

**DEPARTMENT OF AGRICULTURE****Farm Service Agency****7 CFR Part 760****RIN 0560-AH76****Emergency Agricultural Assistance, 2007; Crop Disaster and Livestock Indemnity Programs****AGENCY:** Farm Service Agency, USDA.**ACTION:** Final rule.

**SUMMARY:** This rule establishes the Farm Service Agency (FSA) regulations for the 2007 Emergency Agricultural Assistance. The rule implements legislation that provides funds for agricultural disaster aid for eligible producers, specifically a Crop Disaster Program (CDP) and a 2005–2007 Livestock Indemnity Program (LIP). For CDP, the program applies only to 2005, 2006, and 2007 crop producers who chose to have a Federal Crop Insurance plan of insurance or Noninsured Crop Disaster Assistance Program coverage for the year of loss and suffered damage due to a natural disaster. Eligible crops for 2007 must have been planted prior to February 28, 2007. For LIP, the program applies only to livestock producers in counties designated as a major disaster or emergency area by the President or those declared a natural disaster area by the Secretary of Agriculture. Counties designated disasters by the President may be eligible even though agricultural loss was not covered by the designation if there has been an FSA Administrator's Physical Loss Notice covering such losses. The natural disaster declarations by the Secretary or designations by President must have been issued between January 1, 2005, and February 28, 2007; that is after January 1, 2005 and before February 28, 2007. Counties contiguous to such counties will also be eligible.

**DATES:** This rule is effective December 19, 2007.

**FOR FURTHER INFORMATION CONTACT:** Salomon Ramirez, 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 [salomon.ramirez@wdc.usda.gov](mailto:salomon.ramirez@wdc.usda.gov).

**SUPPLEMENTARY INFORMATION:****Background**

This final rule implements the agricultural assistance provisions of the U.S. Troop Readiness, Veterans' Care,

Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28) (the 2007 Emergency Supplemental), enacted May 25, 2007. The 2007 Emergency Supplemental authorizes the Secretary of Agriculture (Secretary) to assist producers of livestock and agricultural commodities through programs administered by FSA.

All counties, owners, contract growers, lessees, livestock, crops, and losses, must meet the eligibility criteria provided in this rule. False certifications carry severe ramifications. FSA will validate applications with random spot-checks.

A payment limitation of \$80,000 per program per person is applicable to payments made under the 2007 Emergency Supplemental. The amount of any payment for which a participant may be eligible under any of these programs may be reduced by any amount received by the participant for the same or any similar loss. Other restrictions apply including, but not limited to, those pertaining to highly erodible land and wetland conservation provisions. Livestock and crop losses that are not weather-related are not covered.

The average adjusted gross income (AGI) limitation as administered under 7 CFR part 1400, subpart G, applies. AGI eligibility is based on the average of the adjusted gross incomes for the three tax years immediately preceding the tax year for which disaster assistance is being requested, with the exclusion of any year(s) the individual or entity did not have income or had an AGI of zero.

**Crop Disaster Program**

Section 9001 of the 2007 Emergency Supplemental authorizes the Secretary to provide assistance to crop producers for qualifying crop quantity or crop quality losses due to damaging weather and related conditions for one, but not more than one, of the 2005, 2006, or 2007 crop years. The 2007 Emergency Supplemental requires that assistance for quantity losses to be made available in the same manner as provided under section 815 of the Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Pub. L. 106–387) (the 2001 Appropriations Act), except that the payment rate will be 42 percent of the established price, instead of 65 percent. Like under section 815 of the 2001 Appropriations Act, only approved yields based on production evidence submitted prior to the enactment of the 2007 Emergency Supplemental will be used for the purposes of the 2005, 2006, and 2007

CDP. This is also applicable to those plans of insurance or NAP that did not or do not have approved yields calculated based on actual production history. FSA does not have the resources or the knowledge to calculate those approved yields now. Additionally, historically, FSA has not computed approved yields following enactment of legislation authorizing similar ad hoc disaster assistance. There are a plethora of reasons for not computing such yields now, not the least of which is burdening participants and FSA offices with tasks that will undoubtedly slow the dispersal of funds that Congress wanted issued timely. There are also serious integrity issues related to allowing, as a general matter, participants an opportunity to now in conjunction with a loss claim application under this ad hoc legislation, the opportunity to now alter or change their expected level of production in the year of alleged loss. The same quantity loss thresholds used under section 815 of the 2001 Appropriations Act are applicable. The 2007 Emergency Supplemental provides that total assistance provided to a participant for a crop year under the Crop Disaster Program (CDP), together with any amount provided to the same participant for the same crop made pursuant to any crop insurance program or the Noninsured Crop Disaster Assistance Program (NAP), plus the value of the crop that was not lost, may not exceed 95 percent of the value of the crop in the absence of a loss, as estimated by FSA.

By statute, a participant seeking financial assistance under this rule will not be eligible for payments if the participant did not obtain a Federal Crop Insurance Plan or NAP coverage for the crop incurring loss for the year in which assistance is requested. Circumstances why a participant either chose to not have such insurance or NAP coverage are irrelevant to determination of CDP eligibility. Those circumstances, accordingly, will not be considered under any of the relief provisions outlined in 7 CFR part 718.

The CDP objectives are as follows:

- Use crop insurance principles to the extent practicable.
- Establish an equitable distribution of payments based on the losses of each producer.
- Treat producers with similar losses similarly.
- Distribute payments according to the geographic location of the losses.
- Ensure that all producers are notified of program benefits.

Eligible crops include insured crops and NAP covered crops. Insured crops

are crops insured by a Federally-subsidized crop insurance policy. NAP covered crops are crops for which crop insurance is not available, but are covered by NAP. Under the previous CDP, crop insurance and NAP coverage were not required for eligibility.

For quality losses, producers are eligible for assistance for quality losses of at least 25-percent. All crops are eligible for quality losses except for value loss crops<sup>1</sup> and some specialty crops.<sup>2</sup> The total affected production for a quality loss payment cannot exceed

the expected production. Payments will be made only on 65 percent of the quantity of production.

Payment rates will be based on five broad loss levels, determined as follows:

Level	For estimated quality loss ranges (percentage)	The following percentages of established prices <sup>1</sup> are used:
I .....	25.0 and 34.9 .....	30
II .....	35.0 and 54.9 .....	45
III .....	55.0 and 74.9 .....	65
IV .....	75.0 and 94.9 .....	85
V .....	95.0 and 100.0 .....	95

<sup>1</sup> Established prices are marketing contract prices, catastrophic risk protection, Actual Production History prices, or 5-year average prices.

For marketing contracts and quality loss assistance, under the CDP, production of a commodity sold pursuant to a marketing contract is eligible for quality loss assistance based on one or more prices specified in the contracts. When there are multiple marketing contract prices, a weighted average will be calculated to determine a single blended price. Production of a commodity not sold through marketing contracts is eligible for quality loss assistance based on the average local market discounts for reduced quality, as determined by the appropriate State committee of FSA.

For insurable crops, only producers who purchased crop insurance for the affected crop during the applicable disaster year are eligible to receive crop disaster payments. For NAP covered crops, producers must have participated in NAP for the crop for which they are seeking benefits in the disaster year.

#### Livestock Indemnity Program

Section 9002(b) of the 2007 Emergency Supplemental appropriates to the Secretary such sums as necessary to remain available until expended to provide assistance to livestock producers for certain livestock deaths directly resulting from natural disasters that occurred between January 1, 2005, and February 28, 2007, that is after January 1, 2005, but before February 28, 2007, including losses due to blizzards that started in 2006 and continued into January 2007. To be eligible for assistance under the 2005–2007 Livestock Indemnity Program (LIP), the participant must have suffered livestock loss due to an eligible disaster event occurring after January 1, 2005, but before February 28, 2007, and the livestock must have been physically

located in a county or contiguous county having a natural disaster designated by the President or declared by the Secretary after January 1, 2005, but before February 28, 2007. For timely Presidential declarations that do not cover agricultural physical loss, the subject counties may still be eligible if the county was the subject of an approved Administrator's Physical Loss Notice (APLN) when the APLN applies to a natural disaster designated by the President. Livestock producers incurring livestock losses in more than one of the 2005, 2006, and 2007 calendar years may only select one year in which to receive assistance.

The 2005–2007 LIP is administered by FSA and funds have been appropriated to FSA for such purpose. Therefore, it is implemented through regulations in 7 CFR part 760. We are establishing a new subpart J for the 2005–2007 LIP regulations.

The 2005–2007 LIP will provide assistance to eligible producers (owners and contract growers) of eligible livestock located in a total of 2,944 counties. These 2,944 counties refer to the total number of declared counties, regardless of the number of times for which they received disaster declarations after January 1, 2005, but before February 28, 2007. The regulations will specify what makes a county eligible. The list of eligible counties is on the FSA Web site.

The natural disasters covered by the 2005–2007 LIP include various hurricanes, extreme heat, wildfires, and blizzards that occurred after January 1, 2005, but before February 28, 2007.

Payments under the 2005–2007 LIP are based on the type, kind, and weight of eligible livestock. The amount of payment that a person may receive

under the 2005–2007 LIP cannot exceed \$80,000.

Eligible livestock includes certain beef cattle, dairy cattle, buffalo, beefalo, equine, sheep, goats, deer, swine, poultry, reindeer, catfish, and crawfish that died as a direct result of an eligible disaster and on the day they perished were all of the following:

- Owned by an eligible owner or in the possession of an eligible contract grower;
- Maintained for commercial use as part of a farming operation of the participant on the day they died; and
- Died in an eligible county as a direct result of an eligible disaster event during the disaster period.

Participants must provide verifiable documentation of livestock deaths claimed.

Payments will be made to contract growers to the extent of their contractual risk, as determined by FSA. Any compensation received by the contract grower from the contractor for loss of income for the dead livestock will be deducted from the contract grower's payment.

An eligible producer who received payments for disaster-related livestock losses from the 2005 hurricanes under earlier LIPs may only receive payments under the 2005–2007 LIP under the following two circumstances: (1) A participant who lost livestock to subsequent disasters in 2006 or 2007, is eligible for payments resulting from the subsequent disasters, but must elect to declare losses and receive payments for only one of those two years. (2) A participant with eligible livestock who received payments for disaster-related livestock losses from the 2005 hurricanes under an earlier LIP may also elect to receive payments under the

<sup>1</sup> Value loss crops ineligible for quality losses include aquaculture, floriculture, mushrooms,

ginseng root, ornamental nursery, and Christmas trees.

<sup>2</sup> Specialty crops ineligible for quality losses include honey, maple sap, and turf grass sod.

2005–2007 LIP, however, the payment will be reduced by the amount received for the same disaster under an earlier LIP. This second situation is not expected to produce any payments because payment rates under earlier programs were higher than payment rates under the 2005–2007 LIP.

#### Notice and Comment

These regulations are exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. 553) and 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, as specified in section 9005 of the 2007 Emergency Supplemental, which requires that the regulations be promulgated and administered without regard to those notice and comment provisions.

#### 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. The summary of the anticipated economic impacts for CDP and LIP are described below.

#### Crops

Total crop disaster payments are expected to range from \$1.6 billion to \$2.0 billion. The low end of the range is estimated at \$1.6 billion reflecting the probability that the more restrictive eligibility provisions and the reduction in the quality loss threshold may lower payments. The high end of the range is estimated at \$2.0 billion reflecting the probability that the new marketing contract provisions may increase payments.

The 2005 and 2006 payments are expected to be mainly based on the 2006 crop year because crop losses were more severe in 2006. A large portion of 2007 payments are expected to be paid to winter wheat and specialty crop producers affected by freezes. CDP payments for 2007 winter wheat are estimated at \$190 million. CDP payments for 2007 oranges are estimated at \$7 million. CDP payments for 2007 peaches are estimated at \$6 million. CDP payments for 2007 lemons are estimated at \$2 million.

The past crop disaster programs (2001/2002 and 2003/2004) had very similar crop disaster payouts, with payments of \$2.5 billion for each program. Qualitative adjustments to the estimates were necessary because of

program changes. Program changes that are expected to cause the estimate to be lower include:

- Insurable crops that are uninsured are ineligible for crop disaster payments;
- Non-insurable crops not covered, but eligible, through NAP are ineligible for crop disaster payments; and
- Producers that will be compensated for losses of at least 25 percent quality loss.

New provisions that allow production of a commodity sold through marketing contracts to be eligible for quality loss assistance based on the prices specified in the contracts are expected to increase payments.

#### Livestock

The value of expected claims under the 2005–2007 LIP is \$14.4 million. To the extent program payments are ultimately spent on forage or grain or affect the total supply of available livestock, the impacts of the 2005–2007 LIP on any sector of the economy, including livestock feed prices, livestock prices, and consumer prices, are not expected to be measurable. However, for those participants who have suffered losses from disasters between January 1, 2005, and February 28, 2007, and qualify for payments under the 2005–2007 LIP, their farm income losses will be somewhat offset or reduced by these payments, and they and their local communities may benefit accordingly.

Most claims for losses are expected to result from conditions of extreme heat in California and blizzards that affected Colorado, western Kansas, two counties in northern New Mexico, and one county in Oklahoma. There are expected to be some producers in the Gulf Coast states who may not have applied for payments under an earlier LIP, or who had losses from other disasters for which the county in which they produced the livestock was declared a primary disaster county or an adjoining county. For example, several hundred cattle are reported to have died in Texas as a result of wildfires. Such claims are not expected to be significant, however. Other claims may also exist among other counties in the United States, but these are also expected to be quite small and no information exists upon which to make estimates.

The impact of the 2005–2007 LIP is not expected to be significant in terms of aggregate change in social welfare. FSA initially estimates expected payments totaling \$14.4 million for the 2005–2007 LIP, the sum of approximately \$13.4 million for land-based losses and \$1 million for

payments to catfish and crawfish producers. The actual number of eligible owners, contract growers, and livestock and program costs will become more certain toward the end of sign-up for the program. Actual claims are expected to be less than the estimated \$14.4 million because some persons may exceed the \$80,000 payment limit, or their adjusted gross incomes may exceed \$2.5 million.

The \$14.4 million is \$3.3 million less than the \$17.7 million paid out under the 2005 LIP. In comparison, the 2005 LIP used a 30 percent payout rate, compared to the 26 percent rate used in the 2005–2007 LIP, and paid for hurricane-related losses located in States affected by those hurricanes. If the 2005–2007 LIP payout rate was also 30 percent, the payout amount would be \$16.6 million ( $0.3 * (\$14.4 / .26) = \$16.6$ ), or over \$1 million less than the 2005 payout amount.

The above magnitude of difference appears reasonable in spite of the fact that the 2005–2007 LIP is national in scope, and covers all disasters between January 1, 2005, and February 28, 2007, including catfish and crawfish, while the 2005 LIP only covered 9 states in the Southeast and Gulf Coast region. First, nearly all payments under the 2005–2007 LIP are expected to cover two specific disasters: losses of an estimated 16,000 dairy cattle from extreme heat in California and an estimated 20,000 beef cattle lost from blizzards in the winter of 2006–2007 that affected Colorado, Kansas, and New Mexico. Second, participants who received payments under the 2005 LIP are not expected to apply for payments under the 2005–2007 LIP because their payment rates were higher under the earlier program and they cannot receive payments under both programs without returning monies received under the 2005 LIP.

#### 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 a manner consistent with the provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA (7 CFR part 799). The following final rule was determined to be Categorically Excluded because it is considered a ministerial action solely involving the transfer of

funds to offset disaster related losses with no site-specific or ground-disturbing actions occurring as a requirement or an immediate result of program implementation. Therefore, no environmental assessment or environmental impact statement will be completed for this final rule.

#### Executive Order 12372

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

#### 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 under Executive Order 12988. This final rule is not retroactive and it does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. 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

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

These regulations are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 9005(b)(3) of the 2007 Emergency Supplemental, which provides that these regulations, which are necessary to implement title IX of the 2007 Emergency Supplemental, be promulgated and administered without regard to the Paperwork Reduction Act.

#### 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.

#### 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. Consistent with the provisions of 9005(c) of the 2007 Emergency Supplemental, 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 disasters addressed by this rule. Therefore, this rule is effective immediately.

#### List of Subjects in 7 CFR Part 760

Dairy products, Indemnity payments, Pesticides and pests, Reporting and recordkeeping requirements.

■ For the reasons explained above, 7 CFR part 760 is amended as follows:

#### PART 760—INDEMNITY PAYMENT PROGRAMS

■ 1. Revise the authority citation for 7 CFR part 760 to read as follows:

**Authority:** 7 U.S.C. 612c; Pub. L. 106-387, 114 Stat. 1549; Pub. L. 107-76, 115 Stat. 704; Title III, Pub. L. 109-234, 120 Stat. 474; 16 U.S.C. 3801, note; and Title IX, Pub. L. 110-28.

■ 2. Amend 7 CFR part 760 by adding new subparts I and J to read as follows:

#### Subpart I—2005–2007 Crop Disaster Program

Sec.

- 760.800 Applicability.
- 760.801 Administration.
- 760.802 Definitions.
- 760.803 Eligibility.
- 760.804 Time and method of application.
- 760.805 Limitations on payments and other benefits.
- 760.806 Crop eligibility requirements.
- 760.807 Miscellaneous provisions.
- 760.808 General provisions.
- 760.809 Eligible damaging conditions.
- 760.810 Qualifying 2005, 2006, or 2007 quantity crop losses.
- 760.811 Rates and yields; calculating payments.
- 760.812 Production losses; participant responsibility.
- 760.813 Determination of production.
- 760.814 Calculation of acreage for crop losses other than prevented planted.
- 760.815 Calculation of prevented planted acreage.

- 760.816 Value loss crops.
- 760.817 Quality losses for 2005, 2006, and 2007 crops.
- 760.818 Marketing contracts.
- 760.819 Misrepresentation, scheme, or device.
- 760.820 Offsets, assignments, and debt settlement.
- 760.821 Compliance with highly erodible land and wetland conservation.

#### Subpart J—2005–2007 Livestock Indemnity Program

- 760.900 Administration.
- 760.901 Applicability.
- 760.902 Eligible counties and disaster periods.
- 760.903 Definitions.
- 760.904 Limitations on payments and other benefits.
- 760.905 Eligible owners and contract growers.
- 760.906 Eligible livestock.
- 760.907 Application process.
- 760.908 Deceased individuals or dissolved entities.
- 760.909 Payment calculation.
- 760.910 Appeals.
- 760.911 Offsets, assignments, and debt settlement.
- 760.912 Records and inspections.
- 760.913 Refunds; joint and several liability.

#### Subpart I—2005–2007 Crop Disaster Program

##### § 760.800 Applicability.

This part sets forth the terms and conditions for the 2005–2007 Crop Disaster Program (2005–2007 CDP). CDP makes emergency financial assistance available to producers who have incurred crop losses in quantity or quality for eligible 2005, 2006, or 2007 crop years due to disasters as determined by the Secretary under provisions of Title IX of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110-28). However, to be eligible for assistance, the crop subject to the loss must have been planted or existed before February 28, 2007, or, in the case of prevented planting, would have been planted before February 28, 2007.

##### § 760.801 Administration.

(a) The program will be administered under the general supervision of the Deputy Administrator for Farm Programs and will be carried out in the field by FSA State and county committees.

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

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

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

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

(d) No provision or delegation to a State or county committee will prevent the Deputy Administrator for Farm Programs from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

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

#### **§ 760.802 Definitions.**

The following definitions apply to this part. The definitions in parts 718 and 1400 of this title also apply, except where they conflict with the definitions in this section.

*Actual production* means the total quantity of the crop appraised, harvested, or assigned, as determined by the FSA State or county committee in accordance with instructions issued by the Deputy Administrator for Farm Programs.

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

*Affected production* means, with respect to quality losses, the harvested production of an eligible crop that has a documented quality reduction of 25 percent or more on the verifiable production record.

*Appraised production* means production determined by FSA, or a company reinsured by the Federal Crop Insurance Corporation (FCIC), that was unharvested but was determined to reflect the crop's yield potential at the time of appraisal.

*Approved yield* means the amount of production per acre, computed in accordance with FCIC's Actual Production History (APH) Program at part 400, subpart G of this title or, for crops not included under part 400, subpart G of this title, the yield used to determine the guarantee. For crops covered under NAP, the approved yield is established according to part 1437 of this title. Only the approved yields based on production evidence submitted to FSA prior to May 25, 2007 will be used for purposes of the 2005–2007 CDP.

*Aquaculture* means a value loss crop for the reproduction and rearing of aquatic species in controlled or selected environments including, but not limited to, ocean ranching, except private ocean ranching of Pacific salmon for profit in those States where such ranching is prohibited by law.

*Aquaculture facility* means any land or structure including, but not limited to, a laboratory, concrete pond, hatchery, rearing pond, raceway, pen, incubator, or other equipment used in aquaculture.

*Aquaculture species* means any aquaculture species as defined in part 1437 of this title.

*Average market price* means the price or dollar equivalent on an appropriate basis for an eligible crop established by FSA, or CCC, or RMA, as applicable, for determining payment amounts. Such price will be based on historical data of the harvest basis excluding transportation, storage, processing, packing, marketing, or other post-harvesting expenses. Average market prices are generally applicable to all similarly situated participants and are not established in response to individual participants. Accordingly, the established average market prices are not appealable under parts 11 or 780 of this title.

*Catastrophic risk protection* means the minimum level of coverage offered by FCIC.

*CCC* means the Commodity Credit Corporation.

*Controlled environment* means, with respect to those crops for which a controlled environment is expected to be provided, including but not limited to ornamental nursery, aquaculture (including ornamental fish), and floriculture, an environment in which everything that can practicably be 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.

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

*Crop year* means:

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

(2) For NAP covered crops, as provided in part 1437 of this title.

*Damaging weather* means drought, excessive moisture, hail, freeze, tornado, hurricane, typhoon, excessive wind, excessive heat, weather-related saltwater intrusion, weather-related irrigation water rationing, and earthquake and volcanic eruptions, or

any combination. It also includes a related condition that occurs as a result of the damaging weather and exacerbates the condition of the crop, such as crop disease, and insect infestation.

*Deputy Administrator* means the Deputy Administrator for Farm Programs, Farm Service Agency, U.S. Department of Agriculture or designee.

*Eligible crop* means a crop insured by FCIC as defined in part 400 of this title, or included under NAP as defined under part 1437 of this title for which insurance or NAP coverage was obtained timely for the year which CDP benefits are sought.

*End use* means the purpose for which the harvested crop is used, such as grain, hay, or seed.

*Expected production* means, for an agricultural unit, the historic yield multiplied by the number of planted or prevented acres of the crop for the unit.

*FCIC* means the Federal Crop Insurance Corporation, a wholly owned Government Corporation within USDA.

*Final planting date* means the latest date, established by the Risk Management Agency (RMA) for insured crops, by which the crop must initially be planted in order to be insured for the full production guarantee or amount of insurance per acre. For NAP covered crops, the final planting date is as provided in part 1437 of this title.

*Flood prevention* means:

(1) For aquaculture species, placing the aquaculture facility in an area not prone to flood;

(2) In the case of raceways, devices or structures designed for the control of water level; and

(3) With respect to nursery crops, placing containerized stock in a raised area above expected flood level and providing draining facilities, such as drainage ditches or tile, gravel, cinder, or sand base.

*Good nursery growing practices* means utilizing flood prevention, growing media, fertilization to obtain expected production results, irrigation, insect and disease control, weed, rodent and wildlife control, and over winterization storage facilities.

*Ground water* means aqueous supply existing in an aquifer subsurface that is brought to the surface and made available for irrigation by mechanical means such as by pumps and irrigation wells.

*Growing media* means:

(1) For aquaculture species, media that provides nutrients necessary for the production of the aquaculture species and protects the aquaculture species from harmful species or chemicals or

(2) For nursery crops, a well-drained media with a minimum 20 percent air pore space and pH adjustment for the type of plant produced designed to prevent "root rot."

*Harvested* means:

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

(2) For NAP covered single harvest crops, that a crop has been removed from the field, either by hand or mechanically, or by grazing of livestock;

(3) For NAP covered crops with potential multiple harvests in 1 year or harvested over multiple years, that the producer has, by hand or mechanically, removed at least one mature crop from the field during the crop year;

(4) For mechanically-harvested NAP covered crops, that the crop has been removed from the field and placed in a truck or other conveyance, except hay is considered harvested when in the bale, whether removed from the field or not. Grazed land will not be considered harvested for the purpose of determining an unharvested or prevented planting payment factor. A crop that is intended for mechanical harvest, but subsequently grazed and not mechanically harvested, will have an unharvested factor applied.

*Historic yield* means, for a unit, the higher of the county average yield or the participant's approved yield.

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

(2) NAP participant's yield will be the higher of the county average or approved NAP APH for the disaster year.

*Insurable crop* means an agricultural crop (excluding livestock) for which the producer on a farm is eligible to obtain a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501–1524).

*Marketing contract* means a legally binding written contract between a purchaser and grower for the purpose of marketing a crop.

*Market value* means:

(1) The price(s) designated in the marketing contract; or

(2) If not designated in a marketing contract, the rate established for quantity payments under § 760.811.

*Maximum average loss level* means the maximum average level of crop loss to be attributed to a participant without acceptable production records (verifiable or reliable). Loss levels are expressed in either a percent of loss or yield per acre, and are intended to reflect the amount of production that a participant would have been expected

to make if not for the eligible disaster conditions in the area or county, as determined by the county committee in accordance with instructions issued by the Deputy Administrator.

*Multi-use crop* means a crop intended for more than one end use during the calendar year such as grass harvested for seed, hay, and grazing.

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

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

*NASS* means the National Agricultural Statistics Service.

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

*NAP covered* means a crop for which the participants obtained assistance under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333).

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

*Person* means person as defined in part 1400 of this title, and all rules with respect to the determination of a person found in that part are applicable to this part. However, the determinations made in this part in accordance with part 1400, subpart B, Person Determinations, of this title will also take into account any affiliation with any entity in which an individual or entity has an interest, regardless of whether or not such entities are considered to be actively engaged in farming.

*Planted acreage* means land in which seed, plants, or trees have been placed, appropriate for the crop and planting method, at a correct depth, into a seedbed that has been properly prepared for the planting method and production practice normal to the USDA plant hardiness zone as determined by the county committee.

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

*Production* means quantity of the crop or commodity produced expressed in a specific unit of measure including, but not limited to, bushels or pounds.

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

*Recording county* means, for a producer with farming interests in only one county, the FSA county office in which the producer's farm is administratively located or, for a

producer with farming interests that are administratively located in more than one county, the FSA county office designated by FSA to control the payments received by the producer.

*Related condition* means, with respect to a disaster, a condition that causes deterioration of a crop, such as insect infestation, plant disease, or aflatoxin, that is accelerated or exacerbated as a result of damaging weather, as determined in accordance with instructions issued by the Deputy Administrator.

*Reliable production records* means evidence provided by the participant that is used to substantiate the amount of production reported when verifiable records are not available, including copies of receipts, ledgers of income, income statements of deposit slips, register tapes, invoices for custom harvesting, and records to verify production costs, contemporaneous measurements, truck scale tickets, and contemporaneous diaries that are determined acceptable by the county committee.

*Repeat crop* means, with respect to production, a commodity that is planted or prevented from being planted in more than one planting period on the same acreage in the same crop year.

*RMA* means the Risk Management Agency.

*Salvage value* means the dollar amount or equivalent for the quantity of the commodity that cannot be marketed or sold in any recognized market for the crop.

*Secondary use* means the harvesting of a crop for a use other than the intended use.

*Secondary use value* means the value determined by multiplying the quantity of secondary use times the FSA or CCC-established price for that use.

*State committee* means the FSA State committee.

*Surface irrigation water* means aqueous supply anticipated for irrigation of agricultural crops absent an eligible disaster condition impacting either the aquifer or watershed. Surface irrigation water may result from feral sources or from irrigation districts.

*Tropical crops* has the meaning assigned in part 1437 of this title.

*Tropical region* has the meaning assigned in part 1437 of this title.

*Unharvested factor* means a percentage established for a crop and applied in a payment formula to reduce the payment for reduced expenses incurred because commercial harvest was not performed. Unharvested factors are generally applicable to all similarly situated participants and are not established in response to individual

participants. Accordingly established unharvested factors are not appealable under parts 11 and 780 of this title.

*Unit* means, unless otherwise determined by the Deputy Administrator, basic unit as defined in part 457 of this title that, for ornamental nursery production, includes all eligible plant species and sizes.

*Unit of measure means:*

(1) For all insured crops, the FCIC-established unit of measure;

(2) For all NAP covered crops, the established unit of measure, if available, used for the 2005, 2006, or 2007 NAP price and yield;

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

(4) For turfgrass sod, a square yard;

(5) For maple sap, a gallon;

(6) For honey, pounds; and

(7) For all other crops, the smallest unit of measure that lends itself to the greatest level of accuracy with minimal use of fractions, as determined by the State committee.

*United States* means all 50 States of the United States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, and to the extent the Deputy Administrator determines it to be feasible and appropriate, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the former Trust Territory of the Pacific Islands, which include Palau, Federated States of Micronesia, and the Marshall Islands.

*USDA* means the United States Department of Agriculture.

*USDA Plant Hardiness Zone* means 11 regions or planting zones as defined by a 10 degree Fahrenheit difference in the average annual minimum temperature.

*Value loss crop* has the meaning assigned in part 1437 of this title.

*Verifiable production record* means:

(1) For quantity losses, evidence that is used to substantiate the amount of production reported and that can be verified by FSA through an independent source; or

(2) For quality losses, evidence that is used to substantiate the amount of production reported and that can be verified by FSA through an independent source including determined quality factors and the specific quantity covered by those factors.

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

#### **§ 760.803 Eligibility.**

(a) Participants will be eligible to receive disaster benefits under this part only if they incurred qualifying quantity or quality losses for the 2005, 2006, or 2007 crops, as further specified in this part, as a result of damaging weather or any related condition. Participants may not receive benefits with respect to volunteer stands of crops.

(b) Payments may be made for losses suffered by an eligible participant who, at the time of application, is a deceased individual or is a dissolved entity if a representative, who currently has authority to enter into a contract for the participant, signs the 2005, 2006, or 2007 Crop Disaster Program application. Participants must provide proof of the authority to sign legal documents for the deceased individual or dissolved entity. If a participant is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

(c) As a condition to receive benefits under this part, the Participant must have been in compliance with the Highly Erodible Land Conservation and Wetland Conservation provisions of part 12 of this title for the 2005, 2006, or 2007 crop year, as applicable, and must not otherwise be precluded from receiving benefits under parts 12 or 1400 of this title or any law.

#### **§ 760.804 Time and method of application.**

(a) The 2005, 2006, 2007 Crop Disaster Program application must be submitted on a completed FSA-840, or such other form designated for such application purpose by FSA, in the FSA county office in the participant's control county office before the close of business on a date that will be announced by the Deputy Administrator.

(b) Once signed by a participant, the application for benefits is considered to contain information and certifications of and pertaining to the participant regardless of who entered the information on the application.

(c) The participant requesting benefits under this program certifies the accuracy and truthfulness of the information provided in the application as well as any documentation filed with or in support of the application. All information is subject to verification by FSA. For example, as specified in § 760.818(f), the participant may be required to provide documentation to substantiate and validate quality standards and marketing contract prices. Refusal to allow FSA or any agency of the Department of Agriculture to verify

any information provided will result in the participant's forfeiting eligibility under this program. Furnishing required information is voluntary; however without it, FSA is under no obligation to act on the application or approve benefits. Providing a false certification to the government is punishable by imprisonment, fines, and other penalties.

(d) FSA may require the participant to submit any additional information it deems necessary to implement or determine any eligibility provision of this part. For example, as specified in § 760.818(f), the participant may be required to provide documentation to substantiate and validate quality standards and marketing contract prices.

(e) The application submitted in accordance with paragraph (a) of this section is not considered valid and complete for issuance of payment under this part unless FSA determines all the applicable eligibility provisions have been satisfied and the participant has submitted all of following completed forms:

(1) If Item 16 on FSA-840 is answered "YES," FSA-840M, Crop Disaster Program for Multiple Crop—Same Acreage Certification;

(2) CCC-502, Farm Operating Plan for Payment Eligibility;

(3) CCC-526, Payment Eligibility Average Adjusted Gross Income Certification;

(4) AD-1026, Highly Erodible Land Conservation (HELC) and Wetland Conservation Certification; and

(5) FSA-578, Report of Acreage.

(f) Application approval and payment by FSA does not relieve a participant from having to submit any form required, but not filed, according to paragraph (e) of this section.

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

(a) A participant may receive benefits for crop losses for only one of the 2005, 2006, or 2007 crop years as specified under this part.

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

(c) Payments determined to be issued are considered due and payable not later than 60 days after a participant's application is completed with all information necessary for FSA to determine producer eligibility for benefits.

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

(e) No person, as defined by part 1400 subpart B of this title, may receive more than a total of \$80,000 in disaster benefits under this part. In applying the



\$80,000 per person payment limitation, regardless of whether 2005, 2006, or 2007 crop year benefits are at issue or sought, the most restrictive "person" determination for the participant in the years 2005, 2006, and 2007, will be used to limit benefits.

(f) No participant may receive disaster benefits under this part in an amount that exceeds 95 percent of the value of the expected production for the relevant period as determined by FSA.

Accordingly, the sum of the value of the crop not lost, if any; the disaster payment received under this part; and any crop insurance payment or payments received under the NAP for losses to the same crop, cannot exceed 95 percent of what the crop's value would have been if there had been no loss.

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

(h) Any participant in a county eligible for either of the following programs must complete a duplicate benefits certification. If the participant received a payment authorized by either of the following, the amount of that payment will be reduced from the calculated 2005–2007 CDP payment:

(1) The Hurricane Indemnity Program (subpart B of this part);

(2) The Hurricane Disaster Programs (subparts D, E, F, and G of part 1416 of this title);

(3) The 2005 Louisiana Sugarcane Hurricane Disaster Assistance Program; or

(4) The 2005 Crop Florida Sugarcane Disaster Program.

#### **§ 760.806 Crop eligibility requirements.**

(a) A participant on a farm is eligible for assistance under this section with respect to losses to an insurable commodity or NAP if the participant:

(1) In the case of an insurable commodity, obtained a policy or plan of insurance under the Federal Crop Insurance Act for the crop incurring the losses; or

(2) In the case of a NAP covered crop, filed the required paperwork and paid the administrative fee by the applicable filing deadline, for the noninsurable commodity under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 for the crop incurring the losses.

(b) The reasons a participant either elected not to have coverage or did not have coverage mentioned in paragraphs (a)(1) or (2) of this section are not relevant to the determination of the

participant's ineligibility under this section. In addition, such reasons for not having crop insurance coverage have no bearing for consideration under part 718, subpart D of this chapter.

#### **§ 760.807 Miscellaneous provisions.**

(a) A person is not eligible to receive disaster assistance under this part if it is determined by FSA that the person has:

(1) Adopted any scheme or other device that tends to defeat the purpose of this part;

(2) Made any fraudulent representation;

(3) Misrepresented any fact affecting a program determination;

(4) Is ineligible under § 1400.5 of this title; or

(5) Does not have entitlement to an ownership share of the crop.

(i) Growers growing eligible crops under contract for crop owners are not eligible unless the grower can be determined to have a share of the crop.

(ii) Any verbal or written contract that precludes the grower from having an ownership share renders the grower ineligible for benefits under this part.

(b) A person ineligible under § 1437.15(c) of this title for any year is likewise ineligible for benefits under this part for that year or years.

(c) A person ineligible under § 400.458 of this title for any year is likewise ineligible for benefits under this part for that year or years.

(d) All persons with a financial interest in the operation receiving benefits under this part are jointly and severally liable for any refund, including related charges, which is determined to be due FSA for any reason.

(e) In the event that any request for assistance or payment under this part resulted from erroneous information or a miscalculation, the assistance or payment will be recalculated and any excess refunded to FSA with interest to be calculated from the date of the disbursement to the producer.

(f) The liability of anyone for any penalty or sanction under or in connection with this part, or for any refund to FSA or related charge is in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to: 18 U.S.C. 286, 287, 371, 641, 651, 1001, and 1014; 15 U.S.C. 714; and 31 U.S.C. 3729.

(g) The regulations in parts 11 and 780 of this title apply to determinations under this part.

(h) Any payment to any person will be made without regard to questions of title under State law and without regard

to any claim or lien against the crop, or its proceeds.

(i) For the purposes of the effect of lien on eligibility for Federal programs (28 U.S.C. 3201(e)), FSA waives the restriction on receipt of funds or benefits under this program but only as to beneficiaries who, as a condition of such waiver, agree to apply the benefits received under this part to reduce the amount of the judgment lien.

(j) Under this program, participants are either eligible or ineligible. Participants in general, do not render performance or need to comply. They either suffered eligible losses or they did not. Accordingly, the provisions of § 718.304 of this chapter do not apply to this part.

#### **§ 760.808 General provisions.**

(a) For calculations of loss, the participant's existing unit structure will be used as the basis for the calculation established in accordance with:

(1) For insured crops, part 457 of this title; or

(2) For NAP covered crops, part 1437 of this title.

(b) County average yield for loss calculations will be the average of the 2001 through 2005 official county yields established by FSA, excluding the years with the highest and lowest yields, respectively.

(c) County committees will assign production or reduce the historic yield when the county committee determines:

(1) An acceptable appraisal or record of harvested production does not exist;

(2) The loss is due to an ineligible cause of loss or practices, soil type, climate, or other environmental factors that cause lower yields than those upon which the historic yield is based;

(3) The participant has a contract providing a guaranteed payment for all or a portion of the crop; or

(4) The crop was planted beyond the normal planting period for the crop.

(d) The county committee will establish a maximum average loss level that reflects the amount of production producers would have produced if not for the eligible damaging weather or related conditions in the area or county for the same crop. The maximum average loss level for the county will be expressed as either a percent of loss or yield per acre. The maximum average loss level will apply when:

(1) Unharvested acreage has not been appraised by FSA, or a company reinsured by FCIC; or

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

(e) Assignment of production or reduction in yield will apply for



practices that result in lower yields than those for which the historic yield is based.

**§ 760.809 Eligible damaging conditions.**

(a) Except as provided in paragraphs (b) and (c) of this section, to be eligible for benefits under this part the loss of the crop, or reduction in quality, or prevented planting must be due to damaging weather or related conditions as defined in § 760.802.

(b) Benefits are not available under this part for any losses in quantity or quality, or prevented planting due to:

- (1) Poor farming practices;
- (2) Poor management decisions; or
- (3) Drifting herbicides.

(c) With the exception of paragraph (d) of this section, in all cases, the eligible damaging condition must have directly impacted the specific crop or crop acreage during its planting or growing period.

(d) If FSA has determined that there has been an eligible loss of surface irrigation water due to drought and such loss of surface irrigation water impacts eligible crop acreage, FSA may approve assistance to the extent permitted by section 760.814.

**§ 760.810 Qualifying 2005, 2006, or 2007 quantity crop losses.**

(a) To receive benefits under this part, the county committee must determine that because of eligible damaging weather or related condition specifically impacting the crop or crop acreage, the participant with respect to the 2005, 2006, or 2007 crop:

- (1) Was prevented from planting a crop;
- (2) Sustained a loss in excess of 35 percent of the expected production of a crop; or
- (3) Sustained a loss in excess of 35 percent of the value for value loss crops.

(b) Qualifying losses under this part do not include losses:

- (1) For the 2007 crop, those acres planted, or in the case of prevented planting, would have been planted, on or after February 28, 2007;
- (2) That are determined by FSA to be the result of poor management decisions, poor farming practices, or drifting herbicides;
- (3) That are the result of the failure of the participant to re-seed or replant the same crop in the county where it is customary to re-seed or replant after a loss;
- (4) That are not as a result of a damaging weather or a weather related condition specifically impacting the crop or crop acreage;
- (5) To crops not intended for harvest in crop year 2005, 2006, or 2007;

(6) Of by-products resulting from processing or harvesting a crop, such as cottonseed, peanut shells, wheat, or oat straw;

(7) To home gardens;

(8) That are a result of water contained or released by any governmental, public, or private dam or reservoir project if an easement exists on the acreage affected for the containment or release of the water; or

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

(c) Qualifying losses under this part for nursery stock will not include losses:

(1) For the 2007 crop, that nursery inventory acquired on or after February 28, 2007;

(2) Caused by a failure of power supply or brownouts;

(3) Caused by the inability to market nursery stock as a result of lack of compliance with State and local commercial ordinances and laws, quarantine, boycott, or refusal of a buyer to accept production;

(4) Caused by fire unless directly related to an eligible natural disaster;

(5) Affecting crops where weeds and other forms of undergrowth in the vicinity of the nursery stock have not been controlled; or

(6) Caused by the collapse or failure of buildings or structures.

(d) Qualifying losses under this part for honey, where the honey production by colonies or bees was diminished, will not include losses:

(1) For the 2007 crop, for production from those bees acquired on or after February 28, 2007;

(2) Where the inability to extract was due to the unavailability of equipment, the collapse or failure of equipment, or apparatus used in the honey operation;

(3) Resulting from storage of honey after harvest;

(4) To honey production because of bee feeding;

(5) Caused by the application of chemicals;

(6) Caused by theft, fire, or vandalism;

(7) Caused by the movement of bees by the producer or any other person; or

(8) Due to disease or pest infestation of the colonies.

(e) Qualifying losses for other value loss crops, except nursery, will not include losses for the 2007 crop that were acquired on or after February 28, 2007.

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

**§ 760.811 Rates and yields; calculating payments.**

(a)(1) Payments made under this part to a participant for a loss of quantity on

a unit with respect to yield-based crops are determined by multiplying the average market price times 42 percent, times the loss of production which exceeds 35 percent of the expected production, as determined by FSA, of the unit.

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

(3) As determined by FSA, additional quality loss payments may be made using a 25 percent quality loss threshold. The quality loss threshold is determined according to § 760.817.

(b) Payment rates for the 2005, 2006, or 2007 year crop losses will be 42 percent of the average market price.

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

(d) Production from all end uses of a multi-use crop or all secondary uses for multiple market crops will be calculated separately and summarized together.

(e) Each eligible participant's share of a disaster payment will be based on the participant's ownership entitlement share of the crop or crop proceeds, or, if no crop was produced, the share of the crop the participant would have received if the crop had been produced. If the participant has no ownership share of the crop, the participant is ineligible for assistance under this part.

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

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

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

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

**§ 760.812 Production losses; participant responsibility.**

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

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

(1) Retaining or providing, when required, the best verifiable or reliable production records available for the crop;

(2) Summarizing all the production evidence;

(3) Accounting for the total amount of unit production for the crop, whether or not records reflect this production;

(4) Providing the information in a manner that can be easily understood by the county committee; and

(5) Providing supporting documentation if the county committee has reason to question the damaging weather event or question whether all production has been accounted for.

(c) In determining production under this section, the participant must supply verifiable or reliable production records to substantiate production to the county committee. If the eligible crop was sold or otherwise disposed of through commercial channels, production records include: commercial receipts; settlement sheets; warehouse ledger sheets; load summaries; or appraisal information from a loss adjuster acceptable to FSA. If the eligible crop was farm-stored, sold, fed to livestock, or disposed of in means other than commercial channels, production records for these purposes include: truck scale tickets; appraisal information from a loss adjuster acceptable to FSA; contemporaneous diaries; or other documentary evidence, such as contemporaneous measurements.

(d) Participants must provide all records for any production of a crop that is grown with an arrangement, agreement, or contract for guaranteed payment.

#### **§ 760.813 Determination of production.**

(a) Production under this part includes all harvested production, unharvested appraised production, and assigned production for the total planted acreage of the crop on the unit.

(b) The harvested production of eligible crop acreage harvested more than once in a crop year includes the total harvested production from all these harvests.

(c) If a crop is appraised and subsequently harvested as the intended use, the actual harvested production must be taken into account to determine benefits. FSA will analyze and determine whether a participant's evidence of actual production

represents all that could or would have been harvested.

(d) For all crops eligible for loan deficiency payments or marketing assistance loans with an intended use of grain but harvested as silage, ensilage, cobbage, hay, cracked, rolled, or crimped, production will be adjusted based on a whole grain equivalent as established by FSA.

(e) For crops with an established yield and market price for multiple intended uses, a value will be calculated by FSA with respect to the intended use or uses for disaster purposes based on historical production and acreage evidence provided by the participant and FSA will determine the eligible acres for each use.

(f) For crops sold in a market that is not a recognized market for the crop with no established county average yield and average market price, 42 percent of the salvage value received will be deducted from the disaster payment.

(g) If a participant does not receive compensation based upon the quantity of the commodity delivered to a purchaser, but has an agreement or contract for guaranteed payment for production, the determination of the production will be the greater of the actual production or the guaranteed payment converted to production as determined by FSA.

(h) Production that is commingled between units before it was a matter of record or combination of record and cannot be separated by using records or other means acceptable to FSA will be prorated to each respective unit by FSA. Commingled production may be attributed to the applicable unit, if the participant made the unit production of a commodity a matter of record before commingling and does any of the following, as applicable:

(1) Provides copies of verifiable documents showing that production of the commodity was purchased, acquired, or otherwise obtained from beyond the unit;

(2) Had the production measured in a manner acceptable to the county committee; or

(3) Had the current year's production appraised in a manner acceptable to the county committee.

(i) The county committee will assign production for the unit when the county committee determines that:

(1) The participant has failed to provide adequate and acceptable production records;

(2) The loss to the crop is because of a disaster condition not covered by this part, or circumstances other than natural disaster, and there has not

otherwise been an accounting of this ineligible cause of loss;

(3) The participant carries out a practice, such as multiple cropping, that generally results in lower yields than the established historic yields;

(4) The participant has a contract to receive a guaranteed payment for all or a portion of the crop;

(5) A crop was late-planted;

(6) Unharvested acreage was not timely appraised; or

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

(j) For peanuts, the actual production is all peanuts harvested for nuts, regardless of their disposition or use, as adjusted for low quality.

(k) For tobacco, the actual production is the sum of the tobacco: marketed or available to be marketed; destroyed after harvest; and produced but unharvested, as determined by an appraisal.

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

(a) Payment acreage of a crop is limited to the lesser of insured acreage or NAP covered acreage of the crop, as applicable, or actual acreage of the crop planted for harvest.

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

(1) Were planted with the intent to harvest;

(2) Were planted within the normal planting period for that crop;

(3) Meet all other eligibility provisions of this part including good farming practices; and

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

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

(1) The specific crops are approved by the State committee as eligible multiple-cropping practices in accordance with procedures approved by the Deputy Administrator and separately meet all requirements, including insurance or NAP requirements; and

(2) The farm containing the multiple-cropped acreage has a history of successful multiple cropping more than one crop on the same acreage in the same crop year, in the year previous to the disaster, or at least 2 of the 4 crop

years immediately preceding the disaster crop year based on timely filed crop acreage reports.

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

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

(f) Benefits under this part apply to irrigated crops where, in cases determined by the Deputy Administrator, acreage was affected by a lack of surface irrigation water due to drought or contamination of ground water or surface irrigation water due to saltwater intrusion. In no case is a loss of ground water, for any reason, an eligible cause of loss.

**§ 760.815 Calculation of prevented planted acreage.**

(a) When determining losses under this part, prevented planted acreage will be considered separately from planted acreage of the same crop.

(b) For insured crops, or NAP covered crops, as applicable, disaster payments under this part for prevented planted acreage will not be made unless RMA or FSA, as applicable, documentation indicates that the eligible participant received a prevented planting payment under either NAP or the RMA-administered program.

(c) The participant must prove, to the satisfaction of the county committee, an intent to plant the crop and that such crop could not be planted because of an eligible disaster. The county committee must be able to determine the participant was prevented from planting the crop by an eligible disaster that:

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

(2) Occurred after the previous planting period for the crop; and

(3) Unless otherwise approved by the Deputy Administrator, began no earlier than the planting season for that crop.

(d) Prevented planted disaster benefits under this part do not apply to:

(1) Acreage not insured or NAP covered;

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

(3) Any acreage for which a cash lease payment is received for the use of the acreage the same crop year, unless the county committee determines the lease was for haying and grazing rights only and was not a lease for use of the land;

(4) Acreage for which the participant or any other person received a prevented planted payment for any crop for the same acreage, excluding share arrangements;

(5) Acreage for which the participant cannot provide verifiable proof to the county committee that inputs such as seed, chemicals, and fertilizer were available to plant and produce a crop with the expectation of producing at least a normal yield; and

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

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

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

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

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

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

(5) The specific crops meet the eligibility criteria for a separate crop designation as a repeat or approved multiple cropping practice set out in § 760.814.

(f)(1) Disaster benefits under this part do not apply to crops where the prevented planted acreage was affected by a disaster that was caused by drought unless on the final planting date or the late planting period for non-irrigated acreage, the area that was prevented

from being planted had insufficient soil moisture for germination of seed and progress toward crop maturity because of a prolonged period of dry weather;

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

(g) Prevented planting benefits under this part apply to irrigated crops where adequate irrigation facilities were in place before the eligible disaster and 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.

(h) For NAP covered crops, prevented planting provisions apply according to part 718 of this chapter.

(i) Late-filed crop acreage reports for prevented planted acreage in previous years are not acceptable for CDP purposes.

**§ 760.816 Value loss crops.**

(a) Notwithstanding any other provisions of this part, this section applies to value loss crops and tropical crops. Unless otherwise specified, all the eligibility provisions of part 1437 of this title apply to value loss crops and tropical crops under this part.

(b) For value loss crops, benefits under this part are calculated based on the loss of value at the time of the damaging weather or related condition, as determined by FSA.

(c) For tropical crops:

(1) CDP benefits for 2005 are calculated according to general provisions of part 1437, but not subpart F, of this title.

(2) CDP benefits for 2006 and 2007 are calculated according to part 1437, subpart F of this title.

**§ 760.817 Quality losses for 2005, 2006, and 2007 crops.**

(a) Subject to other provisions of this part, assistance will be made available to participants determined eligible under this section for crop quality losses of 25 percent or greater of the value that all affected production of the crop would have had if the crop had not suffered a quality loss.

(b) The amount of payment for a quality loss will be equal to 65 percent of the quantity of the crop affected by the quality loss, not to exceed expected production based on harvested acres, multiplied by 42 percent of the per unit average market value based on percentage of quality loss for the crop as determined by the Deputy Administrator.

(c) This section applies to all crops eligible for 2005, 2006, and 2007 crop disaster assistance under this part, with the exceptions of value loss crops, honey, and maple sap, and applies to crop production that has a reduced economic value due to the reduction in quality.

(d) Participants may not be compensated under this section to the extent that such participants have received assistance under other provisions of this part, attributable in whole or in part to diminished quality.

#### **§ 760.818 Marketing contracts.**

(a) A marketing contract must meet all of the conditions outlined in paragraphs (b), (c), and (d) of this section.

(b) A marketing contract, at a minimum, must meet all of the following conditions:

(1) Be a legal contract in the State where executed;

(2) Specify the commodity under contract;

(3) Specify crop year;

(4) Be signed by both the participant, or legal representative, and the purchaser of the specified commodity;

(5) Include a commitment to deliver the contracted quantity;

(6) Include a commitment to purchase the contracted quantity that meets specified minimum quality standards and other criteria as specified;

(7) Define a determinable quantity by containing either a:

(i) Specified production quantity or

(ii) A specified acreage for which production quantity can be calculated;

(8) Define a determinable price by containing either a:

(i) Specified price or

(ii) Method to determine such a price;

(9) Contain a relationship between the price and the quality using either:

(i) Specified quality standards or

(ii) A method to determine such quality standards from published third party data; and

(10) Have been executed within 10 days after:

(i) End of insurance period for insured crops or

(ii) Normal harvest date for NAP covered crops as determined by FSA.

(c) The purchaser of the commodity specified in the marketing contract must meet at least one of the following:

(1) Be a licensed commodity warehouseman;

(2) Be a business enterprise regularly engaged in the processing of a commodity, that possesses all licenses and permits for marketing the commodity required by the State in which it operates, and that possesses or has contracted for facilities with enough

equipment to accept and process the commodity within a reasonable amount of time after harvest; or

(3) Is able to physically receive the harvested production.

(d) In order for the commodity specified in the marketing contract to be considered sold pursuant to the marketing contract, the commodity must have been produced by the participant in the crop year specified in the contract, and at least one of the following conditions must be met:

(1) Commodity was sold under the terms of the contract or

(2) Participant attempted to deliver the commodity to the purchaser, but the commodity was rejected due to quality factors as specified in the contract.

(e) The amount of payment for affected production, as determined in § 760.817(b), sold pursuant to one or more marketing contracts will take into consideration the marketing contract price as determined by FSA.

(f) County committees have the authority to require a participant to provide necessary documentation, which may include, but is not limited to, previous marketing contracts fulfilled, to substantiate and validate quality standards in paragraph (b)(9) of this section and marketing contract price received for the commodity for which crop quality loss assistance is requested. In cases where the county committee has reason to believe the participant lacks the capacity or history to fulfill the quality provisions of the marketing contract the county committee will require such documentation.

#### **§ 760.819 Misrepresentation, scheme, or device.**

(a) A person is ineligible to receive assistance under this part if it is determined that such person has:

(1) Adopted any scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent representation under this program;

(3) Misrepresented any fact affecting a program or person determination; or

(4) Has violated or been determined ineligible under § 1400.5 of this title.

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

(a) Except as provided in paragraph (b) of this section, any payment to any person will be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and

withholdings found at part 1403 of this title apply to any payments made under this part.

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

(c) A debt or claim may be settled according to part 792 of this chapter.

#### **§ 760.821 Compliance with highly erodible land and wetland conservation.**

(a) The highly erodible land and wetland conservation provisions of part 12 of this title apply to the receipt of disaster assistance for 2005, 2006, and 2007 crop losses made available under this authority.

(b) Eligible participants must be in compliance with the highly erodible land and wetland conservation compliance provisions for the year for which financial assistance is requested.

### **Subpart J—2005–2007 Livestock Indemnity Program**

#### **§ 760.900 Administration.**

(a) The regulations in this subpart specify the terms and conditions applicable to the 2005–2007 Livestock Indemnity Program (2005–2007 LIP), which will be administered under the general supervision and direction of the Administrator, FSA.

(b) FSA representatives do not have authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State FSA committee will take any action required by the regulations of this subpart that the county FSA committee has not taken. The State FSA committee will 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 this subpart; or

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

(d) No delegation to a State or county FSA committee will preclude the Deputy Administrator for Farm Programs from determining any question arising under the program or from reversing or modifying any determination made by a State or county FSA committee.

#### **§ 760.901 Applicability.**

(a) This subpart establishes the terms and conditions under which the 2005–2007 LIP will be administered under Title IX of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act,

2007 (Pub. L. 110–28) for eligible counties as specified in § 760.902(a).

(b) Eligible livestock owners and contract growers will be compensated in accordance with § 760.909 for eligible livestock deaths that occurred in eligible counties as a direct result of an eligible disaster event. Drought is not an eligible disaster event except when anthrax, as a related condition that occurs as a result of drought, results in the death of eligible livestock.

#### **§ 760.902 Eligible counties and disaster periods.**

Counties are eligible for agricultural assistance under the 2005–2007 LIP if they received a timely Presidential designation, a timely Secretarial declaration, or a qualifying Administrator's Physical Loss Notice (APLN) determination in a county otherwise the subject of a timely Presidential declaration, or are counties contiguous to such counties. Presidential designations and Secretarial declarations will be considered timely only if made after January 1, 2005, and before February 28, 2007. Eligible counties, disaster events, and disaster periods are listed at <http://disaster.fsa.usda.gov>.

#### **§ 760.903 Definitions.**

The following definitions apply to this subpart. The definitions in parts 718 and 1400 of this title also apply, except where they conflict with the definitions in this section.

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

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

*Adult dairy bull* means a male dairy breed bovine animal at least 2 years old used primarily 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 is also considered an adult dairy cow if it was pregnant at the time it died.

*Agricultural operation* means a farming operation.

*Application* means the “2005–2007 Livestock Indemnity Program” form.

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

*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.

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

*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 by the participant with structures, facilities, and growing media (including, but not limited to, water and nutrients) and was in fact controlled by the participant at the time of the disaster.

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

*Deputy Administrator* means the Deputy Administrator for Farm Programs, Farm Service Agency, U.S. Department of Agriculture or the designee.

*Doe* means a female goat.

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

*Ewe* means a female sheep.

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

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

*Livestock owner* means one having legal ownership of the livestock for which benefits are being requested on the day such livestock died due to an eligible disaster.

*Non-adult beef cattle* means a bovine that does not meet the definition of adult beef cow or bull. Non-adult beef cattle are 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 an animal of those breeds that does not meet the definition of adult buffalo/beefalo cow or bull. Non-adult buffalo or beefalo are 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 a bovine livestock, of a breed used for the purpose of providing milk for human consumption, that do not meet the definition of adult dairy cow or bull. Non-adult dairy cattle are 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 are further delineated by sex, age, and purpose of production as determined by FSA.

*Ram* means a male sheep.

*Sheep* means a domesticated, ruminant mammal of the genus *Ovis*. Sheep are further defined by sex (rams and ewes) and age (lambs).

*Swine* means a domesticated omnivorous pig, hog, and boar. Swine are further delineated by sex and weight as determined by FSA.

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

(a) A participant may receive benefits for livestock losses for only one of the 2005, 2006, or 2007 calendar years as specified under this part.

(b) A “person” as determined under part 1400 of this title may receive no more than \$80,000 under this subpart. In applying the \$80,000 per person payment limitation, regardless of whether 2005, 2006, or 2007 calendar year benefits are at issue or sought, the most restrictive “person” determination for the participant in the years 2005, 2006, and 2007, will be used to limit benefits.

(c) The provisions of part 1400, subpart G, of this title relating to limits to payments for individuals or entities with certain levels of adjusted gross income apply to this program.

(d) As a condition to receive benefits under this subpart, a participant must have been in compliance with the provisions of parts 12 and 718 of this title and must not otherwise be precluded from receiving benefits under any law.

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

**§ 760.905 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 § 760.906(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 § 760.906(b), on the day the livestock died.

**§ 760.906 Eligible livestock.**

(a) To be considered eligible livestock for livestock owners, livestock must be adult or non-adult dairy cattle, beef cattle, buffalo, beefalo, catfish, crawfish, equine, sheep, goats, swine, poultry, deer, or reindeer and meet all the conditions in paragraph (c) of this section.

(b) To be considered eligible livestock for contract growers, livestock must be poultry or swine as defined in § 760.903 and meet all the conditions in paragraph (c) of this section.

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

(1) Died in an eligible county as a direct result of an eligible disaster event;

(i) After January 1, 2005, but before February 28, 2007;

(ii) No later than 60 calendar days from the ending date of the applicable disaster period, but before February 28, 2007; and

(iii) In the calendar year for which benefits are being requested.

(2) The disaster event that caused the loss must be the same event for which a natural disaster was declared or designated.

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

(4) 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, roping, pets, or for show.

(d) In those counties in § 760.902, the following types of animals owned by a livestock owner are eligible livestock:

(1) Adult beef bulls;

(2) Adult beef cows;

(3) Adult buffalo or beefalo bulls;

(4) Adult buffalo or beefalo cows;

(5) Adult dairy bulls;

(6) Adult dairy cows;

(7) Catfish;

(8) Chickens, broilers, pullets;

(9) Chickens, chicks;

(10) Chickens, layers, roasters;

(11) Crawfish;

(12) Deer;

(13) Ducks;

(14) Ducks, ducklings;

(15) Equine;

(16) Geese, goose;

(17) Geese, gosling;

(18) Goats, bucks;

(19) Goats, does;

(20) Goats, kids;

(21) Non-adult beef cattle;

(22) Non-adult buffalo/beefalo;

(23) Non-adult dairy cattle;

(24) Reindeer

(25) Sheep, ewes;

(26) Sheep, lambs;

(27) Sheep, rams;

(28) Swine, feeder pigs under 50 pounds;

(29) Swine, sows, boars, barrows, gilts 50 to 150 pounds;

(30) Swine, sows, boars, barrows, gilts over 150 pounds;

(31) Turkeys, poults; and

(32) Turkeys, toms, fryers, and roasters.

(e) In those counties in § 760.902, the following types of animals are eligible livestock for contract growers:

(1) Chickens, broilers, pullets;

(2) Chickens, layers, roasters;

(3) Geese, goose;

(4) Swine, boars, sows;

(5) Swine, feeder pigs;

(6) Swine, lightweight barrows, gilts;

(7) Swine, sows, boars, barrows, gilts; and

(8) Turkeys, toms, fryers, and roasters.

**§ 760.907 Application process.**

(a) To apply for 2005–2007 LIP, submit a completed application to the administrative county FSA office that maintains the farm records for your agricultural operation, a copy of your grower contract, if you are a contract grower, and other supporting documents required for determining your eligibility as an applicant. Supporting documents must show:

(1) Evidence of loss,

(2) Current physical location of livestock in inventory, and

(3) Physical location of claimed livestock at the time of death.

(b) The application must be filed during the application period announced by the Deputy Administrator.

(c) A minor child is eligible to apply for program benefits if 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.

(d) The participant must provide adequate proof that the death of the eligible livestock occurred in an eligible county as a direct result of an eligible disaster event during the applicable disaster period. The quantity and kind of livestock that died as a direct result of the eligible disaster event 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 FSA.

(e) Certification 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 FSA, were in inventory at the time the applicable disaster event occurred; and

(iii) Other details required for FSA 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 required by FSA to determine the certification acceptable.

(f) Data furnished by the participant 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.

**§ 760.908 Deceased individuals or dissolved entities.**

(a) Payments may be made for eligible losses suffered by an eligible participant who is now a deceased individual or is a dissolved entity if a representative, who currently has authority to enter

into a contract, on behalf of the participant, signs the application for payment.

(b) Legal documents showing proof of authority to sign for the deceased individual or dissolved entity must be provided.

(c) If a participant 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.

#### **§ 760.909 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. Payments for the 2005–2007 LIP 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 § 760.906. Adjustments will be applied in accordance with paragraphs (d) and (e) of this section.

(b) The 2005–2007 LIP national payment rate for eligible livestock owners is based on 26 percent of the average fair market value of the livestock.

(c) The 2005–2007 LIP national payment rate for eligible livestock contract growers is based on 26 percent of the average income loss sustained by the contract grower with respect to the dead livestock.

(d) The 2005 payment calculated under 2005–2007 LIP for eligible livestock owners will be reduced by the amount the participant received under:

(1) The Livestock Indemnity Program (subpart E of this part);

(2) The Aquaculture Grant Program (subpart G of this part); and

(3) The Livestock Indemnity Program II (part 1416, subpart C of this title).

(e) The 2005 payment calculated under 2005–2007 LIP for eligible livestock contract growers will be reduced by the amount the participant received:

(1) Under the Livestock Indemnity Program (subpart E of this part);

(2) For the loss of income from the dead livestock from the party who contracted with the producer to grow the livestock; and

(3) Under the Livestock Indemnity Program II (part 1416, subpart C of this title).

#### **§ 760.910 Appeals.**

The appeal regulations set forth at parts 11 and 780 of this title apply to determinations made pursuant to this subpart.

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

(a) Any payment to any participant will be made without regard to questions of title under State law and without regard to any claim or lien against the commodity, or proceeds, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 792 of this chapter apply to payments made under this subpart.

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

#### **§ 760.912 Records and inspections.**

Participants receiving payments under this subpart or any other person who furnishes information for the purposes of enabling such participant to receive a payment under this subpart must 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. Participants receiving payments or any other person who furnishes such information to FSA must allow authorized representatives of USDA and the General Accountability Office, during regular business hours, to inspect, examine, and make copies of such books or records, and to enter upon, inspect and verify all applicable livestock and acreage in which the participant has an interest for the purpose of confirming the accuracy of information provided by or for the participant.

#### **§ 760.913 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 this subpart, and if any refund of a payment to FSA will otherwise become due in connection with this subpart, all payments made in regard to such matter must be refunded to FSA together with interest and late-payment charges as provided for in part 792 of this chapter.

Signed in Washington, DC, December 18, 2007.

**Teresa C. Lasseter,**

*Administrator, Farm Service Agency.*

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## **DEPARTMENT OF AGRICULTURE**

### **Farm Service Agency**

#### **7 CFR Part 760**

**RIN 0560–AH72**

#### **2005–2007 Livestock Compensation and Catfish Grant Programs**

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes the Farm Service Agency (FSA) regulations for the 2007 Emergency Agricultural Assistance. The rule implements legislation that provides funds for agricultural disaster aid for eligible producers, specifically the continuation of the Livestock Compensation Program (LCP) and the Catfish Grant Program (CGP). The programs will provide financial assistance to eligible livestock and catfish producers in counties designated as a major disaster or emergency by the President or those declared a natural disaster by the Secretary of Agriculture. Counties designated disasters by the President may be eligible even though agricultural loss was not covered by the designation if there has been an FSA Administrator's Physical Loss Notice covering such losses. The natural disaster declarations by the Secretary or designations by the President must have been issued between January 1, 2005, and February 28, 2007; that is after January 1, 2005, and before February 28, 2007. Counties contiguous to such counties will also be eligible. These programs are designed to provide financial assistance to producers who suffered feed losses due to natural disasters in the eligible counties.

**DATES:** This rule is effective December 19, 2007.

#### **FOR FURTHER INFORMATION CONTACT:**

Salomon Ramirez, 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 [salomon.ramirez@wdc.usda.gov](mailto:salomon.ramirez@wdc.usda.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

This final rule implements certain agricultural assistance provisions of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Public Law 110–28) (the 2007 Emergency Supplemental). The 2007 Emergency Supplemental authorizes the