

**DEPARTMENT OF AGRICULTURE****Farm Service Agency****Commodity Credit Corporation****7 CFR Parts 718 and 723**

**7 CFR Parts 1400, 1412, 1421, 1427, 1430, 1434, 1435, 1439, 1447, 1464, 1469, 1478**

**RIN 0560-AG13**

**1999 Crop and Market Loss Assistance**

**AGENCIES:** Farm Service Agency, Commodity Credit Corporation; USDA.

**ACTION:** Final Rule.

**SUMMARY:** This final rule implements crop and market loss provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000, (the 2000 Act), and the Omnibus Consolidated Appropriations Act, 2000. This action will implement the statutory provisions related to the 1999 Crop Disaster Program, the Livestock Assistance and Livestock Indemnity Programs, Market Loss Assistance Programs for Dairy, Peanuts, and Tobacco, the Milk Price Support Program, Recourse Loan Programs for Mohair and Honey, advance production flexibility contract payments, revision of the Upland Cotton User Marketing Certificate Program, postponement of the Dairy Recourse Loan Program and elimination of the enforcement of sugar marketing assessments through FY 2001. This rule will also amend the regulations to implement several other, related provisions, such as payment limitations and the transfer of flue-cured tobacco quota.

**EFFECTIVE DATE:** February 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, FSA, USDA, STOP 0540, 1400 Independence Avenue, SW, Washington, D.C. 20250-0540, Telephone: (202) 205-5851.

**SUPPLEMENTARY INFORMATION:****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. A cost-benefit assessment was completed and is summarized after the background section explaining the actions this rule will take.

**Federal Assistance Programs**

The titles and numbers of the Federal assistance programs, as found in the

Catalog of Federal Domestic Assistance, to which this final rule applies are: Commodity Loan Deficiency Payments-10.051; Production Flexibility Payments for Contract Commodities-10.055; Conservation Reserve Program-10.069, Disaster Reserve Assistance-10.452.

**Regulatory Flexibility Act**

It has been determined that 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).

**Unfunded Mandates**

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because the 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.

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

Section 824 of the 2000 Act requires that the regulations necessary to implement Title VIII, Subtitle A of the 2000 Act be issued as soon as practicable and without regard to the notice and comment provisions of 5 U.S.C. 553. It also requires that the Secretary use the provisions of 5 U.S.C. 808, which provides that a rule may take effect at such time as the agency may determine if the agency finds for good cause that public notice is impracticable, unnecessary, or contrary to the public purpose. These regulations affect the incomes of an extraordinarily large number of agricultural producers who have been hit hard by natural disasters and poor market conditions. Accordingly, because it would be contrary to the public interest to delay

this rule, as expressed in the 2000 Act, this rule is effective immediately.

**Paperwork Reduction Act**

As provided in section 824 of the 2000 Act, these regulations are to be promulgated without regard to the Paperwork Reduction Act. However, the forms necessary to conduct these programs will be submitted for clearance to the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

**Background**

This Final Rule will implement requirements of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000, (Pub. L. 106-78) (the 2000 Act), and the Omnibus Consolidated Appropriations Act, 2000 (Pub. L. 106-113) related to crop and market loss assistance for agricultural producers. It will also implement several other provisions of those and other Acts that are related to but not in themselves crop or market loss assistance provisions. Crop and market loss provisions of the Acts that are being implemented are the 1999 Crop Disaster Program, the Livestock Assistance and Livestock Indemnity Programs, Market Loss Assistance Programs for Dairy, Peanuts, and Tobacco, and advance production flexibility contract payments.

This rule will also amend the regulations to implement a related provision of the 2000 Act, increased payment limitations. Other provisions, such as revision of the Upland Cotton User Marketing Certificate Program, the Milk Price Support Program, Recourse Loan Programs for Mohair and Honey, postponement of the Dairy Recourse Loan Program, elimination of the enforcement of sugar marketing assessments through FY 2001 and the transfer of flue-cured tobacco quota, while not necessarily related to crop or market loss assistance, are mandated by the same subtitle, Subtitle A of Title VIII of the 2000 Act, that mandated the crop and market loss provisions. Regulations implementing Subtitle A were mandated by the 2000 Act to be promulgated without regard to the public comment requirements of the Administrative Procedures Act, 5 U.S.C. 553. Thus, this final rule is a logical place to finalize these additional provisions. Finally, the revisions to the Upland Cotton User Marketing Certificate Program include finalization of proposed rules that were published earlier to implement other legislation,

and removal of obsolete regulations. These revisions are appropriate in order to provide consistent and uniform regulations for the implementation of the revisions mandated by the 2000 Act.

Descriptions of the provisions being implemented by this rule follow.

*1. 7 CFR 718 Farm Constitution for Transfer of Tobacco Quota*

Section 803 of the 2000 Act amended Section 379(b) of the Agricultural Adjustment Act of 1938 (the 1938 Act) with respect to the organization of tobacco farms. Prior to the enactment of the 2000 Act, the 1938 Act provided explicitly, for tobacco, that where the same owner has tracts of land in contiguous counties, the owner could combine the tracts as one "farm" for program purposes so long as one of the tracts had a burley tobacco poundage quota and the local county FSA committee determined that the tracts would be operated as a single farming unit. The 2000 Act extended that allowance to flue-cured tobacco farms. The reconstitution provision at 7 CFR 718.201(a)(4)(ii)(A) has been revised accordingly.

*2. 7 CFR 723 Tobacco Quotas and Allotments*

This rule will also implement section 755 of the 2000 Act, which amends section 319(l) of the 1938 Act to permit, in Kentucky, Ohio, and Indiana, the lease and transfer of burley tobacco quota across county lines if such leasing is approved in a referendum of growers. Previously, such leasing within those states was only allowed within the same county. Referenda were previously allowed in Tennessee and Virginia. Referenda were held in Tennessee and Virginia in which Tennessee growers favored cross county line leasing, whereas Virginia growers opposed such leasing. Additional referenda will not be held in Tennessee or Virginia unless growers petition the Secretary. Under the amendments made by the 2000 Act, such referenda would be allowed in five states instead of two.

In a related matter also implemented in this rule, section 803 of the 2000 Act amends section 316(g) of the 1938 Act to permit the Secretary, on request of at least 25 percent of the active flue-cured tobacco producers within a State, to conduct a referendum to determine whether the producers favor or oppose permitting the sale of a flue-cured tobacco allotment or quota from a farm in the State to any other farm in the State. That section specifies that such sales shall be allowed if the majority of the voters approve the allowance of such transfers.

Further, section 803 of the 2000 Act modifies section 316(e) of the 1938 Act to exempt flue-cured tobacco from the prohibition of having a tobacco allotment that, in acres, is more than 50 percent of the total cropland on the farm. That provision is also implemented in this rule. In addition, though the 2000 Act amendments exempt flue-cured tobacco from the coverage of section 316(e), the amendments to section 316(e) retain in that subsection a definition of "tillable cropland." As that definition, however, only had significance with respect to the flue-cured tobacco and the application of section 316(e), that definition is removed by this rule from the program regulations in part 723.

Finally, section 803 of the 2000 Act also amends section 379(b) of the 1938 Act, which provided explicitly that where the same owner has tracts of land in contiguous counties, the owner can combine the tracts as one "farm" for program purposes so long as one of the tracts has a burley tobacco poundage quota and the local county FSA committee determines that the tracts will be operated as a single farming unit. The 2000 Act amendments extend the allowance to flue-cured tobacco farms. That provision is implemented in this rule. Because that provision involves the general regulations dealing with farm reconstitutions that are codified at 7 CFR Part 718, it is also described in that section of this rule.

*3. 7 CFR 1400 Limitation on 1999 Marketing Loan Gains and Loan Deficiency Payments*

This rule amends 7 CFR Part 1400 to set forth a revised limitation on Marketing Loan Gains (MLG's) and Loan Deficiency Payments (LDP's) for 1999 contract commodities and oilseeds as required by the 2000 Act. Specifically, Section 813(a) of the 2000 Act increased to \$150,000 the maximum total amount of payments identified in section 1001(3) of the Food Security Act of 1985 (7 U.S.C. 1308(1)) (the 1985 Act) that a person may receive under the Agricultural Marketing Transition Act (AMTA) for one or more contract commodities and oilseeds produced during the 1999 crop year. This rule does not amend any other provisions of part 1400. It should be emphasized that the change to the \$150,000 limitation on MLG's and LDP's is applicable only to the 1999 crop year. The revised limitation for 1999 MLG's and LDP's does not affect any other payment eligibility and limitation requirements contained in part 1400, or any price support benefit or price support loan making eligibility requirements that

may be contained in parts 1421 or 1427 of this chapter, or elsewhere.

*4. 7 CFR Part 1410 Recission of the Highly-Erodible Land Restriction for the Conservation Reserve Program*

Section 763 of the 2000 Act deleted section 1232(a)(11) of the 1985 Act, as amended. That section required, as a condition of contract compliance for certain producers with Conservation Reserve Program contracts, that the producer not use any newly-acquired highly-erodible land for the production of certain crops unless the land had a history of crop use. This rule revises the CRP regulations at 7 CFR Part 1410 accordingly.

*5. 7 CFR Part 1412 Production Flexibility Contracts*

This rule amends the regulations governing Production Flexibility Contracts (PFC's) to provide for greater flexibility in the timing of the FY 1999 through 2002 program payments, as required by section 811 of the 2000 Act. It also amends the regulations to reduce payments when contract acreage is planted to wild rice, to change the deadline for enrolling land that is under an expiring Conservation Reserve Program (CRP) contract into the PFC program and to provide that PFC payment shares must be redesignated within 30 days of official approval of any reconstitution of a PFC farm. These latter changes are intended to improve program delivery.

The PFC program, enacted in 1996, allows persons with farms with crop bases under previous commodity support programs to enter into agreements for payments for the 1996–2002 crop years in return for limiting the use of the contract acres during the contract period.

Section 727 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (Pub. L. 105–277) (1999 Appropriations Act), provides that the number of acres on which a participant will be eligible for 1999 PFC payments must be reduced, acre for acre, for each contract acre on which wild rice is planted. Additionally, Section 727 of the 2000 Act provides that the number of acres on which a participant will be eligible for 2000 and future years' PFC payments must be reduced, acre for acre, for each contract acre on which wild rice is planted. Section 1412.206 has been amended accordingly. Also, the Emergency Farm Financial Relief Act (Pub. L. 105–228) amended section 112(d) of AMTA (7 U.S.C. 7212(d)) to provide greater flexibility in the timing

of the issuance of the 1999 PFC payments. The 2000 Act authorizes the same payment options for FY 1999–2002. Section 1412.302 of the regulations is amended accordingly. In addition, to help establish clear program eligibility, 7 CFR 1412.201 is amended to provide that the shares on a PFC must be designated or redesignated within 30 days of the approval of a reconstitution on a PFC. The 30-day limitation is in addition to other limits that may apply. Finally, to allow greater time for a producer to consider the producer's options, this rule will allow land with a Conservation Reserve Program (CRP) contract expiring after August 1, 1998, to be enrolled in the PFC program anytime up until April 1 of the fiscal year following the fiscal year in which the CRP contract expires. Prior to this amendment, the deadline for enrolling in a PFC would have been the last day of November of the fiscal year following the year in which the CRP contract expires. Section 1412.501(d) and (e) have been amended for that reason and for clarity. These amendments still will not allow any land to generate both a PFC and CRP payment for the same year.

#### *6. 7 CFR Part 1421 New Eligibility Rules for MLG's and LDP's*

Section 813(a) of the 2000 Act increased the payment limitation for MLG's and LDP's for one or more contract commodities and oilseeds produced during the 1999 crop year from \$75,000 to \$150,000. Section 813(b) directed the Secretary, in administering the increased payment limitation, to allow a producer that marketed a quantity of an eligible 1999 crop for which an MLG or LDP was not received to receive such payment or gain as of the date the quantity was marketed or redeemed.

Rules governing MLG's and LDP's are codified in 7 CFR Part 1421.1, and those regulations are modified in this rule to reflect these new statutory provisions. Subject to certain conditions, the new rules will allow a producer that is otherwise eligible to receive a payment to receive an MLG or LDP even though the producer has already marketed the commodity. This will only apply for commodities marketed on or before date of publication of this rule and to otherwise eligible producers on commodities for which no MLG or LDP has been paid.

This rule makes similar changes regarding eligibility requirements for MLG's and LDP's in part 1427.

#### *7. 7 CFR Part 1427 Upland Cotton User Marketing Certificate Program*

This rule amends the Upland Cotton User Marketing Certificate Program regulations to implement both 2000 Act provisions and changes required by earlier legislation. The amendments will accomplish three distinct objectives:

A. Changes to the regulations for the user marketing certificate program are necessitated by statutory changes made by section 731 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1998 (Pub. L. 105–86), by section 762 of the 1999 Appropriations Act, and by section 806 of the 2000 Act. These acts amended the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) to change the requisite conditions in the cotton market under which user marketing certificates must be made available. The 1996 Act, as amended, requires that user marketing certificates be made available to domestic users and exporters for raw upland cotton grown in the United States and consumed or exported after four consecutive weeks during which the U.S. price quotation for upland cotton, including cost, insurance, and freight (C.I.F.), delivered in northern Europe, exceeds the average quotation for the five cheapest growths of upland-style cotton quoted for delivery, C.I.F. northern Europe, by more than 1.25 cents per pound.

If marketing certificates are being made available, the 1996 Act, as amended, provides that such certificates are interrupted whenever the adjusted world price (AWP) at which upland cotton marketing loan repayments are made rises to a level in excess of 134 percent of the current loan rate.

B. About mid-April each year, price quotations for both the old-crop (current) and new-crop (forward) marketing years become available and are usually published concurrently until the end of the marketing year on July 31. Given the parallel sets of price data, administration of the user marketing certificate program requires a procedure to effect the transition from the old crop to the new crop during the four weeks following July 31.

On August 7, 1997, CCC established a transition procedure with respect to the weekly determination as to whether the requisite period of consecutive weeks has passed in which U.S. price quotations, C.I.F. northern Europe, have exceeded the average quotation for the five cheapest growths of upland-style cotton quoted for delivery, C.I.F. northern Europe, by more than 1.25 cents per pound. Under this transition

procedure, current-crop price quotations are considered for the weeks prior to the first Thursday after July 31 to determine whether each week's data should be counted toward the four consecutive weeks the passage of which could cause special global import quotas to be opened.

Under current regulations, user marketing certificate payment rates throughout the year are based on current-crop quotations. However, current regulations require that, at the marketing year transition period, price quotations for the forward crop be considered for the three weeks prior to the first Thursday after July 31 to determine whether four consecutive qualifying weeks have passed that would require user marketing certificate payments to be made available. This procedure is inconsistent with the procedure now used for the determination regarding the special global import quota. This final rule sets forth an end-of-year transition procedure that is identical to the procedure USDA established on August 7, 1997, and thereby attains consistency by establishing that current-crop price quotations from the weeks prior to the first Thursday after July 31 will be used for the 4-week determinations for both the special global import quota and the user marketing certificate program.

C. Current regulations contain language that is obsolete and applied only to situations that have passed and cannot recur. The language remained following the regulatory revisions in 1996 so that prior existing claims under the user marketing certificate program could be handled. There is no further need for this language, so it is deleted from the regulations.

A Notice of Proposed Rulemaking was published in the **Federal Register** on December 9, 1998, (63 FR 67806) regarding these issues. No comments were received, and those changes have been adopted in this rule along with the additional modifications needed to reflect provisions of the recent appropriations bill which revives this program by effectively removing the spending cap that formerly was codified in the legislation at \$701 million.

#### *8. 7 CFR Part 1430 Price Support Program for Milk, Dairy Recourse Loan Program, and Dairy Market Loss Assistance Program*

Section 807 of the 2000 Act postpones the termination date of the Milk Price Support Program until December 31, 2000, and continues the \$9.90 per hundredweight support rate for milk that was in effect during calendar year 1999 through the year 2000. Section 807

of the 2000 Act postpones the start of the Recourse Loan Program for Commercial Processors of Dairy Products from January 1, 2000, to January 1, 2001. This rule modifies the provisions of 7 CFR part 1430 accordingly.

Sections 805 and 825 of the 2000 Act provided \$325 million for assistance for livestock and dairy producers who suffered economic losses in 1999. Of that \$325 million, \$125 million must be made available to dairy producers. The assistance will be provided by extending the Dairy Market Loss Assistance Program (DMLAP), which was established by a final rule published in the **Federal Register** on May 10, 1999 at 64 FR 24933. This present rule amends part 1430 to expand the current regulation to cover the second Dairy Market Loss Assistance Program.

The original DMLAP implemented section 1121 of Pub. L. No. 105-277, which directed the Secretary to provide \$200 million in assistance to dairy producers. Eligible dairy producers received payments under this program for the first 26,000 hundredweight (cwt.) of milk marketings in either calendar year 1997 or 1998, but not both. Eligible operations had to have been in existence during the fourth quarter of 1998. The \$200 million was divided among all the eligible dairy operations that applied during the initial application period that ended on May 21, 1999.

Under the new provisions of this rule, signup has been extended through February 28, 2000. Dairy operations may apply in person at county FSA offices during regular business hours, and at that time complete the application form. Dairy operations that applied for and received payments under the May 1999 dairy market loss assistance program do not need to reapply. Additional payments will be issued based upon the original application. The per-cwt. payment rate will be the \$125 million available divided by the eligible production of milk (limited to 26,000 cwt. per dairy operation) marketed commercially during the base period.

#### *9. 7 CFR Part 1434 Recourse Loan Regulations for Honey*

Section 1122 of Pub. L. 105-277 provided that in order to assist producers of honey to market their honey in an orderly manner during a period of low prices, the Secretary would be required to make recourse loans to producers of the 1998 crop of honey on fair and reasonable terms and conditions, as determined by the Secretary. That section specified a particular loan rate and specified that

repayment of such loans would require, in addition to repayment of principal and interest, collection of such administrative costs as necessary to operate the program on a no net cost basis. Thereafter, regulations were issued that were codified in 7 CFR part 1434 by a final rule published on March 8, 1999 (64 FR 10923). Subsequently, in Pub. L. 106-31, Congress amended the no net cost provision of Section 1122 of Pub. L. 105-277 to specify that no administrative costs should be charged against this program to the extent that those costs were costs which would have been incurred otherwise.

More recently, section 801 of the 2000 Act provided for a similar program for the 1999 crop. That section provides generally for the use of \$1.2 billion in CCC funds to make emergency financial assistance available to producers on a farm that have incurred losses in a 1999 crop due to a disaster as determined by the Secretary. With respect to honey, however, that section specifies that in order to assist producers of honey to market their honey in an orderly manner during a period of low prices, the Secretary may use funds otherwise made available for use under Section 801 to make available recourse loans to producers of the 1999 crop of honey on fair and reasonable terms and conditions, as determined by the Secretary. As with the program provided in Pub. L. 105-277 for the 1998 crop, the 2000 Act specifies that the loan rate shall be 85 percent of the average price of honey during the 5-crop year period preceding the crop year for which the loan is made, excluding the crop year in which the average price of honey was the highest and the crop year in which the average price was the lowest in the period. This final rule will amend part 1434 to expand the current regulation to cover 1999-crop honey as well. The 1999-crop program will be operated in the same manner as the 1998-crop program given the similarity of the 1999-crop statutory provisions to those for the 1998 crop. Program details were set out in the March 8, 1999, rule. The adopted regulations specify that the final loan date for 1999-crop honey will be March 31, 2000. Also, the rule amends section 1434.9 to reflect the change in the no-net-cost aspect of the program brought about by Pub. L. 106-31.

#### *10. 7 CFR Part 1435 Sugar Marketing Assessments*

Section 803(b) of the 2000 Act provides that none of the funds appropriated or otherwise made available by this Act or any other Act may be used to pay the salaries and

expenses of personnel of the Department of Agriculture to carry out or enforce section 156(f) of the 1996 Act through fiscal year 2001. Section 156(f) of the 1996 Act provides for a marketing assessment for sugar, and regulations for that assessment are codified in 7 CFR part 1435. This rule modifies part 1435 in light of the provisions of section 803(b) of the 2000 Act. Section 156(f) of the 1996 Act requires first processors to pay an assessment on the marketing of all raw cane sugar and raw beet sugar in fiscal years 1996-2003. That part calls for an accounting on a monthly basis and also provides that at the end of each fiscal year processors must pay an assessment on their inventories on hand even though those inventories have not yet been marketed.

Section 803 does not apply to particular sugar but rather to the enforcement of the assessment during a certain period. However, the orientation of the assessment statute itself is toward month to month accounting and reporting. Processors will not be required to file reports during the period October 23, 1999, through September 30, 2001. Sugar that is marketed during September of 2001 will be sugar on which the assessment will be due when the report on that sugar is due in October of 2001.

#### *11. 7 CFR Part 1439 Livestock Assistance and Livestock Indemnity Programs*

Section 805 of the 2000 Act provides that the Secretary shall use \$325 million of CCC funds to provide assistance directly to livestock and dairy producers in a manner determined appropriate by the Secretary to compensate the producers for economic losses incurred during 1999. Section 825 of the 2000 Act provides that of the funds provided in section 801 (which deals with crop losses) and section 805 of the 2000 Act, no less than \$200 million shall be used for livestock producers for losses due to drought or other natural disasters. This rule will implement the livestock requirements through the Livestock Assistance Program (LAP) and the Livestock Indemnity Program (LIP).

Several programs dealing with livestock matters are codified at 7 CFR part 1439. That part was amended in March 1999 (64 FR 13497, March 19, 1999) to set out a 1998 LAP based on Pub. L. 105-277. A new LAP program based on the 2000 Act will be created using the same criteria that were used for the 1998 LAP program. The program for 1998 was successful in identifying needy producers in an efficient manner. Use of the same criteria will help avoid confusion and should serve as well in

making it possible for benefits to be made available more rapidly.

There is a suggestion in the 2000 Act conference report that last year's LAP limit per person of \$40,000 in benefits be, for this year, increased to a higher level. However, on consideration, it has been decided not to adopt that suggestion as it would draw funds away from potentially needier farmers with smaller operations.

As with the 1998 LAP program, benefits under the new program will be provided to eligible livestock producers only in those counties where a severe natural disaster occurred, and that were subsequently designated eligible counties by the Deputy Administrator for Farm Programs of FSA. To be designated an eligible county, the county must have suffered a 40-percent or greater grazing loss for 3 consecutive months during the 1999 calendar year as a result of damage due to a drought or other natural disaster. Each county must qualify on its own, unlike in some programs in the past where contiguous counties have also been eligible. Further, the livestock producer 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 cannot exceed a maximum determined and announced by the local county committee. The program will be administered through the Deputy Administrator for Farm Programs, FSA. The producer's gross loss eligibility will be computed using a formula that takes into account the composition of the producer's livestock holdings and will be subject to funding and other limitations, including a per person payment limitation and a provision which precludes participation for persons whose 1998 gross revenues exceed \$2.5 million. As with the 1998 program, the regulations allow for a final payment eligibility not to exceed 50 percent of the eligible loss amount. To the extent that the funds available for the program are not enough to cover the claims, the claims will be pro-rated using a national factor, if applicable. For purposes of per-person payment limits for the new program, the regulations in 7CFR 1400 will be used to determine who qualifies as a separate "person".

In addition to the LAP, a new LIP will compensate producers for losses of livestock. The new LIP, referred to as 1999 LIP, Phase II, will follow closely upon the LIP program promulgated in regulations published at 64 FR 58766 on November 1, 1999. That LIP program, which will now be known as 1999 LIP,

Phase I, is authorized by provisions of the 1999 Emergency Supplemental Appropriations Act (Pub. L. 106-31), enacted on May 21, 1999, which made \$3,000,000 available to the Secretary of Agriculture to implement a livestock indemnity program for qualifying livestock losses occurring in the period beginning on May 2, 1998, and ending on May 21, 1999. That legislation specified that the covered losses had to be due to natural disasters declared by the President or Secretary of Agriculture. Further, that legislation specified that the request for qualifying declaration had to be submitted by May 21, 1999, and that, to the extent practicable, benefits had to be provided in a manner similar to that used for the livestock indemnity programs carried out by the Secretary during 1997 and 1998. Also, Pub. L. 106-31 specified that benefits under the program would be subject, to the extent practicable, to the gross income means test and payment limitations of the 1996-crop Disaster Reserve Assistance Program (DRAP) previously codified in 7 CFR part 1437. Under the 1996 DRAP, no person could receive more than \$50,000 in payments and no person could receive any payment at all if that person's annual gross revenue exceeded \$2.5 million. The 2000 Act does not carry that specificity with respect to livestock losses but rather, as indicated, simply provides generally that at least \$200 million of the funds available under Sections 801 and 805 of the 2000 Act for 1999 crop and livestock disaster losses must be made available to livestock producers.

The LIP, Phase I, was a successful and fair way of making assistance available to producers and following the existing program will allow for an efficient and cohesive way of providing additional assistance.

Accordingly, this rule simply expands the existing LIP rules in part 1439 to allow for the new LIP by extending benefits to losses that occurred in that part of 1999 not covered by Phase I, namely, losses that occurred due to a natural disaster that was the subject of a Presidential or Secretarial disaster declaration that was requested between May 22, 1999 and December 31, 1999, inclusive, and subsequently approved. Losses of livestock due to drought conditions are deemed to have been avoidable and are not eligible for benefits under LIP. Benefits were available to producers under LAP, which would have compensated the producer for purchased feed. Otherwise, with one exception noted below, this rule will follow the substantive terms of

Phase I, the details of which were set out in the November 1, 1999, rule.

For the 1999 livestock indemnity programs, payment rates will vary by class of livestock involved and the payment rate will be a percentage of the assigned market price for the class.

As in Phase I, no person can receive benefits if that person's gross revenue, as defined by applicable regulations, exceeds \$2.5 million. The only substantive variance between the two phases, other than the time period covered, will be in dealing with the per-person payment limit. As indicated above, Phase I had a \$50,000 per person limit, whereas LAP had a \$40,000 payment limit. In order to provide for consistency with LAP and to provide for a better disbursement of benefits to smaller farms, which are generally less able to deal with adverse market conditions, this rule adopts a \$40,000 per person payment limit for LIP, Phase II. Phase I and Phase II will be considered separate programs for payment limitation purposes and payments for a loss will be compensated only under one of these two programs. Only \$200 million will be allotted to the new livestock programs and claims will be prorated as needed.

#### *12. 7 CFR Part 1447 1999 Peanut Marketing Assistance Program*

Section 803(a) of the 2000 Act provides that the Secretary shall use such amounts as are necessary of funds of the Commodity Credit Corporation to provide payments to producers of quota or additional peanuts to partially compensate them for continuing low commodity prices and increasing costs of production for the 1999 crop year. The 2000 Act specifies that the amount of the payment to producers on a farm of quota or additional peanuts shall be equal to the product obtained by multiplying the quantity of quota peanuts or additional peanuts produced or considered produced by the producers by an amount equal to 5 percent of the loan rate established for quota peanuts or additional peanuts, respectively, under section 155 of AMTA. In order to implement this new program new regulations are codified by this rule in part 1447. In the case of so-called "fall transfers" where a farmer with a quota is unable to sell the quota peanuts, the farmer will be considered to have been the producer of quota peanuts and will be eligible at the quota rate for peanuts. The transferee will also be considered the producer of quota peanuts because the peanuts will have been marketed using a quota. In the case of spring transfers, the transferor will not be eligible for a payment unless the

transferor actually planted peanuts or was prevented from doing so by conditions beyond the producer's control. While the transferor in those cases receives what is called "considered produced credit", which allows the transferor to avoid losing the quota for non-use, the transferor is not considered to have actually produced any peanuts. Thus, for example, in traditional disaster programs such as transfers have not received disaster payments whereas a farmer who planted peanuts but lost them due to a disaster was considered to have produced the peanuts and was, therefore, eligible for payments. Persons wanting to participate in the new program must file an application the payment by January 31, 2000, or such other date as may be set by the Deputy Administrator for Farm Programs, FSA. Applications will be spot-checked and validated by FSA.

### *13. 7 CFR 1464 Tobacco Loss Assistance Program*

This rule provides for several amendments to existing regulations regarding tobacco. First, section 803 of the 2000 Act authorizes the Secretary to use \$328 million of funds of CCC to make payments to States on behalf of persons whose 1999 quota or acreage allotment for tobacco was reduced from the 1998 crop year level due to a drop in the national marketing quota or poundage quota for a kind of tobacco. This rule implements this provision by an amendment to 7 CFR part 1464 providing for a Tobacco Loss Assistance Program (TLAP) to distribute those funds to the States. The rule provides that CCC will allocate funds to State governments with eligible growers. It appears that the States that will be eligible for receipt of the quota reduction funds will be those states in which burley, flue-cured, fire-cured and cigar-filler and binder tobaccos are grown. There is, it is noted, some question under the statute about the scope of the coverage of the program. That debate arises because burley and flue cured tobaccos are the only tobaccos for which poundage quotas are assigned at the farm level and because of the existence of a colloquy in the Senate's consideration of the bill in which it was stated that the intent of the provision in the statute was to grant relief for burley and flue-cured growers. For other kinds of tobacco the farm does not receive a farm poundage quota as such, but receives an allotment that limits the number of acres that can be devoted to the crop. However, the statute provides that those farms that will be eligible for the payment will be those farms for which the "quantity of

quota allotted" to the farm was reduced between the two years in question. Thus, there is no specific limitation in the statute to burley and flue-cured tobacco that could have been easily implemented and that would have been clearly understood. Further, while for other tobaccos there are not farm poundage quotas but farm acreage allotments, which limit the number of acres that can be devoted to the crop, the farm's allotment is determined by apportioning a national marketing quota for the farm based on yield calculations. Hence, there is, in that sense, when there is a drop in the overall quota, as there was for fire-cured and cigar-filler and binder tobaccos, a reduction in the quota allotted to the farm. For that reason, it appears that for producers of those tobaccos the statutory condition for payment is met. On the other hand, while the colloquy does mention cigarette tobaccos, the statute does specifically limit its coverage to those tobaccos for which there are quotas and allotments. Thus, cigarette tobaccos for which there are no such quota or allotments, because they have been rejected by referendum conducted among producers, are not eligible for the distribution.

Insofar as distribution of the monies are concerned, the rule provides generally that the Secretary will distribute the \$328 million quota reduction funds only to the State or their agents rather than to growers directly. The States, however, would take the sums obligated, except for the costs of distributing the principal and any interest earned on it to eligible growers in accordance with the terms of the 2000 Act. The 2000 Act generally calls for the distribution to be made, where applicable, in the same manner as the current distributions are being made under the National Tobacco Growers Settlement Trust (the Trust), a special \$5 billion trust created by tobacco companies to provide compensation to tobacco growers. States not party to the Trust are eligible for disaster funds but must submit a distribution plan for approval by the Executive Vice-President, CCC. Questions of eligibility under the new \$328 million program would have to be resolved by complainants with the States themselves. In order, however, to allow for maximum flexibility, the rule would allow for CCC to make direct distributions to eligible persons if a compelling need should arise.

### *14. 7 CFR Part 1469 Mohair Recourse Loans*

Section 1126 of the 1999 Appropriations Act provided that in

order to assist producers of mohair to market their mohair in an orderly manner during a period of disastrously low prices, the Secretary would be required to make available recourse loans to producers who produced or had mohair on hand before or during FY 1999. Section 1126 specified a loan rate of \$2.00 per pound and that such loans would require repayment of principal only. The program regulations were codified at 7 CFR part 1469 by a final rule published on March 8, 1999 (64 FR 10929).

Section 801 of the 2000 Act provided for a similar program for mohair produced or on hand before or during FY 2000. Section 801 provides generally for the use of \$1.2 billion in CCC funds to make emergency financial assistance available to producers on a farm that have incurred losses in a 1999 crop due to a disaster as determined by the Secretary. Regarding mohair, Section 801 specifies, in language that is the same in substance as that for the FY 1999 program provided by the 1999 Appropriations Act, that in order to assist producers of mohair to market their mohair in an orderly manner during a period of low prices, the Secretary may use funds otherwise made available for use under Section 801 to make available recourse loans to producers of mohair produced during or before FY 2000 on fair and reasonable terms and conditions, as determined by the Secretary. The interest free provision specified in section 137(c)(4) of the 1999 Appropriations Act was removed by section 801(h)(2) of the 2000 Act. Loans made during FY 2000 will accrue interest as provided in 7 CFR part 1405. This rule amends 7 CFR part 1469 to expand the current regulations consistent with the new legislation. The FY 2000 program will be operated in the same manner as the FY 1999 program. The final loan application date for FY 2000 mohair will be September 30, 2000.

### *15. 7 CFR Part 1478 1999 Crop Disaster Program*

Section 1102 of the 1999 Appropriations Act provided for a crop loss program that covered, with certain conditions, disaster-related crop losses for 1998 and prior years. The Secretary was directed, in that connection, not to discriminate against or penalize producers on a farm who had purchased crop insurance under the Federal crop insurance program. In order to implement that program, new rules, codified at 7 CFR part 1477, were published on April 15, 1999 (64 FR 18553). Those rules were later amended with respect to an offset issue by a rule

published on November 1, 1999 (64 FR 58769). Now, in Section 801 of the 2000 Act, and Pub. L. 106–113, Congress has provided that \$1.386 billion of the funds of CCC be made available to make emergency financial assistance available to producers on a farm that have incurred losses on a 1999 crop due to a disaster, as determined by the Secretary. Section 801 specifies that such assistance be made available in the same manner as provided under the 1998-crop program, including use of the same loss thresholds. Section 801(d) specifies that the program shall be applicable to losses for all crops (including losses of trees from which a crop is harvested, livestock, and fisheries), as determined by the Secretary, due to disasters. This rule implements those provisions of section 801 essentially by adopting the single-year program regulations that were published for the 1998 program. However, because the necessary differences between the 1999 and the 1998 and earlier programs would produce unnecessarily confusing regulations if the 1999 program were to be implemented by revising the existing regulations at 7 CFR part 1477, the 1999 program regulations will be promulgated in a new part, 7 CFR part 1478. In addition to the new program being a single-year program only instead of having a multi-year program element, the rules for 1999 differ from the rules for 1998 due to other clarifications and modifications, including the following:

Adding a definition of “eligible crops” to clarify that all crops eligible for noninsured crop disaster assistance (NAP) or crop insurance are eligible for the 1999 Crop Disaster Program (CDP);

Modifying the crop insurance linkage requirement so that crop insurance will be required for all 2000 and 2001 crops

for which the producer received CDP payments for the 1999 crop year. Previously, the producer only had to obtain crop insurance on crops of “economic significance” to the producer. This eliminates the need for a determination of economic significance and makes enforcing compliance with the provision much more efficient;

Removing the definition of “economic significance”;

Adding a provision clarifying that the use of approved yields may only be used if production reports were submitted prior to the enactment of the 2000 Act;

Adding language regarding crops with multiple uses that allows CCC to request proof of marketing history when a crop had different payment rates for each intended use;

Adding vegetable and root stock as a value loss crop to more accurately reflect the way these types of crops are grown or sold; and

Removing language regarding Federal Crop Insurance Corporation (FCIC) premium discounts. Section 814 of the 2000 Act requires the Secretary to transfer \$400 million of CCC funds to FCIC to assist agricultural producers in purchasing additional crop insurance for crop year 2000. Previously, such premium discounts were provided directly by CCC.

Producers who seek benefits under this part must file an application for benefits during the sign-up period, December 13, 1999, to February 25, 2000, or other ending date as determined by the Deputy Administrator. False certification carries strict penalties and the Department will spot-check and validate applications. Because funding for the program is limited, national factors for reducing

payments will be determined after the end of sign-up, if necessary, to ensure that total outlays do not exceed the amount of funds made available under this program.

As with the 1998 program, there is a per-person payment limit of \$80,000 and, in addition, no person can receive benefits if that person's gross revenue as determined under the applicable rule exceeds \$2.5 million. Producers seeking benefits under this new program will be required to purchase crop insurance as a condition of receiving benefits, and the benefits that can be received may be reduced, if needed, for a failure, in connection with the 1998 crop program, to acquire crop insurance. Loss level requirements and payment criteria are essentially the same as for the 1998-crop program and are set out in this rule. With respect to livestock, however, benefits for such livestock will not be addressed within the provisions of the new part, but under the livestock assistance program and dairy indemnity programs which are otherwise provided for in this rule.

#### Cost-Benefit Assessment

The table and the discussion following summarize the Cost/Benefit Assessments for the major provisions of this rule. For FY 2000, outlays total approximately \$2.742 billion, including the elimination of sugar marketing assessments, which actually represent reduced revenues. Incomes of producers, processors and shippers will increase approximately \$2,998–\$3.197 billion. The differences between outlays, which are virtually all direct transfers to program participants, and income, are made up of increased dairy prices and the product of increased cotton prices and increased cotton production.

#### SUMMARY OF FY 2000 OUTLAYS AND CHANGES IN PRODUCER/PROCESSOR/SHIPPER INCOMES

Program	Outlays \$ million	Change in income \$ million
Milk Price Support and Dairy Recourse Loan Program .....	173	\$400–600
Sugar Marketing Assessments .....	41.6	41.6
Upland Cotton .....	400	475
Crop Disaster Program (includes honey and mohair) .....	1,386	<sup>1</sup> 1,340
Livestock Programs .....	200	200
Dairy Market Loss .....	125	125
Tobacco Quota Loss .....	328	328
Peanut Market Assistance .....	49	49
Increased Payment Limit for MLG and LDP <sup>2</sup> .....	39.4	39.4
Advance AMTA Payment <sup>3</sup> .....	1,971	.....
Total .....	<sup>4</sup> 2,742	2,998–3,198

<sup>1</sup> After allowances for administrative costs provided under section 822 of the 2000 Act and additional rice loan deficiency payments under section 801(f) of the 2000 Act.

<sup>2</sup> 1999: \$39.4 million; 2000: \$29.8 million; 2001: \$9.6 million.

<sup>3</sup> The acceleration of FY 2000–2002 PFC payments will advance payments of \$1,971 in 2000, \$1,584 million in 2001, and \$1,537 in 2002.

<sup>4</sup> Does not include advance AMTA payments.



### *Limitation on Marketing Loan Gains and Loan Deficiency Payments*

Marketing loan provisions allow a producer to repay a loan at a rate that is the lesser of the applicable loan rate and charges plus per-unit accrued interest or an alternative repayment rate determined by CCC. A marketing loan gain (MLG) is the amount of principal waived when a producer repays a loan at an alternative loan repayment rate that is less than the applicable loan rate. In lieu of securing a commodity loan, a producer may instead opt for a loan deficiency payment (LDP) if the alternative repayment rate is below the applicable loan rate. Once a given quantity of a commodity has received an LDP, however, the quantity is no longer eligible for a commodity loan. Moreover, a quantity that has received an MLG is not eligible for an LDP.

Combined MLG's plus LDP's for crops harvested in a given year are subject to a statutorily-specified payment limitation. Prior to a statutory change in this limit for the 1999 crops made by the 2000 Act, the payment limit had been \$75,000 per person. This payment limitation is viewed by many as a means of targeting program benefits to small- and medium-size farming operations. However, the payment limit does not prevent large operations from receiving such benefits, but it may effectively limit the amount of benefits that large operations receive.

The relatively high crop prices received by producers in 1995 and 1996 began to decline in 1997 as world demand slackened and as world supplies increased due to generally favorable growing conditions. The price decline has continued into the 1998 and 1999 crop years.

Because alternative repayment rates are tied to prices, the low 1998- and 1999 crop prices have triggered considerable MLG and LDP payments to producers. Due to the relatively high 1999-crop MLG and LDP payment rates that have been available to producers, and due to the considerable amount of loan-eligible quantities that many producers have, potential LDP plus MLG payments have easily exceeded \$75,000 for many such producers. In the absence of a change in the payment limit for the 1999 crops to a value higher than \$75,000, some of these producers would have had an incentive to obtain loans on those quantities that would be ineligible for LDP and MLG benefits due to the payment limit, and subsequently forfeit the crop to CCC. Any indirect program benefits realized by a producer by forfeiting a commodity to CCC (*i.e.*, the loan rate at which the

quantity is forfeited exceeds the loan repayment rate at the time of forfeiture) are not subject to the payment limitation.

By increasing the payment limitation, there will be a reduction in payment limit-related forfeitures and producers with large farming operations will be able to receive increased program benefits, especially at a time when prices are low and numerous other income-stabilizing actions were enacted in the 2000 Act. Specifically, section 813(a) of the 2000 Act amended section 1001 of the 1985 Act by increasing to \$150,000 the maximum MLG plus LDP payments a person may receive for the 1999 crops. The existing \$75,000 payment limitation for the 2000 and subsequent crops was unaffected by this statutory change.

This statutory change has some notable effects. A majority of the relatively large operators whose 1999-crop payments will exceed or have exceeded \$75,000 will be able to receive MLG's and/or LDP's on quantities of a commodity that were previously ineligible for such payments due to the \$75,000 limit. The incentive for these producers to pledge their production as collateral for loans and possibly forfeit the collateral at maturity is significantly reduced for all except operators with very large operations. Thus, corresponding quantities of commodities not pledged as collateral for a loan will be free to flow into the market. The effect of this change on CCC inventories and stock-holding is expected to be relatively small, however, because most forfeited quantities, regardless of the payment limitation, are sold by CCC within a short time after they have been forfeited.

Another effect is that CCC outlays will increase. Payments not made due to a payment limitation are a Government savings. Thus, increasing the payment limitation reduces such savings and results in an increase in outlays. The outlays associated with foregone payment limit savings will be offset to some extent by savings on such things as reduced CCC storage costs associated with a reduction in CCC inventories.

The increase in the payment limit occurred at a time when many individuals had already reached the previously established payment limit of \$75,000. Several of these producers sold those quantities that were ineligible for an MLG or LDP prior to enactment of the higher 1999-crop payment limit. By selling those quantities, the producers lost beneficial interest and, in the absence of a statutory change, were therefore ineligible for additional

benefits on those quantities despite the increase in the payment limit.

Due to this situation, section 813(b) of the 2000 Act stipulated that producers who would otherwise be ineligible for such payments or gains because they had marketed the commodity could receive a benefit based on the relevant loan repayment rate and LDP rate that was in effect on the date on which the quantity was marketed or redeemed. This change will lead to a relatively small increase in outlays. It will increase the benefits to and income of the affected producers up to the \$150,000 limit, but it will have no effect on marketings since such marketings have already occurred.

### *Price Support Program for Milk and the Recourse Loan Program for Commercial Processors of Dairy Products*

The total cost to CCC for extending the milk price support program is estimated at \$173 million. 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 20–40 cents per cwt., which would reduce dairy income by about \$400–600 million.

### *Advance Production Flexibility Contract Payments*

AMTA provided for payments to producers who signed Production Flexibility Contracts (PFC). These payments under AMTA were required to be made in two equal payments, with the first on December 15 or January 15 at the owner's or producer's option. The second payment was then made at the end of the fiscal year in September. For Fiscal Year (FY) 1999, the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 1999, Public Law 105–277, ("1999 Act") provided that producers could elect to receive their entire fiscal year PFC payment in a single payment or two equal payments anytime during the fiscal year. The 2000 Act authorizes the same payment options for FY 2000–2002.

The option for producers to receive all their FY 1999 PFC payments in a single lump sum pushed forward the disbursement of \$2,138 million in funds that otherwise would have been held until the final two months of the fiscal year. The acceleration of FY 2000–2002



PFC payments under a single-payment option can be expected to put as much as an additional \$1,971 million into the hands of producers by early 2000, \$1,584 million by early 2001, and \$1,537 million by early 2002. Under the two-payment requirement, these funds would not be available to producers until as late as September in each of these years. In addition to easing cash-flow and debt-servicing problems for many producers, the earlier availability of these funds could mean a savings of as much as \$238 million in reduced interest costs for U.S. grain producers over the four-year period.

#### *Suspending the Sugar Marketing Assessment*

Suspending the enforcement of the sugar marketing assessment is expected to reduce government revenues \$41.6 million in FY 2000 and \$41.8 million in FY 2001, for a total loss to the Federal government of \$83.4 million. The savings on program administration are estimated to be insignificant—less than \$10,000 per year. Processors and growers are expected to save about \$16.7 million and \$66.7 million, respectively, in assessment payments. Elimination of the reporting requirement for FY 2000 and FY 2001 will save the industry about \$50,000 in bookkeeping costs.

#### *Upland Cotton User Marketing Certificate Program*

Step 2 payments had been authorized to begin with the 1991 crop and were re-authorized for the 1996 through 2002 crops in the 1996 Act. Outlays were limited to \$701 million for Step 2 under that Act. The program began operating in July 1997 after a hiatus of 131 weeks. It operated until December 1998, when the entire amount of funding was exhausted. The payment rate during the operational period averaged 5.7 cents per pound. About 15.8 million bales were consumed by domestic textile mills and about 9.6 million bales of U.S.-grown cotton were exported and were the subject of payments under the program.

For the 1997 marketing year the average payment rate for exporters was 4.6 cents per pound. The payment is believed to have contributed about 250,000 to 375,000 bales to total U.S. exports in 1997/98. These additional exports would be worth about \$150 million to \$200 million in additional farm sales receipts. Payments to exporters totaled \$156 million. For mill use in the 1997 marketing year, the payment may have contributed between 150,000 and 250,000 bales to total mill use worth \$125 million to \$175 million.

Payments to mills in 1997 totaled \$234 million.

The upland cotton crop in the United States in 1998 was down by nearly 3.8 million bales (22 percent) from the level of 1997. Total supplies of upland cotton were down by 4.4 million bales (20 percent) for the 1998 marketing year. Despite domestic mill use that was 9 percent lower than in 1997, and even though exports dropped by over 40 percent, end-of-year cotton stocks held about constant at 3.8 million bales.

In the 1998 marketing year, the Step 2 payment rate averaged over 10 cents per pound but covered less than half the crop. With limited U.S. supplies and early exhaustion of the funds, Step 2 made only a limited contribution to total use. However, it likely raised domestic prices more than it had in other years, sending more of the Step 2 funds to farmers. The program is thought to have increased exports by between 100,000 and 150,000 bales, worth \$200 million to \$250 million. Payments to exporters in 1998 totaled \$116 million. In 1998, mill use is thought to have been increased by 150,000 to 300,000 bales, worth \$250 million to \$300 million. Payments to mills were \$191 million.

Now that Step 2 has been funded for the 1999 marketing year and beyond, USDA's cotton estimates committee projects that exports might be increased by 200,000 to 350,000 bales per year. Mill use was determined not to respond as well to Step 2 payments when supplies are normal, and the program is estimated by the committee as likely to lead to increases in mill use of only 60,000 to 100,000 bales per year. These increases would be accompanied by annual expenditures of about \$400 million in Step 2 payments and would increase farm sales receipts by an average of \$250 million to \$300 million per year due to a combination of higher prices and greater production.

Step 3 also was authorized to begin with the 1991 crop and was re-authorized in the 1996 Act. There have been two periods of sustained triggering of the import quotas. The first was over October 1995 through March 1997, when 70 consecutive quotas were announced. Imports from these quotas totaled about 800,000 bales. Due to the end of Step 2 in December of 1997, the second series of 35 consecutive weeks of import quotas began in February 1999 and ended in October 1999. Imports resulting from these quotas are still possible, but about 400,000 bales have been imported under these quotas so far.

Supplies are now adequate in the United States, and imports have dwindled to virtually nothing in recent

weeks. Step 3 quotas totaling over 900,000 bales remain open. With U.S. prices now quite low and competitive, few imported bales are expected for the remainder of this marketing year. No significant imports are projected through the 2002 crop year.

#### *Honey Recourse Loan Program*

The 1999-crop loan rate will be established at 59 cents per pound based on the statutory formula. At the current reduced price level the 1999-crop loan rate resulting from the statutory formula is expected to exceed most current market prices. Producers who use the 1999-crop loan program are expected to save \$480,000 in reduced borrowing costs compared with commercial loans. With current market prices in the range of 40 to 55 cents per pound, a market price increase of about 1.5 cents per pound would be needed to recover the loan interest. Domestic honey prices are closely related to prices of imports because of our sizeable imports. Without higher foreign honey prices, it would seem likely that domestic honey prices will remain low in spite of the 1999 honey loan program. The amount of honey estimated to be loan collateral would not be sufficient to create significant upward price pressure. With prices expected to be unaffected by the loan program, domestic consumers will not be impacted.

#### *Livestock Programs*

The Livestock Assistance Program (LAP) will provide emergency feed assistance to eligible livestock producers for grazing losses in counties where a severe natural disaster occurred during calendar 1999 and which has been approved by the Deputy Administrator for Farm Programs, FSA. Counties where precipitation was 40 percent or more below or above normal for at least 4 months and where there was at least a 40 percent, or greater, grazing loss for at least 3 consecutive months, are eligible for approval.

Eligible livestock are beef and dairy cattle; buffalo or 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 on the owner's farm. Livestock must have been owned for at least three months before they are eligible for LAP benefits.

Individual producer eligibility is based on whether a natural disaster caused the producer in an approved county to suffer a 40-percent or greater loss of grazing for a 3-consecutive-month period in calendar year 1999. The amount of assistance is based upon

the value of feed calculated on a corn-equivalence basis factored by the percentage of grazing loss during the approved grazing period. In addition, producers must certify that they have an annual gross income of less than \$2.5 million.

Benefits paid to eligible producers will be determined by the value of feed needed to maintain the eligible livestock on the farm, the percentage of feed production lost due to the disaster, and the rate of coverage of loss. Benefits are reduced if the producer did not have sufficient grazing to support eligible livestock under normal grazing conditions.

The value of feed needed to maintain the eligible livestock is determined by the daily energy requirement for the kind and type of livestock owned by the producer, the number of each kind, type, and weight class of eligible livestock, the number of days in the payment period, the five-year (1994 through 1998 crops) average price, excluding the highest and the lowest years, received by the farmers for corn (established at \$.0441 per pound, or \$2.47 per bushel divided by 56 pounds per bushel) and the amount of grazing land available for eligible livestock.

Outlays were estimated for the proposed livestock assistance program based on the estimate of the number of livestock in the affected region that are likely to qualify for program benefits and an estimate of the average feed production loss suffered in the affected region (see Table 1). About 1,800 counties are expected to be designated as eligible for LAP based on losses in 1999 (compared with 1,194 eligible based on losses in 1998). A 60-percent forage production loss level was assumed.

Total feed needs were calculated for the entire period for each type of eligible livestock based on the daily energy requirement and the quantity of corn needed to provide the energy requirement. The daily energy requirement (in pounds of corn equivalent) for a given kind of livestock was multiplied by 120 days times the estimated number of livestock in the affected region times the estimated percent loss of feed production in the region times 4.41 cents per pound corn price.

The potential cost of LAP (before application of a national factor) is estimated to be about \$1.15 billion. It is estimated that over 25 million head of cattle, 500,000 horses, and 2 million sheep are in the affected regions.

Because projected claims exceed the funds appropriated for the program, each producer's payment will be

prorated based on the ratio of the maximum allowed benefits to total claims. Funds available for LAP and LIP total \$200 million. A total of approximately \$9.8 million will be used for administrative expenses for the two programs, leaving \$190.2 million for program benefits. Prorating expected total claims under each program (\$1.15 billion for LAP and \$6 million for LIP) results in payments under the LAP program of about \$189 million. The prorating factor is 16.45 percent (\$190 million/\$1,156 million).

The impact of the payments on livestock prices and feed prices is expected to be small. Without 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 1999 is expected to be \$199 million higher. Federal outlays will also increase by the indemnity payments of \$199 million.

The 1999 LIP Phase II will provide financial assistance to livestock producers for losses of eligible livestock due to natural disasters between May 22, 1999, and December 31, 1999. Eligible livestock are beef, dairy, sheep, goats, swine, poultry (including egg-producing poultry), equine animals used for food or in the production of food, and buffalo/beefalo when maintained on the same basis as beef cattle.

On a sectoral basis, the \$1 million (\$6 million in claims multiplied by a 0.1667 national factor) expected to be paid under 1999 LIP Phase II represents a small fraction of the \$55.3 billion value of production in 1998 (the most recent year for which data are available).

For those producers who actually suffered the losses, however, the impact on their equity and cash flow positions is significant. Indemnity payments will assist producers affected by the disaster in meeting their financial obligations for inputs used in the production of the lost livestock and to replace breeding stock. It is assumed, in part as a result of the LIP, that producers affected by the disaster would remain in business and rebuild their foundation herds to their previous size.

These funds will assist producers in meeting outstanding financial obligations against inputs used in the production of livestock which were lost in the disasters and to replace breeding livestock lost in the disasters. The impact of the indemnity payments on livestock and milk market prices and consumers is not expected to be

measurable. Aggregate farm income in 1999 is expected to be \$1 million higher, equaling the amount of indemnity payments. Federal outlays would also increase by the indemnity payment of \$1 million.

#### *Peanut Market Loss Assistance Program*

The 1999 Peanut Marketing Loss Assistance program will provide financial assistance to producers who have experienced increased costs of production and lower market prices over the last four years. The program will provide about \$49 million to peanut producers, including those who fall-leased peanuts either to or from their farm. Producers with unmarketed quota pounds left on their marketing cards after harvest were determined to have shared in the risk of production and will be compensated as well as those who leased their quota pounds. Payments will assist peanut producers to meet their financial obligations and are not likely to impact market price for peanut products. No measurable impact is likely for consumers. Aggregate farm income will increase by about the \$49 million in Federal outlays. Approximately 40,000 peanut farms are expected to participate in the program.

#### *Mohair Recourse Loan Program*

The intent of the mohair loan provision in the 1999 Act was to target benefits to producers and their co-operatives, not to speculators. Therefore, the regulation for the Mohair Recourse Loan Program specifies that beneficial interest in the mohair must reside with the person requesting the loan until the loan is repaid. The person must have a separate, identifiable interest in both the goats and the mohair and must have been responsible for the financial risk of production. If the person is handling the marketing through a co-operative, the beneficial interest must remain with the co-operative member, and the member must share in any marketing proceeds realized by the co-operative. The person requesting the mohair loan must have owned, for 180 days, in the United States, the goats from which the loan mohair was clipped. Goats younger than 180 days must have been born in the United States. The loan must be requested in the Farm Service Agency local office that serves the county in which the headquarters of the producing farm is located. Speculators who have purchased mohair from producers, or who have imported mohair, and are storing it in central locations are not eligible for these recourse loans.

It is believed that a large proportion of mohair producers are of limited financial means. Concerns have been expressed that, if borrowers received \$2.00 per pound from CCC, and if the market price for certain types of mohair were less than \$2.00 per pound, borrowers perhaps would not be able to repay the loans. However, the program will provide financing for such producers. A flat loan rate of \$2.00 will be offered on all mohair unless the producer provides inadequate security, in which case only \$1.25 will be offered. CCC will obtain a lien against all present and future production of mohair by the producer requesting the loan. CCC may require additional security, such as bonds or letters of credit. In this way, even limited-means producers will receive some benefit from the loan program, but the integrity of the program will be assured.

As of the end of FY 1999, a total of approximately 5.6 million pounds of mohair had been pledged as collateral for the recourse loans, for an estimated total loan principal outstanding of about \$11.2 million. About 85 percent of this is thought to be adult hair. No loans had been repaid as of the close of the year on September 30, 1999. Since all of the loans under the FY 1999 program were made in FY 1999 and none repaid, the program shows a net outlay of about \$11.2 million. These loans will mature after 12 months and must be repaid during FY 2000, for a receipt during that year of the same \$11.2 million. For FY 2000, with most of the adult hair inventory already under loan, there will be less "new-crop" activity. It is estimated that only about 1 to 2 million pounds of adult hair not already serving as loan collateral will be pledged as collateral for a loan in FY 2000, but that about 4.5 million pounds of hair that is already pledged as collateral must be redeemed during FY 2000 and then be redepledged. Loan activity for kid hair should be reduced from last year's level. Total projected loan outlays for FY 2000 are \$12.6 million.

#### *Tobacco Loss Assistance Program (TLAP)*

The \$328 million provided for assistance to tobacco producers will help quota holders and growers defray income lost in crop year 1999 due to quota reductions. TLAP will pay producers approximately \$1 for each pound of quota lost in crop year 1999. This amount of payment will easily cover producers' and quota holders' lost profit for crop year 1999, but is insufficient to cover long-term losses in quota, land, equipment, and future profits. (As previously stated, in an

indirectly related action cigarette manufacturers have promised \$5.15 billion to growers and allotment holders.) Further, several tobacco-growing states have promised a portion of the \$246 billion settlement to go to tobacco producers.

To the extent that the \$328 million payment to producers and quota holders defrays costs, the TLAP enhances solvency. To the extent that the TLAP exceeds costs, the payment is taxable. With the national savings rate near zero (perhaps even less in economically depressed agricultural areas) the multiplier effect is substantial. The large multipliers assures that a substantial portion of the TLAP will be recycled back to local, state, and federal coffers.

#### *Crop Disaster Program (CDP)*

The 2000 Act authorizes the Secretary to provide disaster assistance to producers who suffered crop losses because of adverse weather conditions in the amount of \$1.2 billion. Public Law 106-113 authorizes an additional \$186 million for crop loss assistance under the same terms and conditions as the crop loss provisions in the 2000 Act. Thus, \$1.34 billion is available, after taking into consideration administrative expenses, rice loan deficiency payments, and honey and mohair recourse loans.

Large farms would account for a disproportionate share of crop loss payments if there were no eligibility limitations. The 2000 Act, by reference to the earlier program, provides both gross income and per-person payment limitations. A person is not eligible for benefits if their gross revenue is in excess of \$2.5 million for the 1998 tax year. The 1997 Census of Agriculture indicates that less than 2.4 percent of the farms in the U.S. have sales greater than \$500,000. Farms with gross incomes of \$2.5 million or more only represent a small fraction of one percent. The gross revenue limitation thus limits eligibility to all but the Nation's largest farms and ranches. The impact of the \$2.5 million gross income limit will put more payments in the hands of the Nation's smaller farms. The per-person payment limitation of \$80,000 also directs money towards small farms.

If total claims for 1999 crop losses approach \$2 billion (similar to 1998 crop loss claims), a pro-rata factor of about two-thirds will apply.

For further information, the following individuals may be contacted regarding the different parts of the Cost/Benefit Assessment:

Crop Disaster—Contact: Philip Sronce, 202-720-2711

Dairy and Sugar—Contact: Dan Colacicco, 202-720-6733

Livestock—Contact: Dan Colacicco, 202-720-6733

Honey—Contact: Candy Thompson, 202-720-4584

Mohair—Contact: Candy Thompson, 202-720-4584

Peanuts—Contact: Dan Stevens, 202-720-5291

Cotton—Contact: Wayne Bjorlie, 202-720-7954

Advance Production Flexibility Contracts—Contact: Jerry Norton, 202-720-0967

Payment Limitations—Contact: Terry Hickenbotham, 202-690-0733

Conservation Reserve—Contact: Ed Rall, 202-720-7795

Tobacco—Contact: Tom Burgess, 202-720-4318

#### **List of Subjects**

##### *7 CFR Part 718*

Acreage, Allotments, Quotas, Reconstitutions, Tobacco

##### *7 CFR Part 723*

Acreage Allotment, Auction warehouses, Dealers, Domestic manufacturers, Marketing quota, Penalties, Reconstitutions, Tobacco.

##### *7 CFR Part 1400*

Agricultural Commodities, Agriculture, Loan Programs, Oilseeds

##### *7 CFR Part 1412*

Contract acreage, Contract payments, Planting flexibility, Price support programs.

##### *7 CFR Part 1421*

Wheat, Feed Grains, Rice, Oilseeds, and Farm-stored Peanuts, Loan programs/agriculture, Reporting and record keeping requirements.

##### *7 CFR Part 1427*

Cotton, Upland Cotton and Extra Long Staple Cotton, Loan programs/agriculture, Marketing certificate programs, Price support programs, Reporting and record keeping requirements, Warehouses.

##### *7 CFR Part 1430*

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

##### *7 CFR Part 1434*

Honey, Loan programs/agriculture, Reporting and record keeping requirements.

##### *7 CFR Part 1435*

Loan programs/agriculture, Reporting and recordkeeping requirements, Sugar.

## 7 CFR Part 1439

Animal feeds, Disaster assistance, Livestock, Reporting and recordkeeping requirements.

## 7 CFR Part 1447

Disaster assistance, emergency assistance, peanuts, reporting and recordkeeping requirements.

## 7 CFR Part 1464

Tobacco Loans, Importer Assessments

## 7 CFR Part 1469

Loan programs—agriculture, Mohair, Price support programs, Reporting and recordkeeping requirements.

## 7 CFR Part 1478

Disaster assistance, emergency assistance, reporting and recordkeeping requirements.

For the reasons set out in the preamble, 7 CFR Chapters VII and XIV are amended as set forth below.

# **PART 718—PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS**

1. The authority citation is revised to read as follows:

**Authority:** 7 U.S.C. 1373, 1374, 7201 *et seq.*; 15 U.S.C. 714b.

2. Revise § 718.201 (a)(4)(ii)(A) to read as follows:

## **§ 718.201 Farm constitution.**

(a) \* \* \*

(4) \* \* \*

(ii) \* \* \*

(A) A burley or flue-cured tobacco quota is established for one or more of the tracts; and

\* \* \* \* \*

# **PART 72—TOBACCO**

3. The authority citation for 7 CFR part 723 continues to read as follows:

**Authority:** 7 U.S.C. 1301–1314, 1314–1, 1314b, 1314b–1, 1314b–2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1377–1379, 1421, 1445–1 and 1445–2.

4. Amend § 723.104(h) by removing the definition of “Tillable cropland.”

5. Amend § 723.216 by revising paragraphs (e)(5)(iv) and (f)(1) and removing and reserving paragraph (f)(7)(ii) to read as follows:

## **§ 723.216 Transfer of tobacco acreage allotment or marketing quota by sale, lease, or owner.**

\* \* \* \* \*

(e) \* \* \*

(5) \* \* \*

(iv) *Filed on or before July 1.* Unless the receiving farm is administratively

located in the same county as the transferring farm. However, for 1991 and subsequent crops, burley tobacco producers in the State of Tennessee shall be permitted to lease and transfer burley tobacco quota to any other farm in the State. In addition, such transfers outside the county but within the same state may be allowed for burley tobacco producers in Virginia, Kentucky, Ohio, or Indiana, if the burley tobacco producers in that state approve such transfers in a referendum conducted by the Secretary.

\* \* \* \* \*

(f) \* \* \*

(1) Location of buying and selling farms. Marketing quota for flue cured tobacco transferred by sale must be to a farm administratively located within the same county, except that if 25 percent of the active flue-cured tobacco producers within a State petition the Secretary and the Secretary determines that a majority of the active flue-cured tobacco producers voting in the referendum approve, the sale of a flue-cured tobacco allotment or quota from a farm in the State to any other farm in the State shall be permitted if all other conditions for such transfers are met. Further, the Secretary may permit flue-cured farms with the same owner that are located in contiguous counties to be combined for administrative purposes as one farm, notwithstanding provisions in part 718 of this chapter that might not otherwise permit that kind of combination.

\* \* \* \* \*

6. In § 723.220 remove and reserve paragraphs (c) and (d).

# **PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY**

7. The authority citation for Part 1400 is revised to read as follows:

**Authority:** 7 U.S.C. 1308, 1308–1, 1308–2; 16 U.S.C. 3834; Pub. L. 106–78, 113 Stat. 1135.

8. Amend § 1400.1 by revising Footnote 3 in the table in paragraph (g) to read as follows:

## **Subpart A—General Provisions**

### **§ 1400.1 Applicability.**

\* \* \* \* \*

(g) \* \* \*

3. The total of marketing loan gains and loan deficiency payments cannot exceed \$75,000 per crop year, except for the 1999 crop year for which the limit shall be \$150,000 of which all or part may consist of marketing loan gains.

# **PART 1410—CONSERVATION RESERVE PROGRAM**

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

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

10. Amend § 1410.20 by removing paragraph (a)(5) and redesignating paragraphs (a)(6) through (11) as paragraphs (a)(5) through (10), respectively.

# **PART 1412—PRODUCTION FLEXIBILITY CONTRACTS FOR WHEAT, FEED GRAINS, RICE, AND UPLAND COTTON**

11. The authority citation for part 1412 is revised to read as follows:

**Authority:** 7 U.S.C. 7201 *et seq.*; 15 U.S.C. 714b, 714c; Sec. 734, Pub. L. 105–86; Pub. L. 105–228; Sec. 727, Pub. L. 105–277; Secs. 727, 811, Pub. L. 106–78, 113 Stat. 1181.

12. Revise § 1412.201(c) to read as follows:

## **§ 1412.201 Production flexibility contract.**

\* \* \* \* \*

(c) All producers sharing in the contract payments on a farm whose payment shares have not been designated for a fiscal year must sign the contract designating payment shares and provide supporting documentation as specified in parts 12, 1400, and 1412 of this title no later than August 1 of the fiscal year to be eligible to earn a contract payment for that fiscal year. If all producers have not signed the contract by August 1, no producers on the contract will be eligible for a payment for that farm for that fiscal year. Notwithstanding the August 1 deadline, in the event a farm reconstitution is completed in accordance with part 718 of this title, all producers must sign the contract and provide supporting documentation as specified in parts 12, 1400 and 1412 of this title within 30 days after written notification by the county committee indicating the reconstitution is completed. If all producers have not signed the contract within 30 days, no producers on the contract will be eligible for a payment for that farm for that fiscal year.

13. Revise § 1412.206(a) to read as follows:

## **§ 1412.206 Planting flexibility.**

(a) For the 1996 through 2002 crop years, any crop may be planted on contract acreage on a farm, except as limited elsewhere in this section. For fiscal years 1998 through 2002, for each

contract acre on which a producer plants wild rice, 1 acre will not be used in determining the contract payment. Any crop may be planted on cropland in excess of the contract acreage.

\* \* \* \* \*

14. Amend § 1412.302 by adding paragraph (e) to read as follows:

**§ 1412.302 Contract payment provisions.**

\* \* \* \* \*

(e) Notwithstanding any other provision of this section, 1999 fiscal year production flexibility contract payments may be made at any time as may be determined to be permitted by the Emergency Farm Financial Relief Act, Public Law 105-228.

15. Amend § 1412.501 by revising paragraph (d) to read as set forth below and removing paragraph (e).

**§ 1412.501 Timing for enrollment and termination of production flexibility contracts.**

\* \* \* \* \*

(d)(1) Subject to the provisions of paragraphs (d)(2) and (3) of this section, land that could not previously have been enrolled in a production flexibility contract because of participation in the Conservation Reserve Contract but which becomes available for enrollment because of the expiration of a Conservation Reserve Program contract may be enrolled in a production flexibility contract.

(2) Land qualifying for a production flexibility contract under paragraph (d)(1) of this section may be enrolled in a production flexibility contract no later than November 30 of the fiscal year following the final fiscal year of the Conservation Reserve Program contract unless the Conservation Reserve Program contract terminated after August 1, 1998, in which case the land shall be enrolled in a production flexibility contract no later than April 1 of the fiscal year following the final fiscal year of the Conservation Reserve Program contract.

(3) In fiscal years 1997 through 2002, if a conservation reserve contract is terminated, and the land that was subject to the conservation reserve contract is enrolled in a production flexibility contract, the owner or producer may elect to receive either the production flexibility contract payment or a prorated Conservation Reserve Program payment for the fiscal year, but not both.

**PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES**

16. The authority citation for part 1421 is revised to read as follows:

**Authority:** 7 U.S.C. 7213-7235, 7237; 15 U.S.C. 714b, 714c; Sec. 813, Pub. L. 106-78, 113 Stat. 1182.

17. Revise the Subpart title of the subpart containing § 1421.1 to read as follows: "Subpart—Loan and Loan Deficiency Payment Regulations for the 1996 Through 2002 Crops of Wheat, Feed Grains, Rice, Oilseeds, (Canola, Crambe, Flaxseed, Mustard Seed, Rapeseed, Safflower, Soybeans, and Sunflower Seed), and Farm-Stored Peanuts"

18. Amend § 1421.1 by adding paragraphs (e) and (f) to read as follows:

**§ 1421.1 Applicability.**

\* \* \* \* \*

(e) For commodities produced during the 1999 crop year, the total amount of loan deficiency payments and marketing loan gains made under this part or part 1427 of this chapter shall be \$150,000 per person, as defined in part 1400 of this chapter.

(f) Loan deficiency payments or marketing loan gains for loan commodities produced in the 1999 crop year for which a loan deficiency payment or marketing loan gain was not requested prior to February 16, 2000 will be calculated:

(1) For marketing loan gains, based on the date the commodity was redeemed; and

(2) For loan deficiency payments, based on the date the commodity was marketed, as determined by CCC.

\* \* \* \* \*

**PART 1427—COTTON**

19. The authority citation for 7 CFR part 1427 is revised to read as follows:

**Authority:** 7 U.S.C. 7231, 7235, 7237; 15 U.S.C. 714b, 714c; Sec. 813, Pub.L. 106-78, 113 Stat. 1182.

20. Amend § 1427.1 by adding paragraphs (d) and (e) to read as follows:

**§ 1427.1 Applicability.**

\* \* \* \* \*

(d) For commodities produced during the 1999 crop year, the total amount of loan deficiency payments and marketing loan gains made under this part or part 1427 of this chapter shall be \$150,000 per person, as defined in part 1400 of this chapter.

(e) Loan deficiency payments or marketing loan gains for loan commodities produced in the 1999 crop year for which a loan deficiency payment or marketing loan gain was not requested prior to February 16, 2000 will be calculated:

(1) For marketing loan gains, based on the date the commodity was redeemed; and

(2) For loan deficiency payments, based on the date the commodity was marketed, as determined by CCC.

21. Revise § 1427.100(b) to read as follows:

**§ 1427.100 Applicability.**

(b) During the period beginning August 1, 1991, and ending July 31, 2003, subject to the availability of funds, CCC shall issue marketing certificates or cash payments to domestic users and exporters in accordance with this subpart in a week following a consecutive 4-week period in which—

(1) The Friday through Thursday average price quotation for the lowest-priced United States growth, as quoted for Middling one and three thirty-seconds inch ("M 1<sup>3</sup>/<sub>32</sub> inch") cotton, delivered C.I.F. (cost, insurance and freight) northern Europe, ("U.S. Northern Europe (USNE) price") exceeds the Friday through Thursday average price quotation for the five lowest-priced growths, as quoted for M 1<sup>3</sup>/<sub>32</sub> inch cotton, delivered C.I.F. northern Europe, ("Northern Europe (NE) price") by more than 1.25 cents per pound; and

(2) The adjusted world price (AWP) for upland cotton, determined in accordance with § 1427.25, does not exceed 134 percent of the current crop loan level for the base quality of upland cotton.

22. Amend § 1427.102 by removing the definition of "optional origin export contract."

23. Revise § 1427.103(a) to read as follows:

**§ 1427.103 Eligible upland cotton.**

(a) For purposes of this subpart, eligible upland cotton is domestically produced baled upland cotton which bale is opened by an eligible domestic user on or after August 1, 1991, and on or before July 31, 2003, or exported by an eligible exporter on or after July 18, 1996, and on or before July 31, 2003, during a Friday through Thursday period in which a payment rate, determined in accordance with § 1427.107, is in effect and which meets the requirements of paragraphs (b) and (c) of this section.

24. Revise § 1427.105(b) to read as follows:

**§ 1427.105 Upland Cotton Domestic User/Exporter Agreement.**

\* \* \* \* \*

(b) Upland Cotton Domestic User/Exporter Agreements may be obtained from Cotton and Rice Branch, Warehouse Contract Division, Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141—

6205. Telephone requests for copies of the agreement will be accepted at (816) 926-6662. In order to participate in the program authorized by this subpart, domestic users and exporters must execute the Upland Cotton Domestic User/Exporter Agreement and forward the original and one copy to KCCO.

25. Revise § 1427.107 to read as follows:

**§ 1427.107 Payment rate.**

(a) Beginning July 18, 1996, and ending July 31, 2003, the payment rate for purposes of calculating the payments made in accordance with this subpart shall be determined as follows for exporters for cotton shipped on or after July 18, 1996, and for domestic users:

(1) Beginning the Friday following August 1 and ending the week in which the Northern Europe current (NEC) price, the Northern Europe forward (NEF) price, the U.S. Northern Europe current (USNEC) price, and the U.S. Northern Europe forward (USNEF) price first become available, the payment rate shall be the difference between the USNE price, minus 1.25 cents per pound, and the NE price in the fourth week of a consecutive 4-week period in which the USNE price exceeded the NE price each week by more than 1.25 cents per pound, and the AWP did not exceed the current crop-year loan level for the base quality of upland cotton by more than 134 percent in any week of the 4-week period; and

(2) Beginning the Friday through Thursday week after the week in which the NEC, the NEF, the USNEC, and the USNEF prices first become available and ending the Thursday following July 31, the payment rate shall be the difference between the USNEC price, minus 1.25 cents per pound, and the NEC price in the fourth week of a consecutive 4-week period in which the USNEC price exceeded the NEC price each week by more than 1.25 cents per pound, and the AWP did not exceed the current crop-year loan level for the base quality of upland cotton by more than 134 percent in any week of the 4-week period. If either or both the USNEC price and the NEC price are not available, the payment rate may be the difference between the USNEF price, minus 1.25 cents per pound, and the NEF price.

(b) Whenever a 4-week period under paragraph (a) of this section contains a combination of NE prices only for one to three weeks and NEC prices and NEF prices only for one to three weeks, such as occurs in the spring when the NE price is succeeded by the NEC price and the NEF price ("Spring transition") and at the start of a new marketing year when the NEC price and the NEF price

are succeeded by the NE price ("marketing year transition"), under paragraphs (a)(1) and (a)(2) of this section, during both the spring transition and the marketing year transition periods, to the extent practicable, the NEC price and the USNEC price in combination with the NE price and the USNE price shall be taken into consideration during such 4-week periods to determine whether a payment is to be issued. During both the spring transition and the marketing year transition periods, if either or both the USNEC price and the NEC price are not available, the USNEF price and the NEF price in combination with the USNE price and the NE price shall be taken into consideration during such 4-week periods to determine whether a payment is to be issued.

(c) For purposes of this subpart—

(1) With respect to the determination of the USNE price, the USNEC price, the USNEF price, the NE price, the NEC price, and the NEF price:

(i) If daily quotations are not available for one or more days of the 5-day period, the available quotations during the period will be used;

(ii) CCC will not take into consideration a week in which no daily quotes are available for the entire 5-day period for either or both the USNE price and the NE price during the period when only one daily price quotation is available for each growth quoted for M 1<sup>3</sup>/<sub>32</sub> inch cotton, delivered C.I.F. northern Europe, or the USNEC price and the NEC price, or the USNEF price and the NEF price. In that case, CCC may establish a payment rate at a level it determines to be appropriate, taking into consideration the payment rate determined in accordance with paragraph (a) of this section for the most recent available week; and

(iii) Beginning July 18, 1996, if no daily quotes are available for the entire 5-day period for either or both the USNEC and the NEC price, the marketing year transition shall be implemented immediately.

(2) With respect to the determination of the USNE price, the USNEC price, and the USNEF price, if a quotation for either the U.S. Memphis territory or the California/Arizona territory as quoted for M 1<sup>3</sup>/<sub>32</sub> inch cotton, delivered C.I.F. northern Europe, is not available for each day or any day of the 5-day period, the available quotation(s) will be used.

(d) Payment rates for loose, reginned motes and semi-processed motes that are of a quality suitable, without further processing, for spinning, papermaking or bleaching shall be based on a percentage of the basic rate for baled

lint, as specified in the Upland Cotton Domestic User/Exporter Agreement.

26. Amend § 1427.108 by revising paragraph (c)(2), and removing paragraph (c)(3), to read as follows:

**§ 1427.108 Payment.**

\* \* \* \* \*

(c) \* \* \*

(2) Through July 31, 2003, exported by the exporter on the date CCC determines is the date on which the cotton is shipped.

\* \* \* \* \*

**§ 1427.109 [Removed]**

27. Remove § 1427.109.

**PART 1430—DAIRY PRODUCTS**

28. 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.

29. Revise § 1430.2 (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 and 2000.

\* \* \* \* \*

30. Revise § 1430.401 (a) to read as follows:

**§ 1430.401 Applicability.**

(a) The regulations in this subpart are applicable to eligible dairy products produced after December 31, 2000. These regulations 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 that a processor must execute in order to receive such a loan.

\* \* \* \* \*

31. Revise § 1430.403 (a) to read as follows:

**§ 1430.403 Loan rates.**

(a) The Secretary will announce before January 1, 2001, 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.

\* \* \* \* \*

32. Revise § 1430.407 (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, 2001.

\* \* \* \* \*

33. The authority citation for part 1430 subpart D is revised to read as follows:

**Authority:** Pub. L. 105–277, 112 Stat. 2681; Pub. L. 106–78, 113 Stat. 1135.

34. In § 1430.500 revise the phrase “under Pub. L. 105–277, 112 Stat. 2681” to read “under Pub. L. 105–277, 112 Stat. 2681 and Sections 805 and 825 of Pub. L. 106–78 only”.

35. Amend § 1430.502 and § 1430.503 by revising the phrase “May 21, 1999” wherever it appears to read “February 28, 2000”.

36. Add § 1430.510 to read as follows:

**§ 1430.510 New producers.**

Notwithstanding other provisions of this subpart, producers who were new producers in 1999 and not affiliated with other eligible producers may receive payments from sums made available after October 2, 1999, based on their 1999 production levels.

**PART 1434—RECOURSE LOAN REGULATIONS FOR HONEY**

37. The authority citation for part 1434 is revised to read as follows:

**Authority:** Sec. 1122, Pub. L. 105–277, 112 Stat. 2681; Sec. 3018, Pub. L. 106–31, 113 Stat. 57; Sec. 801(f), Pub. L. 106–78, 113 Stat. 1175.

38. Amend § 1434.1 by revising the first sentence to read as follows:

**§ 1434.1 Applicability .**

The regulations of this part provide the terms and conditions under which the Commodity Credit Corporation (CCC) may issue recourse loans for 1998-crop and 1999-crop honey that has remained continuously within the beneficial interest of the producer.

\* \* \*

39. Amend § 1434.6 by revising paragraphs (a) and (d) and adding paragraph (i) to read as follows:

**§ 1434.6 Application, availability, disbursement, and maturity.**

(a) The deadline for requesting a loan under this part is May 7, 1999, for 1998-crop honey loans and March 31, 2000, for 1999 crop-honey loans.

\* \* \* \* \*

(d) Subject to paragraph (a) of this section, loans for the 1998 and 1999 crop of honey will be available to producers as soon as announced by CCC.

\* \* \* \* \*

(i) Subject to adjustments for quality and location as deemed appropriate by the Deputy Administrator, the average loan rate for loans made under this part shall be 85 percent of the average price of honey during the 5-crop years period preceding the crop year for which the loan is made, excluding the crop year in which the average price of honey was the highest and the crop year in which the average price of honey was the lowest in the period.

40. Revise § 1434.9(a) to read as follows:

**§ 1434.9 Fees and interest.**

(a) A producer shall pay a nonrefundable loan service fee to CCC at a rate determined by CCC. The amount of such fees will be available in State and county offices and will be shown on the note and security agreement.

\* \* \* \* \*

**PART 1435—SUGAR PROGRAM**

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

**Authority:** 7 U.S.C. 7272; and 15 U.S.C. 714b and 714c.

42. In § 1435.200, revise the introductory text of paragraph (b) to read as follows:

**§ 1435.200 General statement.**

(a) \* \* \*

(b) Except as provided in § 1435.205, the marketing assessment applies to:

\* \* \* \* \*

43. Revise § 1435.202(d)(1) introductory text to read as follows:

**§ 1435.202 Remittance.**

\* \* \* \* \*

(d)(1) Except as provided in § 1435.205, first processors shall prepare and submit a fully and accurately completed form CCC–80 each month that shows:

\* \* \* \* \*

44. Add § 1435.205 to read as follows:

**§ 1435.205 Special rules for fiscal years 2000 and 2001.**

(a) First processors are not required to pay the marketing assessments provided for in this subpart that would otherwise be due under this part during the period from October 22, 1999 through September 30, 2001;

(b) First processors are not required to prepare and submit form CCC–80 pursuant to § 1435.202(d)(1) during the period from October 22, 1999 through September 30, 2001; and

(c) Sugar in inventory at the end of fiscal year 2001 that is marketed thereafter will be subject to an assessment at the rate that is current at the time of marketing unless that sugar was the subject of a previously paid assessment.

**PART 1439—EMERGENCY LIVESTOCK ASSISTANCE**

45. The authority citation for 7 CFR part 1439 is revised to read as follows:

**Authority:** 15 U.S.C. 714b, 714c; Sec. 805, 825, Pub. L. 106–78, 113 Stat. 1135.

46. Revise the heading for the Subpart entitled “Subpart—1998 Livestock Assistance Program” to read “Subpart—1998–99 Livestock Assistance Program.”

47. Revise § 1439.101 to read as follows:

**§ 1439.101 Applicability.**

(a) This subpart sets forth the terms and conditions applicable to the 1998 Livestock Assistance Program authorized by Public Law 105–277 and the 1999 Livestock Assistance Program authorized by the Public Law 106–78. Benefits will be provided to eligible livestock producers in the United States but only in counties where a natural disaster occurred, and that were subsequently approved by the Deputy Administrator for Farm Programs. For purposes of reference, the program authorized by Public Law 105–277 shall be referred to in this subpart as the “1998 LAP” and that administered under Public Law 106–78 shall be referred to in this subpart as the “1999 LAP”.

(b) The two LAP programs provided for in this part will be treated as separate programs for purposes of payment limitations and for other purposes relating to eligibility.

(c) A county must have suffered a 40 percent or greater grazing loss for 3 consecutive months during the 1998 calendar year for 1998 LAP or for 3 consecutive months during the 1999 calendar year for the 1999 LAP, as a result of damage due to a natural disaster as determined by the Deputy



Administrator for Farm Programs, or a designee. 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 seeded small grain forage crops.

(d) To be eligible for assistance under this subpart, a livestock producer's pastures in an eligible county 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.

(e) Unless otherwise specified or determined by the Deputy Administrator, a livestock producer is not eligible to receive payments for the same loss under both this subpart and another Federal program.

48. Amend § 1439.102 by revising the definition of "LAP" to read as follows:

**§ 1439.102 Definitions.**

\* \* \* \* \*

LAP means, depending on the context, either the 1998 Livestock Assistance Program provided for in this subpart, the 1999 Livestock Assistance Program provided for in this subpart, or the overall 1998–99 Livestock Assistance Program provided for in this subpart.

\* \* \* \* \*

49. Amend § 1439.103 by revising the first sentence in paragraph (a) to read as follows:

**§ 1439.103 Application process.**

(a) Livestock producers must submit a completed application prior to the close of business on March 31, 1999 for the 1998 LAP or March 1, 2000 for the 1999 LAP, or such other dates as established by the Deputy Administrator. \* \* \*

\* \* \* \* \*

50. Amend § 1439.104 by revising the first sentence of paragraph (a) and the second sentence of paragraph (d) to read as follows:

**§ 1439.104 County committee determination 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 three

consecutive months during the calendar year 1998 for the 1998 LAP or calendar year 1999 for the 1999 LAP. \* \* \*

\* \* \* \* \*

(d) \* \* \* 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 1998 for the 1998 LAP or during 1999 for the 1999 LAP, the carrying capacity for grazing land or pasture was reduced by 40 percent or more from the normal carrying capacity.

51. Amend § 1439.107 by revising paragraphs (b)(3) and (c)(3) to read as follows:

**§ 1439.107 Calculation of assistance.**

\* \* \* \* \*

(b) \* \* \*

(3) The 5-year national average market price for corn (1998 LAP \$2.56 bushel or \$.0457 per pound, 1999 LAP \$2.46 bushel or \$.0441071 per pound); by

\* \* \* \* \*

(c) \* \* \*

(3) \$0.71771 (\$0.0457 × 15.7) for 1998 LAP or \$0.69248 (\$0.0441071 × 15.7) for 1999 LAP; by

\* \* \* \* \*

52. Revise § 1439.108 to read as follows:

**§ 1439.108 Availability of funds.**

In the event that the total amount of claims submitted under this subpart shall in the case of the 1998 LAP exceeds \$270 million or in the case of the 1999 LAP, except as determined by the Deputy Administrator, exceeds the amount determined appropriate, then such payments under such program shall be reduced by a uniform national percentage. Such payment reductions shall be after the imposition of applicable payment limitation provisions. Total 1999 LAP payments shall be prorated with payments for the Livestock Indemnity Program, Phase II provided for in this part such that total payments under the two programs shall not exceed \$200 million minus, as deemed appropriate, other assistance provided to livestock producers.

53. Revise § 1439.301 to read as follows:

**§ 1439.301 Applicability.**

(a) This subpart sets forth the terms and conditions applicable to the original 1999 Livestock Indemnity Program (hereafter "1999 Livestock Indemnity Program, Phase I") and 1999 Livestock Indemnity Program, Phase II. Benefits will be provided under this subpart only for losses (deaths) of livestock occurring as a result of natural disasters in counties included in the geographic area

covered by a qualifying natural disaster declaration:

(1) With respect to the 1999 Livestock Indemnity Program ("LIP"), Phase I, issued by the President of the United States or the Secretary of Agriculture of the United States in the period from May 2, 1998, through May 21, 1999, or

(2) With respect to the 1999 Livestock Indemnity Program ("LIP"), Phase II, issued by the President of the United States or the Secretary of Agriculture which declaration was requested between May 22, 1999, through December 31, 1999, inclusive, and subsequently approved.

(b) Losses in contiguous counties, or any other counties not the subject of the declaration, will not be compensable. Producers will be compensated by livestock category as established by CCC. The producer's loss must be the result of the declared disaster and in excess of the normal losses, established by CCC, for the producer's livestock operation. Losses to livestock due to drought conditions are deemed to have been avoidable and are not eligible for benefits under the 1999 LIP, Phase II.

54. Revise § 1439.304 to read as follows:

**§ 1439.304 Sign-up period.**

A request for benefits under this subpart must be submitted to the Commodity Credit Corporation (CCC) at the Farm Service Agency county office serving the county where the livestock loss occurred. All applications and supporting documentation must be filed in the county office prior to the close of business on:

(a) November 1, 1999, or such other date as established by CCC for 1999 LIP, Phase I, or

(b) January 21, 2000, or such other date as established by CCC for 1999 LIP, Phase II.

55. Revise § 1439.305 (a)(3) to read as follows:

**§ 1439.305 Proof of loss.**

(a) \* \* \*

(3) The death of the livestock occurred:

(i) Between May 2, 1998, and May 21, 1999 inclusive for 1999 LIP, or

(ii) For 1999 LIP, Phase II, due to a disaster that was the subject of a Presidential or Secretarial disaster declaration, that was requested between May 22, 1999, and December 31, 1999, inclusive, and was subsequently approved.

\* \* \* \* \*

56. Revise § 1439.307 to read as follows:

**§ 1439.307 Availability of funds.**

(a) In the event that the total amount of eligible claims submitted under this subpart exceeds the amount available as specified in paragraph (b) of this section, then each payment shall be reduced by a uniform national percentage.

(b) Amounts available for payments under this subpart shall be:

(1) \$3,000,000 for 1999 LIP, Phase I, or

(2) The amount determined to be appropriate such that payments for LIP, Phase II and the 1999 Livestock Assistance Program provided for in this part do not exceed \$200 million as specified in § 1439.108.

(c) Such payment reductions shall be applied after the imposition of applicable per person payment limitation provisions. Notwithstanding any other provision of law, the payment limits for Phase I and II shall be considered separate limits except to the extent, if any, that a producer's recovery under the two phases are for losses from the same disaster.

57. Revise § 1439.308 to read as follows:

**§ 1439.308 Limitations on payments.**

(a) No person, as determined in accordance with part 1400 of this chapter, may receive benefits for livestock losses in excess of:

(1) \$50,000 for 1999 LIP, or

(2) \$40,000 for 1999 LIP, Phase II.

(b) No person may receive payments under this subpart for the same losses that the producer has received or will receive compensation under any other program provided for in this part. Payments under this part for other losses shall not, however, reduce the amount payable under this part. As provided for in § 1439.11, no person shall be eligible to receive any payment under this subpart if such person's annual gross revenue exceeds \$2.5 million.

(c) Disaster benefits under this part are not subject to administrative offset under § 1403.8 of this chapter except as otherwise provided by the Deputy Administrator.

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

**PART 1447—1999 PEANUT MARKETING ASSISTANCE PROGRAM**

58. Add part 1447 to subchapter B of 7 CFR Chapter XIV to read as follows:

**PART 1447—1999 PEANUT MARKETING ASSISTANCE PROGRAM****Subpart A—General Provisions**

Sec.

- 1447.101 Applicability.
- 1447.102 Administration.
- 1447.103 Definitions.
- 1447.104 Producer eligibility.
- 1447.105 Time for filing application.
- 1447.106 Payment rate.
- 1447.107 Calculation of payment.
- 1447.108 [Reserved]
- 1447.109 Assignment of payments.
- 1447.110 Miscellaneous provisions.

**Authority:** Pub. L. 106–78, 113 Stat. 1135; 15 U.S.C. 714b, 714c.

**Subpart A—General Provisions****§ 1447.101 Applicability.**

This part sets out provisions related to the 1999 crop of peanuts as authorized and in accordance with the applicable provisions of Public Law 106–78, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000 (2000 Act). Under section 803 of the 2000 Act, the Secretary of Agriculture is required to make certain payments available to eligible producers of 1999-crop quota and additional peanuts.

**§ 1447.102 Administration.**

(a) *Responsibility.* The Farm Service Agency (FSA), will administer this part under the general direction and supervision of the Administrator, FSA, or the Executive Vice President, Commodity Credit Corporation (CCC), as applicable. In the field, these regulations shall be carried out by State and county Farm Service Agency committees.

(b) *Limitation of authority.* A State or county committee or its employees or representatives, or any marketing association or its employees or representatives, may not modify or waive any of the provisions of this part or any amendment or supplement to it.

(c) *Supervisory authority.* Delegation of authority contained in this part shall not preclude the Administrator, FSA, the Executive Vice President, CCC, or a designee of such person from determining any questions arising under the regulations or from reversing or modifying any determinations made pursuant to such delegation.

**§ 1447.103 Definitions.**

For purposes of this part, the definitions and provisions of parts 718, 719, 729, 780, 790, 791, 793, 1402, 1403, 1407, 1421, 1422, 1446 and 1498 of this title are incorporated and shall apply except where the context or subject matter or provisions of the regulations

in this part otherwise requires or provides. References contained in this subpart to other parts of this chapter or title include any subsequent amendments to those referenced parts. Unless the context indicates otherwise, any reference to the Executive Vice President of CCC shall also be read to mean any persons designated by the Executive Vice President. The definitions in this section shall be applicable for all purposes of administering the 1999 Peanut Marketing Assistance Program. Unless the context or subject matter otherwise requires, the following words and phrases as used in this part and in all related instructions and documents shall have the following meanings:

*CCC* means the Commodity Credit Corporation, an agency and instrumentality of the United States within the United States Department of Agriculture.

*County committee* means the local FSA county committee.

*Crop year* means the calendar year in which a crop is planted.

*Deputy Administrator* means the Deputy Administrator for Farm Programs, Farm Service Agency (FSA), or a designee.

*FSA* means the Farm Service Agency, United States Department of Agriculture.

*Planted acres* means land in which seed has been placed, appropriate for the crop and planting method, at a correct depth, into a seedbed that has been properly prepared for the planting method and production practice normal to the area as determined by the county committee.

*Producer* means a producer as defined in part 718 of this title.

*Secretary* means the Secretary of the United States Department of Agriculture.

*Total production* means, for purposes of calculating assistance payments under this part, the total production eligible for payment, calculated as the sum of acres planted times the established farm yield or highest actual yield for the current crop year or the previous 3 crop years, whichever is greater.

*United States* means all 50 States of the United States, the Commonwealth of Puerto Rico, the Virgin Islands and Guam.

*USDA* means the United States Department of Agriculture.

**§ 1447.104 Producer eligibility.**

(a) Producers of quota and/or additional peanuts in the United States will be eligible to receive benefits under this part provided their share in the

planted acreage of such peanuts is greater than zero.

(b) Payments may be made to an eligible producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer signs the Peanut Marketing Assistance Program Payment Application and Summary (FSA-1043). Proof of authority to sign for the deceased producer or dissolved entity must be provided. If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

#### **§ 1447.105 Time for filing application.**

(a) Applications for benefits under this part must be filed on or after December 22, 1999, but not later than the close of business on February 21, 2000, in the county FSA office serving the county where the producer's farm is located for administrative purposes.

(b) The Deputy Administrator may grant general exceptions to these deadlines for filing applications.

#### **§ 1447.106 Payment rate.**

(a) *Payment rate for quota peanut production.* The payment rate for quota peanuts under this part is \$30.50 per ton (5 percent of \$610, the national support level for the 1999 crop year).

(b) *Payment rate for additional peanut production.* The payment rate for additional peanuts under this part is \$8.75 per ton (5 percent of \$175, the national support level for the 1999 crop year).

#### **§ 1447.107 Calculation of Payment.**

(a) *Calculating producer's share of peanuts produced or considered produced on a farm.* The amount of peanuts produced or considered produced by a producer on a farm, for which the producer's share in the acreage planted to peanuts is greater than zero, is the product of:

(1) The number of acres planted to peanuts on the farm, times

(2) The producer's percent share in the acres planted, times

(3) The highest yield from the following choices:

- (i) The established farm yield,
- (ii) The actual yield for any of the 1996, 1997 or 1998 crop years,
- (iii) The actual yield for the 1999 crop year.

(b) *Determination of quota or additional peanut payment rate.* A producer's eligibility for payments at the quota rate and at the additional rate

will be computed separately. A producer, within the quantity limit determined under paragraph (a) of this section, may claim payments at the quota payment rate to the extent that it is determined that the producer used a quota to market the peanuts or was prevented from doing so because of conditions beyond the producer's control. The producer's eligibility shall, otherwise, be only at the additional peanut payment rate.

(c) *Calculating producer's total assistance payment.* (1) *Assistance payment for quota peanuts.* A producer's assistance payment for quota peanuts is the product of the assistance rate for quota peanuts set forth in § 1447.106(a) times the sum of the amount of quota pounds eligible for payment for each farm as determined under paragraphs (a) and (b) of this section.

(2) *Assistance payment for additional peanuts.* A producer's assistance payment for additional peanuts is the product of the assistance rate for additional peanuts set forth in § 1447.106(b) times the sum of the amount of additional pounds eligible for payment for each farm as determined in paragraphs (a) and (b) of this section.

#### **§ 1447.108 [Reserved].**

#### **§ 1447.109 Assignment of payments.**

Payments made under this part may be assigned in accordance with the provisions of part 1404 of this chapter.

#### **§ 1447.110 Miscellaneous provisions.**

(a) A person may be denied payments under this part 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.

(b) 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 (c) of this section and late-payment charges as provided for in part 1403 of this chapter.

(c) Producers shall be required to pay interest on any refund required of the producer receiving assistance or a

payment if CCC determines that payments or other assistance were provided to the producer and the producer was not eligible for such assistance. The interest rate shall be 1 percent greater than the rate of interest that the United States Treasury charges CCC for funds, as of the date of payment. Interest that is determined to be due CCC shall accrue from the date such benefits were made available by CCC to the date repayment is completed. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any error by, or fault of, the producer.

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

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

(f) The liability of any person for any penalty under this part or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 651, 1001 and 1014; 15 U.S.C. 714m; and 31 U.S.C. 3729.

(g) 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 regulations set forth at parts 11 and 780 of this title.

(h) Any payment or portion thereof to any person 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.

### **PART 1464—TOBACCO**

59. The authority citation for part 1464 is revised to read as follows:

**Authority:** 7 U.S.C. 1421, 1423, 1441, 1445, 1445-1; 1445-2; 15 U.S.C. 714b, 714c; Pub. L. 106-78, 113 Stat. 1135.

59a. Amend part 1464 by adding Subpart C to read as follows:

### Subpart C—Tobacco Loss Assistance Program

Sec.

- 1464.201 Applicability and basic terms for payments to states.
- 1464.202 Administration.
- 1464.203 Eligibility.
- 1464.204 Appeals.
- 1464.205 Alternate distribution.

#### § 1464.201 Applicability and basic terms for payments to states.

(a) This subpart sets forth the terms and conditions of the Tobacco Loss Assistance Program (TLAP) authorized by Section 803 of the FY 2000 Agriculture Appropriations Act (Public Law 106–78). That section provides that \$328 million of funds of the Commodity Credit Corporation shall be made available to make payments to States for the benefit of certain persons for the reduction in quantity of tobacco quota.

(b) States, in order to be eligible for payment under this part, must be States having farms to which, for “eligible kinds of tobacco” only, tobacco quotas or allotments were made available under 7 CFR part 723 for the 1999 crop years. “Eligible kinds of tobacco” for purposes of this part will be any kind of tobacco for which the national marketing quota for 1999 was reduced from the 1998 level.

(c) Except as provided in § 1464.205, all payments under this part shall be made to States and only to those states with producers of eligible kinds of tobacco.

(d) Such payments shall be made to the State as soon as practicable after the application for such payment by the State.

(e) Payments from the \$328 million allotted to this program for loss of quota shall be made to the qualifying States in proportion, as determined by the Executive Vice President of CCC, to the relative quantity of lost quota apportioned to the qualifying States for eligible kinds of tobacco.

(f) In the case of a State that is a party to the National Tobacco Growers Settlement Trust, the State shall, to the extent practicable, distribute funds made available under this part (that is, under the TLAP) to eligible persons in the State in accordance with the formulas established pursuant to the Trust to the extent provided for in the authorizing statute. In the case of a State that is not party to the National Tobacco Growers Settlement Trust, the State shall distribute funds made available under TLAP to eligible persons in the State in a manner determined by the State and approved by the Executive Vice President, CCC. The National Tobacco Growers Settlement Trust referred to in this section is that private

trust created by tobacco companies to make approximately \$5 billion in payments available to parties involved in the production of tobacco, and which has distributed the monies through local, state trusts.

#### § 1464.202 Administration.

(a) This subpart shall be administered by CCC under the general supervision of the Executive Vice President of the CCC and the Deputy Administrator for Farm Programs of the Farm Service Agency of the Department of Agriculture (who shall be hereafter referred to in this part as the “Deputy Administrator”).

(b) The Deputy Administrator on behalf of the Executive Vice President will determine the allocation of funds available for apportionment to qualifying States.

(c) Funds allocated to States will be distributed directly to the State or may, at the direction of the State, be transferred to a disbursing or other agent of the State’s choice.

#### § 1464.203 Eligibility.

(a) Except as provided in paragraph (d) of this section, the State’s receipt of funds or control of funds under this part shall be conditioned upon the promise, obligation and understanding that the funds will be distributed to eligible tobacco growers as that term is defined in this section, in accord with the provision of this part.

(b) For a person to be considered an eligible “tobacco grower” for purposes of this part, such person must own or operate, or produce tobacco on a farm:

(1) To which was assigned a poundage quota or acreage allotment for the 1999 crop year for an eligible kind of tobacco; and

(2) That was used for the production of tobacco during the 1999 crop year.

(c) All disputes as to eligibility shall be the responsibility of the States and any terms in the authorizing statute that are contrary to the terms of this part shall be controlling.

(d) Any interest earned by the States on sums distributed in this part shall be distributed in turn to eligible tobacco growers.

(e) Of the sums made available to the States under this part, and interest earned on such sums, an amount may be deducted by the State for such reasonable amounts as may be needed to pay the cost of distributing the funds, including the cost of private agents who may be engaged to assist the State in that respect or provide service to the State in that respect.

#### § 1464.204 Appeals.

Any person who believes a determination made by the State government is in error should seek relief

from the State government. Eligibility decisions and determinations made by the State government are not appealable to the Department of Agriculture under part 780 of this chapter and will not be considered to be determinations of the Department of Agriculture.

#### § 1464.205 Alternate Distribution.

Nothing in §§ 1464.201 through 1464.204 shall prohibit the Executive Vice President from providing assistance to the States with respect to the distribution of the monies to eligible tobacco growers or prevent the Executive Vice President from making distributions directly to the eligible growers in lieu of the manner of distribution otherwise provided for in this part.

### PART 1469—RECOURSE LOAN PROGRAM FOR MOHAIR

61. The authority citation for part 1469 is revised to read as follows:

**Authority:** Pub. L. 105–277, 112 Stat.2681; Sec. 801, Pub. L. 106–78, 113 Stat. 1135.

62. In § 1469.1 remove the phrase “fiscal year 1999” and add the phrase “FY 1999 and 2000” in its place.

63. Revise § 1469.4 (a)(8) and (h)(3)(i) and add and reserve paragraph (h)(3)(ii) to read as follows:

#### § 1469.4 Eligibility.

(a) \* \* \*

(8) Not have received a loan or incentive payment under the previous mohair loan or payment program for a quantity of mohair pledged as loan collateral covered by this part, unless the full amount is repaid to CCC.

\* \* \* \* \*

(h) \* \* \*

(3) \* \* \*

(i) A producer may, before the final date for obtaining a loan for mohair, re-offer as loan mohair any mohair that has been previously pledged and redeemed as loan mohair.

(ii) [Reserved]

64. Revise § 1469.5 (a) to read as follows:

#### § 1469.5 Application, availability, disbursement, and maturity.

(a) The deadline for requesting a loan offered under this part is September 30, 1999, for FY 1999 and September 30, 2000, for FY 2000.

\* \* \* \* \*

65. Amend § 1469.11 as follows:

a. In paragraphs (d) and (e), revising the phrase “For Liquidated damages” to read “When Liquidated damages are”.

b. In paragraph (e), revising the phrase “The entirety of the loan” to read “The loan in its entirety”.

c. Removing paragraph (i)(1)(iv), and redesignating paragraphs (i)(1)(v) and (i)(1)(vi) as paragraphs (i)(1)(iv) and (i)(1)(v).

66. Revise § 1469.13 to read as follows:

**§ 1469.13 Liquidation of loans.**

(a)(1) For loans made in FY 1999, the producer is required to repay the loan on or before maturity by payment of the amount of loan, plus any charges.

(2) For loans made in FY 2000, the producer is required to repay the loan on or before maturity by payment of the amount of loan plus interest, as applicable, and any charges.

(b) If a producer fails to settle the loan in accordance with paragraph (a) of this section within 30 calendar days from the maturity date of such loan, or other reasonable time period as established by CCC, a claim shall be established for the loan amount plus interest and any charges. CCC shall inform the producer before the maturity date of the loan of the date by which the loan must be settled or a claim will be established in accordance with part 1403 of this title. A failure to pay the loan in a timely manner will start the accrual of late payment interest, and costs.

67. Add § 1469.17 to read as follows:

**§ 1469.17 Interest.**

For loans made on or after October 1, 1999, through September 30, 2000, interest will accrue as provided in 7 CFR part 1405.

**PART 1478—1999 CROP DISASTER PROGRAM**

68. Add part 1478 to subchapter B of 7 CFR Chapter XIV to read as follows:

**PART 1478—1999 CROP DISASTER PROGRAM**

Sec.

- 1478.1 Applicability.
- 1478.2 Administration.
- 1478.3 Definitions.
- 1478.4 Producer eligibility.
- 1478.5 Time for filing application.
- 1478.6 Limitation on payments and other benefits.
- 1478.7 Requirement to purchase crop insurance.
- 1478.8 Miscellaneous provisions.
- 1478.9 Matters of general applicability.
- 1478.10 [Reserved]
- 1478.11 Qualifying 1999 crop losses.
- 1478.12 Calculating rates and yields.
- 1478.13 Production losses, producer responsibility.
- 1478.14 Determination of production.
- 1478.15 Calculation of acreage for crop losses other than prevented planted.
- 1478.16 Calculation of prevented planted acreage.
- 1478.17 Quality adjustments to production.

1478.18 Value loss crops.

1478.19 Other specialty crops.

**Authority:** Sec. 801, Pub. L. 106–78, 113 stat. 1135; Pub. L. 106–113, 113 stat. 1501; 15 U.S.C. 714 et seq.

**§ 1478.1 Applicability.**

This part sets forth the terms and conditions applicable to the 1999 Crop Disaster Program. Under section 801 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, 2000 (“2000 Act”) (Public Law 106–78, 113 Stat. 1135), and the Omnibus Consolidated Appropriations Act, 2000 (Public Law 106–113, 113 Stat. 1501), the Secretary of Agriculture will make disaster payments available to certain producers who have incurred losses in quantity or quality of their crops due to disasters. Producers will be able to receive benefits under this part for losses to eligible 1999 crops as determined by the Secretary. Producers cannot receive compensation under this part and another part for the same loss except as provided for in § 1478.6, and except as allowed by the Deputy Administrator who shall resolve any such conflicts.

**§ 1478.2 Administration.**

(a) The program will be administered under the general supervision of the Executive Vice President, Commodity Credit Corporation (CCC), and shall be carried out in the field by State and county Farm Service Agency (FSA) committees.

(b) State and county FSA committees and representatives do not have the authority to modify or waive any of the provisions of this part.

(c) The State FSA committee shall take any action required by this part that has not been taken by a county FSA committee. The State FSA committee shall also:

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

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

(d) No delegation in this part to a State or county FSA committee shall prevent the Deputy Administrator from determining any question arising under the program or from reversing or modifying any determination made by a State or county FSA committee.

(e) The Deputy Administrator may authorize the State and county committees to waive or modify deadlines or other program requirements in cases where lateness or failure to meet such other requirements

does not adversely affect the operation of the program or when, in his or her discretion, it is determined that an exception should be allowed to provide for a more equitable distribution of benefits consistent with the goals of the program provided for in this part.

**§ 1478.3 Definitions.**

The definitions in this section shall be applicable for all purposes of administering the 1999 Crop Disaster Program provided for in this part.

*Actual production* means the total quantity of the crop appraised, harvested or that could have been harvested as determined by the county or State FSA committee in accordance with instructions issued by the Deputy Administrator.

*Additional coverage* means with respect to insurance plans of crop insurance providing a level of coverage equal to or greater than 65 percent of the approved yield indemnified at 100 percent of the expected market price, or a comparable coverage as established by FCIC.

*Administrative fee* means an amount the producer must pay for catastrophic risk protection, limited, and additional coverage crop insurance policies for each crop and crop year.

*Appraised production* means production determined by FSA, RMA, a company reinsured by FCIC, or other appraiser acceptable to CCC, that was unharvested but which was determined to reflect the crop's yield potential at the time of appraisal.

*Approved yield* means the amount of production per acre, computed in accordance with FCIC's Actual Production History Program (7 CFR part 400, subpart G) or for crops not included under 7 CFR part 400, subpart G, the yield used to determine the guarantee. For crops covered under the Noninsured Crop Disaster Assistance program, the approved yield is established according to part 1437 of this title. Only the approved yields based on production evidence submitted to the Agency prior to the 2000 Act will be used for purposes of the 1999 CDP.

*Aquaculture* means the reproduction and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching (except private ocean ranching of Pacific salmon for profit in those States where such ranching is prohibited by law).

*Aquaculture facility* means any land or structure including, but not limited to, a laboratory, hatchery, rearing pond, raceway, pen, incubator, or other equipment used in aquaculture.

*Aquacultural species* means aquacultural species as defined in part 1437 of this chapter.

*Catastrophic risk protection* means the minimum level of coverage offered by FCIC.

**Catastrophic Risk Protection**

*Endorsement* means the relevant part of the Federal crop insurance policy that contains provisions of insurance that are specific to catastrophic risk protection.

*CCC* means the Commodity Credit Corporation.

*Control county* means: for a producer with farming interests in only one county, the county FSA office in which the producer's farm(s) is administratively located; for a producer with farming interests that are administratively located in more than one county FSA office, the county FSA office designated by FSA to control the payments received by the producer.

*County committee* means the local FSA county committee.

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

*Crop year* means: for insured and uninsured crops, the crop year as defined according to the applicable crop insurance policy; and for noninsurable crops, the year harvest normally begins for the crop, except the crop year for all aquacultural species and nursery crops shall mean the period from October 1 through the following September 30, and the crop year for purposes of calculating honey and tree losses shall be the period running from January 1 through the following December 31.

*Cropland* means cropland as defined in part 718 of this title.

*Deputy Administrator* means the Deputy Administrator for Farm Programs, Farm Service Agency (FSA), or a designee.

*Disaster* means damaging weather, including drought, excessive moisture, hail, earthquake, freeze, tornado, hurricane, typhoon, volcano, excessive wind, excessive heat, or any combination thereof; and shall also include a related condition and all eligible loss conditions, excluding price risk for 1999 crop losses, as determined by the crop insurance policy, if RMA has made an eligible loss determination.

*Double-cropped* means a condition in which a subsequent crop of a different commodity is planted on the same acreage as the first crop within the same crop year if the county committee determines both crops were or could have been carried to harvest.

*Eligible crop* means a 1999-crop agricultural commodity commercially

produced for food or fiber; floriculture, ornamental nursery, Christmas tree, turf grass sod, seed and industrial crops including tobacco; and aquaculture including ornamental fish. Losses of livestock and livestock related losses are not compensable under this part but may, depending on the circumstances be compensable under part 1439 of this chapter.

*End use* means the purpose for which the harvested crop is used, such as fresh, processed or juice.

*Entity* means any legal organization of any kind, including, but not limited to, corporations, trusts and partnerships.

*Expected market price (price election)* means the price per unit of production (or other basis as determined by FCIC) anticipated during the period the insured crop normally is marketed by producers. This price will be set by FCIC before the sales closing date for the crop. The expected market price may be less than the actual price paid by buyers if such price typically includes remuneration for significant amounts of post-production expenses such as conditioning, culling, sorting, packing, etc.

*Expected production* means, for an agricultural unit, the historic yield multiplied by the number of planted or prevented acres of the crop for the unit.

*FCIC* means the Federal Crop Insurance Corporation, a wholly owned Government Corporation within USDA.

*Final planting date* means the date established by RMA for insured and uninsured crops by which the crop must be initially planted in order to be insured for the full production guarantee or amount of insurance per acre. For noninsurable crops, the final planting date is the end of the planting period for the crop as determined by CCC.

*Flood prevention* means with respect to aquacultural species, placing the aquacultural facility in an area not prone to flood; in the case of raceways, providing devices or structures designed for the control of water level; and for nursery crops, placing containerized stock in a raised area above expected flood level and providing draining facilities, such as drainage ditches or tile, gravel, cinder or sand base.

*FSA* means the Farm Service Agency.

*Good nursery growing practices* means utilizing flood prevention, growing media, fertilization to obtain expected production results, irrigation, insect and disease control, weed, rodent and wildlife control, and over winterization storage facilities.

*Growing media* means:

(1) For aquacultural species, media that provides nutrients necessary for the

production of the aquacultural species and protects the aquacultural species from harmful species or chemicals; and

(2) For nursery crops, media designed to prevent "root rot" and other media-related problems through a well-drained media with a minimum 20 percent air pore space and pH adjustment for the type of plant produced.

*Harvested* means: For insured and uninsured crops, harvested as defined according to the applicable crop insurance policy; for noninsurable single harvest crops, that a crop has been removed from the field, either by hand or mechanically, or by grazing of livestock; for noninsurable crops with potential multiple harvests in one year or harvested over multiple years, that the producer has, by hand or mechanically, removed at least one mature crop from the field; and for mechanically harvested noninsurable crops, that the crop has been removed from the field and placed in a truck or other conveyance, except hay is considered harvested when in the bale, whether removed from the field or not. Grazed land will not be considered harvested for the purpose of determining an unharvested or prevented planting payment factor.

*Historic yield* means, for a unit, the higher of the county average yield or the producer's approved yield.

*Individual stand* means, with respect to trees, an area of eligible trees that are tended by an eligible producer as a single operation, whether or not the trees are planted in the same field or similar location, as determined by the county committee. Eligible trees not in the same field or similar location may be considered to be separate individual stands if county committee determines that there are significantly differing levels of loss susceptibility.

*Insurance is available* means when crop information is contained in RMA's county actuarial documents for a particular crop and a policy can be obtained through the RMA system, except if the Group Risk Plan of crop insurance was the only plan of insurance available for the crop in the county in the 1999 crop year, insurance is considered not available for that crop.

*Insured crops* means those crops covered by crop insurance pursuant to 7 CFR chapter IV and for which the producer purchased either the catastrophic or buy-up level of crop insurance so available.

*Limited coverage* means plans of crop insurance offering coverage that is equal to or greater than 50 percent of the approved yield indemnified at 100 percent of the expected market price, or a comparable coverage as established by

FCIC, but less than 65 percent of the approved yield indemnified at 100 percent of the expected market price, or a comparable coverage as established by FCIC.

*Maximum loss level* means the maximum level of crop loss in the county, expressed in either a percent of loss or yield per acre, based on other losses in the county for the same crop as determined by the county committee in accordance with instructions issued by the Deputy Administrator.

*Multi-use crop* means a crop intended for more than one end use during the calendar year such as grass harvested for seed, hay, and/or grazing.

*Multiple planting* means the planting for harvest of the same crop in more than one planting period in a crop year on different acreage.

*Noninsurable crops* means those crops for which crop insurance was not available.

*Normal mortality* means the percentage of damaged or dead trees in the individual stand or the percentage of dead aquacultural species that would normally occur during the crop year.

*Operator* means operator as defined in part 718 of this title.

*Pass-through funds* means revenue that goes through, but does not remain in, a person's account, such as money collected by an auction house for the sale of livestock that is subsequently paid to the sellers of the livestock, less a commission withheld by the auction house.

*Person* means person as defined in part 1400 of this chapter, and all rules with respect to the determination of a person found in that part shall be applicable to this part. However, the determinations made in this part in accordance with 7 CFR part 1400, subpart B, Person Determinations, shall also take into account any affiliation with any entity in which an individual or entity has an interest, irrespective of whether or not such entities are considered to be engaged in farming.

*Planted acreage* means land in which seed, plants, or trees have been placed, appropriate for the crop and planting method, at a correct depth, into a seedbed that has been properly prepared for the planting method and production practice normal to the area as determined by the county committee.

*Producer* means producer as defined in part 718 of this title.

*Related condition* means with respect to disaster, a condition related to a disaster that causes deterioration of a crop such as insect infestation, plant disease, or aflatoxin that is accelerated or exacerbated naturally as a result of damaging weather occurring prior to or

during harvest as determined in accordance with instructions issued by the Deputy Administrator.

*Reliable production records* means evidence provided by the producer that is used to substantiate the amount of production reported when verifiable records are not available, including copies of receipts, ledgers of income, income statements of deposit slips, register tapes, invoices for custom harvesting, and records to verify production costs, that are determined acceptable by the county committee.

*Repeat crop* means with respect to a producer's production, a commodity that is planted or prevented from being planted in more than one planting period on the same acreage in the same crop year.

*RMA* means the Risk Management Agency.

*Salvage value* means the dollar amount or equivalent for the quantity of the commodity that cannot be marketed or sold in any recognized market for the crop.

*Secondary use* means the harvesting of a crop for a use other than the intended use, except for crops with intended use of grain, but harvested as silage, ensilage, cabbage, hay, cracked, rolled, or crimped.

*Secondary use value* means the value determined by multiplying the quantity of secondary use times the CCC-established price for this use.

*Secretary* means the Secretary of the United States Department of Agriculture.

*Trees* means maple trees for syrup, or orchard trees grown for commercial production of fruits or nuts.

*Uninsured crops* means those crops for which Federal crop insurance was available, but the producer did not purchase insurance.

*Unit* means, unless otherwise determined by the Deputy Administrator, basic unit as described in part 457 of this title which, for ornamental nursery production, shall include all eligible plant species and sizes.

*Unit of measure* means:

- (1) For all insured and uninsured crops, the FCIC-established unit of measure;
- (2) For aquacultural species, a standard unit of measure such as gallons, pounds, inches or pieces, established by the State committee for all aquacultural species or varieties;
- (3) For Christmas trees, a plant or tree;
- (4) For turfgrass sod, a square yard;
- (5) For maple sap, a gallon; and
- (6) For all other crops, the smallest unit of measure that lends itself to the greatest level of accuracy with minimal

use of fractions, as determined by the State committee.

*United States* means all 50 States of the United States, the Commonwealth of Puerto Rico, the Virgin Islands and Guam.

*USDA* means United States Department of Agriculture.

*Value loss crop* will have the meaning assigned in part 1437 of this chapter.

*Verifiable production records* means evidence that is used to substantiate the amount of production reported and that can be verified by CCC through an independent source.

#### **§ 1478.4 Producer eligibility.**

(a) Producers in the United States will be eligible to receive disaster benefits under this part only if they have suffered 1999 crop losses of eligible crops as a result of a disaster as further specified in this part.

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

(c) As a condition to receive benefits under this part, a producer must have been in compliance with the Highly Erodible Land Conservation and Wetland Conservation provisions of 7 CFR part 12, for the 1999 crop year and must not otherwise be barred from receiving benefits under part 12 or any other provision of law.

(d) Except as otherwise required by law, the provisions of paragraph (c) of this section shall not apply to producers receiving benefits under this part for value loss crops unless otherwise determined by the Deputy Administrator.

#### **§ 1478.5 Time for filing application.**

Applications for benefits under the 1999 Crop Disaster Program must be filed before the close of business on February 25, 2000, or such other date that may be announced by the Deputy Administrator, in the county FSA office serving the county where the producer's farm is located for administrative purposes.



**§ 1478.6 Limitations on payments and other benefits.**

(a) A producer may receive disaster benefits under this part on 1999 crop year losses only.

(b) Payments will not be made under this part for grazing losses. Further, the Deputy Administrator may divide and classify crops based on loss susceptibility, yield, and other factors.

(c) No person shall receive more than a total of \$80,000 in disaster benefits under this part.

(d) No person shall receive disaster benefits under this part in an amount that exceeds the value of the expected production for the relevant period as determined by CCC.

(e) A person who has a gross revenue in excess of \$2.5 million for the 1998 tax year shall not be eligible to receive disaster benefits under this part. Gross revenue includes the total income and total gross receipts of the person, before any reductions. Gross revenue shall not be adjusted, amended, discounted, netted or modified for any reason. No deductions for costs, expenses or pass-through funds will be deducted from any calculation of gross revenue. For purposes of making this determination, gross revenue means the total gross receipts received from farming, ranching and forestry operations if the person receives more than 50 percent of such person's gross income from farming or ranching; or the total gross receipts received from all sources if the person receives 50 percent or less of such person's gross receipts from farming, ranching and forestry.

(f) In the event the total amount of applications for disaster benefits under this part exceeds the available funds, payments shall be reduced by a uniform national percentage. Such reductions shall be applied before any determination of limits on compensation due to multiple USDA benefits and after the imposition of applicable payment limitation and gross revenues caps. Available funds will not include funds made available under other parts for honey loans, mohair loans, and payments to livestock producers.

**§ 1478.7 Requirement to purchase crop insurance.**

(a) Any producer who elected not to purchase crop insurance on a crop in 1999 for which the producer receives crop loss assistance under this part must purchase crop insurance on that crop for the 2000 and 2001 crop years.

(b) If, at the time the producer is advised that he or she is eligible for crop loss assistance under this part, and the sales closing date for the 2000 crop year

has passed for any crop for which crop insurance is required as specified in paragraph (a) of this section, the producer must purchase crop insurance for the 2001 crop year for any such crop.

(c) If any producer fails to purchase crop insurance as required in paragraph (a) or (b) of this section, the producer will be required to refund the benefits received or pay a lesser amount as may be specified by the Deputy Administrator.

**§ 1478.8 Miscellaneous provisions.**

(a) Disaster benefits under this part are not subject to administrative offset under § 1403.8 of this chapter except as determined appropriate by the Deputy Administrator who may, among other offsets, deduct from the benefits accrued any reductions appropriate for a producer's failure to obtain crop insurance as required in connection with benefits for crop losses in prior years.

(b) A person shall be ineligible to receive disaster assistance under this part 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.

(c) 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 (d) of this section and late-payment charges as provided for in part 1403 of this chapter.

(d) Producers shall be required to pay interest on any refund required of the producer receiving assistance or a payment if CCC determines that payments or other assistance were provided to the producer and the producer was not eligible for such assistance. The interest rate shall be one percent greater than the rate of interest that the United States Treasury charges CCC for funds, as of the date of payment. Interest that is determined to be due CCC shall accrue from the date such benefits were made available by CCC to the date repayment is completed. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination

was not due to any error by the producer.

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

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

(g) The liability of any person for any penalty under this part or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 651, 1001 and 1014; 15 U.S.C. 714m; and 31 U.S.C. 3729.

(h) 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 regulations set forth at parts 11 and 780 of this title.

(i) Any payment or portion thereof to any person 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.

(j) Payments that are earned under this part may be assigned in accordance with the provisions of part 1404 of this chapter upon filling out the applicable assignment form.

(k) For the purposes of 28 U.S.C. 3201(e), the restriction on receipt of funds or benefits under this program is waived; however, this waiver shall not preclude withholding or offsetting where it is deemed appropriate by the Deputy Administrator.

**§ 1478.9 Matters of general applicability.**

(a) For calculations of loss made with respect to insured crops, the producer's existing unit structure will be used as the basis for the calculation and may include optional units established in accordance with part 457 of this title. For uninsured and noninsurable crops, basic units will be established for these purposes.

(b) Loss payment rates and factors shall be established by the state committee based on procedures provided by the Deputy Administrator.

(c) County average yield for loss calculations will be the simple average

of the 1993 through 1997 official county yields established by FSA.

(d) County committees will assign production when the county committee determines:

(1) An acceptable appraisal or record of harvested production does not exist;

(2) The loss is due to an ineligible cause of loss or practices that cause lower yields than those upon which the historic yield is based;

(3) The producer has a contract providing a guaranteed payment for all or a portion of the crop; or

(4) The crop is planted beyond the normal planting period for the crop.

(e) The county committee shall establish a maximum loss level based on other losses in the county for the same crop. The maximum loss level for the county shall be expressed as either a percent of loss or yield per acre. The maximum loss level will apply when:

(1) Unharvested acreage has not been appraised by FSA, RMA, a company reinsured by FCIC, or other appraiser;

(2) The crop's loss is because of an ineligible disaster condition or circumstances other than a natural disaster;

(3) Acceptable production records for harvested acres are not available from any source; or

(4) Any other good reason for such a limit shall present itself.

(f) Assigned production for practices that result in lower yields than those for which the historic yield is based shall be established based on the acres found to have been subjected to those practices.

(g) Assigned production for crops planted beyond the normal planting period for the crop shall be calculated according to the lateness of planting the crop. If the crop is planted after the final planting date by:

(1) 1 through 10 calendar days, the assigned production reduction will be based on one percent of the payment yield for each day involved.

(2) 11 through 24 calendar days, the assigned production reduction will be based on 10 percent of the payment yield plus an additional two percent reduction of the payment yield for each day of days 11 through 24 that are involved.

(3) 25 or more calendar days or a date from which the crop would not reasonably be expected to mature by harvest, the assigned production reduction will be based on 50 percent of the payment yield or such greater amount determined by the county committee to be appropriate.

(h) Assigned production for producers with contracts to receive a guaranteed payment for production of an eligible

crop will be established by the county committee by:

(1) Determining the total amount of guaranteed payment for the unit;

(2) Converting the guaranteed payment to guaranteed production by dividing the total amount of guaranteed payment by the approved county price for the crop or variety or such other factor deemed appropriate if otherwise the production would appear to be too high; and

(3) Establishing the production for the unit as the greater of the actual net production for the unit or the guaranteed payment.

#### **§ 1478.10 [Reserved]**

#### **§ 1478.11 Qualifying 1999 crop losses.**

(a) To receive disaster benefits under this part, which covers single-year 1999 crop losses, the county committee must determine that because of a disaster, the producer with respect to the 1999 crop year:

(1) Was prevented from planting a crop;

(2) Sustained a loss in excess of 35 percent of the expected production of a crop;

(3) Sustained a loss in excess of 35 percent of the value for value loss crops; or

(4) Sustained damage in excess of 20 percent of an individual stand of eligible trees.

(b) Calculation of benefits under this part shall not include losses:

(1) That are the result of poor management decisions or poor farming practices as determined by the county committee on a case-by-case basis;

(2) That are the result of the failure of the producer to reseed or replant to the same crop in the county where it is customary to reseed or replant after a loss;

(3) That are not as a result of a natural disaster;

(4) To crops not intended for harvest in crop year 1999;

(5) To losses of by-products resulting from processing or harvesting a crop, such as cotton seed, peanut shells, wheat or oat straw;

(6) To home gardens;

(7) That are a result of 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; or

(8) To losses of trees that are a result of normal mortality or would have been lost to normal mortality but for the disaster.

(c) Calculation of benefits under this part for ornamental nursery stock shall not include losses:

(1) Caused by a failure of power supply or brownouts;

(2) Caused by the inability to market nursery stock as a result of quarantine, boycott, or refusal of a buyer to accept production;

(3) Caused by fire;

(4) Affecting crops where weeds and other forms of undergrowth in the vicinity of the nursery stock have not been controlled; or

(5) Caused by the collapse or failure of buildings or structures.

(d) Calculation of benefits under this part for honey where the honey production by colonies or bees was diminished, shall not include losses:

(1) Where the inability to extract was due to the unavailability of equipment; the collapse or failure of equipment or apparatus used in the honey operation;

(2) Resulting from improper storage of honey;

(3) To honey production because of bee feeding;

(4) Caused by the application of chemicals;

(5) Caused by theft, fire, or vandalism;

(6) Caused by the movement of bees by the producer or any other person; or

(7) Due to disease or pest infestation of the colonies.

#### **§ 1478.12 Calculating rates and yields.**

(a) Payment rates for 1999 year crop losses shall be:

(1) 65 percent of the maximum established RMA price for insured crops;

(2) 65 percent of the State average price for noninsurable crops;

(3) 60 percent of the maximum established RMA price for uninsured crops; and

(4) 65 percent of the established practice rate for damage to eligible trees.

(b) Disaster benefits under this part for losses to crops other than trees shall be made in an amount determined by multiplying the loss of production in excess of 35 percent of the expected production by the applicable payment rate established according to paragraph (a) of this section.

(c) Disaster benefits under this part for losses of trees shall be made in an amount determined by multiplying the quantity of acres or number of trees in a practice approved by the county committee as authorized by the Deputy Administrator, by the payment rate established according to paragraph (a) of this section.

(d) Separate payment rates and yields for the same crop may be established by the county committee as authorized by the Deputy Administrator, when there is supporting data from NASS or other sources approved by CCC that show

there is a significant difference in yield or value based on a distinct and separate end use of the crop. In spite of differences in yield or values, separate rates or yields shall not be established for crops with different cultural practices, such as organically or hydroponically grown.

(e) Each eligible producer's share of a disaster payment shall be based on the producer's share of the crop or crop proceeds, or, if no crop was produced, the share the producer would have received if the crop had been produced. In cases where crop insurance provides for a landlord/tenant to insure the tenant/landlord's share according to part 457 of this title, disaster payments will be issued on the same basis.

(f) When calculating a payment for a unit loss:

(1) The unharvested payment factor shall be applied to crop acreage planted but not harvested; and

(2) The prevented planting factor shall be applied to any prevented planted acreage eligible for payment.

(g) Production from all end uses of a multi-use crop or all secondary uses for multiple market crops will be calculated separately and summarized together.

#### **§ 1478.13 Production losses, producer responsibility.**

(a) Where available, RMA loss records will be used for insured crops.

(b) If RMA loss records are not available, producers are responsible for:

(1) Retaining or providing, when required, the best verifiable or reliable production records available for the crop;

(2) Summarizing all the production evidence;

(3) Accounting for the total amount of unit production for the crop, whether or not records reflect this production; and

(4) Providing the information in a manner that can be easily understood by the county committee.

(c) In determining production under this section the producer must supply acceptable production records to substantiate production to the county committee. If the eligible crop was sold or otherwise disposed of through commercial channels, acceptable production records include: commercial receipts; settlement sheets; warehouse ledger sheets; or load summaries; appraisal information from a loss adjuster acceptable to CCC. If the eligible crop was farm-stored, sold, fed to livestock, or disposed of in means other than commercial channels, acceptable production records include: truck scale tickets; appraisal information from a loss adjuster acceptable to CCC; contemporaneous

diaries; or other documentary evidence, such as contemporaneous measurements.

(d) Producers must provide all records for any production of a crop that is grown with an arrangement, agreement, or contract for guaranteed payment. The failure to report the existence of any guaranteed contract or similar arrangement or agreement shall be considered as providing false information to CCC.

#### **§ 1478.14 Determination of production.**

(a) Production under this part shall include all harvested production, unharvested appraised production and assigned production for the total planted acreage of the crop on the unit.

(b) The harvested production of eligible crop acreage harvested more than once in a crop year shall include the total harvested production from all these harvests.

(c) If a crop is appraised and subsequently harvested, the actual harvested production shall be used to determine benefits.

(d) For all crops eligible for loan deficiency payments or marketing assistance loans with an intended use of grain but harvested as silage, ensilage, cobbage, hay, cracked, rolled, or crimped, production will be adjusted based on a whole grain equivalent as established by CCC.

(e) For crops with an established yield and market price for multiple intended uses, a value will be calculated for each use; with

(1) The intended use or uses for disaster purposes based on historical production and acreage evidence provided by the producer; and

(2) The eligible acres for each use and the calculation of the disaster payment will be determined by the county committee according to instruction issued by the Deputy Administrator.

(f) For crops sold in a market that is not a recognized market for the crop with no established county average yield and market price, 60 percent of the salvage value received will be deducted from the disaster payment.

(g) If a producer has an arrangement, agreement, or contract for guaranteed payment for production (as opposed to production based on delivery), the production to count shall be the greater of the actual production or the guaranteed payment converted to production as determined by CCC.

(h) Production that is commingled between units before it was a matter of record and cannot be separated by using records or other means acceptable to CCC shall be prorated to each respective by CCC. Commingled production may

be attributed to the applicable unit, if the producer made the unit production of a commodity a matter of record before commingling and does any of the following, as applicable:

(1) Provides copies of verifiable documents showing that production of the commodity was purchased, acquired, or otherwise obtained from beyond the unit;

(2) Had the production measured in a manner acceptable to the county committee; or

(3) Had the current year's production appraised in a manner acceptable to the county committee.

(i) The county committee shall assign production for the unit when the county committee determines that:

(1) The producer has failed to provide adequate and acceptable production records;

(2) The loss to the crop is because of a disaster condition not covered by this part, or circumstances other than natural disaster, and there has not otherwise been an accounting of this ineligible cause of loss;

(3) The producer carries out a practice, such as double cropping, that generally results in lower yields than the established historic yields;

(4) The producer has a contract to receive a guaranteed payment for all or a portion of the crop; or

(5) A crop is late-planted.

(j) For sugarcane, the quantity of sugar produced from such crop shall exclude acreage harvested for seed.

(k) For peanuts, the actual production shall be all peanuts harvested for nuts regardless of their disposition or use as adjusted for low quality.

(l) For tobacco, except flue-cured and burley, the actual production shall be the sum of the tobacco: marketed or available to be marketed; destroyed after harvest; and produced but unharvested, as determined by an appraisal. For flue-cured and burley tobacco, the actual production shall be the sum of the tobacco: marketed, regardless of whether the tobacco was produced in the current crop year or a prior crop year; on hand; destroyed after harvest; and produced but unharvested, as determined by an appraisal.

#### **§ 1478.15 Calculation of acreage for crop losses other than prevented planted.**

(a) Subject to paragraph (b) of this section, the acreage of a crop planted in each planting period shall be considered a different crop for the purpose of determining disaster benefits under this part.

(b) In cases where there is a repeat crop, double crop or a multiple planting, each of these crops may be

considered different crops if the county committee determines that:

(1) Both the initial and subsequent planted crops were planted with an intent to harvest;

(2) The subsequent crop was planted after the time when the initial crop would normally have been harvested;

(3) Both the initial and subsequent planted crops were planted within the normal planting period for that crop; and

(4) Both the initial and subsequent planted crops meet all other eligibility provisions of this part including good farming practices.

(c) In cases where an initial crop is planted and fails due to an eligible disaster condition and it is generally considered too late to replant and a subsequent crop is planted on the same acreage within its normal planting period in the same crop year and also failed because of an eligible disaster condition, both crops are eligible for disaster assistance if they meet all other eligibility provisions of this part.

#### **§ 1478.16 Calculation of prevented planted acreage.**

(a) When determining losses under this part, prevented-planted acreage will be considered separately from planted acreage of the same crop.

(b) Except as provided in paragraph (c) of this section, for insured crops, disaster payments under this part for prevented-planted acreage shall not be made unless RMA documentation indicates that the eligible producer received a prevented planting payment under the RMA-administered program.

(c) For insured crops, disaster payments under this part for prevented-planted acreage will be made available for the following crops for which prevented planting coverage was not available and for which the county committee will make an eligibility determination according to paragraph (d) of this section: peppers; sweet corn (fresh market); tomatoes (fresh market); tomatoes (processing).

(d) For uninsured or noninsurable crops, or the insured crops listed in paragraph (c) of this section, the producer must prove, to the satisfaction of the county committee, an intent to plant the crop and that such crop could not be planted because of an eligible disaster. The county committee must be able to determine the producer was prevented from planting the crop by an eligible disaster that both:

(1) Prevented most producers from planting on acreage with similar characteristics in the surrounding area; and

(2) Unless otherwise approved by the Deputy Administrator, began no earlier than the planting season for the 1999 crop.

(e) Prevented planted disaster benefits under this part shall not apply to:

(1) Aquaculture, including ornamental fish; perennial forage crops grown for hay, seed, or grazing; ginseng root and ginseng seed; honey; maple sap; millet; nursery crops; sweet potatoes; tobacco; trees; turfgrass sod; and tree and vine crops;

(2) Any acreage that is double-cropped, even if the producer has a history of double-cropping acreage;

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

(4) Acreage that is used for conservation purposes or intended to be left unplanted under any USDA program;

(5) The same acreage from which any benefit is derived under any program administered by the USDA on which a crop is planted and fails during the crop year except as provided in § 1478.6(f);

(6) Any acreage on which a crop other than a cover crop was harvested, hayed, or grazed during the crop year;

(7) Any acreage for which a cash lease payment is received for the use of the acreage the same crop year unless the county committee determines the lease was for haying and grazing rights only and was not a lease for use of the land;

(8) Acreage for which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes;

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

(10) Acreage for which the producer cannot provide proof to the county committee that inputs such as seed, chemicals, and fertilizer were available to plant and produce a crop with the expectation of at least producing a normal yield.

(f) Disaster benefits under this part shall not apply to uninsured and noninsurable crops where the prevented-planted acreage was affected by a disaster that was caused by drought or the failure of the irrigation water supply unless the acreage is in an area classified by the Palmer Drought Severity Index as in a severe or extreme drought during the planting period time specified by the producer and prior to the final planting date for the crop.

(g) For uninsured or noninsurable crops and the insured crops listed in paragraph (c) of this section, for prevented planting purposes:

(1) The maximum prevented-planted acreage for all crops:

(i) Cannot exceed the number of acres of cropland in the unit for the crop year; and

(ii) Will be reduced by the number of acres planted in the unit;

(2) The maximum prevented planted acreage for a crop cannot exceed the number of acres planted by the producer, or that was prevented from being planted, to the crop in any 1 of the 1995 through 1998 crop years as determined by the county committee;

(3) For crops grown under a contract specifying the number of acres contracted, the prevented-planted acreage is limited to the result of the number of acres specified in the contract minus planted acreage;

(4) For each crop type or variety for which separate prices or yields are sought for prevented-planted acreage, the producer must provide evidence that the claimed prevented-planted acres were successfully planted in at least 1 of the most recent 4 crop years; and

(5) The prevented planted acreage must be one contiguous block consisting of at least 20 acres or 20 percent of the intended planted acreage in the unit, whichever is less.

#### **§ 1478.17 Quality adjustments to production.**

(a) For the crops identified in paragraph (b) of this section, subject to the provisions of this section and part, the quantity of production of crops of the producer shall be adjusted to reflect diminished quality resulting from the disaster.

(b) Crops eligible for quality adjustments to production are limited to:

(1) Barley; canola; corn; cotton; crambe, flaxseed; grain sorghum; mustard seed; oats; peanuts; rapeseed; rice; safflower; soybeans; sugar beets; sunflower-oil; sunflower-seed; tobacco; wheat; and

(2) Crops with multiple market uses such as fresh, processed or juice, as supported by NASS data or other data determined acceptable.

(c) The producer must submit documentation for determining the grade and other discount factors that were applied to the crop.

(d) Quality adjustments will be applied after production has been adjusted to standard moisture, when applicable.

(e) Except for cotton, if a quality adjustment has been made for multi-peril crop insurance purposes, an additional adjustment will not be made.

(f) Quality adjustments for crops, other than cotton, peanuts, sugar beets

and tobacco, listed in paragraph (b)(1) of this section may be made by applying an adjustment factor based on dividing the Federal marketing assistance loan rate applicable to the crop and producer determined according to part 1421 of this chapter by the unadjusted county marketing assistance loan rate for the crop. For crops that grade "sample" and are marketed through normal channels, production will be adjusted as determined by CCC. County committees may, with state committee concurrence, establish county average quality adjustment factors.

(g) Quality adjustments for cotton shall be based on the difference between:

(1) The loan rate applicable to the crop and producer determined according to part 1427 of this chapter; and

(2) The adjusted county loan rate. The adjusted county rate is the county loan rate adjusted for the 5-year county average historical quality premium or discount, as determined by CCC.

(h) Quality adjustments for quota peanuts shall for unused quota be based on the difference between the adjusted sales price and the quota price. The adjusted sales price is the quota price minus discounts for quality, regardless of the actual sales price received. Adjustments for non-quota peanuts may also be made to reflect diminished quality as determined by CCC.

(i) Quality adjustments for sugar beets shall be based on sugar content. The 1999 actual production for the producer shall be adjusted upward or downward to account for sugar content as determined by CCC.

(j) Quality adjustments for tobacco shall be based on the difference between the sales price and the support price except that the market price may be used instead of the support price where market prices for the tobacco are normally in excess of the support price.

(k) Quality adjustments for crops with multiple market uses such as fresh, processed and juice, shall be applied based on the difference between the producer's historical marketing percentage of each market use compared to the actual percentage for 1999.

(l) Quality adjustments for aflatoxin shall be based on the aflatoxin level. The producer must provide the county

committee with proof a price reduction because of aflatoxin. The aflatoxin level must be 20 parts per billion or more before a quality adjustment will be made. The quality adjustment factor applied to affected production is .50 if the production is marketable. If the production is unmarketable due to aflatoxin levels of at least 20 parts per billion, production will be adjusted to zero. Any value received will be considered salvage.

(m) Any quantity of the crop determined to be salvage will not be considered production. Salvage values shall be factored by 0.60.

(n) Quality adjustments do not apply to value loss crops.

(o) Quality adjustments shall not apply to: hay, honey, maple sap, turfgrass sod, crops marketed for a use other than an intended use for which there is not an established county price or yield.

#### **§ 1478.18 Value loss crops.**

(a) Special provisions to assess losses and calculate disaster assistance under this part apply to the following crops and such other crops as determined by CCC: ornamental nursery; Christmas trees; vegetable and root stock including ginseng root; and aquaculture, including ornamental fish.

(b) Disaster benefits under this part are calculated based on the loss of value at the time of disaster, as determined by CCC.

(c) For aquaculture, disaster benefits under this part for aquacultural species are limited to those aquacultural species that were placed in the aquacultural facility by the producer. Disaster benefits under this part shall not be made available for aquacultural species that are growing naturally in the aquaculture facility. Disaster benefits under this part are limited to aquacultural species that were planted or seeded on property owned or leased by the producer where that land has readily identifiable boundaries, and over which the producer has total control of the waterbed and the ground under the waterbed. Producers who only have control over a column of water will not be eligible for disaster benefits under this part.

(d) For ornamental nursery crops, disaster benefits under this part are limited to ornamental nursery crops that

were grown in a container or controlled environment for commercial sale on property owned or leased by the producer, and cared for and managed using good nursery growing practices. Indigenous crops are not eligible for benefits under this part.

(e) For Christmas trees, disaster benefits under this part are limited to losses that exceed 35 percent of the value of the Christmas trees present at the time of the disaster. Christmas tree producers seeking disaster assistance under this part must provide acreage data, dates of plantings and the quantity of trees planted on each date.

(f) For vegetable and root stock, disaster benefits under this part are limited to plants grown in a container or controlled environment for use as transplants or root stock by the producer for commercial sale or property owned or leased by the producer and managed using good rootstock or fruit and vegetable plant growing practices.

#### **§ 1478.19 Other specialty crops.**

(a) For turfgrass sod, disaster benefits under this subpart are limited to turfgrass sod that would have matured and been harvested during 1999, when a disaster caused in excess of 35 percent of the expected production to die.

(b) For honey, disaster benefits under this part are limited to table and non-table honey produced commercially for human consumption. For calculating benefits, all honey is considered a single crop, regardless of type or variety of floral source or intended use.

(c) For maple sap, disaster benefits under this part are limited to maple sap produced on private property in a controlled environment by a commercial operator for sale as sap or syrup. The maple sap must be produced from trees that are: located on land the producer controls by ownership or lease; managed for production of maple sap; and are at least 30 years old and 12 inches in diameter.

Signed at Washington, DC, on February 9, 2000.

**Parks Shackelford,**

*Acting Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.*

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