

**DEPARTMENT OF AGRICULTURE****Commodity Credit Corporation****7 CFR Parts 1430 and 1439**

RIN 0560-AG32

**Dairy Price Support, Dairy Recourse Loan, Livestock Assistance, American Indian Livestock Feed, and Pasture Recovery Programs****AGENCIES:** Commodity Credit Corporation, USDA.**ACTION:** Final rule.

**SUMMARY:** This rule implements provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (the 2001 Act) related to the Dairy Price Support, Dairy Recourse Loan, Livestock Assistance (LAP), American Indian Livestock Feed (AILFP), and Pasture Recovery (PRP) Programs. Dairy price support is extended through calendar year 2001 and dairy recourse loans are postponed until January, 2002. The LAP and PRP are being extended to cover disaster-related losses that occurred in calendar year 2000 and the AILFP was given additional funding. Other provisions of the 2001 Act will be implemented under separate rules.

**DATES:** Effective March 14, 2001.

**FOR FURTHER INFORMATION CONTACT:** For dairy: Dan Colacicco, Director, Dairy and Sweeteners Analysis Division, Farm Service Agency (FSA), U.S. Department of Agriculture, STOP 0508, 1400 Independence Ave., SW., Washington, DC 20250-0540, telephone 202-720-6733, e-mail: [dcolicocco@wdc.fsa.usda.gov](mailto:dcolicocco@wdc.fsa.usda.gov). For LAP, AILFP: Diane Sharp, Director, Production, Emergency, and Compliance Division, Farm Service Agency (FSA), U.S. Department of Agriculture, STOP 0517, 1400 Independence Ave., SW., Washington, DC 20250-0540, telephone (202)720-7641, e-mail: [dsharp@wdc.fsa.usda.gov](mailto:dsharp@wdc.fsa.usda.gov). For PRP: Robert Stephenson, Director, Conservation, and Environmental Protection Division, Farm Service Agency (FSA), U.S. Department of Agriculture, STOP 0513, 1400 Independence Ave., SW., Washington, DC 20250-0540, telephone (202)720-5295, e-mail: [robert\\_stephenson@wdc.fsa.usda.gov](mailto:robert_stephenson@wdc.fsa.usda.gov).

**SUPPLEMENTARY INFORMATION:****Notice and Comment**

Section 840 of the 2001 Act (Public Law 106-387) requires that the regulations necessary to implement the

provisions regarding LAP, AILFP, and PRP be issued as soon as practicable and without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture (the Secretary) effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These provisions are thus issued as final and are effective immediately.

Similarly, section 742 of the 2001 Act, relating to the dairy provisions, amends section 141 of the Agricultural Market Transition Act (AMTA) (7 U.S.C. 7251). The amendment made by the 2001 Act merely extends the current program for one year and delays the effectiveness of the loan provisions until 2002. These statutory amendments supersede existing regulations, such that the changes to the regulations have effectively been made by the 2001 Act, and this rule merely carries out and announces those amendments. Additionally, the 2001 Act amended provisions of AMTA for which 7 U.S.C. 7281 provides an identical exemption from public notice and comment, allowing CCC to issue the dairy provisions as a final rule, effective immediately.

**Executive Order 12866**

This final rule is issued in conformance with Executive Order 12866 and has been determined to be economically significant and has been reviewed by the Office of Management and Budget. Cost/benefit assessments were completed and are summarized after the background section explaining the actions this rule will take.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act is not applicable to this rule because USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

**Environmental Evaluation**

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

**Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR

part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

**Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

**Unfunded Mandates Reform Act of 1995**

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. Further, in any case, these provisions do not impose any mandates on state, local or tribal governments, or the private sector.

**Small Business Regulatory Enforcement Fairness Act of 1996 (Chapter 8 of the Administrative Procedures Act)**

Section 840 of the 2001 Act requires that the regulations necessary to implement the provisions for LAP, AILFP, and PRP be issued as soon as practicable and without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. Section 840 also requires that the Secretary use the provisions of 5 U.S.C. 808 (the Small Business Regulatory Enforcement Fairness Act (SBREFA)), to find that good cause exists to implement the rule immediately and that public notice is impracticable, unnecessary, or contrary to the public purpose. CCC finds that because this rule affects the incomes of a large number of agricultural producers who have been hit hard by natural disasters and poor market conditions it would be contrary to the public interest to delay those provisions of this rule, as expressed in the 2001 Act. Therefore, this rule is issued as final, effective immediately.

With respect to the dairy provisions, CCC interprets these statutory requirements as superseding existing regulations, such that the changes to the regulations have effectively been made by the 2001 Act and this rule merely carries out and announces those amendments. Additionally, the 2001 Act amends provisions of AMTA for which 7 U.S.C. 7281 provides an

identical exemption from notice and comment. Accordingly, the implementing regulations are effective immediately.

#### **Paperwork Reduction Act**

There are no information collections associated with the dairy provisions of this rule. In addition, section 840 of the 2001 Act requires that the regulations implementing the provisions regarding LAP, AILFP, and PRP be promulgated without regard to the Paperwork Reduction Act. This means that the normal 60-day public comment period and OMB approval of the information collections required by this rule are not required before the regulations may be made effective. However, the 60-day public comment period and OMB approval under the provisions of 44 U.S.C. chapter 35 are still required for LAP, AILFP, and PRP after the rule is published.

#### **Background**

This rule will implement requirements of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001, (the 2001 Act) (Public Law 106-387) related to the Dairy Price Support, Dairy Recourse Loan, Livestock Assistance (LAP) Pasture Recovery (PRP), and American Indian Livestock Feed (AILFP) Programs. The provisions are as follows.

#### **1. 7 CFR Part 1430—Dairy Price Support Program and Dairy Recourse Loan Program**

Section 742 of the 2001 Act postpones the termination date of the Milk Price Support Program until December 31, 2001, and continues the \$9.90 per hundredweight support rate for milk that was in effect during calendar years 1999 and 2000 through the year 2001. Section 742 also postpones the start of the Recourse Loan Program for Commercial Processors of Dairy Products—from January 1, 2001, to January 1, 2002. This rule modifies the provisions of 7 CFR part 1430 accordingly.

#### **2. 7 CFR Part 1439, Subpart B—Livestock Assistance Program**

Section 806 of the 2001 Act requires that the Secretary of Agriculture use \$490 million of the funds of the Commodity Credit Corporation to make and administer payments for livestock losses using the criteria established to carry out the 1999 Livestock Assistance Program (1999 LAP) to producers for losses in a county that has received an emergency designation by the President or the Secretary after January 1, 2000.

The funds are available through September 30, 2001. The statute further provides that of the \$490 million, up to \$40 million may be used for the Pasture Recovery Program (PRP), up to \$12 million for the American Indian Livestock Feed Program (AILFP); and as amended by section 101(5) of the Consolidated Appropriations Act, 2001, (Pub. L. 106-554), \$5 million to be transferred to the State of Alabama to be used in conjunction with the program administered by the Alabama Department of Agriculture and Industries, \$2 million for losses due to Poult Enteritis Mortality Syndrome, and \$300,000 to be transferred to the State of Montana for transportation needs associated with emergency haying and feeding, leaving \$430.7 million for LAP-2000. This rule does not implement the program provisions of Public Law 106-554. Public Law 106-554 also mandated a Government-wide rescission of 0.22 percent of appropriated funds. Available funding for the livestock programs is thus reduced to \$429.752 million for LAP, \$39.912 million for PRP, and \$11.974 for AILFP.

Livestock producers who suffered livestock feed losses as a result of natural disaster may apply for benefits to compensate for losses that occurred in calendar year 2000. Benefits will be provided to eligible livestock producers only in those counties where a natural disaster occurred and that were subsequently approved by FSA's Deputy Administrator for Farm Programs. A county must have suffered a 40-percent or greater grazing loss for 3 consecutive months during the 2000 calendar year as a result of damage due to a natural disaster in order to be eligible. Livestock producers in counties contiguous to an approved county are not eligible. A livestock producer in an approved county must have suffered at least a 40-percent loss of normal grazing for the producer's eligible livestock for a minimum of 3 consecutive months. Losses will only be compensable up to 80 percent of the total grazing available and the compensable loss may not exceed a county maximum set by the local FSA county committee. Payments will be made according to a formula subject to funding and other limitations, including a \$40,000 per person payment limitation and a \$2.5 million gross revenue limitation. In the event that the total amount of claims submitted under this subpart exceeds the funding available for LAP-2000, each payment shall be reduced by a uniform national percentage.

#### **3. 7 CFR Part 1439, Subpart D—Pasture Recovery Program**

Section 806 of the 2001 Act provides that the Secretary may use up to \$40 million of CCC funds to carry out a Pasture Recovery Program (PRP), reduced \$39.912 million by the 0.22 percent Government-wide rescission. These funds are to be used to compensate livestock producers in reseeding permanent pasture that was severely damaged or destroyed by natural disaster during calendar year 2000. PRP payments will be authorized only in counties that requested and were determined eligible for the Emergency Conservation Program (ECP) for losses during 2000. Requests must be received by a date determined and announced by FSA to be eligible. For the land to be eligible, it must be established pasture land on which livestock is normally grazed but that was so damaged or destroyed by natural disaster that seeding is required to reestablish a cover. Hayland and rangeland will not be eligible, nor will land operated by the Federal or a State Government or a political subdivisions of a State.

Eligible producers must agree to reestablish the forage crop and maintain the crop for three full years after the calendar year of installation. To be an eligible recipient of program benefits, the applicant must be an owner or operator of eligible land damaged or destroyed in 2000 who normally grazes livestock on such land and such applicant must be the person who will restore and maintain the property for three full calendar years after the year of installation.

All conditions must be satisfied if a person is to be eligible for a PRP payment. For example, if an owner leases pasture land to an operator for grazing the operator's livestock, then the operator is eligible for a PRP payment only if the operator reestablishes the forage crop on the leased pasture land and has a lease and the equipment necessary to maintain the forage crop for three full calendar years after the year of installation. If an owner leases pasture land to an operator who normally grazes the operator's livestock but the owner agrees to reestablish the forage crop on the pasture land, then neither the operator nor the owner are eligible for PRP benefits because neither can meet all of the eligibility requirements. The owner is ineligible because the owner does not normally graze livestock on the pasture land, and the operator is ineligible because the operator did not reestablish the forage crop on the pasture land. Other

restrictions will apply as well in the administration of the program.

This program will be subject to the general provisions for emergency livestock assistance programs found in Subpart A of part 1439. Among other provisions, that subpart provides for limitations on total benefits that a person may receive and the gross revenue of eligible persons. The gross revenue limitation will apply to the PRP. However, a different benefit limitation is provided in this rule.

Accordingly, and in order to efficiently maximize the use of program funds for those farmers most in need of relief, the PRP will not be available to a person whose annual gross revenue is in excess of \$2.5 million. Further, benefits are limited to \$2,500 per "person" determined according to the "person" determination regulations at 7 CFR part 1400.

In order to receive payments, applicants will be required to certify that pasture land to be enrolled in the PRP was so damaged or destroyed by natural disaster during calendar year 2000 that seeding is required to reestablish the forage crop. State Farm Service Agency (FSA) committees will establish per-acre payment rates equal to 65 percent of the eligible area's average cost of reestablishing the approved forage crop on eligible pasture land not to exceed \$100 per acre. The FSA Deputy Administrator for Farm Programs may approve higher per-acre payment rates not to exceed \$125 per acre. In no case will per-acre payment rates exceed \$125 per acre. Seeding and related fertilizing requirements will be required to be carried out according to standards for agronomic practices and applicable environmental laws and regulations. Payments may be issued upon certification by the participant that approved practices to reestablish the forage crop have been completed. Certifications are subject to spot-check by FSA.

Signup periods for this new program will be announced by CCC, but are expected to be conducted no later than the spring 2001 planting season for affected regions. It is expected that all seeding will be required to be completed in calendar year 2001 by a date announced by CCC.

#### 4. 7 CFR Part 1439, Subpart I— American Indian Livestock Feed Program

The American Indian Livestock Feed Program (AILFP) makes assistance available to eligible livestock owners when, as a result of natural disaster occurring on tribal-governed land, a significant loss of livestock feed has

occurred and a livestock feed emergency exists, as determined by FSA's Deputy Administrator for Farm Programs. Section 806 of the 2001 Act provided that, of the \$490 million of CCC funds made available for livestock assistance, up to \$12 million could be used for the AILFP, which was later reduced to \$11.973 million by the 0.22 percent Government-wide rescission. The regulations for the AILFP finalized on June 8, 2000 (65 FR 86578) included a statement that the program was funded for \$12.5 million. This rule will amend the AILFP regulations to conform with the additional funding provided by the 2001 Act, which will be available when the original \$12.5 million is exhausted.

#### Cost-Benefit Assessment

##### Summary

Outlays for the programs this rule implements are shown in the table below. Discussion of the individual programs follows.

#### SUMMARY OF OUTLAYS [In millions of dollars]

| Program   | Outlays        |
|---|----------------|
| 2000 Livestock Assistance Program (LAP-2000) <sup>1</sup> .....   | 429.752        |
| American Indian Livestock Feed Program (AILFP) <sup>1</sup> ..... | 11.974         |
| Pasture Recovery Program (PRP) <sup>1</sup> .....                 | 39.912         |
| Total Livestock Assistance ....                                   | 481.638        |
| Dairy Price Support .....   | 470            |
| Dairy Recourse Loan .....   | 0              |
| <b>Total .....</b>  | <b>951.638</b> |

<sup>1</sup>Original appropriation minus 0.22% rescission.

#### Dairy Price Support and Dairy Recourse Loan

The total cost to CCC for extending the milk price support program one year is estimated at \$470 million. The Dairy Recourse Loan Program is not expected to have a net cost to CCC because the loans will be secured and must be repaid in full. The federal cost to administer the recourse loan program that would replace the milk price support program is similar to the cost of administering the milk price support program so there is no net change in program costs.

Extending the milk price support program will help maintain the all-milk price and dairy farm incomes because CCC's purchase price is providing a floor under the current market price for nonfat dry milk (NDM). The domestic price of NDM would be expected to fall at least 10 cents per pound if the program were not extended. The 10-

cent-per-pound drop in the price of NDM would be expected to allow a drop in the all-milk price of about 10–14 cents per cwt., which would reduce dairy income by about \$200–300 million.

#### 2000 Livestock Assistance Program (LAP-2000)

It is estimated that over 31 million head of cattle, 3 million horses, and 2 million sheep are in the affected states. The potential cost of the LAP-2000 before application of a national factor is estimated to be about \$450 million. Because projected claims exceed the \$429.752 million expected to be available for the program, each producer's payment will be prorated based on the ratio of the maximum allowed benefits to total claims.

Payments will assist producers affected by disasters in meeting their financial obligations for income lost due to poor grazing conditions. It is assumed, in part as a result of the LAP, that producers affected by the disaster will remain in business. The impact of the payments on livestock prices and feed prices is expected to be small. For those producers who actually suffered the losses, the impact on their equity and cash flow positions is significant. In the absence of this program, some producers would have been forced to liquidate their herds, increasing livestock supplies and lowering prices in the short term. The changes would likely be small and temporary. Thus, the impact on consumers would be negligible. Aggregate farm income in 2000 is expected to be about \$429.7 million higher.

#### American Indian Livestock Feed Program (AILFP)

Natural disasters continue to cause significant loss of livestock feed production on land governed by American Indian Tribes. The states primarily affected during the 2000 crop year were Montana, Arizona, Oklahoma, Colorado, and New Mexico. A large proportion of American Indian livestock producers reside in communities where the USDA has had difficulty coordinating and implementing programs to meet the needs and financial constraints of American Indians.

Up to \$11.974 million will be available to American Indian tribes to provide to producers who suffered loss of livestock feed production as a result of a natural disaster occurring on tribal-governed land during 2000 and subsequent years. For assistance to be made available, a loss of feed grain and forage used for livestock production in

the affected region must exceed 35 percent and the Deputy Administrator for Farm Programs (DAFP) must declare a livestock feed emergency. The 35 percent loss for the region is similar to the loss level required under past programs. In addition, the livestock producer must have livestock production in the geographic region that has been determined to meet the eligibility requirements for the program.

Individual producer assistance is determined based on the estimated value of livestock feed needed to maintain the producer's eligible livestock. Assistance is paid at a rate of either 30 percent of the cost of purchased feed needed to maintain the producer's eligible livestock for the approved feeding period, or 30 percent of the eligible livestock owner's calculated Animal Unit Days (AUD) for the approved feeding period, whichever is smaller. This rate is the same rate of loss coverage that FSA has used in previous livestock feed programs. If any feed has been sold by producers these receipts must be reported as feed sold and the total amount deducted from the calculated payment amount.

Program assistance will be provided on a first-come, first-serve basis. Thus, if total claims in 2000 exceed \$11.974 million, the first \$11.974 million in qualifying claims will receive assistance. Using this procedure eliminates the need to make partial payment and withhold some assistance until all claims are processed to determine a prorating factor for final assistance payments. A downside to first-come, first-serve is that some tribes otherwise eligible for assistance may not be paid if available funds are exhausted. Spending between November 27, 1998 and November 16, 2000, totaled \$11.4 million. Current funding is expected to last into 2002 if similar claims are filed as with the past program.

AILFP provides financial assistance to eligible livestock producers who have suffered significant loss of livestock feed production for the 2000 calendar year and subsequent years. These funds will assist eligible livestock producers in meeting financial obligations against purchased feed stocks needed to maintain livestock enterprises on the farm as a result of lost livestock feed production on the farm. Further, the impact of the livestock feed program on livestock feed and livestock prices and consumer prices is not expected to be measurable. Based on program funding of \$11.974 million for 2000 and subsequent years, program assistance is less than 1 percent of the national value of all livestock feed production. Assistance, therefore, will not have a

measurable impact on national price levels for livestock feed ingredients or livestock. Aggregate American Indian farm income losses will be somewhat offset or reduced by AILFP payments. Federal outlays could increase by up to \$11.974 million for the 2001 program year, but funds are expected to cover two years of loss claims.

#### *Pasture Recovery Program (PRP)*

Funds to reestablish pasture damaged by drought will be allocated from funds provided for livestock loss assistance under the 2001 Act. PRP payments will be authorized only in counties determined eligible for the ECP. Applications for payment will probably exceed the funding level of \$39.912 million based on the expected number of eligible producers and re-seeding costs. To be eligible, land must be established pasture land on which livestock are normally grazed and that was so damaged by drought or other natural disaster that seeding is required to reestablish a cover crop. Neither hay land nor rangeland is eligible.

Payment rates per acre will equal 65 percent of the eligible area's average cost of reestablishing the approved forage crop. FSA State committees will establish the average cost of reestablishing the approved forage crop.

The cost to reestablish pastures is assumed to be between \$100 and \$250 per acre, depending on the tillage and fertilization rates required. Most are expected to fall between \$100 and \$150 per acre, which will allow producers a payment rate of \$65–97.50 per acre. At an average payment rate of \$81.25 per acre and subject to the \$2,500 limitation producers could reestablish pasture on about 30 acres. Farm income is expected to increase by \$39.912 million, equal to government outlays.

For further information on the cost/benefit assessments, contact Dan Colacicco, 202–720–6733.

#### **List of Subjects**

##### *7 CFR Part 1430*

Dairy products, Price support programs, Reporting and recordkeeping requirements.

##### *7 CFR Part 1439*

Animal feeds, Disaster assistance, Grant programs—agriculture, Livestock, Pasture, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 7 CFR parts 1430 and 1439 are amended as set forth below.

## **PART 1430—DAIRY PRODUCTS**

1. The authority citation for part 1430 continues to read as follows:

**Authority:** 7 U.S.C. 7251 and 7252; and 15 U.S.C. 714b and 714c.

### **Subpart A—Price Support Program for Milk**

2. Amend § 1430.2 by revising paragraph (a)(1) to read as follows:

#### **§ 1430.2 Price support levels and purchase conditions.**

(a)(1) The levels of price support provided to farmers marketing milk containing 3.67 percent milkfat from dairy cows are: \$10.35 per hundredweight for calendar year 1996, \$10.20 per hundredweight for calendar year 1997, \$10.05 per hundredweight for calendar year 1998, and \$9.90 per hundredweight for calendar years 1999 through 2001.

\* \* \* \* \*

### **Subpart C—Recourse Loan Program for Commercial Processors of Dairy Products**

3. Amend § 1430.401 by revising paragraph (a) to read as follows:

#### **§ 1430.401 Applicability.**

(a) The regulations in this subpart are applicable to eligible dairy products produced after December 31, 2001. The regulations in this subpart set forth the terms and conditions under which CCC will make recourse loans to eligible processors. Additional terms and conditions shall be those set forth in the loan application and the note and security agreement which a processor must execute in order to receive such a loan.

\* \* \* \* \*

4. Amend § 1430.403 by revising paragraph (a) to read as follows:

#### **§ 1430.403 Loan rates.**

(a) The Secretary will announce before January 1, 2002, and thereafter, before October 1 of each year, that a recourse loan program is available under this subpart, and loan rates for Cheddar cheese, butter, and nonfat dry milk based on a milk equivalent value of \$9.90 per hundredweight of milk containing 3.67 percent butterfat.

\* \* \* \* \*

5. Amend § 1430.407 by revising paragraph (a)(2) to read as follows:

#### **§ 1430.407 Availability, disbursement, and maturity of loans.**

(a) \* \* \*

(2) A request for an initial loan must be filed no later than September 30 of

the fiscal year in which the product was produced, but no earlier than January 1, 2002.

\* \* \* \* \*

## PART 1439—EMERGENCY LIVESTOCK ASSISTANCE

6. The authority citation continues to read as follows:

**Authority:** 7 U.S.C. 1427a; 15 U.S.C. 714 *et seq.*; Sec. 1103 Pub. L. 105-277, 112.

Stat. 2681-42-44; Pub. L. 106-31, 113 Stat. 57; Pub. L. 106-78, 113 Stat. 1135; Pub. L. 106-113, 113 Stat. 1501; Sec. 257 Pub. L. 106-224, 114 Stat. 358; Secs. 802, 806, & 813 Pub. L. 106-387, 114 Stat. 1549.

7. Revise Subpart B of part 1439 to read as follows:

### Subpart B—Livestock Assistance Program

Sec.

1439.101 Applicability.

1439.102 Definitions.

1439.103 Application process.

1439.104 County committee determinations of general applicability.

1439.105 Loss criteria.

1439.106 Livestock producer eligibility.

1439.107 Calculation of assistance.

1439.108 Availability of funds.

1439.109 Financial considerations.

### Subpart B—2000 Livestock Assistance Program

#### § 1439.101 Applicability.

(a) This subpart sets forth the terms and conditions applicable to the 2000 Livestock Assistance Program (LAP—2000) authorized by Public Law 106-387, 114 Stat. 1549. Program regulations for prior livestock assistance programs can be found at 7 CFR 1439 as it was published on January 1, 2001. Benefits will be provided to eligible livestock producers in the United States for LAP—2000 but only in counties where a natural disaster declaration was issued after January 1, 2000 by the President of the United States or the Secretary of Agriculture of the United States and that were subsequently approved for relief under this part by the Deputy Administrator for Farm Programs.

(b) During the 2000 calendar year for LAP—2000, a producer must be in a county where a natural disaster declaration was approved after January 1, 2000, and also approved and determined by the Deputy Administrator for Farm Programs (or a designee) as having suffered losses during calendar year 2000. Contiguous counties that were not designated as a disaster area in their own right will not be eligible for participation in the LAP—2000 under this part. Grazing losses must have occurred on native and improved pasture with permanent

vegetative cover and other crops planted specifically for the sole purpose of providing grazing for livestock, but such losses do not include losses on, or with respect to, seeded small grain forage crops.

(c) To be eligible for assistance under this subpart, a livestock producer's pastures must have suffered at least a 40-percent loss of normal carrying capacity for a minimum of 3 consecutive months during the relevant calendar year. The percent of loss eligible for compensation shall not exceed the maximum percentage of grazing loss for the county as determined by the county committee. In addition, the producer will not be compensated for that part of any loss that would represent payment of a loss greater than 80 percent.

(d) Except as approved by the Deputy Administrator for Farm Programs (or designee), a livestock producer is not eligible to receive payments for the same loss under this subpart if that loss has been recovered under another Federal program of some other source.

#### § 1439.102 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering this subpart. The definitions in § 1439.3 shall also be applicable, except where those definitions conflict with the definitions set forth in this subpart, in which case the definitions in this section will apply. The definitions follow:

*Application* means the Form CCC-740, Livestock Assistance Program Application. The CCC-740 is available at county FSA offices.

*Livestock* means beef and dairy cattle, buffalo and beefalo (when maintained on the same basis as beef cattle), sheep, goats, swine, and equine animals where such equine animals are used commercially for human food or kept for the production of food or fiber on the owner's farm.

#### § 1439.103 Application process.

(a) Livestock producers must submit a completed application prior to the close of business on March 23, 2000, or such other date as established and announced by the Deputy Administrator. The application and any other supporting documentation shall be submitted to the county FSA office with administrative authority over a producer's eligible grazing land or to the county FSA office that maintains the farm records for the livestock producer.

(b) Livestock producers shall certify as to the accuracy of all the information contained in the application, and provide any other information to CCC

that the county FSA office or committee deems necessary to determine the livestock producer's eligibility.

#### § 1439.104 County committee determinations of general applicability.

(a) County committees shall determine whether due to natural disasters their county has suffered a 40-percent loss affecting pasture and normal grazing crops for at least 3 consecutive months during calendar year 2000 for LAP—2000. In making this determination, county committees, using the best information available from sources including but not limited to: the Extension Service, the Natural Resources Conservation Service; the Palmer Drought Index; and general knowledge of local rainfall data, pasture losses, grazing livestock movement out of county, abnormal supplemental feeding practices for livestock on pasture and liquidation of grazing livestock, shall determine the percentage of grazing losses for pastures on a county-wide basis. The county committee shall submit rainfall data, percentage of grazing losses for each general type of pasture, and the weighted average percentage of grazing loss for the county, with State committee concurrence, to the Deputy Administrator on form CCC-654. The maximum grazing losses the county committees shall submit on form CCC-654 is 80 percent. These determinations shall be subject to review and approval of the Deputy Administrator. For purposes of this subpart, such counties are called “eligible counties.”

(b) In each county, the county committee shall determine a LAP crop year. The LAP crop year shall be that period of time in a calendar year that begins with the date grazing of new growth pasture normally begins and ends on the date grazing without supplemental feeding normally ends in the county.

(c) In and for each eligible county, the county committee shall determine normal carrying capacities for each type of grazing or pasture during the LAP crop year. The normal carrying capacity for the LAP crop year shall be the normal carrying capacity the county committee determines could be expected from pasture and normal grazing crops for livestock for the LAP crop year if a natural disaster had not diminished the production of these grazing crops.

(d) In each eligible county, the county committee shall determine the payment period for the county. The payment period for the county shall be the period of time during the county's LAP crop year where for 3 consecutive months

during 2000, the carrying capacity for grazing land or pasture was reduced by 40 percent or more from the normal carrying capacity.

**§ 1439.105 Loss criteria.**

(a) Grazing land for which a livestock producer requests benefits must be within the physical boundary of the county for which a Presidential disaster declaration or Secretarial disaster declaration was granted for disasters occurring during calendar year 2000. Livestock producers in unapproved counties contiguous to an eligible county will not receive benefits under this subpart.

(b) To be eligible for benefits under this subpart, a livestock producer in an eligible county must have suffered a loss of grazing production equivalent to at least a 40-percent loss of normal carrying capacity for a minimum of 3 consecutive months.

(c) A producer shall certify each type of pasture and percentage of loss suffered by each type on the application. In establishing the percentage of grazing loss, producers shall consider the amount of available grazing production during the LAP crop year, whether more than the normal acreage of grazing land was required to support livestock during the LAP crop year, and whether supplemental feeding of livestock began earlier or later than normal.

(d) The county committee shall determine the producer's grazing loss and shall consider the amount of available grazing production during the LAP crop year, whether more than the normal acreage of grazing land was required to support livestock during the LAP crop year, and whether supplemental feeding of livestock began earlier or later than normal. The county committee shall request the producer to provide proof of loss of grazing production if the county committee determines the producer's certified loss exceeds other similarly situated livestock producers.

(e) The percentage of loss claimed by a livestock producer shall not exceed the maximum allowable percentage of grazing loss for the county as determined by the county committee in accordance with § 1439.104(a). Livestock producers will not receive benefits under this subpart for any portion of their loss that exceeds 80 percent of normal carrying capacity.

(f) Conservation Reserve Program acres released for haying and/or grazing and seeded small grain forage crops shall not be used to calculate losses under this subpart.

**§ 1439.106 Livestock producer eligibility.**

(a) Only one livestock producer will be eligible for benefits under this subpart with respect to an individual animal.

(b) Only owners of livestock who themselves provide the pasture or grazing land, including cash leased pasture or grazing land, for the livestock may be considered as livestock producers eligible to apply for benefits under this subpart.

(c) An owner of livestock who uses another person to provide pasture or grazing land on a rate-of-gain basis is not considered to be the livestock producer eligible to apply for benefits under this subpart.

(d) An owner who pledges livestock as security for a loan shall be considered as the person eligible to apply for benefits under this subpart if all other requirements of this part are met. Livestock leased under a contractual agreement that has been in effect at least 3 months and establishes an interest for the lessee in such livestock shall be considered as being owned by the lessee.

(e) Livestock must have been owned for at least 3 months before becoming eligible for payment.

(f) The following entities are not eligible for benefits under this subpart:

(1) State or local governments or subdivisions thereof; or

(2) Any individual or entity who is a foreign person as determined in accordance with the provisions of §§ 1400.501 and 1400.502 of this chapter.

**§ 1439.107 Calculation of assistance.**

(a) The value of LAP assistance determined with respect to a livestock producer for each type and weight class of livestock owned or leased by such producer shall be the lesser of the amount calculated under paragraph (b) of this section (the total value of lost feed needs for eligible livestock) or calculated under paragraph (c) of this section (the total value of lost eligible pasture).

(b) The total value of lost feed needs shall be the amount obtained by multiplying:

(1) The number of days in the payment period the livestock are owned or, in the case of purchased livestock, meet the 3-month ownership requirement; by

(2) The number of pounds of corn-equivalent per day, as established by CCC, that is determined necessary to provide the energy requirements established for the weight class and type of livestock; by

(3) The 5-year national average market price for corn (\$2.36 bushel or \$0.0421428 per pound); by

(4) The number of eligible animals of each type and weight range of livestock owned or leased by the person; by

(5) The percent of the producer's grazing loss during the relevant period as certified by the producer and approved by the county committee in accordance with § 1439.105.

(c) The total value of lost eligible pasture shall be the amounts for each type of pasture calculated by:

(1) Dividing the number of acres of each pasture type by the carrying capacity established for the pasture; and multiplying the result by

(2) The 5-year national average market price for corn (\$2.36 bushel or \$0.0421428 per pound); by

(3) The daily feed grain equivalent per animal (15.7 pounds of corn necessary for a beef cow, factored for the weight class and type of livestock, as determined by CCC); by

(4) The applicable number of days in the LAP payment period; by

(5) The percent of the producer's grazing loss during the relevant period as certified by the producer and approved by the county committee in accordance with § 1439.105.

(d) The final payment shall be the smaller of paragraph (b) of this section or paragraph (c) of this section multiplied by the national factor if required under § 1439.108. The final payment shall not exceed 50 percent of the smaller of paragraph (b) or (c) of this section determined prior to applying the national factor provided for in § 1439.108.

(e) Seeded small grain forage crops shall not be counted as grazing land under paragraph (c) of this section with respect to supporting eligible livestock.

(f) The number of equine animals that are used to calculate benefits under this subpart and in paragraph (a) of this section are limited to the number actually needed to produce food and fiber on the producer's farm or to breed horses and mules to be used to produce food and fiber on the owner's farm, and shall not include animals that are used for recreational purposes or are running wild or uncontrolled on land owned or leased by the owner.

**§ 1439.108 Availability of funds.**

In the event that the total amount of claims submitted under this subpart exceed \$429,752,460, each payment shall be reduced by a uniform national percentage. Such payment reductions shall be made after the imposition of applicable payment limitation provisions.

**§ 1439.109 Financial considerations.**

(a) The provisions of §§ 1439.10 and 1439.11 apply to LAP-2000.

(b) Benefits under this part are not subject to administrative offset. See section 842 of the 2001 Act (Public Law 106-387, 114 Stat. 1549).

8. Revise Subpart D of Part 1439 to read as follows:

**Subpart D—Pasture Recovery Program**

Sec.

- 1439.301 Administration.
- 1439.302 Definitions.
- 1439.303 General description.
- 1439.304 Eligible persons.
- 1439.305 Eligible land.
- 1439.306 Duration of contracts.
- 1439.307 Gross revenue limitation.
- 1439.308–1439.319 [Reserved]
- 1439.320 Obligations of participant.
- 1439.321 Obligations of the Commodity Credit Corporation.
- 1439.322 Eligible practices.
- 1439.323–1439.329 [Reserved]
- 1439.330 Enrollment.
- 1439.331 Termination of PRP contracts.
- 1439.332 Contract modifications.
- 1439.333–1439.339 [Reserved]
- 1439.340 Payments.
- 1439.341 Levels and rates for payments.
- 1439.342–1439.349 [Reserved]
- 1439.350 Payments to participants.
- 1439.351 Violations.
- 1439.352 Executed PRP contract not in conformity with regulations.
- 1439.353 Performance based upon advice or action of representative of the Secretary of Agriculture.
- 1439.354 Access to land under contract.
- 1439.355 Appeals.
- 1439.356 Refunds to CCC; joint and several liability.
- 1439.357 Miscellaneous.

**Subpart D—Pasture Recovery Program****§ 1439.301 Administration.**

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), and the Deputy Administrator, for Farm Programs, Farm Service Agency (FSA). In the field, the regulations in this part will be administered by the 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 Deputy Administrator.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee that 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.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, or the Deputy Administrator from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Data furnished by the applicants will be used to determine eligibility for program benefits. Although participation in the Pasture Recovery Program (PRP) is voluntary, program benefits will not be provided unless the participant furnishes the appropriate data.

**§ 1439.302 Definitions.**

The following definitions shall be applicable to this subpart:

*Applicant* means, unless the context indicates otherwise, the owner or operator.

*Contract period* means the period of time the PRP contract is in effect.

*Equine animals* means horses, mules, and donkeys.

*Federally-owned land* means land owned by the Federal Government or any department, bureau, or agency thereof, or any corporation whose stock is wholly owned by the Federal Government.

*Forage crop* means a perennial stand of grasses or legumes that are intended for use by livestock for grazing and are customarily used for that purpose by local producers.

*FSA* means the Farm Service Agency.

*Hayland* means land that was or has been routinely used to produce hay.

*Livestock* means beef and dairy cattle, buffalo and beefalo (when maintained on the same basis as beef cattle), sheep, goats, swine, and equine animals used commercially for human food or kept for the production of food or fiber.

*Local FSA office* means the FSA office in the local USDA service center in which the FSA records are maintained for the farm or ranch that includes the pasture land that the applicant is seeking to enroll in the PRP.

*Operator* means a person who is in general control of the farming operation on the farm, as determined by FSA for CCC.

*Owner* means a person or entity who is determined by FSA to have sufficient legal ownership of the land, including a person who is buying the acreage under a purchase agreement; each spouse in a

community property State; each spouse when spouses own property jointly; and a person who has life-estate in the property.

*Participant* means an owner or operator or tenant who has entered into a PRP contract.

*Pasture land* means generally enclosed land devoted to a perennial forage crop used and suitable for grazing of livestock.

*Payment* means, unless the context indicates otherwise, the payment specified in the PRP contract that, subject to the availability of funds, is made to a participant to compensate such participant for reestablishing an approved forage crop on eligible pasture land in the PRP.

*Practice* means with respect to practices to be approved for relief under this subpart, an approved measure to cost-effectively reseed pasture, and, in conjunction with seeding, as necessary, fertilize to reestablish a forage crop on eligible pasture land damaged or destroyed by natural disaster, as determined by CCC.

*Rangeland* means land having indigenous, unimproved vegetation that may be used or suitable for open roaming and grazing of livestock.

*Secretary* means the Secretary of Agriculture or a designee of the Secretary.

*State committee, State office, county committee, or county office* means the respective FSA committee or office.

*State Technical Committee* means that committee established pursuant to 16 U.S.C. 3861.

*State-owned land* means land owned by a State Government or any department, bureau, or agency thereof, including political subdivisions of a State, as determined by CCC.

*Technical assistance* means the assistance provided in connection with the PRP to owners or operators by FSA or other authorized designee of the Secretary in determining the eligibility of land and implementing and certifying eligible practices.

*United States* means all fifty states of United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and the District of Columbia.

**§ 1439.303 General description.**

Under the PRP, the CCC will enter into contracts with eligible producers to provide payments to assist producers to reestablish the damaged or destroyed pasture land to an approved forage crop upon a promise and obligation to maintain the new crop for 3 full years after the calendar year of installation.

**§ 1439.304 Eligible persons.**

In order to be eligible to enter into a PRP contract in accordance with this part, a person must be an owner or operator of eligible pasture land that was damaged or destroyed by natural disaster during calendar year 2000 and:

- (a) Must normally graze livestock on such pasture land; and
- (b) If an operator of eligible land that the operator does not own, must provide satisfactory evidence that such operator will be in control of such eligible pasture land for the full term of the PRP contract period.

**§ 1439.305 Eligible land.**

(a) Except as otherwise provided in this section, land in the PRP must be pastureland that:

(1) As determined by CCC, is located within a county that was approved for assistance under the Emergency Conservation Program provided for in 7 CFR part 701 because of a 2000 natural disaster, or was later approved for such participation based upon an application filed by such date as is determined and announced by the Deputy Administrator and based upon natural disaster damage suffered in 2000.

(2) Has been established pasture land on which livestock is normally grazed or on which the forage crop was so damaged or destroyed by natural disaster in calendar year 2000 that the forage crop will not return in the 2001 grazing year, and seeding is required to reestablish the forage crop, as determined by CCC.

(b) Notwithstanding paragraph (a) of this section, land, as determined by CCC, shall be ineligible for enrollment if the pasture land is:

- (1) Federal-operated land;
- (2) State-operated land;
- (3) Hayland; or
- (4) Rangeland, as determined by the CCC.

**§ 1439.306 Duration of contracts.**

Contracts under this subpart and their forage crop maintenance requirements shall be for three years. The installation of the practice must be completed no later than the date specified in the PRP contract.

**§ 1439.307 Gross revenue limitation.**

A person, as determined in accordance with part 1400 of this chapter, who has annual gross revenue in excess of \$2.5 million shall not be eligible to receive assistance under this part. For the purpose of this determination, annual gross revenue means:

- (a) With respect to a person who receives more than 50 percent of such

person's gross income from farming and ranching, the total gross revenue received from such operations; and

(b) With respect to a person who receives 50 percent or less of such person's gross income from farming and ranching, the total gross revenue from all sources.

**§§ 1439.308–1439.319 [Reserved]****§ 1439.320 Obligations of participant.**

All participants subject to a PRP contract must agree to:

(a) Carry out the terms and conditions of the PRP contract including carrying out all approved practices and meeting the schedule of dates for seeding and for maintenance measures provided for in the contract to establish and maintain the approved forage crop;

(b) Comply with all requirements of part 12 of this title;

(c) Comply with noxious weed laws of the applicable State or local jurisdiction on such land;

(d) Control, subject to the contract, all weeds, insects, pests and other undesirable species to the extent necessary to ensure that the establishment and maintenance of the approved forage crop is adequately protected, as determined by CCC;

(e) Not harvest the re-seeded cover crop at any time during the contract period; and

(f) Be jointly and severally responsible with other persons qualifying for payments under this program on the same land for compliance with such contract and the provisions of this part and for any refunds, payment adjustments, or liquidated damages that may be required for violations of any of the terms and conditions of the PRP contract.

**§ 1439.321 Obligations of the Commodity Credit Corporation.**

CCC shall:

(a) Upon establishment of the required forage crop, and provided all other eligibility criteria have been met, make PRP payments to participants in accordance with the provisions of this part; and

(b) Provide such technical assistance as it determines necessary to assist the participant in carrying out the PRP contract.

**§ 1439.322 Eligible practices.**

Eligible practices are those practices specified in the contract that meet all quantity and quality standards needed to cost-effectively reestablish the approved forage crop, as determined by CCC, on acreage subject to the contract, including reseeding.

**§§ 1439.323–1439.329 [Reserved]****§ 1439.330 Enrollment.**

Only applications for contracts submitted by a participant at the FSA office responsible for administering CCC programs in the county where the participant's farm is located during designated signup periods, as announced by CCC, will be approved.

**§ 1439.331 Termination of PRP contracts.**

(a) As determined by CCC, PRP contracts may be terminated before the expiration date when:

(1) The owner loses control of, or transfers, all or part of the acreage under contract and the new owner does not wish to continue the contract;

(2) The participant voluntarily requests in writing to terminate the contract and obtains the approval of CCC subject to such conditions on approval as may be determined by CCC;

(3) The participant is not in compliance with the terms and conditions of the contract;

(4) The same acreage is later enrolled in another State, Federal, or local conservation program;

(5) The PRP practice fails and CCC determines the cost of restoring the cover outweighs the benefits received from the restoration; or

(6) The PRP contract was approved based on erroneous eligibility determinations.

(b) When a PRP contract is terminated, the participant must, except as agreed to by CCC, refund all or part of the payments made with respect to such contract plus interest thereon, as determined by CCC, and shall pay liquidated damages as provided for in such contract.

**§ 1439.332 Contract modifications.**

By mutual agreement between CCC and the participant, a PRP contract may be modified in order to:

(a) Decrease acreage in the PRP;

(b) Facilitate the practical administration of the PRP; or

(c) Accomplish the goals and objectives of the PRP, as determined by CCC.

**§§ 1439.333–1439.339 [Reserved]****§ 1439.340 Payments.**

(a) Payments shall be made available upon a determination by CCC that an eligible practice, or an identifiable unit thereof, has been established in compliance with the appropriate standards and specifications. Payments will be prorated if requests for assistance exceed available funding.

(b) Except as otherwise provided for in this part, payments may be made

under the PRP only for the cost-effective establishment or installation of an eligible practice.

(c) Payments shall be made in such amount and in accordance with a schedule specified in the PRP contract.

(d) Payment shall be made on a per-acre basis.

(e) The payment shall be divided among the participants on a single contract in the manner agreed upon in such contract.

(f) The maximum amount of all payments that a person may receive under the PRP shall not exceed \$2,500. The regulations set forth at part 1400 of this chapter shall be applicable in making certain eligibility and "person" determinations as they apply to payment limitations under this part.

(g) Payments shall be limited as needed or appropriate to account for mandatory or discretionary limits on payments.

#### **§ 1439.341 Levels and rates for payments.**

(a) CCC shall pay not more than 65 percent of the average cost of reestablishing the approved forage crop, including reseeding, on eligible land.

(b) The average cost of performing a practice may be determined by CCC based on recommendations from the State Technical Committee or on such other basis as it deemed appropriate.

(c) Notwithstanding paragraph (a) or (b) of this section, no payment shall exceed \$100 per acre without approval of the Deputy Administrator. In no case shall a payment exceed \$125 per acre.

#### **§§ 1439.342–1439.349 [Reserved]**

#### **§ 1439.350 Payments to participants.**

Payments shall be made to the participants responsible for the establishment of the practice.

#### **§ 1439.351 Violations.**

(a) If a participant fails to carry out the terms and conditions of a PRP contract, CCC may terminate the PRP contract.

(b) If the PRP contract is terminated by CCC:

(1) The participant shall forfeit all rights to payments under such contract and refund all payments previously received together with interest; and

(2) Pay liquidated damages to CCC in such amount as specified in the contract.

(c) If the Deputy Administrator determines such failure does not warrant termination of such contract, the Deputy Administrator may authorize relief as the Deputy Administrator deems appropriate.

#### **§ 1439.352 Executed PRP contract not in conformity with regulations.**

If, after a PRP contract is approved by CCC, CCC discovers that the PRP contract is not in conformity with the provisions of this part, the provisions of the regulations in this part shall prevail and the contract may be terminated.

#### **§ 1439.353 Performance based upon advice or action of representative of the Secretary of Agriculture.**

The provisions of § 718.8 of this title relating to performance based upon the action or advice of a representative of the Secretary of Agriculture shall be applicable to this part.

#### **§ 1439.354 Access to land under contract.**

(a) The applicant or participant shall, as requested, provide all representatives or designees of CCC with access to all land that is:

(1) The subject of an application for a contract under this part; or

(2) Under contract or otherwise subject to this part.

(b) With respect to such land identified in paragraph (a) of this section, the participant or applicant shall provide such representatives with access to examine records with respect to such land for the purpose of determining compliance with the terms and conditions of the PRP.

#### **§ 1439.355 Appeals.**

Any person who is dissatisfied with a determination made with respect to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at parts 780 and 11 of this title.

#### **§ 1439.356 Refunds to CCC; joint and several liability.**

(a) In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under this part, and if any refund of a payment to CCC shall otherwise become due in connection with this part, all payments made in regard to such matter shall be refunded to CCC, together with interest as determined in accordance with paragraph (b) of this section and late-payment charges as provided for in part 1403 of this chapter.

(b) All persons with a financial interest in the operation or in an application for payment shall be jointly and severally liable for any refund, including related charges, that is determined to be due CCC for any reason under this part.

(c) Interest shall be applicable to refunds required of the livestock owner or other party receiving assistance or a

payment if CCC determines that payments or other assistance were provided to the owner and the owner was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges CCC for funds, as of the date CCC made such benefits. Such interest that is determined to be due CCC shall accrue from the date such benefits were made available by CCC to the date of repayment or the date interest increases in accordance with part 1403 of this chapter. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any action of the livestock owner or other individual or entity receiving benefits.

(d) Interest otherwise determined due in accordance with paragraph (c) of this section may be waived with respect to refunds required of the owner or other program recipient because of unintentional misaction on the part of the owner or other individual or entity, as determined by CCC.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in part 1403 of this chapter.

(f) Individuals or entities who are a party to any program operated under this part must refund to CCC any excess payments made by CCC with respect to such program.

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

#### **§ 1439.357 Miscellaneous.**

(a) Any remedies permitted CCC under this part shall be in addition to any other remedy, including, but not limited to criminal remedies, or actions for damages in favor of CCC, or the United States, as may be permitted by law.

(b) Absent a scheme or device to defeat the purpose of the program, when an owner loses control of PRP acreage due to foreclosure, CCC may waive the demand that could otherwise be made for refunds.

(c) Payments under this subpart are subject to provisions contained in Subpart A of this part including, but not limited to provisions concerning misrepresentations, payment limitations, limitations on eligibility tied to the person's gross income, and refunds to CCC, liens, assignment of payments, and appeals, and

maintenance of books and records. In addition, other parts of this chapter and of chapter VII of this title relating to payments in event of death, the handling of claims, and other matters may apply, as may other provisions of law and regulation.

(d) Any payments not earned that have been paid must be returned with interest subject to such other remedies as may be allowed by law.

(e) No interest will be paid or accrue on benefits under this subpart that are delayed or otherwise not timely issued unless otherwise mandated by law.

(f) Nothing in this subpart shall require a commitment of funds to this subpart in excess of that determined to be appropriate by the Deputy Administrator and/or CCC.

(g) Any payment otherwise due under this subpart will be reduced to the extent that it is determined that such payment produces a duplicate benefit under another program operated by the Department of Agriculture and that to make such duplicate payment would be contrary to the purposes of the program.

(h) In no instance may the amount expended under this subpart exceed \$39.912 million.

(i) Payments under this subpart shall 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, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to PRP contract payments.

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

(k) In those instances in which, prior to the March 14, 2001 effective date of this subpart, a producer has signed a power of attorney on an approved FSA-211 for a person or entity indicating that such power shall extend to "all above programs", without limitation, such power will be considered to extend to this program unless by April 2, 2001 the person granting the power notifies the local FSA office for the control county that the grantee of the power is not authorized to handle transactions for this program for the grantor.

(l) Livestock producers or any other individual or entity seeking or receiving assistance under this part shall maintain and retain records that will permit verification of PRP practice completion for at least 3 years following the end of the calendar year in which payment was made, or for such additional period as CCC may request. An examination of such records by a duly authorized representative of the United States Government shall be permitted at any time during business hours.

(m) A person shall be ineligible to receive assistance under PRP and be subject to such other remedies as may be allowed by law, if, with respect to the PRP, it is determined by the State committee or the 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.

#### **Subpart I—American Indian Livestock Feed Program**

9. Revise § 1439.901 to read as follows:

#### **§ 1439.901 Applicability.**

This subpart sets forth the terms and conditions of a government-to-government program titled the American Indian Livestock Feed Program (AILFP). Assistance will be available in those regions that CCC determines have been affected by natural disaster, and where a determination is made by the Deputy Administrator for Farm Programs that a livestock feed emergency exists on tribal land. Funds made available to CCC shall be available for any outstanding crop year 2000 payment applications and in subsequent crop years contract requests until funding is exhausted. Payments may become available as contracts with tribal governments are approved. If any other benefits are received from the Department of Agriculture for the same loss, then payments under this part will be reduced accordingly. Payments will terminate when funds have been exhausted, without respect to the date of any application, or of when any contract has been entered into by any tribal government and CCC. Applicants will receive benefits on a first-come, first-served basis.

10. Revise the last sentence of § 1439.906(a) to read as follows:

#### **§ 1439.906 Program availability.**

(a) \* \* \* All contracts requesting region approval must be submitted by the date 30 days after the end of the disaster period specified on the contract.

\* \* \* \* \*

Dated: March 12, 2001.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

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**BILLING CODE 3410-05-P**