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## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1439

RIN 0560-AF11

#### Disaster Reserve Assistance Program

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Credit Corporation (CCC) published an interim rule in the **Federal Register** (62 FR 3195) on January 22, 1997, to announce the availability of assistance under the Disaster Reserve Assistance Program (DRAP). The assistance was for livestock producers whose production of livestock feed was adversely affected by severe winter disaster conditions.

Authority for the program is set forth in section 813 of the Agricultural Act of 1970, as amended. This final rule adopts the interim rule with modifications that became necessary during the administration of the program due to circumstances unforeseen at the time the interim rule was written, but which became necessary because of the severity of the disaster.

**EFFECTIVE DATE:** August 21, 1997.

**FOR FURTHER INFORMATION CONTACT:** Chris Niedermayer, Acting Director, Emergency and Noninsured Assistance Program Division, Farm Service Agency (FSA), United States Department of Agriculture, STOP 0526, 1400 Independence Avenue, SW, Washington, D.C. 20250-0526, telephone (202) 720-6635.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined to be significant and has been reviewed by the Office of Management and Budget.

##### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because neither FSA nor the CCC is 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 12988

The final rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are retroactive to January 10, 1997. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

##### 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 the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because neither FSA nor CCC is required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

##### Paperwork Reduction Act

The amendments to 7 CFR 1439 set forth in this final rule have been approved by OMB under an emergency submission of 0560-0029. An information collection notice was published in the **Federal Register** (62 FR 3195) on January 22, 1997. No comments were received regarding information collections. A regular submission of information collection

will be provided to OMB before July 31, 1997.

##### Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

##### Federal Assistance Programs

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.452.

##### Background

Pursuant to the authority set forth in section 813 of the Agricultural Act of 1970, as amended, it has been determined that:

1. Severe and prolonged natural disasters adversely affecting livestock producers across the country warrant implementing additional provisions of DRAP to alleviate the distress caused by the natural disaster conditions and unforeseen consequences brought on by the severity of the natural disasters.

2. An interim rule published on January 22, 1997, (62 FR 3195) amended part 1439 to provide assistance for feed losses in crop year 1996, occurring because of snow and freezing conditions. Consequently, in implementing these regulations CCC made several changes in the program due to the severity of the natural disaster conditions. Presidential Disaster Declarations M1156 and M1157 were issued for all counties in North Dakota and South Dakota; therefore, all livestock producers in these States who met all eligibility requirements, as determined by the Deputy Administrator for Farm Programs (DAFP), and timely filed requests, were eligible for assistance under the herein contained Emergency Feed Grain Donation Program (EFGDP). Subsequently, DAFP determined that livestock producers in North Dakota, South Dakota, and in the Minnesota counties designated as primary counties in Presidential Disaster Declaration M1158 who met all eligibility requirements, as determined by DAFP, and timely filed requests, were eligible for assistance under the herein

contained Foundation Livestock Relief Program (FLRP). The interim rule did not specify that producers in counties contiguous to primary counties where an emergency declaration was made by the President would be eligible for assistance under EFGDP and FLRP. Inadvertently, the following counties contiguous to the States of North Dakota and South Dakota were erroneously included as being eligible for FLRP: Lyon, Plymouth, Sioux, and Woodbury Counties in Iowa; Carter, Fallon, Richland, Roosevelt, Sheridan, and Wibaux Counties in Montana; Boyd, Cedar, Cherry, Dakota, Dawes, Dixon, Keya Paha, Sheridan, and Sioux Counties in Nebraska; and Crook, Niobrara, and Weston Counties in Wyoming. Applications for FLRP assistance were accepted in the aforementioned contiguous counties through February 25, 1997. FSA determined that withdrawal of its offer to provide cost share assistance after the final date for submitting an application would not be in the best interest of the public because producers in the erroneously approved counties would have already made previous commitments. Accordingly, FSA elected to grant relief in accordance with 7 U.S.C. 1339a on the basis of "misaction" by the Agency.

This final rule adopts the interim rule, with some modifications and additions. The comments received and CCC responses are as follows:

*Comment:* § 402(a) One comment received from a national livestock association recommended that:

(1) The Secretary of Agriculture should have the authority to delineate the areas of the U.S. that are eligible for the DRAP.

(2) Producers who qualify for the DRAP should be allowed to use the funds for snow removal, clearing of flood related debris, removal of mud, repair and maintenance of farm roads, rebuilding of fences due to high water or snow, purchase of hay and high protein feed supplements and minerals, and maintenance and continued usage of water supplies of adequate quality and quantities.

(3) Producers be reimbursed whether they remove the disaster related snow, mud and/or debris themselves, or they use an outside contractor.

*Response:* (1) Authorization for the program was limited to the 1996 crop year, allowing USDA to provide assistance for feed loss or inaccessibility as a result of snow or freezing conditions where an emergency declaration has been made by the President. DAFP believes it is not prudent to seek legislative change to

allow the Secretary authority to delineate the areas of the U.S. eligible for DRAP as the terms of the program have already expired. (2) Under § 1439.602(b), assistance is provided as reimbursement for expenses relating to transportation assistance on or after January 10, 1997, specifically related to providing access to existing feed supplies or to the livestock and reimbursement for expenses relating to eligible livestock feed purchased on or after January 10, 1997, and donation of CCC-owned feed grains. There is no restriction on how the livestock owner uses the reimbursed funds. However, according to § 1439.8, CCC-owned feed grains obtained under this part shall not be exchanged for any ingredients, services, cash, credit, or any other thing of value. (3) Under § 1439.602(f), maximum assistance for snow removal is limited to the lesser of the actual cost to move snow to gain access to the available feed or stranded livestock, or the monetary value of multiplying the number of livestock, by type and weight range, by the allowance per day in pounds of corn, as determined by CCC, by \$0.05 per pound, by a feeding period of 15 days. There is no restriction on whether the livestock owner or a contractor removes the snow.

3. This rule will modify part 1439 to add sections 1439.601 and 1439.602 and 1439.701 and 1439.702. These sections set out program regulations for EFGDP and FLRP.

4. Based on the above determinations, the EFGDP and the FLRP are authorized for the 1996 livestock feed crop year for livestock owners who are determined eligible. Program payments will be contingent on the availability of CCC funds.

#### List of Subjects in 7 CFR part 1439

Animal feeds, Disaster assistance, Livestock.

Accordingly, for the reasons set forth in the Preamble, the interim rule published on January 22, 1997, (62 FR 3195) is adopted as final with changes, as set forth below.

#### PART 1439—EMERGENCY ASSISTANCE PROGRAMS

1. The authority citation for part 1439 continues to read as follows:

**Authority:** 15 U.S.C. 714b and 714c and 7 U.S.C. 1427a.

2. In section 1439.402, paragraph (a) is revised to read as follows:

#### § 1439.402 Assistance

(a) Assistance is for eligible livestock which are commingled, stranded, and unidentified as to the livestock owner.

\* \* \* \* \*

3. Sections 1439.601 and 602 are added as follows:

#### Subpart—Emergency Feed Grain Donation Program (EFGDP)

##### § 1439.601 General statement.

(a)(1) This subpart sets forth the terms and conditions of the EFGDP. This program may be authorized only for livestock owners in a State or county, by the Deputy Administrator for Farm Programs (DAFP), Farm Service Agency (FSA), upon a determination that a sudden livestock feed emergency exists and a Presidential disaster declaration has been issued for such a State or county as a result of snow and freezing and related conditions. Under the program, CCC will provide to the livestock owner whose access to livestock and normal livestock feed supplies was adversely affected by natural disasters either or both of the following:

(i) Reimbursement for expenses relating to eligible livestock feed purchases and transportation assistance;

(ii) CCC-owned feed grains on a donation basis.

(2) Assistance may be given to other persons or entities (public and private), who certify that the eligible livestock were, or are, in danger of perishing without their immediate assistance. This program shall terminate at the conclusion of the 1996 livestock feed crop year.

(b) The EFGDP is authorized for the 1996 livestock feed crop year when both of the following apply:

(1) The FSA State committee determines and documents a livestock feed emergency on a county by county basis, when the danger of eligible livestock perishing as a result of snow and freezing and related conditions exists in the county, and

(2) The livestock owner, or other person or entities (public or private) certify that the eligible livestock were, or are, in danger of perishing without immediate assistance and that normal livestock feed supplies were, or are, inaccessible.

##### § 1439.602 Assistance.

(a) Assistance is for eligible livestock which are in danger of perishing without immediate assistance. Eligible livestock includes beef and dairy cattle; buffalo and beefalo; equine animals, including horses, mules, donkeys; sheep; goats; and swine.

(b) Assistance may be provided as any of the following:

(1) Reimbursement for expenses relating to transportation assistance on or after January 10, 1997, specifically related to providing access to existing feed supplies or to the livestock;

(2) Reimbursement for expenses relating to eligible livestock feed purchased on or after January 10, 1997; or

(3) Donation of CCC-owned feed grains.

(c) Requests for reimbursement for transportation assistance and eligible livestock feed purchases shall include verifiable sales receipts, service agreements, or any other documentation as determined by the FSA county committee.

(d) Individuals who provide assistance to livestock which is in danger of perishing without immediate assistance or where the owner of the livestock is not known, shall only receive CCC-owned feed grain on a donation basis, not to exceed the amount of feed grain actually used.

(e) Assistance shall not exceed the monetary value of multiplying the number of livestock, by type and weight range, by the allowance per day in pounds of corn as determined in accordance with § 1439.3, by \$0.05 per pound, by a feeding period of 15 days.

(f) For snow removal, the maximum assistance shall be the lesser of:

(1) Actual cost to move snow to gain access to the available feed or stranded livestock; or

(2) The maximum assistance calculated in accordance with paragraph (e) of this section.

(g) For feed purchases, the maximum assistance shall be the lesser of:

(1) The monetary value of purchased eligible feed; or

(2) The maximum assistance calculated in accordance with paragraph (e) of this section.

(h) The maximum assistance for donated grain is a 15 day feed allowance calculated in accordance with paragraph (e) of this section.

4. Sections 1439.701 and 1439.702 are added as follows:

#### **Subpart—Foundation Livestock Relief Program (FLRP)**

##### **§ 1439.701 General statement.**

(a) This subpart sets forth the terms and conditions of the FLRP. This program may be authorized by DAFP, upon a determination that foundation livestock owners have been forced to feed excessive quantities of livestock feed and a Presidential disaster declaration has been issued for the State

or county as a result of snow and freezing and related conditions. Under the program, CCC will provide cash reimbursement for eligible livestock feed purchases to the livestock owner and other persons or entities (public and private), whose usage of normal livestock feed supplies was adversely affected by natural disasters. Cost-share assistance is provided at 30 percent of the lesser of actual eligible livestock feed costs shown on acceptable feed purchase documents or the calculated feed allowance for eligible livestock for a period not to exceed 30 days. This program shall terminate at the conclusion of the 1996 livestock feed crop year.

(b) As determined by DAFP, FLRP may be authorized for any length of time not to exceed a 30-day feeding period. Subsequent feeding periods of the same or different duration may be designated by DAFP for the same or related disaster conditions.

##### **§ 1439.702 Assistance.**

(a) Assistance is limited to livestock owners who have eligible foundation or replacement livestock, as determined by DAFP. Eligible livestock includes beef and dairy cattle, buffalo and beefalo, sheep, goats, swine, and equine animals used to raise livestock that will be used for human consumption or in the production of food or fiber on the owner's farm.

(b) Assistance shall be provided as a 30 percent cost-share payment based on the lesser of:

(1) Eligible livestock feed purchased and received during the period designated by DAFP, or

(2) The calculated feed allowance for the eligible livestock for up to 30 days, as determined by DAFP.

(c) Requests for reimbursement of eligible livestock feed purchases shall include verifiable sales receipts and any other documentation the FSA county committee requires.

(d) Assistance shall not exceed the monetary value of multiplying the number of livestock, by type and weight range, by the allowance per day in pounds of corn as determined in accordance with § 1439.3, by \$0.05 per pound, by the number of days in the feeding period designated by DAFP.

Signed at Washington, DC, on August 14, 1997.

**Bruce R. Weber,**

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 97-22128 Filed 8-20-97; 8:45 am]

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## **DEPARTMENT OF AGRICULTURE**

### **Rural Housing Service**

### **Rural Business-Cooperative Service**

### **Rural Utilities Service**

### **Farm Service Agency**

### **7 CFR Part 1955**

### **RIN 0560-AE88**

### **Implementation of the Inventory Property Management Provisions of the Federal Agriculture Improvement and Reform Act of 1996**

**AGENCIES:** Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This implements provisions of the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) that affect the farm credit programs of the Farm Service Agency (FSA), formerly administered by the Farmers Home Administration (FmHA). The provisions of this rule affect the acquisition, management and disposal of inventory farm property by FSA.

**DATES:** Effective August 21, 1997. Comments must be submitted by October 20, 1997.

**ADDRESSES:** Submit written comments to the Farm Credit Programs Loan Servicing and Property Management Division, Farm Service Agency, United States Department of Agriculture, Room 5449-S, Stop 0523, 1400 Independence Avenue, SW, Washington, DC 20013-0523.

**FOR FURTHER INFORMATION CONTACT:** James P. Fortner, Senior Realty Specialist, Farm Service Agency; Telephone: 202-720-1976; Facsimile: 202-690-0949. E-mail: jfortner@wdc.fsa.usda.gov

### **SUPPLEMENTARY INFORMATION:**

#### **Executive Order 12866**

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

#### **Regulatory Flexibility Act**

The Farm Service Agency (FSA) certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96-534, as amended (5 U.S.C. 601).

In addition, the Regulatory Flexibility Act is not applicable to this rule since