

Rules and Regulations

Federal Register

Vol. 70, No. 59

Tuesday, March 29, 2005

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR 1479

RIN 0560-AH24

2003–2005 Crop Disaster Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule implements portions of the Military Construction, Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005 enacted October 13, 2004 (the 2004 Act), to authorize crop-loss disaster assistance for producers who suffered 2003, 2004, or 2005 crop losses caused by damaging weather and related conditions. Also included under this rule is authority for disaster assistance specifically for producers in Virginia, and producers of fruit and vegetable crops located in North Carolina that suffered losses due to adverse weather and related conditions that occurred in 2003.

EFFECTIVE DATE: March 28, 2005.

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Background

Disaster Assistance for Crop Producers

Division B of the 2004 Act (Pub. L. 108-324, 118 Stat. 1220, October 13, 2004) authorizes the Secretary, generally, to provide assistance to crop producers for qualifying crop or crop quality losses due to damaging weather and related conditions for one, but not more than one of the 2003, 2004, or 2005 crop years in the same manner as provided for eligible crop losses under section 815 of the Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Pub. L. 106-387; 114 Stat. 1549A-55) (2001 Act). The 2001 Act provided coverage for 2000 crop losses and was codified in 7 CFR part 1480 (66 FR 15979, March 21, 2001). Eligible crop losses for 2005 are limited to only those losses caused by a hurricane or tropical storm of the 2004 hurricane season in counties declared disaster areas by the President. The 2004 Act specifies, too, that notwithstanding the crop-year election otherwise required, \$53 million shall be provided to the Secretary of which \$50 million shall be for losses located in the Commonwealth of Virginia and \$3 million shall be for fruit and vegetable losses in North Carolina specifically caused by adverse weather and related conditions in 2003. Special approved yields based on actual production are prohibited unless production reports were submitted before enactment of the 2005 Act. The statute provides that total assistance provided to a producer for a crop year under the Crop Disaster Program (CDP) (including the Virginia and North Carolina Programs), together with any amount provided to the same producer for the same crop made pursuant to any crop insurance program, and/or the Noninsured Crop Disaster Assistance Program (NAP), plus the value of the crop that was not lost, may not exceed 95 percent of the value of the crop in the absence of a loss, as estimated by the Secretary.

The same loss thresholds used with respect to the 2000 CDP are applicable to the 2003, 2004, and 2005 CDP, including those losses under the Virginia and North Carolina provisions. If a producer under this rule seeks payments with regard to a crop for which insurance was available under a Federal Crop Insurance Act (FCIA) plan,

but for which such insurance was not obtained, the producer must purchase crop insurance coverage at a level greater than the level available under the catastrophic risk protection for each of the next two subsequent crops. Also, in order to obtain benefits for 2003, 2004, or 2005 CDP, or the Virginia and North Carolina programs, for a “non-insurable” crop (*i.e.*, a crop for which FCIA related insurance is not available), and for which NAP coverage was not obtained, the producer must pay the applicable service fee and complete all paperwork in accordance with NAP requirements for the next two crops. Producers who fail to agree with these requirements or fail to obtain the correct acreage as required will be required to refund the assistance provided under this rule, plus interest.

Applications for 2003, 2004 or 2005 CDP (including applications under the Virginia and North Carolina special loss provisions) must be submitted during the sign-up period as announced by the Deputy Administrator. False certifications by producers carry strict penalties and FSA will validate applications with random spot-checks of acreage and production evidence.

The 2004 Act provides that persons who received payment under the special Florida Disaster Program operated by USDA are not eligible under this new 2003–2005 Crop Disaster Program. A payment limitation of \$80,000 per “person,” as defined by part 1400 of this chapter, will be applicable to the total, for each crop year, of all 2003, 2004 and 2005 CDP benefits (including assistance under the special provisions for Virginia and North Carolina crops). As provided in the 2004 Act, unlike disaster programs in the past, the average adjusted gross income (AGI) limitation as administered under 7 CFR part 1400, subpart G, will apply rather than a gross revenue test. Under the AGI test, producers will not be eligible for 2003, 2004 or 2005 CDP benefits, or benefits under the Virginia and North Carolina crop-loss provisions, if the average AGI of the individual or entity exceeds \$2.5 million and less than 75 percent of the average AGI is derived from farming, ranching, or forestry operations. AGI eligibility will be based on the average of the adjusted gross incomes for the three tax years immediately preceding the tax year in which the disasters occurred, with the exclusion of any

year(s) the individual or entity, as determined under part 1400, did not have income or had an AGI of zero. Other restrictions apply. Crop losses that are not weather-related are not covered.

Cost-Benefit Analysis Summary

Payments for RMA-insured crops will be made at 65 percent of the price for insured and uninsurable crops, and at 60 percent of the price for uninsured crops. Payments for insured crops will be made at a slightly higher rate to provide an incentive to purchase crop insurance. Payments for non-insurable crops will also be made at the higher level because insurance is not available for these crops. Crop losses under the 2003, 2004 and 2005 CDP are expected to be about \$2.75 billion. Crop losses under the Virginia and North Carolina provision are expected to be \$53 million. The \$80,000 payment limitation and the \$2.5 million AGI limitation will direct the distribution of payments more toward relatively smaller operations. In the absence of any limitations of payment and income applied, large operations would account for a disproportionate share of the crop-loss assistance.

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 101(g) of Division B of the 2004 Act requires that these regulations be promulgated 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 notice and comment rulemaking and public participation in rulemaking. These regulations are thus issued as final.

Executive Order 12866

This final rule has been determined to be economically significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB). A Cost-Benefit Analysis was completed and is summarized following the Background section.

Federal Assistance Programs

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

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because neither the Secretary of Agriculture nor CCC are required by 5 U.S.C. 553 or any other

law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Review

The environmental impacts of this rule have been considered consistent with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500 through 1508), and regulations of the Farm Service Agency (FSA) of the Department of Agriculture (USDA) for compliance with NEPA, 7 CFR part 799. An Environmental Evaluation was completed and it was determined that this action does not have the potential to significantly impact the quality of the human environment and, therefore, the rule is categorically excluded from further review under NEPA. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12778

The final rule has been reviewed in accordance with Executive Order 12778. This final rule preempts State laws that are inconsistent with its provisions, but the rule is not retroactive. Before any judicial action may be brought concerning this rule, all administrative remedies must be exhausted.

Executive Order 12372

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

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because neither the Secretary of Agriculture nor CCC are required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule. Also, the rule imposes no mandates as defined in UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 101(g) of Division B of the 2004 Act requires that the Secretary use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121 (SBREFA), which allows an agency to forgo SBREFA's usual 60-day Congressional Review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. Accordingly, this rule is

effective upon the date of filing for public inspection by the Office of the Federal Register.

Paperwork Reduction Act

Section 101(g) of Division B the 2004 Act requires that these regulations be promulgated and the activities under this rule be administered without regard to the Paperwork Reduction Act. This means that the information to be collected from the public to implement these provisions and the burden, in time and money, the collection of the information would have on the public does not have to be approved by the Office of Management and Budget or be subject to the normal requirement for a 60-day public comment period.

Government Paperwork Elimination Act

CCC is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general, and the FSA in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. Because of the need to publish these regulations quickly, the forms and other information collection activities required to be utilized by a person subject to this rule are not yet fully implemented in a way that would allow the public to conduct business with CCC electronically. Accordingly, at this time, all forms required to be submitted under this rule may be submitted to CCC by mail or FAX.

List of Subjects in 7 CFR 1479

Agricultural commodities, Crop insurance, Disaster assistance.

■ Accordingly, 7 CFR part 1479 is added to read as follows:

PART 1479—2003–2005 CROP DISASTER PROGRAM

Sec.	
1479.100	Applicability.
1479.101	Administration.
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- 1479.114 Calculation of acreage for crop losses other than prevented planted.
- 1479.115 Calculation of prevented planted acreage.
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- 1479.117 Value loss crops.
- 1479.118 Other provisions for specialty crops.
- 1479.119 2005 crop losses only.
- 1479.120 Quality losses for 2003, 2004, and 2005 crops.
- 1479.121 Virginia crop losses.
- 1479.122 North Carolina fruit and vegetable crop losses.
- 1479.123 Misrepresentation, and scheme or device.
- 1479.124 Offsets, assignments, and debt settlement.
- 1479.125 Compliance with highly erodible land, and wetland conservation provisions.

Authority: Pub. L. 106-387, 114 Stat. 1549; Pub. L. 108-324, 118 Stat. 1220; 15 U.S.C. 14 *et seq.*

§ 1479.100 Applicability.

This part sets forth the terms and conditions for the 2003, 2004, and 2005-Crop Disaster Program (CDP). The CDP makes disaster assistance payments available to producers who have incurred losses in quantity or quality on eligible 2003, 2004, or 2005 crops due to disasters as determined by the Commodity Credit Corporation (CCC) under provisions of Division B of the Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005 (Pub. L. 108-324). Provisions of previous crop disaster programs shall continue to be administered under regulations previously issued.

§ 1479.101 Administration.

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

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

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

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

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

(d) No delegation in this part to a State or county committee shall prevent the Deputy Administrator from determining any question arising under

the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator may authorize State and county committees to waive or modify non-statutory deadlines or other program requirements in cases where lateness or failure to meet such does not adversely affect the operation of the program.

§ 1479.102 Definitions.

The definitions in this section apply to all determinations made under this part. The terms defined in part 718 of this title and parts 1400 and 1437 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 a plan of insurance established by FCIC that provides coverage comparable to a level for a single crop that is equal to at least 65 percent of the approved yield indemnified at 100 percent of the expected market price.

Administrative fee means an amount the producer must pay for Noninsured Crop Disaster Assistance Program (NAP) enrollment for non-insurable crops.

Appraised production means production determined by FSA, or a company reinsured by the Federal Crop Insurance Corporation (FCIC), that was unharvested but that 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 at 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 NAP, 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 enactment of Pub. L. 108-324 will be used for purposes of the 2003, 2004, or 2005 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.

Aquaculture species means any aquaculture 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.

CCC means the Commodity Credit Corporation.

Control county means, for a producer with farming interests in only one county, the FSA county office in which the producer's farm is administratively located or, for a producer with farming interests that are administratively located in more than one county, the FSA county 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 FCIC under the provisions of the Federal Crop Insurance Act, as amended.

Crop year means:

(1) For insured and uninsured crops, the crop year as defined according to the applicable crop insurance policy;

(2) For non-insurable crops, the year harvest normally begins for the crop;

(3) For all aquaculture species and nursery crops, the period from October 1 through the following September 30; and

(4) For honey, 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 volcanic 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 (except sugarcane) insured by FCIC as defined

in part 400 of this title, or included under NAP as defined under part 1437 of this chapter. Losses of livestock and livestock related losses are not compensable under this part, but may be compensable under part 1439 of this chapter to the extent provided for in that part.

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 the Risk Management Agency (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 non-insurable crops, the final planting date is the end of the planting period for the crop as determined by CCC.

Flood prevention means:

- (1) For aquaculture species, placing the aquaculture facility in an area not prone to flood; and
- (2) For raceways, providing devices or structures designed for the control of water level; and with respect to 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;

- (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:

- (1) For insured and uninsured crops, *harvested* as defined according to the applicable crop insurance policy;
- (2) For non-insurable single harvest crops, that a crop has been removed from the field, either by hand or mechanically, or by grazing of livestock;
- (3) For non-insurable 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;
- (4) For mechanically-harvested non-insurable 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.

- (1) An insured participant's yield shall be the higher of the county average yield listed on the crop table or the approved federal crop insurance APH, for the disaster year.

- (2) NAP participant's yield shall be the higher of the county average yield as listed on the crop table or approved NAP APH for the disaster year.

- (3) Participants without federal crop insurance or NAP coverage for the disaster year shall be assigned the county average listed on the crop table.

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 Chapter IV of this title and for which the producer purchased either the catastrophic or buy-up level of crop insurance so available.

Limited coverage means plans of insurance established by FCIC that provides coverage comparable to a level for a single crop that is equal to or greater than 50 percent of the approved

yield indemnified at 100 percent of the expected market price, but less than 65 percent of the approved yield indemnified at 100 percent of the expected market price.

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 grazing.

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

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

NASS means the National Agricultural Statistics Service.

Net crop insurance indemnity means the indemnity minus the producer paid premium.

Non-insurable crop means a crop for which FCIC crop insurance was not available.

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

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 seed bed that has been properly prepared for the planting method and production practice normal to the area as determined by the county committee.

Prevented planting means the inability to plant an eligible crop with proper equipment during the planting period as a result of an eligible cause of loss, as determined by CCC, according to § 1479.115.

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 a 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.

State committee means the FSA State committee.

Uninsured crop means a crop 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 non-insurable crops, the established unit of measure, if available, used for the 2003, 2004, or 2005 Noninsured Crop Assistance Program price and yield;

(3) For aquaculture species, a standard unit of measure such as gallons, pounds, inches or pieces, established by the State committee for all aquaculture species or varieties;

(4) For turf-grass 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 has the meaning assigned in part 1437 of this chapter.

Verifiable production record 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.

§ 1479.103 Producer eligibility.

(a) Producers in the United States will be eligible to receive disaster benefits under this part only if they have suffered losses of eligible crops in 2003, 2004, or 2005, as further specified in this part, as a result of a disaster or related condition. Producers may not receive benefits with respect to volunteer stands of crops.

(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 2003, 2004, or 2005 crop year, as applicable, and must not otherwise be barred from receiving benefits under 7 CFR part 12 or any other law.

§ 1479.104 Time for filing application.

Applications for benefits under the 2003, 2004, or 2005 Crop Disaster Program must be filed in the FSA county office in the producer's control county before the close of business on August 1, 2005, or such other date that may be announced by the Deputy Administrator.

§ 1479.105 Limitations on payments and other benefits.

(a) Except with respect to certain claims in Virginia and North Carolina, as specified in §§ 1479.121 and 1479.122, a producer may receive disaster benefits for crop losses for only one of the 2003, 2004, or 2005 crop years as specified under this part.

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

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

(d) No person, as defined by part 1400 subpart B of this chapter, shall receive more than a total of \$80,000 in disaster benefits under this part, unless otherwise specified.

(e) No producer shall receive disaster benefits under this part in an amount that exceeds 95 percent of the value of the expected production for the relevant period as determined by CCC. The sum of the value of the crop not lost, if any; the disaster payment received under this part; and any crop insurance payment or payments received under the NAP for losses to the same crop, cannot exceed 95 percent of what the crop's value would have been if there had been no loss.

(f) An individual or entity whose adjusted gross income is in excess of \$2.5 million, as defined by and determined under part 1400 subpart G of this chapter, shall not be eligible to receive disaster benefits under this part.

(g) Any person who received any payments from Section 32 of the Act of August 25, 1935, with respect to any 2004 hurricane losses, is not eligible for any payments under this part.

§ 1479.106 Requirement to purchase crop insurance and non-insurable coverage.

(a) Except as provided further in this section, any producer who elected not

to purchase crop insurance on an insurable 2003, 2004, or 2005 crop for which the producer receives crop loss assistance or, for non-insurable crops, elected not to participate in NAP for the year for which benefits are received must purchase:

(1) Crop insurance with additional coverage on that crop for each of the next 2 crop years, as applicable, for the insurable crops.

(2) NAP coverage by paying the administrative fee by the applicable State filing deadline and complete all required program requirements, including yearly acreage reports, for the non-insurable crop for each of the next 2 crop years, as applicable, for the non-insurable crops.

(b) If, at the time the producer applies for the CDP and benefits under §§ 1479.121 or 1479.122, the sales closing date for next year's insurable crops, or for the next year's non-insurable crops for which the producer sought benefits under this part has passed, the producer must purchase a crop insurance policy or obtain NAP coverage, as applicable, for the next available 2 crop years.

(c) If any producer fails to purchase crop insurance or NAP, as required in paragraph (a) or (b) of this section, the producer shall reimburse CCC for the full amount of the assistance, plus interest, provided to the producer under this part.

§ 1479.107 Miscellaneous provisions.

(a) 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.

(b) 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.

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

(d) The liability of any person for any penalty or sanction under or in connection with 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.

(e) 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 in parts 11 and 780 of this title.

(f) 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.

(g) For the purposes of 28 U.S.C. 3201(e), CCC 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 benefits received under this part to reduce the amount of the judgment lien.

§ 1479.108 Additional general provisions.

(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 or written agreements. For uninsured and non-insurable crops, basic units will be established for these purposes.

(b) County average yield for loss calculations will be the average of the 1998 through 2002 official county yields established by CCC, excluding the years with the highest and lowest yields, respectively.

(c) County committees will assign production or reduce the historic yield 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, soil type, climate, or other environmental factors, 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.

(d) The county committee shall establish a maximum loss level that should reflect the amount of production producers should have produced

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.

(e) Assigned production or reduced yield 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.

(f) 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) Up to and including 10 calendar days, the assigned production reduction will be based on one percent of the payment yield for each day involved;

(2) Eleven (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) Twenty-five (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.

(4) CCC may adjust items 1 through 3 to make a comparable assignment for short rotation crops such as vegetables that may have a 30-day growing period.

(g) 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.

§ 1479.109 Eligible disaster conditions.

(a) Except as provided in paragraphs (b) and (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 disasters as defined in § 1479.102, or:

- (1) Insect infestation as a related condition to damaging weather if documented by COC with published data;
- (2) Disease as a related condition to damaging weather;
- (3) Salt water intrusion of an irrigation supply;
- (4) Irrigation water rationing if proof is provided that water was rationed by a Government entity or water district (unless the producer was compensated by the Government entity or water district for a disaster or conservation purpose);
- (5) Lack of water supply due to drought conditions for irrigated crops;
- (6) Other weather-related factors as determined by the Deputy Administrator.

(b) Qualifying crop losses for the 2005 crop are limited to only those losses caused by a hurricane or tropical storm of the 2004 hurricane season in counties declared disaster areas by the President.

(c) 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.

§ 1479.110 Qualifying 2003, 2004, or 2005-crop losses.

(a) To receive disaster benefits under this part, the county committee must determine that because of an eligible disaster condition, the producer with respect to the 2003, 2004, or 2005 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, poor farming practices, or drifting herbicides as determined by the county committee on a case-by-case basis;

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

(3) That are not as a result of a damaging weather or a weather related condition;

(4) To crops not intended for harvest in crop year 2003, 2004, or 2005;

(5) To losses of by-products resulting from processing or harvesting a crop, such as cottonseed, 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

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

§ 1479.111 Rates and yields; calculating payments.

(a)(1) Payments made under this part to a producer for a loss on a unit with respect to yield based crops are determined by multiplying the payment rate established for the crop by CCC, times the loss of production which exceeds 35 percent of the expected production, as determined by CCC, of the unit.

(2) Payments made under this part to a producer for a loss on a unit with respect to value-based crops are determined by multiplying the payment rate established for the crop by CCC times the loss of value that exceeds 35 percent of the expected production value, as determined by CCC, of the unit.

(3) Payments made under this part may be adjusted by CCC to reflect losses due to quality factors adversely affected by a disaster. For FSA price support loan commodities, production to count may be reduced using the schedule of premiums and discounts for FSA commodity loans. Additional quality loss adjustments may be made for single market crops, using a 20 percent quality loss threshold. The quality loss threshold may be determined by multiplying: 65 percent of the affected quantity, times 65 percent of the result of subtracting: the value of the crop due to the effects of the disaster, as determined by CCC, from the value of the crop if it had not been affected by the disaster, as determined by CCC. Quality adjustments for multiple market crops sold to a lower priced market as a result of poor quality will be determined by using the difference between the average market price for the intended use and the average market price for the actual use, as determined by CCC.

(b) Payment rates for 2003, 2004, or 2005 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 non-insurable crops; and
- (3) 60 percent of the maximum established RMA price for uninsured crops.

(c) Except as provided elsewhere in this part, disaster benefits under this part for losses to crops shall be paid 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.

(d) Separate payment rates and yields for the same crop may be established by the county committee as authorized by the Deputy Administrator, when there is supporting data from NASS or other sources approved by CCC that show there is a significant difference in yield or value based on a distinct and separate end use of the crop. In spite of differences in yield or values, separate rates or yields shall not be established for crops with different cultural practices, such as organically or hydroponically grown.

(e) 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.

(f) 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.

(g) 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.

§ 1479.112 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.

§ 1479.113 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 does not receive compensation based upon the quantity of the commodity delivered to a purchaser, but has an agreement or contract for guaranteed payment for production, for purposes of determination 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 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 was 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 peanuts, the actual production shall be all peanuts harvested for nuts, regardless of their disposition or use, as adjusted for low quality.

(k) 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.

§ 1479.114 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 2003, 2004, or 2005 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 the 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 State Committee as eligible multiple-cropping practices in accordance with procedures approved by the Deputy Administrator; and

(2) The farm containing the multiple-cropped acreage has a history of successful 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 paragraphs (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.

§ 1479.115 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:

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

(2) Occurred after the previous planting period for the crop.

(3) 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, turf grass 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 CCC or 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 planted 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 producing at least 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 in the same crop year 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 § 1479.114.

(g)(1) 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 was prevented from being planted had insufficient soil moisture for germination of seed and progress toward crop maturity because of a prolonged period of dry weather;

(2) Verifiable information collected by sources whose business or purpose to record weather conditions, including but not limited to the local weather reporting stations of the U.S. 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 non-insurable 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 4 crop years previous to the disaster year 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.

§ 1479.116 Quantity adjustments for diminished quality for certain crops.

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

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

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

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

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

(d) Quality adjustments will be applied to crops experiencing at least a 20 percent loss 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 CCC 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 2003, 2004, and 2005 peanuts, quality adjustments shall be based on the difference between the actual sales price, or other proceeds, received and the price announced by CCC under section 1421.10 of part 1421 of this chapter, by type of peanut for the applicable crop year.

(i) 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 2003, 2004, or 2005 crop year. These quality adjustments are built into the production loss determination. Production determinations from Federal crop insurance will not be used.

(j) 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, affected production will be adjusted to zero. Any value received will be considered salvage.

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

(l) Quality adjustments for tobacco in crops years 2003, 2004, or 2005 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 there is no support price, or where market prices normally exceed the support price.

(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 § 1479.117, value loss crops.

(o) Quantity adjustments for diminished quality shall also not apply under this section to: honey, maple sap, turf-grass 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.

§ 1479.117 Value loss crops.

(a) Irrespective of any inconsistent provisions in other sections, this section shall apply to the following crops, which are 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. CDP benefits shall not be available for aquacultural species that are growing naturally in the aquaculture facility. 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 on 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, and 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 is 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.

§ 1479.118 Other provisions for specialty crops.

(a) For turf-grass sod, disaster benefits under this part are limited to turf grass sod that would have matured and been harvested during 2003, 2004, or 2005, 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.

§ 1479.119 2005-crop losses only.

(a) Producers may be eligible for assistance under this part for 2005 crop losses in counties declared Presidential disaster areas due only to a hurricane or tropical storm that occurred during the 2004 hurricane season June 1 through November 30, 2004, as defined by the National Oceanic and Atmospheric Administration.

(b) All provisions of this part including linkage, AGI, conservation compliance, 95% payment cap and \$80,000 payment limitation are applicable to such 2005-crop claims.

(c) Persons that received assistance under section 32 of the Act of August 25, 1935 for losses due to Hurricanes Charley, Frances and/or Jeanne are not eligible for assistance under this provision.

§ 1479.120 Quality losses for 2003, 2004, and 2005 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 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 2003, 2004, and 2005 crop disaster assistance under this part, and will apply to crop production that has a reduced economic value due to the reduction in quality.

(d) Persons may not be compensated under this section to the extent that such producers have received assistance under § 1479.116 through § 1479.118, or other provisions of this part, attributable in whole or in part to diminished quality.

§ 1479.121 Virginia crop losses.

(a) In addition to CDP benefits for 2004, or 2005, producers with crop losses located in the Commonwealth of Virginia may be eligible for disaster assistance for crop losses that resulted from hurricanes, tropical storms, and other weather related disasters that occurred during the calendar year 2003 only.

(b) \$50 million will be available for such disaster assistance until expended.

(c) All provisions of this part limiting payments, including crop insurance and NAP purchase requirements, adjusted gross income provisions, conservation compliance, 95% payment cap related to expected revenue, and the \$80,000 per person per year payment limitation are applicable to assistance received under this section.

§ 1479.122 North Carolina fruit and vegetable crop losses.

(a) In addition to CDP benefits for 2004 or 2005, but not both, producers with fruit and vegetable losses located in the State of North Carolina may be eligible for disaster assistance for these crop losses that resulted from hurricanes, tropical storms, and other weather related disasters that occurred during the 2003 calendar year only.

(b) \$3 million will be available for such additional disaster assistance until expended.

(c) All provisions of this part limiting payments, including crop insurance and NAP purchase requirements, adjusted gross income provisions, conservation compliance, 95% payment cap related to expected revenue, and the \$80,000 per person payment limitation, are applicable to assistance received under this section.

§ 1479.123 Misrepresentation, and scheme or device.

(a) A producer who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part shall not be entitled to disaster payments and must refund all such payments received, plus interest as determined in accordance with part 1403 of this chapter.

(b) A producer shall refund to CCC all disaster payments, plus interest as determined in accordance with part 1403 of this chapter, received by such producer with respect to all applications under this part if the producer is determined to have knowingly done any of the following:

- (1) Adopted any scheme or device that tends to defeat the purpose of the program;
- (2) Made any fraudulent representation; or
- (3) Misrepresented any fact affecting a program determination.

§ 1479.124 Offsets, assignments, and debt settlement.

(a) Except as provided in paragraph (b) of this section, 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, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter apply to any payments made under this part.

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

(c) A debt or claim may be settled according to part 1403 of this chapter.

§ 1479.125 Compliance with highly erodible land and wetland conservation provisions.

(a) The highly erodible land and wetland conservation provisions of part 12 of this title apply to the receipt of disaster assistance for 2003, 2004, and 2005 crop losses made available under this authority.

(b) All eligible producers must be in compliance with the highly erodible land and wetland conservation compliance provisions for the year(s) for which disaster assistance is requested.

Signed in Washington, DC March 23, 2005.

Thomas B. Hofeller,

Acting Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 05-6080 Filed 3-28-05; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****12 CFR Part 30**

[Docket No. 05-07]

RIN 1557-AC92

FEDERAL RESERVE SYSTEM**12 CFR Parts 208 and 225**

[Docket No. OP-1155]

FEDERAL DEPOSIT INSURANCE CORPORATION**12 CFR Part 364****DEPARTMENT OF THE TREASURY****Office of Thrift Supervision****12 CFR Parts 568 and 570**

[No. 2005-11]

RIN 1550-AB97

Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS).

ACTION: Interpretive guidance and OTS final rule.

SUMMARY: The OCC, Board, FDIC, and OTS (the Agencies) are publishing an interpretation of the Gramm-Leach-Bliley Act (GLBA) and the Interagency Guidelines Establishing Information Security Standards (Security Guidelines).¹ This interpretive guidance, titled "Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice" (final Guidance), is being published as a supplement to the Security Guidelines in the Code of Federal Regulations in order to make the interpretation more accessible to financial institutions and to the general public. The final Guidance will clarify the responsibilities of financial

¹ This document renames the "Interagency Guidelines Establishing Standards for Safeguarding Customer Information" as the "Interagency Guidelines Establishing Information Security Standards." Therefore, all other references in the Agencies' regulations to the former title of the Security Guidelines shall be read to refer to the new title.

institutions under applicable Federal law. OTS is also making a conforming, technical change to its Security Procedures Rule.

DATES: Effective March 29, 2005.

FOR FURTHER INFORMATION CONTACT:

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Board: Donna L. Parker, Supervisory Financial Analyst, Division of Banking Supervision & Regulation, (202) 452-2614; or Joshua H. Kaplan, Attorney, Legal Division, (202) 452-2249, at 20th and C Streets, NW., Washington, DC 20551.

FDIC: Jeffrey M. Kopchik, Senior Policy Analyst, Division of Supervision and Consumer Protection, (202) 898-3872; Kathryn M. Weatherby, Examiner Specialist, Division of Supervision and Consumer Protection, (202) 898-6793; or Robert A. Patrick, Counsel, Legal Division, (202) 898-3757, at 550 17th Street, NW., Washington, DC 20429.

OTS: Lewis C. Angel, Program Manager, (202) 906-5645; Glenn Gimble, Senior Project Manager, Consumer Protection and Specialized Programs, (202) 906-7158; or Richard Bennett, Counsel, Regulations and Legislation Division, (202) 906-7409, at 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

- I. Introduction
- II. Overview of Comments Received
- III. Overview of Final Guidance
- IV. Section-by-Section Analysis of the Comments Received
 - A. The "Background" Section
 - B. The "Response Program" Section
 - C. The "Customer Notice" Section
- V. Effective Date
- VI. OTS Conforming and Technical Change
- VII. Impact of Guidance
- VIII. Regulatory Analysis
 - A. Paperwork Reduction Act
 - B. Regulatory Flexibility Act
 - C. Executive Order 12866
 - D. Unfunded Mandates Reform Act of 1995

I. Introduction

The Agencies are jointly issuing final Guidance that interprets the requirements of section 501(b) of the GLBA, 15 U.S.C. 6801, and the Security Guidelines² to include the development

² 12 CFR part 30, app. B (OCC); 12 CFR part 208, app. D-2, and part 225, app. F (Board); 12 CFR part 364, app. B (FDIC); and 12 CFR part 570, app. B (OTS). In this Guidance, citations to the Agencies'