

**DEPARTMENT OF AGRICULTURE****Commodity Credit Corporation****7 CFR Part 1480**

RIN 0560-AG36

**2000-Crop Disaster Program**

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

**ACTION:** Final rule.

**SUMMARY:** This rule implements provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (2001 Act) related to crop-loss disaster assistance for producers who suffered 2000-crop losses, and other specified crop year losses, because of adverse weather or other specified conditions.

**DATES:** Effective March 19, 2001.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Davis, Chief, Compliance Branch, FSA, USDA; Telephone: (202)720-9882.

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

Section 840 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (2001 Act) (Public Law 106-387) requires that, with respect to the programs authorized by sections 804, 811 and 815 of the 2001 Act, the regulations be issued as soon as practicable and without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture (the Secretary) effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. These provisions are thus issued as final and are effective immediately.

**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 following the Background section.

**Federal Assistance Programs**

The titles and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: Crop Disaster Program (D); 10.073.

**Regulatory Flexibility Act**

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

**Environmental Evaluation**

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

**Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

**Executive Order 12988**

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

**Unfunded Mandates Reform Act of 1995 (UMRA)**

This rule does not impose any mandates on State, local or tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

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

Section 840 of Public Law 106-387 requires that the regulations necessary to implement these provisions be issued as soon as practicable and without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. It also requires that the Secretary use the provisions of 5 U.S.C. 808 (the Small Business Regulatory Enforcement Fairness Act (SBREFA)), 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, and thus

does not have to meet the requirements of section 801 of SBREFA requiring a 60-day delay for Congressional review of a major regulation before the regulation can go into effect. This rule is considered a major rule for the purposes of SBREFA, but Congress has expressed its desire that these regulations be issued expeditiously without protracted notice and comment, or additional delays required by section 801 of SBREFA. Inasmuch as the rule affects the incomes of a large number of agricultural producers who have been hit hard by natural disasters, and given the clear intent expressed by Congress, CCC finds that further delays are contrary to the public interest and therefore, this regulation is issued as final and is effective immediately.

**Paperwork Reduction Act**

Section 840 of the 2001 Act requires that the regulations implementing sections 804, 811 and 815 be promulgated without regard to the Paperwork Reduction Act. This means that the normal 60-day public comment period and OMB approval of the information collections required by this rule are not required before the regulations may be made effective.

**Background**

Provisions of the 2001 Act authorize the Secretary to provide disaster assistance to crop producers for losses due to damaging weather and related conditions, losses due to crop disease and insects for 2000 crops, and other crops in certain limited instances. Generally, by terms of the statute, crop loss assistance is to be made available under the same or similar terms and conditions as the crop loss provisions administered for 1998 crop losses, as provided in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, 1999 (Public Law 105-277). However, there are certain notable additions, exceptions and restrictions in the 2000-crop Disaster Program (2000 CDP) that were not applicable to the 1998 single-year Crop Loss Disaster Assistance Program (CLDAP).

Principally, the rules for the 2000 CDP differ from the rules for the 1998 single-year CLDAP in the following manner:

1. A section has been added to clarify which crop losses are eligible for coverage;
2. The eligible causes of loss have been expanded, as specified by Section 804 of the 2001 Act, to include losses from insect damage from grasshoppers and Mormon crickets; and losses caused

by aflatoxin, plum pox virus, Pierce's disease, watermelon sudden wilt disease; losses from Mexican fruit fly quarantines in certain California counties; all of which are not required to be weather related;

3. Eligible causes of loss for irrigated crops, both planted and prevented planted, for 2000 CDP, include lack of irrigation water from saltwater intrusion or contamination of irrigation water supply due to drought conditions;

4. Also included as an eligible cause of loss to irrigated crops is water rationing if proof is provided that water was rationed by a Government entity or a water district;

5. The crop insurance linkage requirement was modified so that crop insurance will be required on 2001 and 2002 crops that were insurable in 2000, but for which the producer did not purchase coverage, and for which the producer receives 2000 CDP payments. For the 1998 CLDAP, the producer had to obtain crop insurance on all crops of economic significance;

6. The use of special approved yields based on actual production is not allowed unless production reports were submitted prior to the enactment of the 2001 Act;

7. The 2001 Act did not include any provisions regarding FCIC premiums and discounts for insurance coverage and therefore, all such language has been removed;

8. Language has been added that authorizes FSA county committees to make adjustments to RMA data on crop production, crop acres and other information supplied to FSA for insured producers for 2000 CDP purposes if the reason for adjustment is supported by adequate documentation;

9. All references regarding the use of a national factor for the pro-ration of disaster payments have been removed since the 2000 CDP is funded by the Commodity Credit Corporation (CCC), rather than by limited appropriation, with the exception of the \$38 million specifically authorized for 1999 and 2000 apple and potato quality adjustments in Section 811 of the 2001 Act, which was subsequently reduced to \$37,916,400 by the Government-Wide rescission of appropriated funds required by the FY 2001 Consolidated Appropriations Bill (Public Law 106-554, section 1403);

10. Unlike the statute covering the preceding disaster programs, the 2001 Act did not specifically include trees as an eligible crop for 2000 CDP and therefore, such assistance for trees will not be available in the new program;

11. Provisions have been added to implement the portion of the 2001 Act

that provides for a separate quality adjustment if the quality loss was at least 20 percent of the value of affected production of the crop would have had if the crop had not suffered a quality loss;

12. Additional provisions have been added to provide the maximum of \$37.9 million in CDP benefits for quality losses specifically for 1999 and 2000 apple and potato crops due to disaster. Unlike all other benefits under the 2000 CDP, these payments are not subject to payment limitation and gross revenue provisions, but may be subject to a national pro-ration factor if the value of the requests for assistance under this part exceed the amount funded;

13. Provisions for vegetable and root stock as value loss crops were revised for clarity and to more accurately reflect the way these crops are grown and marketed;

14. The definitions of "multiple cropping," "multiple planting" and "repeat crops" were added and revised to assist in the implementation of the restriction on 2000 CDP benefits to only one crop in certain situations;

15. Language has been added to exclude the use of late-filed crop acreage reports for the purpose of developing cropping history under the provisions concerning multiple-cropping and prevented planting;

16. Definition of the "United States" has been revised to include authority for the Deputy Administrator to determine whether to extend disaster assistance to certain U.S. territories based on feasibility and disaster occurrences;

17. Definitions of "production," "rate," and "yield" have been added for clarity;

18. The Highly Erodible Land and Wetland Conservation (HELWC) compliance exclusion for producers of value loss crops has been removed;

19. Language has been added for the revision of the adjusted unharvested payment factors if costs associated with growing the crop are not incurred;

20. Crops ineligible for prevented planting assistance have been changed to be consistent with crop insurance determinations of crops eligible for prevented planted coverage;

21. Insured producers are now required to provide documentation proving their prevented planting eligibility; and

22. All references to the use of the Palmer Drought Index and the contiguous acreage requirement in the determination of prevented planted crop acres have been removed to be more consistent with crop insurance prevented planting requirements.

As provided in section 815(e) of the 2001 Act, assistance will be applicable to losses, due to disaster, for all crops, as determined by the Secretary. The eligible crops will also include irrigated crops that, due to lack of irrigation water or contamination by saltwater intrusion of an irrigation water supply due to drought conditions, were planted and suffered a loss or were prevented from being planted; pecans; and nursery losses in the State of Florida that occurred, because of disaster, during the period of October 1, 2000, through December 31, 2000. For these Florida nursery losses, any benefit determined and issued will be independent from other 2000 CDP payments and such compensable losses will be ineligible for assistance that may become available for 2001 crop losses.

The 2001 Act limits disaster assistance to only one 2000 crop on the same acreage unless there is an established practice of planting two or more crops on the same acreage for harvest in the same crop year as determined by the Secretary. In the event that two or more crops grown on the same acreage are determined eligible for 2000 CDP and the exception of multiple-cropping is not applicable as determined by the Secretary, the producer must designate the one crop for which 2000 CDP will be requested. As previously mentioned, no such restriction was in place for the 1998 CLDAP.

In addition to implementing provisions of section 815 of the 2001 Act, which, as amended, provides the basic authority for the disaster program, this rule also addresses sections 804, 807 and 811 of the 2001 Act. The first of these, Section 804 of the 2001 Act, provides that CCC may provide compensation for losses not otherwise compensated to: (a) Compensate growers whose crops could not be sold due to Mexican fruit fly quarantines in San Diego and San Bernardino/Riverside counties in California since their imposition on November 16, 1999, and September 10, 1999, respectively; (b) compensate growers in relation to the Secretary's "Declaration of Extraordinary Emergency" on March 2, 2000, regarding plum pox virus; (c) compensate growers for losses due to Pierce's disease; (d) compensate growers for losses due to watermelon sudden wilt disease; and (e) compensate growers for losses incurred due to infestations of grasshoppers and Mormon crickets. Accordingly, section 1480.10(c) provides that the 2000 CDP will be available for these losses. Section 804 was needed because normally, and under section 815, CDP-

type programs are limited to weather-related losses. That being the case, it appears, however, that there was no intent to provide any relief for growers covered by section 804 that was different from or broader than that available for other producers with crop claims under section 815. There would, presumably, have been some expression of intent to do otherwise had that been Congress' desire. Accordingly, except as specified in section 804 itself, the claims in that are covered under the rule in connection with that section are only those for 2000-crop losses. The rules specify that loss calculations for the section 804 crops will be calculated in the same manner as for the majority of other losses covered in this rule and will be subject to the same limitations including per person limits and other restrictions. The rule allows the Deputy Administrator, generally, to set such additional limitations as may be appropriate in administering this relief and other relief addressed in the regulations.

Section 807 provides that in using some previously allotted funds, losses to nursery stock caused by Hurricane Irene on October 16 and 17, 1999, are to be considered 1999 crop losses (despite the normal rule that losses that late for nursery stock could be considered 2000-crop losses). Section 807 does not preclude compensation for these claims under section 815, which should allow for full recovery of the losses involved and thus not leave any losses remaining to be compensated for under previous authorities. Without more, it does not appear to be appropriate to assume that Congress meant for there to be double compensation on these claims; rather the provisions of section 807 seem to reflect the concern that those claims, which occurred in calendar year 1999 were not, because of the special rules that govern the determination of the program year for nursery stock, compensable under the 1999 program. Because of payment limitation consideration, it may be that whether these claims are paid under the 2000 program or the 1999 program could have some effect on the funds available to certain producers. Whether accordingly some changes should still be undertaken to the 1999 rules, or some action should be taken, is still under consideration. The rule allows the Deputy Administrator however to consider such claims and take action as the Deputy Administrator deems appropriate.

Section 807 also provides that for certain 1999 crops of citrus for which losses occurred in December 1998, certain California growers should be

compensated at the level that would have applied had those claims been considered to be 1998 claims rather than 1999 claims. While payment formulas have generally remained unchanged, differing factors were applied in 1998 and 1999 for over-subscription of the programs. The reduction, by this factoring, was higher for the 1999 program than for the 1998 program. This part of section 807 strictly deals with past claims and since it deals with a limited number of producers and seems to involve a recalculation only, no new rules appear needed. Rather, these payments will be handled outside of these regulations.

Also, this rule, as indicated elsewhere, implements the provisions of section 811 of the 2001 Act, which provides for a special program for apple and potato losses. Those payments, by the terms of section 811, are not subject to the normal payment limitations and can be made without regard to whether the crop was harvested. The statute provided that there cannot be compensation for the same loss under more than one program other than the Crop Insurance Program.

This rule generally provides that apple and potato losses will be addressed separately to the extent of the available funding (\$37,916,400). However, if a producer would receive less by that method than would have been received under the general section 815 program, the difference will be paid under the section 815 program. Since the additional payment would be limited to this difference, it would not be a duplication of payment for the same loss. This manner of operation will allow for a fair allotment of the special, payment limit-free funds, while insuring that the special program does not result in harming some producers. The rule provides, however, that the Deputy Administrator for Farm Programs may make adjustments between the two "programs" (both of which are covered in the same body of regulations) as needed to accomplish the goals of the program.

Another complication involves what can be referred to as a "special quality loss" provisions of section 815(d), as amended in later legislation, which provides special rules for the coverage of "quality losses" under the terms of the statute. While that subsection on its face indicates that such relief would be to the extent of the allowance for quality losses, the same statute also provides, generally, that the 2000 program shall be operated in the manner of the old 1998 program. The question is whether these new provisions exclude certain aspects of the old program in which

quantity loss adjustments were made based on certain quality-related factors or where the general disaster loss was based on lost value, as in the case of the nursery stock. Such adjustments are necessary with respect to quantity as for some crops it would otherwise be impossible to get a fair reading of the actual quantitative effect of the disaster on the commodity. For example, part of the measured weight of the commodity on marketing can, if there is a problem with the crop, be excess water or debris. Given that the new statute appears generally expansive and given that there is no indication to the contrary, it has been determined that the instruction to operate the program as it was in the past includes the authority to include these adjustments of the old program, as well as including in the new program, the new quality payments provided in section 815(d). That is, the "special" quality adjustment of section 815(d) is perceived to be an add-on to the program rather than being a restriction that would disallow a producer from having a qualifying quantity adjusted to reflect, for example, that the delivered grade may have included foreign material or excess moisture so as to give a false impression of the actual amount of production.

However, the rule recognizes that there is some interplay between the quantity adjustments of the old program and the special quality provisions of the new statute and provide authority to the Deputy Administrator to insure that these existence of these two sets of allowances do not result in a double payment for the same problem. That is, the rules provide that the producer will be allowed to take the special quality payment only if the producer foregoes adjustments that may otherwise be made to the quantity determination on the basis of grade or lost value. The Deputy Administrator generally is given the authority in these rules to take whatever measures are needed to insure that there is not double compensation for the same loss.

Also, as indicated, the regulations contain special rules that allow certain nursery losses in the final quarter of calendar year 2000 to be treated, contrary to normal practice, to be treated as 2000-crop losses rather than 2001 crop losses. That provision is compelled by the new legislation that provides, too, that those claims will have a separate payment limit—and will not count against the limit that producers may have for 2000-crop claims that would otherwise arise applying the normal rules of crop definition.

Another issue in this rule concerns whether receipt of payments under this rule will or will not preclude recovery or retention of monies that could otherwise be paid to the producer under the Noninsured Crop Assistance Program (NAP) operated under 7 CFR part 1437. In the 1998 program statute, there was a list of programs set out for which the payment eligibility would be in addition to that which was provided as disaster relief under that statute. One of the listed programs was NAP and another was the Federal Crop Insurance Program. A second and separate provision was contained in the 1998 Act that also specified that there should not be discrimination, in making payments, against persons who had acquired federal crop insurance. While the new Act has the second provision, it does not have the first. Generally, this assistance (the annual disaster programs) have been seen as not seeking to replace NAP. Further, it appears that there would be no NAP claims of substance for the 2000 crop if a NAP claim would preclude a producer from the more generous relief of the 2000 Act. Taking those and other factors into consideration, it has been determined that the payments under the new program will be in addition to whatever monies producers can claim under NAP. NAP does require some effort on the part of producers and generally recent disaster bills have seemed to take care to avoid any result that would discourage producers from obtaining insurance. Also, it is not easy to assume that Congress effectively would close down the NAP program, for a year, without saying so and, instead, Congress has generally instructed the agency to operate the new 2000 disaster program in the same manner as the 1998 program. The situation with NAP is different from the tree question addressed elsewhere in that the only provision that addressed trees in the 1998 statute was itself repeated in the new Act but with the reference to trees conspicuously left out. As for NAP, the provision that covered NAP and other payments was not repeated.

The same loss thresholds as in previous disaster programs are applicable to insured, uninsured and non-insurable 2000 crops. As a condition of receiving 2000 CDP assistance, applicants will be required to purchase crop insurance coverage, if available, for 2001 and 2002 crop years for the crops not insured for 2000 and for which 2000 CDP benefits are requested. Producers who fail to purchase the crop insurance as they agreed will be required to refund all or

a portion of the disaster assistance provided under this part.

Producers who seek benefits under this part must file an application for benefits during the sign-up period that began on January 18, 2001, and will end on or about May 4, 2001, or such other date that may be announced by the Deputy Administrator. The sign-up period for special quality loss and apple and potato loss programs will be conducted at a later date to be announced by the Deputy Administrator. False certification carries strict penalties and the Department will spot-check and validate applications.

Like the earlier programs, both gross revenue and per-person payment limitations apply, unless specifically stated otherwise. A person, as defined under part 1400 of this chapter, may not receive more than \$80,000 under this part. A person, as defined under part 1400 of this chapter, is not eligible for benefits if their gross revenue is in excess of \$2.5 million for the tax year preceding the year for which disaster program benefits are requested. 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 only limits eligibility of the Nation's largest farm and ranch operations.

#### Cost-Benefit Analysis Summary

##### General

Payments for insured and noninsured crops will be made at 65 percent of price, and uninsured crops will be made at 60 percent of price. Payments for insured crops will be made at the slightly higher rate to provide an incentive to purchase crop insurance. Payments for noninsured crops will be made at the higher rate because insurance is not available for these crops.

Claims for losses under the 1998 crop loss disaster assistance program and the 1999 crop disaster program were about \$2.3 billion and \$1.7 billion, respectively, before pro-ration. Based on similar weather conditions, crop losses under the 2000 program are expected to be about \$2 billion.

The \$80,000 payment limitation and the limitation of \$2.5 million gross income will put more payments in the hands of the Nation's smaller farms. 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. However, because of their large size these farms would account for a disproportionate share of crop loss payments if there were no income limitation.

##### Apple and Potato Quality-Losses

Oversupply created most of the financial challenge currently confronting apple and potato growers. Quality problems also contributed to the financial stress, especially for Eastern growers. This program will offer relief for some, totaling almost \$38 million, but will not address the principal problem, slumping prices caused by bounteous harvests. The 2001 Act also provided \$100 million in "market loss" payments for apple growers, allowing some producers to combine payments from the two programs. In addition, government purchases of apples for food assistance programs may bolster apple prices. Potato growers are voluntarily attempting to take a billion pounds of their crop off the market to help alleviate the dampening effect of the record 2000 potato crop on potato prices.

For more information on the Cost-Benefit Analysis, contact Brad Karmen, (202) 720-4635.

#### List of Subjects in 7 CFR Part 1480

Agricultural commodities, Disaster assistance, Emergency assistance, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 7 CFR Chapter XIV is amended by adding part 1480 to subchapter B to read as follows:

#### PART 1480—2000 CROP DISASTER PROGRAM

Sec.	
1480.1	Applicability.
1480.2	Administration.
1480.3	Definitions.
1480.4	Producer eligibility.
1480.5	Time for filing application.
1480.6	Limitation on payments and other benefits.
1480.7	Requirement to purchase crop insurance.
1480.8	Miscellaneous provisions.
1480.9	Matters of general applicability.
1480.10	Eligible disaster conditions.
1480.11	Qualifying 2000-crop losses.
1480.12	Rates and yields; calculating payments.
1480.13	Production losses, producer responsibility.
1480.14	Determination of production.
1480.15	Calculation of acreage for crop losses other than prevented planted.
1480.16	Calculation of prevented planted acreage.
1480.17	Quantity adjustments for diminished quality for certain crops.
1480.18	Value loss crops.

- 1480.19 Other special provisions for specialty crops.  
 1480.20 Florida nursery crop losses.  
 1480.21 [Reserved]  
 1480.22 Quality losses for 1999 and 2000 apples and potatoes.  
 1480.23 Quality losses for 2000 crops.

**Authority:** Sec. 804, 807, 811 (apple and potato quality loss only) and 815, Pub. L. 106-387, 114 Stat. 1549, as amended; 15 U.S.C. 714 *et seq.*

#### § 1480.1 Applicability.

This part announces the 2000-Crop Disaster Program (2000 CDP) and sets forth the terms and conditions applicable to the program. Under section 815 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, 2001 ("2001 Act") (Public Law 106-387, 114 Stat. 1549), the Secretary of Agriculture will use the funds, facilities and authorities of the Commodity Credit Corporation to make disaster payments available to 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 2000 crops as determined by the Secretary under that section and under related provisions of the 2001 Act.

#### § 1480.2 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 Farm Service Agency (FSA) State and county committees.

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

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

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

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

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

(e) The Deputy Administrator may authorize the State and county committees to waive or modify non-statutory 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.

#### § 1480.3 Definitions.

The definitions and program parameters set out in this section shall be applicable for all purposes of administering the 2000-Crop Disaster Program provided for in this part. The terms defined in part 718 of this title and 1400 of this chapter shall also be applicable, except where those definitions conflict with the definitions set forth in this section. The definitions follow:

*Actual production* means the total quantity of the crop appraised, harvested or that could have been harvested as determined by the FSA State or county 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, or a company reinsured by FCIC, 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 chapter. Only the approved yields based on production evidence submitted to FSA prior to the 2000 Act will be used for purposes of the 2000 CDP. Other yields may be assigned when an eligible approved yield is not available.

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

*Average market price* means the price or dollar equivalent on an appropriate basis for an eligible crop established by CCC for determining payment amounts. Such price will be based on the harvest basis without the inclusion of transportation, storage, processing, packing, marketing, or other post-harvesting expenses and will be based on historical data.

*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 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 losses shall be the period running from January 1 through the following December 31.

*Disaster* means damaging weather, including drought, excessive moisture, hail, freeze, tornado, hurricane, typhoon, excessive wind, excessive heat, weather-related saltwater intrusion, weather-related irrigation water rationing, and earthquake and volcano eruptions, or any combination thereof. Disaster includes a related condition that occurs as a result of the damaging weather and exacerbates the

condition of the crop, such as disease and insect infestation.

*Eligible crop* means a crop insured by FCIC as defined in part 400 of this title, or included under the non-insured crop disaster assistance program (NAP) as defined under part 1437 of this chapter. 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 grain, hay or seed.

*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 1 year or harvested over multiple years, that the producer has, by hand or mechanically, removed at least one mature crop from the field during the crop year; 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.

*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 or Adjusted Gross Revenue Plan of crop insurance was the only plan of insurance available for the crop in the county in the applicable 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 to be applied to a producer without acceptable production records. Loss levels are expressed in either a percent of loss or yield per acre, and should

reflect the amount of production that a producer should have made considering the eligible disaster conditions in the area or county, 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.

*Multiple-cropping* means the planting of two or more different crops on the same acreage for harvest within the same crop year.

*NASS* means the National Agricultural Statistics Service.

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

*Normal mortality* means the percentage of dead aquacultural species that would normally occur during the crop year.

*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 or consignment business that is subsequently paid to the sellers or consignors, 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.

*Production* means quantity of the crop or commodity produced expressed in a specific unit of measure such as bushels, pounds, etc.

*Rate* means price per unit of the crop or commodity.

*Related condition* means with respect to disaster, a condition that causes deterioration of a crop such as insect infestation, plant disease, or aflatoxin that is accelerated or exacerbated as a result of damaging weather 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, contemporaneous measurements, truck scale tickets, and contemporaneous diaries 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, cobbage, 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.

*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 that, 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 all noninsurable crops, if available, the established unit of measure used for the 1998 or 1999 Noninsured Crop Assistance Program price and yield;

(3) 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;

(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 of the United States, and to the extent the Deputy Administrator determines it to be feasible and appropriate Guam, American Samoa, the Commonwealth of the Northern Mariana Islands and the former Trust Territory of the Pacific Islands, which include Palau, Federated States of Micronesia and the Marshall Islands.

*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.

*Yield* means unit of production, measured in bushels, pounds, etc., per area of consideration, usually measured in acres.

#### § 1480.4 Producer eligibility.

(a) Producers in the United States will be eligible to receive disaster benefits under this part only if they have suffered 2000-crop losses of eligible crops as a result of a disaster or related condition, or 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 2000 crop year and must not otherwise be barred from receiving benefits under 7 CFR part 12 or any other provision of law.

#### § 1480.5 Time for filing application.

Applications for benefits under the 2000-Crop Disaster Program must be filed before the close of business on May

4, 2001, 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.

#### § 1480.6 Limitations on payments and other benefits.

(a) A producer may receive disaster benefits on 2000 crop and other crop losses as specified under this part.

(b) Payments will not be made under this part for grazing losses.

(c) The Deputy Administrator may divide and classify crops based on loss susceptibility, yield, and other factors.

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

(e) 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.

(f) A person who has a gross revenue in excess of \$2.5 million for the preceding 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.

#### § 1480.7 Requirement to purchase crop insurance.

(a) Except as provided further in this section, any producer who elected not to purchase crop insurance on an insurable 2000 crop for which the producer receives crop loss assistance under this part must purchase crop insurance on that crop for the 2001 and 2002 crop years.

(b) If, at the time the producer applies for the 2000 CDP the sales closing date for 2001 insurable crops for which the producer sought benefits under the 2000 CDP has passed, the producer must purchase crop insurance for the 2002 crop, but is excused from purchasing insurance for those 2001 crops.

(c) If any producer fails to purchase crop insurance as required in

paragraphs (a) or (b) of this section, the producer will be required to refund all 2000 CDP benefits received, or such lesser amount as determined appropriate to the circumstances by the Deputy Administrator.

**§ 1480.8 Miscellaneous provisions.**

(a) Disaster benefits under this part are not subject to administrative offset provided for in section 842 of the 2001 Act (Public Law 106-387, 114 Stat. 1549).

(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) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) For the purposes of 28 U.S.C. 3201(e), the Secretary hereby waives the restriction on receipt of funds or benefits under this program but only as to beneficiaries who as a condition of such waiver agree to apply the 2000

CDP benefits to reduce the amount of the judgment lien.

(i) The 2000 CDP is carried out using the funds, facilities and authorities of the CCC. As with all CCC programs, all authorities applicable to CCC and its activities apply to this program including, but not limited to the following: assessment of interest for refunds due CCC; late payment interest under part 1403 of this chapter; and withholding authorities. Additionally, producers may utilize other CCC authorities including but not limited to: assignments; and power of attorney forms.

**§ 1480.9 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. Insured crops may have basic units established if the existing unit structure is based on enterprise units or whole county units. 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 that should reflect the amount of production producers should have considering the eligible disaster conditions in the area or 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, or a company reinsured by FCIC; or

(2) Acceptable production records for harvested acres are not available from any source.

(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. With the exception of replanted crops, 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; and

(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, or combination thereof if greater.

**§ 1480.10 Eligible disaster conditions.**

(a) Except as provided in paragraph (c) of this section, this part applies to losses where the crop could not be planted or crop production, both in quantity and quality, was adversely affected by:

(1) Damaging weather including drought, excessive moisture, hail, freeze, tornado, hurricane, typhoon, excessive wind, excessive heat or a combination thereof;

(2) Damage from earthquake and volcano eruptions;

(3) Insect infestation as a related condition to damaging weather;

(4) Disease as a related condition to damaging weather;

(5) Salt water intrusion of an irrigation supply;

(6) Irrigation water rationing if proof is provided that water was rationed by a Government entity or water district;

(7) Lack of water supply due to drought conditions for irrigated crops; or

(8) Other causes or factors as determined by the Deputy Administrator.

(b) Disaster benefits will not be available under this part if the crop could not be planted or crop production, both in quantity and quality, was adversely affected by:

(1) Poor farming practices;

(2) Poor management decisions; or

(3) Drifting herbicides.

(c) To the extent not otherwise compensated by USDA, 2000 CDP benefits will be made available under this part to also compensate:

(1) Growers whose crops could not be sold due to Mexican fruit fly quarantines in San Diego and San Bernardino/Riverside counties in California since their imposition on November 16, 1999, and September 10, 1999, respectively;

(2) Growers in relation to the Secretary's "Declaration of Extraordinary Emergency" on March 2, 2000, regarding the plum pox virus;

(3) Growers for 2000-crop losses due to Pierce's disease;

(4) Growers for 2000-crop losses due to watermelon sudden wilt disease; and

(5) Growers for 2000-crop losses incurred due to infestations of grasshoppers and Mormon crickets.

(d) Losses for which compensation may be provided under paragraph (c) of this section will be compensated in the same manner, and subject to the same limitations as other general claims for crop losses under the 2000 CDP and shall be limited in scope to those claims that, as determined by the Deputy Administrator, are allowable under the provisions of paragraph (c) of this section and are consistent with the terms of the authorizing legislation. In handling such claims, and others, the Deputy Administrator may consult with other branches of the Department to determine the extent of losses and the effect of prior governmental action on marketing decisions made by the growers.

#### **§ 1480.11 Qualifying 2000-crop losses.**

(a) To receive disaster benefits under this part, the county committee must determine that because of a disaster, the producer with respect to the 2000 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; or

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

(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, unless otherwise specified in § 1480.10;

(4) To crops not intended for harvest in crop year 2000;

(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) If losses could be attributed to conditions occurring outside of the applicable crop year growing season.

(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 that 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;

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

(8) Loss calculations shall take into account other conditions and adjustments provided for in this part.

#### **§ 1480.12 Rates and yields; calculating payments.**

(a) Payment rates for 2000 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; and

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

(b) Except as provided elsewhere in this part, disaster benefits under this part for losses to crops 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) 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. 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.

(d) 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.

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

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

(2) a prevented planting factor shall be applied to any prevented planted acreage eligible for payment; and

(3) unharvested payment factors may be adjusted if costs normally associated with growing the crop are not incurred.

(f) All payments made under this part shall conform to the requirements and limitations of this part and the Deputy Administrator may provide additional conditions or requirements as needed or appropriate to other wise serve the goals of the program. Nothing in this section shall prevent the Deputy Administrator from allowing a payment despite the

receipt of the producer of a crop insurance payment, or a payment under the Noninsured Crop Disaster Assistance Program operated under part 1437 of this chapter, as determined to be appropriate.

**§ 1480.13 Production losses, producer responsibility.**

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

(b) If RMA loss records are not available, or if the FSA county committee determines the RMA loss records are inaccurate or incomplete, or if the FSA county committee makes inquiry, 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;

(4) Providing the information in a manner that can be easily understood by the county committee; and (5) Providing supporting documentation if the county committee has reason to question the disaster event or that all production has been accounted for.

(c) In determining production under this section the producer must supply verifiable or reliable production records to substantiate production to the county committee. If the eligible crop was sold or otherwise disposed of through commercial channels, 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, production records for these purposes 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 and will render producers ineligible for 2000 CDP benefits, and may lead to other civil or criminal sanctions.

**§ 1480.14 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 as the intended use, 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 instructions 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 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 or combination of record and cannot be separated by using records or other means acceptable to CCC shall be prorated to each respective unit 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 multiple 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;

(5) A crop is late-planted;

(6) Unharvested acreage was not timely appraised; or

(7) Other appropriate causes exist for such assignment as determined by the Deputy Administrator.

(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.

**§ 1480.15 Calculation of acreage for crop losses other than prevented planted.**

(a) Acreage shall be calculated using the number of acres shown to have been planted to a crop.

(b) In cases where there is a repeat crop or a multiple planted crop in more than one planting period, or if there is multiple cropped acreage meeting criteria established in paragraph (c) or (d) of this section, each of these crops may be considered separate crops for 2000 CDP if the county committee determines that all of the following conditions are met:

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

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

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

(4) Each planting could reach maturity if each planting was harvested or would have been harvested.

(c) In cases where there is multiple cropped acreage, each crop may be eligible for disaster assistance separately if both of the following conditions are met:

(1) the specific crops are approved by the FSA State Committee as eligible multiple-cropping practices according to procedures approved by the Deputy Administrator; and

(2) the farm containing the multiple cropped acreage has a history of multiple cropping based on timely filed crop acreage reports.

(d) Producers with multiple cropped acreage not meeting the criteria in paragraph (c) of this section may be eligible for disaster assistance on more than one crop if the producer has verifiable records establishing a history of carrying out a successful multiple cropping practice on the specific crops for which assistance is requested. All required records acceptable to CCC as determined by the Deputy Administrator must be provided before payments are issued.

(e) Producers with multiple cropped acreage not meeting the criteria in paragraph (c) or (d) of this section must select the crop for which assistance will be requested. If more than one producer has an interest in the multiple cropped acreage, all producers must agree to the crop designated for payment by the end of the application period or no payment will be approved for any crop on the multiple cropped acreage.

(f) Benefits under this part shall apply to irrigated crops where the acreage was affected by a lack of water or contamination by saltwater intrusion of an irrigation supply resulting from drought conditions.

#### **§ 1480.16 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) 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 that 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; honey; maple sap; millet; mint; nursery crops; cultivated wild rice; fresh market beans; cabbage, pumpkins, sweet potatoes; winter squash; tobacco, turfgrass sod and vine crops;

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

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

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

(5) 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;

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

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

(8) 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; and

(9) Any other acreage for which, for whatever reason, there is cause to question whether the crop could have been planted for a successful and timely harvest, or for which prevented planting credit is not allowed under the provisions of this part.

(f) Prevented planting payments are not provided on acreage that had either a previous or subsequent crop planted on the acreage, unless the county committee determines that all of the following conditions are met:

(1) There is an established practice of planting two or more crops for harvest on the same acreage in the same crop year;

(2) Both crops could have reached maturity if each planting was harvested or would have been harvested;

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

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

(5) The specific crops meet the eligibility criteria for a separate crop designation as a repeat or approved multiple cropping practice set out in § 1480.15.

(g) Disaster benefits under this part shall not apply to crops where the prevented-planted acreage was affected by a disaster that was caused by drought unless on the final planting date or the late planting period for non-irrigated acreage, the area that is prevented from being planted has insufficient soil moisture for germination of seed and progress toward crop maturity because of a prolonged period of dry weather. Prolonged precipitation deficiencies must be verifiable using information collected by sources whose business it is to record and study the weather, including but not limited to the local weather reporting stations of the National Weather Service.

(h) Prevented planting benefits under this part shall apply to irrigated crops where the acreage was prevented from being planted due to a lack of water resulting from drought conditions or contamination by saltwater intrusion of an irrigation supply resulting from drought conditions.

(i) 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 cannot exceed the number of acres of cropland in the unit

for the crop year and 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 1996 through 1999 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 at least 20 acres or 20 percent of the intended planted acreage in the unit, whichever is less.

(j) Notwithstanding the provisions of part 718 of this chapter, late-filed crop acreage reports for previous years shall not be accepted for CDP purposes.

**§ 1480.17 Quantity adjustments for diminished quality for certain crops.**

(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; crame, 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) For all crops listed in paragraph (b)(1) of this section, 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 receive a grade of "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) For quota and non-quota peanuts, quality adjustments shall be based on the difference between the actual sales price, or other proceeds, received and the National average support price by type of peanut for the applicable crop year.

(i) Quality adjustments for sugar beets shall be based on sugar content. The 2000 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 revenue received 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 the 2000 crop year. These quality adjustments are built into the production loss determination. Production determinations from Federal crop insurance will not be used.

(l) Except as determined by the Deputy Administrator, quality adjustments for aflatoxin shall be based on the aflatoxin level. The producer must provide the county committee with proof of 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 times the producer's share. This amount will be deducted from the disaster payment.

(n) Quantity adjustments for diminished quality under this section will not be applied to crops that are, under § 1480.18, value loss crops.

(o) Quantity adjustments for diminished quality shall also not apply under this section 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, or any other crop that the Deputy Administrator deems it appropriate to exclude.

**§ 1480.18 Value loss crops.**

(a) Irrespective of any inconsistent provisions in other sections, the provisions of this section shall be applied to the following crops, which will be considered "value loss crops": ornamental nursery; Christmas trees; vegetable and root stock including ginseng root; aquaculture, including ornamental fish, and such other crops as may be determined appropriate for treatment as "value loss crops."

(b) For crops specified in paragraph (a) of this section, 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 of the waterbed or the ground under the waterbed but not both 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 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.

(f) For ginseng, only ginseng that meets all the requirements of cultivated ginseng shall be considered as eligible for benefits under this part. Ginseng is defined as cultivated ginseng roots and seeds that meet the following requirements:

(1) grown in raised beds above and away from wet and low areas protected from flood;

(2) grown under man-made canopies that provide 75 to 80 percent shade coverage;

(3) grown in well drained media with a pH adjustment of at least 5.5 and which protects plants from disease; and

(4) grown with sufficient fertility and weed control to obtain expected production results of ginseng root and seed.

(g) Evidence of the above ginseng practice requirements must be provided by the producer if requested by the county committee. Any ginseng that is grown under cultivated practices or simulated wild or woodland conditions that do not meet these requirements are not eligible for disaster assistance under this part.

(h) Because ginseng is a perennial crop, the producer must provide annual crop history to establish when the loss occurred and the extent of such loss. If the producer does not or is unable to provide annual records to establish the beginning inventory, before the loss, and ending inventory, after the loss, production shall be assigned by the county committee.

(i) Aside from differences provided for in this section, all other conditions for eligibility contained in this part shall be applied to value loss crops.

**§ 1480.19 Other special provisions for specialty crops.**

(a) For turfgrass sod, disaster benefits under this part are limited to turfgrass sod that would have matured and been harvested during 2000, 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.

**§ 1480.20 Florida nursery crop losses.**

Notwithstanding any other provision of this part, 2000 CDP benefits shall be made available for losses due to disasters afflicting nursery crops in the State of Florida that occur, because of disaster during the period beginning on October 1, 2000, and ending on December 31, 2000. Calculations of the amount of such losses shall be made independently of other losses of the producer, and such losses shall be subject to a separate limit on payment amounts as may otherwise apply. Any payment under this section for such losses shall for all purposes, present and future, be considered to be a 2000-crop payment, and such compensated losses shall be ineligible for any assistance that may become available for 2001 crop losses.

**§ 1480.21 [Reserved]**

**§ 1480.22 Quality losses for 1999 and 2000 apples and potatoes.**

(a) Notwithstanding any other provisions of this part, \$37,916,400 of CCC funds shall be made available until expended to producers of 1999 and 2000-crop apples and potatoes for quality losses due to fireblight or weather related disasters, including but not limited to hurricane or hail damage.

(b) Applications for benefits under this section must be filed before the close of business on May 4, 2001, or such other date that may be announced by the Deputy Administrator, in the county FSA office serving the county where the producer's operation is located for administrative purposes.

(c) Payments issued under this section will be made regardless of whether the crop was harvested and without regard to:

(1) A per person limitation on payment amount; however, a national payment factor may be applicable to all payments under this section if requests for benefits exceed the \$37,916,400;

(2) Restriction for the person's gross revenue; or

(3) Qualifying loss threshold.

(d) All or part of the benefits under this section shall not be issued if the producer received compensation for the same quality loss under any other Federal program, other than the Federal Crop Insurance Program.

(e) Unless determined by the Deputy Administrator, all 2000-crop potato and apple claims will be addressed first under this section and if, after the handling of those claims under this section, it appears that for an individual producer that the producer would have received a greater compensation had the claim been treated in the same manner as other crops under the general program provided for in this part, then the difference shall be paid using that additional authority.

**§ 1480.23 Quality losses for 2000 crops.**

(a) Subject to other provisions of this part, CCC funds shall be made available for assistance to producers determined eligible under this section for crop quality losses greater than 20 percent of the value that the affected production of the crop would have had if the crop had not suffered a quality loss. The per unit amount of a quality loss for a producer's crop shall be equal to the difference between:

(1) the unit market value of the units of the crop affected by the quality loss had the crop not suffered a quality loss; and

(2) the per unit market value of the units of the crop affected by the quality loss.

(b) The amount of payment for a quality loss shall be equal to 65 percent of the quantity of the crop affected by the quality loss, multiplied by 65 percent of the per unit quality loss for the crop as determined by the Deputy Administrator.

(c) This section will apply to all crops eligible for 2000-crop disaster assistance under this part including, but not limited to, forage crops and pecans, and will apply to crop production that has a reduced economic value due to the reduction in quality.

(d) Except as provided in § 1480.22(e), or as determined by the Deputy Administrator, producers may not be compensated under this section to the extent that such producers have received a payment under § 1480.22 or received an adjustment on payment attributable in whole or in part to diminished quality under §§ 1480.17, 1480.18, 1480.19, or other provisions of this part.

Dated: March 15, 2001.

**James R. Little,**

*Acting Executive Vice President, Commodity Credit Corporation.*

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