

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Parts 756 and 760

### Commodity Credit Corporation

#### 7 CFR Parts 1410, 1421, 1425, 1427, 1430, 1434, and 1435

[Docket ID FSA–2021–0003]

RIN 0560–AI59

### Supplemental Dairy Margin Coverage Payment; Conservation Reserve Program; Dairy Indemnity Payment Program; Marketing Assistance Loans, Loan Deficiency Payments, and Sugar Loans; and Oriental Fruit Fly Program

**AGENCY:** Commodity Credit Corporation (CCC) and Farm Service Agency (FSA), Department of Agriculture (USDA).

**ACTION:** Final rule.

**SUMMARY:** This rule amends the regulations for Dairy Margin Coverage (DMC) to allow supplemental DMC payments to participating eligible dairy operations. DMC provides dairy producers with risk management coverage that pays producers when the difference between the price of milk and the cost of feed (the margin) falls below a certain level. Eligible dairy operations with less than 5 million pounds of established production history may enroll supplemental pounds based upon a formula using 2019 actual milk marketings. Supplemental DMC coverage is applicable to calendar years 2021, 2022, and 2023. Participating dairy operations with supplemental production may receive supplemental payments in addition to payments based on their established production history. In addition, the rule amends the alfalfa hay calculation used in determining the average feed cost and actual dairy production margin. To end prolonged months of milk indemnity payments, the rule amends the regulations for

Dairy Indemnity Payment Program (DIPP) to indemnify affected farmers for depopulating and permanently removing cows after discovery of chemical residues affecting the commercial marketing of milk for the applicable farm and likely affecting the marketability of cows for a lengthy duration. The rule also implements a new Oriental Fruit Fly (OFF) Program as authorized in the Consolidated Appropriations Act, 2019. In addition, the rule updates the existing Marketing Assistance Loans (MAL) and Loan Deficiency Payments (LDP) loan rates to be consistent with the Agriculture Improvement Act of 2018 (the 2018 Farm Bill); the loan rates were already changed administratively because the loan rate changes were self-enacting. This rule also amends the Conservation Reserve Program (CRP) regulations to remove two discretionary requirements.

#### DATES:

*Effective:* December 13, 2021.

*Comment due date:* For the OFF Program only, we will consider comments on the Paperwork Reduction Act that we receive by: February 11, 2022.

**ADDRESSES:** For the OFF Program only, we invite you to submit comments on the information collection request. You may submit comments by going through the Federal eRulemaking Portal as follows:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov> and search for Docket ID FSA–2021–0003. Follow the online instructions for submitting comments.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. All comments received, including those received by mail, will be posted without change and publicly available on <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For the Supplemental DMC Payment Program and DIPP, contact Douglas Kilgore; telephone: (202) 720–9011; email: [douglas.e.kilgore@usda.gov](mailto:douglas.e.kilgore@usda.gov). For the MAL and LDP Programs, contact Shayla Watson; telephone: (202) 690–2350; email: [Shayla.watson@usda.gov](mailto:Shayla.watson@usda.gov). For the OFF Program, contact Kimberly A. Kempel; telephone: (202) 720–0974; or email: [Kimberly.kempel@usda.gov](mailto:Kimberly.kempel@usda.gov).

For CRP, contact Jody Kenworthy; telephone: (202) 690–5230; email: [jody.kenworthy@usda.gov](mailto:jody.kenworthy@usda.gov). Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

#### SUPPLEMENTARY INFORMATION:

##### Supplemental DMC Payments

This rule is amending the DMC regulations in 7 CFR part 1430 to establish supplemental payments to participating dairy operations. Subtitle D, section 1401, of Title I of the 2018 Farm Bill (Pub. L. 115–334) (changes codified in 7 U.S.C. 9055–9057) authorizes DMC to provide a risk management program for dairy operations that pays producers when the difference between the price of milk and the cost of feed (the margin) falls below a certain dollar amount selected by the producer. Producers are eligible for catastrophic level margin protection (based on a \$4 margin and 95 percent production history coverage) for their dairy operations by paying an annual administrative fee, and are also able to purchase greater coverage (up to \$9.50 margin on 5 to 95 percent of production history) for an annual premium.

Section 761 of Subtitle B of Title VII of Division N of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260) authorizes eligible participants in DMC, who have an approved DMC contract, the opportunity to create a supplemental production history and receive supplemental payments whenever the average actual dairy production margin for a month is less than the coverage level threshold as selected by the dairy operation. Dairy operations eligible for supplemental coverage must have an approved DMC contract for the applicable calendar year and have an existing DMC production history of less than 5 million pounds.

A significant number of current DMC participants established a production history using marketings from 2011, 2012, and 2013. Since that time, many dairy operations have increased their milk production above their established production history by expanding the dairy herd or increasing milk production per cow.

Eligible DMC operations that have an increase in 2019 milk marketings from their established production history have the opportunity to receive

payments on supplemental pounds of milk marketings. The supplemental production history is determined by multiplying 75 percent of the result of subtracting the dairy operation's established production history from their actual milk marketings for the 2019 calendar year; calculated as follows:

(2019 milk marketings – production history) × 75%

A participating dairy operation with approved supplemental pounds will have the same coverage percentage and level as on the DMC contract for the applicable calendar year. DMC indemnity payments will be issued according to the corresponding coverage levels for both established production history and supplemental pounds.

The sum of the pounds covered by supplemental DMC and the established production history cannot exceed 5 million pounds. The total covered production history is determined by the coverage percentage multiplied by the sum of supplemental production history and the existing DMC production history.

Supplemental production premium fees are determined using the Tier 1 premium rate and the supplemental production history to ensure that the total covered production history does not exceed 5 million pounds. Tier 1 premium rates are specified in 7 CFR 1430.407. Dairy operations enrolled in multi-year lock-in contracts are not eligible for the premium discount on supplemental pounds. Multi-year lock-in contracts will pay the standard premium rate by coverage level on supplemental production history. When a dairy operation with a multi-year lock-in contract enrolls supplemental production history, the supplemental history is enrolled up to and including the 2023 coverage year.

FSA will announce by press release and external communications a 45-day or more special enrollment or coverage election period for participating dairy operations to establish supplemental production history. When supplemental production history is established, dairy operations are required to cover the pounds of established production history and supplemental production history. Dairy operations not enrolled for 2021 DMC cannot enroll during the supplemental special enrollment. Eligible dairy operations for supplemental production history once enrolled and approved may receive applicable indemnity starting in January of 2021 through December 2023. For dairy operations where a succession-in-interest occurred or occurs on or after

January 2, 2021, through the special enrollment opening, the predecessor must establish supplemental history for the successor to be eligible for 2021 supplemental DMC coverage because the predecessor originally established the production history. The successor will only be eligible for the days in 2021 in which they succeeded to the dairy operation. The successor will not be eligible for 2021 supplemental coverage if the predecessor does not establish supplemental production history. Otherwise, supplemental production history established by a successor during the same period will not be effective until the 2022 coverage year.

To accurately reflect dairy operation feed costs, the rule will amend the calculation of average feed cost and actual dairy production margins by determining the price for alfalfa by using the price for high quality hay. The previous rule used an average of high quality (premium and supreme) alfalfa hay and average quality hay to calculate the hay price according to 7 CFR 1430.411(c)(3). USDA is making this change retroactive to the beginning of the 2020 program year, as a discretionary change.

#### Dairy Indemnity Payment Program

As codified in 7 U.S.C. 4551, the Secretary of Agriculture is authorized to indemnify affected farmers and manufacturers of dairy products who, through no fault of their own, suffer income losses with respect to milk or milk products containing harmful pesticide residues, chemicals, or toxic substances, or that were contaminated by nuclear radiation or fallout. DIPP was originally authorized by section 3 of Public Law 90–484, and was amended by section 1402(b) of the 2018 Farm Bill, extending the authority for DIPP until September 30, 2023.

This rule amends the regulations in 7 CFR part 760 to indemnify affected farmers for depopulating and permanently removing cows in certain situations as explained in this section. This rule is also amending the amount of time a dairy is eligible to receive indemnification for milk under DIPP. Both changes are discretionary.

For certain affected farmers, elevated levels of perfluoroalkyl and polyfluoroalkyl substances (PFAS) chemical residues in their dairy cows has led to extended participation in DIPP, resulting in the need to consider an appropriate change under DIPP to better address these circumstances. Because efforts to investigate and address PFAS by the Federal government are ongoing and additional studies are needed to understand how to

significantly reduce accumulated PFAS levels in dairy cows, affected cows may be determined likely to be not marketable for a lengthy duration. Currently the science related to PFAS is evolving. FSA carefully considered the circumstances and determined that in cases where dairy cows are likely to be not marketable for a lengthy duration, as determined by the Deputy Administrator for Farm Programs (DAFP), the affected cows would be eligible for depopulation. The potential increase in these situations requires this change in DIPP policy for contaminated milk and other similar events resulting in milk and cows that are likely to be not marketable for longer durations. Therefore, the amended rule:

- Limits indemnification of milk due to chemical residues to 3 months to monitor chemical levels, unless an extension is approved, removing the cows from milk production during that time; and
- provides indemnification of the cows through DIPP where the cows are likely to be not marketable for 3 months or longer [from the date the affected farmer submits an application for cow indemnification per 7 CFR 760.13].

Changing the DIPP regulations to allow for the indemnification of affected cows from the same loss<sup>1</sup> will eliminate the potential for continued and prolonged months of milk indemnification and in most cases reduce the overall expense to the government and producer. The DIPP statute authorized the Secretary to make indemnity payments for cows or milk but USDA has not previously implemented regulations for the indemnification of cows. The term of DIPP milk eligibility is changing in this rule to limit indemnification for contaminated milk due to the same loss to 3 months, unless an extension is approved. An extension may be granted if, upon request from an affected farmer and at the discretion of DAFP, DAFP approves additional months of milk indemnity payments to allow additional time for planning for removal (depopulation and disposal), and public agency approval of such plan, required for cow indemnification or in circumstances where chemical residues are anticipated to be reduced to marketable levels according to a plan

<sup>1</sup> As defined in § 760.2, “same loss” means the event or trigger that caused the milk to be removed from the commercial market. For example, if milk is contaminated, the original cause of the contamination was the trigger and any loss related to that contamination would be considered the same loss. An example of a cause of contamination would be contaminated water from a specific well or feed grown on certain fields.

submitted by the affected farmer. Prior to this rule, an affected farmer was limited to receiving 18 months of payments under DIPP due to the same loss.

As a result of the changes being made by this rule, any affected farmer may apply for cow indemnification, with eligibility then determined by DAFP. The application must be filed with the FSA county office for the county where the farm headquarters is located by December 31 following the fiscal year end in which the affected farmer's milk was removed from the commercial market, except that affected farmers that have received at least 3 months of milk indemnity payments prior to December 13, 2021, must file the form within 120 days after December 13, 2021. Upon written request from an affected farmer and at DAFP's discretion, the deadline for that affected farmer may be extended. For affected cows that produce contaminated milk, DAFP will determine eligibility for cow indemnity based on whether those cows are likely to be not marketable for 3 months or longer [from the date the affected farmer submits an application for cow indemnification per 7 CFR 760.13]. To make this determination, DAFP will take into consideration the levels of chemical residues in the contaminated milk by reviewing milk testing results, the commercial market's assessment of the current marketability of the affected cows, the type and source of chemical residues in the milk and animal tissues, and the projected duration for chemical residues to be reduced to marketable levels. Additionally, DAFP will review the actions the affected farmer has taken to reduce the chemical residues since the contaminated milk was discovered. After the affected farmer submits a complete application for DIPP cow indemnification on a form approved by DAFP, including the required documentation specified in 7 CFR 760.12, DAFP will determine eligibility for cow indemnification for those affected cows according to 7 CFR 760.10. Once an affected farmer is approved for cow indemnity payments, that affected farmer will no longer be eligible for additional milk indemnity payments in the future for the same loss.

Bred (young dairy female in gestation) and open (young dairy female not in gestation) heifers that are not marketable due to elevated levels of chemical residues as the result of the same loss are eligible for cow indemnification through DIPP if determined by DAFP to likely be not marketable for 3 months or longer under 7 CFR 760.11 after review of a recommendation on eligibility from the appropriate FSA county committee.

The affected farmer may include heifers in the cow indemnity request if the heifers' intended purpose is milk production and that future milk production is likely to be not marketable due to the same loss. DIPP indemnity payments for affected bred and open heifers due to same loss will be calculated as provided in 7 CFR 760.11. Information required to apply for cow indemnity for heifers is specified in 7 CFR 760.12.

In order for the affected farmer to receive approval for cow indemnification, the application must provide a removal plan for depopulating, disposing of, and permanently removing the affected cows and heifers from any future commercial milk production. That removal plan must be approved by the applicable public agency where the affected cows are located and in accordance with the public agency's depopulation and animal disposal requirements at the time of disposal, including any applicable Environmental Protection Agency (EPA), State, and local guidelines and requirements. The removal plan must provide FSA, to the satisfaction of the FSA county committee, a timeline of all aspects of cow removal, how and where cows will be depopulated, including how the cows and chemical residues, if applicable, will be disposed of, and documentation of the approval of the removal plan from the applicable public agency.

DAFP, upon request from an affected farmer on the application for cow indemnity and at DAFP's discretion, may approve indemnification of affected cows that were not marketable and were depopulated or died above normal mortality rates<sup>2</sup> for the farm between approval of the affected farmer's application for the first month of milk indemnity and approval of the removal plan for cow indemnification. An affected farmer making such a request must submit an accounting of affected cows depopulated or died above normal mortality rates for cows between approval of the affected farmer's application for the first month of milk indemnity but before the public agency approved the removal plan. This request for cow indemnification may include both cows that were included in

<sup>2</sup> DIPP will use the normal mortality rates for cows established by the FSA State Committees for the Livestock Indemnity Program (LIP). The FSA State Committee annually determines normal mortality rates in their state for the following weight ranges:

- Dairy, nonadult less than 400 pounds;
- Dairy, nonadult 400 pounds or more; and
- Dairy, adult cow.

applications for milk indemnity and heifers that were affected from the same loss.

Indemnification for affected cows through the Livestock Indemnity Program (LIP) is not an option for affected farmers because chemical residues are not an eligible cause of loss under LIP.

The application for cow indemnification should include all affected cows, including heifers, as well as any deceased or previously depopulated cows, for which the affected farmer seeks indemnification. To apply, the affected farmer will need to provide the information specified in 7 CFR 760.12: An application form approved by FSA, a removal plan, an inventory of adult cows or bred or open heifers at applicable weight ranges, and depopulation and disposal authorization from an applicable public agency. A written statement is required from 2 commercial markets that declined the acceptance of the affected cows through a cull cow market, slaughter facility, or processing facility due to the levels of chemical residues in the affected cows. Additionally, documentation of any projected timelines to reduce the chemical residues, actions the affected farmer has taken to reduce the chemical residues to marketable levels, including any professional assistance obtained for chemical residue remediation, including, but not limited to advice, consultation, and discussion of strategies with the public agencies. For heifers, the affected farmer will also need to provide: Veterinarian records, blood test results, or other testing information for DAFP to make its eligibility determination. In addition to any other information sought in § 760.12, if an affected farmer has not applied for milk indemnification through DIPP before applying for cow indemnification, the affected farmer will also need to provide documentation according to 7 CFR 760.6(a), (b), (h), and (i).

Affected farmers have the choice to receive 50 percent of cow indemnification after application approval and the remaining 50 percent after the cows are depopulated and removed or 100 percent after the cows are depopulated and removed. FSA will provide indemnification of cows to compensate for the value of the affected cows for eligible affected farmers according to the calculations set forth in 7 CFR 760.10 and 760.11, but will not provide cost share assistance of cow depopulation and removal expenses. The Natural Resources Conservation Service can assist affected farmers in

developing a removal plan and may provide cost share assistance to help with proper disposal and permanent removal through the Environmental Quality Incentives Program.

Once approved for cow indemnification, the affected farmers will dry the affected lactating dairy cows to stop further milk production. Affected farmers approved for indemnification of cows that subsequently restock the original farm with new dairy cows and commercially market milk at the original location of contamination, are not eligible for DIPP indemnification for any future contamination from the same loss.

FSA is also amending 7 CFR 760.6(i) to include the requirement that all milk indemnification applicants provide monthly milk testing results detailing the chemical residue levels in the milk to align with current procedure. In addition, FSA is amending 7 CFR 760.2 to add definitions for “contaminated milk,” “depopulation,” “not marketable,” and “violating substance” in 7 CFR 760.2 and FSA is amending § 760.7 to apply to both milk and cow indemnification.

#### **Marketing Assistance Loans and Loan Deficiency Payment Programs**

FSA administers the MAL and LDP Programs for CCC. The 2018 Farm Bill extends the existing MAL and LDP programs for the 2019 through 2023 crop years with minor changes implemented by this rule. Sections 1201 through 1205 and 1301 of the 2018 Farm Bill authorize the continuation of the MAL and LDP programs, the Economic Adjustment Assistance for Textile Mills, the Extra Long Staple (ELS) Cotton Competitiveness Payment Program, and the Sugar Program. The changes required by the 2018 Farm Bill include: Revising the loan rates for wheat, feed grains, soybeans, and pulse crops; providing the ability to pledge contaminated commodities for recourse loans at 100 percent of the loan rate if merchantable; removing payment limitation and other payment eligibility criteria for MAL and LDP for all commodities; providing a new formula for upland cotton base loan rates; revising the name of the Economic Adjustment Assistance for Users of Upland Cotton Program to Economic Adjustment Assistance for Textile Mills, and adjusting the trigger point for payment under the ELS Cotton Competitiveness Payment Program. The 2018 Farm Bill also established the loan rates for raw cane sugar and refined beet sugar. This rule also makes discretionary changes to include provisions for Commodity Certificate

Exchanges, to clarify the regulations and to remove expired provisions.

This rule updates 7 CFR parts 1421, 1425, 1427, 1434, and 1435 to implement the mandatory changes required by the 2018 Farm Bill and the discretionary clarifying changes and technical corrections. All applicable handbooks and forms are also being updated with conforming changes.

The 2018 Farm Bill changes in this rule have already been implemented administratively for the 2019 and subsequent crop year.

#### *Existing MAL and LDP Programs*

Producers of eligible commodities can apply for MALs or LDPs, subject to terms and conditions as specified in applicable regulations. MALs are 9-month loans with the commodity pledged as collateral for the loan. A producer who is eligible for MAL may choose to receive LDP in lieu of receiving a MAL. LDPs allow the producer to receive a payment when the alternative repayment rate for that commodity is below the loan rate, instead of pledging the commodity as collateral for MAL. The general structure of the MAL and LDP Programs are not changing with this rule. The 2018 Farm Bill changes eligibility requirements for producers, as well as the loan rates for many commodities.

MALs and LDPs are available beginning with harvest or shearing season for each commodity and extend through the marketing year for that particular commodity. Nearly all MALs are nonrecourse loans, meaning that the commodity is collateral for MALs and may be delivered at maturity as full payment for an outstanding MAL. Recourse loans are available for a few commodities for which long term storage is not readily available, meaning that the collateral cannot be delivered as full payment for MALs. With the 2018 Farm Bill, recourse loans will now be available for contaminated commodities that are merchantable. MALs and LDPs must be requested on or before the final loan availability date for the applicable commodity. Producers may repay the MAL at a rate that is the lesser of the loan rate plus interest or an alternative repayment rate as determined and announced by the USDA. The repayment rate is based on average market prices for the preceding 30 days, or an alternative rate set by a similar method established by the Secretary. If the market price as reflected in the repayment rate falls below a loan rate specified in the 2018 Farm Bill for that commodity, producers can redeem a MAL at the posted repayment rate, deliver the MAL commodity to CCC, or

use Commodity Certificates to exchange the commodity.

As an alternative to receiving a MAL, a producer can forgo a MAL, and instead, may obtain an LDP on their crop, if an LDP is currently available for the applicable commodity and the producer is eligible for the MAL. LDPs allow the producer to receive a payment when the repayment rate for a commodity is below the loan rate for that commodity.

#### *Upland Cotton National Loan Rate Calculation and ELS Loan Rate Change*

Section 1202 of the 2018 Farm Bill specifies the national loan rates for the 2019 through 2023 crop years for the eligible loan commodities.

Section 1202(a)(3) of the 2018 Farm Bill amended 7 U.S.C. 9032 to add subsection (b)(6) and sets the base loan rate for upland cotton at no less than \$0.45 per pound or more than \$0.52 per pound based on the average of the adjusted prevailing world price for the two immediately preceding marketing years, as determined by the Secretary, and may not equal less than 98 percent of the loan rate for the preceding year. This change is designed to make the loan rate more reflective of prevailing market prices, and serves to limit the impact of decreased market prices on the loan rate while allowing any price changes to the established loan rate to be reflected in future base loan rates.

#### *Payment Limitations and Adjusted Gross Income*

Section 1703(a)(2) of the 2018 Farm Bill removed references to market loan gains and loan deficiency payments in 7 U.S.C. 1308, and as a result, payment limitations no longer apply to market loan gains and LDPs. Additionally, by removing market loan gains and loan deficiency payments, payment limitations, actively engaged in farming requirements, and the cash rent tenant provisions no longer apply to market loan gains and LDPs as well.

The average Adjusted Gross Income (AGI) limit for most FSA and CCC programs is \$900,000 and remains unchanged. The \$900,000 limit is for total average AGI, as opposed to the way AGI has operated previously, with multiple limits for farm and non-farm income, and the separate, different limit for conservation programs. Producers exceeding AGI can apply for and receive a MAL. Nonrecourse MALs must either be repaid at principal plus interest, exchanged with commodity certificates if the alternative repayment rate is below the established loan rate, or forfeited to the commodity to CCC in satisfaction of the loan debt. Producers

who exceed AGI may use a commodity certificate to repay MALs and receive a market loan gain. An alternative repayment rate does not apply to ELS cotton or sugar. All recourse loans must be repaid at principal plus interest and cannot be forfeited.

This rule makes conforming changes to payment limitation references throughout 7 CFR parts 1421, 1425, 1427, and 1434.

#### *Summary of MAL and LDP Discretionary and Clarifying Changes*

In addition to implementing the 2018 Farm Bill changes, FSA is making changes resulting from a retrospective review of the MAL and LDP regulations. Most of the changes are clarifying changes to make the regulations clear and consistent. Information regarding commodity certificate exchanges is now included in 7 CFR 1421.110 and 1427.22. That information is a technical correction as commodity certificates were reintroduced to the MAL program in Section 740 of Title VII of Division A of the Consolidated Appropriations Act, 2016 (Pub. L. 114–113), which amended section 166 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7286). Beginning with 2015 crop year MALs, the Secretary has the authority to provide commodity certificates in the same terms and conditions as were in effect for the 2008 crop year for loans.

#### *New and Revised MAL and LDP Definitions*

This rule adds a definition for “commodity certificate exchange” in §§ 1421.3 and 1427.3. A commodity certificate exchange is the exchange of commodities pledged as collateral for a marketing assistance loan at a rate determined by CCC in the form of a commodity certificate bearing a dollar denomination. A commodity certificate may not be transferred or exchanged for the inventory of CCC.

This rule also revises the definition for “market loan gain” in 7 CFR part 1421 and adds a definition for “market loan gain” for upland cotton in 7 CFR part 1427 to be consistent across all rules involving marketing assistance loans. A market loan gain is the loan rate, minus the announced repayment rate on loans repaid at a rate that is less than the loan rate. A producer’s AGI must be below the limit as specified in 7 CFR parts 1421 and 1427 in order to be eligible to receive a market loan gain.

The changes are being made to add clarity and consistency in the regulations.

#### *Commodity Certificate Exchange*

Use of commodity certificates was reintroduced and made effective with the 2015 crop year MALs as authorized under section 740 of the Title VII of Division A of the Consolidated Appropriations Act, 2016 (Pub. L. 114–113), by amending section 166 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7286) using the same terms and conditions in effect for the 2008 crop year. This rule revises the regulations to clarify the availability of commodity certificates at loan redemption.

#### *Cotton*

The 2018 Farm Bill reauthorizes and extends existing cotton MAL and LDP provisions, which are in 7 CFR part 1427. It also extends the authorizations for the Economic Adjustment Assistance for Users of Upland Cotton Program and ELS Cotton Competitiveness Payment Program.

This rule amends 7 CFR part 1427 to remove outdated references, and to clarify definitions consistent with the changes being made to 7 CFR part 1421.

As specified in section 1203(b) of the 2018 Farm Bill, the Economic Adjustment Assistance to Users of Upland Cotton will be referred to as Economic Adjustment Assistance for Textile Mills.

As specified in section 1204(b) of the 2018 Farm Bill, the regulations for the ELS Cotton Competitiveness Payment Program are amended to reflect the statutory change of the payment trigger from 134 percent to 113 percent.

#### *Honey*

Section 1703(a)(2) of the 2018 Farm Bill reauthorizes and extends existing honey MAL and LDP provisions with some modified numbers and removed the words “payment limitations” in 7 CFR 1434.1.

#### *Miscellaneous Changes*

This rule makes a discretionary change in 7 CFR 1421.9 to allow DAFP additional flexibility to adjust premiums and discounts and whether they are accounted for at the time of disbursement.

Throughout 7 CFR part 1421 nonsubstantive housekeeping changes are being made to the regulations to fix typographical errors and add to the clarity, readability, and consistency in the regulations. These changes do not represent substantive policy or administrative changes. These changes are in 7 CFR 1421.5, 1421.104, 1421.112, and 1421.417.

#### *Oriental Fruit Fly*

This final rule establishes provisions in 7 CFR part 756, for providing assistance as authorized by section 778 of Subtitle B of Title VII of Division N of the Consolidated Appropriations Act, 2019 (Pub. L. 116–6), which appropriated \$9 million to FSA for the purpose of making payments to producers affected by an Oriental fruit fly (*Bactrocera dorsalis*) quarantine as referenced in House Report 115–232. Funds will remain available until expended. The quarantine, which lasted from August 28, 2015 through February 13, 2016, was necessary and successful in eradicating the Oriental fruit fly. Because the Non-Insured Crop Assistance Program (NAP) does not apply in instances of a state or federally declared quarantine and RMA does not offer a quarantine endorsement in Florida, the affected producers need relief. The Oriental Fruit Fly (OFF) Program will provide payments to producers affected by the quarantine. This rule specifies the administrative provisions, eligibility requirements, application procedures, and payment procedures for the OFF Program.

Oriental fruit flies were first detected in Miami-Dade County, Florida, on August 26, 2015. The Oriental fruit fly is considered one of the most destructive of the world’s fruit fly pests and attacks more than 430 different fruits, vegetables, and nuts. Population growth can be massive since females can produce hundreds of eggs infesting fruit and rendering it unsuitable for human consumption. The female deposits eggs under the skin of host fruit and the larvae infests the fruit. The detection of multiple flies triggered the State of Florida and Animal Plant Health and Inspection Service (APHIS) to implement a quarantine in the Redland area of Miami-Dade County on August 28, 2015. The quarantine area was established and covered 98.65 square miles authorized in Florida Statute 581.031 and defined in 5B–66 Florida Administrative Code. As part of the effort to eradicate the Oriental fruit fly, producers in the quarantine area were required to sign a compliance agreement that outlines the procedures necessary for the harvesting, handling, and postharvest of crops in the quarantined area. On February 13, 2016, APHIS rescinded the quarantine after three lifecycles elapsed without any new Oriental fruit fly detections. Therefore, the quarantine was necessary and successful in eradicating the Oriental fruit fly. Due to the timing of the State of Florida and APHIS implemented quarantine, crops were

negatively affected during the 2015 and 2016 crop growing seasons and producers suffered revenue losses.

Crops were negatively affected in the following ways:

(1) Host crops within a 200-meter radius of an Oriental fruit fly find had to be stripped, double bagged, transported, and disposed of in a landfill.

(2) Host crops within 1/2 mile radius of an Oriental fruit fly find were only allowed to be harvested and sold if a post-harvest treatment plan was implemented. This option was expensive and unfeasible, as there were no post-harvest treatment facilities in Miami-Dade County, Florida.

(3) Host crops within the quarantine area, but outside the 200 meter and 1/2 mile radius were required to follow a 30-day pre-harvest treatment plan or post-harvest treatment plan to be harvested and sold. The pre-harvest treatment plan was expensive and sometimes impractical, as the treatment method involved a 30-day pre-harvest treatment of pesticide at 6 to 10-day intervals. Therefore, crops suffered revenue losses due to crop drop, spoilage, reduced post-harvest shelf life, and costly methods to complete pre- or post-harvest treatment.

(4) Producers within the quarantine area, may have been prevented from planting an annual crop in the 2015 or 2016 season as a response to the perceived risk of the Oriental fruit fly outbreak.

#### *Producer Eligibility for the OFF Program*

To be eligible for the OFF Program, the producer must have been actively producing and marketing crops from August 28, 2015, through February 13, 2016, and also be affected by the State of Florida and APHIS implemented quarantine. Producers will not be required to be in the business of producing and marketing agricultural products at the time of the OFF Program application.

#### *OFF Program Application Process*

Producers must submit OFF Program applications to their administrative FSA county office by the deadline that will be announced by an FSA press release and FSA notice, by DAFP. A complete OFF Program application consists of filing an FSA-438, Oriental Fruit Fly Program (OFF) Application. If not already on file with FSA, applicants must also submit AD-1026, Highly Erodible Land Conservation (HELIC) and Wetland Conservation (WC) Certification; CCC-902, Farm Operating Plan for Payment Eligibility; CCC-901 Member Information for Legal Entities,

if applicable; CCC-941, Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information; and CCC-942 Certification of Income from Farming, Ranching and Forestry Operations, if applicable. Actively engaged in farming requirements, cash rent tenant rules, and rules for foreign persons will not apply.

The producer's self-certified gross revenue for the applicable calendar years entered on the FSA-438 is subject to compliance spot-check and based on their verifiable or reliable documentation that substantiate the information provided by the producer on FSA-438. Gross revenue is income from crop sales received during the applicable calendar years for the crops that suffered a loss due to the Oriental fruit fly quarantine.

The following is an example of how an OFF Program payment will be calculated:

Calendar Year 2014 Gross Revenue = \$200,000  
 Calendar Year 2015 Gross Revenue = \$150,000  
 Calendar Year 2016 Gross Revenue = \$160,000  
 $200,000 - 150,000 = 50,000$  (2015 Gross Revenue Loss)  
 $200,000 - 160,000 = 40,000$  (2016 Gross Revenue Loss)  
 $90,000$  (Total 2015 & 2016 Gross Revenue Loss)  
 $\times 70\%$  OFF Program Factor = \$63,000 (OFF Program Payment)

The following is an example of how an OFF Program payment will be calculated if the producer did not have 2014 revenue. The producer's 2019 revenue will be used in place of the 2014 revenue:

Calendar Year 2019 Gross Revenue = \$150,000  
 Calendar Year 2015 Gross Revenue = \$110,000  
 Calendar Year 2016 Gross Revenue = \$90,000  
 $150,000 - 110,000 = 40,000$  (2015 Gross Revenue Loss)  
 $150,000 - 90,000 = 60,000$  (2016 Gross Revenue Loss)  
 $100,000$  (Total 2015 & 2016 Gross Revenue Loss)  
 $\times 70\%$  OFF Factor = \$70,000 (OFF Program Payment)

After the application period closes, payments will be prorated if the total calculated payments to all eligible producers would exceed funding.

It is possible a producer may not receive a payment if there is no gross revenue loss determined. Below is an example of a zero payment.

Calendar Year 2014 Gross Revenue = \$200,000

Calendar Year 2015 Gross Revenue = \$220,000  
 Calendar Year 2016 Gross Revenue = \$210,000  
 $200,000 - 220,000 = 20,000$  (2015 Gross Revenue Gain)  
 $200,000 - 210,000 = 10,000$  (2016 Gross Revenue Gain)  
 $30,000$  (Gross Revenue Gain)

There is no revenue loss for calendar years 2015 and 2016, therefore the OFF Program payment will be zero.

#### **Conservation Reserve Program**

Under CRP, CCC will enter into contracts with eligible producers to convert eligible land to an approved cover during the contract period in return for financial and technical assistance. A producer must obtain and adhere, for the contract period, to a conservation plan prepared in accordance with CCC guidelines and the other provisions in § 1410.22. The objectives of CRP are to cost-effectively reduce water and wind erosion, protect the Nation's long-term capability to produce food and fiber, reduce sedimentation, improve water quality, create and enhance wildlife habitat, and other objectives including, as appropriate, addressing issues raised by State, regional, and national conservation initiatives and encouraging more permanent conservation practices, including, but not limited to, tree planting. FSA administers CRP on behalf of CCC.

Two discretionary requirements that were added to the CRP regulation in 7 CFR part 1410 from an interim rule published on December 6, 2019, are being removed because they limit participation in CRP.

The requirement in § 1410.6(e)(4)(iii) is being removed because it has affected enrollment by reducing the rental payment rate for the acres within the footprint of the resource conservation measures otherwise required by Tribal, State, or other local laws, ordinances, or regulations. Once removed, contracts with reduced payment rates will be modified if CCC and the participant agree to modify the contract under § 1410.33(a)(3) if doing so, in CCC's determination, will facilitate the practical administration of CRP. The contract modification would apply to future contract payments and subsequent years.

The requirement in § 1410.90(c) has the potential of limiting interest and opportunity for potential Conservation Reserve Enhancement Program (CREP) partners, due to the level of the cash matching fund requirement for direct payments. Sixty-seven public comments were received in response to the CRP

interim rule. At this time, FSA is not responding to all comments, but only those regarding the two provisions being amended in this rule. The comments not addressed in this rule will be addressed at a later date.

*Summary of Public Comments and FSA Responses for CRP (See 84 FR 66813, December 6, 2019)*

FSA received comments on the two provisions in §§ 1410.6(e)(4)(iii) and 1410.90 from non-profit organizations, a coalition of grassroots organizations, and private individuals.

In line with public comments received requesting the removal of § 1410.6(e)(4), this rule is removing § 1410.6(e)(4)(iii)—the language requiring a 25 percent payment reduction. This discretionary reduction was intended, while allowing the land to be eligible, to reduce the payment for land required to be in compliance with resource conservation measures or practices by law, ordinance, or regulation. It would not work to strike the entire section, as that would make all land for which Tribal, State, or other local laws, ordinances, or other regulations require any resource conserving or environmental protection measures or practices, to be ineligible to enroll in CRP. Section 1410.6(e)(4)(i) and (ii) provide exceptions to land eligibility, making land requiring resource conserving or environmental protection measures or practices by Tribal, State, or other local laws, ordinances, or other regulations, eligible for enrollment.

This rule is removing part of § 1410.90, as it is likely impeding the opportunity for potential CREP partners to enter into agreements. By eliminating the requirement of at least half of the matching funds be provided in the form of direct payments to participants, potential CREP partners will be able to provide matching funds in other forms, allowing for a more inclusive group of potential partners to participate. Public comments were received in favor of this change, as it is recognized a cash match is difficult for many Tribes, non-profits, and local agencies. As a result of the change made by this rule, partners may provide matching funds in the form of cash, in-kind contributions, or technical assistance.

The following discussion summarizes the issues raised by commenters and FSA's responses to those comments.

*Comment:* Strike § 1410.6(e)(4) and ensure that CRP provides full support to farmers in complying with state water protection regulations.

Eliminate the 25 percent reduction to the annual rental payment for land for

which Tribal, State, or other local laws, ordinances, or other regulations require any resource conserving or environmental protection measures or practices, and to provide full annual rental payments through CRP for otherwise eligible land.

*Response:* This rule is removing § 1410.6(e)(4)(iii), which previously required a 25 percent reduction to the annual rental payment that would have been paid if there were no such Tribal, State, or other law, ordinance, or regulation. The removal of the section will help increase interest in enrollment by not reducing the rental payment due to requirements regarding resource conserving practices and measures, and ensure participation in CREP. The entire section is not being struck because land for which Tribal, State, or other local laws, ordinances, or other regulations require any resource conserving or environmental protection measures or practices, and the owners or operators of such land have been notified in writing of such requirements, is still ineligible for enrollment unless it meets one of the exceptions in § 1410.6(e)(4)(i) or (ii).

*Comment:* Promote, don't discourage, state, local, and Tribal partnerships. CREP leverages state and other funding to focus CRP contracts where they will do the most good to solve state-level water, soil, and wildlife problems. Instead of adopting high requirements for providing a cash match that would be difficult for many Tribes, non-profits, and local agencies, USDA should actively promote CREP agreements with states and other entities to bring together new conservation funds to address these difficult issues.

*Response:* This rule is removing § 1410.90 due to it impeding the opportunity for potential CREP partners to participate in matching funds. By eliminating the requirement of at least half of the matching funds being provided as a direct payment to the participants, the CREP partners will be able to provide matching funds in other forms and will allow for a more inclusive group of potential CREP partners to participate.

**Notice, Comment, Exemptions, and Effective Date**

As specified in 7 U.S.C. 9091, the regulations to implement the DMC Program, DIPP, MAL, and LDP, are:

- Exempt from the notice and comment provisions of 5 U.S.C. 553, and
- Exempt from the Paperwork Reduction Act (44 U.S.C. chapter 35).

As specified in 16 U.S.C. 3846, the regulations to implement CRP are:

- To be made as an interim rule effective on publication, with an opportunity for notice and comment, as was done through the CRP interim rule published in the **Federal Register** on December 6, 2019 (84 FR 66813–66833)—this rule includes changes in response to certain comments to the interim rule, and

- Exempt from the Paperwork Reduction Act (44 U.S.C. chapter 35). In addition, 7 U.S.C. 9091(c)(3) and 16 U.S.C. 3846 direct the Secretary to use the authority provided in 5 U.S.C. 808, which provides that when an agency finds for good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the rule may take effect at such time as the agency determines.

For the OFF Program, the Administrative Procedure Act (5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date of the provisions do not apply when the rule involves a matter relating to agency management or person to the public property, loans, grants, benefits, or contracts (5 U.S.C. 553(a)(2)). This rule involves programs for payments to certain agricultural commodity producers and therefore the exemption applies.

FSA is authorized to provide payments to the producers to comply with the recently enacted Consolidated Appropriations Act, 2021 in providing the Supplemental DMC Payments to dairy producers in the DMC Program. FSA and CCC find that notice and public procedure are contrary to the public interest. Therefore, even though this rule is a major rule for purposes of the Congressional Review Act of 1996, FSA and CCC are not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Therefore, this rule is effective on the date of publication in the **Federal Register**.

Although the OFF Program regulations is exempt from the Administrative Procedure Act public comment requirements, as noted below in the Paperwork Reduction Act section, the 60-day public comment requirements of the Paperwork Reduction Act apply to the information collection request. Therefore, this rule has a 60-day comment period specifically to request input from the public on the information collection request.

In addition, because this rule is exempt from the requirements in 5 U.S.C. 553, it is also exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small

Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The requirements for the regulatory flexibility analysis in 5 U.S.C. 603 and 604 are specifically tied to the agency being required to issue a proposed rule by section 553 or any other law, further, the definition of rule in 5 U.S.C. 601 is tied to the publication of a proposed rule.

#### Executive Orders 12866 and 13563

Executive Order 12866, "Regulatory Planning and Review," and Executive Order 13563, "Improving Regulation and Regulatory Review," direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13573 for the analysis of costs and benefits apply to rules that are determined to be significant.

The Office of Management and Budget (OMB) designated this rule as economically significant under Executive Order 12866 and therefore, OMB has reviewed this rule. The costs and benefits of this rule are summarized below. The full cost benefit analysis is available on [regulations.gov](https://www.regulations.gov).

#### Cost Benefit Analysis Summary

The Supplemental DMC payments are authorized by the Consolidated Appropriations Act, 2021. The use of 100-percent "premium and supreme" <sup>3</sup> hay in the DMC calculation is an administrative change made by FSA. Changes to DIPP are initiated by FSA as a result of PFAS chemical residue cases. The OFF program is authorized by the Consolidated Appropriations Act, 2019. The CRP changes remove discretionary limitations in order to provide greater flexibility to CREP partners and increase payments modestly in situations where state law intersects with CRP. The MAL and LDP provisions are technical changes that implement provisions of the 2018 Farm Bill.

DMC provides eligible dairy producers with a risk management tool that pays producers when the difference between the price of milk and the cost of feed (that is, the margin) falls below a certain level. This determination is based on a formula using the milk price

and feed costs (corn, soybean meal, and alfalfa hay). In June 2019 (84 FR 28171, June 18, 2019), the regulation was changed to specifying the alfalfa hay price used in the calculation. Prior to that time, the calculation used only the price of conventional alfalfa hay. The 2019 regulation implemented a factored price, which was based on 50 percent of the premium alfalfa hay price and 50 percent of the conventional alfalfa hay price. Given USDA analysis indicating that the DMC feed cost formula does not adequately capture the costs experienced by dairy producers, 100-percent premium alfalfa hay will be used in the calculation. This change in the DMC margin formula will be retroactive and will start in January 2020. The accrued Fiscal Year (FY) 2021 costs associated with this change, including the retroactive January 2020 through September 2020 payment period, are estimated at \$108.47 million (Table 1). A 3-fiscal year (FY 2021 through FY 2023) cost estimate, including the estimate for the first quarter of FY 2024 in the FY 2023 data, is \$335.43 million. The 10-year (FY 2021 through FY 2030) cost estimate is \$705.32 million.

The Consolidated Appropriations Act, 2021, allows eligible dairy operations with less than 5 million pounds of established milk production history to enroll supplemental pounds of milk in DMC using 2019 actual milk marketings.<sup>4</sup> Participating dairy operations with supplemental production may receive additional payments over and above their currently established production history. Supplemental DMC is available to participating DMC dairy operations starting in January of 2021 and lasting through December 31, 2023. Supplemental DMC payments will be made retroactively, starting in January 2021, for the months when DMC triggered. The Supplemental DMC estimates are calculated using the DMC formula based on 100-percent premium alfalfa hay.

FY 2021 accrued gross costs for Supplemental DMC are estimated at \$114.62 million. After subtracting premiums paid by farmers for supplemental milk production enrollment, net costs are estimated at \$110.31 million (see Table 1). To provide perspective, DMC gross costs for FY 2021 (prior to Supplemental DMC) are estimated at \$1.70 billion.; as a result, supplemental DMC is estimated to increase payments to dairy producers by 6.7 percent (\$114.62 million/\$1.7

billion) accrued in FY 2021. As indicated above, Supplemental DMC is available to participating operations from January 2021 to December 2023. Total stochastic gross and net outlays for the entirety of the 3-year program are estimated at \$661.77 million and \$644.52 million, respectively.

The rule also amends DIPP. DIPP is available to dairy farmers and dairy product manufacturers who, through no fault of their own, suffer income losses because milk or milk products were contaminated with harmful pesticide residues, chemicals, toxic substances, or nuclear radiation or fallout. The rule change allows affected farmers and manufacturers to be compensated for their milk or their cows and heifers. The rule:

(1) Amends the duration a dairy claimant under DIPP is eligible to receive indemnification for milk and milk products from 18 months to 3 months (except in cases in which it is shorter when cow indemnity is approved or when case-by-case extensions are granted), and

(2) Allows for indemnification of cows and heifers that are affected by chemical residues and likely to be not marketable long term and will require removal of dairy cows from the farm by depopulation, transport, and disposal.

DIPP accrued costs in FY 2021, relative to what they would have been otherwise, are estimated to increase by \$4.19 million due to retroactive payment for depopulated cows that were indemnified for the term of milk indemnity limitation according to the prior regulation. These payments will be made in FY 2022. In the future, the regulatory change will result in savings, rather than outlays.

The Consolidated Appropriations Act, 2019, provides \$9 million to FSA to assist producers affected by an Oriental Fruit Fly (*Bactrocera dorsalis*) quarantine as referenced in House Report 115–232. Producers must have suffered eligible losses due to the quarantine that occurred in the Redland area of Miami-Dade County, Florida, from August 28, 2015, through February 13, 2016. The payment covers 70 percent of the 2015 and 2016 revenue losses suffered relative to 2014 revenue (or 2019 revenue, if the producer does not have access to 2014 revenue). At the close of the OFF sign-up period, a national payment factor may be determined and announced by FSA if the total of calculated payments exceeds the authorized funding of \$9 million, less a reserve amount of 3 percent (\$270,000). Gross OFF Program outlays in FY 2022 may be as high as in the \$23 million range and net outlays are estimated at \$8.73 million. Given the

<sup>3</sup> Referred to as "premium" for simplicity.

<sup>4</sup> Supplemental DMC allows for enrollment above and beyond what is already enrolled in 2021 DMC.



likelihood of a pro-rate, no payments are assumed for FY 2021.

Changes to CREP program partner percentages do not change the partner's overall contribution and are expected to increase outlays minimally. When state

law requires producers to install buffers or take other measures to address water quality issues, CREP payments have been reduced; that payment reduction is now eliminated and outlays are expected to increase modestly. This is

because only Vermont has such a law and exposure in that State is limited. The marketing assistance loan changes are technical changes and are not addressed here.

TABLE 1—SUMMARY OF CHANGES AND ESTIMATED FISCAL YEAR OUTLAYS FOR FY 2021–FY 2023

Item	FY 2021 net estimated outlays (in million \$)	FY 2022 net estimated outlays (in million \$)	FY 2023 net estimated outlays (in million \$)
Item 1 Calculate the DMC formula using 100 percent premium alfalfa hay .....	\$108.47	\$125.01	<sup>a</sup> \$101.95
Item 2 Allow supplemental dairy production to become eligible for DMC payments <sup>b</sup> .....	110.31	273.66	260.55
Item 3 Implement DIPP changes .....	4.19	(2.15)	(3.27)
Item 4 Implement a one-time OFF Program .....	<sup>c</sup> n.a.	<sup>c</sup> 8.73	<sup>c</sup> n.a.
Item 5 Modify certain CRP provisions .....	<sup>d</sup> n.a.	<sup>d</sup> negligible	<sup>d</sup> negligible
Item 6 Add MAL and LDP housekeeping changes associated with the 2018 Farm Bill .....	<sup>e</sup> n.a.	<sup>e</sup> n.a.	<sup>e</sup> n.a.
Total .....	222.97	405.25	359.23

<sup>a</sup>For Items 1 and 2, the FY 2023 net estimated outlays include outlays for October 2023, November 2023, and December 2023. For item 1, net outlays for the first quarter of FY 2024 are included in addition to net outlays for FY 2023 because 2018 Farm Bill provisions for DMC expire at the end of calendar year 2023.

<sup>b</sup>Estimated costs accrued for FY 2021 of \$110.31 million do not include costs associated with the first quarter of FY 2021. Total gross and net outlays for the entirety of the 3-year program are estimated at \$661.77 million and \$644.52 million, respectively.

<sup>c</sup>The OFF Program is a one-time program and all outlays are expected to occur in FY 2022 due to the likelihood of a pro-rata factor after all applications are received. The \$8.73 million is calculated for FY 2022 as \$9 million less a 3 percent reserve.

<sup>d</sup>Impacts for the CRP rule changes are expected to be quite small; see the discussion in the full Cost Benefit Analysis for the discussion.

<sup>e</sup>These are housekeeping changes and the impacts are similarly not addressed here.

## Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), the FSA regulation for compliance with NEPA (7 CFR part 799), and, because FSA will be making the payments to producers, the USDA regulation for compliance with NEPA (7 CFR part 1b).

Although OMB has designated this rule as “economically significant” under Executive Order 12866, “economic or social effects are not intended by themselves to require preparation of an environmental impact statement” when not interrelated to natural or physical environmental effects (see 40 CFR 1502.16(b)).

The intent of DMC, DIPP, MAL, LDP, and the OFF Program are to compensate producers who have suffered revenue losses. The discretionary aspects of the programs being revised in this rule do not have the potential to impact the human environment. As such, for these programs, the FSA categorical exclusions in 7 CFR 799.31 apply, specifically 7 CFR 799.31(b)(6)(iii), (iv) and (vi), as follows: § 799.31(b)(6)(iii), Financial assistance to supplement income, manage the supply of agricultural commodities, or influence

the cost or supply of such commodities or programs of a similar nature or intent (that is, price support programs); and § 799.31(b)(6)(vi), Safety net programs administered by FSA (for DMC, DIPP, MAL, and LDP).

For CRP, the changes proposed are administrative in nature and covered by the USDA categorical exclusion found at 7 CFR 1b.3(a)(2). This categorical exclusion applies to activities that deal solely with the funding of programs, such as program budget proposals, disbursements, and the transfer or reprogramming of funds. While this environmental review evaluates impacts programmatically, it does not substitute for or alter the existing requirement for site-specific environmental reviews for all CRP applications.

Through this review, FSA determined that the proposed discretionary changes in this rule fit within the categorical exclusions listed above. Categorical exclusions apply when no extraordinary circumstances exist (7 CFR 799.33). As such, FSA evaluated the potential for extraordinary circumstances and determined that none apply because the discretionary provisions identified in this final rule are minor and administrative in nature, are intended to clarify the mandatory requirements of the programs, and do not constitute a major Federal action that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, an

environmental assessment or environmental impact statement will not be prepared for this regulatory action; this rule serves as documentation of the programmatic environmental compliance decision for this Federal action.

## Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. For the Supplemental DMC implementation, Supplemental DMC payments will be made retroactively, starting in January 2021, for the months when DMC triggered. For the DIPP rule changes, a payment to indemnify affected farmers for affected cows due to known chemical residues will be made retroactively, as explained above. For the MAL and LDP changes, the changes were implemented administratively, as discussed above. Therefore, this rule has retroactive effect for MAL and LDP for the 2018 crop year, and as specified by the 2018 Farm Bill and explained in this rule, certain provisions are effective beginning December 20, 2018. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted.

**Executive Order 13175**

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a Government-to-Government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

USDA recognizes that the Miccosukee Indian Reservation lies in the Northwest corner of Miami-Dade County but was outside of the boundaries of the Oriental fruit fly quarantine. USDA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that required Tribal consultation under Executive Order 13175 at this time. If a Tribe requests consultation, the USDA Office of Tribal Relations (OTR) will ensure meaningful consultation is provided where changes, additions, and modifications are not expressly mandated by law. Outside of Tribal consultation, USDA is working with Tribes to provide information about payments, and MAL and LDP assistance and other issues.

**Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions of State, local, and Tribal governments or the private sector.

Agencies generally must prepare a written statement, including cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

**Paperwork Reduction Act (PRA)**

As noted above, the regulations to implement the DMC Program, DIPP, and MAL and LDP Programs are exempt from PRA as specified in 7 U.S.C. 9091 and the regulations to implement CRP is exempt from PRA as specified in 16 U.S.C. 3846.

The following new information collection request that supports the OFF Program was submitted to OMB for emergency approval. FSA will collect and evaluate the application from the producers and other required paperwork for determining the producer’s eligibilities and assist in producer’s payment calculations. FSA is requesting comments from interested individuals and organizations on the information collection activities related to the OFF Program as described in this rule. Following the 60-day public comment period for this rule, the information collection request will be submitted to OMB for the 3-year approval to ensure adequate time for the information collection for the duration of OFF.

*Title:* Oriental Fruit Fly (OFF) Program.

*OMB Control Number:* 0560–New.

*Type of Request:* New Collection.

*Abstract:* This information collection is required to support the regulation in 7 CFR part 756 for the OFF Program that establishes the requirements for eligible producers who suffered eligible revenue losses resulting from the Oriental fruit fly quarantine as specified in Public Law 116–6 (the Consolidated Appropriations Act, 2019). The information collection is necessary to evaluate the application and other required paperwork for determining the producer’s eligibilities and assist in producer’s payment calculations.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per response multiplied by the estimated total annual responses.

*Estimate of Respondent Burden:* Public reporting burden for this information collection is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collections of information.

*Type of Respondents:* Producers or farmers.

*Estimated Annual Number of Respondents:* 750.

*Estimated Number of Responses per Respondent:* 1.933.

*Estimated Total Annual Responses:* 1450.

*Estimated Average Time per Response:* 0.36.

*Estimated Annual Burden on Respondents:* 522.

For the OFF Program, the per form estimated burden is:

Form name	Form No.	Number of respondents	Total burden hours
Oriental Fruit Fly Program Application .....	FSA-438 .....	750	375
Farm Operating Plan for Payment Eligibility .....	CCC-902 .....	300	24
Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure .....	CCC-941 .....	300	75
Certification of Income from Farming, Ranching and Forestry Operations, optional .....	CCC-942 .....	10	3
Member Information for Legal Entities, if applicable .....	CCC-901 .....	90	45
Highly Erodible Land Conservation (HELC) and Wetland Conservation Certification (exempt from PRA, 16 U.S.C. 3846).	AD-1026 .....	300	24

**Federal Assistance Programs**

The titles and numbers of the Federal assistance programs in the Catalog of Federal Domestic Assistance to which this rule applies are:

10.051—Commodity Loans and Loan Deficiency Payments

10.053—Dairy Indemnity Payment Program  
 10.069—Conservation Reserve Program  
 10.127—Dairy Margin Coverage Program  
 10.134—Oriental Fruit Fly Program

**USDA Non-Discrimination Policy**

In accordance with Federal civil rights law and USDA civil rights

regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation,

disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410 or email: [OAC@usda.gov](mailto:OAC@usda.gov).

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#### List of Subjects

##### 7 CFR Part 756

Disaster assistance, Reporting and recordkeeping requirements.

##### 7 CFR Part 760

Dairy products, Indemnity payments, Reporting and recordkeeping requirements.

##### 7 CFR Part 1410

Acreage allotments, Agriculture, Environmental protection, Natural resources, Reporting and recordkeeping requirements, Soil conservation, Technical assistance, Water resources, Wildlife.

##### 7 CFR Part 1421

Barley, Farm Services Agency, Feed grains, Grains, Loan programs—agriculture, Oats, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses, Wheat.

##### 7 CFR Part 1425

Agricultural commodities, Confidential business information, Cooperatives, Reporting and recordkeeping requirements.

##### 7 CFR Part 1427

Cotton, Cottonseeds, Loan programs—agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

##### 7 CFR Part 1430

Dairy products, Fraud, Penalties, Reporting and recordkeeping requirements.

##### 7 CFR Part 1434

Honey, Loan programs—agriculture, Reporting and recordkeeping requirements.

##### 7 CFR Part 1435

Loan programs—agriculture, Penalties, Reporting and recordkeeping requirements, Sugar.

For the reasons discussed above, CCC and FSA amend 7 CFR parts 756, 760, 1410, 1421, 1425, 1427, 1430, 1434, and 1435 as follows:

- 1. Add 7 CFR part 756 to read as follows:

#### Subchapter D—Special Programs

#### PART 756—ORIENTAL FRUIT FLY PROGRAM

Sec.

- 756.1 Applicability.
- 756.2 Administration.
- 756.3 Definitions.
- 756.4 Qualifying disaster event.
- 756.5 Eligible producers.
- 756.6 Eligible and ineligible causes of revenue loss.
- 756.7 Time and method of application.
- 756.8 Calculating OFF Program payments.
- 756.9 Availability of funds and timing of payments.
- 756.10 Miscellaneous provisions.
- 756.12 Payment limitation.
- 756.13 Estates and trusts; minors.
- 756.14 Misrepresentation, scheme, or device.
- 756.15 Death, incompetency, or disappearance.
- 756.16 Maintenance and inspection of records.
- 756.17 Appeals.

**Authority:** Sec. 778, Pub. L. 116-6, 133 Stat. 91.

#### PART 756—ORIENTAL FRUIT FLY PROGRAM

##### § 756.1 Applicability.

(a) The Oriental Fruit Fly (OFF) Program will provide payments to eligible producers who suffered losses

due to the Oriental fruit fly quarantine in Miami-Dade County, Florida, in accordance with Public Law 116-6 (the Consolidated Appropriations Act, 2019).

(b) The regulations in this part are applicable to crops affected by the Oriental fruit fly quarantine.

(c) In any case in which money must be refunded to the Farm Service Agency (FSA) in connection with this part, interest will be due to run from the date of disbursement of the sum to be refunded. This paragraph (c) will apply, unless waived by the Deputy Administrator for Farm Programs, FSA, irrespective of any other regulation in this part.

##### § 756.2 Administration.

(a) The OFF Program will be administered under the general supervision of the Administrator, FSA, and the Deputy Administrator for Farm Programs, FSA. The OFF Program is carried out by FSA State committees and FSA county committees with instructions issued by the Deputy Administrator.

(b) FSA State committees and FSA county committees, and representatives and their employees, do not have authority to modify or waive any of the provisions of the regulations in this part, except as provided in paragraph (e) of this section.

(c) The FSA State committee will take any required action not taken by the FSA county committee. The FSA State committee will also:

- (1) Correct or require correction of an action taken by an FSA county committee that is not in compliance with this part; or
- (2) Require an FSA county committee to not take an action or implement a decision that is not under the regulations of this part.

(d) The Deputy Administrator for Farm Programs, FSA, or a designee, may determine any question arising under these programs, or reverse or modify a determination made by an FSA State committee or FSA county committee.

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

(f) A representative of FSA may execute applications and related documents only under the terms and conditions determined and announced by FSA. Any document not executed under such terms and conditions, including any purported execution

before the date authorized by FSA, will be null and void.

(g) Items of general applicability to program participants, including, but not limited to, application periods, application deadlines, internal operating guidelines issued to State and county offices, prices, and payment factors established by the OFF Program, are not subject to appeal.

#### **§ 756.3 Definitions.**

The definitions in this section apply for all purposes of OFF Program administration.

*Administrative county office* is the FSA county office where a producer's FSA records are maintained.

*APHIS* means Animal Plant Health and Inspection Service, U.S. Department of Agriculture.

*Application period* means the dates established by the Deputy Administrator for producers to apply for OFF Program benefits.

*Calendar year* means January 1st through December 31st.

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

*FSA* means the Farm Service Agency, U.S. Department of Agriculture.

*NAP* means Non-insured Crop Disaster Assistance Program.

*OFF Program* means the Oriental Fruit Fly Program.

*OFF quarantine period* means August 28, 2015, through February 13, 2016.

*Oriental fruit fly quarantine* means the quarantine put in place during the OFF quarantine period in the quarantine area to protect against the entry and spread of the Oriental fruit fly by requiring strict adherence to treatment or destruction of the host crop.

*Prevented planting* means when producers chose not to plant an annual crop during the 2015 through 2016 season due to the Oriental fruit fly quarantine.

*Producer* means a person, partnership, association, corporation, estate, trust, or other legal entity that produces an eligible crop as a landowner, landlord, tenant, or sharecropper.

*Program year* means the relevant application year. The program year for OFF will be 2015 and include total revenue losses for calendar year 2015 and calendar year 2016.

*Quarantine area* means the area mapped by The Florida Department of Agriculture and Consumer Services Division, Division of Plant Industry (FDACS-DPI). The map identifies areas where the Oriental Fruit Fly was detected and the associated boundaries of the area quarantined by APHIS. The

map is available by contacting FDACS-DPI, The Doyle Conner Building, 1911 SW 34th St., Gainesville, FL 32608-7100 or <https://www.fdacs.gov/Divisions-Offices/Plant-Industry>.

*Reliable documentation* means evidence provided by the participant that is used to substantiate the amount of revenue reported when verifiable documentation is not available, including copies of receipts, ledgers of income, income statements of deposit slips, register tapes, invoices for custom harvesting, and records to verify production costs, contemporaneous measurements truck scale tickets, and contemporaneous diaries that are determined acceptable by the FSA county committee. To determine whether the records are acceptable, the FSA county committee will consider whether they are consistent with the records of other producers of the crop in that area.

*Revenue* means the gross income from crop sales received during the applicable calendar years for the crops that suffered a loss due to the Oriental fruit fly quarantine. Revenue does not mean revenue received for crops grown under contract for crop owners unless the grower had an ownership share of the crop.

*RMA* means Risk Management Agency.

*Secretary* means the Secretary of the United States Department of Agriculture, or the Secretary's delegate.

*Verifiable documentation* means evidence that can be verified by FSA through an independent source.

#### **§ 756.4 Qualifying disaster event.**

The OFF Program will provide assistance to eligible producers who suffered revenue losses due to the State of Florida and APHIS implemented quarantine that took place from August 28, 2015, through February 13, 2016, in Miami-Dade County, Florida.

#### **§ 756.5 Eligible producers.**

(a) To be an eligible producer, the producer must:

(1) Be an individual person that is a U.S. Citizen or Resident Alien, or a partnership, association, corporation, estate, trust, or other legal entity consisting solely of U.S. Citizens or Resident Aliens that produces an eligible crop as a landowner, landlord, tenant, or sharecropper; and

(2) Comply with all provisions of this part and, as applicable:

(i) 7 CFR part 3—Debt Management;  
(ii) 7 CFR part 12—Highly Erodible Land and Wetland Conservation;  
(iii) 7 CFR 400.680, Controlled substance;

(iv) 7 CFR part 1400, adjusted gross income (AGI) provisions:

(A) Program year 2015 will be used to determine AGI for the OFF Program, therefore the AGI will be the average of tax years 2013, 2012, and 2011; and

(B) The OFF Program allows an exception to the \$900,000 average AGI limitation if at least 75 percent of the average AGI was derived from farming, ranching, or forestry operations. CCC-942 is used to collect the producer and certified public accountant (CPA) or attorney certification statements;

(v) 7 CFR part 707—Payments Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent;

(vi) 7 CFR part 718—Provisions Applicable to Multiple Programs; and

(vii) 7 CFR part 1400—Payment Limitation and Payment Eligibility.

(b) A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or an administrator of a deceased person's estate, a guardian of an estate of a ward or an incompetent person, and trustees of a trust is considered to represent the insolvent or bankrupt debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively. The production of the receiver, executor, administrator, guardian, or trustee is the production of the person or estate represented by the receiver, executor, administrator, guardian, or trustee. OFF Program documents executed by any such person will be accepted by FSA only if they are legally valid and such person has the authority to sign the applicable documents.

(c) A minor who is otherwise an eligible producer is eligible to receive an OFF Program payment only if the minor meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute.

(2) A guardian has been appointed to manage the minor's property and the applicable OFF Program documents are signed by the guardian.

(3) Any OFF Program application signed by the minor is cosigned by a person determined by the FSA county committee to be financially responsible.

(d) Foreign person rules in 7 CFR part 1400, subpart E, are not applicable to the OFF Program.

(e) Producers will not be required to be in the business of producing and marketing agricultural products at the time of OFF Program application.

(f) The producer must have been actively producing and marketing agricultural products during the OFF quarantine period.

**§ 756.6 Eligible and ineligible causes of revenue loss.**

(a) To be eligible for payments under this part the producer must have suffered a loss of revenue due to the Oriental fruit fly quarantine of one or more of the following types:

(1) Revenue loss on crop(s) planted or prevented from being planted within the Oriental Fruit Fly quarantine area during the OFF quarantine period. Crops that suffered a revenue loss due to prevented planting must have a prior history of being planted or be able to provide verifiable or reliable documentation demonstrating legitimate intent to plant the crop during the OFF quarantine period;

(2) Pre or post-harvest treatment costs;

(3) Transportation costs to a post-harvest treatment facility;

(4) Crop quality loss;

(5) Crop spoilage;

(6) Crop drop; or

(7) Reduced post-harvest shelf life.

(b) An ineligible cause of revenue loss under this part will apply to the following:

(1) Losses determined by FSA to be the result of poor management decisions or poor farming practices, such as using non-optimal chemical application, over-tilling, monoculture (growing of same crop year after year), allowing soil erosion, nonoptimal planting time, or poor quality seed selection.

(2) Losses due to conditions or events occurring outside of the applicable growing season for the crop.

(3) Losses due to failure of a power supply or lack of irrigation.

(4) Losses to crops not intended for harvest.

(5) Losses to home gardens for personal use and not intended to market.

(6) Losses to non-fruit bearing ornamental nursery.

(7) Losses caused by theft.

(8) Losses caused by disease or pest infestation other than the Oriental fruit fly.

(9) Losses to purchased crops.

**§ 756.7 Time and method of application.**

(a) An application for OFF Program payment under this part must be submitted in person, by mail, email, or facsimile to the FSA county office serving as the farm's administrative county office by the close of business 60 calendar days after the signup start date announced by FSA. A National Special Program (SP) Notice will be issued providing OFF program details including signup start date and program requirements.

(b) An application will include only the producer's share of revenue for the

crops negatively affected by the Oriental fruit fly quarantine for the applicable calendar years.

(c) Once signed by a producer, the application for payment is considered to contain information and certifications of and pertaining to the producer regardless of who entered the information on the application.

(d) The producer applying for the OFF Program under this part certifies the accuracy and truthfulness of the information provided in the application as well as any documentation filed with or in support of the application.

(1) All information is subject to verification or spot check by FSA at any time, either before or after payment is issued. Refusal to allow FSA or any agency of the Department of Agriculture to verify any information provided will result in the participant's forfeiting eligibility for the OFF Program. FSA may at any time, including before, during, or after processing and paying an application, require the producer to submit any additional information necessary to implement or determine any eligibility provision of this part. Furnishing required information is voluntary; however, without it, FSA is under no obligation to act on the application or approve payment.

(2) Providing a false certification will result in ineligibility and can also be punishable by imprisonment, fines, and other penalties.

(e) The application submitted in accordance with paragraph (a) of this section is not considered valid and complete for issuance of payment under this part unless FSA determines all the applicable eligibility provisions have been satisfied and the participant has submitted all required documentation by the application deadline date announced by FSA.

(f) Applicants must submit all eligibility forms as listed on the FSA-438 Oriental Fruit Fly Program (OFF) Application within 60 calendar days from the date of submitting the application if not already on file with FSA.

**§ 756.8 Calculating OFF Program payments.**

(a) A revenue loss calculation and factor will determine the OFF Program payment.

(1) A factor will be applied to reduce the participant's payment to ensure that total OFF Program payments are no more than 70 percent of the total revenue losses by all eligible OFF Program participants.

(2) If necessary, at the close of the OFF Program sign-up period, a national payment factor may be determined by

the Secretary and announced if full payment of all approved OFF Program applications would result in payments in excess of available OFF Program funds, less a reserve amount of 3 percent. A Price Support Division SP Notice will be issued to announce the issuance of OFF and, if applicable, the factored rate.

(b)(1) The OFF Program payment calculation is:

(Calendar year 2014 producer certified gross revenue  
 – Calendar year 2015 producer certified gross revenue)  
 + (Calendar year 2014 producer certified gross revenue  
 – Calendar year 2016 producer certified gross revenue)  
 = Total revenue loss for calendar year 2015 and calendar year 2016  
 × 70%  
 = OFF Program payment (subject to proration after sign-up, see paragraph (a)(2) of this section)

(2) If the producer did not have 2014 revenue, then 2019 revenue will be used, and the calculation will be:

(Calendar year 2019 producer certified gross revenue  
 – Calendar year 2015 producer certified gross revenue)  
 + (Calendar year 2019 producer certified gross revenue  
 – Calendar year 2016 producer certified gross revenue)  
 = Total revenue loss for calendar year 2015 and calendar year 2016  
 × 70%  
 = OFF Program Payment (subject to proration after sign-up, see paragraph (a)(2) of this section)

(c) If there is no gross revenue loss determined for calendar year 2015 or calendar year 2016, the payment will be zero.

**§ 756.9 Availability of funds and timing of payments.**

The total available program funds are \$9 million as provided by Public Law 116-6 (the Consolidated Appropriations Act, 2019). OFF Program payments will be issued after all applications are received and FSA has approved the application.

**§ 756.10 Miscellaneous provisions.**

(a) Producers who are approved for OFF Program payment will not be required to purchase future NAP or crop insurance for those crops affected by the quarantine as is often required by other disaster programs, because the Oriental fruit fly quarantine was not an eligible covered loss by NAP, and RMA does not offer quarantine as an endorsement in Florida.

(b) All persons with a financial interest in a legal entity receiving payments under this part are jointly and severally liable for any refund, including related charges, that is determined to be due to FSA for any reason.

(c) In the event that any application under this part resulted from erroneous information or a miscalculation, the payment will be recalculated and any excess refunded to FSA with interest to be calculated from the date of disbursement.

(d) Any payment to any participant under this part will be made without regard to questions of title under State law, and without regard to any claim or lien against the commodity, or proceeds in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholding in part 3 of this title apply to payments under this part.

(e) Any participant entitled to any payment may assign any payment(s) in accordance with regulations governing the assignment of payment in part 3 of this title.

(f) The regulations in part 11 of this title and part 780 of this chapter apply to determinations under this part.

#### § 756.12 Payment limitation.

(a) For the program year 2015, direct or indirect payments made to an eligible person or legal entity, other than a joint venture or general partnership, will not exceed \$125,000.

(b) The attribution of payment provisions in 7 CFR 1400.105 will be used to attribute payments to persons and legal entities for payment limitation determinations.

#### § 756.13 Estates and trusts; minors.

(a) A receiver of an insolvent debtor's estate and the trustee of a trust estate will, for the purpose of this part, be considered to represent the insolvent affected producer or manufacturer and the beneficiaries of the trust, respectively.

(1) The production of the receiver or trustee will be considered to be the production of the represented person.

(2) Program documents executed by any such person will be accepted only if they are legally valid and such person has the authority to sign the applicable documents.

(b) [Reserved]

#### § 756.14 Misrepresentation, scheme, or device.

(a) A producer will be ineligible to receive assistance under the OFF Program if the producer is determined by the FSA State committee or FSA county committee to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the OFF Program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a determination under the OFF Program, then FSA will notify the appropriate investigating agencies of the United States and take steps deemed necessary to protect the interests of the Government.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, will be refunded to FSA. The remedies provided in this part are in addition to other civil, criminal, or administrative remedies that may apply.

#### § 756.15 Death, incompetency, or disappearance.

In the case of the death, incompetency, or disappearance of any affected producer who would otherwise receive an OFF Program payment, such payment may be made to the person or persons specified in the regulations in part 707 of this chapter. The person requesting such payment must file Form FSA-325, "Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent," as provided in part 707.

#### § 756.16 Maintenance and inspection of records.

(a) Producers randomly selected for compliance spot checks by FSA must, in accordance with program notice instructions issued by the Deputy Administrator, provide adequate reports of revenue as applicable. The producer must report documentary evidence of crop revenue to FSA together with any supporting documentation to verify information entered on the application. Verifiable documentation is preferred. If verifiable documentation is not available, FSA will accept reliable documentation, if determined to be acceptable by the FSA county committee.

(b) If supporting documentation is not presented to the county FSA office requesting the information within 30 calendar days of the request, producers will be determined ineligible for OFF Program benefits.

(c) The producer must maintain any existing books, records, and accounts supporting any information furnished in an approved OFF Program application for 3 years following the end of the year during which the application for payment was filed.

(d) The producer must permit authorized representatives of the Department of Agriculture and the

General Accounting Office, during regular business hours, to inspect, examine, and make copies of such books, records, and accounts.

#### § 756.17 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations in 7 CFR parts 11 and 780.

### PART 760—INDEMNITY PAYMENT PROGRAMS

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

**Authority:** 7 U.S.C. 4501 and 1531; 16 U.S.C. 3801, note; 19 U.S.C. 2497; Title III, Pub. L. 109-234, 120 Stat. 474; Title IX, Pub. L. 110-28, 121 Stat. 211; Sec. 748, Pub. L. 111-80, 123 Stat. 2131; Title I, Pub. L. 115-123, 132 Stat. 65; Title I, Pub. L. 116-20, 133 Stat. 871; and Division B, Title VII, Pub. L. 116-94, 133 Stat. 2658.

#### Subpart A—Dairy Indemnity Payment Program

■ 3. The authority citation for subpart A of part 760 continues to read as follows:

**Authority:** 7 U.S.C. 450j-1.

■ 4. Amend § 760.2 as follows:

■ a. Add the definition for "Contaminated milk", "Depopulation", and "Not marketable" in alphabetical order; and

■ b. Remove the definition of "Violating Substance" and add the definition of "Violating substance" in its place.

The additions read as follows:

#### § 760.2 Definitions.

\* \* \* \* \*

*Contaminated milk* means milk containing elevated levels of any violating substance that may affect public health based on tests made by the applicable public agency and resulting in the removal of the milk from the commercial market.

\* \* \* \* \*

*Depopulation* means, consistent with the American Veterinary Medical Association (AVMA)<sup>1</sup> definition, the rapid destruction of a population of cows with as much consideration given to the welfare of the animals as practicable.

\* \* \* \* \*

*Not marketable* means no commercial market is available for affected cows to be slaughtered, processed, and marketed

<sup>1</sup> The AVMA Guidelines for the Depopulation of Animals is available at: <https://www.avma.org/sites/default/files/resources/AVMA-Guidelines-for-the-Depopulation-of-Animals.pdf>.

through the food chain system as determined by the Deputy Administrator.

\* \* \* \* \*

*Violating substance* means one or more of the following, as defined in this section: Pesticide, chemicals or toxic substances, or nuclear radiation or fallout.

\* \* \* \* \*

■ 5. Revise § 760.3 to read as follows:

**§ 760.3 Indemnity payments on milk.**

(a) The amount of an indemnity payment for milk, including, but not limited to organic milk, made to an affected farmer who is determined by the county committee to be in compliance with all the terms and conditions of this subpart will be in the amount of the fair market value of the farmer's normal marketings for the application period, as determined in accordance with §§ 760.4 and 760.5, less:

(1) Any amount the affected farmer received for whole milk marketed during the application period; and

(2) Any payment not subject to refund that the affected farmer received from a milk handler with respect to milk removed from the commercial market during the application period.

(b) The eligible period for Dairy Indemnity Payment Program (DIPP) benefits for milk for the same loss is limited to 3 calendar months from when the first claim for milk benefits is approved. Upon written request from an affected farmer on the milk indemnity form authorized by the Deputy Administrator, the Deputy Administrator may authorize, at the Deputy Administrator's discretion, additional months of benefits for the affected farmer for milk due to extenuating circumstances, which may include allowing additional time for public agency approval of a removal plan for cow indemnification and confirmation of site disposal for affected cows. Additionally, the Deputy Administrator has discretion to approve additional months based on issues that are beyond the control of the affected farmer who is seeking cow indemnification, as well as when the affected farmer is following a plan to reduce chemical residues in milk, cows, and heifers to marketable levels.

**§ 760.6 [Amended]**

■ 6. Amend § 760.6 in paragraph (i) by removing the words "and the results of any laboratory tests on the feed supply" and adding "the results of any laboratory tests on the feed supply, and the monthly milk testing results that

detail the chemical residue levels" in their place.

■ 7. Revise § 760.7 to read as follows:

**§ 760.7 Conditions required for milk or cow indemnity.**

(a) An indemnity payment for milk or cows (dairy cows including, but not limited to, bred and open heifers) may be made under this subpart to an affected farmer under the conditions in this section.

(b) If the pesticide, chemical, or toxic substance, in the contaminated milk was used by the affected farmer, the affected farmer must establish that each of the conditions in this section are met:

(1) That the pesticide, chemical, or toxic substance, when used, was registered (if applicable) and approved for use as provided in § 760.2(f);

(2) That the contaminated milk was not the result of the affected farmer's failure to use the pesticide, chemical, or toxic substance, according to the directions and limitations stated on the label; and

(3) That the contaminated milk was not otherwise the affected farmer's fault.

(c) If the violating substance in the contaminated milk was not used by the affected farmer, the affected farmer must establish that each of the conditions in this section are met:

(1) The affected farmer did not know or have reason to believe that any purchased feed contained a violating substance;

(2) None of the milk was produced by dairy cattle that the affected farmer knew, or had reason to know at the time they were acquired, had elevated levels of a violating substance; and

(3) The contaminated milk was not otherwise the affected farmer's fault.

(d) The affected farmer has adopted recommended practices and taken action to eliminate or reduce chemical residues of violating substances from the milk as soon as practicable following the initial discovery of the contaminated milk.

■ 8. Amend § 760.9 by revising the section heading and paragraph (c) and adding paragraphs (d) and (e) to read as follows:

**§ 760.9 Payments for the same loss.**

\* \* \* \* \*

(c) For any affected farmer that exceeded 3 months of milk indemnity payments before December 13, 2021 no further payments for milk indemnity will be made for the same loss except as provided in § 760.3(b) and the affected farmer may apply for cow indemnity as specified in this subpart.

(d) An affected farmer that has an approved application for cow indemnity

is no longer eligible for milk indemnity payments for the same loss.

(e) Cows purchased or bred after the initial discovery of the milk contamination are not eligible for DIPP benefits due to the same loss.

■ 9. Add § 760.10 to read as follows:

**§ 760.10 Indemnity payments for cows.**

(a) The Deputy Administrator for Farm Programs (DAFP) will determine eligibility for DIPP indemnification based on if the cows of the affected farmer are likely to be not marketable for 3 months or longer [from the date the affected farmer submits an application for cow indemnification per § 760.13]. The Deputy Administrator will review the following factors in making that determination:

(1) Milk testing results;

(2) Non marketability of affected cows through commercial marketing facilities;

(3) Type and source of chemical residues impacting the milk and animal tissues; and

(4) Projected duration for chemical residue reduction including the actions taken by the affected farmer to reduce the chemical residues to marketable levels since the affected cows were discovered.

(b) See § 760.11 for indemnity payment eligibility for bred and open heifers.

(c) Affected farmers applying for indemnification of cows, including heifers, must develop a removal plan both to permanently remove the affected cows by depopulating the cows.

(1) The removal plan for affected cows for which an affected farmer applies for indemnification under DIPP must be approved by the applicable public agency where the cows are located and must be in accordance with any applicable Environmental Protection Agency (EPA) and public agency depopulation and animal disposal requirements and guidelines, including contaminant disposal requirements, in the State where the affected cows are located.

(2) The approved removal plan must be submitted with the application for indemnification.

(d) The amount of an indemnity payment for cows to an affected farmer who is determined by the Deputy Administrator to be eligible for indemnification and by the county committee to be in compliance with all the terms and conditions of this subpart will be based on the national average fair market value of the cows. DIPP cow indemnification will be based on the 100 percent value of the Livestock Indemnity Program (LIP) rates as applicable for the calendar year for milk

indemnification established for dairy cows, per head. For example, for a 100-cow farm: 100 cows multiplied by \$1,300 (2021 LIP rate based on 100 percent value of average cow) = \$130,000 payment.

(e) For any cow indemnification payment under this section or § 760.11, the affected farmer has the option to receive 50 percent of calculated payment in advance after application approval with the remaining fifty percent paid after the affected cows have been depopulated and removed. Otherwise, the affected farmer may choose to receive 100 percent of payment after cows have been depopulated and removed. Documented records of depopulation and removal of affected cows must be provided to FSA to the satisfaction of the county committee, before the final payment will be made.

(f) Upon written request from an affected farmer on a form authorized by the Deputy Administrator, the Deputy Administrator may approve, at the Deputy Administrator's discretion, indemnification of additional affected cows as specified in paragraphs (f)(1) through (3) of this section.

(1) The affected cows were depopulated or died above normal mortality rates for cows between approval of the affected farmer's application for the first month of milk indemnity and public agency approval of the affected farmer's removal plan for cow indemnification. Normal mortality rates established annually by the FSA State committee for their state for the following cow and heifer weight groups will be used:

- (i) Dairy, nonadult less than 400 pounds;
- (ii) Dairy, nonadult 400 pounds or more; and
- (iii) Dairy, adult cow.

(2) This request may include both cows that were included in applications for milk indemnity and heifers that were affected from the same loss.

(3) An affected farmer making such a request must submit the information specified in § 760.12(c).

(g) Affected cows that are marketed as cull or for breeding are not eligible for indemnification.

■ 10. Add § 760.11 to read as follows:

**§ 760.11 Indemnity payments for bred and open heifers.**

(a) Bred (young dairy female in gestation) and open (young dairy female not in gestation) heifers that contain elevated levels of chemical residues as the result of the same loss may be eligible for indemnification through DIPP. For affected bred and open heifers

participating affected farmers may receive indemnification if the farmer's dairy cows were determined to be likely not marketable for three months or longer according to § 760.10(a) and the Deputy Administrator determines the bred and open heifers to be eligible under paragraph (b) of this section. Except as provided in this section or otherwise stated in this subpart, the provisions in this subpart for cow indemnity apply equally to bred and open heifers, for example the removal requirements in § 760.10(b).

(b) The county committee will make the recommendation to the Deputy Administrator to determine if eligible bred and open heifers that have been affected by the same loss will likely be not marketable for 3 months or longer from the date the affected farmer submits an application for cow indemnification per § 760.13 because of elevated levels of chemical residues that will pass through milk once lactating. Affected farmers must provide the information specified in § 760.12(a) and (b) for the county committee to make a recommendation of eligibility to the Deputy Administrator. The Deputy Administrator will take into consideration the recommendation of the county committee in making its eligibility determination.

(c) The amount of the cow indemnity for bred and open heifers will be based on the national average fair market value of the non-adult heifers. DIPP bred and open heifer indemnification will be based on the 100 percent value of the Livestock Indemnity Program (LIP) rates as applicable for the calendar year of milk indemnification established for non-adult dairy, by weight range, per head. For example, for an affected farmer with 40 bred or open heifers at different weight ranges: 10 bred heifers at 800 pounds or more multiplied by \$986.13 (\$9861.30), 10 bred or open heifers at 400 to 799 pounds multiplied by \$650.00 (\$6500.00), 10 open heifers at 250 to 399 pounds multiplied by \$325.00 (\$3250.00), and 10 open heifers 250 pounds or less multiplied by \$57.65 (\$576.50) = \$20,187.80 payment.

■ 11. Add § 760.12 to read as follows:

**§ 760.12 Information to be furnished for payment on dairy cows, and bred and open heifers.**

(a) To apply for DIPP for affected cows, the affected farmer must provide the county committee complete and accurate information to enable the Deputy Administrator to make the determinations required in this subpart in addition to providing the information requested in § 760.6(a), (b), (h), and (i), if not previously provided to FSA in a

milk indemnity application. The information specified in this section must be submitted as part of the cow indemnity application and includes, but is not limited to, the following items:

(1) An inventory of all dairy cows as of the date of application including lactating cows, bred heifers, and open heifers on the farm;

(2) A detailed description and timeline of how, where, and when cows will be depopulated and permanently removed from the farm (the removal plan);

(3) Documentation of public agency approval of the removal plan for cow depopulation and cow and contaminate disposal in accordance with any applicable EPA and public agency disposal requirements and guidelines;

(4) Documentation from 2 separate commercial markets stating that such market declined to accept the affected cows through a cull cow market, slaughter facility, or processing facility due to elevated levels of chemical residues;

(5) Documentation of any projected timelines for reducing chemical residues, any actions the affected farmer has taken to reduce chemical residues to marketable levels including any documents verifying steps undertaken, and any professional assistance obtained, including, discussion of strategy with the public agencies; and

(6) Any other documentation that may support the determination that the affected cows or milk from such cows is likely to be not marketable for longer than 3 months; and other documentation as requested or determined to be necessary by the county committee or the Deputy Administrator.

(b) To apply for DIPP for bred and open heifers the affected farmer must provide the information specified in paragraph (a) of this section and: veterinarian records, blood test results, and other testing information requested by the county committee for the recommendation specified in § 760.11(b) and eligibility for indemnification.

(c) To request consideration for indemnification of affected cows and heifers under § 760.10(e), the affected farmer must submit the information specified in paragraphs (c)(1) and (2) of this section to provide an accounting of affected cows and heifers that were depopulated or died above normal mortality rates for cows between approval of the affected farmer's application for the first month of milk indemnity and the public agency approval of the affected farmer's removal plan for cow indemnification.



(1) Herd health record documenting cow and heifer deaths; and

(2) Farm inventory or other record identifying the loss of dairy cows and heifers.

(d) The affected farmer certifies at application that once the cow indemnity application is approved, the affected farmer will dry off all lactating cows in a reasonable timeframe and discontinue milking.

■ 12. Add § 760.13 to read as follows:

**§ 760.13 Application for payment of cows.**

(a) Any affected farmer may apply for cow indemnity under §§ 760.10 and 760.11. To apply for DIPP for affected cows, the affected farmer must sign and file an application for payment on a form that is approved for that purpose by the Deputy Administrator and provide the information described in § 760.12.

(b) The form must be filed with the FSA county office for the county where the farm headquarters is located by December 31 following the fiscal year end in which the affected farmer's milk was removed from the commercial market, except that affected farmers that have received 3 months of milk indemnity payments prior to December 13, 2021, must file the form within 120 days after December 13, 2021. Upon written request from an affected farmer and at Deputy Administrator's discretion, the deadline for that affected farmer may be extended.

**PART 1410—CONSERVATION RESERVE PROGRAM**

■ 13. The authority citation for 7 CFR part 1410 continues to read as follows:

**Authority:** 15 U.S.C. 714b and 714c; 16 U.S.C. 3801–3847.

**§ 1410.6 [Amended]**

■ 14. Amend § 1410.6 as follows:

■ a. In paragraph (e)(4)(ii), remove “; and” and add a semicolon in its place; and

■ b. Remove paragraph (e)(4)(iii).

**§ 1410.90 [Amended]**

■ 15. Amend § 1410.90 in paragraph (c) introductory text by removing the fourth sentence.

**PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES—MARKETING ASSISTANCE LOANS AND LOAN DEFICIENCY PAYMENTS**

■ 16. The authority citation for part 1421 continues to read as follows:

**Authority:** 7 U.S.C. 7231–7237, 7931–7936, and 9031–40, 15 U.S.C. 714b and c.

**Subpart A—General**

**§ 1421.1 [Amended]**

■ 17. Amend § 1421.1 in paragraph (e) by removing the words “and payment limitation”.

■ 18. Amend § 1421.3 as follows:

■ a. Add definition for “Commodity certificate exchange” in alphabetical order; and

■ b. Revise the definition of “Market loan gain”.

The addition and revision read as follows:

**§ 1421.3 Definitions.**

\* \* \* \* \*

*Commodity certificate exchange* means the exchange, as provided for in § 1421.111, of commodities pledged as collateral for a marketing assistance loan at a rate determined by CCC in the form of a commodity certificate bearing a dollar denomination.

\* \* \* \* \*

*Market loan gain* is the loan rate, minus the repayment rate on loans repaid at a rate that is less than the loan rate. A producer's adjusted gross income must be below the limit as specified in part 1400 of this chapter to receive a market loan gain.

\* \* \* \* \*

**§ 1421.4 [Amended]**

■ 19. Amend § 1421.4 by removing paragraph (h).

**§ 1421.5 [Amended]**

■ 20. Amend § 1421.5 in paragraph (c)(1) by adding the word “nonrecourse” after the words “pledged for a”.

**§ 1421.9 [Amended]**

■ 21. Amend § 1421.9 in paragraph (f) by adding the words “or additional commodities as determined by the Deputy Administrator on a crop year basis” after “peanuts”.

**Subpart B—Marketing Assistance Loans**

■ 22. Amend § 1421.102 by revising paragraph (a)(1) to read as follows:

**§ 1421.102 Adjustment of basic loan rates.**

(a) \* \* \*

(1) For farm-stored commodities, except for peanuts, that exceed acceptable levels of contamination, the loan rate will be discounted to 10 percent of the base county MAL rate if pledged as collateral for a nonrecourse loan. Loan rates for commodities with acceptable levels of contamination will not be adjusted if pledged as collateral for recourse loans.

\* \* \* \* \*

**§ 1421.104 [Amended]**

■ 23. Amend § 1421.104 in paragraph (a)(1) by removing the words “lien searches, and” and “law, as” and adding “lien searches and” and “law as” in their places, respectively.

■ 24. Add § 1421.110 to read as follows:

**§ 1421.110 Commodity certificate exchanges.**

(a) For any outstanding marketing assistance loan, a producer may purchase a commodity certificate and exchange that commodity certificate for the marketing assistance loan collateral.

(b) The exchange rate is the lessor of:

(1) The loan rate and charges, plus interest applicable to the loan; or

(2) The prevailing world market price, as determined by CCC, or the alternative repayment rate for all other commodities, as determined by CCC.

(c) Commodity certificate exchanges may not be used when locking in a repayment rate under § 1421.10.

(d) Producers must request a commodity certificate exchange on or before loan maturity in person at the FSA county office that disbursed the marketing assistance loan by:

(1) Completing a written request on the form or providing the information as required by CCC;

(2) Purchasing a commodity certificate for the exact amount required to exchange the marketing assistance loan collateral; or

(3) Immediately exchanging the purchased commodity certificate for the outstanding loan collateral.

(e) Loan gains realized from a commodity certificate exchange are not subject to AGI provisions specified in part 1400 of this chapter.

**§ 1421.112 [Amended]**

■ 25. Amend § 1421.112 in paragraph (b) introductory text by removing the word “effected” and adding “affected” in its place in the second sentence.

■ 26. Amend § 1421.113 by revising paragraph (a) to read as follows:

**§ 1421.113 Recourse MALs.**

(a) CCC will make recourse MALs available to eligible producers of high moisture corn, high moisture grain sorghum, commodities that fall within acceptable levels of contamination and remain merchantable, and other eligible loan commodities as determined by the Deputy Administrator, Farm Programs.

\* \* \* \* \*

**Subpart C—Loan Deficiency Payments**

**§ 1421.200 [Amended]**

- 27. Amend § 1421.200 in paragraph (e) by removing the words “and payment limitation”.

**Subpart D—Grazing Payments for Wheat, Barley, Oats, and Triticale**

**§ 1421.302 [Amended]**

- 28. Amend § 1421.302(d)(1) by removing the words “and payment limitation”.

**§ 1421.304 [Amended]**

- 29. Amend § 1421.304 as follows:
  - a. Remove paragraph (d); and
  - b. Redesignate paragraphs (e) through (g) as paragraphs (d) through (f), respectively.

**Subpart E—Designated Marketing Associations for Peanuts**

- 30. Revise § 1421.409 to read as follows:

**§ 1421.409 Monitoring AGI.**

DMAs are required to monitor their producers’ AGIs and may not permit repayments with a market loan gain on peanut MALs or process peanut LDPs for those producers with annual AGI over the allowable limit as specified in part 1400 of this chapter.

- 31. Amend § 1421.416 by revising paragraph (a)(1) to read as follows:

**§ 1421.416 Processing loan deficiency payments.**

(a) \* \* \*

(1) In addition to other determinations that are required, the DMA must determine whether the producer exceeds the AGI limits to allow the receipt of the LDP. If the producer is over the AGI limit the DMA cannot process the request.

\* \* \* \* \*

**§ 1421.417 [Amended]**

- 32. Amend § 1421.417 in paragraph (a) by removing the words “to producers, and” and adding the words “to producers and” in their place.

**PART 1425—COOPERATIVE MARKETING ASSOCIATIONS**

- 33. The authority citation for part 1425 continues to read as follows:

**Authority:** 7 U.S.C. 1441 and 1421, 7 U.S.C. 7931–7939; and 15 U.S.C. 714b, 714c, and 714j.

- 34. Amend § 1425.4 by revising paragraphs (a)(2) and (b)(2) to read as follows:

**§ 1425.4 Approval.**

(a) \* \* \*

(2) A current financial statement, dated within the last year, prepared for the cooperative and accompanied by a letter from an independent Certified Public Accountant, certifying that the financial statement was prepared in accordance with generally accepted accounting principles;

\* \* \* \* \*

(b) \* \* \*

(2) The CMA’s latest financial statement. The financial statement must be dated within the past year and be accompanied by a letter from an independent Certified Public Accountant certifying that the financial statement was prepared in accordance with generally accepted accounting principles.

\* \* \* \* \*

**PART 1427—COTTON**

- 35. The authority citation for part 1427 continues to read as follows:

**Authority:** 7 U.S.C. 7231–7237, 7931–7936, 9011, and 9031–40, 15 U.S.C. 714b and c.

**Subpart A—Nonrecourse Cotton Loan and Loan Deficiency Payments**

**§ 1427.1 [Amended]**

- 36. Amend § 1427.1 in paragraph (d) by removing the words “Adjusted gross” and adding “Average adjusted” in their place.

- 37. Amend § 1427.3 by adding the definitions of “Commodity certificate exchange”, “Commodity loan gain”, “Exchange rate”, “Market loan gain”, and “Turn-around loan” in alphabetical order to read as follows:

**§ 1427.3 Definitions.**

\* \* \* \* \*

*Commodity certificate exchange* means the exchange of commodities pledged as collateral for a marketing assistance loan at a rate determined by CCC in the form of a commodity certificate bearing a dollar denomination.

*Commodity loan gain* means the difference between the loan principal amount and the adjusted world price (AWP)-value of a commodity certificate used to exchange the loan collateral.

\* \* \* \* \*

*Exchange rate* will be the effective AWP for cotton on the date the request to purchase a certificate is received by CCC.

\* \* \* \* \*

*Market loan gain* means the loan rate, minus the repayment rate on upland cotton loans repaid at the AWP-value

that is less than the loan rate. A producer’s adjusted gross income must be below the limit as specified in part 1400 of this chapter to receive a market loan gain.

\* \* \* \* \*

*Turn-around loan* is a special designation for a loan that is requested, approved for disbursement, and immediately exchanged with a commodity certificate purchased the same day.

\* \* \* \* \*

- 38. Amend § 1427.4 as follows:
  - a. Revise paragraph (a)(2)(iii); and
  - b. In paragraph (g), remove the words “and payment limitation”.

The revision reads as follows:

**§ 1427.4 Eligible producer.**

(a) \* \* \*

(2) \* \* \*

(iii) 7 CFR part 1400, subpart F—Average Adjusted Gross Income Limitation;

\* \* \* \* \*

**§ 1427.10 [Amended]**

- 39. Amend § 1427.10 in paragraph (f)(2) by removing the words “so as” and adding “in a manner” in their place.

**§ 1427.11 [Amended]**

- 40. Amend § 1427.11 in paragraph (a) introductory text by adding the word “electronic” after the words “represented by”.

- 41. Add § 1427.22 to read as follows:

**§ 1427.22 Commodity certificate exchanges.**

(a) For any outstanding marketing assistance loan provided for upland cotton, a producer may purchase a commodity certificate and exchange that commodity certificate for the marketing assistance loan collateral.

(b) The exchange rate is the lesser of:

- (1) The loan rate and charges, plus interest applicable to the loan; or
- (2) The adjusted world price for upland cotton as determined by CCC.

(c) Producers must request a commodity certificate exchange on or before loan maturity in person at the FSA county office by:

(1) Completing a written request on the form or providing the information as required by CCC;

(2) Purchasing a commodity certificate for the exact amount required to exchange the marketing assistance loan collateral; and

(3) Immediately exchanging the purchased commodity certificate for the outstanding loan collateral.

(d) Gains realized from a commodity certificate exchange are not subject to

AGI or payment limitation provisions specified in part 1400 of this chapter.

**§ 1427.23 [Amended]**

■ 42. Amend § 1427.23 in paragraph (d) by removing the words “and payment limitation requirements” and adding “provisions” in their place.

**Subpart D—Recourse Seed Cotton Loans**

■ 43. Amend § 1427.160 by revising paragraph (a) to read as follows:

**§ 1427.160 Applicability.**

(a) This subpart is applicable to crops of upland and extra long staple seed cotton and as otherwise determined appropriate by the Deputy Administrator. This subpart specifies the terms and conditions under which recourse seed cotton loans will be made available by CCC. Such loans will be available through March 31 of the year following the calendar year in which such crop is normally harvested. CCC may change the loan availability period to conform to State or locally imposed quarantines. Additional terms and conditions are in the note and security agreement that must be executed by a producer in order to receive such loans.

\* \* \* \* \*

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

**§ 1427.1200 [Amended]**

■ 44. Amend § 1427.1200 in paragraph (b)(2) by removing “134” and adding “113” in its place.

**§ 1427.1207 [Amended]**

■ 45. Amend § 1427.1207 in paragraphs (a)(1) and (2) and (c)(2) by removing “134” and adding “113” in its place.

**PART 1430—DAIRY PRODUCTS**

■ 46. The authority citation for part 1430 is revised to read as follows:

**Authority:** 7 U.S.C. 9051–9060 and 9071 and 15 U.S.C. 714b and 714c.

**Subpart D—Dairy Margin Coverage Program**

■ 47. Amend § 1430.402 by adding the definitions of “Supplemental Dairy Margin Coverage payment” and “Supplemental production history” in alphabetical order to read as follows:

**§ 1430.402 Definitions.**

\* \* \* \* \*

*Supplemental Dairy Margin Coverage payment* means a payment made to a participating dairy operation under the

DMC Program under the terms of this subpart.

*Supplemental production history* means the production history determined for a participating dairy operation under this subpart when the participating dairy operation registers to participate in DMC through special enrollment or annual coverage election period.

\* \* \* \* \*

■ 48. Amend § 1430.403 by adding paragraph (f) to read as follows:

**§ 1430.403 Eligible dairy operations.**

\* \* \* \* \*

(f) Dairy operation eligibility for supplemental production history requires the dairy operation to be enrolled in DMC for the applicable calendar year. Dairy operations with less than 5 million pounds of DMC production history are eligible for supplemental production history.

■ 49. Amend § 1430.404 by revising paragraph (a) and adding paragraphs (b)(3), (e)(4), and (h) to read as follows:

**§ 1430.404 Time and method of registration and annual election.**

(a) A dairy operation may register to participate in DMC by establishing a production history and, if eligible, supplemental production history, according to § 1430.405 on a form prescribed by CCC and also submitting a contract prescribed by CCC. Dairy operations may obtain a contract in person, by mail, or by facsimile from any FSA county office. In addition, dairy operations may download a copy of the forms at <https://www.sc.egov.usda.gov>.

(b) \* \* \*

(3) Dairy operations enrolling supplemental production must establish supplemental production history and apply for supplemental coverage during a special enrollment or coverage election period specified by the Deputy Administrator. Once supplemental production history is established, that history will be permanent and will include previously established production history and subject to coverage elections made by the dairy operation under the lock-in option according to § 1430.407(j) or made by the dairy operation in subsequent annual coverage year enrollments.

\* \* \* \* \*

(e) \* \* \*

(4) During the 2021 special enrollment period only, for participating dairy operations that had a succession-in-interest occur from January 2, 2021, through the opening of special enrollment, for supplemental

production history to be applicable to such successors, the predecessor must first establish supplemental production history. For successions-in-interest when the successor establishes supplemental production history before the predecessor, the successor’s supplemental production history will be applicable for 2022.

\* \* \* \* \*

(h) In addition to meeting requirements in paragraph (g) of this section, the dairy operation must submit a separate form as prescribed by CCC to establish the supplemental production history for the dairy operation. A supplemental production history and a completed contract are both required for a complete submission that is then subject to approval by FSA.

■ 50. Amend § 1430.405 as follows:

■ a. In paragraph (a)(1), add the words “and supplemental history” after the words “the production history”;

■ b. In paragraph (a)(2), add the words “or 2019 milk marketings” after the words “annual milk marketings” in the second sentence;

■ c. Add paragraph (a)(3);

■ d. In paragraph (f) introductory text, add the words “and supplemental history” after the words “The production history”;

■ e. In paragraph (f)(1), add the words “and supplemental history, if applicable,” after the words “and the production history”;

■ f. In paragraph (f)(2), add the words “and supplemental history, if applicable,” after the words “associated production history”;

■ g. In paragraph (g), add the words “and supplemental history, if applicable” after the words “production history”.

The addition reads as follows:

**§ 1430.405 Establishment and transfer of production history for participating dairy operation.**

(a) \* \* \*

(3) A participating dairy operation may establish supplemental production history during the coverage election period preceding the coverage year, except for 2021 when a special enrollment will occur. To determine supplemental production history, the dairy operation production history established according to paragraph (a), (b), or (c) of this section must be subtracted from that dairy operation’s actual pounds of 2019 milk production as indicated on the milk marketing statement, with the result multiplied by 75 percent.

\* \* \* \* \*

■ 51. Amend § 1430.407 as follows:

- a. In paragraph (a)(2), add the words “and supplemental history” after the words “production history”;
- b. Revise paragraph (f); and
- c. Add paragraph (n).

The revision and addition read as follows:

**§ 1430.407 Buy-up coverage.**

\* \* \* \* \*

(f) The annual premium due for a participating dairy operation is calculated:

- (1) For production history, by multiplying:
  - (i) The covered production history; and
  - (ii) The premium per cwt of milk specified in paragraph (e) of this section for the coverage level elected in paragraph (d) of this section by the dairy operation; and
- (2) For supplemental production history, by multiplying:
  - (i) The covered supplemental production history; and
  - (ii) The premium per cwt of milk in paragraph (e) of this section for the coverage level elected in paragraph (d) of this section by the dairy operation.

\* \* \* \* \*

(n) The premium rate for supplemental pounds eligible under a multi-year lock in contract maintains the basic rate according to paragraph (e) of this section and will not receive the 25 percent premium discount rate.

- 52. Amend § 1430.409 as follows:
  - a. In paragraph (b)(2), remove the word “and” at the end;
  - b. In paragraph (b)(3), remove the period at the end and add “; and” in its place; and
  - c. Add paragraph (b)(4).

The addition reads as follows:

**§ 1430.409 Dairy margin coverage payments.**

\* \* \* \* \*

(b) \* \* \*

(4) *Supplemental history.* The supplemental production history of the dairy operation, divided by 12.

\* \* \* \* \*

- 53. Amend § 1430.411 by revising paragraph (c)(3) to read as follows:

**§ 1430.411 Calculation of average feed cost and actual dairy production margins.**

\* \* \* \* \*

(c) \* \* \*

(3) For alfalfa hay, the full month price received during the month by farmers in the United States for high quality (premium and supreme) alfalfa hay as reported in the monthly Agricultural Prices report by USDA NASS will be used to calculate the hay price.

\* \* \* \* \*

**PART 1434—NONRECOURSE MARKETING ASSISTANCE LOANS AND LOAN DEFICIENCY PAYMENTS FOR HONEY**

- 54. The authority citation for part 1434 continues to read as follows:

*Authority:* 7 U.S.C. 7231–7237, 7931–7936, and 9031–40; and 15 U.S.C. 714b and c.

**§ 1434.1 [Amended]**

- 55. Amend § 1434.1 in paragraph (a) by removing the words “payment limitation and”.

**PART 1435—SUGAR PROGRAM**

- 56. The authority citation for part 1435 continues to read as follows:

*Authority:* 7 U.S.C. 1359aa–1359jj, 7272, and 8110; 15 U.S.C. 714b and 714c.

**Subpart B—Sugar Loan Program**

**§ 1435.101 [Amended]**

- 57. Amend § 1435.101 as follows:
  - a. In paragraph (a), remove the words “is 18.75 cents per pound” and add the words “may be established based on rates that comply with applicable statutes, and may be adjusted by CCC to reflect grade, type, quality, and other factors as applicable” in their place; and
  - b. In paragraph (b), remove the words “is equal to 128.5 percent of the loan rate per pound of raw cane sugar” and add the words “may be established based on rates that comply with applicable statutes, and may be adjusted by CCC to reflect grade, type, quality, and other factors as applicable” in their place.

**Zach Ducheneaux,**

*Administrator, Farm Service Agency.*

**Robert Ibarra,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 2021–26827 Filed 12–10–21; 8:45 am]

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**DEPARTMENT OF JUSTICE**

**Executive Office for Immigration Review**

**8 CFR Parts 1001, 1003, 1103, 1208, 1240, 1245, 1246, and 1292**

[EOIR Docket No. 018–0203; A.G. Order No. 5257–2021]

**RIN 1125–AA81**

**Executive Office for Immigration Review Electronic Case Access and Filing**

**AGENCY:** Executive Office for Immigration Review, Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** On December 4, 2020, the Executive Office for Immigration Review (“EOIR”) published a notice of proposed rulemaking (“NPRM” or “proposed rule”), proposing to amend EOIR’s regulations in order to implement electronic filing and records applications for all cases before the immigration courts and the Board of Immigration Appeals (“BIA”). The NPRM also proposed amendments to the regulations regarding law student filing and accompaniment procedures. This final rule responds to comments received in response to the NPRM and adopts the NPRM with changes as described below.

**DATES:** This rule is effective on February 11, 2022.

**FOR FURTHER INFORMATION CONTACT:** Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, telephone (703) 305–0289 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

**I. Notice of Proposed Rulemaking**

On December 4, 2020, EOIR published an NPRM in the **Federal Register**, proposing to amend EOIR’s regulations in order to implement electronic filing and records applications, known as EOIR’s Courts & Appeals System (“ECAS”), for all cases before the immigration courts and the BIA, as well as to update law student filing and accompaniment procedures. See Executive Office for Immigration Review Electronic Case Access and Filing, 85 FR 78240 (Dec. 4, 2020).

The NPRM proposed revisions to 8 CFR parts 1001, 1003, 1208, 1240, 1245, 1246, and 1292. These revisions included: (1) Adding or updating relevant definitions; (2) mandating electronic filing, subject to certain