

are expected to be little affected by this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

**PART 301—DOMESTIC QUARANTINE NOTICES**

■ 1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.≤

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.50–3, paragraph (c) is amended as follows:

■ a. By revising the entry for Iowa to read as set forth below.

■ b. In the entry for New Jersey, by adding new counties in alphabetical order to read as set forth below.

**§ 301.50–3 Quarantined areas.**

\* \* \* \* \*  
(c) \* \* \*  
\* \* \* \* \*

Iowa  
The entire State.  
\* \* \* \* \*

New Jersey  
\* \* \* \* \*  
Morris County. The entire county.  
\* \* \* \* \*  
Somerset County. The entire county.  
\* \* \* \* \*

Done in Washington, DC, this 6th day of February 2007.

**Kevin Shea,**  
*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E7–2325 Filed 2–9–07; 8:45 am]

**BILLING CODE 3410–34–P**

**DEPARTMENT OF AGRICULTURE**

**Commodity Credit Corporation**

**7 CFR Part 1416**

**RIN 0560–AH62**

**2006 Emergency Agricultural Disaster Assistance Programs**

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

**ACTION:** Final rule.

**SUMMARY:** This rule sets forth the Commodity Credit Corporation regulations for the 2006 Emergency Agricultural Disaster Assistance. The rule establishes seven disaster programs to provide funds to eligible producers in counties affected by the 2005 hurricanes Katrina, Ophelia, Rita, Wilma, or a related condition. To be eligible, counties must have been designated a major disaster or emergency area by the President or declared a natural disaster by the Secretary of Agriculture. Counties contiguous to such counties will also be eligible.

**DATES:** This rule is effective February 9, 2007.

**FOR FURTHER INFORMATION CONTACT:** Diane Sharp, Director, Production, Emergencies, and Compliance Division; Farm Service Agency; United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517; telephone (202) 720–7641; e-mail *Diane.Sharp@wdc.usda.gov*.

**SUPPLEMENTARY INFORMATION:**

**Background**

This final rule implements the Emergency Agricultural Disaster Assistance Act of 2006, Public Law 109–234, Title III (the Act). During calendar years (CY’s) 2005 and 2006 the

production of agricultural commodities produced in certain counties in Alabama, Arkansas, Florida, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Texas was hindered by widespread and significant destruction caused by hurricanes Katrina, Ophelia, Rita, Wilma. Counties in these States which the President or the Secretary of Agriculture has designated or declared disaster areas during CY 2005, or during 2006 for a request that was pending as of December 31, 2005, and all counties contiguous to these counties, are eligible for emergency disaster assistance under the Act. The Act provides that the Secretary of Agriculture (Secretary) shall use funds of the Commodity Credit Corporation (CCC) to assist producers of agricultural commodities through programs administered by the Farm Service Agency (FSA). All counties, owners, lessees, livestock, crops, losses, must meet all of the eligibility criteria provided in this rule including being the result of the listed hurricanes as provided. The programs are summarized as follows:

- Livestock Compensation Program (LCP). LCP will provide payments to livestock owners and cash lessees (not both for same livestock) for certain feed losses.
- Livestock Indemnity Program II (LIP II). LIP–II will provide benefits to livestock owners and contract growers (not both for same livestock) for certain livestock deaths. For previous LIP programs see 67 FR 7265, February 19, 2002, and 69 FR 23721, April 30, 2004.
- Citrus Disaster Program (Citrus). The 2005 Citrus Program will provide benefits to citrus producers who suffered citrus crop production losses and associated fruit-bearing tree damage, including related clean-up and rehabilitation costs.
- Fruit and Vegetable Disaster Program (Fruit and Vegetable). The Fruit and Vegetable Program will provide benefits to producers who suffered fruit and vegetable crop production losses, including related clean-up costs.
- Tropical Fruit Disaster Assistance Program (Tropical Fruit). The Tropical Fruit Program will provide benefits to producers of carambola, longan, lychee, and mangos who suffered tropical fruit production losses.
- Nursery Disaster Assistance Program (Nursery). The Nursery Program will provide benefits to commercial ornamental nursery and fernery producers who suffered inventory losses and incurred clean-up costs.
- Tree Assistance Program (TAP). The 2005 Hurricane TAP will provide

benefits to producers who suffered tree, bush, or vine losses for site preparation, replacement, rehabilitation, and pruning.

- The 2005 Catfish Grant Program is authorized under the LCP provision of the Act and will provide assistance in the form of grants to states having catfish producers who suffered catfish feed losses.

#### Notice and Comment

Section 3034 of the Act requires that the regulations necessary to implement title III of the Act shall be made without regard to the notice and comment provisions of Section 553 of title 5, United States Code or of the Statement of Policy of the Secretary effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking, or the Paperwork Reduction Act. Thus, this rule is issued as final and is effective immediately.

#### Executive Order 12866

This rule has been determined to be economically significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget. A Cost-Benefit Analysis (CBA) was completed and is available from the contact person listed above.

#### Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act since the Farm Service Agency is not required to publish a notice of proposed rulemaking for this rule.

#### Environmental Review

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), the FSA regulations for compliance with NEPA at 7 CFR part 799, and Section 106 of the National Historic Preservation Act. The following programs were determined to have no potential impact upon the human and natural environment because they solely involve the transfer of funds to offset production- and disaster-related losses with no site-specific or ground-disturbing activities occurring as a requirement or an immediate result of program implementation: Livestock Compensation Program, Livestock Indemnity Program II, 2005 Hurricane Citrus Disaster Program, 2005 Hurricane Fruit and Vegetable Disaster Program, 2005 Hurricane Tropical Fruit Disaster Program, 2005 Hurricane Nursery

Disaster Assistance and 2005 Catfish Grant Program. Therefore, no environmental assessment was needed for these programs.

FSA is currently completing a Programmatic Environmental Assessment (PEA) on the 2005 Hurricanes Tree Assistance Program to examine the potential impacts of program implementation on the human and natural environments. No benefit shall be paid under the program until FSA has completed the PEA and issued a decision document.

#### Executive Order 12372

This program is not subject to the provisions of 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).

#### Executive Order 12612

This rule does not have Federalism implications that warrant the preparation of a Federalism Assessment. This rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

#### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This interim rule is not retroactive and it does not preempt State law. Before any judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

#### Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local, and tribal government or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### Paperwork Reduction Act

Section 3034(b)(3) of the Act provides that the regulations necessary to implement title III of the Act shall be promulgated without regard to the Paperwork Reduction Act, 44 U.S.C. 35.

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

This rule has been determined to be Major under the Small Business Regulatory Enforcement Fairness Act of 1996, (Pub. L. 104–121) (SBREFA). SBREFA normally requires that an

agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. Section 808 of SBREFA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. Accordingly, FSA finds that it would be contrary to the public interest to delay implementation of this rule because it would significantly delay assistance to the many people affected by the hurricane disasters addressed by this rule. This rule is thus effective immediately.

#### 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 FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The regulation is available at <http://www.fsa.usda.gov> under the heading 'Other Partners.'

#### E-Government Act Compliance

CCC is committed to complying with the E-Government Act to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-GOV compliance related to this rule, please contact the person named above under the information contact section.

#### Summary of Economic Impacts

##### Crops

Florida and Louisiana sustained the most damage from the 2005 hurricane season. According to the Florida State Department of Agriculture, losses for citrus, vegetable, tropical fruit, and nursery damage by the 2005 hurricanes was estimated at \$1.7 billion and the Louisiana State University Ag Center reports damage of \$35.8 million. For example, Florida Citrus Mutual reports there were nearly 352,000 acres of citrus affected for Hurricane Wilma alone. There were 152,000 acres in Tier 1, 95,000 acres in Tier 2, 79,000 acres in Tier 3 and 26,000 acres in Tier 4. Based on the tier payment system Florida citrus payments alone could be more than \$350 million for producers without insurance or NAP coverage and \$368 million for producers with insurance or NAP coverage. However, most producers have received some form of

payment already and are not eligible to receive payment under this program due to the payment limitations provisions. As of November 14, 2006, the Federal Crop Insurance Cooperation (FCIC) has paid out \$463.8 million, including nearly \$60 million for citrus. Limited payment data from other payment sources prevents a definite calculation of payments paid to producers to date. Eligible producers' payments are not expected to exceed \$95 million. If payments exceed \$95 million, payments to eligible producers will be reduced by a uniform national percentage determined by CCC.

#### *Livestock*

The estimated \$50 million in expected claims for the 2006 LIP-II (\$30 million) and the 2006 LCP (\$20 million) are expected to significantly affect individual farmers; however these programs are not expected to have noticeable effects on aggregate social welfare. In comparison, FSA paid \$16.9 billion to farmers and ranchers in fiscal 2005, with the largest payments category being \$8 billion paid under the Direct and Counter Cyclical Program. However, payments to individual claimants should provide needed monetary relief from significant financial losses suffered as a result of conditions related to the 2005 Hurricanes.

#### *Trees*

Estimated TAP program payments range from \$4.6 million to \$8.6 million, with a most likely estimate of \$5.5 million. Throughout the range of estimates, Florida comprises 63 percent of the estimated damage to fruit and nut trees, vines and bushes, and thus would receive a similar level of total TAP assistance.

#### **List of Subjects for 7 CFR Part 1416**

Agriculture, Citrus fruits, Disaster assistance, Fish, Livestock, Nursery stock.

■ For the reasons set forth above, 7 CFR part 1416 is added as follows:

### **PART 1416—2006 EMERGENCY AGRICULTURAL DISASTER ASSISTANCE PROGRAMS**

#### **Subpart A—General Provisions for 2006 Emergency Agricultural Disaster Assistance Programs**

Sec.

- 1416.1 Applicability.
- 1416.2 Eligible counties, hurricanes, and disaster periods.
- 1416.3 Administration.
- 1416.4 Definitions.
- 1416.5 Application for payment.

- 1416.6 Limitations on payments and other benefits.
- 1416.7 Insurance requirements.
- 1416.8 Appeals.
- 1416.9 Offsets, assignments, and debt settlement.
- 1416.10 Records and inspections thereof.
- 1416.11 Refunds; joint and several liability.

#### **Subpart B—Livestock Compensation Program**

- 1416.100 Applicability.
- 1416.101 Definitions.
- 1416.102 Eligible livestock and producers.
- 1416.103 Application process.
- 1416.104 Payment calculation.
- 1416.105 Availability of funds.

#### **Subpart C—Livestock Indemnity Program II**

- 1416.200 Applicability.
- 1416.201 Definitions.
- 1416.202 Eligible owners and contract growers.
- 1416.203 Eligible livestock.
- 1416.204 Application process.
- 1416.205 Payment calculation.
- 1416.206 Availability of funds.

#### **Subpart D—Citrus Disaster Program**

- 1416.300 Applicability.
- 1416.301 Definitions.
- 1416.302 Eligible crops and producers.
- 1416.303 Application process.
- 1416.304 Payment calculations.
- 1416.305 Availability of funds.

#### **Subpart E—Fruit and Vegetable Disaster Program**

- 1416.400 Applicability.
- 1416.401 Definitions.
- 1416.402 Eligible fruit and vegetable producers.
- 1416.403 Application process.
- 1416.404 Payment calculations.
- 1416.405 Availability of funds.

#### **Subpart F—Tropical Fruit Disaster Program**

- 1416.500 Applicability.
- 1416.501 Definitions.
- 1416.502 Eligibility requirements.
- 1416.503 Application process.
- 1416.504 Payment calculation.
- 1416.505 Availability of funds.

#### **Subpart G—Nursery Disaster Program**

- 1416.600 Applicability.
- 1416.601 Eligibility requirements.
- 1416.602 Application process.
- 1416.603 Payment calculations.
- 1416.604 Availability of funds.

#### **Subpart H—2005 Hurricane Tree Assistance Program**

- 1416.700 Applicability.
- 1416.701 Definitions.
- 1416.702 Eligible producers and stands.
- 1416.703 Application process.
- 1416.704 Payment calculation.
- 1416.705 Obligations of a participant.

#### **Subpart I—2005 Catfish Grant Program**

- 1416.800 General.

**Authority:** Title III, Pub. L. 109-234, 120 Stat. 474; 16 U.S.C. 3801, note.

### **Subpart A—General Provisions for 2006 Emergency Agricultural Disaster Assistance Programs**

#### **§ 1416.1 Applicability.**

(a) This part establishes the terms and conditions under which the following programs will be administered under Title III of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 for producers affected by the 2005 hurricanes listed in § 1416.2:

- (1) Livestock Compensation Program (LCP);
- (2) Livestock Indemnity Program II (LIP II);
- (3) Citrus Disaster Program (Citrus Disaster);
- (4) Fruit and Vegetable Disaster Program (Fruit and Vegetable Disaster);
- (5) Tropical Fruit Disaster Program (Tropical Fruit);
- (6) Nursery Disaster Program (Nursery);
- (7) 2005 Hurricane Tree Assistance Program (Hurricane TAP);
- (8) Catfish Grant Program (Catfish Grants).

(b) The amount that may be expended for payments under subparts B through I of this part shall not exceed the amounts authorized in Title III of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006.

(c) To be eligible for payments under these programs, producers must comply with all applicable provisions under subparts B through I of this part.

#### **§ 1416.2 Eligible counties, hurricanes, and disaster periods.**

(a) Except as provided in paragraph (c) of this section, the Commodity Credit Corporation (CCC) will provide assistance under the programs listed in § 1416.1 to eligible producers who have suffered certain losses due to 2005 hurricanes Katrina, Ophelia, Rita, or Wilma, or a related condition, in the counties provided in paragraph (d) of this section. CCC funds for the programs in subparts B through I of this part are made available under the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006.

(b) The "Disaster Period" is the time period in which losses occurred that may be considered eligible for the programs under subparts B, C, H and I of this part.

(c) The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 provides that no

producer receives duplicative payments under the programs in subparts B through I of this part and any other Federal program for the same loss. Under the regulations at 7 CFR part 760, Subpart E, eligible livestock owners and contract growers were provided benefits for certain livestock deaths that occurred as a result of 2005 hurricanes Dennis, Katrina, Ophelia, Rita, or Wilma in many of the same counties as provided in paragraph (d) of this

section. The benefits provided under 7 CFR part 760, Subpart E, are significantly greater than the benefits to be provided under Subpart C of this part. Accordingly, to ensure the statutory requirement that no producer receives duplicative payments under the program in Subpart C of this section and any other Federal program for the same loss, eligible livestock under the program in Subpart C of this section shall be limited to catfish and crawfish

in any county listed in paragraph (d) of this section that was an eligible county under 7 CFR 760.101.

(d) Counties are eligible for emergency disaster assistance under this Act if they received a Presidential designation or Secretarial declaration or are counties contiguous to such counties. Accordingly, the following counties are eligible:

State	County	Disaster period			
		Katrina	Ophelia	Rita	Wilma
Alabama	Baldwin	8/29/05–10/28/05			
Alabama	Bibb	8/29/05–10/28/05			
Alabama	Blount	8/29/05–10/28/05			
Alabama	Butler	8/29/05–10/28/05			
Alabama	Chilton	8/29/05–10/28/05			
Alabama	Choctaw	8/29/05–10/28/05			
Alabama	Clarke	8/29/05–10/28/05			
Alabama	Colbert	8/29/05–10/28/05			
Alabama	Conecuh	8/29/05–10/28/05			
Alabama	Covington	8/29/05–10/28/05			
Alabama	Cullman	8/29/05–10/28/05			
Alabama	Dallas	8/29/05–10/28/05			
Alabama	Escambia	8/29/05–10/28/05			
Alabama	Fayette	8/29/05–10/28/05			
Alabama	Franklin	8/29/05–10/28/05		9/23/05–11/22/05	
Alabama	Geneva	8/29/05–10/28/05			
Alabama	Greene	8/29/05–10/28/05			
Alabama	Hale	8/29/05–10/28/05			
Alabama	Jefferson	8/29/05–10/28/05			
Alabama	Lamar	8/29/05–10/28/05			
Alabama	Lauderdale	8/29/05–10/28/05			
Alabama	Lawrence	8/29/05–10/28/05			
Alabama	Limestone	8/29/05–10/28/05			
Alabama	Lowndes	8/29/05–10/28/05			
Alabama	Marengo	8/29/05–10/28/05			
Alabama	Marion	8/29/05–10/28/05			
Alabama	Marshall	8/29/05–10/28/05			
Alabama	Mobile	8/29/05–10/28/05			
Alabama	Monroe	8/29/05–10/28/05			
Alabama	Morgan	8/29/05–10/28/05			
Alabama	Perry	8/29/05–10/28/05			
Alabama	Pickens	8/29/05–10/28/05			
Alabama	St. Clair	8/29/05–10/28/05			
Alabama	Shelby	8/29/05–10/28/05			
Alabama	Sumter	8/29/05–10/28/05			
Alabama	Tuscaloosa	8/29/05–10/28/05			
Alabama	Walker	8/29/05–10/28/05			
Alabama	Washington	8/29/05–10/28/05			
Alabama	Wilcox	8/29/05–10/28/05			
Alabama	Winston	8/29/05–10/28/05			
Arkansas	Ashley	8/29/05–10/28/05		9/23/05–11/22/05	
Arkansas	Chicot	8/29/05–10/28/05		9/23/05–11/22/05	
Arkansas	Columbia	8/29/05–10/28/05		9/23/05–11/22/05	
Arkansas	Crittenden	8/29/05–10/28/05		9/23/05–11/22/05	
Arkansas	Desha	8/29/05–10/28/05		9/23/05–11/22/05	
Arkansas	Lafayette	8/29/05–10/28/05		9/23/05–11/22/05	
Arkansas	Lee	8/29/05–10/28/05		9/23/05–11/22/05	
Arkansas	Miller	8/29/05–10/28/05		9/23/05–11/22/05	
Arkansas	Phillips	8/29/05–10/28/05		9/23/05–11/22/05	
Arkansas	St. Francis	8/29/05–10/28/05		9/23/05–11/22/05	
Arkansas	Union	8/29/05–10/28/05		9/23/05–11/22/05	
Florida	Bay	8/24/05–10/23/05			
Florida	Brevard				10/23/05–12/22/05
Florida	Broward	8/24/05–10/23/05			10/23/05–12/22/05
Florida	Calhoun	8/24/05–10/23/05			
Florida	Charlotte				10/23/05–12/22/05
Florida	Collier	8/24/05–10/23/05			10/23/05–12/22/05
Florida	De Soto				10/23/05–12/22/05

State	County	Disaster period			
		Katrina	Ophelia	Rita	Wilma
Florida	Escambia	8/24/05–10/23/05			
Florida	Franklin	8/24/05–10/23/05			
Florida	Glades				10/23/05–12/22/05
Florida	Gulf	8/24/05–10/23/05			
Florida	Hardee				10/23/05–12/22/05
Florida	Hendry				10/23/05–12/22/05
Florida	Highlands				10/23/05–12/22/05
Florida	Hillsborough				10/23/05–12/22/05
Florida	Holmes	8/24/05–10/23/05			
Florida	Indian River				10/23/05–12/22/05
Florida	Jackson	8/24/05–10/23/05			
Florida	Lee				10/23/05–12/22/05
Florida	Liberty	8/24/05–10/23/05			
Florida	Manatee				10/23/05–12/22/05
Florida	Martin				10/23/05–12/22/05
Florida	Miami-Dade	8/24/05–10/23/05			10/23/05–12/22/05
Florida	Monroe	8/24/05–10/23/05			10/23/05–12/22/05
Florida	Okaloosa	8/24/05–10/23/05			
Florida	Okeechobee				10/23/05–12/22/05
Florida	Orange				10/23/05–12/22/05
Florida	Osceola				10/23/05–12/22/05
Florida	Palm Beach				10/23/05–12/22/05
Florida	Polk				10/23/05–12/22/05
Florida	St. Lucie				10/23/05–12/22/05
Florida	Santa Rosa	8/24/05–10/23/05			
Florida	Sarasota				10/23/05–12/22/05
Florida	Volusia				10/23/05–12/22/05
Florida	Wakulla	8/24/05–10/23/05			
Florida	Walton	8/24/05–10/23/05			
Florida	Washington	8/24/05–10/23/05			
Louisiana	Acadia	8/29/05–10/23/05		9/23/05–11/22/05	
Louisiana	Allen	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Ascension	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Assumption	8/29/05–10/28/05			
Louisiana	Avoyelles	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Beauregard	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Bienville	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Bossier	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Caddo	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Calcasieu	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Caldwell	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Cameron	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Catahoula	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Claiborne	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Concordia	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	De Soto	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	East Baton Rouge	8/29/05–10/28/05			
Louisiana	East Carroll	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	East Feliciana	8/29/05–10/28/05			
Louisiana	Evangeline	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Franklin	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Grant	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Iberia	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Iberville	8/29/05–10/28/05			
Louisiana	Jackson	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Jefferson	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Jefferson Davis	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Lafayette	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Lafourche	8/29/05–10/28/05			
Louisiana	La Salle	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Lincoln	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Livingston	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Madison	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Morehouse	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Natchitoches	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Orleans	8/29/05–10/28/05			
Louisiana	Ouachita	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Plaquemines	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Pointe Coupee	8/29/05–10/28/05			
Louisiana	Rapides	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Red River	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Richland	8/29/05–10/28/05		9/23/05–11/22/05	

State	County	Disaster period			
		Katrina	Ophelia	Rita	Wilma
Louisiana	Sabine	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	St. Bernard	8/29/05–10/28/05			
Louisiana	St. Charles	8/29/05–10/28/05			
Louisiana	St. Helena	8/29/05–10/28/05			
Louisiana	St. James	8/29/05–10/28/05			
Louisiana	St. John the Baptist	8/29/05–10/28/05			
Louisiana	St. Landry	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	St. Martin	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	St. Mary	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	St. Tammany	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Tangipahoa	8/29/05–10/28/05			
Louisiana	Tensas	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Terrebonne	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Union	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Vermilion	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Vernon	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	Washington	8/29/05–10/28/05			
Louisiana	Webster	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	West Baton Rouge	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	West Carroll	8/29/05–10/28/05		9/23/05–11/22/05	
Louisiana	West Feliciana	8/29/05–10/28/05			
Louisiana	Winn	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Adams	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Alcorn	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Amite	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Attala	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Benton	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Bolivar	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Calhoun	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Carroll	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Chickasaw	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Choctaw	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Claiborne	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Clarke	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Clay	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Coahoma	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Copiah	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Covington	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	De Soto	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Forrest	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Franklin	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	George	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Greene	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Grenada	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Hancock	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Harrison	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Hinds	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Holmes	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Humphreys	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Issaquena	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Itawamba	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Jackson	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Jasper	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Jefferson	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Jefferson Davis	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Jones	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Kemper	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Lafayette	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Lamar	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Lauderdale	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Lawrence	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Leake	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Lee	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Leflore	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Lincoln	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Lowndes	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Madison	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Marion	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Marshall	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Monroe	8/29/05–10/28/05		9/23/05–11/22/05	
Mississippi	Montgomery	8/29/05–10/28/05		9/23/05–11/22/05	

State	County	Disaster period			
		Katrina	Ophelia	Rita	Wilma
Mississippi	Neshoba	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Newton	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Noxubee	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Oktibbeha	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Panola	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Pearl River	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Perry	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Pike	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Pontotoc	8/29/05-10/28/05			
Mississippi	Prentiss	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Quitman	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Rankin	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Scott	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Sharkey	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Simpson	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Smith	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Stone	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Sunflower	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Tallahatchie	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Tate	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Tippah	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Tishomingo	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Tunica	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Union	8/29/05-10/28/05			
Mississippi	Walthall	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Warren	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Washington	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Wayne	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Webster	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Wilkinson	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Winston	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Yalobusha	8/29/05-10/28/05		9/23/05-11/22/05	
Mississippi	Yazoo	8/29/05-10/28/05		9/23/05-11/22/05	
North Carolina	Beaufort		9/11/05-11/10/05		
North Carolina	Bladen		9/11/05-11/10/05		
North Carolina	Brunswick		9/11/05-11/10/05		
North Carolina	Carteret		9/11/05-11/10/05		
North Carolina	Columbus		9/11/05-11/10/05		
North Carolina	Craven		9/11/05-11/10/05		
North Carolina	Currituck		9/11/05-11/10/05		
North Carolina	Dare		9/11/05-11/10/05		
North Carolina	Duplin		9/11/05-11/10/05		
North Carolina	Hyde		9/11/05-11/10/05		
North Carolina	Jones		9/11/05-11/10/05		
North Carolina	Lenoir		9/11/05-11/10/05		
North Carolina	New Hanover		9/11/05-11/10/05		
North Carolina	Onslow		9/11/05-11/10/05		
North Carolina	Pamlico		9/11/05-11/10/05		
North Carolina	Pender		9/11/05-11/10/05		
North Carolina	Pitt		9/11/05-11/10/05		
North Carolina	Sampson		9/11/05-11/10/05		
North Carolina	Tyrell		9/11/05-11/10/05		
North Carolina	Washington		9/11/05-11/10/05		
South Carolina	Horry		9/11/05-11/10/05		
Tennessee	Fayette	8/29/05-10/28/05		9/23/05-11/22/05	
Tennessee	Giles	8/29/05-10/28/05			
Tennessee	Hardeman	8/29/05-10/28/05		9/23/05-11/22/05	
Tennessee	Hardin	8/29/05-10/28/05		9/23/05-11/22/05	
Tennessee	Lawrence	8/29/05-10/28/05			
Tennessee	McNairy	8/29/05-10/28/05		9/23/05-11/22/05	
Tennessee	Shelby	8/29/05-10/28/05		9/23/05-11/22/05	
Tennessee	Wayne	8/29/05-10/28/05			
Texas	Anderson			9/23/05-11/22/05	
Texas	Angelina			9/23/05-11/22/05	
Texas	Austin			9/23/05-11/22/05	
Texas	Brazoria			9/23/05-11/22/05	
Texas	Cass	8/29/05-10/28/05		9/23/05-11/22/05	
Texas	Chambers			9/23/05-11/22/05	
Texas	Cherokee			9/23/05-11/22/05	
Texas	Fort Bend			9/23/05-11/22/05	
Texas	Galveston			9/23/05-11/22/05	
Texas	Gregg			9/23/05-11/22/05	

State	County	Disaster period			
		Katrina	Ophelia	Rita	Wilma
Texas	Grimes	.....	.....	9/23/05–11/22/05	.....
Texas	Hardin	.....	.....	9/23/05–11/22/05	.....
Texas	Harris	.....	.....	9/23/05–11/22/05	.....
Texas	Harrison	.....	.....	9/23/05–11/22/05	.....
Texas	Henderson	.....	.....	9/23/05–11/22/05	.....
Texas	Houston	.....	.....	9/23/05–11/22/05	.....
Texas	Jasper	.....	.....	9/23/05–11/22/05	.....
Texas	Jefferson	.....	.....	9/23/05–11/22/05	.....
Texas	Leon	.....	.....	9/23/05–11/22/05	.....
Texas	Liberty	.....	.....	9/23/05–11/22/05	.....
Texas	Madison	.....	.....	9/23/05–11/22/05	.....
Texas	Marion	.....	.....	9/23/05–11/22/05	.....
Texas	Matagorda	.....	.....	9/23/05–11/22/05	.....
Texas	Montgomery	.....	.....	9/23/05–11/22/05	.....
Texas	Morris	.....	.....	9/23/05–11/22/05	.....
Texas	Nacogdoches	.....	.....	9/23/05–11/22/05	.....
Texas	Newton	.....	.....	9/23/05–11/22/05	.....
Texas	Orange	.....	.....	9/23/05–11/22/05	.....
Texas	Panola	.....	.....	9/23/05–11/22/05	.....
Texas	Polk	.....	.....	9/23/05–11/22/05	.....
Texas	Rusk	.....	.....	9/23/05–11/22/05	.....
Texas	Sabine	.....	.....	9/23/05–11/22/05	.....
Texas	San Augustine	.....	.....	9/23/05–11/22/05	.....
Texas	San Jacinto	.....	.....	9/23/05–11/22/05	.....
Texas	Shelby	.....	.....	9/23/05–11/22/05	.....
Texas	Smith	.....	.....	9/23/05–11/22/05	.....
Texas	Trinity	.....	.....	9/23/05–11/22/05	.....
Texas	Tyler	.....	.....	9/23/05–11/22/05	.....
Texas	Upshur	.....	.....	9/23/05–11/22/05	.....
Texas	Walker	.....	.....	9/23/05–11/22/05	.....
Texas	Waller	.....	.....	9/23/05–11/22/05	.....
Texas	Wharton	.....	.....	9/23/05–11/22/05	.....

**§ 1416.3 Administration.**

(a) These programs are administered under the general supervision of the Administrator, Farm Service Agency (FSA), or Executive Vice President of CCC.

(b) CCC representatives do not have authority to modify or waive any of the provisions of the regulations of subparts B through I of this part.

(c) The State FSA committee shall take any action required by the regulations of subparts B through H of this part that the county FSA committee has not taken. The State committee shall also:

- (1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with the regulations of subparts B through H of this part; or
- (2) Require a county committee to withhold taking any action that is not in accordance with subparts B through H of this part.

(d) No provision or delegation to a State or county FSA committee shall preclude the Executive Vice President, CCC, FSA Deputy Administrator for Farm Programs (Deputy Administrator), or a designee of such, from determining any question arising under the program or from reversing or modifying any

determination made by a State or county FSA committee.

**§ 1416.4 Definitions.**

The following definitions apply to the programs in subparts B through H of this part. The definitions in parts 718 and 1400 of this chapter shall also apply, except where they conflict with the definitions in this section.

*Application period* means the date established by the Deputy Administrator for producers to apply for program benefits.

*Bush* means a thick densely branched woody shrub grown in the ground for the production of an annual crop for commercial market for human consumption.

*Commercial use* means used in the operation of a business activity engaged in as a means of livelihood for profit by the eligible producer.

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

*Farming operation* means a business enterprise engaged in producing agricultural products.

*Owner* means one who had legal ownership of the trees, bushes, vines, or livestock for which benefits are being

requested under subparts B through H, on the day such plant or livestock perished or suffered losses due to an eligible hurricane.

*Tier* means the geographic bands of damage generally correlating to the severity of damage caused by the maximum sustained winds of the applicable hurricanes.

*Tree* means a tree (including a Christmas tree, ornamental tree, nursery tree, and potted tree).

*Vine* means a perennial plant grown under normal conditions from which an annual fruit crop is produced for commercial market for human consumption, such as grape, kiwi, or passion fruit that has a flexible stem supported by climbing, twining, or creeping along a surface.

**§ 1416.5 Application for payment.**

(a) A producer who applies for any program under subparts B through H of this part shall submit an application and required supporting documentation to the county FSA office serving the county where the eligible loss occurred; or in the case of LCP, where the eligible livestock were physically located on the applicable date.

(b) The application must be filed during the application period



announced by the Deputy Administrator.

(c) Payments may be made for eligible 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.

(d) Data furnished by the applicant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without all required data program benefits will not be approved or provided.

(e) A minor child shall be eligible to apply for program benefits so long as all eligibility requirements are met and one of the following conditions exists:

(1) The right of majority has been conferred upon the minor by court proceedings or statute;

(2) A guardian has been appointed to manage the minor's property, and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which a surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

#### **§ 1416.6 Limitations on payments and other benefits.**

(a) A producer may receive no more than \$80,000 under LCP, subpart B of this part.

(b) A producer may receive no more than \$80,000 under LIP—II, subpart C of this part.

(c) A single producer may receive no more than \$80,000 total combined payments from subpart D of this part, the Citrus Disaster Program, subpart E of this part, the Fruit and Vegetable Program, subpart F of this part, the Tropical Fruit Program, and subpart G of this part, the Nursery Program.

(d) Limits per person for payments made under subpart I of this part for Catfish Grants will be \$80,000 per producer. This limit shall be enforced by the State administering the grant program.

(e) An individual or entity whose adjusted gross income is in excess of \$2.5 million, as determined under part 1400 of this title, shall not be eligible to receive benefits under this part, except for TAP and Catfish Grants.

(f) As a condition to receive benefits under this part, a producer must have

been in compliance with the provisions of parts 12 and 718 of this title for the 2005 crop year and must not otherwise be barred from receiving benefits under any law.

(g) An individual or entity determined to be a foreign person under part 1400 of this title shall not be eligible to receive benefits under this part.

(h) In addition to limitations provided in each subpart of this part, producers cannot receive duplicate benefits under this part and any other Federal programs for the same loss, including but not limited to the following:

(1) Crop insurance indemnity payments under 7 CFR Part 400;

(2) The Noninsured Crop Disaster Assistance Program, part 1437 of this chapter;

(3) Part 701 of this title, the Emergency Conservation Program;

(4) The Hurricane Indemnity Program, subpart C of part 760 of this title.

(i) An applicant's actual loss or actual costs incurred because of losses due to an eligible hurricane must equal or exceed the benefit requested under this part.

#### **§ 1416.7 Insurance requirements.**

For the Citrus, Fruit and Vegetable, Tropical Fruit and Nursery Disaster Programs:

(a) Payment rates for producers who did not have crop insurance or coverage under the Noninsured Crop Disaster Assistance Program (NAP) will be 5 percent less than the rates received by producers who did have crop insurance or NAP coverage.

(b) Eligible producers who elected to not purchase crop insurance on an insurable crop, or to sign up for NAP that was available on an uninsurable crop for which benefits are received under these programs, must purchase such coverage for the next available coverage period in the form of:

(1) Crop insurance that is, at a minimum, at least at the catastrophic level on that crop, although producers required to purchase a citrus policy may purchase a fruit or tree policy; or

(2) NAP coverage.

(c) If a producer who is required to purchase crop insurance or NAP for the applicable year fails to do so, the producer must refund any disaster payment made under these programs. Required refunds will be serviced as a claim under part 1403 of this chapter.

#### **§ 1416.8 Appeals.**

The appeal regulations set forth at parts 11 and 780 of this title apply to determinations made pursuant to subparts B through H of this part.

#### **§ 1416.9 Offsets, assignments, and debt settlement.**

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any producer shall be made without regard to questions of title under State law and without regard to any claim or lien against the commodity, 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 parts 792 and 1403 of this title apply to payments made under subparts B through H of 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.

#### **§ 1416.10 Records and inspections thereof.**

Producers receiving payments under the programs in subparts B through H or any other person who furnishes information for the purposes of enabling such producer to receive a payment under subparts B through H of this part shall maintain any books, records, and accounts supporting any information so furnished for 3 years following the end of the year during which the application for payment was filed. Producers receiving payments or any other person who furnishes such information to CCC shall permit authorized representatives of USDA and the General Accounting Office during regular business hours to inspect, examine, and to allow such persons to make copies of such books or records, and to enter upon, inspect and verify all applicable livestock and acreage in which the applicant has an interest for the purpose of confirming the accuracy of the information provided by the applicant.

#### **§ 1416.11 Refunds; joint and several liability.**

In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under subparts B through H of this part, and if any refund of a payment to CCC shall otherwise become due in connection with this part, all payments made in regard to such matter shall be refunded to CCC together with interest and late-payment charges as provided for in part 792 of this title.

#### **Subpart B—Livestock Compensation Program**

##### **§ 1416.100 Applicability.**

This subpart sets forth the terms and conditions applicable to the Livestock Compensation Program (LCP).

**§ 1416.101 Definitions.**

The following definitions apply to this subpart.

*Adult beef bulls* means male bovine animals that were at least 2 years old and used for breeding purposes on the beginning date of the applicable disaster period.

*Adult beef cows* means female bovine animals that had delivered one or more offspring before the beginning date of the disaster period. A first-time bred beef heifer shall also be considered an adult beef cow if it was pregnant on the beginning date of the disaster period.

*Adult buffalo and beefalo bulls* means male animals of those breeds that were at least 2 years old and used for breeding purposes on the beginning date of the disaster period.

*Adult buffalo and beefalo cows* means female animals of those breeds that had delivered one or more offspring before the beginning date of the applicable disaster period. A first-time bred buffalo or beefalo heifer shall also be considered to be an adult buffalo or beefalo cow if it was pregnant on the beginning date of the disaster period.

*Adult dairy bulls* means male bovine animals of a breed used for producing milk for human consumption that were at least 2 years old and used for breeding dairy cows on the beginning date of the disaster period.

*Adult dairy cows* means female bovine animals used for the purpose of providing milk for human consumption that had delivered one or more offspring before the beginning date of the disaster period. A first-time bred dairy heifer shall also be considered an adult dairy cow if it was pregnant on the beginning date of the disaster period.

*Agricultural operation* means a farming operation.

*Application* means the "2005 Hurricanes Livestock Compensation Program Application" form.

*Disaster period* means the applicable disaster period as set forth in § 1416.2.

*Equine animal* means a domesticated horse, mule or donkey.

*Goat* means a domesticated, ruminant mammal of the genus *Capra*, including Angora goats.

*Non-adult beef cattle* means male, female or neutered male bovine animals that weighed 500 pounds or more on the beginning date of the disaster period, but do not meet the definition of adult beef cows or bulls.

*Non-adult buffalo/beefalo* means male, female or neutered male animals of those breeds that weighed 500 pounds or more on the beginning date of the disaster period, but do not meet the definition of an adult buffalo or beefalo cow or bull.

*Non-adult dairy cattle* means male, female or neutered male bovine livestock, of a breed used for the purpose of providing milk for human consumption, that weighed 500 pounds or more on the beginning date of the disaster period, but do not meet the definition adult dairy cows or bulls.

*Poultry* means domesticated chickens, turkeys, ducks and geese. Poultry will be further delineated by sex, age and purpose of production, as determined by CCC.

*Sheep* means domesticated, ruminant mammals of the genus *Ovis*.

*Swine* means domesticated omnivorous pigs, hogs, and boars. Swine will be further delineated by sex and weight as determined by CCC.

**§ 1416.102 Eligible livestock and producers.**

(a) To be considered eligible, livestock must meet all the following conditions:

(1) Be adult or non-adult dairy cattle, beef cattle, buffalo, beefalo, equine, poultry, elk, reindeer, sheep, goats, swine or deer;

(2) Been physically located in an eligible county on the beginning date of the disaster period;

(3) Been maintained for commercial use as part of a farming operation on the beginning date of the disaster period; and

(4) Not have been produced and maintained for reasons other than commercial use as part of a farming operation. Such excluded uses include, but are not limited to wild free roaming animals or animals used for recreational purposes, such as pleasure, hunting, pets, or for show.

(b) To be considered an eligible livestock producer, a producer must have:

(1) Owned or cash-leased, but not both for the same livestock, eligible livestock on the beginning date of the disaster period; and

(2) Suffered a loss of feed:

(i) From produced or purchased forage or feedstuffs which was:

(A) Damaged or destroyed by an eligible hurricane; and

(B) Physically located in an eligible county; and

(C) Intended for use as feed for only the livestock found eligible under paragraph (a) of this section.

(ii) The value of such loss, as determined by CCC, equals or exceeds the amount calculated according to § 1416.104(a).

**§ 1416.103 Application process.**

(a) Applicants must submit to CCC:

(1) A completed application in accordance with § 1416.5;

(2) Adequate proof, as determined by CCC, that the feed lost:

(i) Was for the claimed eligible livestock;

(ii) Occurred as a direct result of the eligible hurricane during the disaster period; and

(iii) Had a value, as determined by CCC, equal to or greater than the amount calculated in accordance with § 1416.104(a); and

(iv) Any other supporting documentation as determined by CCC to be necessary to make a determination of eligibility of the applicant. Supporting documents include, but are not limited to: verifiable purchase records; veterinarian records; bank or other loan papers; rendering truck receipts; Federal Emergency Management Agency records; National Guard records; written contracts; production records; Internal Revenue Service records; property tax records; private insurance documents; sales records, and similar documents.

(b) [Reserved]

**§ 1416.104 Payment calculation.**

(a) LCP payments are calculated by multiplying the national payment rate for each livestock category, as provided in paragraph (c) of this section, by the number of eligible livestock in each category. The national payment rate represents the cost of the amount of corn needed to maintain the specific livestock for 30 days, as determined by CCC. Adjustments shall be applied in accordance with paragraph (b) of this section and § 1416.105;

(b) The LCP payment calculated in accordance with paragraph (a) of this section shall be reduced by the amount the applicant received for the specific livestock under the Feed Indemnity Program in accordance with subpart D of part 760 of this title.

(c) The eligible livestock categories are:

- (1) Adult beef cows or bulls;
- (2) Non-adult beef cattle;
- (3) Adult buffalo or beefalo cows or bulls;
- (4) Non-adult buffalo or beefalo;
- (5) Adult dairy cows or bulls;
- (6) Non-adult dairy cattle;
- (7) Goats;
- (8) Sheep;
- (9) Equine;
- (10) Reindeer;
- (11) Elk;
- (12) Poultry; and
- (13) Deer.

**§ 1416.105 Availability of funds.**

(a) In the event that the total amount of eligible claims submitted under this subpart and subpart I of this part exceeds \$95 million, each payment shall

be reduced by a uniform national percentage, as determined by CCC,

(b) Such payment reduction shall be applied after the imposition of per-person payment limitations as provided in § 1416.6.

### Subpart C—Livestock Indemnity Program II

#### § 1416.200 Applicability.

(a) This subpart sets forth the terms and conditions applicable to the Livestock Indemnity Program II (LIP-II).

(b) Eligible livestock owners and contract growers will be compensated in accordance with § 1416.205 for eligible livestock deaths that occurred in eligible counties as a direct result of an eligible hurricane during the disaster period.

#### § 1416.201 Definitions.

The following definitions are applicable for all purposes of administering LIP-II.

*Adult beef bull* means a male bovine animal that was at least 2 years old and used for breeding purposes before it died.

*Adult beef cow* means a female bovine animal that had delivered one or more offspring before dying. A first-time bred beef heifer shall also be considered an adult beef cow if it was pregnant at the time it died.

*Adult buffalo and beefalo bull* means a male animal of those breeds that were at least 2 years old and used for breeding purposes before it died.

*Adult buffalo and beefalo cow* means a female animal of those breeds that had delivered one or more offspring before dying. A first-time bred buffalo or beefalo heifer shall also be considered an adult buffalo or beefalo cow if it was pregnant at the time it died.

*Adult dairy bull* means a male bovine animal of a breed used for producing milk for human consumption that was at least 2 years old and used for breeding dairy cows before it died.

*Adult dairy cow* means a female bovine animal used for the purpose of providing milk for human consumption that had delivered one or more offspring before dying. A first-time bred dairy heifer shall also be considered an adult dairy cow if it was pregnant at the time it died.

*Agricultural operation* means a farming operation.

*Application* means the “2005 Hurricanes Livestock Indemnity Program II Application” form.

*Buck* means a male goat.

*Catfish* means catfish grown as food for human consumption by a commercial operator on private property in water in a controlled environment.

*Contract* means, with respect to contracts for the handling of livestock, a written agreement between a livestock owner and another individual or entity setting the specific terms, conditions and obligations of the parties involved regarding the production of livestock or livestock products.

*Controlled environment* means an environment in which everything that can practicably be controlled with structures, facilities, growing media (including but not limited to water and nutrients) by the producer, is in fact controlled by the producer.

*Crawfish* means crawfish grown as food for human consumption by a commercial operator on private property in water in a controlled environment.

*Disaster period* means the applicable disaster period as set forth in § 1416.2.

*Doe* means a female goat.

*Equine animal* means a domesticated horse, mule or donkey.

*Ewe* means a female sheep.

*Goat* means a domesticated, ruminant mammal of the genus *Capra*, including Angora goats. Goats will be further delineated by sex (bucks and does) and age (kids).

*Kid* means a goat less than 1 year old.

*Lamb* means a sheep less than 1 year old.

*Non-adult beef cattle* means male, female or neutered male bovines that do not meet the definition of adult beef cows or bulls. Non-adult beef cattle is further delineated by weight categories of less than 400 pounds, and 400 pounds or more at the time they died.

*Non-adult buffalo or beefalo* means a male, female or neutered male animal of those breeds that do not meet the definition of adult buffalo/beefalo cow or bull. Non-adult buffalo or beefalo is further delineated by weight categories of less than 400 pounds, and 400 pounds or more at the time of death.

*Non-adult dairy cattle* means male, female, or neutered male bovine livestock, of a breed used for the purpose of providing milk for human consumption, that do not meet the definition of adult dairy cows or bulls. Non-adult dairy cattle is further delineated by weight categories of less than 400 pounds, and 400 pounds or more at the time they died.

*Poultry* means domesticated chickens, turkeys, ducks and geese. Poultry will be further delineated by sex, age and purpose of production, as determined by CCC.

*Ram* means a male sheep.

*Sheep* means domesticated, ruminant mammals of the genus *Ovis*. Sheep will be further delineated by sex (rams and ewes) and age (lambs).

*Swine* means domesticated omnivorous pigs, hogs, and boars.

Swine will be further delineated by sex and weight as determined by CCC.

#### § 1416.202 Eligible owners and contract growers.

(a) To be considered eligible, a livestock owner must have had legal ownership of the eligible livestock, as provided in § 1416.203(a), on the day the livestock died.

(b) To be considered eligible, a contract grower on the day the livestock died must have had:

(1) A written agreement with the owner of eligible livestock setting the specific terms, conditions and obligations of the parties involved regarding the production of livestock; and

(2) Control of the eligible livestock, as provided in § 1416.203(b), on the day the livestock died.

#### § 1416.203 Eligible livestock.

(a) To be considered eligible livestock for eligible livestock owners, livestock:

(1) In any county provided in § 1416.2(d) that was an eligible county in accordance with 7 CFR 760.101, must meet all the following:

(i) Be catfish or crawfish as defined in § 1416.201;

(ii) Died in an eligible county as a direct result of an applicable hurricane during the disaster period;

(iii) Been maintained for commercial use as part of a farming operation on the day they died; and

(iv) Before dying, not have been produced or maintained for reasons other than commercial use as part of a farming operation, including but not limited to wild free roaming animals or animals used for recreational purposes, such as pleasure, hunting, pets, or for show.

(2) In any county provided in § 1416.2(d) that was not an eligible county according to 7 CFR 760.101, must meet all the following:

(i) Be adult or non-adult dairy cattle, beef cattle, buffalo, beefalo, catfish, crawfish, equine, sheep goats, swine, poultry or deer;

(ii) Died in an eligible county as a direct result of an applicable hurricane during the disaster period;

(iii) Been maintained for commercial use as part of a farming operation on the day they died; and

(iv) Before dying, not have been produced or maintained for reasons other than commercial use as part of a farming operation, including but not limited to wild free roaming animals or animals used for recreational purposes, such as pleasure, hunting, pets, or for show.

(b) To be considered eligible livestock for eligible contract growers, livestock must meet all the following:

(1) Be poultry as defined in § 1416.201;

(2) Died in an eligible county provided in § 1416.2(d) that was not an eligible county as provided in 7 CFR 760.101;

(3) Died as a direct result of an eligible hurricane during the applicable disaster period as set forth in § 1416.2;

(4) Been maintained for commercial use as part of a farming operation on the day they died; and

(5) Before dying, not have been produced or maintained for reasons other than commercial use as part of a farming operation, including but not limited to wild free roaming animals or animals used for recreational purposes, such as pleasure, hunting, pets, or for show.

(c) No producer may receive duplicative payments under this subpart and any other Federal program for the same loss. Except catfish and crawfish, livestock that died in any county set forth in § 1416.2(d) that was an eligible county under § 760.101 of this title are not eligible livestock under this subpart.

#### § 1416.204 Application process.

(a) Applicants must submit to CCC a completed application in accordance with § 1416.5, a copy of their grower contract if the applicant is a contract grower, and other supporting documents necessary for determining the eligibility of the applicant. Supporting documents must show: Evidence of loss; current physical location of livestock in inventory; and physical location of claimed livestock at the time of death.

(b) Applicants must provide adequate proof that the death of the eligible livestock occurred in an eligible county as a direct result of an eligible hurricane during the disaster period. The quantity and kind of livestock that died as a direct result of the eligible hurricane may be documented by: Purchase records; veterinarian records; bank or other loan papers; rendering truck receipts; Federal Emergency Management Agency records; National Guard records; written contracts; production records, Internal Revenue Service records; property tax records; private insurance documents; and other similar verifiable documents, as determined by CCC.

(c) Certifications of livestock deaths by third parties may be accepted only if both the following conditions are met:

(1) The livestock owner or livestock contract grower, as applicable, certifies in writing:

(i) That there is no other documentation of death available;

(ii) The number of livestock, by category determined by the Deputy Administrator, were in inventory at the time the applicable hurricane occurred;

(iii) Other details necessary for CCC to determine the certification acceptable; and

(2) The third party provides their telephone number, address, and a written statement containing:

(i) Specific details about their knowledge of the livestock deaths;

(ii) Their affiliation with the livestock owner;

(iii) The accuracy of the deaths claimed by the livestock owner; and

(iv) Other details necessary for CCC to determine the certification acceptable.

#### § 1416.205 Payment calculation.

(a) Under this subpart, separate payment rates are established for eligible livestock owners and eligible livestock contract growers in accordance with paragraphs (b) and (c) of this section. LIP-II payments are calculated by multiplying the national payment rate for each livestock category, as determined in paragraphs (b) and (c) of this section, by the number of eligible livestock in each category, as provided in paragraphs (f), (g) and (h) of this section. Adjustments shall be applied in accordance with paragraphs (d) and (e) of this section and § 1416.206.

(b) The LIP-II national payment rate for eligible livestock owners is based on 30 percent of the average fair market value of the livestock.

(c) The LIP-II national payment rate for eligible livestock contract growers is based on 30 percent of the average income loss sustained by the contract grower with respect to the dead livestock.

(d) The payment calculated for eligible livestock owners shall be reduced by the amount the applicant received for the specific livestock under:

(1) Subpart E of Part 760 of this title, the Livestock Indemnity Program;

(2) Subpart G of Part 760 of this title, the Aquaculture Program; and

(3) Part 1437 of this chapter, the Noninsured Crop Disaster Assistance Program.

(e) The payment calculated for eligible livestock contract growers shall be reduced by the amount the applicant received for the specific livestock:

(1) Under the Livestock Indemnity Program under Subpart E of Part 760 of this title; and

(2) From the party who contracted with the producer to grow the livestock for the loss of income from the dead livestock.

(f) The categories of eligible livestock in any county provided in § 1416.2(d) that was not an eligible county according to 7 CFR 760.101 for eligible livestock contract growers are as follows:

- (1) Chickens, layers, roasters;
- (2) Chickens, broilers, pullets;
- (3) Chickens, chicks;
- (4) Turkeys, toms, fryers, roasters;
- (5) Turkeys, poults;
- (6) Ducks;
- (7) Ducks, ducklings;
- (8) Geese, goose; and
- (9) Geese, gosling.

(g) The categories of eligible livestock in any county provided in § 1416.2(d) that was not an eligible county according to 7 CFR 760.101 for eligible livestock owners are as follows:

- (1) Adult beef cows;
- (2) Adult beef bulls;
- (3) Non-adult beef cattle;
- (4) Adult buffalo or beefalo cows;
- (5) Adult buffalo or beefalo bulls;
- (6) Non-adult buffalo/beefalo;
- (7) Adult dairy cows;
- (8) Adult dairy bulls;
- (9) Non-adult dairy cattle;
- (10) Swine, sows, boars, barrows, gilts over 150 pounds;
- (11) Swine, sows, boars, barrows, gilts 50 to 150 pounds;
- (12) Swine, feeder pigs under 50 pounds;
- (13) Goats, bucks;
- (14) Goats, does;
- (15) Goats, kids;
- (16) Sheep, rams;
- (17) Sheep, ewes;
- (18) Sheep, lambs;
- (19) Deer;
- (20) Chickens, layers, roasters;
- (21) Chickens, broilers, pullets;
- (22) Chickens, chicks;
- (23) Turkeys, toms, fryers, roasters;
- (24) Turkeys, poults;
- (25) Ducks;
- (26) Ducks, ducklings;
- (27) Geese, goose;
- (28) Geese, gosling;
- (29) Catfish;
- (30) Crawfish; and
- (31) Equine.

(h) The categories of eligible livestock in any county provided in § 1416.2(d) that was an eligible county according to 7 CFR 760.101 for eligible livestock owners are as follows:

- (1) Catfish; and
- (2) Crawfish.

#### § 1416.206 Availability of funds.

(a) In the event that the total amount of eligible claims submitted by eligible livestock owners under this subpart exceeds \$30 million, each payment to eligible livestock owner shall be reduced by a uniform national percentage, as determined by CCC.

(b) Such payment reduction shall be applied after the imposition of the applicable per-person payment limitations in § 1416.6.

**Subpart D—Citrus Disaster Program**

**§ 1416.300 Applicability.**

This subpart sets forth the terms and conditions applicable to the Citrus Disaster Program.

**§ 1416.301 Definitions.**

*Citrus* means eligible citrus types that are those listed within the Risk Management Agency (RMA) Florida Citrus Fruit Crop Provisions.

*Grove* means contiguous acreage of the same citrus crop.

**§ 1416.302 Eligible crops and producers.**

(a) A producer must be an owner, operator, landlord, tenant, or sharecropper who shares in the risk of producing the citrus crop and is entitled to share in the crop available for marketing from the farm or would have shared had the crop been produced. Producers that did not market citrus in both 2004 and 2005 are not eligible, except producers with groves that will be of fruit-bearing age for 2006, but were too immature to producer marketable fruit in 2004 or 2005.

(b)(1) Citrus producers will be reimbursed on a per-acre basis for each eligible grove. Payment will be based on the severity of destruction as determined by the paths of the storms

and damage estimates by CCC considering levels of loss correlating to the severity of damage caused by maximum sustained winds of the hurricane. The levels of damage that will determine payment rates are as follows:

- Tier I—75 percent or greater crop loss and associated tree damage.
- Tier II—50 to 74 percent crop loss and associated tree damage/loss.
- Tier III—35 to 49 percent crop loss and associated tree damage/loss.
- Tier IV —15 percent and greater associated tree damage only.

(2) Citrus producers who suffered citrus crop production losses and associated fruit-bearing tree damage, including related cleanup and rehabilitation costs, must provide to CCC a certified statement on a CCC-approved form of the level of destruction, the number of acres in the disaster-affected grove, and the geographic location of the losses.

(c) If the actual level of loss is greater than the level of loss associated with the tier based on the location of the grove, the applicant may submit documentation to CCC to request the grove be placed in the next lower-numbered tier which represents a greater level of loss and a higher payment rate. Regardless of the level of loss incurred, the grove can only be placed in the next lower-numbered tier.

(d) If the actual level of loss is less than the tier associated with the

location band for the grove, the producer shall certify to the lower loss level, which must be 15 percent or more, on the application and a lower payment rate will be used by CCC based upon the tier rate associated with the lower loss level.

**§ 1416.303 Application process.**

(a) Producers wishing to receive benefits must submit a completed application and report of acreage identifying the geographic location and number of acres in the disaster-affected area to their local FSA Service Center at the time an application for payment is being filed according to § 1416.5.

(b) Applicants must certify and provide adequate proof that the losses and expenses incurred to eligible citrus crops were a direct result of the hurricane, in accordance with § 1416.2.

**§ 1416.304 Payment calculations.**

(a) Payments will be calculated by multiplying the number of net acres in each tier times the applicable payment rate, as determined by CCC, times the producer's share of the loss. The number of net acres is determined by subtracting drainage ditches, canals, and other such land uses from the citrus acres planted in the grove. The following table provides the applicable payment rates for producers with crop insurance or NAP coverage and those without coverage:

	Producers with insurance or NAP coverage	Producers without insurance or NAP coverage
Tier I .....	\$1,500	\$1,425
Tier II .....	1,000	950
Tier III .....	600	570
Tier IV .....	100	95

(b) The percentages of the payment for citrus crops that are subject to the payment limitation and AGI provisions are:

- Tier I—55 percent
- Tier II —60 percent
- Tier III—64 percent
- Tier IV—0 percent

(c) The percentages of the payment for citrus crops that are not subject to the payment limitation and AGI provisions are:

- Tier I—45 percent
- Tier II—40 percent
- Tier III—36 percent
- Tier IV—100 percent

**§ 1416.305 Availability of funds.**

(a) In the event that the total amount of eligible claims submitted by eligible

citrus producers under this subpart and subparts E, F, and G of this part exceeds \$95 million, each payment to an eligible citrus producer shall be reduced by a uniform national percentage, as determined by CCC.

(b) Such payment reduction shall be applied after imposition of applicable per person payment limitation as provided in § 1416.6.

**Subpart E—Fruit and Vegetable Disaster Program**

**§ 1416.400 Applicability.**

This subpart sets forth the terms and conditions applicable to the Fruit and Vegetable Disaster Program.

**§ 1416.401 Definitions.**

*Other than plasticulture* means conventional row-cropped fruits and vegetables, and those crops that are double cropped on a previous crop's or season's plastic.

*Plasticulture* means production practices where the soil has been bedded, fumigated, fertilized, an irrigation system installed, and covered with plastic mulch.

*Specialty crop* means any commercially grown fruit or vegetable eligible for crop insurance or NAP coverage.

**§ 1416.402 Eligible fruit and vegetable producers.**

(a) Producers of fruits and vegetables utilizing "plasticulture", and "other

than plasticulture” production practices are eligible for assistance. Producer must be an owner, operator, landlord, tenant, or sharecropper who shares in the risk of producing the crop and is entitled to share in the crop available for marketing from the farm or would have shared had the crop been produced. Payments will be made on a per-acre basis, and are based on tiers and the severity of destruction as specified for citrus crops and the type of production practice.

(b) Producers must have at least a 35 percent loss in production, or a 15 percent or more associated crop damage. Producers must also document that the necessary materials and procedures were followed to produce vegetables using plasticulture or other than plasticulture.

(c)(1) Fruit and vegetable producers will be reimbursed on a per-acre basis for eligible acreage. Payment will be based on the severity of destruction as determined by the paths of the storms and damage estimates developed by CCC. Estimates take into account levels of loss generally correlating to the severity of damage caused by maximum sustained winds of the applicable hurricanes. The levels of damage that

will determine payment rates are as follows:

- Tier I—75 percent or greater crop and/or yield loss
- Tier II—50 to 74 percent crop and/or yield loss
- Tier III—35 to 49 percent crop and/or yield loss
- Tier IV—15 percent or more crop and/or field damage

(2) Fruit and vegetable producers who suffered crop production losses and associated crop damage, including related cleanup, must provide to CCC a certified statement on a CCC approved form of the level of destruction, the number of the disaster affected acres, and the geographic location of the losses.

(d) If the actual level of loss is greater than the tier associated with the location of the acreage, the applicant may submit documentation to CCC to request the acreage be placed in the next lower-numbered tier which represents a greater level of loss and a higher payment rate.

(e) If the actual level of loss is less than the tier associated with the location of the acreage, the producer shall certify to the lower loss level on the application and a lower payment rate will be used by CCC based upon the

tier rate associated with the lower loss level.

**§ 1416.403 Application process.**

(a) Producers wishing to receive benefits must submit a completed application and report of acreage identifying the geographic location and number of acres in the disaster-affected area to their local FSA Service Center at the time an application for payment is being filed according to § 1416.5.

(b) Applicants must certify and provide adequate proof that the losses and expenses incurred to eligible fruit and vegetable crops were a direct result of the applicable disaster, as set forth in § 1416.2.

**§ 1416.404 Payment calculations.**

(a) Payments will be calculated by multiplying the number of net acres in each tier times the applicable payment rate, as determined by CCC, times the producer’s share of the loss. The number of net acres is determined by subtracting drainage ditches, canals, and other such land uses from the planted fruit and vegetable acres. The following table provides the applicable payment rates for producers with crop insurance or NAP coverage and those without coverage:

	Producers with insurance or NAP coverage		Producers without insurance or NAP coverage	
	Plasticulture	Other than plasticulture	Plasticulture	Other than plasticulture
Tier I .....	\$3,750	\$1,125	\$3,560	\$1,070
Tier II .....	2,500	750	2,375	710
Tier III .....	1,500	450	1,425	425
Tier IV .....	250	75	235	70

(b) The percentage of the payment for fruit and vegetable crops that are subject to the payment limitation and AGI provisions are:

- Tier I—94.6667 percent
- Tier II—94 percent
- Tier III—93.3333 percent
- Tier IV—0 percent

(c) The percentage of the payment for fruit and vegetable crops that are not subject to the payment limitation and AGI provisions are:

- Tier I—5.3333 percent
- Tier II—6 percent
- Tier III—6.6667 percent
- Tier IV—0 percent

(d) In addition to the prohibition in § 1416.6(g) a producer may not receive duplicate benefits under this subpart and subpart H of this part, the 2005 Hurricanes Tree Assistance Program.

**§ 1416.405 Availability of funds.**

(a) In the event that the total amount of eligible claims submitted by eligible fruit and vegetable producers under this subpart and subparts D, F, and G exceeds \$95 million, each payment to an eligible fruit and vegetable producer shall be reduced by a uniform national percentage, as determined by CCC.

(b) Such payment reduction shall be applied after imposition of applicable per person payment limitation as provided in § 1416.6.

**Subpart F—Tropical Fruit Disaster Program**

**§ 1416.500 Applicability.**

This subpart sets forth the terms and conditions applicable to the Tropical Fruit Disaster Program.

**§ 1416.501 Definitions.**

*Tropical Fruit* means carambola, longan, lychee, and mangos for disaster program purposes.

**§ 1416.502 Eligibility requirements.**

(a) Eligible Tropical Fruit producers must have incurred 50 percent or greater loss in commercial production.

(b) Only those acres of the four eligible fruits located in Tier I or II as designated under § 1416.2 shall be considered for payment under this subpart.

**§ 1416.503 Application process.**

(a) Producers wishing to receive benefits must submit a completed application and report of acreage identifying the geographic location and number of acres in the disaster-affected area to their local FSA Service Center at the time an application for payment is

being filed as provided in § 1416.5. Applications will not be accepted after such date as announced by FSA. Applications for assistance are available at local FSA Service Centers.

(b) Applicants must certify and provide adequate proof that the losses and expenses incurred to eligible tropical fruit crops were a direct result of the applicable disaster, as set forth in § 1416.2.

#### § 1416.504 Payment calculation.

(a) Payments are calculated by multiplying the number of affected acres by the payment rate times the producer's share of the crop. The payment rate for insured or NAP covered tropical fruit is a flat rate of \$5000 per acre. The rate for uninsured or acreage without NAP coverage is \$4750 per acre. The total payment is subject to the limitations in § 1416.6.

(b) In addition to the prohibition in § 1416.6(g), producers cannot receive duplicate benefits under this subpart and subpart H of this part, Hurricane TAP, for the same loss.

#### § 1416.505 Availability of funds.

(a) In the event that the total amount of eligible claims submitted by eligible tropical fruit producers under this subpart and subparts D, E, and G exceeds \$95 million, each payment to an eligible tropical fruit producer shall be reduced by a uniform national percentage, as determined by CCC.

(b) Such payment reduction shall be applied after imposition of applicable per person payment limitation as provided in § 1416.6.

### Subpart G—Nursery Disaster Program

#### § 1416.600 Applicability.

This subpart sets forth the terms and conditions applicable to the Nursery Disaster Program.

#### § 1416.601 Eligibility requirements.

(a) Commercial ornamental nursery and fernery producers are eligible for assistance for inventory losses for each nursery or fernery operation and clean-up costs. For a nursery to be considered a commercial nursery, it must be certified by the appropriate state agency. Eligible producers include producers of the following types of nursery stock and such stock as announced by CCC:

(1) Deciduous shrubs, broadleaf evergreens, coniferous evergreens, shade and flowering trees.

(2) Stock for use as propagation in a commercial ornamental nursery operation.

(3) Fruit or nut seedlings grown for sale as seed stock for commercial

orchard operations growing fruit or nuts.

(b) Eligible nursery inventory does not include:

(1) Edible varieties.

(2) Plants produced for reforestation purposes or for the purpose of producing a crop for which RMA does not provide insurance, or for which CCC does not provide assistance under NAP.

(c) Losses will be determined on an individual-nursery basis. Production loss from one nursery will not be offset by production from another nursery operated by the same applicant.

#### § 1416.602 Application process.

(a) Producers wishing to receive benefits must submit a completed application and report of acreage identifying the geographic location, number of acres in the disaster-affected area, the inventory value before the hurricane, and the inventory value after the hurricane to their local FSA Service Center at the time an application for payment is being filed as provided in § 1416.5. The value of the inventory is the producer's wholesale price list, less the maximum customer discount they provide, not to exceed the prices in RMA's "Eligible Plant List and Price Schedule."

(b) Applicants must certify and provide adequate proof that the losses and expenses incurred to eligible nursery crops were a direct result of the applicable hurricane during the disaster period.

#### § 1416.603 Payment calculations.

(a) Payments are calculated by multiplying the difference between the beginning and ending inventory value times 25 percent times the producer's share of the loss. The payment for production loss is subject to the payment limitation and AGI provisions.

(b) Producers are also eligible for a payment of \$250 per acre for debris removal and associated costs from hurricane damage if they can document that these costs were equal to or greater than \$250 per acre. None of the payment for cleanup is subject to the payment limitation and AGI provisions.

(c) In addition to the prohibition of § 1416.6(g), producers cannot receive duplicate benefits under this subpart and subpart H of this part, the Hurricane TAP, for the same loss.

#### § 1416.604 Availability of funds.

(a) In the event that the total amount of eligible claims submitted by eligible nursery producers under this subpart and subparts D, E, and F exceeds \$95 million, each payment to an eligible nursery producer shall be reduced by a

uniform national percentage, as determined by CCC.

(b) Such payment reduction shall be applied after imposition of applicable per person payment limitation as provided in § 1416.6.

### Subpart H—2005 Hurricane Tree Assistance Program

#### § 1416.700 Applicability.

This subpart sets forth the terms and conditions applicable to the 2005 Hurricane Tree Assistance Program (TAP) for losses in eligible counties as defined according to § 1416.2.

#### § 1416.701 Definitions.

*Application* means the "2005 Hurricane Tree Assistance Program" Application form.

*Fruit tree* means a woody perennial plant having a single main trunk, commonly exceeding 10 feet in height and usually devoid of branches below, but bearing a head of branches and foliage or crown of leaves at the summit that is grown for the production of an annual crop, including nuts, for commercial market for human consumption.

*Stand* means a contiguous acreage of the same crop of trees (including Christmas trees, ornamental trees, nursery trees, and potted trees), bushes (including shrubs), or vines.

#### § 1416.702 Eligible producers and stands.

(a) An eligible producer means an individual, or legal entity, including an Indian tribe as defined under the Indian Self-Determination and Education Assistance Act; an Indian organization or entity chartered under the Indian Reorganization Act; a tribal organization as defined under the Indian Self-Determination Education and Assistance Act; or, an economic enterprise as defined under the Indian Financing Act of 1974, which owns a tree, bushes, or vine.

(b) An eligible stand must:

(1) Be physically located in an eligible county;

(2) Have been impacted during an eligible disaster as set forth in § 1416.2; and

(3) Be grown for commercial use.

#### § 1416.703 Application process.

(a) A complete application for 2005 Hurricane TAP benefits and related supporting documentation must be submitted to the county office prior to the deadline announced by the Deputy Administrator.

(b) A complete application includes all of the following:

(1) A form CCC-896 provided by CCC;

(2) Report of acreage identifying the geographic location and number of acres in the disaster-affected stand of claimed trees, bushes, and vines according to part 718 of this title;

(3) A written estimate of the number of acres of trees, bushes or vines lost or damaged which is prepared by the owner or someone who is a qualified expert, as determined by the county committee;

(4) Sufficient evidence of the loss to allow the county committee to calculate whether an eligible loss occurred.

(c) Before requests will be approved, the county committee:

(1) Must verify actual qualifying losses and the number of acres involved by on-site visual inspection of the land and trees, bushes or vines.

(2) May request additional information and may consider all relevant information in making their determination, including their members' own knowledge about the applicant's normal operations.

#### **§ 1416.704 Payment calculation.**

(a) An approved eligible producer shall be reimbursed in an amount not to exceed 75 percent of the eligible costs for the qualifying practice. The payment shall be the lesser of the 75% of actual costs for the practice or the amount calculated using rates established by the Deputy Administrator. The costs permitted shall only be approved for:

(1) Seedlings or cuttings, for trees, bushes or vine replanting;

(2) Site preparation and debris handling within normal cultural practices for the type of individual stand being re-established and necessary to ensure successful plant survival;

(3) Chemicals and nutrients necessary for successful establishment;

(4) Labor to plant seedlings or cuttings as determined reasonable by the county committee;

(5) Replacement, rehabilitation, and pruning; and

(6) Labor used to transplant existing seedlings established through natural regeneration into a productive tree stand.

(b) Costs for fencing, irrigation, irrigation equipment, protection of seedlings from wildlife, general improvements, re-establishing structures, windscreens and other costs as determined by the Deputy Administrator are not eligible for reimbursement benefits.

(c) When lost stands are replanted, the types planted may be different than those originally planted if the new types have the same general end use, as the county committee determines and approves. Payments will be based on the

lesser of rates established to plant the types actually lost or the cost to establish the eligible alternative type used. If the species of plantings, seedlings or cuttings differs significantly from the species lost then, except as the county committee determines, the costs may not be reimbursed.

(d) Eligible producers may elect not to replant or rehabilitate the entire eligible stand. If so, the county committee shall calculate payment based on the number of qualifying trees, bushes or vines actually replanted or rehabilitated.

(e) In addition to the prohibition in § 1416.6(g), and the payment limitation in § 783.6(f) of this title, producers cannot receive duplicate benefits under this subpart and subpart D of this part, the Hurricane Citrus Disaster Program, for the same loss.

#### **§ 1416.705 Obligations of a participant.**

(a) Eligible producers must execute all required documents and complete the 2005 Hurricane TAP funded practice within 12 months of application approval.

(b) If a person was erroneously determined to be eligible or becomes ineligible for all or part of a 2005 Hurricane TAP benefit, the person and successor shall refund any payment paid under this part together with interest from the date of disbursement at a rate in accordance with part 1403 of this chapter.

(c) Participants must allow representatives of FSA to visit the site for the purpose of certifying compliance with 2005 Hurricanes TAP requirements.

#### **Subpart I—2005 Catfish Grant Program**

##### **§ 1416.800 General.**

(a) CCC will administer a limited program to provide assistance to catfish producers in eligible counties. Under the Catfish Grant Program, CCC will provide grants to the State governments of States where eligible counties are located. The amount of each grant will be based on the total value of the catfish feed loss suffered in every eligible county in the subject state as determined by CCC. Available grant funds under this subpart and funds under subpart B of this part will be uniformly prorated to ensure that available funding is not exceeded. Catfish producers in eligible counties who suffered at least a 30-day catfish feed loss may be eligible for these funds. Among other conditions of these grants, assistance provided by a State under such a grant to an applicant shall not exceed \$80,000, except for general partnerships and joint ventures, in

which case assistance shall not exceed \$80,000 times the number of members that constitute the general partnership or joint venture.

(b) No producer may receive duplicate payments under this subpart and any other Federal programs for the same loss.

Signed in Washington, DC, February 2, 2007.

**Thomas B. Hofeller,**

*Acting Executive Vice President, Commodity Credit Corporation.*

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## **DEPARTMENT OF AGRICULTURE**

### **Commodity Credit Corporation**

#### **7 CFR Part 1496**

**RIN 0560-AH39**

#### **Procurement of Commodities for Foreign Donation**

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

**ACTION:** Final rule.

**SUMMARY:** This rule adopts new procedures to be used by the Commodity Credit Corporation (CCC) in the evaluation of bids in connection with the procurement of commodities for foreign donation. CCC is amending the existing regulations to provide for the simultaneous review of commodity and ocean freight offers when evaluating lowest-landed cost options in connection with the procurement of commodities for foreign donation. This rule will enhance bidding opportunities for potential vendors while allowing CCC to more efficiently acquire commodities.

**DATES:** *Effective Date:* February 12, 2007.

**FOR FURTHER INFORMATION CONTACT:** Richard J. Chavez, United States Department of Agriculture (USDA), Farm Service Agency (FSA), Commodity Procurement Policy & Analysis Division (CPPAD), Room 5741-S, 1400 Independence Avenue, SW., Washington, DC 20250; Telephone: (202) 690-0194; Facsimile: (202) 690-2221; E Mail: [Richard.Chavez@USDA.gov](mailto:Richard.Chavez@USDA.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

CCC procures agricultural commodities for donation overseas under various food aid authorities. These authorities include Title II of the Agricultural Trade Development and