

(e) Remedies provided for in this section will, unless CCC determines otherwise, be subject to the administrative appeals provided for elsewhere in this part, including those that are found at § 1436.13.

[66 FR 4612, Jan. 18, 2001, as amended at 74 FR 41591, Aug. 18, 2009; 81 FR 25595, Apr. 29, 2016]

#### § 1436.18 Appeals.

The appeal, reconsideration, or review of all determinations made under this part, except for provisions for which there are no appeal rights because they are determined rules of general applicability, must be in accordance with parts 11 and 780 of this title.

#### § 1436.19 Equal Opportunity and Non-discrimination requirements.

(a) No recipient of a Storage Facility loan will directly, or through contractual or other arrangement, subject any person or cause any person to be subjected to discrimination on the basis of race, religion, color, national origin, gender, or other prohibited basis. Borrowers must comply with all applicable Federal laws and regulations regarding equal opportunity in hiring, procurement, and related matters. FSFL borrowers are subject to the non-discrimination provisions applicable to Federally assisted programs contained in 7 CFR parts 15 and 15b.

(b) With respect to any aspect of a credit transaction, CCC will not discriminate against any applicant on the basis of race, color, religion, national origin, disability, sex, marital status, familial status, parental status, sexual orientation, genetic information, political beliefs, reprisal, or age, provided the applicant can execute a legal contract. Nor will CCC discriminate on the basis of whether all or a part of the applicant's income derives from any public assistance program, or whether the applicant in good faith, exercises any rights under the Consumer Protection Act. FSFL is subject to the non-discrimination provisions applicable to Federally conducted programs contained in 7 CFR parts 15d and 15e.

[67 FR 54939, Aug. 26, 2002. Redesignated at 67 FR 65690, Oct. 28, 2002; 74 FR 41592, Aug. 18, 2009]

## PART 1437—NONINSURED CROP DISASTER ASSISTANCE PROGRAM

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AUTHORITY: 7 U.S.C. 1501–1508 and 7333; 15 U.S.C. 714–714m; 19 U.S.C. 2497, and 48 U.S.C. 1469a.

SOURCE: 67 FR 12448, Mar. 19, 2002, unless otherwise noted.

### Subpart A—General Provisions

#### § 1437.1 Applicability.

(a) The purpose of the Noninsured Crop Disaster Assistance Program (NAP) is to help manage and reduce production risks faced by producers of eligible commercial crops or other agricultural commodities during a coverage period. NAP reduces financial losses that occur when natural disasters (damaging weather or adverse natural occurrence that is an eligible cause of loss) cause a loss of expected production or actual value for value loss crops, or where producers are prevented from planting an eligible crop because of an eligible cause of loss in a coverage period.

(b) The provisions in this part are applicable to eligible producers and eligible crops for which catastrophic risk protection is not available under subsection (b) of section 508 of the Federal Crop Insurance Act (7 U.S.C. 1508) and additional coverage under subsections (c) and (h) of section 508 or, if coverage is available, it is only available under a policy that provides coverage for specific intervals based on weather indexes or under a whole farm plan of insurance.

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(c) The regulations in this part are applicable to the 2019 and subsequent crop years.

[79 FR 74571, Dec. 15, 2014, as amended at 85 FR 12218, Mar. 2, 2020]

#### § 1437.2 Administration.

(a) NAP is administered under the general supervision of the Administrator, Farm Service Agency (FSA) (who also serves as the Commodity Credit Corporation (CCC) Executive Vice President), and the Deputy Administrator for Farm Programs, FSA, (referred to as “Deputy Administrator” in this part). NAP is carried out by FSA State and county committees (State and county committees) with instructions issued by the Deputy Administrator.

(b) State and 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, NAP’s basic provisions, or instructions issued by the Deputy Administrator.

(c) The State committee will take any action required by the regulations in this part that the county committee has not taken. The State committee will also:

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

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

(d) No delegation to a State or county committee precludes the FSA Administrator, the Deputy Administrator, or a designee, from determining any question arising under NAP or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator has the authority to permit State and county committees to waive or modify deadlines (except deadlines specified in a law) and other requirements or program provisions not specified in law, in cases where lateness or failure to meet such other requirements or program provisions do not adversely affect operation of NAP.

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(1) Producers and participants have no right to a decision in response to a request to waive or modify deadlines or program provisions. The Deputy Administrator's refusal to consider such a request or a decision not to exercise this discretionary authority under this section is not an adverse decision and is not appealable.

(2) FSA's decision not to consider a case under this section is not a failure to act under any law or regulation because participants have no right to a decision on a request for waiver or modification.

(f) Items including, but not limited to, application periods, application deadlines, basic provisions, internal operating guidelines issued to FSA State and county offices, coverage periods, fees, prices, yields, and payment factors established for NAP in accordance with this part that are used for similarly situated participants and eligible crops are not to be construed to be individual program eligibility determinations or extent of eligibility determinations and are, therefore, not subject to administrative review.

(g) Where there is any conflict between the basic provisions and the regulations, the regulations apply except when the Deputy Administrator determines that because of the timing of issuance of the regulations, the basic provisions applicable to the specific crop year or coverage period that may be less restrictive will apply.

[79 FR 74571, Dec. 15, 2014]

### § 1437.3 Definitions.

The terms and definitions in this section apply to NAP. The terms and definitions in part 718 of this title and part 1400 of this chapter also apply to NAP, except where those same terms are defined in this section. In that case, the terms and definitions of this section apply.

*Abandoned* means to have discontinued care for a crop or provided care so insignificant as to provide no benefit to the crop, or failed to harvest in a timely manner.

*Acres devoted to the eligible crop* means the total planted and considered planted (P&CP) acres of the eligible crop.

*Additional coverage* means insurance coverage offered by the Federal Crop

Insurance Corporation under sections 508(c) or 508(h) of the Federal Crop Insurance Act.

*Administrative county office* means the county FSA office designated to make determinations, handle official records, and issue payments for the producer in accordance with 7 CFR part 718.

*Agricultural experts* means persons who are employed by the National Institute of Food and Agriculture, or the agricultural departments of universities, or other persons approved by FSA, whose research or occupation is related to the specific crop or practice for which such expertise is sought.

*Animal Unit Days (AUD)* means an expression of expected or actual stocking rate for pasture or forage.

*Application closing date* means the last date, as determined by FSA, producers can submit an application for coverage for noninsured crops for the specified crop year and coverage period.

*Application for coverage* means the form specified by FSA to be completed by a producer applying for NAP coverage for an eligible crop that is accompanied by the service fee or service fee waiver form in the administrative county office by the application closing date.

*Basic provisions* means the document summarizing the terms and conditions of NAP coverage for a crop year that are acknowledged as having been received by the person or legal entity who signs an application for coverage according to this part.

*Buffer zone* means a parcel of land, as designated in an organic system plan, that separates agricultural commodities grown under organic practices from agricultural commodities grown under non-organic practices and is used to minimize the possibility of unintended contact by prohibited substances or organisms.

*Buy-up coverage* means NAP assistance that is available for all eligible NAP covered crops (other than for crops and grasses intended for grazing) at a payment amount that is equal to an indemnity amount calculated for buy-up coverage computed under section 508(c) or (h) of the Federal Crop Insurance Act and equal to the amount that the buy-up coverage yield for the

crop exceeds the actual yield for the crop.

*Buy-up coverage yield* means not less than 50 percent nor greater than 65 percent of the approved yield for the crop, as elected by the NAP covered participant and specified in 5-percent increments.

*Bypass year* means a year that the producer did not obtain NAP coverage for the crop and did not file a report of acreage or production, or obtained NAP coverage for the crop and had reported or determined zero acres devoted to the eligible crop.

*Catastrophic coverage* means:

(1) For insured crops, the coverage offered by the Federal Crop Insurance Corporation (FCIC) under section 508(b) of the Federal Crop Insurance Act.

(2) For eligible NAP crops, coverage at the following levels due to an eligible cause of loss impacting the NAP covered crop during the coverage period:

- (i) Prevented planting in excess of 35 percent of the intended acres;
- (ii) A yield loss in excess of 50 percent of the approved yield;
- (iii) A value loss in excess of 50 percent; or
- (iv) An animal-unit-days (AUD) loss greater than 50 percent of expected AUD.

*Certified organic acreage* means acreage in the certified organic farming operation that has been certified by a certifying agent as conforming to organic standards specified in part 205 of this title.

*Certifying agent* means a private or governmental entity accredited by the United States Department of Agriculture (USDA) Secretary for the purpose of certifying a production, processing or handling operation as organic.

*Conventional farming practice* means any good farming practice that is not an organic farming practice.

*Crop year* means the calendar year in which the crop is normally harvested or in which the majority of the crop would have been harvested. For value loss and other specific commodities, see the applicable subpart and section of this part. For crops for which catastrophic coverage or buy-up coverage is

available, the crop year will be as defined by such coverage.

*Feedstock* means a crop including, but not limited to, grasses or legumes, algae, cotton, peanuts, coarse grains, small grains, oil seeds, or short rotation woody crops, that is grown expressly for the purpose of producing a biobased material or product, and does not include residues and by-products of crops grown for any other purpose.

*Fiber* means a slender and greatly elongated natural plant filament, e.g. cotton, flax, etc. used in manufacturing, as determined by FSA.

*Final planting date* means the date which marks the end of the planting period for the crop and in particular the last day, as determined by FSA, the crop can be planted to reasonably expect to achieve 100 percent of the expected yield in the intended harvest year or planting period.

*Food* means a material consisting essentially of protein, carbohydrates, and fat used in the body to sustain growth, repair, and vital processes including the crops used for the preparation of food, as determined by FSA.

*Generally recognized* means when agricultural experts or organic agricultural experts, as applicable, are aware of the production method or practice and there is no genuine dispute regarding whether the production method or practice allows the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee or amount of insurance.

*Good farming practices* means the cultural practices generally recognized as compatible with agronomic and weather conditions and used for the crop to make normal progress toward maturity and produce at least the individual unit approved yield, as determined by FSA. These practices are:

- (1) For conventional farming practices, those generally recognized by agricultural experts for the area, which could include one or more counties; or
- (2) For organic farming practices, those generally recognized by the organic agricultural experts for the area or contained in the organic system plan that is in accordance with the National Organic Program specified in part 205 of this title.

*Guarantee* means the level of coverage provided based on the application for coverage and buy-up coverage elected under the provisions of this part.

*Hand-harvested crop* means a non-forage crop that is not harvested mechanically and is removed from a field by hand.

*Harvested* means the producer has removed the crop from the field by hand, mechanically, or by grazing of livestock. The crop is considered harvested once it is removed from the field and placed in a truck or other conveyance or is consumed through the act of grazing. Crops normally placed in a truck or other conveyance and taken off the crop acreage, such as hay are considered harvested when in the bale, whether removed from the field or not.

*Hemp* means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a THC concentration of not more than 0.3 percent on a dry weight basis.

*Hemp processor* means any business enterprise regularly engaged in processing hemp that possesses all licenses and permits for processing hemp required by the applicable state or Federal governing authority, and that possesses facilities, or has contractual access to such facilities with enough equipment to accept and process contracted hemp within a reasonable amount of time after harvest.

*Hemp processor contract* means a legal written agreement executed between the producer and hemp processor engaged in the production and processing of hemp containing at a minimum:

(1) The producer's promise to plant and grow hemp and to deliver all hemp to the hemp processor;

(2) The hemp processor's promise to purchase the hemp produced by the producer; and

(3) A base contract price, or method to derive a value that will be paid to the producer for the production as specified in the processor's contract.

(4) For a producer who is also a hemp processor, a corporate resolution by the Board of Directors or officers of the hemp processor will be considered a hemp processor contract if it contains

the required terms listed in this definition.

*Industrial crop* means a commercial crop, or other agricultural commodity used in manufacturing or grown expressly for the purpose of producing a feedstock for renewable biofuel, renewable electricity, or biobased products. Industrial crops include castor beans, chia, crambe, crotalaria, cuphea, guar, guayule, hesperaloe, kenaf, lesquerella, meadowfoam, milkweed, plantago ovato, sesame, and other crops specifically designated by FSA. Industrial crops exclude any plant that FSA has determined to be either a noxious weed or an invasive species. A list of plants that are noxious weeds and invasive species will be available in the FSA county office.

*Maximum dollar value for coverage sought* means the total dollar amount elected by the NAP covered participant for which buy-up coverage may be considered for a value loss crop in a coverage period. The amount is set by the NAP covered participant for each value loss crop and represents the highest amount of field market value of the crop before disaster in a coverage period.

*Multiple planted* means the same crop is planted and harvested during two or more distinct planting periods in the same crop year, as determined by FSA.

*Native sod* means land on which the natural state plant cover before tilling was composed principally of native grasses, grass-like plants, forbs, or shrubs suitable for grazing and browsing and is land that has never been tilled (determined in accordance with information collected and maintained by an agency of the USDA or other verifiable records that are provided by a producer and acceptable to FSA).

*Normal harvest date* means the date harvest of the crop is normally completed in the administrative county, as determined by FSA.

*Organic agricultural experts* means persons who are employed by the following organizations: Appropriate Technology Transfer for Rural Areas, Sustainable Agriculture Research and Education, or the National Institute of Food and Agriculture, the agricultural departments of universities, or other

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persons approved by FSA, whose research or occupation is related to the specific practice for which such expertise is sought.

*Organic crop* means an agricultural commodity that is organically produced consistent with section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

*Organic farming practice* means a system of plant production practices used to produce an organic crop that is approved by a certifying agent in accordance with 7 CFR part 205.

*Organic standards* means standards in accordance with the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6523) and 7 CFR part 205.

*Organic system plan* means a plan of management of an organic production or handling operation that has been agreed to by the producer or handler and the certifying agent and that includes written plans concerning all aspects of agricultural production or handling described in the Organic Foods Production Act and the regulations in 7 CFR part 205, subpart C.

*Prohibited substance* means any biological, chemical, or other agent that is prohibited from use or is not included in the organic standards for use on any certified organic, transitional, or buffer zone acreage. Lists of such substances are specified in §§ 205.602 and 205.604 of this title.

*Secondary use* means the harvested production bears little resemblance to, or has a different unit of expression than, the unit of expression for the reported intended use. It does not apply to fresh and processed harvested production; is not salvage; not counted as production of the crop for the following purposes, including, but not limited to:

- (1) The determination of whether the unit suffered requisite loss; and
- (2) APH and approved yield.

*Seed crop* means propagation stock commercially produced for sale as seed stock for eligible crops.

*Seeded forage* means forage on acreage mechanically seeded with forage vegetation at regular intervals, at least every 7 years, in accordance with good farming practices.

*Short rotation woody crops* means fast-growing trees that reach their eco-

nomically optimum size between 4 and 20 years old.

*T-Yield* means the yield which is based on the county expected yield of the crop for the crop year and is used on an adjusted or unadjusted basis to calculate the approved yield for crops covered under the NAP when less than four years of actual, assigned, or appraised yields are available in the APH data base.

*THC* means delta-9 tetrahydrocannabinol.

*Transitional acreage* means acreage on which organic farming practices are being followed that does not yet qualify to be designated as organic acreage.

*Transitional yield* means an estimated yield of that name provided in the Federal Crop Insurance Corporation (FCIC) actuarial table which is used to calculate an average/approved APH yield for crops insured under the Federal Crop Insurance Act when less than four years of actual, temporary, and/or assigned yields are available on a crop by county basis.

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13742, Mar. 17, 2006; 76 FR 4805, Jan. 27, 2011; 78 FR 21018, Apr. 9, 2013; 79 FR 74572, 74583, Dec. 15, 2014; 85 FR 12218, Mar. 2, 2020]

#### § 1437.4 Eligibility.

(a) Noninsured crop disaster assistance is available during the coverage period specified in § 1437.6 for loss of production or loss of value for value loss crops or prevented planting of eligible commercial crops or other eligible agricultural commodities:

(1) Planted during the planting period, which means the time during which a majority of the crop is normally planted in the area, as determined by FSA, and is considered timely-planted for NAP purposes;

(2) Prevented from being planted during the planting period;

(3) Planted during the late planting period, which means the time after the planting period, during which certain crops, as determined by FSA, may be planted and remain eligible for reduced NAP coverage; and

(4) Determined by FSA to be eligible crops for which:

(i) Catastrophic risk protection and additional coverage under the Federal Crop Insurance Act (7 U.S.C. 1508(b),

(c), and (h)) are not available or, if coverage is available, it is only available under a policy that provides coverage for specific intervals based on weather indexes or under a whole farm plan of insurance; or

(ii) These specific practices for these crops are not included under the Federal Crop Insurance Act (7 U.S.C. 1508), but only when the Deputy Administrator determines in advance of a coverage period that the specific practice is appropriate for NAP coverage and is not available for coverage under Federal crop insurance.

(iii) The producer applies good farming practices.

(b) When other conditions are met, NAP may be available for an eligible loss of:

(1) Any commercial crop grown for food, excluding livestock and their by-products;

(2) Any commercial crop planted and grown for livestock consumption, including but not limited to grain and forage crops;

(3) Any commercial crop grown for fiber, excluding trees grown for wood, paper, or pulp products; and

(4) Any commercial production of:

(i) Aquacultural species (including ornamental fish);

(ii) Floricultural crops;

(iii) Ornamental nursery plants;

(iv) Christmas tree crops;

(v) Turfgrass sod;

(vi) Sweet sorghum;

(vii) Biomass sorghum;

(viii) Industrial crops (including those grown expressly for the purpose of producing a feedstock for renewable biofuel, renewable electricity, or biobased products);

(ix) Seed crops, including propagation stock such as non-ornamental seedlings, sets, cuttings, rootstock, and others, as determined by FSA; and

(x) Sea grass and sea oats.

(c) Except as specified in paragraph (e) of this section, paragraph (d) of this section will apply to native sod acreage in Iowa, Minnesota, Montana, Nebraska, North Dakota, and South Dakota that has been tilled:

(1) During the first 4 crop years of planting for native sod acreage that has been tilled for the production of an annual crop during the period begin-

ning on February 8, 2014, and ending on December 20, 2018; and

(2) For not more than any 4 crop years for native sod acreage that has been tilled for the production of any crop after December 20, 2018:

(i) During the first 10 crop years after the initial tillage; and

(ii) For which a NAP applicant must submit a service fee or NAP premium for a crop on that acreage.

(d) For acreage specified in paragraph (c) of this section:

(1) The approved yield will be determined by using a yield equal to 65 percent of the producer's T-yield for the annually planted crop; and

(2) The service fee or premium for the annual covered crop planted on native sod will be equal to 200 percent of the amount determined in § 1437.7, as applicable, but the premium will not exceed the maximum amount specified in § 1437.7(d)(2).

(e) If the producer's total native sod acreage that is tilled in a crop year is 5 acres or less, the approved yield, service fee, and premium provisions specified in paragraph (d) of this section will not apply.

(f) Wheat, barley, oats, or triticale crop acreage subject to an application for grazing payments under the program specified in part 1421, subpart D of this chapter, or successor program, is ineligible for NAP payments.

[67 FR 12448, Mar. 19, 2002, as amended at 67 FR 62324, Oct. 7, 2002; 71 FR 13742, Mar. 17, 2006; 78 FR 21018, Apr. 9, 2013; 79 FR 74573, 74583, Dec. 15, 2014; 85 FR 12218, Mar. 2, 2020]

#### § 1437.5 Coverage levels.

(a) NAP coverage for prevented planting is provided for approved prevented planting of an eligible NAP covered crop due to an eligible cause of loss in the coverage period. Payment is based on the approved prevented planted acreage in excess of 35 percent of the total intended acres to be planted.

(b) Except as provided in paragraph (d) of this section, NAP coverage is equal to 50 percent of the yield or inventory value specified in paragraph (c) of this section at 55 percent of the average market price established by FSA.

(c) Except as provided in paragraph (d) of this section, to be eligible for a

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NAP payment a producer must have suffered a yield or inventory value loss greater than 50 percent as the result of an eligible cause of loss in the coverage period as follows:

(1) For yield-based crops, a yield loss in excess of 50 percent of the approved yield;

(2) For value loss crops, a loss of value in excess of 50 percent of the total value of eligible inventory at the time of disaster;

(d) Subject to paragraph (e) of this section, producers of eligible NAP crops, other than crops and grasses intended for grazing, may elect buy-up coverage at 100 percent of the average market price in amounts of 50 percent to 65 percent, in 5 percent increments, of:

(1) For yield-based crops, the approved yield; and

(2) For value loss crops, the lesser of the total value of eligible inventory at the time of disaster or the maximum dollar value for coverage sought.

(e) A producer cannot obtain buy-up coverage for a crop if the producer has not successfully produced the crop in a previous year for which documentation exists and that documentation shows that the crop can be successfully grown by the producer in the county. Production of the crop is considered to be successful if the producer produced at least 50 percent of the county expected yield for the same county for which buy-up coverage is sought, unless the producer suffered a loss on the crop due to an eligible cause of loss in §1437.10. If not already provided to FSA for any reason including NAP coverage or assistance, the producer must submit documentation showing successful growing of the crop in a previous year and, in the event a loss due to an eligible cause of loss was sustained, submit documentation of that loss satisfying the requirements of §1437.11.

(f) The quantity or value of any eligible NAP crop will not be reduced for any quality consideration unless a zero value is established based on a total loss of quality, except as specified in §1437.105.

(g) For crop acreage intended to be grazed, to be eligible for a NAP payment, a producer must have suffered a loss of AUD in excess of 50 percent of

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expected AUD determined on the basis of acreage, carrying capacity, and grazing period.

[79 FR 74574, Dec. 15, 2014, as amended at 85 FR 12219, Mar. 2, 2020]

### § 1437.6 Coverage period.

(a) *Coverage period.* The coverage period is the time during which coverage is available against prevented planting, a loss of production, or loss of value, as applicable, of the eligible crop as a result of an eligible cause of loss specified in §1437.10. Except as provided in paragraph (h) of this section, coverage periods start no earlier than 1 calendar day after date of filing of a valid application for coverage as specified in §1437.7.

(1) Relief provisions cannot be used to change or modify the date an application is filed.

(2) If an application for coverage is filed within 30 calendar days of the end of a coverage period, the application for coverage is invalid and will not be processed by FSA. In the event the application for coverage is invalid as discussed in this paragraph, service fees will not be refunded.

(3) Except as provided in paragraph (h) of this section, coverage is never retroactive.

(b) *Annual crops.* Except as provided in paragraph (h) of this section, the coverage period for annual crops, including annual forage crops,

(1) Begins the later of:

(i) 1 calendar day after the date the application for coverage is filed; or

(ii) The date the crop is planted, not to exceed the late planting period; and

(2) Ends on the earlier of:

(i) The date harvest is complete;

(ii) The normal harvest date of the crop in the area;

(iii) The date the crop is abandoned; or

(iv) The date the crop is destroyed.

(c) *Biennial and perennial crops.* Except as otherwise specified in this part, the coverage period for biennial and perennial crops begins the later of 1 calendar day after the date the application for coverage is filed or 1 calendar day after the application closing date. The coverage ends as determined by FSA.



(d) *Value loss crops.* Except as otherwise specified in this part, the coverage period for value loss crops, including ornamental nursery, aquaculture, Christmas tree crops, ginseng, and turfgrass sod; and other eligible crops, including floriculture and mushrooms begins the later of 1 calendar day after the date the application for coverage is filed or 1 calendar day after the application closing date. The coverage ends the last day of the crop year, as determined by FSA.

(e) *Honey.* Except as provided in paragraph (h) of this section, the coverage period for honey begins the later of 1 calendar day after the date of the application for coverage is filed; 1 calendar day after the application closing date; or the date the colonies are set in place for honey production. The coverage ends the last day of the crop year.

(f) *Maple sap.* Except as provided in paragraph (h) of this section, the coverage period for maple sap begins the later of 1 calendar day after the date the application for coverage is filed or 1 calendar day after the application closing date. The coverage ends on the earlier of the date harvest is complete; or the normal harvest date.

(g) *Biennial and perennial forage crops.* Except as provided in paragraph (h) of this section, for biennial and perennial forage crops the coverage period begins the later of 1 calendar day after the date the application for coverage is filed or 1 calendar day after the application closing date; for first year seedlings, the date the crop was planted; or the date following the normal harvest date. The coverage ends on the normal harvest date of the subsequent year.

(h) *2019 and 2020 crop years.* For the 2019 and 2020 crop years only, if a crop's application closing date is before April 8, 2019, the coverage period of the crop will be as specified in paragraphs (a) through (g) of this section except that the date coverage begins will be retroactive as long as the application for coverage is filed by the application closing date as specified in §1437.7(i). This limited retroactive coverage for the 2019 and 2020 crop years only will begin 1 calendar day after the established application closing date, which

would be the same as if they had filed by the deadlines as specified in paragraphs (a) through (g) of this section.

[79 FR 74574, Dec. 15, 2014, as amended at 85 FR 12219, Mar. 2, 2020]

**§ 1437.7 Application for coverage, service fee, premium, transfers of coverage, and acreage report.**

(a) Except as provided in paragraph (i) of this section, with respect to each crop, commodity, or acreage, producers must file an application for coverage under this part in the administrative county office by the application closing date.

(b) The service fee or request for service fee waiver specified in paragraph (g) of this section must accompany the application for coverage in order for it to be considered filed. The service fee is:

(1) For applications filed by April 7, 2019, \$250 per crop per administrative county, up to \$750 per producer per administrative county, not to exceed \$1,875 per producer; and

(2) For applications filed on or after April 8, 2019, \$325 per crop per administrative county, up to \$825 per producer per administrative county, not to exceed \$1,950 per producer.

(c) The service fee will be applied per administrative county by crop and by planting period, as determined by FSA.

(d) Producers who elect buy-up coverage must pay a premium, in addition to the service fee, equal to the lesser of:

(1) The product obtained by multiplying:

(i) A 5.25-percent premium fee; and

(ii) The applicable payment limit; or

(2) The sum of the premiums for each eligible crop, with the premium for each eligible crop obtained by multiplying:

(i) The producer's share of the eligible crop;

(ii) The number of acres devoted to the eligible crop;

(iii) The approved yield;

(iv) The coverage level elected by the producer;

(v) The average market price; and

(vi) A 5.25-percent premium fee.

(e) For value loss crops, premiums will be equal to the lesser of:

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(1) The product obtained by multiplying:

- (i) A 5.25-percent premium fee; and
- (ii) The applicable payment limit; or

(2) The sum of the premiums for each eligible crop, with the premium for each eligible crop obtained by multiplying:

(i) The maximum dollar value for which coverage is sought by the applicant;

(ii) The coverage level elected by the producer; and

- (iii) A 5.25-percent premium fee.

(f) Premiums will be calculated separately for each crop, type, and intended use as reported on the acreage report and as specified in the basic provisions.

(g) Beginning farmers and ranchers, limited resource farmers and ranchers, socially disadvantaged farmers or ranchers, and veteran farmers and ranchers will receive, upon certification, a waiver of the service fee and a 50 percent premium reduction. The certification is required on or before the time the application for coverage is filed using the form specified by FSA.

(h) Transfers of NAP coverage are governed by the basic provisions.

(i) For the 2019 and 2020 crop years, if a crop's application closing date is before April 8, 2019, FSA will accept applications for coverage without regard to whether or not the application for coverage was filed by the crop's application closing date, provided that the application for coverage includes buy-up coverage according to §1437.5(d) and is filed by May 24, 2019. Except as specifically stated in this rule, the provisions of this paragraph do not apply to crops having an application closing date established on or after April 8, 2019, or to applications for coverage that do not include buy-up coverage as an option selected by the applicant. The coverage period for applications for coverage filed according to this paragraph will be as specified in §1437.6.

(j) An accurate acreage report must be filed for each crop included on an application for coverage by the earliest of:

(1) The acreage reporting date for the crop announced by FSA;

(2) 15 calendar days before the onset of harvest or grazing of the crop acreage being reported; or

(3) The established normal harvest date for the end of the coverage period.

(k) Applications for coverage for hemp are governed by this part.

(l) Applications for coverage that were filed with FSA for all crops other than hemp that were covered under the regulations in effect at the time of filing and which meet all the other requirements of this section will be recognized by FSA.

[79 FR 74575, Dec. 15, 2014, as amended at 85 FR 12219, Mar. 2, 2020]

### § 1437.8 Records.

(a) Producers must maintain accurate records of crop acreage, acreage yields, and production for the crop for which an application for coverage is filed in accordance with §1437.7. For those crops or commodities for which it is impractical, as determined by FSA, to maintain crop acreage, yields, or production data, producers must maintain records, in addition to the available records required by this section, as may be required in subparts C, D, and E of this part. Producers must retain records of the production and acreage yield for a minimum of 3 years for each crop for which an application for coverage is filed in accordance with §1437.7. Producers may be selected and be required to provide records acceptable to FSA to support any certification provided. For each harvested crop for which producers file an application for payment in accordance with §1437.11, producers must provide documentary evidence acceptable to FSA of production and the date harvest was completed, including production of crops planted after the planting period or late planting period. Such documentary evidence must be provided no later than the acreage reporting date for the crop in the subsequent crop year or, for crops with a coverage period of more than 12 months, no later than 60 days after the normal harvest date. Records of a previous crop year's production for inclusion in the actual production history database used to calculate an approved yield for the current crop year must be certified by the

producer no later than the acreage reporting date for the crop in the current crop year. Production data provided after the acreage reporting date in the current crop year for the crop may be included in the actual production history data base for the calculation of subsequent approved yield calculations if accompanied by acceptable records of production as determined by FSA. Certifications must be accompanied by a record of production; records of production acceptable to FSA may include:

(1) Commercial receipts, settlement sheets, warehouse ledger sheets, or load summaries if the eligible crop was sold or otherwise disposed of through commercial channels provided the records are reliable or verifiable as determined by FSA; and

(2) Such documentary evidence such as contemporaneous measurements, truck scale tickets, and contemporaneous diaries, as is necessary in order to verify the information provided if the eligible crop has been fed to livestock, or otherwise disposed of other than through commercial channels, provided the records are reliable or verifiable as determined by FSA.

(3) For quality losses specified in §1437.105, verifiable records substantiating a quality loss due to an eligible cause of loss in the coverage period. The record submitted must come from tests or analysis substantiating that the loss of quality occurred from an eligible cause of loss during the coverage period. FSA will disapprove quality adjustments under §1437.105 if FSA determines the evidence does not substantiate a loss of quality occurred due to an eligible cause of loss in the coverage period. For example, if FSA determines the tests or analysis of the specific crop's production were taken too late to determine if the measured loss of quality occurred from an eligible cause of loss in the coverage period (regardless whether a loss of quality was in fact measured or determined), no quality loss adjustment will be made or permitted. There is no presumption that a measured loss of quality occurred due to an eligible cause of loss in the coverage period. It is a NAP covered producer's burden to present evidence, satisfactory to FSA, substan-

tiating that the alleged quality loss occurred to the NAP covered crop in the coverage period.

(b) During any crop year that a notice of loss is filed according to this part:

(1) Producers of hand-harvested or rapidly deteriorating crops, as determined by the Deputy Administrator, must, in addition to providing acceptable production records according to this part, notify the administrative county office that harvest is complete. This notification must be made within 72 hours of when harvest is complete. If an appraisal of the crop acreage is requested by the producer or determined necessary by FSA, the producer must not destroy the crop residue until the crop acreage is released by an FCIC- or FSA-qualified loss adjustor. Producers may, at their expense, request that an appraisal by certified FCIC or FSA loss adjusters of acreage of hand-harvested or rapidly deteriorating crops be completed during non-loss crop years in order to maintain accurate actual production history.

(2) Producers must not allow the gathering (gleaning) of any produce left in the field following normal harvest of the crop acreage until the crop acreage is released by a qualified FSA or FCIC loss adjustor, as determined by FSA. Except, crop acreage may be released by an authorized FSA representative for acceptable gleaning operations, as determined by FSA, when producers and gleaners agree to provide acceptable records, as determined by FSA, of the quantity of the crop gleaned.

(c) Producers must provide acceptable evidence, as determined by FSA, of:

(1) An interest in the commodity produced or control of the crop acreage on which the commodity was grown at the time of disaster;

(2) The authority of the applicable individual to execute program documents;

(3) The producer's risk in the crop; and

(4) The producer's ability and intent to harvest, transport, and market the crop's expected production determined by using the approved yield or inventory of the crop or commodity.

(d) Reports of acreage planted or intended but prevented from being planted must be provided to FSA at the administrative county office for the acreage no later than the date specified by FSA for each crop and location. Reports of acreage filed beyond the date specified by FSA for the crop and location may, however, be processed and used for determining acres devoted to the eligible crop if all the provisions of 7 CFR part 718 are met. In the case of a crop-share arrangement, all producers will be bound by the acreage report filed by the landowner or operator unless the producer files a separate acreage report by the date specified by FSA for the crop and location. Reports of acreage planted or intended and prevented from being planted must include all of the following information:

(1) Number of acres of the eligible crop in the administrative county (for each planting in the event of multiple planting) in which the producer has a share;

(2) Zero acres planted when the producer's crop for which an application for coverage was filed, is not planted;

(3) The producer's share of the eligible crop at the time an application for coverage was filed;

(4) The FSA farm serial number;

(5) The identity of the crop, practices, intended uses, and for forage crops, the predominant species or type and variety of the vegetation;

(6) For organic crops with an average market price established under §1437.12(b), the identity of the crop planted on:

(i) Acreage using conventional farming practices;

(ii) Certified organic acreage;

(iii) Transitional acreage being converted to certified organic acreage;

(iv) Buffer zone acreage;

(7) The identity of all producers sharing in the crop;

(8) The date the crop was planted or planting was completed, including the age of the perennial crops; and

(9) The acreage intended but prevented from being planted.

(e) Producers receiving a guaranteed payment for planted acreage, as opposed to receiving a payment only upon delivery of the production must provide documentation of any written

or verbal contract or arrangement with the buyer to FSA. Net production, as determined by FSA, may be adjusted upward by the amount of production corresponding to the amount of the contract payment received.

(f) Producers must provide documentation of any salvage value received by or made available for the quantity of the crop or commodity that cannot be marketed or sold in any market, as determined by FSA and any value received by or made available for a secondary use of the crop or commodity.

(g) Producers requesting payment under this part must maintain records which substantiate gross revenue for the tax year preceding the crop year for which coverage is requested.

(h) Producers requesting a waiver of service fees as a limited resource producer must maintain records which substantiate annual gross income for the two tax years preceding the crop year for which coverage is requested.

(i) Producers requesting payment under this part for a crop grown on certified organic acreage for which a price and T-yield are established, as provided in §§1437.12(b) and 1437.102, must provide, no later than the acreage reporting date specified by FSA for the crop and location:

(1) A written certification in effect from a certifying agency indicating the name of the entity certified, effective date of certification, certificate number, types of commodities certified, and name and address of the certifying agent (a certificate issued to a tenant may be used to qualify a landlord or other similar arrangement); and

(2) Records from the certifying agent showing the specific location of certified organic, transitional, and buffer zone acreage, and acreage not subject to organic farming practices according to an organic system plan.

(j) Producers providing reports of acreage that include transitional acreage being converted to certified organic acreage in accordance with an organic system plan must provide, no later than the acreage reporting date specified by FSA for the crop and location:

(1) Written documentation from a certifying agent indicating an organic

system plan is in effect for the acreage; and

(2) Records from the certifying agent showing the specific location of certified organic, transitional, and buffer zone acreage, and acreage not subject to organic farming practices according to an organic system plan.

(k) Producers who are exempt from National Organic certification requirements, as specified in §205.101 of this title, and are requesting payment under this part for a crop grown on organic acreage for which a price and T-yield is established, as provided in §§1437.12(b) and 1437.102, must provide, no later than the acreage reporting date specified by FSA for the crop and location, a copy of their organic system plan, which must be developed with an organic certifying agent.

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13742, Mar. 17, 2006. Redesignated and amended at 79 FR 74574, 74575, 74583, Dec. 15, 2014; 85 FR 12220, Mar. 2, 2020; 85 FR 16232, Mar. 23, 2020]

#### § 1437.9 Unit definition.

(a) The unit identifies the interest of the producer in the administrative county on the basis of the unique relationship of the owner to one or more operators. The unit is the foundation for all determinations of acreage, production, value, AUD, approved yields, requisite losses, payments, and other program requirements.

(b) Separate and distinct units are:

(1) One-hundred percent interest as owner/operator;

(2) Less than one-hundred percent interest as owner or operator; or

(3) Less than one-hundred percent interest, as owner or operator in an inverse relationship.

[71 FR 13743, Mar. 17, 2006. Redesignated at 79 FR 74574, Dec. 15, 2014]

#### § 1437.10 Causes of loss.

(a) To qualify for assistance, production losses or prevented planting must occur as a result of an eligible cause of loss during the coverage period. Not all causes of loss are eligible causes of loss for all crops or all commodities.

(b) An eligible cause of loss is:

(1) Damaging weather, including, but not limited to:

(i) Drought;

(ii) Hail;

(iii) Excessive moisture;

(iv) Freeze;

(v) Tornado;

(vi) Hurricane;

(vii) Excessive wind;

(viii) Lightning;

(ix) Insufficient chill hours, but only for specific crops and locations for which FSA has determined in advance of a coverage period, based on FSA's review of sufficient scientific evidence that a requisite amount of chill hours is required for the crop to produce and a lack of chill hours is adverse to the crop's production without any regard to any management. In this context, "without regard to any management" means if a crop's inability to produce due to lack of chill hours can be mitigated by any managerial practices, application of chemical, or other management intervention, the lack of chill hours will not be included as an eligible cause of loss for the crop. In cases where FSA makes the decision to include insufficient chill hours as a cause of loss by itself for a crop and location, the crop and location and subsequent crop year coverage period for which the decision will apply will be specified in a list maintained by FSA. If the crop and location is not on that list, then insufficient chill hours can only be an eligible cause of loss if the insufficient chill hours were related to a damaging weather event or an adverse natural occurrence included in paragraphs (b)(1) or (2) of this section; or

(x) Any combination of paragraphs (b)(1)(i) through (viii) of this section;

(2) Adverse natural occurrence, including, but not limited to:

(i) Earthquake;

(ii) Flood; or

(iii) Volcanic eruption; or

(3) A condition related to an eligible cause of loss in paragraphs (b)(1) or (2) of this section (in this context, the related condition must result from the damaging weather or adverse natural occurrence; it is not eligible if it occurs on its own) including, but not limited to:

(i) Heat;

(ii) Insect infestation;

(iii) Disease;

(iv) Insufficient chill hours;

(v) Wildfire; or

(vi) Any combination thereof.

(c) The damaging weather, adverse natural occurrence, or related condition as specified in paragraph (b) of this section must occur in the coverage period before or during harvest and directly cause, accelerate, or exacerbate destruction or deterioration of the eligible crop as determined by the county committee.

(d) NAP coverage is provided against only eligible causes of loss. All specified causes of loss must be due to a naturally occurring event during the coverage period. All other causes of loss, including, but not limited to, the following, are not covered:

(1) Negligence, mismanagement, or wrongdoing by the NAP covered producer or anyone else;

(2) Failure to follow recognized good farming practices for the eligible crop;

(3) Water contained or released by any governmental, public, or private dam or reservoir project, if an easement exists on the acreage affected for the containment or release of the water;

(4) Failure or breakdown of the irrigation equipment facilities, unless the failure or breakdown is due to an eligible cause of loss. If damage is due to an eligible cause of loss, the producer must make all reasonable efforts to restore the equipment or facilities to proper working order within a reasonable amount of time unless FSA determines it is not practical to do so. Cost will not be considered when determining whether it is practical to restore the equipment or facilities;

(5) Failure to carry out a good irrigation practice for the covered crop, if applicable;

(6) Any cause of loss that results in damage that is not evident or would not have been evident during the NAP coverage period. Even though FSA may not inspect the damaged crop until after the end of the NAP coverage period, only damage due to eligible causes that would have been evident during the NAP coverage period will be covered;

(7) Except for lack of chill hours as specified in paragraph (b)(1)(viii) of this section, normal variance of temperatures from average normal temperatures including, but not limited to,

cyclic yield variations that occur for a crop that are not causes of loss included in paragraphs (b)(1) or (2) of this section;

(8) Any managerial decision to attempt to grow or produce a crop in an area that is not suited for successful commercial production of the eligible NAP crop as determined by FSA;

(9) Failure of the producer to reseed to the same crop during the same planting period in those areas and under such circumstances where it is customary to do so;

(10) Except for tree crops and perennials and as provided for in §1437.201, inadequate irrigation resources at time of planting;

(11) Except as specified in §1437.303, a loss of inventory or yield of aquaculture (including ornamental fish), floriculture, or ornamental nursery stemming from drought or any failure to provide water, soil, or growing media to such crop for any reason;

(12) Any failure to provide a controlled environment or exercise good nursery practices when such controlled environment or practices are a condition of eligibility under this part;

(13) Except as provided for mollusks in §1437.303, any alleged or actual loss of inventory or missing non-containerized inventory resulting from a managerial decision not to seed or raise the eligible NAP crop in containers, net pens, or wire baskets, on ropes, or using similar devices;

(14) For crops grown using organic farming practices, failure to comply with organic standards;

(15) Contamination by application or drift of prohibited substances onto land on which crops are grown using organic farming practices;

(16) Weeds; or

(17) Failure to harvest or market the crop due to lack of a sufficient plan or resources.

(e) The lack of an eligible cause of loss during a coverage period is not a compliance matter or issue. NAP will not provide assistance for crops that do not suffer from an eligible cause of loss during a coverage period. The relief provisions of these regulations and of 7 CFR part 718 cannot be used to pay producers of crops that did not suffer from

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an eligible cause of loss during the coverage period.

[79 FR 74576, Dec. 15, 2014, as amended at 85 FR 12220, Mar. 2, 2020]

EDITORIAL NOTE: At 85 FR 12220, Mar. 2, 2020, § 1437.10 was amended; however, the amendment in paragraph (b)(1)(ix) could not be incorporated due to inaccurate amendatory instruction.

### **§ 1437.11 Notice of loss, appraisal requirements, and application for payment.**

(a) In addition to the written notice of loss requirements specified for all crops in paragraphs (b) and (c) of this section, for hand-harvested or rapidly deteriorating crops and for other crops determined by FSA, at least one producer having a share in the unit must notify FSA of the damage or loss through the administrative county office for the unit within 72 hours of the date damage or loss on the unit first becomes apparent. Notification required under this paragraph may be via telephone to the administrative county office during business hours or via written notice on a form prescribed by FSA as specified in paragraph (c) of this section.

(b) Unless written notice for hand-harvested or rapidly deteriorating crops has already been provided within 72 hours of date of damage or loss as specified in paragraphs (a) and (c) of this section, in case of damage to any NAP covered crop, at least one producer having a share in the unit must file a notice of loss in the administrative county office:

(1) For prevented planting claims, within 15 days after the final planting date;

(2) For low yield claims and value loss claims, the earlier of:

(i) 15 days after the disaster occurrence or date of loss or damage to the crop first becomes apparent; or

(ii) 15 days after the normal harvest date.

(c) The notice of loss specified in paragraph (b) of this section must be for each crop and be in writing on a form prescribed by FSA and include:

(1) The alleged cause of crop damage;

(2) Date the disaster occurred and when the damage or loss first became apparent;

(3) A copy of the contract or agreement if a contract or agreement of a guaranteed payment for planted acreage exists;

(4) The type of loss that occurred, for example, prevented planting or low yield;

(5) Practices used, for example, irrigated or non-irrigated;

(6) For prevented planting:

(i) Total intended planted acreage of the crop on the unit;

(ii) Total acreage of the crop planted on the unit;

(iii) Whether seed, chemicals, fertilizer, etc. was purchased, delivered, or an arrangement for purchase or delivery was made for the intended to be planted crop;

(iv) What and when land preparation measures were completed, and

(v) What has been done or will be done with the acreage, for example, abandoned, replanted, etc.;

(7) For low yield:

(i) Total acreage devoted to the crop in the unit;

(ii) Total acreage of the crop affected;

(iii) What and when land preparation measures and practices were completed before and after the loss; and

(iv) What will be done with the affected crop acreage, for example, harvested, destroyed, replanted to a different crop, abandoned, etc.; and

(8) Any other information requested by an FSA authorized representative.

(d) Producers who file a notice of loss, using the appropriate FSA form, for crop acreage that will not be harvested as intended, such as abandoned, put to another use, replanted to the same or a different crop, or in the case of forage, acreage intended to be mechanically harvested that will be both mechanically harvested and grazed, must:

(1) Not put the crop to another use or prepare the acreage for replanting or otherwise change any conditions of the crop or acreage until written notification of release of the crop or acreage is received from FSA;

(2) Request, using the appropriate FSA form, an appraisal of the unharvested acreage for potential production and release of the crop or acreage;

(i) No less than 15 calendar days before replanting or in the case of forage intended to be mechanically harvested, grazing of the crop acreage.

(ii) Within 72 hours after the acreage is abandoned for hand-harvested or rapidly deteriorating crops, or within 15 calendar days after the acreage is abandoned for all other crops;

(iii) No later than the normal harvest date of the crop, as determined by FSA.

(3) Request the loss adjustor on the day the initial appraisal is completed, or request in any manner of written correspondence received in the administrative county office no later than 15 calendar days after the request for initial appraisal is submitted, that the appraisal be deferred until the end of the growing season, the producer be permitted to establish representative sample areas according to paragraph (d)(4) of this section, and that the acreage be released immediately when:

(i) Time is critical for replanting, or other urgent reasons; and

(ii) Producers and loss adjustors cannot resolve disagreement with the initial appraisal of the acreage to be released.

(4) Establish representative sample areas of the acreage according to the loss adjustor's instructions received on the day the initial appraisal is completed or, if the loss adjustor is not available, according to the FCIC Loss Adjustment Manual (LAM) and applicable FCIC crop handbooks. Report the size, number, and location of the areas in any manner of written correspondence received in the administrative county office, no later than 15 calendar days after requesting a deferred appraisal and before the acreage is put to another use or replanted. Representative sample areas must be of adequate construction and numbers to provide acceptable sampling results and maintained in sound condition, as determined by FSA, until released by FSA.

(5) If possible, be present for the appraisal involving un-harvested crop acreage and accept or contest the results of the loss adjustor's appraisal. Producers unable to be present for the appraisal may contest the results of the appraisal in the administrative county office.

(e) Crop acreage for which an application for coverage has been filed, that is intended for production of forage seed and for which a notice of loss is filed indicating the crop acreage will not be harvested as seed, will be appraised for potential production of seed when producers provide FSA acceptable evidence of a contract to produce seed for the current crop year or acceptable records of acreage and seed production for three or more of the last 5 consecutive crop years, as determined by FSA.

(f) Forage acreage for which a notice of loss is filed and:

(1) Catastrophic coverage was obtained for forage intended to be grazed will have NAP benefits calculated based on §1437.401(f);

(2) Catastrophic coverage was obtained for forage that was intended to be mechanical harvested but will be grazed and not mechanical harvested;

(i) Must have an appraisal and release for the unit to have NAP benefits calculated based on mechanical harvested forage; or

(ii) For which an appraisal or release was not obtained, will have a loss calculated as specified in §1437.401(f).

(3) Buy-up coverage was obtained for forage intended to be mechanically harvested but will be grazed and not mechanically harvested:

(i) Must have an appraisal and release in order for the unit to have NAP benefits calculated based on the loss of expected mechanically harvested forage; or

(ii) For which an appraisal or release was not obtained is ineligible for payment consideration and will have the unit guarantee assigned to the forage crop acreage.

(g) Producers must file an application for payment on a form specified by FSA to apply for NAP payments within 60 days of the last day of coverage for the crop year for any NAP covered crop in the unit.

(h) A notice of loss under paragraph (a) of this section filed beyond the time specified in this section or notification provided under paragraph (b) of this section may satisfy the requirements of these provisions, if, at the discretion of FSA, the notice is filed at such time that permits:



(1) An authorized FSA representative to verify information on the notice of loss by inspecting the affected acreage or the crop or commodity involved; and

(2) The county committee or an authorized FSA representative the opportunity to determine that eligible disaster conditions caused the damage or loss.

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13743, Mar. 17, 2006. Redesignated and amended at 79 FR 74574, 74577, 74583, Dec. 15, 2014; 85 FR 12220, Mar. 2, 2020]

**§ 1437.12 Average market price and payment factors.**

(a) An average market price will be used to calculate assistance under this part and will be:

(1) A dollar value per the applicable unit of measure of the eligible crop;

(2) Determined on a harvested basis without the inclusion of transportation, storage, processing, marketing, or other post-harvest expenses, as determined by FSA;

(3) Comparable with established FCIC prices; and

(4) Determined, as practicable, for each intended use of a crop type within a State, as determined by FSA, for a crop year.

(b) For each crop and location (State or county or other location as determined appropriate by FSA), FSA will establish an average market price using the following method:

(1) Obtaining market prices for each crop for the 5 consecutive crop years beginning with the most recent year for which price data is available; then

(2) Dropping the crop years in the 5 consecutive crop years with the highest and lowest prices; and then

(3) Averaging the prices for the remaining 3 crop years in the 5 consecutive crop years; and

(4) If 5 crop years of data is not available for determining the average market price, FSA will use the best data available, as determined by FSA, for as many crop years of average market price data as possible within the 5 consecutive crop years beginning with the most recent year for which price data is available and determine an average market price for the crop by computing a simple average of the prices for those years.

(c) FSA will disregard small differences in prices for a crop based on different types or varieties or various intended uses. If FSA determines there is a significant amount of production being marketed in a location or region at significantly different prices, FSA will determine whether or not to establish different average market prices for subsequent crop years.

(d) Separate average market prices may be established within a State based on conventional or organic practices or the intended market, as determined by FSA.

(e) For these purposes, where needed, an Animal-unit-days (AUD) value will be based on the national average price of corn and the daily requirement of 13.6 megacalories of net energy for maintenance of 1 animal unit.

(f) Payment factors will be used to calculate assistance for crops produced with significant and variable harvesting expenses that are not incurred because the crop acreage was prevented planted, or planted but not harvested, as determined by FSA. The imposition of payment factors is based on the acre status and disposition not whether a NAP participant actually incurs or does not incur expenses.

(g) The average market price used to determine the amount of NAP assistance for crop acreage reported with a specific intended use will be based on the smaller of the approved average market price established for either the specific intended use reported on the acreage report or actual market or actual use for which more than 50 percent of the acreage's harvested production is marketed. For example: A producer reports 50 acres of carrots intended for fresh market and the producer suffers a 70 percent loss of production on the acreage. Additionally, more than 50 percent of the carrots actually produced from the 50 acres are sold as processed carrots. Because the established average market price for processed carrots is less than fresh carrots and more than 50 percent of the harvested crop was marketed as processed carrots, the established average market price for processed carrots will be used to compute the producer's NAP assistance. If an average market price had not been established for processed

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carrots in this example before the coverage period, then the average market price for fresh carrots would be used.

(1) The provisions of this paragraph do not apply to secondary use, peanuts, seed intended uses, and small grain intended for use as forage.

(2) [Reserved]

(h) For crops with an established yield and market price for multiple intended uses, the average market price will be as provided in paragraph (g) of this section except that for producers who choose buy-up coverage under §1437.5(d), the average market price used to determine assistance may be based on historical production and acreage evidence provided by the participant. The evidence of actual final use of historical production must come from the 3 previous crop years immediately preceding the coverage year. Only years in which the producer had acreage and production harvested will be counted. In other words, if a producer only marketed a crop in 1 previous year, FSA will review the evidence of final use in that year and based on the evidence for that year, determine a percent of production attributable to each use. Based on that determined percentage, an appropriate average market price and use will be calculated and determined, respectively. If more than 1 and up to 3 years of final use evidence are available, FSA will count all years and production and determine the average. If a producer had crop acreage and evidence of final use for any year in the 3-year period, but the producer does not submit evidence for any other year in the 3-year period for which the producer also had acreage, the average market price will be as provided in paragraph (g) of this section.

(i) A final payment price will be determined by multiplying, as appropriate, the average market price determined in this section by the applicable payment factor (that is, harvested, unharvested, or prevented planting).

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13744, Mar. 17, 2006. Redesignated and amended at 79 FR 74574, 74578, 74583, Dec. 15, 2014; 85 FR 12220, Mar. 2, 2020]

### § 1437.13 Crop definition.

(a) For the purpose of providing benefits under this part, FSA will, at its discretion, define crops as specified in this section.

(b) FSA may separate or combine types and varieties as a crop when specific credible information as determined by FSA is provided showing the crop of a specific type or variety has a significantly different or similar value when compared to other types or varieties, as determined by FSA.

(c) FSA may recognize two or more different crops planted on the same acreage intended for harvest during the same crop year as two or more separate crops. The crop acreage may include a crop intended for harvest before planting of a succeeding crop or a succeeding crop interseeded with the preceding crop prior to intended harvest of the preceding crop. The acreage must be in an area where the practice is recognized as a good farming practice, as determined by FSA, and all crops are recognized by FSA as able to achieve the expected yield, as determined by FSA.

(d) FSA may consider crop acreage that is harvested more than once during the same crop year from the same plant as a single crop. The acreage must be in an area where the practice is recognized as a good farming practice, as determined by FSA.

(e) FSA may consider each planting period of multiple planted acreage as a separate crop. The acreage must be in an area where the practice is recognized as a good farming practice, as determined by FSA.

(f) FSA may define forage as separate crops according to the intended method of harvest, either mechanical harvest or grazed.

(g) Forage acreage intended to be grazed may be further defined as warm and cool season forage crops.

(h) Forage acreage intended to be mechanically harvested may be defined as a separate crop from grazed forage and may be separated based upon the commodity used as forage, to the extent such separation is allowed under paragraph (b) of this section.

(i) Crop acreage intended for the production of seed may be considered a separate crop from other intended uses,

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as determined by FSA, if all the following criteria apply:

(1) The specific crop acreage is seeded, or intended to be seeded, with an intent of producing commercial seed as its primary intended use;

(2) There is no possibility of other commercial uses of production from the same crop without regard to market conditions; and

(3) The growing period of the specific crop acreage is uniquely conducive to the production of commercial seed and not conducive to the production of any other intended use of the crop, (e.g. vernalization in a biennial crop such as carrots and onions) and that accommodation renders the possibility of production for any other intended use of the crop improbable.

[67 FR 12448, Mar. 19, 2002. Redesignated and amended at 79 FR 74574, 74583, Dec. 15, 2014]

### § 1437.14 Multiple benefits.

(a) If a producer is eligible to receive payments under this part and benefits under any other program administered by the Secretary for the same crop loss, the producer must choose whether to receive the other program benefits or payments under this part, but will not be eligible for both. The limitation on multiple benefits prohibits a producer from being compensated more than once for the same loss.

(b) The limitation on multiple benefits specified in paragraph (a) of this section will not apply to:

(1) Emergency Loans made under subtitle C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961-1970).

(2) Livestock Forage Disaster Program (LFP) payments as specified in part 1416 of this chapter.

(3) Tree Assistance Program (TAP) payments as specified in part 1416 of this chapter, or

(4) Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP) payments as specified in part 1416 of this chapter.

(c) The restriction on multiple benefits does not relieve the producer from the requirements of making a production and acreage report.

(d) If the other USDA program benefits are not available until after an application for benefits has been filed

under this part, the producer may, to avoid this restriction on such other benefits, refund the total amount of the payment to the administrative county office from which the payment was received.

[67 FR 12448, Mar. 19, 2002, as amended at 78 FR 21018, Apr. 9, 2013. Redesignated and amended at 79 FR 74574, 74579 Dec. 15, 2014]

### § 1437.15 Payment and income limitations.

(a) The provisions of part 1400 of this title apply to NAP.

(b) CCC will pay, for up to one year, simple interest on payments to producers which are delayed. Interest will be paid on the net amount ultimately found to be due, and will begin accruing on the 31st day after the date the producer signs, dates, and submits a properly completed application for payment on the designated form, or the 31st day after a disputed application is adjudicated. Interest will be paid unless the reason for failure to timely pay is due to the producer's failure to provide information or other material necessary for the computation of payment, or there was a genuine dispute concerning eligibility for payment.

[67 FR 12448, Mar. 19, 2002, as amended at 78 FR 21019, Apr. 9, 2013. Redesignated and amended at 79 FR 74574, 74579, Dec. 15, 2014]

### § 1437.16 Miscellaneous provisions.

(a) To be eligible for benefits under this part, producers must be in compliance with the highly erodible land and wetlands provisions of part 12 of this title.

(b) The provisions of § 718.11 of this title, providing for ineligibility for benefits for offenses involving controlled substances, apply.

(c) A person is ineligible to receive assistance under this part for the crop year plus two subsequent crop years if it is determined by the State or county committee or an official of FSA that such person has:

(1) Adopted any scheme or other device that tends to defeat the purpose of a program operated under this part;

(2) Made any fraudulent representation with respect to such program; or

(3) Misrepresented any fact affecting a program determination.

(d) All amounts paid by FSA to any such producer, applicable to the crop year in which a violation of this part occurs, must be refunded to FSA together with interest and other amounts as determined appropriate to the circumstances by FSA. FSA may assess liquidated damages of 10 percent of the projected or received NAP payment for the crop or commodity in violation. Liquidated damages are in addition to any refund of program benefits and are not considered a penalty.

(e) All persons with a financial interest in the operation receiving benefits under this part are jointly and severally liable for any refund, including related charges, which is determined to be due FSA for any reason under this part.

(f) In the event that any request for assistance or payments under this part was established as result of erroneous information or a miscalculation, the assistance or payment will be recalculated and any excess refunded with applicable interest.

(g) The liability of any person for any penalty under this part is in addition to any other liability under any civil or criminal fraud statute or any other provision of law.

(h) The appeal regulations at parts 11 and 780 of this title apply to decisions made according to this part.

(i) Any payment or portion thereof to any person will be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof.

(j) For the purposes of 28 U.S.C. 3201(e), the Secretary waives the ineligibility to receive benefits under this program but only for beneficiaries who as a condition of such waiver agree to apply the benefits to reduce the amount of the judgment lien.

(k) The provisions of parts 1400, 1403 and 1404 of this chapter apply to NAP.

(l) In the case of death, incompetence or disappearance of any person who is eligible to receive payments under this part, such payments will be disbursed in accordance with part 707 of this title.

(m) Any person or legal entity who has a debt from nonpayment of the premium for coverage levels specified in §1437.5(c) will be ineligible for assist-

ance under any subsequent crop year NAP coverage on any crop from the crop year of nonpayment of premium until the debt is paid in full.

(1) If a person or legal entity is ineligible for NAP assistance due to the debt because of the nonpayment of premium, FSA will permit the person or legal entity to file an application for coverage together with payment of any service fees; however, that application and payment of service fees will not make the person or legal entity eligible for any assistance until the premium debt is paid in full.

(2) Service fees paid with applications for coverage that are filed by persons or legal entities who are ineligible for NAP assistance as specified in paragraph (m) of this section will not be credited to any unpaid premium debt nor are they refundable.

(n) A person or legal entity ineligible for NAP assistance under paragraph (m) of this section may become eligible for future NAP assistance if they remit all unpaid debt related to the nonpayment of premium before the application for payment filing deadline (see §1437.11(g)).

(o) Any NAP payment that was not issued for a prior NAP crop year due to an outstanding debt as specified in paragraph (m) of this section will not be issued.

(p) Unpaid debt related to the failure to pay any premium satisfied by administrative offset will reinstate the eligibility of a person or legal entity from the date the offset satisfies all the unpaid premium debt with interest.

[67 FR 12448, Mar. 19, 2002. Redesignated and amended at 79 FR 74574, 74579, 74583, Dec. 15, 2014; 85 FR 12220, Mar. 2, 2020]

**§1437.17 Matters of general applicability.**

(a) The regulations in this part and FSA's interpretation of the regulations in this part, the basic provisions, and internal agency directives issued to FSA State and county offices are matters of general applicability and are not individually appealable in administrative appeals according to §§11.3 and 780.5 of this title. Additionally, the regulations in this part and any FSA decisions that are not based on specific

facts derived from an individual participant's application, contract, or file are not appealable under parts 11 or 780 of this title. Examples of such decisions include how NAP is generally administered, signup deadlines, payment rates, or any other generally applicable matter or determination that is made by FSA for use in all similarly situated applications. The only extent to which the matters referenced in this section are reviewable administratively in an appeal forum is whether FSA's determination of facts incidental to the case and decision to apply the generally applicable matter is in conformance with the regulations in this part.

(b) The relief provisions of 7 CFR part 718 are applicable only to participant ineligibility and noncompliance decisions. The relief provisions cannot be used to extend a benefit or assistance not otherwise available under law or not otherwise available to others who have satisfied or complied with all the eligibility and compliance requirements of this part. Equitable relief provisions of part 718 of this title cannot be used to obtain a review of either these regulations, the requirements of this part, the agency's interpretations of this part, or compliance provisions of this part.

[79 FR 74579, Dec. 15, 2014]

### Subpart B—Determining Yield Coverage Using Actual Production History

#### § 1437.101 Actual production history.

Actual production history (APH) is the unit's record of crop yield by crop year for the APH base period. The APH base period consists of ten crop years of actual yield, T-yield, assigned yield, and zero credited yield, immediately preceding the crop year for which an approved yield is calculated in accordance with this part. APH will be used, except as otherwise indicated in this part, as the basis for providing non-insured crop disaster assistance.

[71 FR 13744, Mar. 17, 2006]

#### § 1437.102 Yield determinations.

(a) An actual yield is the total amount of harvested and appraised production from unit acreage for the crop

year on a per-acre, or other basis, as applicable.

(b) A T-yield (county expected yield):

(1) Is the Olympic average (disregarding the high and low yields) of historical yields of the crop in the county for the five consecutive crop years immediately preceding the previous crop year. For example, for the 2015 crop year, the five consecutive crop years immediately preceding the previous crop year would be 2009 through 2013.

(2) Will be the same as the FCIC transitional yield if crop insurance is available for the crop, (but not necessarily for the cause of loss if excluded by policy provisions), in the administrative county.

(3) Will be calculated so as to be comparable to the FCIC transitional yield most reasonable to the area if crop insurance was available for the crop (but not necessarily for the cause of loss) in contiguous counties, but not in the immediate county.

(4) Will be based on the most representative available historical information, as determined by FSA, from such sources as, but not limited to, actual acreage and production data of participating producers in the county; or in similar areas; National Agricultural Statistics Service data; National Institute of Food and Agriculture records, Federal Crop Insurance data, and credible non-government studies. Such data is based on the acreage intended for harvest.

(5) May be adjusted on an administrative county-wide basis for:

(i) Yield variations due to different farming practices in the administrative county such as irrigated and non-irrigated; and

(ii) Cultural practices when such practices in the administrative county are different from those used on acreage to establish the yield.

(6) Will be adjusted on a State-wide basis, for crops grown on certified organic and transitional acreage for which FSA has established a separate organic price as specified in § 1437.12(b), based on an average of FCIC organic yield reductions, as determined by FSA, for the same crop in the same State.

(7) May be adjusted on a county-wide or regional basis for crops grown on certified organic and transitional acreage for which FSA has established a separate organic price as specified in §1437.12(b), based on the most representative available historical information, as determined by FSA.

(8) Will, for all land for those producers who have land physically located in multiple counties and administered in one county office, be based on the administrative county's expected yield for the crop.

(9) May be reduced, on a specific APH basis, when, as determined by FSA, it does not accurately reflect the productive capability of specific crop acreage.

(10) Will be used in the actual production history base period when less than four consecutive crop years of actual, assigned, or zero-credited yields, as applicable, are available.

(c) An assigned yield is:

(1) Equal to 75 percent of the approved yield calculated for the most recent crop year for which the producer did not certify a report of production in a crop year that is not a bypass year.

(2) Used, after the first crop year an approved yield for the crop is calculated, in the actual production history base period when the producer reports acreage for the crop but fails to certify a report of production in a crop year that is not a bypass year. Producers may have only one assigned yield in the actual production history base period.

(3) May be replaced with an actual yield when the producers provide a certification of production and acceptable production records for the applicable crop year in accordance with §1437.8.

(4) May not be used if the acreage of a crop in the administrative county in which the unit is located for the crop year increases by more than 100 percent over any year in the preceding seven crop years, or significantly from the previous crop years, as determined by FSA, unless producers provide:

(i) Detailed documentation of production costs, acres planted, and yield for the crop year for which the producer is requesting assistance, or

(ii) If FSA determines the documentation is inadequate, proof that the

eligible crop, had it been harvested, could have been marketed at a reasonable price.

(5) May be used, notwithstanding paragraph (c)(4) of this section, if:

(i) The planted acreage for the crop has been inspected by a third party acceptable to FSA, or

(ii) The FSA county executive director, with the concurrence of the FSA state executive director, makes a recommendation for an exemption from the requirements and FSA approves such recommendation.

(d) A zero-credited yield:

(1) Will be used in the applicable crop year of the actual production history base period for each crop year following the crop year containing an assigned yield, for which producers do not certify a report of acreage or production in a crop year that is not a bypass year, as determined by CCC.

(2) May be replaced with an actual yield when the producer provides a certification of production and acceptable production records for the applicable crop year in accordance with §1437.8.

(e) An approved yield:

(1) Is used in the calculation of the requisite loss and payment.

(2) Is a simple average of a minimum of four base period crop year yields, *i.e.*, actual yield, T-yield, assigned yield, or zero-credited yield. The base period is 10 crop years, except 5 crop years for apples and peaches, immediately preceding the crop year for which an approved yield is calculated, not including any crop year the crop was out of rotation, not planted, or prevented from being planted.

(3) Will be calculated according to the following criteria when the producer does not have at least four consecutive crop years of actual, assigned, or zero credited yields beginning with the most recent crop year.

(i) If there are no certified acceptable production records of actual production for the most recent crop year, or zero credited or assigned yields in the producer's APH base period, and no formula provided for the producer under paragraphs (e)(3)(ii) through (iv) of this section, then the approved yield for the current crop year will be calculated on the simple average of 65 percent of the

applicable T-yield for each of the minimum four APH crop years.

(ii) If certified acceptable production records of actual production are available for only the most recent crop year and there are no zero credited or assigned yields in the producer's APH base period, the approved yield for the current crop year will be calculated on the simple average of the one actual yield plus 80 percent of the applicable T-yield for the remaining three of the minimum four APH crop years.

(iii) If certified acceptable production records of actual production are available for only the two most recent crop years and there are no zero credited or assigned yields in the producer's APH base period, the approved yield for the current crop year will be calculated on the simple average of the two actual yields plus 90 percent of the applicable T-yield for the remaining two of the minimum four APH crop years.

(iv) If certified acceptable production records of actual production are available for only the three most recent crop years and there are no zero credited or assigned yields in the producer's APH base period, the approved yield for the current crop year will be calculated on the simple average of the three actual yields plus 100 percent of the applicable T-yield for the remaining crop year of the minimum four APH crop years.

(f) If, for one or more actual production history crop years used to establish the approved yield, the actual or appraised yield is less than 65 percent of the current crop year T-yield due to losses incurred in a disaster year, as determined by FSA, producers may request FSA replace the applicable yield with a yield equal to 65 percent of the current crop year T-yield.

(g) If approved yields were calculated for any of the 1995 through 2014 crop years, and subsequently in that period production was not certified, producers may request FSA replace the missing yields for such years with yields equal to the higher of 65 percent of the current crop year T-yield or the missing crop years actual yield.

(h) If producers add land in the farming operation and do not have available production records for the added land FSA will calculate an approved yield

for the new unit by utilizing the actual production history yields for the existing unit. In the event the crop suffers a loss greater than the unit guarantee for the crop year and unit acreage has increased by more than 75 percent of the historical average acreage, FSA may adjust the approved yield, as determined by FSA.

(i) If a producer is a new producer, the approved yield may be based on unadjusted T-Yields or a combination of actual yields and unadjusted T-Yields. A new producer is a person who has not been actively engaged in farming for a share of the production of the eligible crop in the administrative county for more than two APH crop years. Formation or dissolution of an entity which includes individuals with more than two APH crop years of production history during the base period does not qualify the new entity as a new producer for APH determination purposes.

(j) A producer who has not shared in the risk of the production of the crop for more than two crop years during the base period, as determined by FSA, will have an approved yield calculated based on a combination of 100 percent of the applicable T-yield and any actual yield for the minimum crop years of the producer's APH base period. Producers who have produced the crop for one or more crop years must provide FSA, at the administrative county office serving the area in which the crop is located, a certification of production and production records for the applicable crop years as specified in § 1437.8.

(k) Further adjustments may be made as necessary to accomplish the purposes of this program.

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13744, Mar. 17, 2006; 76 FR 4805, Jan. 27, 2011; 79 FR 74579, 74583, Dec. 15, 2014]

#### § 1437.103 Late-planted acreage.

(a) Producers planting crop acreage after the final planting date and during the late planting period, as determined by FSA, may be eligible for reduced coverage as specified in paragraphs (b) and (c) of this section.

(b) Crops with multiple planting periods and value loss crops are not eligible for reduced coverage for late planting. Exceptions to this are the last planting

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period of multiple planted crops and multiple-planting periods having a defined gap of 60 days or more between harvest date of the previous planting period and beginning of the immediately following planting period.

(c) For crops with a growing period of:

(1) 60 days or less and planted:

(i) From 1 to 5 calendar days after the final planting date, production will be assigned equal to 5 percent of unit expected production for each day the crop is actually planted after the final planting date;

(ii) From 6 days after the final planting date, production will be assigned equal to the unit guarantee for the late planted crop acreage.

(2) 61 to 120 calendar days and planted:

(i) From 1 to 5 calendar days after the final planting date, production will be assigned equal to 5 percent of expected unit production of the applicable late-planted crop acreage and for days 6 through 20 an additional 1 percent for each day the crop is planted after the final planting date;

(ii) From 21 days after the final planting date, production will be assigned equal to the unit guarantee for the late planted crop acreage.

(3) 121 calendar days or more and planted:

(i) From 1 to 5 calendar days after the final planting date, production will be assigned equal to 5 percent of expected production of the applicable late-planted crop acreage and for days 6 through 25 an additional 1 percent for each day the crop is planted after the final planting date.

(ii) From 26 or more calendar days after the final planting date, production will be assigned equal to unit guarantee of the producer's expected production of the applicable late-planted crop acreage.

[79 FR 74580, Dec. 15, 2014]

### § 1437.104 Assigned production.

(a) When determining losses under this section, assigned production will be used to offset the loss of production when, as determined by FSA, any of the following has occurred:

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(1) The loss is a result of an ineligible cause of loss and the loss has not been otherwise accounted for.

(2) The unit acreage was destroyed without consent notwithstanding § 1437.11(e).

(3) The producer has a contract to receive a guaranteed payment for all or a portion of the production, as opposed to or regardless of delivery of such production.

(4) The crop is planted after the STC-established final planting date according to § 1437.103.

(5) Irrigation equipment is not capable of supplying adequate water to sustain the expected production of a normal irrigated crop.

(6) For normal irrigated annual, biennial, and perennial crops, the irrigation practice is not used.

(7) For normal irrigated annual and biennial crops, the supply of available water at the beginning of the crop year is not adequate.

(8) For normal irrigated perennial crops, the supply of available water at the beginning of the crop year is not adequate as a result of an ineligible cause of loss.

[71 FR 13745, Mar. 17, 2006, as amended at 79 FR 74580, 74583, Dec. 15, 2014]

### § 1437.105 Determining payments for low yield.

(a) Except to the extent that the loss calculation provisions of other subparts apply, and subject to limitations set out elsewhere in this part and in this title and to the availability of funds, payments under this part will be made on eligible crops with eligible losses by:

(1) Multiplying the total acres devoted to the eligible crop by the producers share, and subject to provisions for specific crops provided elsewhere in this part;

(2) Multiplying the product of paragraph (a)(1) of this section by 50, 55, 60, or 65 percent, as selected by the producer as specified in § 1437.5; of the approved yield per acre for the commodity for the producer.

(3) Multiplying the net production of the total eligible acreage by the producer's share;

(4) Subtracting the product of paragraph (a)(3) of this section from the



product of paragraph (a)(2) of this section;

(5) Multiplying the amount calculated as specified in paragraph (a)(4) of this section by 55 or 100 percent (selected by the producer as specified in §1437.5) of the final payment price calculated as specified in §1437.12; and

(6) Adding the producer's share of any salvage value and secondary use and subtracting the result from the result of paragraph (a)(5) of this section.

(b) Further adjustments may be made as needed to accomplish the purposes and goals of the program.

(c) The crops and locations eligible for quality adjustments will be determined by the Deputy Administrator in advance of the coverage period, only if supporting documentation of industry standards for quality adjustments are available. For specific crops and locations determined by the Deputy Administrator for which buy-up coverage under §1437.5(d) is elected and for which adjustments to net production based on quality losses will be authorized for a coverage period in accordance with this paragraph, producers may opt for an adjustment of net production of a covered crop as specified in paragraph (a)(3) of this section based on a specific measure of quality against a set of standards that are acceptable to FSA. The standards and permissible adjustments to net production based on alleged quality losses stemming from eligible causes of loss in a coverage period will be based on FSA's review of sufficient documentation and are subject to FSA acceptance and State committee recommendation to the Deputy Administrator. The crops and locations where quality adjustments will be permitted will be as specified on a list maintained by FSA.

(d) Production will not be adjusted under this section unless all other provisions of this section are met and the crop and location are included on a list of approved crops and locations before the beginning of the coverage period for the crop.

(e) A producer of a NAP covered crop in a location and coverage period approved by FSA as specified in paragraphs (c) and (d) of this section who opts for the quality loss adjustment option must submit verifiable records ob-

tained by testing or analysis of the specific crop's production and the alleged loss of quality stemming from an eligible cause of loss in the coverage period. Records must meet requirements of §1437.8(a)(3).

(f) If a quality adjustment option is sought by a producer and approved for a crop year, FSA will enter the adjusted value of net production into the producer's actual production history yield database for the loss year. The lower actual yield that results from the quality adjustment will be used for future approved yield calculations.

[67 FR 12448, Mar. 19, 2002. Redesignated and amended at 71 FR 13745, 13746, Mar. 17, 2006; 78 FR 21019, Apr. 9, 2013; 79 FR 74580, Dec. 15, 2014]

#### § 1437.106 Honey.

(a) Honey production eligible for benefits under this part includes table and non-table honey produced commercially.

(b) All of a producer's honey will be considered a single crop, regardless of type or variety of floral source or intended use.

(c) The crop year for honey production is the calendar year, January 1 through December 31.

(d) In addition to filing a report of acreage in accordance with §1437.8, honey producers must provide a record of colonies to FSA. The report of colonies must be filed before the crop year for which producers seek to maintain coverage. The report of colonies must include:

(1) The address of the producer's headquarters and FSA farm serial number, if available;

(2) Names and shares of each person sharing in the honey produced from the unit;

(3) The number of all colonies of bees belonging to the unit;

(4) The names of counties in which colonies of bees are located as of the date of the report; and

(5) A certification of the number of colonies reported including all colonies from which production is expected.

(e) The honey unit consists of all the producer's bee colonies, regardless of location.

(f) Producers must designate a FSA office as the control office for the

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honey operation. Producers must complete the following actions only in the control office:

- (1) File an application for coverage;
- (2) File a report of colonies;
- (3) Report total unit production; and
- (4) Request to change a unit's control office.

(g) Actions that may be taken in any administrative county office includes:

- (1) Designating or selecting another control office; or

(2) Filing a notice of loss in accordance with §1437.11.

(h) Producers must notify the control office designated in accordance with paragraph (f) of this section within 30 calendar days of the date of:

- (1) Any changes in the total number of colonies; and

(2) The movement of any colonies into any additional counties.

(i) Payments will be based on the amount of losses for this community based on the applicable guarantee at a rate determined in accord with this part and the authorizing legislation.

(j) Premiums for coverage levels specified in §1437.5(c) will be calculated based on the highest number of colonies reported during the program year.

[67 FR 12448, Mar. 19, 2002. Redesignated at 71 FR 13745, Mar. 17, 2006, as amended at 79 FR 74581, Dec. 15, 2014]

### § 1437.107 Maple sap.

(a) NAP assistance for maple sap is limited to maple sap produced on private property for sale as sap or syrup. Eligible maple sap must be produced from trees that:

- (1) Are located on land the producer controls by ownership or lease;

(2) Are managed for production of maple sap;

(3) Are at least 30 years old and 12 inches in diameter; and

(4) Have a maximum of 4 taps per tree according to the tree's diameter.

(b) The crop year for maple sap production is the calendar year, January 1 through December 31.

(c) If producers file an application for coverage in accordance with §1437.7, tree acreage containing trees from which maple sap is produced or is to be produced must be reported to FSA no later than the beginning of the crop year.

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(d) In addition to the applicable records required under §1437.8, producers must report the:

- (1) Total number of eligible trees on the unit;

(2) Average size and age of producing trees; and

(3) Total number of taps placed or anticipated for the tapping season.

(e) A maximum county-expected-yield for maple sap is 10 gallons of sap per tap per crop year unless acceptable documentary evidence, as determined by FSA, is available to FSA to support a higher county-expected-yield.

(f) The average market price for maple sap must be established for the value of the sap before processing into syrup. If price data is available only for maple syrup, this data must be converted to a maple sap basis. The wholesale price for a gallon of maple syrup is multiplied by 0.00936 to arrive at the average market price of a gallon of maple sap.

(g) The actual production history for maple sap will be recorded on the basis of gallons of sap per tap.

(h) The unit's expected production is determined by:

- (1) Multiplying the number of taps placed in eligible trees; by

(2) The approved per tap yield as determined in accordance with §1437.102.

(i) Payments will be based on the amount of losses for this community based on the applicable guarantee at a rate determined in accord with this part and the authorizing legislation.

(j) Premiums for coverage levels specified in §1437.5(c) will be calculated based on the number of taps reported by the producer.

[67 FR 12448, Mar. 19, 2002. Redesignated at 71 FR 13745, Mar. 17, 2006; 79 FR 74581, Dec. 15, 2014]

### § 1437.108 Hemp.

(a) Hemp is eligible for NAP coverage only if the hemp is:

- (1) Grown under an official certification or license issued by the applicable governing authority that permits the production of the hemp;

(2) Grown under a hemp processor contract executed by the applicable acreage reporting date; and

(3) Planted for harvest as hemp in accordance with the requirements of the

hemp processor contract and the production management practices of the hemp processor.

(b) In addition to all other requirements under this part, a producer who obtains NAP coverage for hemp must submit by the acreage reporting date:

(1) The certification or license number;

(2) A copy of the certification form or official license issued by the applicable governing authority authorizing the producer to produce hemp; and

(3) A copy of each fully executed hemp processor contract.

(c) A producer must submit THC test results taken at harvest of the hemp crop. If the producer does not submit the THC test results, that production will not be included in the producer's actual yield for the purpose of determining a producer's APH under § 1437.101.

(d) Hemp is not eligible for NAP coverage if it is planted on acres on which Cannabis, canola, dry beans, dry peas, mustard, rapeseed, soybeans in states as determined by the Deputy Administrator, or sunflowers were grown the preceding crop year.

(e) Hemp that has a THC level above 0.3 percent:

(1) Is not eligible for NAP benefits; and

(2) Is not included in the producer's actual yield for the purpose of determining a producer's APH under § 1437.101.

(f) Hemp will be ineligible for NAP payment for that NAP crop year if the producer's certification or license is terminated or suspended during that NAP crop year.

[85 FR 12220, Mar. 2, 2020]

#### §§ 1437.109–1437.200 [Reserved]

### Subpart C—Determining Coverage for Prevented Planted Acreage

#### § 1437.201 Prevented planting acreage.

(a) In addition to the provisions of this section, the provisions of § 718.103 of this title apply.

(b) When determining losses under this section:

(1) Producers must be prevented from planting more than 35 percent of the

total eligible acreage intended for planting to the eligible crop and in the case of multiple planting, more than 35 percent of the total eligible acres intended to be planted within the applicable planting period.

(2) Prevented planted acreage will be considered separately from low-yield losses of planted acreage of the same crop.

(c) Acreage and units ineligible for prevented planting coverage includes, but is not limited to:

(1) Value-loss crops, including, but not limited to, Christmas trees, aquaculture, and ornamental nursery;

(2) Tree crops and other perennials, unless:

(i) The producer can prove resources unique to the planting of tree crops and other perennials were available to plant, grow, and harvest the crop, as determined by FSA; and

(ii) FSA has approved the planting period for the crop;

(3) Uninsured crop acreage that is unclassified for insurance purposes;

(4) Any acreage on which a crop was harvested, hayed, or grazed during the crop year;

(5) Acreage of which the producer or any other person received a prevented planted payment for any crop for the same acreage, excluding share arrangements; and

(6) Acreage planted during the late-planting period.

[71 FR 13746, Mar. 17, 2006, as amended at 79 FR 74581, 74583, Dec. 15, 2014]

#### § 1437.202 Determining payments for prevented planting.

(a) Subject to limitations, availability of funds, and specific provisions dealing with specific crops, a payment for prevented planting will be determined by:

(1) Adding the total planted and prevented-planted acres;

(2) Multiplying the sum of paragraph (a)(1) of this section by .35;

(3) Subtracting the product of paragraph (a)(2) of this section from the total prevented planted acres;

(4) Multiplying the producer's share by the approved yield by the positive result of paragraph (a)(3) of this section;

(5) Multiplying the producer's share by the assigned production;

(6) Subtracting the product of paragraph (a)(5) of this section from the product of paragraph (a)(4) of this section; and

(7) Multiplying the result of paragraph (a)(6) of this section by 55 or 100 percent, as selected by the producer as specified in §1437.5, of the final payment price calculated under §1437.12.

(b) Yields for purposes of paragraph (a) of this section will be calculated in the same manner as for low-yield claims.

[67 FR 12448, Mar. 19, 2002, as amended at 71 FR 13746, Mar. 17, 2006; 79 FR 74581, Dec. 15, 2014]

§§ 1437.203–1437.300 [Reserved]

**Subpart D—Determining Coverage Using Value**

**§ 1437.301 Value loss.**

(a) Special provisions are required to assess losses and calculate assistance for a few crops and commodities that do not lend themselves to yield loss situations. Assistance for these commodities is calculated based on the loss of value at the time of disaster. FSA determines which crops are value-loss crops, but unless otherwise announced, value-loss crops are those identified in §§1437.303 through 1437.309. Lost production of value loss crops is eligible for payment only as specified in this subpart.

(b) The crop year for all value loss crops, except ornamental nursery as specified in §1437.305, is October 1 through September 30.

(c) Producers must file an application for coverage in accordance with §1437.7, and must:

(1) Provide a report of the crop, commodity, and facility to FSA for the acreage or facility, in a form prescribed by FSA, no later than the beginning of the crop year.

(2) Maintain a verifiable inventory of the eligible crop throughout the crop year; and

(3) Provide an accurate accounting of the inventory, as required by FSA.

[67 FR 12448, Mar. 19, 2002, as amended at 78 FR 21019, Apr. 9, 2013; 79 FR 74581, 74583, Dec. 15, 2014; 85 FR 12221, Mar. 2, 2020]

**§ 1437.302 Determining payments.**

(a) Subject to all restrictions and the availability of funds, value loss payments for qualifying losses will be determined by:

(1) Multiplying the field market value of the crop before the disaster, or for buy-up coverage specified in §1437.5(c), the lesser of the field market value of the crop before the disaster or the maximum dollar value for coverage sought, by 50, 55, 60, or 65 percent, as selected by the producer as specified in §1437.5;

(2) Subtracting the sum of the field market value after the disaster and value of ineligible causes of loss from the result from paragraph (a)(1) of this section;

(3) Multiplying the result from paragraph (a)(2) of this section by the producer's share;

(4) Multiplying the result from paragraph (a)(3) of this section by 55 or 100 percent, as selected by the producer as specified in §1437.5, plus whatever appropriate factor reflects savings from non-harvesting of the damaged crop or other factors as appropriate; and

(5) Subtracting the producer's share of any salvage value, if applicable.

(b) [Reserved]

[79 FR 74581, Dec. 15, 2014]

**§ 1437.303 Aquaculture, including ornamental fish.**

(a) Aquaculture is a value loss crop and will have NAP assistance calculated only in accord with restrictions set in this section. Eligible aquacultural species only include:

(1) Any species of aquatic organisms grown as food for human consumption as determined by CCC.

(2) Fish raised as feed for other fish that are consumed by humans; and

(3) Ornamental fish propagated and reared in an aquatic medium.

(b) The aquacultural facility must be:

(1) A commercial enterprise on private property;

(2) Owned or leased by the producer, with readily identifiable boundaries; and

(3) Managed and maintained using good aquacultural growing practices.

(c) Producers must:

(1) Ensure adequate and proper flood prevention, growing medium, fertilization or feeding, irrigation and water quality, predator control, and disease control; and

(2) Have control of the waterbed.

(d) Eligible aquacultural species must be:

(1) Placed in the facility and not be indigenous to the facility; and

(2) Kept in a controlled environment; and

(3) Planted or seeded in containers, wire baskets, net pens, on ropes, or similar device designed for the protection and containment of the seeded aquacultural species.

(e) For mollusks that are not planted or seeded in containers, net pens, on ropes, wire baskets, or similar device designed for the containment and protection of the mollusks, the only eligible cause of loss of mollusks or missing mollusk inventory will be a direct result of a National Oceanic and Atmospheric Administration-determined tropical storm, typhoon, or hurricane.

(f) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of CCC, to provide evidence that the aquacultural species are produced in a facility in accordance with paragraphs (b), (c) and (d) of this section.

(g) If all other eligibility provisions of this part are determined by FSA to be satisfied, assistance will be provided to producers for eligible NAP aquaculture crop losses that are the direct result of drought.

[67 FR 12448, Mar. 19, 2002, as amended at 78 FR 21019, Apr. 9, 2013; 79 FR 74581, Dec. 15, 2014]

#### § 1437.304 Floriculture.

(a) Floriculture, except for seed crops as specified in paragraph (d) of this section, is a value loss crop and is compensable only in accord with restrictions set in this section. Eligible floriculture is limited to commercial production of:

(1) Field-grown flowers, including flowers grown in containers or other growing medium maintained in a field setting according to industry standards, as determined by FSA; and

(2) Tubers and bulbs, for use as propagation stock of eligible floriculture plants; and

(3) Seed for propagation of eligible floriculture plants.

(b) Floriculture does not include flowering plants indigenous to the location of the floriculture facility or acreage.

(c) Eligible floriculture must be grown in a region or controlled environment conducive to the successful production of flowers, tubers, and bulbs, as determined by FSA.

(d) Claims on losses on the production of flower seed for propagation of eligible floriculture plants will not be treated under “value loss” rules, but under the rules for normal production low yield crops under subpart B of this part.

(e) The facility or acreage for eligible floriculture must be managed and maintained using good floriculture growing practices. At a minimum, producers are responsible for providing a controlled environment and must ensure adequate and proper fertilization, irrigation, weed control, insect and disease control, and rodent and wildlife control.

(f) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of FSA, to provide evidence the floriculture is produced in accordance with paragraph (e) of this section.

(g) Flowers having any dollar value are counted as having full value for loss calculations. Damaged plants that are determined able to rejuvenate or determined to be merely stunted are counted as worth full value.

[67 FR 12448, Mar. 19, 2002, as amended at 79 FR 74581, 74583, Dec. 15, 2014]

#### § 1437.305 Ornamental nursery.

(a) Eligible ornamental nursery stock is a value loss crop and is compensable only in accord with restrictions set out in this section. Eligible ornamental nursery stock is limited to field-grown and containerized decorative plants grown in a controlled environment for commercial sale.

(b) The property upon which the nursery stock is located must be owned or leased by the producer.

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(c) The eligible nursery stock must be placed in the ornamental nursery facility and not be indigenous to the facility.

(d) The facility must be managed and cared for using good nursery growing practices for the geographical region. At a minimum producers must provide a controlled environment and ensure adequate and proper flood prevention, growing medium, fertilization, irrigation, insect and disease control, weed control, rodent and wildlife control, and over-winterization storage facilities.

(e) An ornamental plant having any value as an ornamental plant, or a damaged ornamental plant that may rejuvenate and re-establish value as an ornamental plant, will be considered as worth full value based on the age or size of the plant at the time of disaster.

(f) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of FSA, to provide evidence the ornamental nursery is maintained in accordance with this section.

(g) For the 2010 and subsequent crops, the crop year for ornamental nursery is June 1 through May 31.

[67 FR 12448, Mar. 19, 2002, as amended at 78 FR 21019, Apr. 9, 2013; 79 FR 74582, 74583, Dec. 15, 2014]

### § 1437.306 Christmas tree crops.

(a) A Christmas tree is a value loss crop and may generate a claim for benefits under this part only if the tree was grown exclusively for commercial use as a Christmas tree, and only if other requirements of this section are met.

(b) The unit of measure for all Christmas tree crops is a plant.

(c) A Christmas tree having any value as a Christmas tree, or a damaged Christmas tree that may rejuvenate and re-establish value as a Christmas tree, will be considered as worth full value based on the age of the tree at the time of disaster.

[67 FR 12448, Mar. 19, 2002, as amended at 79 FR 74582, Dec. 15, 2014]

### § 1437.307 Mushrooms.

(a) Eligible mushrooms is a value loss crop and is only compensable in accord

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with the restrictions of this section. To be eligible, the mushrooms must be grown as a commercial crop in a facility with a controlled environment utilizing good mushroom growing practices. The facility must be located on private property either owned or leased by the producer.

(b) The controlled environment for eligible mushrooms must include primary and backup systems for:

(1) Temperature and humidity controls;

(2) Proper and adequate lighting; and

(3) Positive air pressurization and filtration.

(c) The growing medium must consist of a substrate (a habitat and nutrient base) sterilized by heat treatment.

(d) Good mushroom growing practices must be used, and they consist of proper and adequate insect and disease control and the maintenance of a sterile environment. Maintaining a sterile environment includes at a minimum:

(1) Adequate hygiene;

(2) Overall cleanliness;

(3) Isolation or minimum contact procedures;

(4) Use of footpaths; and

(5) Availability and frequent utilization of wash-down facilities.

(e) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of FSA, to provide evidence the mushrooms are maintained in accordance with this section.

[67 FR 12448, Mar. 19, 2002, as amended at 79 FR 74583, Dec. 15, 2014]

### § 1437.308 Ginseng.

(a) Ginseng is a value loss crop and is compensable only as allowed in this section. Ginseng is eligible only if:

(1) The ginseng includes stratified seeds for use as propagation stock in a commercial ginseng operation or rootlet for commercial sale that are grown in a controlled, cultivatable environment on private property either owned or leased by the producer; and

(2) The ginseng is grown using good ginseng growing practices with all plant needs supplied and under control of the producer;

(b) Ginseng will not be eligible to generate benefits under this part if it:

(1) Is indigenous to the facility;

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(2) Is grown solely for medicinal purposes; and

(3) Includes wild ginseng rootlet that is harvested and transplanted from woodland grown ginseng.

(c) Good ginseng growing practices must be followed, and include, but are not limited to:

- (1) Adequate drainage;
- (2) Proper and adequate shade;
- (3) Accurate pH level;

(4) Adequate and timely fertilization, including an adequate supply to ensure nutrient reserves to the ginseng plants and customary application equipment;

(5) Adequate pest control, including but not limited to, weed, rodent, and wildlife control; and

(6) Disease control.

(d) Ginseng producers must:

(1) Provide a report of inventory of all ginseng, as determined by FSA;

(2) Provide production and sales records necessary to determine the value of eligible ginseng;

(3) Allow an FSA-certified loss adjuster to verify loss, including physically removing representative samples;

(4) Maintain and provide, as determined by FSA, adequate records of fertilization, and pest and disease controls used or put into place during the crop year; and

(5) Possess a valid food processing license issued by the applicable State Department of Agriculture or equivalent and subject to food regulations administered by the Food and Drug Administration.

(e) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of FSA, to provide evidence the ginseng was produced in accordance with this section.

[67 FR 12448, Mar. 19, 2002, as amended at 79 FR 74582, 74583, Dec. 15, 2014]

### § 1437.309 Turfgrass sod.

(a) Turfgrass sod is a value loss crop and is the upper stratum of soil bound by mature grass and plant roots into a thick mat produced in commercial quantities for sale.

(b) Specific species, types or varieties of grass intended for turfgrass sod will be considered a separate crop without regard to other intended uses.

(c) The unit of measure for all turfgrass sod is a square yard.

(d) Turfgrass sod having any value will be considered as worth full value.

(e) In addition to the records required in §1437.8, producers seeking payment must provide information to FSA regarding the average number of square yards per acre and all unharvested areas.

[67 FR 12448, Mar. 19, 2002, as amended at 79 FR 74582, 74583, Dec. 15, 2014]

### § 1437.310 Sea grass and sea oats.

(a) Sea grass and sea oats are value loss crops and eligibility will be limited to ornamental plants grown for commercial sale and seeds and transplants produced for commercial sale as propagation stock.

(b) An eligible commodity under this section intended for sale on a commercial basis as:

(1) An ornamental plant can produce a claim in the event of a loss due to a qualifying condition only in the same manner and subject to the same conditions as ornamental nursery stock under §1437.305 and such claims will not, as such, be subject to the provisions of paragraphs (c) through (h) of this section, except to the extent that similar provisions apply to claims under §1437.305.

(2) Propagation stock (seed or transplant) can produce a claim under this part but only in accord with the provisions that follow in this section and subject to other conditions on payment as may be imposed elsewhere in this part.

(c) For purposes of a loss calculation arising under paragraph (b)(2) of this section, the value of:

(1) Seed will be determined on a yield basis made in accordance with subpart B of this part and average market price established in accordance with §1437.12.

(2) Transplant losses will be determined based on inventory that existed immediately before and after the disaster and average market price established in accordance with §1437.12.

(d) Transplant producers must have up-to-date inventory and sales records and other documents, sufficient to document actual losses, as determined by FSA.

(e) The land, waterbed, or facility in which the eligible commodity was located at the time of loss must:

(1) Be owned or leased by the producer;

(2) Have readily identifiable boundaries; and

(3) Be managed and maintained using acceptable growing practices for the geographical region, as determined by FSA.

(f) The producer must have control of the land, waterbed, or facility and must ensure adequate and proper:

(1) Flood prevention;

(2) Growing medium;

(3) Fertilization or feeding;

(4) Irrigation and water quality;

(5) Weed control;

(6) Pest and disease control;

(7) Rodent and wildlife control; and

(8) Over-winterization facilities, as applicable.

(g) The eligible commodity must be:

(1) Grown in a region or controlled environment conducive to successful production, as determined by FSA; and

(2) Placed in the waterbed or facility in which the loss occurs and not be indigenous to the waterbed or facility.

(h) Eligible commodities having any dollar value after the disaster will be considered as having full value when making loss calculations. Also, damaged plants that do not have any value after the disaster but that can be rejuvenated or may, if not fully rejuvenated, reacquire value, will be counted as worth full value as well.

(i) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of FSA, to provide evidence that the eligible commodity was produced in accordance with paragraphs (e), (f), and (g) of this section and other provisions of this part.

[67 FR 62324, Oct. 7, 2002, as amended at 79 FR 74582, 74583, Dec. 15, 2014]

**§§ 1437.311–1437.400 [Reserved]**

**Subpart E—Determining Coverage of Forage Intended for Animal Consumption**

**§ 1437.401 Forage.**

(a) Forage eligible for benefits under this part is limited to mature vegetation, as determined by FSA, produced in a commercial operation. Benefits are not available for first-year seeding

of alfalfa and similar vegetation when production is not produced in the seeding year, as determined by FSA. The commercial operation must use acceptable farming, pasture, and range management practices for the location necessary to sustain sufficient quality and quantity of the vegetation so as to be suitable for grazing livestock or mechanical harvest as hay or seed. Forage to be mechanically harvested will be treated under the rules for low-yield crops as calculated under §1437.103, except claims on forage for grazing benefits will be determined according to paragraph (f) of this section. The provisions in this subpart apply to all claims including forage for mechanical harvest.

(b) Producers of forage must, in addition to the records required in §1437.8, specify the intended method of harvest of all acreage intended as forage for livestock consumption as either mechanically or grazed.

(c) Producers must request an appraisal from the administrative county office for the unit prior to the onset of grazing of any intended mechanically harvested forage acreage that will be both mechanically harvested and grazed.

(d) Forage acreage reported to FSA as intended to be mechanically harvested, but which is instead subsequently grazed, will be considered for crop definition purposes as mechanically harvested. Expected production of the specific acreage for which catastrophic coverage was obtained will be calculated on the basis of carrying capacity. The loss of such grazed forage will be determined according to paragraph (f) of this section. For acreage intended to be mechanically harvested which is instead subsequently grazed, the loss of intended mechanically harvested forage may alternatively be determined based on a review of acceptable production evidence or appraisal of the specific crop acreage. As part of the payment computation for this loss, intended mechanically harvested forage crop acreage that is not mechanically harvested but instead grazed will be deemed to be un-harvested for the purposes of determining a payment factor.



(e) Small grain forage is the specific acreage of wheat, barley, oats, triticale, or rye intended for use as forage. Small grain forage is a separate crop and distinct from any other forage commodities and other intended uses of the small grain commodity. In addition to the records required in §1437.8, producers must specify whether the intended forage crop is intended for fall and winter, spring, or full season forage. In addition to other eligibility requirements, FSA will consider other factors, such as water sources and available fencing, and adequate fertilization to determine small grain forage eligibility, yields, and production.

(f) FSA will establish forage losses of acreage intended to be grazed including, in some cases, acreage intended to be mechanically harvested but instead subsequently grazed for producers with catastrophic coverage, on the basis of:

(1) The percentage of loss of similar mechanically-harvested forage acreage on the farm, or on similar farms in the area when approved yields have been calculated to determine loss; or

(2) Where there is no similar mechanically-harvested forage acreage on the farm or similar farms in the area, the collective percentage of loss as determined by FSA for the geographical region after consideration of at least two independent assessments of grazed forage acreage conditions, or by alternative methods as determined by the Deputy Administrator.

(i) The assessments must be completed by forage or range specialists in Federal, State, and local government agencies, educational institutions, and private companies not having a financial interest in the outcome of the assessment. Collective percentage of loss determined by FSA for the geographical region may be based on any or all the following methods as may be available and as determined appropriate by the Deputy Administrator:

(A) Independent assessments of grazed forage acreage conditions;

(B) The U.S. Drought Monitor;

(C) Information obtained from loss adjusters with sufficient forage knowledge to provide grazing loss assessments;

(D) Data obtained from approved areas where clippings are obtained on a

regular basis to compare with expected levels of production in a geographical region; or

(E) Information from Natural Resources Conservation Service technical service providers having a specialized knowledge.

(ii) Neither the assessments themselves, nor collective loss percentages established in accordance with this section are subject to appeal. FSA's determinations of geographical area for assessments and collective grazing loss are generally applicable to all similarly situated participants farming in such defined geographical region.

(g) For those NAP covered participants who seek to have a NAP payment determined based on paragraph (f)(2) of this section, a notice of loss under §1437.11 will not be required; only an application for payment must be filed. Unless otherwise expressed by the NAP covered participant, FSA will presume the participant to want assistance for grazed forage determined according to paragraph (f)(2) of this section.

[79 FR 74582, Dec. 15, 2014, as amended at 85 FR 12221, Mar. 2, 2020]

#### § 1437.402 Carrying capacity.

(a) FSA will establish a carrying capacity for all grazed forage present in the county for purposes of administering this program and to that end:

(1) Multiple carrying capacities may be determined for a specific vegetation if factors, such as soil type, elevation, and topography, result in a significant difference of carrying capacity within the county.

(2) FSA may establish separate carrying capacities for irrigated and non-irrigated forage acreage when acreage of traditionally irrigated forage (forage actually irrigated 3 of the last 5 crop years) is present in the county.

(b) Producers may provide evidence that unit forage management and maintenance practices are improvements over those practices generally associated with the established carrying capacity. Based on this evidence, FSA may adjust the expected AUD for the specific forage acreage with catastrophic coverage upward for the crop year NAP assistance is requested by:

(1) Three percent when at least 1 practice was completed at least 1 time

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in the previous 5 crop years and such practice can be expected to have a positive impact on the forage's carrying capacity in the crop year NAP assistance is requested;

(2) Five percent when 2 or more practices were completed at least 1 time in the previous 5 crop years and such practices can be expected to have a positive impact on the forage's carrying capacity in the crop year NAP assistance is requested; and

(3) Greater than 5 percent when producers provide acceptable records, as determined by FSA, of higher forage production or an increase in animal units supported on the specific forage acreage in 3 of the 5 crop years immediately before the crop year NAP assistance is requested.

[67 FR 12448, Mar. 19, 2002, as amended at 79 FR 74582, 74583, Dec. 15, 2014]

### § 1437.403 Determining payments.

(a) Subject to payment limits, availability of funds, and other limits as may apply, payments for catastrophic coverage of losses of forage reported to FSA as intended to be grazed will be determined by:

(1) Multiplying the eligible acreage by the producer's share;

(2) Dividing the result from paragraph (a)(1) of this section by the carrying capacity or adjusted per day carrying capacity established for the specific catastrophic coverage acreage, as determined by FSA;

(3) Multiplying the result from paragraph (a)(2) of this section by the number of days established as the grazing period;

(4) Adding adjustments of AUD for practices and production to the product of paragraph (a)(3) of this section;

(5) Multiplying the result from paragraph (a)(4) of this section by the applicable percentage of loss established by FSA;

(6) Multiplying the amount of assigned AUD, as determined by FSA, by the producer's share;

(7) Subtracting the result from paragraph (a)(6) of this section from the result from paragraph (a)(5) of this section;

(8) Multiplying the result from paragraph (a)(4) of this section by 0.50;

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(9) Subtracting the result from paragraph (a)(8) of this section from the result from paragraph (a)(7) of this section; and

(10) Multiplying the result from paragraph (a)(9) of this section by 55 percent of the final payment price established in accordance with § 1437.12.

(b) [Reserved]

[79 FR 74582, Dec. 15, 2014]

### § 1437.404 Information collection requirements under the Paperwork Reduction Act; OMB control number.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for the regulation in this part is 0560–0175.

## Subpart F—Determining Coverage in the Tropical Region

SOURCE: 71 FR 52739, Sept. 7, 2006, unless otherwise noted.

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

(a) This subpart applies to covered tropical crops in the tropical region, as those terms are defined in this subpart. Benefits under this part may be extended to those crops only to the extent that they are otherwise eligible for assistance under this part. Covered crops do not include “value loss” crops, as defined elsewhere in this part. For those crops that are covered by this subpart, loss and payment determinations for NAP covered in this part are determined by the rules that otherwise apply to NAP subject to the modifications provided by this subpart. The rules that otherwise apply include, but are not limited to, limitations on payments that are specified in part 1400 of this chapter.

(b) For purposes of this subpart:

(1) *Tropical region* includes, as may be further limited by the Deputy Administrator: Hawaii, American Samoa, Guam, the U.S. Virgin Islands, Puerto Rico, and the territories and possessions of the United States. Other areas may be included as determined by the

Deputy Administrator to be required by law. References to specific areas elsewhere in this subpart will not limit the ability of the Deputy Administrator to limit the geographic scope of this subpart.

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

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

[71 FR 52739, Sept. 7, 2006, as amended at 78 FR 21019, Apr. 9, 2013; 79 FR 74583, Dec. 15, 2014]

**§ 1437.502 Coverage periods and fees for covered tropical crops.**

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

(b) The application closing date for all covered tropical crops is December 31 of the calendar year before the applicable crop year.

(c) For covered tropical crops, the maximum service fee per crop per county provided at § 1437.7 is required of the producer for coverage of:

(1) With respect to annual and biennial crops, all plantings of the same crop planted during the crop year, as determined by FSA.

(2) With respect to perennial crops, all acreage of the crop existing during the crop year, as determined by FSA.

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

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

[71 FR 52739, Sept. 7, 2006, as amended at 78 FR 21019, Apr. 9, 2013; 79 FR 74583, Dec. 15, 2014; 85 FR 12221, Mar. 2, 2020]

**§ 1437.503 Covered losses and record-keeping requirements for covered tropical crops.**

(a) Prevented planting coverage is not available for covered tropical crops.

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

(c) Producers who have applied for coverage on covered tropical crops must maintain for the full coverage period contemporaneous records. Contemporaneous records are those created at the time of planting and harvesting of the crop for which the application for coverage is filed. In this regard:

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

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

[71 FR 52739, Sept. 7, 2006, as amended at 78 FR 21019, Apr. 9, 2013; 79 FR 74583, Dec. 15, 2014; 85 FR 12221, Mar. 2, 2020]

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

(a) The provisions of § 1437.11(d) regarding late filed notice of loss do not apply to covered tropical crops.

(b) Where a notice of loss for covered tropical crops is provided according to § 1437.11, producers must provide records maintained according to § 1437.503(c) of the:

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

(2) Amount, including zero, as applicable, of production harvested, before or after the disaster, from those crop

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

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

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

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

(iv) All production that must be reported for covered tropical crops will, except as specified by the Deputy Administrator, be taken into account in the loss determinations made under this part. The producer is obligated to maximize that production. That is, harvesting and other production activities for the plants in the ground at the time of the disaster must be undertaken or continue to be undertaken, to the maximum extent possible, for the full reporting period, that being the period for which production could count against a loss as indicated in this subpart.

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

(c) Producers with coverage of a covered tropical crop for a crop year must, by the earlier of 90 calendar days after

the crop year ends or the date a notice of loss is filed, file a certified report setting out the:

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

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

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

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

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

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

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

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

(f) All crop acreage for covered tropical crops for which a notice of loss is

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filed must not be destroyed until authorized by FSA.

[71 FR 52739, Sept. 7, 2006, as amended at 78 FR 21019, Apr. 9, 2013; 79 FR 74583, Dec. 15, 2014]

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

(a) For producers of covered tropical crops, except as specified in paragraph (b) of this section or approved in individual cases by the Deputy Administrator, an application for payment must be filed at the same time as the filing of the notice of loss required under §§ 1437.11 and 1437.504.

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

(1) The date on which the notice of loss is filed in accordance with §§ 1437.11 and 1437.504, or

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

[78 FR 21019, Apr. 9, 2013, as amended at 79 FR 74583, Dec. 15, 2014]

## PART 1450—BIOMASS CROP ASSISTANCE PROGRAM (BCAP)

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AUTHORITY: 7 U.S.C. 8111.

SOURCE: 75 FR 66234, Oct. 27, 2010, unless otherwise noted.

### Subpart A—Common Provisions

#### § 1450.1 Administration.

(a) The regulations in this part are administered under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), or a designee. In the field, the regulations in this part will be implemented by the Farm Service Agency (FSA) State and county committees (“State committees” and “county committees,” respectively).

(b) State executive directors, county executive directors, and State and county committees do not have the authority to modify or waive any of the provisions in this part unless specifically authorized by the FSA Deputy Administrator for Farm Programs (Deputy Administrator).

(c) The State committee may take any action authorized or required by this part to be taken by the county committee, but which has not been taken by such committee, such as:

(1) Correct or require a county committee to correct any action taken by such county committee that is not in accordance with this part; or

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