

# Rules and Regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 718

#### Commodity Credit Corporation

#### 7 CFR Part 1437

RIN 0560-AG20

#### Acreage Reports and Noninsured Crop Disaster Assistance Program

**AGENCY:** Commodity Credit Corporation and Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Credit Corporation (CCC) adopts as final, with change, an interim final rule amending the regulations for the Noninsured Crop Disaster Assistance Program (NAP). Also, a clarification is made in the regulations regarding the submission of acreage reports, and obsolete program provisions are removed.

**DATES:** This rule is effective March 17, 2006.

#### FOR FURTHER INFORMATION CONTACT:

Steve Peterson, Branch Chief, Noninsured Assistance Programs Branch; Production, Emergencies, and Compliance Division; Farm Service Agency (FSA); United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250-0517; telephone (202) 720-5172; e-mail: [Steve.Peterson@wdc.usda.gov](mailto:Steve.Peterson@wdc.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

##### NAP

The Agricultural Risk Protection Act of 2000 (Pub. L. 106-224) (ARPA) amended the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104-127) regarding NAP for the 2001 and subsequent crop years. The

amendments made to NAP were significant and involved major changes in the way producers qualify and retain eligibility for NAP. Foremost, the NAP area crop loss requirement was eliminated, meaning that assistance is to be made available to individuals without first requiring that the area in which the individual is located experience a loss over a certain level, or threshold, as had been required in the past. The statute also was amended to require an application for coverage and collection of a service fee. Producers must apply for NAP coverage no later than the application closing date for the crop, announced by the Secretary. A service fee of \$100 per crop per administrative county, or \$300 per producer per administrative county, but not to exceed a total of \$900 per producer, must be filed with the application for coverage. Limited-resource producers may request a waiver of the service fees. As a condition of eligibility, producers must continue to provide applicable crop year records of crop acreage, yields and production by the applicable reporting deadlines.

##### Public Comments

The Agency published an interim final rule in the **Federal Register** on March 19, 2002 (67 FR 12447) amending the NAP regulations. The rule provided a 30-day public comment period. The comments received and Agency responses, by section, are as follows:

##### Section 1437.3 Definitions

**Comment:** One comment received from a trade association suggested the definition of "catastrophic loss" was superfluous since the term appeared only in § 1437.1 to summarize the types of qualifying losses.

**Response:** The Agency agrees and the definition has been removed from § 1437.3 and incorporated into § 1437.9 without specific reference to "catastrophic loss."

**Comment:** One comment received from a trade association suggested the substantive rule for quality losses, which is in the definition of "catastrophic coverage," should not remain buried among the definitions and should be moved to the discussion of loss calculations, as it was in the previous rule.

## Federal Register

Vol. 71, No. 52

Friday, March 17, 2006

**Response:** The provision regarding quality losses has been removed from § 1437.3 and incorporated into § 1437.9.

**Comment:** One comment received from a trade association suggested that in the definition of "good farming practice," "alternative farming practices and innovations that are supported by data from the Cooperative State Research, Education, and Extension Service" be explicitly acknowledged in the definition.

**Response:** The existing definition allows alternative farming practices and innovations that are supported by data from the Cooperative State Research, Education, and Extension Service, and greater specificity is unnecessary. Therefore, no change was made.

##### Section 1437.4 Eligibility

**Comment:** Three comments from three trade associations suggested unseeded forage on Federal- and State-owned land be eligible for the 2001 crop year.

**Response:** The Agency believes the inclusion of 2001 crop year unseeded Federal- and State-owned land would have required State and county committees to make decisions contrary to good business conduct and would have been seen as unfair to some, while excessively beneficial to others. Therefore, no change was made.

**Comment:** One comment received from a producer stated that NAP was supposed to catch all crops that were not eligible for FCI coverage, but Perique tobacco is not eligible for FCI coverage and yet is also not eligible for NAP.

**Response:** The statute (7 U.S.C. 7333) specifically states that eligible crops are commercial crops or other agricultural commodities produced for food or fiber. The statute also does not specifically include tobacco as an eligible crop, as it does some other specific crops. Since tobacco is not considered food or fiber, nor specifically included as an eligible crop, it was determined not to be an eligible crop for NAP. Therefore, no change was made.

##### Section 1437.6 Application for Coverage and Service Fee

**Comment:** Two comments were received from producers regarding the service fee, one suggesting refunds of service fees be allowed under certain circumstances and one suggesting the service fee schedule be modified to

remove disparity between large and small acreage units.

**Response:** The statute (7 U.S.C. 7333) specifically establishes the service fee provisions. As a matter of practicality, general refunds of minimal service fees would be cumbersome to administer and not cost effective. NAP coverage is without cost; however, the statute is clear that coverage must be obtained not later than 30 days before the risk period and that an application for coverage be accompanied by a set fee. The statute does not contemplate there being a need for refund either during the application or coverage periods. Accordingly, no change has been made.

#### Section 1437.8 Unit Division

**Comment:** One comment from a trade association suggested the section be clarified and an example of units be included.

**Response:** § 1437.8 was amended for clarification.

#### Section 1437.9 Causes of Losses

**Comment:** One comment from a trade association suggested that if the intention in paragraph (b)(1) is only to say that losses that are not the direct result of eligible causes of loss are ineligible losses, it should be deleted. If the subsection is intended to say more, it should be written more clearly.

**Response:** The section was revised for clarity.

**Comment:** One comment from a trade association suggests CCC appears to lack statutory authority for naming drought as an ineligible cause of loss for the types of operation named.

**Response:** The statute allows CCC to determine the eligible causes of loss of noninsured commodities. A few eligible commodities, such as aquaculture, floriculture, and ornamental nursery, must be maintained in a controlled environment in which everything that can be practically controlled with structures, facilities, growing media (including but not limited to, water, soil, or nutrients) by the producer is in fact controlled by the producer. In these cases, water, or specifically, lack of water (drought), cannot be a factor in the loss of commodity. Therefore, no change was made.

#### Section 1437.10 Notice of Loss and Application for Payment

**Comment:** One comment from a producer suggested payments be made within 90 days of harvest.

**Response:** Payments are made as soon as possible after losses occur and depend upon the submission of complex information from producers. In addition, CCC makes numerous

payments and must prioritize when payments are made. Accordingly, this recommendation is not adopted.

**Comment:** Ten comments from producers criticized the use of panels in establishing representative sample areas for appraisal of forage acreage intended to be mechanically harvested (hay or seed) that is abandoned or destroyed or also grazed. Producers complain that establishing representative sample areas using panels is expensive, aggravating, inconvenient, impractical, and presents a hardship to producers.

**Response:** For NAP crop definition purposes "forage," for service fee and production purposes, is defined according to the intended method of harvest, either mechanically or grazed. Mechanically harvested includes seed and hay. On that basis, establishing representative sample areas before abandonment or destruction or grazing occurs is a necessary requirement for completing a deferred appraisal of the potential crop (mechanically harvested) at the end of the growing season.

However, for forage acreage intended to be mechanically harvested specifically and only for forage seed, the section has been amended.

Effective with the 2005 crop year, the requirement that producers request a deferred appraisal of potential hay production and establish representative sample areas is discontinued when the producer provides CCC acceptable evidence of a contract to produce seed for the current crop year or acceptable records of acreage and seed production for three or more of the last five consecutive crop years. In this situation, producers must request on the appropriate FSA form an immediate appraisal of potential seed production if the crop acreage will not be harvested for seed. Otherwise, producers who do not have sufficient historical evidence of seed production or a contract to grow forage seed during the crop year must establish representative sample areas and request the appraisal of potential hay production be deferred until the end of the growing season.

As clarification, FSA does not require producers who are required to establish representative sample areas to purchase manufactured or pre-assembled enclosures (panels). When establishing sample areas, producers are required to construct enclosures, by whatever means, sufficiently secure to prevent livestock and wildlife from destroying any evidence of potential production.

#### Section 1437.12 Crop Definition

**Comment:** Eight comments, five from producers, two from trade associations, and one from a financial institution

suggested that it is not beneficial to seed producers to combine types of grass intended for seed production for service fee and requisite loss purposes. Grass for seed includes a wide range of planting and harvesting times and there is a wide range of yields and prices. Furthermore, the various types of forage and turf crops produced have very different and specific agronomic characteristics, which means that under certain conditions some of the grass acreage will suffer losses while others will not. One respondent recommended that FSA State committees and local documented experts on seed crops have the authority to determine if seed crops should be considered a separate and distinct crop from other intended uses.

**Response:** All eligible grass types and varieties intended for mechanical harvest (hay and seed) are defined as one crop for NAP service fee and requisite loss purposes because there is less than a twenty-five percent difference in the National average market prices of the various types and varieties for the most predominant intended use, which is hay. The Agency recognizes the various planting and harvesting times for the production of grass seed. However, grass seed is customarily an annual or biennial crop and, therefore, specific to a crop year. The Agency has sufficient rules and procedures in place for determining the specific crop year acreage and production. The Agency also considers the different yields and prices by calculating NAP assistance on the basis of actual production history and average market price of the specific type or variety of grass and the intended use. Defining the many types and varieties of grass intended for seed as separate crops according to the different and specific agronomic characteristics would place an onerous burden upon the Agency and fail to significantly increase benefits to the producers. Therefore, no change was made.

**Comment:** Two comments from two producers suggested the inclusion of after-normal-harvest grazing (aftermath grazing) as an eligible crop or, as one producer suggested, a conversion of equivalent grazing to hay production to determine historic yields.

**Response:** There is little agronomic commercial price and yield data available or captured from a broad enough spectrum to justify a modification of NAP's eligible or net production definitions. Accordingly, no change was made.

#### Section 1437.13 Multiple Benefits

**Comment:** One comment from a producer recommended producers be

allowed to receive multiple benefits as long as total benefits do not exceed the producer's loss.

**Response:** The multiple benefits provisions are set by statute. Therefore, no change was made.

#### *Section 1437.15 Miscellaneous Provisions*

**Comment:** One comment from a trade association suggested the penalty of ineligibility for the current crop year plus two succeeding crop years is reasonable for intentional actions. However, the association recommends FSA State and county committees or FSA officials have the flexibility to find that a producer who has unintentionally misrepresented a fact affecting a program determination receive a lesser penalty.

**Response:** The rule allows sufficient discretion to FSA reviewers to determine when an act of program malfeasance has occurred. As a general matter, a person cannot unwittingly or unknowingly perpetrate a scheme. However, persons can further program misrepresentations even when there is no apparent advantage. In order to remain consistent with how CCC conducts business with those found to have committed the most flagrant acts of abuse, we have decided to leave the provisions unchanged. The provisions as written already provide the flexibility the respondent believes is needed.

**Comment:** One comment from a trade association suggested that one purpose of NAP is to partially offset lower farm income due to weather-related crop losses. In order to ensure that this purpose is fulfilled to the greatest extent possible, the association recommended the NAP payment be exempt from administrative offset.

**Response:** Debt collection actions of the United States are governed, generally, by the Debt Collection Improvement Act of 1996. That Act has no provision that would allow the recommendation to be adopted. Accordingly, no change in the regulation has been made.

#### *Section 1437.102 Yield Determinations*

**Comment:** One comment from a trade association suggested the section be clarified and the discussion of "approved yield" be reformulated and moved to § 1437.3, Definitions. The association also suggests adding subsections for each potential scenario for calculating approved yields.

**Response:** The section has been amended to clarify the determination of yields. However, considering the number of possible scenarios for

calculating approved yields, it would be impractical to add subsections for each potential scenario.

**Comment:** One comment from a producer suggested the yield variations due to different farming practices also include the transitional-yield (T-yield) zones established by FCIC for crop insurance purposes and other practices recognized as good farming practices.

**Response:** Currently, CCC reduces T-yields for individual producers when it is determined that an unadjusted T-yield does not accurately reflect the production capability of specific crop acreage. Enhanced instructions will be provided to State and county committees regarding establishing county expected yields (T-yields) when T-yield zones established by FCIC or other circumstances result in variations of yields in the county.

#### *Section 1437.103 Determining Payments for Low Yield*

**Comment:** One comment from a trade association pointed out an error in determining payments for low yield.

**Response:** The appropriate section has been amended to correct the typographical error in the explanation of payment calculations.

#### *Section 1437.201 Prevented Planted Acreage*

**Comment:** One comment from a trade association suggested that there appears to be no authority for the requirement that an eligible cause of loss for prevented planting must have "Generally affected other producers in the area, as determined by CCC."

**Response:** The section regarding general prevented planting provisions has been moved to 7 CFR 718.103. Prevented planting must have generally affected other producers in the area because an occurrence that prevents a crop from being planted will likely prevent others from planting. The phrase does not require a determination of a minimum area loss, which was removed by the ARPA. The phrase requires the Agency to determine if the claimed cause of loss generally affected other producers in the area.

**Comment:** One comment from a producer suggested prevented planting provisions include the possibility that producers may choose not to plant because of the effects of long-term natural disaster, i.e. drought. Requiring producers to create intent under these circumstances is impracticable.

**Response:** The section regarding prevented planting provisions has been moved to 7 CFR 718.103, beginning with the 2005 crop year. The rule is being amended to allow prevented

planting assistance for non-irrigated crop acreage when 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. In the case of irrigated crops, prevented planting shall apply where the acreage was prevented from being planted due to a lack of water resulting from drought conditions.

#### *Section 1437.202 Determining Payments for Prevented Planting*

**Comment:** One comment from a trade association pointed out an error in determining payments for prevented planting.

**Response:** The section has been amended to correct the typographical error in the explanation of payment calculations.

#### *Section 1437.401 Forage*

**Comment:** One comment from a trade association expressed concern regarding policy that results in forage acreage that is intended to be mechanically harvested but that is both mechanically harvested and grazed having to be appraised before grazing even if the acreage is historically and customarily grazed following one cutting. Without an appraisal, legitimate hay or forage losses during a summer drought would not qualify as eligible losses. The respondent states that many producers of forage on improved pasture and native hay meadows get one crop and graze the second crop if there is water available to irrigate the pasture or meadow. The respondent suggests that if appraisals are to become necessary, they be paid as part of the program and the State and county Committees be allowed to select representative pasture or meadows, construct representative sample areas (enclosures) and use data collected from these areas to establish losses in the local area.

**Response:** The current policy assures the proper accounting of all potential forage production. Production reporting is the producer's responsibility, including the responsibility to establish representative sample areas to facilitate the proper appraisal of crop acreage. Therefore, no change was made.

**Comment:** Several comments from producers expressed concern that assistance is substantially reduced when acreage intended to be mechanically harvested is grazed and not mechanically harvested and the payment is based on the carrying capacity. One comment from a Congressional office states: "It is entirely reasonable for the Federal Government to meet the allowed benefit

for hay crop loss without requiring a distinction between the hay being harvested and fed to cattle or directly consumed by grazing.”

**Response:** The respondent may have misunderstood the intent of the formation of the forage policy. The intent of the provision is not to deprive participants of just compensation under NAP for legitimate losses; rather, recognizing the difficulty that participants had in submitting requisite production evidence for APH losses, regulations were revised to allow NAP payments to be computed and paid based on acceptable collective loss data for a particular geographical location. The adoption of this forage policy has enabled more NAP participants to satisfy eligibility requirements where, absent this policy, those participants would probably not be eligible. In light of the comments received, the section has been amended to clarify that for the 2005 and subsequent crop years, calculation of assistance may be based on actual production history when producers provide acceptable evidence of actual production. Further, in light of this amendment, language has been added to § 1437.401 to clarify that while participants have the right to challenge, administratively, factual disputes related to their own applications, CCC's determination of regions or geographical locations for two independent assessments and the two independent assessments themselves, and results there from, are not appealable because they are not in response to any individual applicant or application. Rather, the collective loss established by two independent assessments, acceptable to CCC, are applicable to all similarly situated NAP grazed forage participants.

#### *Section 1437.403 Determining Payments*

**Comment:** One comment from a trade association pointed out an error in the calculation for determining payments for forage.

**Response:** The explanation of payment calculations for forage is correct. The amount of AUD assigned for ineligible causes of loss must be assigned according to the producer's share. The section is amended to clarify paragraph (f) and correct an error in paragraph (j).

Also, the final rule adds paragraph 1437.2(f) regarding the authority to change agency determinations in administrative reviews. The addition is necessary because administrative reviews are being misused to redefine the extent of individual program eligibility determinations. With the

exception of a few minor editorial or technical corrections, no other changes were made.

#### *Acreage Reports*

To obtain benefits under certain programs, producers must submit reports containing accurate information as required by those programs. Depending on the program, these acreage reports document acreage planted, acreage enrolled in the program, acreage in which the producer has a share, or other land use. Producers must certify failed or prevented planted acreage for programs providing benefits for that acreage. Currently, 7 CFR part 718 has no provision regarding the filing of an acreage report for prevented planting or failed acreage that could be used for program purposes, including NAP. This rule adds such provisions to the regulations at 7 CFR 718.103.

Producers who file a report of acreage that was prevented from being planted or failed because of a natural disaster must have the request acted on by CCC. To obtain approval for prevented planting credit, the producer must show there was the intent to plant the acreage by providing documentation of field preparation, seed purchase and any other information that shows the acreage would have been planted under normal weather conditions. For failed acreage, the producer must provide documentation that the crop was planted using farming practices consistent for the crop and area, but could not be brought to harvest because of disaster-related conditions. CCC will deny the failed or prevented planted acreage report if it is not satisfied that the documentation provided shows that the acreage failed or was prevented from being planted because of eligible weather-related conditions. CCC will disapprove requests for which documentation shows that it was a management decision to not plant or to not carry the crop to harvest.

#### **Executive Order 12866**

This final rule was determined to be “not significant” under Executive Order 12866 and was not reviewed by the Office of Management and Budget (OMB).

#### **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: Noninsured Crop Disaster Assistance—10.451.

#### **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 with respect to the subject matter of this rule.

#### **Environmental Assessment**

The environmental impacts of this rule have been considered in accordance with the provisions of 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 1500–1508), and FSA regulations for compliance with NEPA, 7 CFR part 799. FSA has concluded that this rule is categorically excluded from further environmental review and documentation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement.

#### **Executive Order 12778**

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

#### **Executive Order 12372**

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

#### **Unfunded Mandates**

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) do not apply to this rule because CCC is required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. Also, the rule imposes no mandates as defined in UMRA.

#### **Paperwork Reduction Act**

Section 161 of the 1996 Act required that the regulations be issued 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 necessary before the regulations are published and made effective; however, FSA did publish notices requesting public comment for NAP and the Acreage Reports, respectively, on May 12, 2003 (68 FR 25316) and March 31, 2005 (70 FR 16476) and OMB approved the information collections required by this rule under OMB control numbers 0560-0175 and 0560-0004.

### **Government Paperwork Elimination Act**

CCC and FSA are committed to compliance with the Government Paperwork Elimination Act (GEPA) and the Freedom to E-File Act, which require Government agencies in general, and FSA in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required by participation in the Noninsured Crop Disaster Assistance Program are not yet fully implemented in a way that would allow the public to conduct business with FSA electronically. Accordingly, applications for this program may be submitted at FSA offices, by mail, or FAX.

### **List of Subjects**

#### **7 CFR Part 718**

Acreage reports.

#### **7 CFR Part 1437**

Crop insurance, Disaster assistance, Nursery stock, Plants.

■ Accordingly, 7 CFR part 718 is amended and the interim rule amending 7 CFR part 1437 that was published on March 19, 2002 (67 FR 12446) is adopted as final, with change, as follows:

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

■ 1. The authority citation continues to read as follows:

**Authority:** 7 U.S.C. 1311 *et seq.*, 1501 *et seq.*, 1921 *et seq.*, 7201 *et seq.*, 15 U.S.C. 714b.

■ 2. Section 718.102 is amended by adding paragraph (b)(7) to read as follows:

#### **§ 718.102 Acreage reports.**

\* \* \* \* \*

(b) \* \* \*

(7) All producers requesting to report acreage as prevented planted or failed must provide documentation to FSA

where the farm is administered that meets the provisions of § 718.103.

\* \* \* \* \*

■ 3. Section 718.103 is revised to read as follows:

#### **§ 718.103 Prevented planted and failed acreage.**

(a) Prevented planting is 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. The eligible cause of loss that prevented the planting must have:

(1) Occurred after a previous planting period for the crop;

(2) Occurred before the final planting date for the crop in the applicable crop year or, in the case of multiple plantings, the harvest date of the first planting in the applicable planting period, and

(3) Similarly affected other producers in the area, as determined by CCC.

(b) To be approved by FSA as prevented planted acreage:

(1) The acreage must have been reported within 15 calendar days after the latter of

(i) The occurrence of prevented planting, or

(ii) The end of the planting period;

(2) The acreage must have been prevented from being planted as the result of a natural disaster and not a management decision; and

(3) The prevented planted acreage report must be acted on by the COC. The COC will deny the acreage report if it is not satisfied with the documentation provided.

(c) To receive prevented planted credit for acreage:

(1) The producer must show there was the intent to plant the acreage by providing documentation of field preparation, seed purchase and any other information that shows the acreage could have been planted and harvested under normal weather conditions, and

(2) The producer must show that the amount of the prevented planted acreage credit is consistent with prior years' planting history for the farm.

(d) Eligible prevented planting acreage will be determined on the basis of the producer's intent to plant the crop acreage and possession of, or access to, resources to plant, grow, and harvest the crop, as applicable.

(e) Prevented planting acreage credit is not provided on acreage that had either a previous or subsequent crop planted on the acreage, unless the COC 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-planted within the normal planting period for that crop; and

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

(f) Prevented planted acreage credit will not be given to crops where the prevented-planted acreage was affected by drought, unless:

(1) On the final planting date 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, as determined by CCC; and

(2) Prolonged precipitation deficiencies exceeded the D2 level as determined using the U.S. Drought Monitor; and

(3) Verifiable information is collected from sources whose business or purpose it is to record weather conditions, as determined by CCC, and including but not limited to the local weather reporting stations of the U.S. National Weather Service.

(g) Prevented planted acreage credit 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 if there was not a reasonable probability of having adequate water to carry out an irrigation practice.

(h) Acreage ineligible for prevented planting coverage includes, but is not limited to acreage:

(1) Which planting history or conservation plans indicate would remain fallow for crop rotation purposes;

(2) Used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by USDA, including the Conservation Reserve and Wetland Reserve Programs; and

(3) Not planted because of a management decision.

(i) Failed acreage is acreage that was planted with the proper equipment during the planting period but failed as a result of an eligible cause of loss, as determined by CCC.

(j) To be approved by CCC as failed acreage the acreage must have been reported as failed acreage before disposition of the crop, and the acreage must have been planted under normal conditions but failed as the result of a natural disaster and not a management decision. Producers who file a failed acreage report must have the request acted on by the COC. The COC will deny the acreage report if it is not satisfied with the documentation provided.

(k) To receive failed acreage credit the producer must show all of the following:

(1) That the acreage was planted under normal conditions using the proper equipment with the intent to harvest the acreage.

(2) Provide documentation that the crop was planted using farming practices consistent for the crop and area, but could not be brought to harvest because of disaster-related conditions.

(l) The eligible cause for failed acreage must have:

(1) Occurred after the crop was planted, and

(2) Before the normal harvest date for the crop in the applicable crop year or in the case of multiple plantings, the harvest date of the first planting in the applicable planting period, and

(3) Other producers in the area were similarly affected as determined by CCC.

(m) Eligible failed acreage will be determined on the basis of the producer planting the crop under normal conditions with the expectation to take the crop to harvest.

(n) Acreage ineligible for failed acreage credit includes, but is not limited to acreage:

(1) Which was planted using methods that could not be considered normal for the area and without the expectation of harvest;

(2) Used for conservation purposes or intended to be or considered to have been un-harvested under any program administered by USDA, including the Conservation Reserve and Wetland Reserve Programs; and

(3) That failed because of a management decision.

■ 4. Section 718.104 is revised to read as follows:

#### **§ 718.104 Late-filed and revised acreage reports.**

(a) Late-filed acreage reports may be accepted after the final reporting date, and be considered timely filed, if both of the following apply:

(1) The crop or identifiable crop residue is in the field, and

(2) The acreage has not already been determined by FSA.

(b) The farm operator filing a report late shall pay the cost of a farm inspection unless FSA determines that failure to report in a timely manner was beyond the producer's control.

(c) Revised acreage reports may be filed with respect to 2005 and subsequent years to change the acreage reported if:

(1) The acreage has not already been determined by FSA; and

(2) Actual crop or residue is present in the field.

(d) Revised reports shall be filed and accepted:

(1) At any time for all crops if the crop or residue still exists in the field for inspection to verify the existence and use made of the crop, the lack of the crop, or a disaster condition affecting the crop; and

(2) If the producer was in compliance with all other program requirements at the reporting date.

### **PART 1437—NONINSURED CROP DISASTER ASSISTANCE PROGRAM**

■ 5. The authority citation continues to read as follows:

**Authority:** 15 U.S.C. 714 *et seq.*; and 7 U.S.C. 7333.

#### **Subpart A—General Provisions**

■ 6. Section 1437.2 is amended by adding paragraph (f) to read as follows:

##### **§ 1437.2 Administration.**

\* \* \* \* \*

(f) Items including, but not limited to, application periods, coverage periods, application deadlines, fees, prices, yields, and payment factors established for NAP in accordance with this part that are used for similarly situated participants and eligible crops are not to be construed to be individual program eligibility determinations or extent of eligibility determinations and are, therefore, not subject to administrative review.

##### **§ 1437.3 [Amended]**

■ 7. Amend § 1437.3 by removing the definitions "Actual production history (APH)" and "Catastrophic loss."

■ 8. Amend § 1437.4 by revising paragraph (a), removing paragraph (b), redesignating paragraph (c) as paragraph (b), and revising newly designated paragraph (b)(4)(vii) to read as follows:

##### **§ 1437.4 Eligibility.**

(a) Noninsured crop disaster assistance is available for loss of production or prevented planting of eligible commercial crops or other agricultural commodities:

(1) Planted during the planting period, which means the time during which a majority of the crop is normally planted in the area, as determined by CCC, and is considered timely-planted for NAP purposes;

(2) Prevented from being planted during the planting period;

(3) Planted during the late planting period, which means the time after the planting period, during which certain crops, as determined by CCC, may be planted and remain eligible for reduced NAP coverage; and

(4) Determined by CCC to be eligible crops:

(i) For which catastrophic coverage is not available; or

(ii) For specific perils not included under available catastrophic coverage.

(b) \* \* \*

(4) \* \* \*

(vii) Seed crops, including propagation stock such as non-ornamental seedlings, sets, cuttings, rootstock, and others, as determined by CCC; and

\* \* \* \* \*

■ 9. Amend § 1437.5 by revising paragraph (b) to read as follows:

##### **§ 1437.5 Coverage period.**

\* \* \* \* \*

(b) The coverage period for annual crops, including annual forage crops, begins the later of 30 calendar days after the date the application for coverage is filed; or the date the crop is planted, not to exceed the late planting period; and ends on the earlier of the date harvest is complete; the normal harvest date of the crop in the area; the date the crop is abandoned; or the date the crop is destroyed.

\* \* \* \* \*

■ 10. Amend § 1437.6 by revising paragraph (a) and removing paragraphs (e) and (f), to read as follows:

##### **§ 1437.6 Application for coverage and service fee.**

(a) With respect to each crop, commodity, or acreage, producers must file an application for coverage under this part in the administrative county FSA office no later than the application closing date.

\* \* \* \* \*

■ 11. Amend § 1437.7 by revising the fifth, sixth, seventh, and eighth sentences in paragraph (a), introductory text, removing the second sentence in paragraph (a)(2), re-designating paragraphs (b) through (g) as paragraphs (c) through (h), and adding a new paragraph (b), to read as follows:

**§ 1437.7 Records.**

(a) \* \* \* For each harvested crop for which producers file an application for payment in accordance with § 1437.10, producers must provide documentary evidence acceptable to CCC of production and the date harvest was completed, including production of crops planted after the planting period or late planting period. Such documentary evidence must be provided no later than the acreage reporting date for the crop in the subsequent crop year. Records of a previous crop year's production for inclusion in the actual production history database used to calculate an approved yield for the current crop year must be certified by the producer no later than the acreage reporting date for the crop in the current crop year. Production data provided after the acreage reporting date in the current crop year for the crop may be included in the actual production history data base for the calculation of subsequent approved yield calculations if accompanied by acceptable records of production as determined by CCC. \* \* \*

\* \* \* \* \*

(b) During any crop year that a notice of loss is filed according to this part:

(1) Producers of hand-harvested crops shall, in addition to providing acceptable production records according to this part, notify the administrative county office that harvest is complete. This notification must be made before deterioration or destruction of the crop residue and within 15 days after harvest is completed. If an appraisal of the crop acreage is determined necessary by CCC, the producer shall not destroy the crop residue until the crop acreage is released by an FCIC- or CCC-qualified loss adjustor. Producers may, at their expense, request that an appraisal by certified FCIC or CCC loss adjustors of hand-harvested crop acreage be completed during non-loss crop years in order to maintain accurate actual production history.

(2) Producers shall not allow the gathering (gleaning) of any produce left in the field following normal harvest of the crop acreage until the crop acreage is released by a qualified CCC or FCIC loss adjustor, as determined by CCC. Except, crop acreage may be released by an authorized CCC representative for acceptable gleaning operations, as determined by CCC, when producers and gleaners agree to provide acceptable records, as determined by CCC, of the quantity of the crop gleaned.

\* \* \* \* \*

■ 12. Revise § 1437.8 to read as follows:

**§ 1437.8 Unit definition.**

(a) The unit identifies the interest of the producer in the administrative county on the basis of the unique relationship of the owner to one or more operators. The unit is the foundation for all determinations of acreage, production, value, AUD, approved yields, requisite losses, payments, and other program requirements.

(b) Separate and distinct units are:

(1) One-hundred percent interest as owner/operator;

(2) Less than one-hundred percent interest as owner or operator; or

(3) Less than one-hundred percent interest, as owner or operator in an inverse relationship.

■ 13. Revise § 1437.9 to read as follows:

**§ 1437.9 Causes of loss.**

(a) To be eligible for benefits under this part, an eligible cause of loss must result in:

(1) A loss of production greater than 50 percent of the approved yield in accordance with subpart B of this part;

(2) Prevented planting of greater than 35 percent of the intended crop acreage according to subpart C of this part;

(3) A value loss of greater than 50 percent of the pre-disaster value according to subpart D of this part, or

(4) An AUD loss of greater than 50 percent of the expected AUD according to subpart E of this part.

(b) The quantity of the crop or commodity will not be reduced for any quality consideration unless a zero value is established.

(c) Eligible causes of loss include:

(1) Damaging weather occurring before or during harvest, including but not limited to drought, hail, excessive moisture, freeze, tornado, hurricane, excessive wind, or any combination thereof;

(2) Adverse natural occurrence before or during harvest, such as earthquake, flood, or volcanic eruption; and

(3) A related condition, including but not limited to heat, insect infestation, or disease, which occurs as a result of an adverse natural occurrence or damaging weather occurring before or during harvest that directly causes, accelerates, or exacerbates the destruction or deterioration of an eligible crop, as determined by CCC.

(d) Due to the unique requirements, such as controlled environments, necessary for successful production of some crops and commodities; not all eligible causes of loss will apply to all crops and commodities.

(e) Ineligible causes of loss include but are not limited to:

(1) Negligence or malfeasance of the producer;

(2) Failure of the producer to reseed to the same crop during the same planting period in those areas and under such circumstances where it is customary;

(3) Failure of the producer to follow good farming practices, as determined by CCC;

(4) 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;

(5) Failure or breakdown of irrigation equipment or facilities;

(6) Except for tree crops and perennials and as provided for in § 1437.201, inadequate irrigation resources at the beginning of the crop year;

(7) A loss of inventory or yield of aquaculture (including ornamental fish), floriculture or ornamental nursery stemming from drought or any failure to provide water, soil, or growing media to such crop for any reason; or

(8) Any failure to provide a controlled environment or exercise good nursery practices when such controlled environment or practices are a condition of eligibility under this part.

■ 14. Amend § 1437.10 by revising the section heading, revising paragraph (a), introductory text, and paragraph (d), redesignating paragraph (e) as paragraph (g), and adding new paragraphs (e) and (f) to read as follows:

**§ 1437.10 Notice of loss, appraisal requirements, and application for payment.**

(a) When an eligible crop is damaged by an eligible cause of loss, at least one producer having a share in the unit must provide a notice of loss to CCC in the administrative FSA county office for the unit, within:

\* \* \* \* \*

(d) Producers who file a notice of loss, using the appropriate CCC form, for crop acreage that will not be harvested as intended, such as abandoned, put to another use, replanted to the same or a different crop, or in the case of forage, acreage intended to be mechanically harvested that will be both mechanically harvested and grazed, must:

(1) Not put the crop to another use or prepare the acreage for replanting or otherwise change any conditions of the crop or acreage until written notification of release of the crop or acreage is received from CCC;

(2) Request, using the appropriate FSA form, an appraisal of the unharvested acreage for potential production and release of the crop or acreage;

(i) No less than 15 calendar days before replanting or in the case of forage intended to be mechanically harvested, grazing of the crop acreage.

(ii) Within 15 calendar days after the acreage is abandoned, for example, discontinued care for the crop or provided care so insignificant as to provide no benefit to the crop, as determined by CCC.

(iii) No later than the normal harvest date of the crop, as determined by CCC.

(3) Request the loss adjustor on the day the initial appraisal is completed, or request in any manner of written correspondence received in the FSA administrative county office no later than 15 calendar days after the request for initial appraisal is submitted, that the appraisal be deferred until the end of the growing season, the producer be permitted to establish representative sample areas according to paragraph (d)(4) of this section, and that the acreage be released immediately when:

(i) Time is critical for replanting, or other urgent reasons; and

(ii) Producers and loss adjustors cannot resolve disagreement with the initial appraisal of the acreage to be released.

(4) Establish representative sample areas of the acreage according to the loss adjustor's instructions received on the day the initial appraisal is completed or, if the loss adjustor is not available, according to the FCIC Loss Adjustment Manual (LAM) and applicable FCIC crop handbooks. Report the size, number, and location of the areas in any manner of written correspondence received in the FSA administrative county office, no later than 15 calendar days after requesting a deferred appraisal and before the acreage is put to another use or replanted.

Representative sample areas must be of adequate construction and numbers to provide acceptable sampling results and maintained in sound condition, as determined by CCC, until released by CCC.

(5) If possible, be present for the appraisal involving un-harvested crop acreage and accept or contest the results of the loss adjustor's appraisal.

Producers unable to be present for the appraisal may contest the results of the appraisal in the FSA administrative county office.

(e) For the 2005 and subsequent crop years, crop acreage for which an application for coverage has been filed, that is intended for production of forage seed and for which a notice of loss is filed indicating the crop acreage will not be harvested as seed, will be appraised for potential production of seed when producers provide CCC acceptable

evidence of a contract to produce seed for the current crop year or acceptable records of acreage and seed production for three or more of the last 5 consecutive crop years, as determined by CCC.

(f) Forage acreage for which a notice of loss is filed that was intended to be mechanically harvested but will be grazed and not mechanically harvested, or that was intended to be grazed but will be mechanically harvested and not grazed, does not require an appraisal or release of crop acreage.

\* \* \* \* \*

- 15. Revise § 1437.11(a)(4) to read as follows:

#### **§ 1437.11 Average market price and payment factors.**

(a) \* \* \*

(4) Determined, as practicable, for each intended use of a crop type within a State, as determined by CCC, for a crop year.

\* \* \* \* \*

- 16. Revise § 1437.101 to read as follows:

#### **§ 1437.101 Actual production history.**

Actual production history (APH) is the unit's record of crop yield by crop year for the APH base period. The APH base period consists of ten crop years of actual yield, T-yield, assigned yield, and zero credited yield, immediately preceding the crop year for which an approved yield is calculated in accordance with this part. APH will be used, except as otherwise indicated in this part, as the basis for providing noninsured crop disaster assistance.

- 17. Amend § 1437.102 by:
- a. Revising paragraphs (a), (b) introductory text, and (b)(1);
- b. Adding paragraphs (b)(4) through (b)(8);
- c. Removing paragraphs (f), (g), (h), (i), and the introductory text of paragraph (j);
- d. Redesignating paragraphs (j)(1), (j)(2), (j)(3), (k), (l), and (m) as paragraphs (f), (g), (h), (i), (j), and (k), respectively; and
- e. Revising newly designated paragraph (j).

The revisions and additions read as follows:

#### **§ 1437.102 Yield determinations.**

(a) An actual yield is the total amount of harvested and appraised production from unit acreage for the crop year on a per-acre, or other basis, as applicable.

(b) A T-yield (county expected yield):

(1) Is the Olympic average (disregarding the high and low yields) of historical yields of the crop in the

county for the five consecutive crop years immediately preceding the previous crop year. For example, for the 2005 crop year, the five consecutive crop years immediately preceding the previous crop year would be 1999 through 2003.

\* \* \* \* \*

(4) Will be based on the most representative available historical information, as determined by CCC, from such sources as, but not limited to, actual acreage and production data of participating producers in the county; or in similar areas; National Agricultural Statistics Service data; Cooperative State Research, Education, and Extension Service records, Federal Crop Insurance data, and credible non-government studies. Such data is based on the acreage intended for harvest.

(5) May be adjusted on an administrative county-wide basis for:

(i) Yield variations due to different farming practices in the administrative county such as irrigated, non-irrigated, and organic practices; and

(ii) Cultural practices when such practices in the administrative county are different from those used on acreage to establish the yield.

(6) Will, for all land for those producers who have land physically located in multiple counties and administered in one county office, be based on the administrative county's expected yield for the crop.

(7) May be reduced, on a specific APH basis, when, as determined by CCC, it does not accurately reflect the productive capability of specific crop acreage.

(8) Will be used in the actual production history base period when less than four consecutive crop years of actual, assigned, or zero-credited yields, as applicable, are available.

(c) An assigned yield is:

(1) Equal to 75 percent of the approved yield calculated for the most recent crop year for which the producer did not certify a report of production.

(2) Used, after the first crop year an approved yield for the crop is calculated, in the actual production history base period when the producer reports acreage for the crop but fails to certify a report of production. Producers may have only one assigned yield in the actual production history base period.

(3) May be replaced with an actual yield when the producers provide a certification of production and acceptable production records for the applicable crop year in accordance with § 1437.7.

(4) May not be used if the acreage of a crop in the administrative county in

which the unit is located for the crop year increases by more than 100 percent over any year in the preceding seven crop years, or significantly from the previous crop years, as determined by CCC, unless producers provide:

- (i) Detailed documentation of production costs, acres planted, and yield for the crop year for which the producer is requesting assistance, or
- (ii) If CCC determines the documentation is inadequate, proof that the eligible crop, had it been harvested, could have been marketed at a reasonable price.

(5) May be used, notwithstanding paragraph (c)(4) of this section, if:

(i) The planted acreage for the crop has been inspected by a third party acceptable to CCC, or

(ii) The FSA county executive director, with the concurrence of the FSA state executive director, makes a recommendation for an exemption from the requirements and CCC approves such recommendation.

(d) A zero-credited yield:

(1) Will be used in the applicable crop year of the actual production history base period for each crop year following the crop year containing an assigned yield, for which producers do not certify a report of acreage or production, as determined by CCC.

(2) May be replaced with an actual yield when the producer provides a certification of production and acceptable production records for the applicable crop year in accordance with § 1437.7.

(e) An approved yield:

(1) Is used in the calculation of the requisite loss and payment.

(2) Is a simple average of a minimum of four base period crop year yields, i.e., actual yield, T-yield, assigned yield, or zero-credited yield. The base period is 10 crop years, except 5 crop years for apples and peaches, immediately preceding the crop year for which an approved yield is calculated, not including any crop year the crop was out of rotation, not planted, or prevented from being planted.

(3) Shall be calculated according to the following criteria when the producer does not have at least four consecutive crop years of actual, assigned, or zero credited yields beginning with the most recent crop year.

(i) If there are no certified acceptable production records of actual production for the most recent crop year, or zero credited or assigned yields in the producer's APH base period, and no formula provided for the producer under paragraphs (e)(3)(ii) through (iv) of this section, then the approved yield for the current crop year will be

calculated on the simple average of 65 percent of the applicable T-yield for each of the minimum four APH crop years.

(ii) If certified acceptable production records of actual production are available for only the most recent crop year and there are no zero credited or assigned yields in the producer's APH base period, the approved yield for the current crop year will be calculated on the simple average of the one actual yield plus 80 percent of the applicable T-yield for the remaining three of the minimum four APH crop years.

(iii) If certified acceptable production records of actual production are available for only the two most recent crop years and there are no zero credited or assigned yields in the producer's APH base period, the approved yield for the current crop year will be calculated on the simple average of the two actual yields plus 90 percent of the applicable T-yield for the remaining two of the minimum four APH crop years.

(iv) If certified acceptable production records of actual production are available for only the three most recent crop years and there are no zero credited or assigned yields in the producer's APH base period, the approved yield for the current crop year will be calculated on the simple average of the three actual yields plus 100 percent of the applicable T-yield for the remaining crop year of the minimum four APH crop years.

\* \* \* \* \*

(j) A producer who has not shared in the risk of the production of the crop for more than two crop years during the base period, as determined by CCC, will have an approved yield calculated based on a combination of 100 percent of the applicable T-yield and any actual yield for the minimum crop years of the producer's APH base period. Producers who have produced the crop for one or two crop years must provide CCC, at the administrative FSA office serving the area in which the crop is located, a certification of production and production records for the applicable crop years in accordance with § 1437.7.

\* \* \* \* \*

■ 18. Redesignate §§ 1437.103, 1437.104, and 1437.105 as §§ 1437.105, 1437.106 and 1437.107, respectively.

■ 19. Add new §§ 1437.103 and 1437.104 to read as follows:

#### **§ 1437.103 Late-planted acreage.**

(a) Producers planting crop acreage after the final planting date and during the late planting period, as determined

by CCC, may be eligible for reduced coverage.

(b) Multiple-planted crops, crops with a growing period of 60 calendar days or less, value-loss crops, and fall season small grain crops intended only for grain are not eligible for reduced coverage under late planting provisions.

(c) For crops with a growing period of:

(1) 61 to 120 calendar days and planted:

(i) One to five calendar days after the final planting date, production will be assigned equal to 5 percent of expected production of the applicable late-planted crop acreage regardless of the day planted.

(ii) Six to twenty calendar days after the final planting date, production will be assigned equal to 5 percent of expected production of the applicable late-planted crop acreage plus an additional one percent of the expected production of the applicable late-planted crop acreage for each day beyond five days.

(iii) 21 or more calendar days after the final planting date, production will be assigned equal to 50 percent of the producer's expected production of the applicable late-planted crop acreage.

(2) 121 days and up and planted:

(i) One to five calendar days after the final planting date, production will be assigned equal to 5 percent of expected production of the applicable late-planted crop acreage regardless of the day planted.

(ii) Six to 25 days after the final planting date, production will be assigned equal to 5 percent of expected production of the applicable late-planted crop acreage plus an additional one percent of the applicable late-planted crop acreage for each day beyond five days.

(iii) 26 or more calendar days after the final planting date, production will be assigned equal to 50 percent of the producer's expected production of the applicable late-planted crop acreage.

#### **§ 1437.104 Assigned production.**

(a) When determining losses under this section, assigned production will be used to offset the loss of production when, as determined by CCC, any of the following has occurred:

(1) The loss is a result of an ineligible cause of loss and the loss has not been otherwise accounted for.

(2) The unit acreage was destroyed without consent notwithstanding § 1437.10(d).

(3) The producer has a contract to receive a guaranteed payment for all or a portion of the production, as opposed to or regardless of delivery of such production.

(4) The crop is planted after the STC-established final planting date according to § 1437.103.

(5) Irrigation equipment is not capable of supplying adequate water to sustain the expected production of a normal irrigated crop.

(6) For normal irrigated annual, biennial, and perennial crops, the irrigation practice is not used.

(7) For normal irrigated annual and biennial crops, the supply of available water at the beginning of the crop year is not adequate.

(8) For normal irrigated perennial crops, the supply of available water at the beginning of the crop year is not adequate as a result of an ineligible cause of loss.

■ 20. Amend newly designated § 1437.105 by revising paragraphs (a)(3) through (a)(5) and adding paragraph (a)(6), to read as follows:

#### **§ 1437.105 Determining payments for low yield.**

(a) \* \* \*

(3) Multiplying the net production of the total eligible acreage by the producer's share;

(4) Subtracting the product of paragraph (a)(3) of this section from the product of paragraph (a)(2) of this section;

(5) Multiplying the difference calculated under paragraph (a)(4) of this section by the final payment price calculated under § 1437.11; and

(6) Multiplying the value of salvage and secondary use by the producer's share and subtracting the result from the result of paragraph (a)(5) of this section.

\* \* \* \* \*

■ 21. Revise § 1437.201 to read as follows:

#### **§ 1437.201 Prevented planting acreage.**

(a) In addition to the provisions of this section, the provisions of § 718.103 of this title shall apply.

(b) When determining losses under this section:

(1) Producers must be prevented from planting more than 35 percent of the total eligible acreage intended for planting to the eligible crop and in the case of multiple planting, more than 35 percent of the total eligible acres intended to be planted within the applicable planting period.

(2) Prevented planted acreage will be considered separately from low-yield losses of planted acreage of the same crop.

(c) Acreage and units ineligible for prevented planting coverage includes, but is not limited to:

(1) Value-loss crops, including, but not limited to, Christmas trees, aquaculture, and ornamental nursery;

(2) Tree crops and other perennials, unless:

(i) The producer can prove resources unique to the planting of tree crops and other perennials were available to plant, grow, and harvest the crop, as determined by CCC; and

(ii) CCC has approved the planting period for the crop;

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

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

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

(6) Acreage planted during the late-planting period.

■ 22. Amend § 1437.202(a) to read as follows:

#### **§ 1437.202 Determining payments for prevented planting.**

(a) Subject to limitations, availability of funds, and specific provisions dealing with specific crops, a payment for prevented planting will be determined by:

(1) Adding the total planted and prevented-planted acres;

(2) Multiplying the sum of paragraph (a)(1) of this section by .35;

(3) Subtracting the product of paragraph (a)(2) of this section from the total prevented planted acres;

(4) Multiplying the producer's share by the approved yield by the positive result of paragraph (a)(3) of this section;

(5) Multiplying the producer's share by the assigned production;

(6) Subtracting the product of paragraph (a)(5) of this section from the product of paragraph (a)(4) of this section; and

(7) Multiplying the result of paragraph (a)(6) of this section by the final payment price calculated under § 1437.11.

\* \* \* \* \*

■ 23. Amend § 1437.401 by revising paragraphs (a), (d) and (f) to read as follows:

#### **§ 1437.401 Forage.**

(a) Forage eligible for benefits under this part is limited to mature vegetation, as determined by CCC, produced in a commercial operation in three or more of the last five crop years, except producers who have not produced forage for the minimum period in order to preserve vegetation and prevent erosion, or otherwise mitigate the

impact of disaster conditions, as determined by CCC, shall not be penalized. Benefits are not available for first-year seeding of alfalfa and similar vegetation when production is not produced in the seeding year, as determined by CCC. The commercial operation must use acceptable farming, pasture and range management practices for the location necessary to sustain sufficient quality and quantity of the vegetation so as to be suitable for grazing livestock or mechanical harvest as hay or seed. Forage to be mechanically harvested shall be treated under the rules for low-yield crops as calculated under § 1437.103, except claims on forage for grazing benefits will be determined according to paragraph (f) of this section. The provisions in this subpart, however, shall govern for all claims including forage for mechanical harvest.

\* \* \* \* \*

(d) Forage acreage reported to CCC as intended to be mechanically harvested, but which is, instead, subsequently grazed, will be considered, for crop definition purposes, as mechanically harvested. Expected production of the specific acreage will be calculated on the basis of carrying capacity. The loss of such grazed forage shall be determined according to paragraph (f) of this section. Except, beginning with the 2005 crop year, for acreage intended to be mechanically harvested which is instead, subsequently grazed, the loss of intended mechanically harvested forage may alternatively be determined based on a review of acceptable production evidence or appraisal of the specific crop acreage. As part of the payment computation for this loss, intended mechanically harvested forage crop acreage that is not mechanically harvested, but instead grazed, shall be deemed to be un-harvested for the purposes of determining a payment factor.

\* \* \* \* \*

(f) CCC will establish forage losses of acreage intended to be grazed including, in some cases, acreage intended to be mechanically harvested but instead subsequently grazed, on the basis of:

(1) The percentages of loss of similar mechanically-harvested forage acreage on the farm, or on similar farms in the area when approved yields have been calculated to determine loss, or

(2) Where there is no similar mechanically-harvested forage acreage on the farm or similar farms in the area, the collective percentage of loss as determined by CCC for the geographical region after consideration of at least two independent assessments of grazed

forage acreage conditions. The assessments shall be completed by forage or range specialists in Federal, State, and local government agencies, educational institutions, and private companies not having a financial interest in the outcome of the assessment. Neither the assessments themselves, nor collective loss percentages established pursuant thereto are subject to appeal. CCC's determinations of geographical area for assessments and collective grazing loss are generally applicable to all similarly situated participants farming in such defined geographical region.

- 24. Amend § 1437.403 by revising paragraphs (f) and (j) to read as follows:

**§ 1437.403 Determining payments.**

\* \* \* \* \*

(f) Multiplying the amount of assigned AUD, as determined by CCC, by the producer's share;

\* \* \* \* \*

(j) Multiplying the result from paragraph (i) of this section by the final payment price established in accordance with § 1437.11.

Signed in Washington, DC, on March 3, 2006.

**Teresa C. Lasseter,**  
Executive Vice-President, Commodity Credit Corporation, and Administrator, Farm Service Agency.

[FR Doc. 06-2548 Filed 3-16-06; 8:45 am]

BILLING CODE 3410-05-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2006-24162; Directorate Identifier 2006-NM-031-AD; Amendment 39-14513; AD 2006-06-05]

RIN 2120-AA64

#### Airworthiness Directives; Boeing Model 720 and 720B Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Boeing Model 720 and 720B series airplanes. This AD requires repetitive inspections for any crack, corrosion, or sign of damage (e.g., finish scratches, blistering, or signs of fuel leaking) of the front spar upper chords under the fairing web, and repair if necessary. This AD results from a report that

inspections required by a previous AD action are inadequate for Boeing Model 720 and 720B series airplanes. We are issuing this AD to detect and correct any crack, corrosion, or sign of damage of the front spar upper chords under the fairing web, which could result in structural failure of the wing.

**DATES:** This AD becomes effective April 3, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 3, 2006.

We must receive comments on this AD by May 16, 2006.

**ADDRESSES:** Use one of the following addresses to submit comments on this AD.

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL-401, Washington, DC 20590.

- Fax: (202) 493-2251.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207, for service information identified in this AD.

**FOR FURTHER INFORMATION CONTACT:**

Candice Gerretsen, Aerospace Engineer, Airframe Branch, ANM-120S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6428; fax (425) 917-6590.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We previously issued AD 2004-22-24, amendment 39-13852 (69 FR 64835, November 9, 2004), for all Boeing Model 707 and 720 series airplanes. That AD requires repetitive detailed and high frequency eddy current inspections for corrosion, signs of corrosion (e.g., blistering or signs of fuel leaks), and cracking, and certain related follow-on and investigative actions if necessary. That AD resulted from a report of a 31-inch crack found during a routine inspection. We issued that AD to find and fix corrosion and stress corrosion cracking of the upper and lower chords on the wing front and rear spars, which could result in reduced structural integrity of the wing.

Since we issued that AD, Boeing has informed us that, for Model 720 and 720B series airplanes, the repetitive inspections required by AD 2004-22-24 do not adequately address the identified unsafe condition. The wing configuration of Model 720 and 720B series airplanes differs from that on Model 707 series airplanes. Model 720 series airplanes have an aerodynamic fairing that extends from the aircraft side of body to the inboard nacelle. This fairing prevents operators from doing the repetitive inspections intended by AD 2004-22-24. Cracks, corrosion, or signs of damage (e.g., finish scratches, blistering or signs of fuel leaking) of the front spar upper chords under the fairing web, if not detected and corrected, could result in structural failure of the wing.

**Relevant Service Information**

We have reviewed Boeing Multi-Operator Message (MOM) 1-151636045-1, dated January 17, 2006. The MOM describes procedures for doing repetitive detailed and high-frequency eddy current (HFEC) inspections for any crack, corrosion, or scratch of the front spar upper chords under the fairing web, and repair if necessary. The HFEC inspection is in the area of the forward face of the vertical flange, from the side of the body to the inboard nacelle (front spar station 107 through 383), from the upper fastener row to the upper edge of the chord flange, and the surface in between. The detailed inspection is of the forward face of the vertical flange from the upper edge of the chord flange to the lower edge of the chord flange. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

**FAA's Determination and Requirements of This AD**

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to detect and correct any crack, corrosion, or sign damage (e.g., finish scratches, blistering, or signs of fuel leaking) of the front spar upper chords under the fairing web, which could result in structural failure of the wing. This AD requires accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the AD and the MOM."