost during the applicable disaster period as set forth in § 760.101 with respect to feed used for the eligible livestock.

#### § 760.304 Application process.

(a) Applicants must submit to FSA a completed application in accordance with § 760.105, and any other supporting documentation as determined by FSA to be necessary to make a determination of the eligibility of the applicant. Supporting documents include but are not limited to: Purchase records; veterinarian records; bank or other loan papers; rendering truck receipts; Federal Emergency Management Agency and National Guard records; written contracts; production records; Internal Revenue Service (IRS) records; property tax records; private insurance documents; and other similar documents.

#### § 760.305 Payment calculation.

(a) FIP payments are calculated by multiplying the national payment rate for each of the following livestock categories by the number of eligible livestock in each category. The payment rate represents the cost of the amount of corn needed to maintain 1 animal unit for a specified period of time.

(b) The eligible livestock categories are:

- (1) Adult beef cows or bulls;
- (2) Non-adult beef cattle;
- (3) Adult buffalo or beefalo cows or bulls;
- (4) Non-adult buffalo or beefalo;
- (5) Adult dairy cows or bulls;
- (6) Non-adult dairy cattle;
- (7) Goats;
- (8) Sheep;
- (9) Horses; and
- (10) Deer.

#### Subpart E—Livestock Indemnity Program

##### § 760.401 Applicability.

(a) This subpart sets forth the terms and conditions applicable to the Livestock Indemnity Program (LIP). Benefits will be provided under this subpart to eligible livestock owners and contract growers, but not both for the same livestock loss, for certain livestock deaths that occurred in eligible counties during the disaster period as set forth in § 760.101.

(b) Eligible livestock owners and contract growers will be compensated in accordance with § 760.405 for eligible livestock deaths that occurred in eligible counties during the disaster period as set forth in § 760.101.

##### § 760.402 Definitions.

The following definitions are applicable for all purposes of administering LIP.

*Adult beef bull* means a male bovine animal that was at least 2 years old and used for breeding purposes before it died.

*Adult beef cow* means a female bovine animal that had delivered one or more offspring before dying. A first-time bred beef heifer shall also be considered an adult beef cow if it was pregnant at the time it died.

*Adult buffalo and beefalo bull* means a male animal of those breeds that was at least 2 years old and used for breeding purposes before it died.

*Adult buffalo and beefalo cow* means a female animal of those breeds that had delivered one or more offspring before dying. A first-time bred buffalo or beefalo heifer shall also be considered an adult buffalo or beefalo cow if it was pregnant at the time it died.

*Adult dairy bull* means a male bovine animal of a breed used for producing milk for human consumption that was at least 2 years old and used for breeding dairy cows before it died.

*Adult dairy cow* means a female bovine animal used for the purpose of providing milk for human consumption that had delivered one or more offspring before dying. A first-time bred dairy heifer shall also be considered an adult dairy cow if it was pregnant at the time it died.

*Buck* means a male goat.

*Contract* means, with respect to contracts for the handling of livestock, a written agreement between a livestock owner and another individual or entity setting the specific terms, conditions and obligations of the parties involved regarding the production of livestock or livestock products.

*Doe* means a female goat.

*Equine animal* means a domesticated horse, mule or donkey.

*Ewe* means a female sheep.

*Goat* means a domesticated, ruminant mammal of the genus *Capra*, including Angora goats. Goats will be further delineated by sex (bucks and does) and age (kids).

*Kid* means a goat less than 1 year old.

*Lamb* means a sheep less than 1 year old.

*Non-adult beef cattle* means male, female or neutered male bovines that do not meet the definition of adult beef cows or bulls. *Non-adult beef cattle* is further delineated by weight categories of less than 400 pounds, and 400 pounds or more at the time they died.

*Non-adult buffalo or beefalo* means a male, female or neutered male animal of those breeds that do not meet the definition of adult buffalo/beefalo cow or bull. *Non-adult buffalo or beefalo* is further delineated by weight categories of less than 400 pounds, and 400 pounds or more at the time of death.

*Non-adult dairy cattle* means male, female or neutered male bovine livestock, of a breed used for the purpose of providing milk for human consumption, that do not meet the definition of adult dairy cows or bulls. *Non-adult dairy cattle* is further delineated by weight categories of less than 400 pounds, and 400 pounds or more at the time they died.

*Poultry* means domesticated chickens, turkeys, ducks and geese. *Poultry* will be further delineated by sex, age and purpose of production, as determined by FSA.

*Ram* means a male sheep.

*Sheep* means domesticated, ruminant mammals of the genus *Ovis*. *Sheep* will be further delineated by sex (rams and ewes) and age (lambs).

*Swine* means domesticated omnivorous pigs, hogs, and boars. *Swine* will be further delineated by sex and weight as determined by FSA.

**§ 760.403 Eligible owners, contract growers and livestock.**

(a) To be considered eligible, a livestock owner must have had legal ownership of the eligible livestock on the day the livestock died.

(b) To be considered eligible, a contract grower on the day the livestock died must have had:

(1) A written agreement with the owner of eligible livestock setting the specific terms, conditions and obligations of the parties involved regarding the production of livestock; and

(2) Control of the livestock that died.

(c) To be considered eligible, livestock must meet all the following:

(1) Be adult or non-adult dairy cattle, beef cattle, buffalo, beefalo, equine, sheep, goats, swine, poultry or deer.

(2) Died as a direct result of an applicable disaster, in an eligible county and during the applicable disaster period as set forth in § 760.101;

(3) Been maintained for commercial use as part of a farming operation on the day they died; and before dying;

(4) Not have been produced or maintained for reasons other than commercial use as part of a farming operation, including but not limited to wild free roaming animals or animals used for recreational purposes, such as pleasure, hunting, pets, or for show.

**§ 760.404 Application process.**

(a) Applicants must submit to FSA a completed application in accordance with § 760.105 and other supporting documents as determined by FSA to be necessary for making determinations of the eligibility of the applicant. Supporting documents must show: evidence of loss; current physical location of livestock in inventory; and physical location of claimed livestock at the time of death.

(b) Applicants must provide adequate proof that the death of the eligible livestock occurred during the applicable disaster period, and the death was a direct result of the occurrence of a 2005 hurricane as provided in § 760.101. The quantity and kind of livestock that died as a direct result of the applicable disaster may be documented by: Purchase records; veterinarian records; bank or other loan papers; rendering truck receipts; Federal Emergency Management Agency and National Guard records; written contracts; production records; IRS records; property tax records; private insurance

documents; and any other similar documents.

(c) Certifications of livestock deaths by third parties may be accepted only if both the following conditions are met:

(1) The livestock owner or livestock contract grower, as applicable, certifies in writing:

(i) That there is no other documentation of death available;

(ii) The number of livestock, by category as determined by the Deputy Administrator, in inventory at the time the applicable disaster occurred;

(iii) Other details necessary for FSA to determine the certification acceptable; and

(2) The third party has provided to FSA their telephone number and address, and a statement containing:

(i) Specific details about their knowledge of the livestock deaths;

(ii) Their affiliation to the livestock owner or contract grower; and

(iii) The accuracy of the deaths claimed by the livestock owner or contract grower; and

(iv) Other details necessary for FSA to determine the certification acceptable.

**§ 760.405 Payment calculation.**

(a) Under LIP, separate payment rates are established for eligible livestock owners and eligible contract growers in accordance with paragraphs (b) and (c) of this section. LIP payments are calculated by multiplying the national payment rate, as determined in paragraphs (b) and (c) of this section, by the number of eligible livestock in each category, as provided in paragraph (d) of this section. The payment calculated for an eligible contract grower for an eligible livestock category shall be reduced by the amount of any compensation received from the contractor for the loss of income from the dead livestock.

(b) The LIP payment rate for eligible livestock owners is based on 75 percent of the average fair market value of the livestock.

(c) The LIP payment rates for eligible contract growers is based on 75 percent of the average income loss sustained by the contract grower with respect to the dead livestock.

(d) The categories of eligible livestock are as follows:

(1) Adult beef cows;

(2) Adult beef bulls;

(3) Non-adult beef cattle;

(4) Adult buffalo or beefalo cows;

(5) Adult buffalo or beefalo bulls;

(6) Non-adult buffalo/beefalo;

(7) Adult dairy cows;

(8) Adult dairy bulls;

(9) Non-adult dairy cattle;

(10) Swine, sows, boars, barrows, gilts over 150 pounds;

(11) Swine, sows, boars, barrows, gilts 50 to 150 pounds;

(12) Swine, feeder pigs under 50 pounds;

(13) Goats, bucks;

(14) Goats, does;

(15) Goats, kids;

(16) Sheep, rams;

(17) Sheep, ewes;

(18) Sheep, lambs;

(19) Deer;

(20) Chickens, layers, roasters;

(21) Chickens, broilers, pullets;

(22) Chickens, chicks;

(23) Turkeys, toms, fryers, roasters;

(24) Turkeys, poultlets;

(25) Ducks;

(26) Ducks, ducklings;

(27) Geese, goose;

(28) Geese, gosling; and

(29) Equine.

**Subpart F—Tree Indemnity Program**

**§ 760.501 Applicability.**

(a) This subpart sets forth the terms and conditions applicable to the Tree Indemnity Program (TIP). Benefits will be provided under this subpart for eligible fruit trees, bushes, and vines that were lost or damaged during the disaster period as set forth in § 760.101.

(b) Compensation will be based on expenses incurred for replanting, rehabilitation, cleanup, and debris removal.

(c) No benefits shall be provided when the loss:

(1) Occurred in any county other than an eligible county, or

(2) Was not the result of an eligible disaster as set forth in § 760.101.

**§ 760.502 Eligible producers and stands.**

(a) An eligible fruit tree, bush, and/or vine producer is one who bears financial responsibility and who has incurred costs of at least \$90 per acre for replanting, rehabilitation, cleanup, or debris removal, excluding crop production.

(b) An eligible stand must:

(1) Be physically located in an eligible county;

(2) Have been impacted during a 2005 hurricane as set forth in § 760.101; and

(3) Be grown for commercial use.

**§ 760.503 Application process.**

(a) Applicants must submit a completed application and report of acreage identifying the geographic location and number of acres in the disaster-affected stand of claimed fruit trees, bushes, and vines in accordance with part 718 of this chapter, and any other supporting documentation for FSA to determine the eligibility of the applicant.

(b) Applicants must certify and provide adequate proof that the expenses incurred to eligible fruit trees, bushes, or vines occurred during the applicable disaster period and that the loss or damage was a direct result of a 2005 hurricane, as set forth in § 760.101.

(c) The quantity and kind of fruit trees, bushes, or vines that died or were damaged as a result of the applicable disaster may be documented by; purchase records; bank or other loan documents; Federal Emergency Management Agency and National Guard records; IRS records; property tax records; private insurance documents; and similar documents.

#### § 760.504 Payment calculation.

(a) TIP payments shall be calculated by multiplying the following national payment rate for the applicable tier by the number of eligible acres, excluding but not limited to such things as drainage ditches and canals, in a stand of fruit trees, bushes, or vines by the producer's share in such crop:

- (1) Tier I—\$750;
- (2) Tier II—\$300;
- (3) Tier III—\$200; and
- (4) Tier IV—\$90.

(b) If the actual expenses incurred for damage are greater than the value associated with the tier based on the location of the stand, the applicant may submit documentation to FSA to request the stand be placed in the next lower-numbered tier which represents a greater level of loss and a higher payment rate. Regardless of the expenses incurred the stand can only be placed in the next lower-numbered tier.

#### Subpart G—Aquaculture Program

##### § 760.601 Funds availability.

FSA will provide block grants to the states of Alabama, Florida, Louisiana, Mississippi, North Carolina and Texas where aquaculture was adversely affected by 2005 hurricanes as set forth in § 760.101. Producers in eligible counties in those states who raise aquaculture species in a controlled environment as part of a farming operation and who have not received assistance under other disaster programs for the same aquaculture losses are eligible to receive these funds. Funds provided by a State to a farming operation under such a grant shall not exceed \$80,000.

#### Subpart H—2006 Livestock Assistance Grant Program

##### § 760.701 Funds availability.

FSA will administer a limited program to provide assistance to livestock producers where forage was

adversely affected by drought in counties reaching D3 or D4 Drought on the U.S. Drought Monitor, during March 7 to August 31, 2006, in the States of: Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Wisconsin and Wyoming. Under the Livestock Assistance Grant Program, FSA will provide grants to the State governments of these States to assist livestock producers who suffered forage losses as part of a farming operation in eligible counties. The amount of each grant will be based on the number of adult beef cattle and sheep from each eligible county uniformly prorated to insure that available funding is not exceeded. Producers in eligible counties in those States who suffered forage losses as part of a farming operation are eligible for assistance under these grants. Among other conditions of these grants, assistance provided by a State under such a grant to an applicant shall not exceed \$10,000, except for general partnerships and joint ventures in which case assistance shall not exceed \$10,000 times the number of members that constitute the general partnership or joint venture.

Signed in Washington, DC January 4, 2007.

**Teresa C. Lasseter,**

*Administrator, Farm Service Agency.*

[FR Doc. E7-88 Filed 1-8-07; 8:45 am]

**BILLING CODE 3410-05-P**

## FEDERAL ELECTION COMMISSION

### 11 CFR Part 104

[Notice 2006—23]

#### Statement of Policy: “Purpose of Disbursement” Entries for Filings With the Commission

**AGENCY:** Federal Election Commission.

**ACTION:** Statement of Policy.

**SUMMARY:** Political committees and other persons required to file campaign finance reports with the FEC must itemize certain disbursements and, for each itemized disbursement, must provide information including a brief description of the purpose of the disbursement. The “purpose of disbursement” entry, when considered along with the identity of the disbursement recipient, must be sufficiently specific to make the purpose of the disbursement clear. The guidance below includes a non-exhaustive list of “purpose of disbursement” entries that are generally acceptable, and a non-

exhaustive list of terms that are generally not acceptable.

**DATES:** Effective as of January 9, 2007.

#### FOR FURTHER INFORMATION CONTACT:

Richard T. Ewell, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530, or Debbie Chacona, Branch Chief, Party/Non-Party Branch, Reports Analysis Division, 999 E Street, NW., Washington, DC 20463, (202) 694-1130 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** Political committees and other persons required to file campaign finance reports with the FEC must itemize certain disbursements and, for each itemized disbursement, must provide the full name and address of the recipient, the date the disbursement was made, and a brief statement or description of why the disbursement was made. See 2 U.S.C. 434(b); 11 CFR 104.3(b)(3) and (4), 104.10(b)(4), 104.17(b)(3) and 300.36(b)(2)(iii). The “purpose of disbursement” entry, when considered along with the identity of the disbursement recipient, must be sufficiently specific to make the purpose of the disbursement clear. 11 CFR 104.3(b)(3)(i)(B) and (4)(i)(A). The Commission's regulation requiring a description of the purpose of each itemized disbursement includes examples of descriptions that are acceptable (e.g., “dinner expenses,” “salary,” “travel expenses”) and examples that are unacceptable (e.g., “advance,” “miscellaneous”). Neither list is exhaustive.

The Commission solicited comments on a draft of this policy statement on November 2, 2006. Two comments were received. After reviewing the comments received, the Commission has decided to publish the policy statement with one change. As suggested by a commenter, the Commission has added “Consulting-Political” to the examples of generally insufficient descriptions. In light of this change, the Commission has also added examples of descriptions that would be generally sufficient, such as “Consulting-Media,” “Consulting-Fundraising,” “Consulting-Polling,” “Consulting-Legal” and “Consulting-Get-Out-The-Vote.”

The Commission recognizes that the “purpose of disbursement” entries, when linked to information provided about the recipient of the payment, may provide sufficient disclosure. For example, a disbursement to an office supply vendor for the stated purpose of “Supplies” provides adequate and acceptable disclosure, while a disbursement to a committee staff member for the same purpose of “Supplies” would likely trigger a