

109TH CONGRESS
1ST SESSION

H. R. 4031

To provide assistance to nursery crop and tropical fruit producers whose agricultural operations were severely damaged by Hurricane Dennis, Hurricane Katrina, or Hurricane Rita in 2005.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 2005

Mr. MARIO DIAZ-BALART of Florida (for himself, Mr. PUTNAM, Ms. HARRIS, Mr. FOLEY, Ms. WASSERMAN SCHULTZ, Mr. LINCOLN DIAZ-BALART of Florida, Mr. MILLER of Florida, Mr. MEEK of Florida, and Ms. ROS-LEHTINEN) introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committee on the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide assistance to nursery crop and tropical fruit producers whose agricultural operations were severely damaged by Hurricane Dennis, Hurricane Katrina, or Hurricane Rita in 2005.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Nursery and Tropical
5 Fruit Producer Hurricane Relief Act”.

1 **SEC. 2. CROP DISASTER ASSISTANCE FOR NURSERY CROP**
2 **AND TROPICAL FRUIT PRODUCERS.**

3 (a) EMERGENCY FINANCIAL ASSISTANCE.—Notwith-
4 standing section 508(b)(7) of the Federal Crop Insurance
5 Act (7 U.S.C. 1508(b)(7)), the Secretary of Agriculture
6 shall use such sums as are necessary of funds of the Com-
7 modity Credit Corporation to make emergency financial
8 assistance available to—

9 (1) commercial ornamental nursery and fernery
10 producers in a disaster county for eligible inventory
11 losses due to Hurricane Dennis, Hurricane Katrina,
12 or Hurricane Rita; and

13 (2) tropical fruit producers in a disaster county
14 who have suffered a loss of 35 percent or more rel-
15 ative to their expected production, as defined in part
16 1480.3 of title 7, Code of Federal Regulations, due
17 to Hurricane Dennis, Hurricane Katrina, or Hurri-
18 cane Rita.

19 (b) ADMINISTRATION.—

20 (1) DETERMINATION OF COMMERCIAL OPER-
21 ATIONS.—For a nursery or fernery producer to be
22 considered a commercial operation for purposes of
23 subsection (a)(1) or (d)(1), the producer must be
24 registered in the State in which the producer con-
25 ducts business.

1 (2) DETERMINATION OF ELIGIBLE INVEN-
2 TORY.—For purposes of subsection (a)(1), eligible
3 nursery and fernery inventory includes foliage, flori-
4 culture, and woody ornamental crops, including
5 stock used for propagation, and fruit or nut seed-
6 lings grown for sale as seed stock for commercial or-
7 chard operations growing fruit or nuts. Eligible in-
8 ventory does not include edible varieties or plants
9 produced for reforestation purposes or for the pur-
10 pose of producing a crop that is neither an insurable
11 commodity nor a noninsurable commodity.

12 (c) CALCULATION OF LOSSES AND PAYMENTS.—

13 (1) NURSERY AND FERNERY PRODUCERS.—For
14 purposes of subsection (a)(1), inventory losses for a
15 nursery or fernery producer shall be determined on
16 an individual-nursery or fernery basis, and the Sec-
17 retary shall not offset inventory losses at one nurs-
18 ery or fernery location by salvaged inventory at an-
19 other nursery or fernery operated by the same pro-
20 ducer. Payment amounts shall be equal to the prod-
21 uct obtained by multiplying—

22 (A) the difference between the pre-disaster
23 and post-disaster inventory value, as deter-
24 mined by the Secretary using the producer's
25 wholesale price list, less the maximum customer

discount provided by the producer, and not to exceed the prices in the Department of Agriculture publication entitled “Eligible Plant List and Price Schedule”;

(B) 25 percent; and

(C) the producer’s share of the loss.

(2) TROPICAL FRUIT PRODUCERS.—For purposes of subsection (a)(2), payment amounts for a tropical fruit producer shall be equal to the product obtained by multiplying—

(A) the number of acres affected;

(B) the payment rate; and

(C) the producer’s share of the crop.

(3) PAYMENT LIMITATION.—The total amount of payments to a person (defined as provided in section 1001(e) of Food Security Act of 1985 (7 U.S.C. 1308)) under paragraph (1) or (2) of subsection (a) may not exceed \$80,000.

(d) DEBRIS-REMOVAL ASSISTANCE.—

(1) AVAILABILITY OF ASSISTANCE.—The Secretary shall use such sums as are necessary of funds of the Commodity Credit Corporation to make emergency financial assistance available to commercial ornamental nursery and fernery producers in a disaster county to help cover costs incurred for debris

1 removal and associated cleanup due to Hurricane
2 Dennis, Hurricane Katrina, or Hurricane Rita.

3 (2) AMOUNT OF ASSISTANCE.—Assistance
4 under this subsection may not exceed the actual
5 costs incurred by the producer or \$250 per acre,
6 whichever is less. The Secretary shall not impose
7 any limitation on the maximum amount of payments
8 that a producer may receive under this subsection.

9 (e) NONDISCRIMINATION.—In carrying out this sec-
10 tion, the Secretary shall not discriminate against or penal-
11 ize producers who did not purchase crop insurance under
12 the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.)
13 with respect to an insurable commodity or did not file the
14 required paperwork, and pay the administrative fee by the
15 applicable State filing deadline, for assistance under sec-
16 tion 196 of the Federal Agriculture Improvement and Re-
17 form Act of 1996 (7 U.S.C. 7333) with respect to a non-
18 insurable commodity, except that payment rates under
19 this section shall be five percent less for such producers
20 and the producers must comply with subsection (f).

21 (f) CONTRACT TO PROCURE CROP INSURANCE OR
22 NAP.—In the case of a producer described in subsection
23 (e) who receives any assistance under this section, the pro-
24 ducer shall be required to enter into a contract with the
25 Secretary under which the producer agrees—

(1) in the case of all insurable commodities grown by the producer during the next available coverage period—

(A) to obtain at least catastrophic risk protection for those commodities under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.); and

(B) in the event of violation of the contract, to repay to the Secretary any payment received under this section; and

(2) in the case of all noninsurable commodities grown by the producer during the next available coverage period—

(A) to file the required paperwork, and pay the administrative fee by the applicable State filing deadline, for those commodities under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333); and

(B) in the event of violation of the contract, to repay to the Secretary any payment received under this section.

(g) RELATION TO OTHER ASSISTANCE.—

(1) LINK TO ACTUAL LOSSES.—Assistance provided under subsection (a) to a producer for losses

1 to a crop, together with the amounts specified in
2 paragraph (2) applicable to the same crop, may not
3 exceed 100 percent of what the value of the crop
4 would have been in the absence of the losses, as esti-
5 mated by the Secretary.

6 (2) OTHER PAYMENTS.—In applying the limita-
7 tion in paragraph (1), the Secretary shall include the
8 following:

9 (A) Any crop insurance payment made
10 under the Federal Crop Insurance Act (7
11 U.S.C. 1501 et seq.) or payment under section
12 196 of the Federal Agricultural Improvement
13 and Reform Act of 1996 (7 U.S.C. 7333) that
14 the producer receives for losses to the same
15 crop.

16 (B) Assistance received under any other
17 emergency crop loss authority.

18 (C) The value of the crop that was not lost
19 (if any), as estimated by the Secretary.

20 (h) ADJUSTED GROSS INCOME LIMITATION.—The
21 adjusted gross income limitation, specified in section
22 1001D of the Food Security Act of 1985 (7 U.S.C. 1308–
23 3a), shall apply to the provision of assistance under this
24 section.

25 (i) DEFINITIONS.—In this section:

1 (1) CATASTROPHIC RISK PROTECTION.—The
2 term “catastrophic risk protection” means the level
3 of insurance coverage provided under section 508(b)
4 of the Federal Crop Insurance Act (7 U.S.C.
5 1508(b)).

6 (2) DISASTER COUNTY.—The term “disaster
7 county” means a county included in the geographic
8 area covered by a natural disaster declaration—

9 (A) made by the Secretary under section
10 321(a) of the Consolidated Farm and Rural
11 Development Act (7 U.S.C. 1961(a)) due to
12 Hurricane Dennis, Hurricane Katrina, or Hur-
13 ricane Rita in 2005; or

14 (B) made by the President under the Rob-
15 ert T. Stafford Disaster Relief and Emergency
16 Assistance Act (42 U.S.C. 5121 et seq.) due to
17 Hurricane Dennis, Hurricane Katrina, or Hur-
18 ricane Rita.

19 (3) INSURABLE COMMODITY.—The term “insur-
20 able commodity” means an agricultural commodity
21 for which producers are eligible to obtain a policy or
22 plan of insurance under the Federal Crop Insurance
23 Act (7 U.S.C. 1501 et seq.).

24 (4) NONINSURABLE COMMODITY.—The term
25 “noninsurable commodity” means an eligible crop

1 for which producers are eligible to obtain assistance
2 under section 196 of the Federal Agriculture Im-
3 provement and Reform Act of 1996 (7 U.S.C.
4 7333).

5 (5) SECRETARY.—The term “Secretary” means
6 the Secretary of Agriculture.

7 **SEC. 3. EMERGENCY CONSERVATION PROGRAM.**

8 (a) SPECIFIC INCLUSION OF NURSERY AND FERN-
9 ERY PRODUCERS.—Section 405 of the Agricultural Credit
10 Act of 1978 (16 U.S.C. 2205) is amended by adding at
11 the end the following new sentence: “For purposes of this
12 title, the term ‘agricultural producer’ includes a producer
13 of nursery or fernery crops.”.

14 (b) APPLICATION OF AMENDMENT.—The Secretary
15 of Agriculture shall implement the amendment made by
16 subsection (a) beginning in counties declared to be dis-
17 aster areas by the President or the Secretary due to Hur-
18 ricane Dennis, Hurricane Katrina, or Hurricane Rita.

19 **SEC. 4. TREE ASSISTANCE PROGRAM.**

20 (a) SPECIFIC INCLUSION OF NURSERY TREES.—Sec-
21 tions 10201 of the Farm Security and Rural Investment
22 Act of 2002 (7 U.S.C. 8201) is amended by striking para-
23 graph (1) and inserting the following new paragraph:

24 “(1) ELIGIBLE ORCHARDIST.—The term ‘eligi-
25 ble orchardist’ means—

1 “(A) a person that produces annual crops
2 from trees for commercial purposes; or

3 “(B) a nursery grower that produces field-
4 grown trees, container-grown trees, or both,
5 whether or not the trees produce an annual
6 crop, intended for replanting after commercial
7 sale.”.

8 (b) APPLICATION OF AMENDMENT.—The Secretary
9 of Agriculture shall implement the amendment made by
10 subsection (a) beginning in counties declared to be dis-
11 aster areas by the President or the Secretary due to Hur-
12 ricane Dennis, Hurricane Katrina, or Hurricane Rita.

13 **SEC. 5. ADMINISTRATION.**

14 The Secretary of Agriculture shall use the funds, fa-
15 cilities, and authorities of the Commodity Credit Corpora-
16 tion to carry out this Act, and such funds shall remain
17 available until expended.

18 **SEC. 6. REGULATIONS.**

19 (a) IN GENERAL.—The Secretary of Agriculture may
20 promulgate such regulations as are necessary to imple-
21 ment this Act and the amendments made by this Act.

22 (b) PROCEDURE.—The promulgation of the regula-
23 tions and administration of this Act and the amendments
24 made by this Act shall be made without regard to—

1 (1) the notice and comment provisions of sec-
2 tion 553 of title 5, United States Code;

3 (2) the Statement of Policy of the Secretary of
4 Agriculture effective July 24, 1971 (36 Fed. Reg.
5 13804), relating to notices of proposed rulemaking
6 and public participation in rulemaking; and

7 (3) chapter 35 of title 44, United States Code
8 (commonly known as the “Paperwork Reduction
9 Act”).

10 (c) CONGRESSIONAL REVIEW OF AGENCY RULE-
11 MAKING.—In carrying out this section, the Secretary of
12 Agriculture shall use the authority provided under section
13 808 of title 5, United States Code.

14 **SEC. 7. EMERGENCY DESIGNATION.**

15 The amounts provided under this Act or under
16 amendments made by this Act to respond to Hurricane
17 Dennis, Hurricane Katrina, or Hurricane Rita are des-
18 ignated as an emergency requirement pursuant to section
19 402 of H. Con. Res. 95 (109th Congress).

○