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Commodity Credit Corporation

7 CFR Parts 1412, 1416, and 1437

Noninsured Crop Disaster Assistance Program; Interim Rule

DEPARTMENT OF AGRICULTURE**Farm Service Agency****7 CFR Part 718****Commodity Credit Corporation****7 CFR Parts 1412, 1416, and 1437**

RIN 0560-AI20

Noninsured Crop Disaster Assistance Program

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

ACTION: Interim rule.

SUMMARY: This rule implements changes to the Noninsured Crop Disaster Assistance Program (NAP) as required by the Agricultural Act of 2014 (the 2014 Farm Bill), including changes to eligible crops, provisions governing eligibility of native sod acreage, additional coverage levels, and waivers of service fees and premium reductions for beginning, limited resource, and socially disadvantaged producers. This rule also clarifies requirements for eligible types and causes of loss and expands coverage for eligible mollusk and other aquaculture losses. This rule clarifies that the Farm Service Agency (FSA) may set separate market prices for organic crops and for direct to consumer sales. The changes are relatively minor and do not change the core purpose of NAP, which is to provide financial assistance to producers of non-insurable crops when low yield, loss of inventory, or prevented planting occurs due to a natural disaster.

DATES: *Effective Date:* December 15, 2014.

Comment Date: We will consider comments that we receive by February 13, 2015.

ADDRESSES: We invite you to submit comments on this interim rule. In your comment, include the Regulation Identifier Number (RIN) and the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail, hand delivery, or courier:* Steve Peterson, Production, Emergencies and Compliance Division, Farm Service Agency (FSA), United States Department of Agriculture (USDA), Stop 0517, 1400 Independence Avenue SW., Washington, DC 20250-0517.

Comments will be available online at <http://www.regulations.gov>. In addition, comments will be available for public inspection at the above address during business hours from 8 a.m. to 5 p.m., Monday through Friday, except holidays. A copy of this interim rule is available through the FSA home page at <http://www.fsa.usda.gov/>.

FOR FURTHER INFORMATION CONTACT: Steve Peterson, telephone: (202) 720-7641. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice).

SUPPLEMENTARY INFORMATION:**Background**

FSA administers NAP for the Commodity Credit Corporation (CCC) as authorized by section 196 of the Federal Agriculture Improvement and Reform Act of 1996, as amended (7 U.S.C. 7333). The NAP regulations are in 7 CFR part 1437. NAP is administered under the general supervision of the FSA Administrator (who also serves as the CCC Executive Vice-President) and is carried out by FSA State and county committees. NAP coverage is limited to crops other than livestock that are commercially produced for food and fiber, and to other specific crops for which catastrophic coverage under section 508(b) or additional coverage under sections 508(c) or 508(h) under the Federal Crop Insurance Act (7 U.S.C. 1508(b), (c), and (h)) is not available. Qualifying losses to eligible NAP crops must be due to an eligible cause of loss as specified in 7 CFR part 1437, which includes damaging weather (drought, hurricane, freeze, etc.) or adverse natural occurrence (volcanic eruption, flood, etc.). NAP coverage is not automatic; producers must first apply for NAP coverage by an application closing date. That application is not filed unless it is accompanied by the service fee. The producer must file the application for coverage accompanied by the appropriate service fee (or service fee waiver) at their FSA county office in order to be eligible for NAP coverage. It is important producers understand that the law specifies that an application for coverage must be accompanied by the service fee and be filed no later than 30 days before the beginning of any coverage period. Therefore, the NAP application for coverage and payment of the service fee must be completed before any coverage can begin or attach. In addition, in the event a loss claim is filed for which premium fees are due premium fees will be first deducted

from the NAP payment earned. Losses occurring outside a coverage period are not eligible for NAP coverage. Producers who choose not to obtain NAP coverage for a crop or commodity are not eligible for NAP assistance on the crop or commodity. The core provisions of NAP are not changing with this rule.

The 2014 Farm Bill (Pub. L. 113-79) made a number of changes to NAP. This rule amends the NAP regulations to be consistent with those changes made by the 2014 Farm Bill. The changes include revised NAP eligibility requirements for tilled native sod, added coverage eligibility for sweet sorghum and biomass sorghum, and modified coverage for industrial crops. Beginning, limited resource, and socially disadvantaged farmers and ranchers will be eligible for service fee waivers. New “buy up” provisions will allow producers to buy additional NAP coverage for a premium, resulting in a risk management product that has equivalent coverage levels to some types of crop insurance offered by the Risk Management Agency (RMA).

This rule makes discretionary changes to clarify eligible losses, and to redefine coverage for mollusks. Another discretionary change adds a requirement for NAP participants to notify FSA of losses within 72 hours for certain crops, including hand-harvested crops, which require a timely assessment of loss before the damaged crop deteriorates. This rule clarifies that FSA may set separate market prices for the same crop in a state based on farming practices (conventional or organic) or sales to different markets (wholesale or direct to consumer).

NAP Assistance for 2012 Fruit Crop Losses

The 2014 Farm Bill requires USDA to provide retroactive 2012 NAP assistance for losses to fruit crops grown on trees or bushes in counties that had Secretarial disaster designations due to frost or freeze. The eligibility provisions for that assistance were previously announced in a Notice of Funds Availability (79 FR 42493-42499) and are not addressed in this rule.

Definitions Added or Revised in This Rule

The changes required by the 2014 Farm Bill and the clarifying discretionary changes require new definitions. This rule adds the following definitions to 7 CFR 1437.3, “Definitions:” “acres devoted to the crop,” “agricultural experts,” “application for coverage,” “bypass year,” “buffer zone,” “buy-up coverage,” “buy-up coverage yield,”

“certified organic acreage,” “certifying agent,” “conventional farming practice,” “feedstock,” “generally recognized,” “guarantee,” “maximum dollar value for coverage sought,” “organic agricultural experts,” “organic crop,” “organic system plan,” “organic standards,” “prohibited substance,” “short rotation woody crops,” and “transitional acreage.” This rule revises the definitions for “application closing date,” “catastrophic coverage,” “crop year,” “good farming practices,” “industrial crop,” and “native sod.” These new and revised terms are needed to clarify the new provisions of this rule. For example, the definitions for “feedstock,” “industrial crop,” and “short rotation woody crops” are needed to implement the changes required by the 2014 Farm Bill to add certain biomass feedstocks as eligible crops and to clarify the existing provisions for industrial crops. Definitions of “agricultural experts” and “organic agricultural experts” are needed because those terms are used in the context of determining appropriate farming practices for specific crops and locations. The new provisions concerning specific market prices and practices for organic crops requires adding definitions for “buffer zone,” “certified organic acreage,” “certifying agent,” “organic crop,” “organic system plan,” “organic standards,” “prohibited substance,” and “transitional acreage.” The new “buy-up coverage” required several additional terms to clarify the provision on premium calculations.

NAP Eligibility for Crops and Practices Not Covered by Federal Crop Insurance

This rule implements changes required by the 2014 Farm Bill with regard to NAP crop eligibility. Before the 2014 Farm Bill, NAP coverage was available on certain eligible crops for which a catastrophic risk protection plan of insurance (CAT) was unavailable from RMA. (A CAT-level of Federal crop insurance offered by RMA pays 55 percent of the price of the commodity established by RMA on crop losses in excess of 50 percent.) NAP was offered at CAT-levels only on those crops. Prior to the required changes made by the 2014 Farm Bill, in some cases, NAP could be made available to certain eligible crops that had other forms of insurance (additional coverage under sections 508(c) or 508(h)) available under the Federal Crop Insurance Act. The 2014 Farm Bill amends NAP crop eligibility. As amended, NAP is not available for crops for which CAT under section 508(b) or additional coverage under sections 508(c) or 508(h) of the Federal Crop

Insurance Act are available. Therefore, if either CAT or additional coverage (excluding pilot policies or plans of insurance) is available for a crop, NAP is not available.

In addition to the mandatory change just described, FSA is making a discretionary clarification that NAP coverage may be made available for certain eligible crops for certain practices not covered under CAT or additional coverage under sections 508(c) or (h). An example of this could be where CAT or additional coverage is available for irrigated corn grain crop acreage in a county but CAT and additional coverage is unavailable for non-irrigated corn crop acreage. In this example, if FSA determines that producing non-irrigated corn in the county is a good farming practice and that Federal crop insurance is unavailable because of a lack of actuarial data, NAP can be made available to non-irrigated corn acreage in the county. This discretionary decision to make NAP available to corn that is not irrigated will provide producers with risk management protection. Coverage under NAP under this exception will be limited to situations when the unavailability of CAT coverage is due to a lack of actuarial data and not due to an absence of good farming practices or due to hardiness zones.

Native Sod

This rule makes mandatory changes to the eligibility of producers who grow crops on native sod as required by section 11014 of the 2014 Farm Bill. Prior to this rule, the regulations allowed that the Governor of a State in the Prairie Pothole National Priority Area (specific counties within the States of Iowa, Minnesota, Montana, North Dakota, and South Dakota) could elect that producers newly tilling native sod (specifically, that was tilled for the production of an annual crop) would have been ineligible for Federal crop insurance and for NAP benefits during the first 5 crop years of planting that annual crop. However, the governors were not required to make that decision and the producers of tilled native sod would have continued to be eligible for both Federal crop insurance and NAP in those States, as such decision was discretionary. The 2014 Farm Bill requires a reduction of benefits for native sod acreage in Iowa, Minnesota, Montana, Nebraska, North Dakota, and South Dakota. There is no longer any discretion given to governors of those States. The reduced eligibility period is now the first four crop years of planting.

Under the 2014 Farm Bill and this rule, for the first four years of planting on native sod acreage, the NAP service fee and premiums for crops planted on that acreage will be 200 percent of the amount calculated according to 7 CFR 1437.6, although the premium cannot exceed the maximum premium amount of 5.25 percent times the payment limitation. The payment limit is \$125,000, so the maximum premium amount is \$6,562.50. In addition, the approved yield will be equal to 65 percent of the T-yield for the crop. (The T-yield, as specified in 7 CFR 1437.3, is the estimated county yield that is used when a producer does not have 4 years of actual production history.) This rule also amends the definition of “native sod” to conform to the amended definition established by the 2014 Farm Bill to specify that it includes land that a producer cannot substantiate has ever been tilled as of February 7, 2014. The 2014 Farm Bill does not change the de minimis acreage exemption, which applies to areas of 5 acres or less and is clarified in this rule to be consistent with the RMA provisions.

Eligible NAP Crops

Eligible NAP crops currently include commercial crops: Crops grown for food (excluding livestock and their by-products); crops planted and grown for livestock consumption; crops grown for fiber (excluding trees grown for wood, paper, or pulp products); aquaculture species crops (including ornamental fish); floriculture; ornamental nursery; Christmas tree crops; turf grass sod; industrial crops; seed crops; and sea grass and sea oats. As required by the 2014 Farm Bill, this rule adds sweet sorghum and biomass sorghum as eligible crops.

The 2014 Farm Bill and this rule clarify that “industrial crops” include crops grown expressly for the purpose of producing a feedstock for renewable biofuel, renewable electricity, or biobased products. For the purpose of implementing this clarification to “industrial crops,” this rule also adds a definition of “feedstock” in § 1437.3 to include only crops grown expressly for biofuel; residues and by-products of crops grown for a purpose other than biofuel are not eligible for NAP coverage. This rule excludes crops that are invasive or noxious plants from “industrial crops” to be consistent with Executive Order 13112, which prohibits Federal agencies from funding or carrying out actions that “are likely to cause or promote the introduction or spread of invasive species in the United States.” The determination of whether a species is invasive or noxious varies by

State, and FSA State committees will consult with the State technical committees for recommendations concerning the non-invasive and noxious status for otherwise eligible crops for the purposes of NAP. Information on ineligible species will be available in FSA county offices.

Eligible Causes of Loss

This rule specifies that in limited instances, insufficient chill hours is an eligible cause of loss by itself for specific crops and locations for which FSA has determined, in advance of a coverage period, based on its review of sufficient scientific evidence, that chill hours are required for the crop to produce and a lack of chill hours is detrimental to crop production irrespective of management. In cases where FSA makes the decision to include insufficient chill hours as an eligible cause of loss by itself for a crop and location, the crop and location and subsequent crop year coverage period for which the decision will apply will be specified in a list maintained by FSA and available at FSA county offices. If the crop and location is not on that list, then insufficient chill hours can only be an eligible cause of loss if the insufficient chill hours was related to damaging weather or an adverse natural occurrence (as specified in § 1437.10(b)(1) or (b)(2)). This is consistent with current policy.

FSA is also making discretionary changes to clarify and specify additional ineligible causes of loss under this rule. Causes of loss that were previously ineligible will continue to be ineligible under this rule, except for insufficient chill hours as discussed above. This rule also clarifies that ineligible causes of loss include: Failure to carry out a good irrigation practice; variance of temperatures from average normal temperatures that are not otherwise specified as eligible causes of loss; managerial decisions to attempt to grow or produce a crop in an area that is not suited for successful commercial production of that crop; for aquaculture, loss of inventory or missing non-containerized inventory resulting from a managerial decision not to seed or raise the crop in containers, net pens, or wire baskets, on ropes, or using similar devices (except as provided for mollusks in this rule); failure to follow organic farming practices or contamination by application or drift of prohibited substances onto organic crops; weeds; and any cause of loss that results in damage that is not evident or would not have been evident during the NAP coverage period. The addition of these causes of loss is discretionary and

is intended to provide clarification and consistency with the intent of NAP to provide coverage only for losses due to drought, flood, or other natural disaster, as determined by the Secretary, which has been interpreted to include damaging weather and adverse natural occurrences and related conditions. FSA is adding ropes as a device on which aquacultural species are raised because aquacultural species, including mussels and other aquatic organisms such as kelp, are seeded and raised on ropes. FSA is adding ropes as an example of a containment device. The Deputy Administrator for Farm Programs will determine on a species by species, area by area, and practice by practice basis whether ropes provide the necessary containment and protection.

Buy-Up Coverage Levels and Premiums

Prior to the passage of the 2014 Farm Bill, NAP provided only one level of coverage, equivalent to CAT risk protection available under section 508(b) of the Federal Crop Insurance Act. This CAT-level protection covers losses due to low yield that are greater than 50 percent of expected production. As specified in current regulations in 7 CFR part 1437, NAP payments for low yield are calculated based on the amount of loss that exceeds 50 percent of expected production at 55 percent of the average market price for the crop. This means that the maximum NAP payment for a total loss under CAT-level coverage is 27.5 percent (50 percent of 55 percent) of the value of the covered crop or commodity. Under NAP, prevented planting was calculated not on a loss of expected yield, but based on acreage prevented from being planted based on total acreage intended to be planted in a crop year. A NAP prevented planting payment was issued based on the eligible approved prevented planted crop acreage in excess of 35 percent of total planted and prevented planted acreage times 55 percent of the average market price of the crop. NAP CAT-level coverage is available for a service fee of \$250 per crop per county, up to \$750 per county, not to exceed \$1,875 per producer—this rule does not change the service fee for CAT-level coverage.

NAP will continue to offer CAT-level coverage for eligible crops. For the 2015 through 2018 crop years, the 2014 Farm Bill authorizes additional levels of coverage equivalent to coverage under subsections (c) and (h) of section 508 of the Federal Crop Insurance Act. This means that producers may select buy-up coverage ranging from 50 to 65 percent of production, in 5 percent increments, and for 100 percent of the average

market price. In other words, all buy-up coverage levels are at 100 percent of the average market price. If a producer elects buy-up coverage for a crop, prevented planting on that crop will be calculated as it was before but with 100 percent of the average market price. Payment factors (for acres prevented from being planted, planted and not harvested, and planted and harvested) will continue to be applied as they were before. Crops and grasses intended for grazing are specifically excluded from buy-up coverage by the 2014 Farm Bill. To obtain buy-up coverage, producers are required to pay a premium, equal to 5.25 percent times the level of coverage, in addition to the NAP service fee. The coverage levels and premium calculations are specified in the 2014 Farm Bill and FSA has no discretion to offer different coverage levels or premiums.

Premiums for additional coverage will be calculated as the product of the producer's share of the NAP covered crop, times the number of eligible acres devoted to the crop, times the approved yield per acre, times the coverage level, times the average market price, times a 5.25 percent premium fee. The maximum premium per producer, as specified in the 2014 Farm Bill, is \$6,562.50 (the product of the applicable payment limitation of \$125,000 times a 5.25 percent premium fee for the maximum level of coverage).

For example, if Farmer Smith has a 100 percent share interest in 20 acres of apple trees intended for the fresh market, and the approved yield per acre for that crop is 450 bushels, and the average fresh market price is \$10.00 per bushel, and the coverage level is 65 percent, the premium will be 1.000 (100 percent share) times 20 (acres) times 450 (bushels per acre) times 0.65 (coverage level of 65 percent) times \$10.00 (price per bushel) times 0.0525 (premium factor), which equals \$3,071.25. If Farmer Smith suffers a 100 percent loss, the payment would be calculated as 1.000 (100 percent share) times 20 (acres) times 450 (bushels per acre) times 0.65 (coverage level) minus 0 bushels (actual production) times \$10.00 (price per bushel), which equals a NAP payment of \$58,500.

Buy-up coverage will also be available for value loss crops. NAP payments for value loss crops are based on the field market value of the crop before the disaster rather than on an approved yield. Examples of value loss crops include aquaculture, floriculture and ornamental nursery. The value of a crop before a potential disaster will be unknown at the time of premium calculation due to variations in

inventory and field value throughout the crop year. As a result, premiums for value loss crop will be based on the maximum dollar value for which a producer requests coverage, subject to applicable payment limitation, times the 5.25 percent premium. In the event of a loss, the NAP payment will be calculated using the lesser of the field market value of the crop before the disaster or the maximum dollar value for which the producer requested coverage at the time of application.

The regulations discuss application closing dates. Because 2015 application closing dates for some crops have already passed before FSA published this rule and made buy-up coverage available, with this rule producers may still nonetheless obtain buy-up coverage for those crops for the 2015 crop year by submitting an application for coverage requesting buy-up coverage and paying the service fee, even if the producer did not previously obtain CAT-level coverage and pay the service fee for the crop, by January 14, 2015. FSA needed time to develop the regulatory changes required to implement the new provisions as required by the 2014 Farm Bill, including completing additional necessary work, such as updating handbooks and training staff. Therefore, it seemed reasonable to provide this retroactive option because producers did not know what the changes or available options would be when they typically would have been required to purchase NAP coverage. In addition, if there are application closing dates near the publication of this rule, those producers will also be given 30 days from the date of publication of this rule to submit an application for coverage to ensure they are able to make their decision to purchase NAP coverage based on consideration of these regulatory changes.

CAT-level coverage for the 2015 crop year was available prior to the application closing date prior to this rule; therefore, the deadline to apply for CAT-level coverage is not extended.

Coverage Periods

This rule clarifies that, regardless of when the coverage period generally begins for any crop, a producer's own individual coverage for a crop that must fall within the general coverage period can start no earlier than 30 calendar days after the producer's application for coverage is filed, except as discussed below. FSA is making this change to be consistent with the requirements of 7 U.S.C. 7333.

This rule provides an exception for the 2015 crop year for crops with application closing dates that have

passed prior to publication of this rule. For those crops, if a producer did not apply for NAP coverage prior to the application closing date but files an application for coverage and elects buy-up coverage by January 14, 2015, the coverage period will begin as specified for the crop in 7 CFR 1437.6, without regard to the date the application for coverage is filed. Under this exception, producers must elect buy-up coverage, but such coverage can be for any level available under such buy-up coverage. Producers who previously purchased CAT-level coverage prior to the application closing date for those crops may also elect buy-up coverage until January 14, 2015. As noted above, if there are application closing dates near the publication of this rule, those producers will also be given 30 days following the publication of this rule to ensure they have the same period in which to make a decision to purchase NAP coverage based on consideration of these regulatory changes.

Service Fee Waiver and Premium Reduction

Prior to this rule, the NAP regulations waived the service fee for producers who met the definition of "limited resource farmer" in 7 CFR 457.8. The 2014 Farm Bill continues to waive service fees for limited resource farmers and ranchers and now waives service fees for beginning and socially disadvantaged farmers and ranchers as well. In addition to the service fee waiver, beginning, limited resource, and socially disadvantaged farmers and ranchers who elect buy-up coverage are also eligible for a 50 percent premium reduction. For the purpose of this rule, "beginning," "limited resource," and "socially disadvantaged farmer and rancher" are defined in 7 CFR part 718. To be eligible for the service fee waiver or premium reduction, persons or legal entities must provide a certification of their status as beginning, limited resource, or socially disadvantaged at the time they file an application for coverage, if they have not already filed that certification with FSA.

For the 2014 crop year, the expanded service fee waiver will apply retroactively. In the extension of authorization document published on March 28, 2014 (79 FR 17388-17390), FSA announced that beginning and socially disadvantaged farmers and ranchers who paid the service fee for the 2014 crop year before enactment of the 2014 Farm Bill would be refunded the service fee.

Notice of Loss and Completion of Harvest

This rule clarifies requirements for filing a notice of loss. As specified in the NAP regulations, a written notice of loss must be filed for prevented planting claims within 15 calendar days after the final planting date, or for yield claims or value loss, by the earlier of 15 calendar days after the disaster occurrence or date of loss or damage to the crop first becomes apparent, or the normal harvest date. These requirements for a written notice of loss are not changing with this rule.

In addition to the written notice of loss, FSA is making a discretionary change to add a requirement to provide notice to the administrative county office within 72 hours for certain crops, including hand-harvested crops and other crops as determined by FSA, if earlier notice is needed in order to conduct an accurate loss assessment of the crop because of the rate at which certain crops (these crops ordinarily include hand harvested fruit and vegetable crops that can rapidly deteriorate and confound loss adjustment work) decompose in the field after a loss event and the reduced ability to discern if alleged damage occurred due to an eligible cause of loss as opposed to other factors. For example, if a freeze damages a crop of tomatoes, the participant is required to provide notice to FSA of damage or loss to the tomatoes within 72 hours of when damage is first apparent to the NAP covered producer. The earlier notice, which is not required to be in writing, provides FSA an opportunity to assess the loss before the damaged crop deteriorates and while the amount of loss attributable to a specific eligible cause of loss is still apparent. This provision is consistent with RMA's notification requirements for crop insurance.

Producers of hand-harvested crops, under the prior rule, were required to provide FSA with notification that harvest is complete within 15 days of when damage or loss was first apparent. This rule changes that deadline from 15 days to within 72 hours. This discretionary change allows FSA to make a more accurate appraisal before the crop deteriorates or before evidence of the crop suffering a loss due to an eligible of loss diminishes or is lost in order to differentiate between legitimate losses versus production left in a field because of quality or unmarketable because of the lack of market.

Late-Planted Acreage

This rule makes discretionary changes to the late planting provisions in 7 CFR 1437.103 to add an exception to the rule that crops having multiple planting periods and value loss crops are not eligible for reduced coverage for late planting. The exception added by this rule makes reduced NAP coverage available for the last planting period of multiple planted crops and multiple-planting periods having a defined gap of 60 days or more between the harvest date of the previous planting period and beginning of the immediately following planting period.

Average Market Prices

This rule makes discretionary changes to clarify how average market prices are established as specified in 7 CFR 1437.12. NAP payments are calculated using average market prices, which are determined by FSA. Prior to this rule, an average market price was established for each crop and, if practicable, for each intended use of a crop on a harvested basis without the inclusion of transportation, storage, processing, marketing, or other post-harvest expenses. Prices should reflect the average market price actually received by producers, which may vary by state. The average market price has been typically established on a state-by-state basis, meaning that all NAP payments for a crop and, if applicable, for an intended use within a state would be based on the same average market price. Average market prices are based on the best available data (including National Agricultural Statistics Service (NASS) data, National Institute of Food and Agriculture (NIFA) data, knowledge of local markets, etc.) and are comparable (though not required to be equal) to established Federal Crop Insurance Corporation (FCIC) prices. In this rule, FSA details how it will determine, average market prices of eligible NAP crops for subsequent crop years.

This rule clarifies that FSA may establish separate prices within a state to reflect the different prices producers receive based on differences due to different farming practices (conventional or organic) and sales to different markets (wholesale, direct sales to consumers at farm stands or farmer's markets, etc.). These changes to average market price provisions do not extend NAP coverage to additional producers or crops; changes made by this rule will allow an eligible producer to obtain NAP coverage for eligible crops grown with organic farming practices or intended to be marketed directly to consumers. This rule simply

clarifies that when sufficient data is available, FSA may establish separate average market prices within a State that more closely reflect the prices obtained by producers based on the specific situations.

To be eligible to receive payment based on an organic price, producers must report their organic acreage of the crop. Producers reporting organic acreage of a crop must be certified or exempt from certification according to the National Organic Program regulations at 7 CFR part 205 and must provide a copy of their organic system plan to FSA. Yields will be adjusted as needed to reflect yields for crops using organic production methods. This rule also adds definitions related to organic acreage and production in order to implement these changes.

All of the definitions in this rule related to organic production and certification are consistent with definitions used by AMS and with the basic provisions for Federal crop insurance used by RMA. Specifically, the definitions for "buffer zone," "certified organic acreage," "certifying agent," "conventional farming practice," the specification of organic farming practices within the definition for "good farming practices," "organic agricultural experts," "organic crop," "organic farming practice," "organic standards," "prohibited substance," and "transitional acreage" are identical to or consistent with those terms as used in the Federal crop insurance basic provisions. The terms "certified organic acreage," "good farming practices," "organic crop," "organic farming practice," "organic system plan," "organic standards," and "prohibited substance" reference the AMS National Organic Program regulations, the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6523), or both.

When prices are established by intended use, producers with buy-up coverage, but without sufficient evidence of the historical intended and actual use or market as reflected in production records and final disposition, and those with CAT-level coverage will have NAP payments calculated using the average market price of the predominant final use of the crop. If a producer elects buy-up coverage and provides sufficient evidence of the intended use percentages of the crop in prior crop years, the NAP payment will be calculated based on those percentages instead of using only the price from the predominant final use. Premiums for producers who elect buy-up coverage will be based on the intended use of the crop based on the acreage report.

If different prices are established for crops intended for different markets of an intended use of a crop, such as wholesale or directly to consumers through farmers markets or farm stands, and where FSA has established average market prices based on different markets, producers who elect buy-up coverage and provide acceptable documentation may elect NAP assistance calculated based on those prices.

Approved Yields

Prior to this rule, when a producer reported acreage for a crop year, but failed to certify a report of production, regardless of whether that producer obtained NAP coverage for that year, an assigned yield or zero-credited yield was used in the producer's actual production history for calculation of that producer's approved yield in later years. This rule defines "bypass year" to include years when the producer did not obtain coverage for the crop and does not file a report of acreage or production. The rule makes a discretionary change to stop using assigned yields and zero-credited yields for bypass years in the calculation of a producer's approved yield. This change is intended to encourage increased participation in NAP by preventing an adverse impact on producers who choose not to report production during years when they do not have NAP coverage but choose to elect NAP coverage in later years. The policy regarding assigned yields and zero-credited yields for producers who have NAP coverage, but do not report production, is not changing under this rule.

This rule allows replacement of assigned yields and zero-credited yields in a producer's actual production history (APH) for the 1995 through 2014 crop years with yields equal to the higher of 65 percent of the current crop year T-yield (as defined 7 CFR 1437.3) or the missing crop year's actual yield. As with the change discussed above for bypass years, this discretionary change is intended to encourage increased participation in NAP and to avoid penalizing producers who did not report production in a year in which they did not have NAP coverage.

Adjustment of Production for Quality Losses

To provide improved risk protection that addresses losses in a similar manner to some past ad hoc disaster programs, the NAP payment calculation for yield losses will allow an adjustment of net production due to quality losses for crops and locations approved by

FSA. This change allows NAP to provide risk protection for quality losses in limited situations when a specific crop in a given location typically does not suffer yield losses large enough to result in NAP payments, but does suffer significant quality losses due to eligible causes of loss. The requests for quality adjustments for crops and locations may be processed through any of the FSA State offices. The crops and locations eligible for quality adjustments will be determined by the Deputy Administrator for Farm Programs in advance of the coverage period, only if supporting documentation of industry accepted standards for quality discounts are available. Net production will be adjusted only if buy-up coverage is elected and the covered producer elects to have the quality loss option; no adjustment will be made if a producer elects only CAT-level coverage for a crop. Evidence to support making a quality loss adjustment must be from records acceptable to FSA and are subject to disapproval if FSA is not satisfied that the alleged loss of quality occurred as a result of an eligible cause of loss in the coverage period. If a producer opts for quality loss adjustment and an adjustment to the unit's net production is made, FSA will enter the adjusted net production into the producer's actual production history database for the loss year. In other words, the lower actual yield that results after adjustment for quality will be used to compute future year approved yields.

Aquaculture Coverage

NAP regulations required that for aquaculture losses to be eligible for payment, the aquaculture species must be kept in a controlled environment and that such species must be planted or seeded in containers, net pens, wire baskets, or similar devices designed for protection and containment. This rule makes discretionary changes for aquaculture producers who raise aquacultural species on a rope and certain mollusk producers.

As noted above, under changes made by this rule for eligible causes of loss, NAP coverage will be available for aquaculture producers who plant or seed aquatic species in or on certain specifically named devices, which now includes ropes, when it is determined by the Deputy Administrator for Farm Programs that the ropes provide the necessary containment and protection for the species, area, and practice.

Under changes made by this rule, with respect to mollusks not planted or seeded in devices such as containers, net pens, or wire baskets, on ropes, or

using similar devices designed for protection and containment, NAP coverage for such mollusks will only cover losses caused by a named tropical storm, typhoon, or hurricane. This change is intended to encourage additional NAP participation by mollusk producers who do not use containers or similar devices, while maintaining integrity in NAP by covering those producers' losses only when their losses are caused by certain types of natural disasters. Mollusk producers who continue to seed or raise mollusks in devices such as containers, net pens, or wire baskets, on ropes, or using similar devices designed for protection and containment as well as meet all other required conditions remain eligible for all NAP qualifying causes of loss for such value loss crops. For these mollusk producers, the principal elements of the rule are not changing.

Certain oyster producers and other stakeholders requested this change because the use of containers or similar devices for the protection and containment of the species is inconsistent with certain customary or ordinary mollusk industry production methods, particularly for oyster production on the U.S. East Coast. USDA data from the 2005 Census of Aquaculture confirms that about 70 percent of mollusk producers use the "on bottom" production method, without containers or pens. In 2011 and 2012, hurricanes caused significant losses for mollusk aquaculture crops. Mollusk producers who had NAP coverage in those years and met the current requirements were compensated for their losses, but the majority of mollusk producers did not have NAP coverage and if they had, they would not have had any losses that would have met the NAP eligibility requirements at that time. (See the Cost Benefit Analysis Summary section for details about the impacts.)

The purpose of NAP is to provide risk management for agricultural operations as they normally or ordinarily exist and operate. Removing the requirement to use containers or similar devices benefits mollusk producers by offering NAP coverage for their operations, independent of how those producers choose to manage their production. FSA is therefore amending the regulations to cover eligible losses of mollusks that are not grown in containers, net pens, or wire baskets, on ropes, or using similar devices. This change permits mollusk producers who accept the risks of raising mollusks without containers, net pens, ropes, wire baskets, or similar devices to be eligible for NAP coverage;

however, under such coverage, eligible losses can only be caused by a named tropical storm, typhoon, or hurricane. It would likely benefit primarily U.S. East Coast oyster producers, as well as producers of other mollusk aquaculture crops such as clams and mussels. Mollusk producers who plant or seed mollusks in containers, net pens, or wire baskets, on ropes or using similar devices designed for protection and containment and meet all other required conditions remain eligible for NAP coverage for all NAP causes of loss. For these mollusk producers, the principal elements of the rule are not changing.

As specified in 7 U.S.C. 7333, NAP is authorized to provide benefits only for losses that are the result of natural disaster; 7 U.S.C. 7333 also specifies that NAP cannot cover losses due to "the failure of the producer to follow good farming practices." FSA has determined that a producer's decision to not use containers, net pens, ropes, wire baskets, or similar devices is not an example of a poor farming practice or an example of something that is not a good farming practice. However, given that NAP can only pay for losses stemming from an eligible cause of loss (and not a decision not to use containers, net pens, ropes, wire baskets, or similar devices), this rule specifies that for mollusks not grown in containers, net pens, or wire baskets, on ropes, or using similar devices, only losses caused by named hurricanes, typhoons, or tropical storms would be eligible for payment. NAP coverage does not cover a loss of mollusks if the producer does not to use containers to protect the mollusks from loss caused by other types of adverse weather, tidal surges, or predators, or other similar events or causes. Missing mollusk inventory reported by a producer that does not use containers, net pens, ropes, wire baskets, or similar devices will not be eligible for a NAP payment unless FSA can determine that the loss of inventory was a direct result of a named hurricane, typhoon, or tropical storm. All other aquaculture species are still subject to the requirement to use protective devices. Additionally, as previously mentioned, mollusk producers that choose to grow mollusks in an environment that consists of containers, net pens, ropes, wire baskets, or similar devices designed for protection and containment remain eligible for all NAP qualifying losses.

Aquaculture species are considered a "value loss" crop under NAP, which means that NAP coverage is based on the market value of the inventory before the loss event, rather than an expected yield. This rule does not change NAP

regulations regarding compensation of eligible aquaculture losses using a value loss calculation or the documentation that must be provided to prove an eligible loss. Mollusk producers, whether they choose to keep their mollusks in controlled environments or not, are still required to have control of the waterbed where the mollusks are grown, as specified in the NAP regulations, meaning that they must own or lease the waterbed. The change being made by this rule merely eliminates the requirement that a NAP-covered participant seed or raise the eligible mollusk inventory in containers or similar devices to be eligible for NAP coverage. It will not change any of the requirements for other aquaculture species.

Forage

This rule makes discretionary changes to methods used by FSA to establish losses for grazed acreage. Prior to being amended by this rule, grazed acreage losses have been established using two methods:

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

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

This rule specifies additional methods that FSA may use to establish a collective percentage of loss based on independent assessments of grazed forage acreage conditions; the U. S. Drought Monitor; information obtained from loss adjusters with sufficient forage knowledge to provide grazing loss assessments; data from approved areas where clippings are obtained on a regular basis to compare with expected levels of production in a geographical region; and information from Natural Resources Conservation Service technical service providers having specialized knowledge. Additionally, because the 2014 Farm Bill did not authorize buy-up coverage for grazed forage, this rule clarifies how FSA will treat forage crop acreage intended for mechanical harvest or grazing when such acreage is actually put to another use for producers who either select catastrophic coverage or buy-up coverage. The rule specifies that forage acreage reported to FSA as intended to be mechanically harvested, but which is instead, subsequently grazed, will be

considered for crop definition purposes as mechanically harvested. The rule also amends how FSA will determine loss for acreage intended to be grazed, including in some cases acreage intended to be mechanically harvested, but instead is subsequently grazed for producers with catastrophic coverage. The rule also removes a prior requirement that producers show a history of forage production in order to obtain coverage.

Payment and Income Limitation

Section 1605 of the 2014 Farm Bill establishes payment and income limitations that apply to 2014 and subsequent crop, program, or fiscal year benefits. FSA previously implemented these payment and income limitations through the final rule published on April 14 (79 FR 21086–21118). The payment and income limitations are specified in 7 CFR part 1400.

NAP assistance is limited to \$125,000 per person or legal entity, directly or indirectly. Attribution of payments under 7 CFR part 1400 applies in administering the payment limitation. The average AGI limit for most FSA and CCC programs, including NAP, is \$900,000. The \$900,000 limit is for total average AGI, as opposed to the prior multiple limits for farm and non-farm income, and the separate limit for conservation programs.

Consistency With Basic Provisions

When a producer signs up for NAP coverage, they receive a copy of the “basic provisions,” which is a document that explains in detail what is covered by NAP and how to file a claim. As part of the application process, the producer acknowledges that they have received and agree to the “basic provisions.” This rule amends 7 CFR 1437.2, “Administration,” to specify that when the NAP basic provisions are less restrictive than regulations that were in effect at the time of signup (such as the situation that may occur in 2015 where the NAP basic provisions were provided to participants prior to amendment and publication of this rule for the 2015 crop year), the Deputy Administrator may determine that the less restrictive provision applies. This amendment is needed to prevent adverse results for participants that relied on the less restrictive basic provisions provided by FSA when they applied for NAP coverage. This rule also amends 7 CFR 1437.3, “Definitions,” to add a definition of “basic provisions.”

Miscellaneous Conforming and Editorial Changes

In addition to the changes required by the 2014 Farm Bill and the substantive discretionary changes discussed above, this rule makes a number of non-substantive changes to make the regulations clear and consistent.

Because this rule expands waivers to beginning farmers and ranchers and that term is used for several FSA programs, this rule defines the term in 7 CFR part 718 and makes a conforming change to remove the term and definition from the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP) regulations in 7 CFR part 1416. The definition is revised slightly to match the definition on the form FSA presents to persons or legal entities who claim they are beginning farmers or ranchers and is consistent with what FSA has determined is a beginning farmer or rancher. FSA is making this discretionary change to provide consistency in the use of the term among FSA programs.

Because this program requires a few terms that are also needed for other FSA and CCC programs, this rule adds those terms to 7 CFR part 718 and removes them from parts 1416 and 1412. These terms are “planted and prevented planted,” “controlled environment,” and “United States.” This rule adds the terms “intended use” to part 718, because it is needed for both NAP and other FSA programs. It removes the term “State” from 718, because it is redundant with the definition of “United States.”

This rule replaces “CCC” with “FSA” where relevant in 7 CFR part 1437 to clarify that NAP is administered by FSA for CCC. It also amends the provisions regarding requests to waive or modify deadlines or other provisions, except where specified by law, to clarify that such requests may be considered at the discretion of the Deputy Administrator for Farm Programs (“Deputy Administrator”). Participants do not have a right to a decision on a request for waiver or on such a request, and a refusal to consider a waiver or such a request is not a failure to act under any law or regulation.

Notice and Comment

In general, the Administrative Procedure Act (APA, 5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the **Federal Register** and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral

presentation, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. Although FSA could use the APA exemption and publish this rule as a final rule without the opportunity for public comment, FSA is implementing the regulatory changes through an interim rule to provide an opportunity for public comment while also implementing the rule without unnecessary delay to benefit FSA customers with the additional flexibility provided by the changes.

Executive Orders 12866 and 13563

Executive Order 12866, "Regulatory Planning and Review," and Executive Order 13563, "Improving Regulation and Regulatory Review," direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as significant under Executive Order 12866, "Regulatory Planning and Review," and therefore, OMB has reviewed this rule. The costs and benefits of this rule are summarized below. The full cost benefit analysis is available on regulations.gov.

Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this rule, we invite your comments on how to make the rule easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Cost Benefit Analysis Summary

The changes to the NAP regulations are expected to have a net economic impact of \$39.4 million per year. This includes \$39.4 million for the "buy up" coverage provisions required by the 2014 Farm Bill, \$250,000 for changes to mollusk coverage, \$45,000 for aquaculture on ropes coverage, and \$1.4 million for organic price coverage. As noted below, the net impact of \$39.4 million includes a partial offset due to the \$9.8 million increase in annual premium and fee revenue.

The 2014 Farm Bill NAP "buy up" coverage changes are estimated to have a net economic cost of \$39.4 million annually. This number is based on estimating the three largest effects of the new "buy-up" provisions: The shift of existing CAT level NAP participants to buy-up NAP coverage levels, an increase in new NAP participants (not formerly in CAT) who purchase buy-up NAP coverage, and the expected NAP payment increases due to the greater liability associated with added buy-up coverage levels for both existing and new participants. (The greater liability effect factors in the payment rate increase from 55 percent to 100 percent of the market value of eligible lost production.) These three effects together are expected to account for nearly \$49.2 million in additional payments to producers annually. However, these additional payments are expected to be partially offset by a \$9.8 million increase in annual premium and fee revenue, for a net impact of \$39.4 million annually.

The impact on costs from fee waivers for socially disadvantaged and beginning farmers is expected to be negligible. This is because the persons who are eligible for the waivers added by the 2014 Farm Bill for socially disadvantaged farmers and ranchers, (SDA), and beginning farmers and ranchers were mostly already eligible for the waivers for limited resource farmers and ranchers that were in place prior to this rule. The participation of these groups is expected to increase in proportion with the overall rate of 44.3 percent increase in new participation estimated for buy-up coverage.

Because the total number of eligible mollusk producers in the United States is relatively small, fewer than 800 producers, the total impact of the changes in eligibility for mollusks is expected to be relatively small, around \$250,000 in additional outlays per year. The aquaculture grown on ropes cost impact is even smaller, at an estimated \$45,000 in additional outlays per year. The coverage for organic prices is

estimated at \$1.4 million per year, based on the assumption that the organic crops for which RMA has enough price data to provide an organic price election in at least one state, but limited enough RMA coverage that they fall within the scope of NAP, are primarily specialty fruit crops.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever an agency is required by APA or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because as noted above, this rulemaking is exempt from the notice and comment rulemaking requirements of APA and no other law requires that a proposed rule be published for this rulemaking initiative.

Environmental Review

FSA has determined that the administrative expansion of coverage for mollusks under NAP, identified in this rule, and the participation in NAP itself do not constitute major Federal actions that would significantly affect the quality of the human environment because Section 196 of 7 U.S.C. 7333 requires that the Secretary of Agriculture operate NAP to provide coverage equivalent to the catastrophic risk protection otherwise available under section 508(b) of the Federal Crop Insurance Act (7 U.S.C. 1508(b)).

In addition to adding coverage for mollusks, the other discretionary changes proposed include coverage for organic crops and clarifications regarding eligible losses and causes of loss (types of natural disasters). FSA has likewise determined that these discretionary efforts do not constitute major Federal actions that would significantly affect the quality of the human environment, individually or cumulatively, because of their context and the anticipated intensity of impacts.

Therefore, in accordance 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 FSA regulations for compliance with NEPA (7 CFR part 799), no environmental assessment or environmental impact statement will be prepared.

Executive Order 12372

Executive Order 12372, "Intergovernmental Review of Federal Programs," requires consultation with State and local officials that would be directly affected by proposed federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons set forth in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, "Civil Justice Reform." This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The rule has retroactive effect in that for the 2014 crop year, the expanded service fee waiver will apply retroactively, and for the 2015 crop year the date coverage begins will be retroactive as long as the application for coverage is filed by the application closing date as specified in § 1437.7(i). Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, "Federalism." The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including

regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FSA has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, FSA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by the 2014 Farm Bill.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996, (Pub. L. 104-121, SBREFA). Therefore, FSA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Accordingly, this rule is effective on the date of publication in the **Federal Register**.

Federal Assistance Programs

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, is: Noninsured Assistance 10.451.

Paperwork Reduction Act of 1995

FSA added the changes required for the buy-up for additional coverage, organic crops, and mollusks described in this rule to a currently approved information collection by OMB under the control number of 0560-0175, Noninsured Crop Disaster Assistance Program. The collection of information from the respondents remains the same except the new respondents with organic crops and mollusks. FSA described the revision of information collection activities and the changes to the burden hours due to the new respondents in the request for public comment that was published in the **Federal Register** on October 15, 2014 (79 FR 61484-61489). FSA confirmed that neither AMS nor RMA collect the information that FSA will be collecting, so there is no duplication of information collection.

E-Government Act Compliance

FSA and CCC are 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.

List of Subjects*7 CFR Part 718*

Acreage allotments, Drug traffic control, Loan programs-agriculture, Marketing quotas, Price support programs, Reporting and recordkeeping requirements.

7 CFR Part 1412

Cotton, Feed grains, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

7 CFR Part 1416

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

7 CFR Part 1437

Agricultural commodities, Crop insurance, Disaster assistance, Fraud, Penalties, Reporting and recordkeeping requirements.

For the reasons discussed above, FSA amends 7 CFR part 718 and CCC amend 7 CFR parts 1412, 1416, and 1437 as follows:

PART 718—PROVISIONS APPLICABLE TO MULTIPLE PROGRAMS

- 1. Revise the authority citation for part 718 to read as follows:

Authority: 7 U.S.C. 1501–1508, 1921–2008, 7201–7302, and 15 U.S.C. 714b.

■ 2. Amend § 718.2 as follows:

■ a. Remove the definition for “State”; and

■ b. Add, in alphabetical order, definitions for “Beginning farmer and rancher”, “Controlled environment”, “Intended use”, “Planted and considered planted (P&CP)”; and “United States”.

The additions read as follows:

§ 718.2 Definitions.

* * * * *

Beginning farmer or rancher means a person or legal entity (for legal entities to be considered a beginning farmer or rancher, all members must be related by blood or marriage and all members must be beginning farmers or ranchers) for which both of the following are true for the farmer or rancher:

(1) Has not operated a farm or ranch for more than 10 years; and

(2) Materially and substantially participates in the operation.

* * * * *

Controlled environment means, with respect to those crops for which a controlled environment is required or expected to be provided, including but not limited to ornamental nursery, aquaculture (including ornamental fish), and floriculture, as applicable under the particular program, 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.

* * * * *

Intended Use means for a crop or a commodity, the end use for which it is grown and produced.

* * * * *

Planted and considered planted (P&CP) means with respect to an acreage amount, the sum of the planted and prevented planted acres on the farm approved by the FSA county committee for a crop. P&CP is limited to initially planted or prevented planted crop acreage, except for crops planted in an FSA approved double-cropping sequence. Subsequently planted crop acreage and replacement crop acreage are not included as P&CP.

* * * * *

United States means all 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any other territory or possession of the United States.

* * * * *

§ 718.102 [Amended]

■ 3. Amend § 718.102 as follows:

■ a. In paragraph (b)(3), add the word “intended” immediately before the word “use”;

■ b. In paragraph (b)(4), remove the words “in the country of the eligible crop” and add the words “and intended use of the eligible crop in the country” in their place; and

■ c. In paragraph (b)(6), add the word “intended” immediately before the word “use”.

PART 1412—AGRICULTURE RISK COVERAGE, PRICE LOSS COVERAGE, AND COTTON TRANSITION ASSISTANCE PROGRAMS

■ 4. The authority citation for part 1412 continues to read as follows:

Authority: 7 U.S.C. 1508b, 7911–7912, 7916, 8702, 8711–8712, 8751–8752, and 15 U.S.C. 714b and 714c.

§ 1412.3 [Amended]

■ 5. In § 1412.3, remove the definition for “Planted and considered planted (P&CP)”.

PART 1416—EMERGENCY AGRICULTURAL DISASTER ASSISTANCE PROGRAMS

■ 6. Revise the authority citation for part 1416 to read as follows:

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

§ 1416.102 [Amended]

■ 7. In § 1416.102, remove the definitions for “Beginning farmer and rancher”; “Controlled environment”; “County committee or county office”; “Secretary”; “State committee, State office, county committee, or county office”; and “United States”.

PART 1437—NONINSURED CROP DISASTER ASSISTANCE PROGRAM

■ 8. The authority citation for part 1437 continues to read as follows:

Authority: 7 U.S.C. 1501–1508 and 7333; 15 U.S.C. 714–714m; 19 U.S.C. 2497, and 48 U.S.C. 1469a.

Subpart A—General Provisions

■ 9. Revise § 1437.1 to read as follows:

§ 1437.1 Applicability.

(a) The purpose of the Noninsured Crop Disaster Assistance Program (NAP) is to help manage and reduce production risks faced by producers of eligible commercial crops or other agricultural commodities during a coverage period. NAP reduces financial losses that occur when natural disasters

(damaging weather or adverse natural occurrence that is an eligible cause of loss) cause a loss of expected production or actual value for value loss crops, or where producers are prevented from planting an eligible crop because of an eligible cause of loss in a coverage period.

(b) The provisions in this part are applicable to eligible producers and eligible crops for which catastrophic coverage under section 508(b) or additional coverage of sections 508(c) or 508(h) under the Federal Crop Insurance Act (7 U.S.C. 1508) (excluding pilot policies or plans of insurance) is not available.

(c) The regulations in this part are applicable to the 2015 and subsequent crop years.

■ 10. Revise § 1437.2 to read as follows:

§ 1437.2 Administration.

(a) NAP is administered under the general supervision of the Administrator, Farm Service Agency (FSA) (who also serves as the Commodity Credit Corporation (CCC) Executive Vice President), and the Deputy Administrator for Farm Programs, FSA, (referred to as “Deputy Administrator” in this part). NAP is carried out by FSA State and county committees (State and county committees) with instructions issued by the Deputy Administrator.

(b) State and county committees, and representatives and their employees, do not have authority to modify or waive any of the provisions of the regulations in this part, NAP’s basic provisions, or instructions issued by the Deputy Administrator.

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

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

(d) No delegation to a State or county committee precludes the FSA Administrator, the Deputy Administrator, or a designee, from determining any question arising under NAP or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator has the authority to permit State and county committees to waive or modify deadlines (except deadlines specified in a law) and other requirements or

program provisions not specified in law, in cases where lateness or failure to meet such other requirements or program provisions do not adversely affect operation of NAP.

(1) Producers and participants have no right to a decision in response to a request to waive or modify deadlines or program provisions. The Deputy Administrator's refusal to consider such a request or a decision not to exercise this discretionary authority under this section is not an adverse decision and is not appealable.

(2) FSA's decision not to consider a case under this section is not a failure to act under any law or regulation because participants have no right to a decision on a request for waiver or modification.

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

(g) Where there is any conflict between the basic provisions and the regulations, the regulations apply except when the Deputy Administrator determines that because of the timing of issuance of the regulations, the basic provisions applicable to the specific crop year or coverage period that may be less restrictive will apply.

■ 11. Amend § 1437.3 as follows:

- a. Revise the introductory text;
- b. Revise the definitions for "Application closing date" and "Catastrophic coverage";
- c. In the definition for "Crop year", third sentence, add the words "or buy-up coverage" immediately after the words "catastrophic coverage";
- d. Revise the definitions for "Good farming practices", "Industrial crop", and "Native sod";
- e. Remove the definitions for "Controlled environment" and "Intended Use"; and
- f. Add, in alphabetical order, definitions for "Acres devoted to the eligible crop", "Additional coverage", "Agricultural experts", "Application for coverage", "Basic provisions", "Bypass year", "Buffer zone", "Buy-up coverage", "Buy-up coverage yield", "Certified organic acreage", "Certifying agent", "Conventional farming practice", "Feedstock", "Generally

recognized", "Guarantee", "Hand-harvested", "Maximum dollar value for coverage sought", "Organic agricultural experts", "Organic crop", "Organic farming practice", "Organic system plan", "Organic standards", "Prohibited substance", "Secondary use", "Short rotation woody crops", and "Transitional acreage".

The revisions and additions read as follows:

§ 1437.3 Definitions.

The terms and definitions in this section apply to NAP. The terms and definitions in part 718 of this title and part 1400 of this chapter also apply to NAP, except where those same terms are defined in this section. In that case, the terms and definitions of this section apply.

Acres devoted to the eligible crop means the total planted and considered planted (P&CP) acres of the eligible crop.

Additional coverage means insurance coverage offered by the Federal Crop Insurance Corporation under sections 508(c) or 508(h) of the Federal Crop Insurance Act.

* * * * *

Agricultural experts means persons who are employed by the National Institute of Food and Agriculture, or the agricultural departments of universities, or other persons approved by FSA, whose research or occupation is related to the specific crop or practice for which such expertise is sought.

* * * * *

Application closing date means the last date, as determined by FSA, producers can submit an application for coverage for noninsured crops for the specified crop year and coverage period.

Application for coverage means the form specified by FSA to be completed by a producer applying for NAP coverage for an eligible crop that is accompanied by the service fee or service fee waiver form in the administrative county office by the application closing date.

Basic provisions means the document summarizing the terms and conditions of NAP coverage for a crop year that are acknowledged as having been received by the person or legal entity who signs an application for coverage according to this part.

Bypass year means a year that the producer did not obtain NAP coverage for the crop and did not file a report of acreage or production, or obtained NAP coverage for the crop and had reported or determined zero acres devoted to the eligible crop.

Buffer zone means a parcel of land, as designated in an organic system plan,

that separates agricultural commodities grown under organic practices from agricultural commodities grown under non-organic practices and is used to minimize the possibility of unintended contact by prohibited substances or organisms.

Buy-up coverage means NAP assistance that is available for all eligible NAP covered crops (other than for crops and grasses intended for grazing) at a payment amount that is equal to an indemnity amount calculated for buy-up coverage computed under section 508(c) or (h) of the Federal Crop Insurance Act and equal to the amount that the buy-up coverage yield for the crop exceeds the actual yield for the crop.

Buy-up coverage yield means not less than 50 percent nor greater than 65 percent of the approved yield for the crop, as elected by the NAP covered participant and specified in 5-percent increments.

Catastrophic coverage means:

(1) For insured crops, the coverage offered by the Federal Crop Insurance Corporation (FCIC) under section 508(b) of the Federal Crop Insurance Act.

(2) For eligible NAP crops, coverage at the following levels due to an eligible cause of loss impacting the NAP covered crop during the coverage period:

(i) Prevented planting in excess of 35 percent of the intended acres;

(ii) A yield loss in excess of 50 percent of the approved yield;

(iii) A value loss in excess of 50 percent; or

(iv) An animal-unit-days (AUD) loss greater than 50 percent of expected AUD.

Certified organic acreage means acreage in the certified organic farming operation that has been certified by a certifying agent as conforming to organic standards specified in part 205 of this title.

Certifying agent means a private or governmental entity accredited by the United States Department of Agriculture (USDA) Secretary for the purpose of certifying a production, processing or handling operation as organic.

Conventional farming practice means any good farming practice that is not an organic farming practice.

* * * * *

Feedstock means a crop including, but not limited to, grasses or legumes, algae, cotton, peanuts, coarse grains, small grains, oil seeds, or short rotation woody crops, that is grown expressly for the purpose of producing a biobased material or product, and does not

include residues and by-products of crops grown for any other purpose.

* * * * *

Generally recognized means when agricultural experts or organic agricultural experts, as applicable, are aware of the production method or practice and there is no genuine dispute regarding whether the production method or practice allows the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee or amount of insurance.

Good farming practices means the cultural practices generally recognized as compatible with agronomic and weather conditions and used for the crop to make normal progress toward maturity and produce at least the individual unit approved yield, as determined by FSA. These practices are:

(1) For conventional farming practices, those generally recognized by agricultural experts for the area, which could include one or more counties; or

(2) For organic farming practices, those generally recognized by the organic agricultural experts for the area or contained in the organic system plan that is in accordance with the National Organic Program specified in part 205 of this title.

Guarantee means the level of coverage based on the application for coverage and buy-up coverage elected under the provisions of this part.

Hand-harvested crop means a non-forage crop that is not harvested mechanically and is removed from a field by hand.

* * * * *

Industrial crop means a commercial crop, or other agricultural commodity used in manufacturing or grown expressly for the purpose of producing a feedstock for renewable biofuel, renewable electricity, or biobased products. Industrial crops include castor beans, chia, crambe, crotalaria, cuphea, guar, guayule, hesperaloe, kenaf, lesquerella, meadowfoam, milkweed, plantago ovato, sesame, and other crops specifically designated by FSA. Industrial crops exclude any plant that FSA has determined to be either a noxious weed or an invasive species. A list of plants that are noxious weeds and invasive species will be available in the FSA county office.

Maximum dollar value for coverage sought means the total dollar amount elected by the NAP covered participant for which buy-up coverage may be considered for a value loss crop in a coverage period. The amount is set by the NAP covered participant for each value loss crop and represents the

highest amount of field market value of the crop before disaster in a coverage period.

* * * * *

Native sod means land on which the natural state plant cover before tilling was composed principally of native grasses, grass-like plants, forbs, or shrubs suitable for grazing and browsing and is land that has never been tilled (determined in accordance with information collected and maintained by an agency of the USDA or other verifiable records that are provided by a producer and acceptable to FSA) for the production of an annual crop through February 7, 2014.

* * * * *

Organic agricultural experts means persons who are employed by the following organizations: Appropriate Technology Transfer for Rural Areas, Sustainable Agriculture Research and Education, or the National Institute of Food and Agriculture, the agricultural departments of universities, or other persons approved by FSA, whose research or occupation is related to the specific practice for which such expertise is sought.

Organic crop means an agricultural commodity that is organically produced consistent with section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

Organic farming practice means a system of plant production practices used to produce an organic crop that is approved by a certifying agent in accordance with 7 CFR part 205.

Organic system plan means a plan of management of an organic production or handling operation that has been agreed to by the producer or handler and the certifying agent and that includes written plans concerning all aspects of agricultural production or handling described in the Organic Foods Production Act and the regulations in 7 CFR part 205, subpart C.

Organic standards means standards in accordance with the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6523) and 7 CFR part 205.

Prohibited substance means any biological, chemical, or other agent that is prohibited from use or is not included in the organic standards for use on any certified organic, transitional, or buffer zone acreage. Lists of such substances are specified in §§ 205.602 and 205.604 of this title.

Secondary use means the harvested production bears little resemblance to, or has a different unit of expression than, the unit of expression for the reported intended use. It does not apply to fresh and processed harvested

production; is not salvage; not counted as production of the crop for the following purposes, including, but not limited to:

(1) The determination of whether the unit suffered requisite loss; and

(2) APH and approved yield.

* * * * *

Short rotation woody crops means fast-growing trees that reach their economically optimum size between 4 and 20 years old.

* * * * *

Transitional acreage means acreage on which organic farming practices are being followed that does not yet qualify to be designated as organic acreage.

* * * * *

■ 12. Amend § 1437.4 as follows:

■ a. Revise paragraph (a) introductory text;

■ b. Revise paragraph (a)(4);

■ c. In paragraph (b)(2), remove the words and punctuation “except for the 2001 and preceding crop years assistance for forage produced on Federal- and State-owned lands is available only for seeded forage.”;

■ d. Revise paragraphs (b)(4)(vi), (vii), and (viii), and add paragraphs (b)(4)(ix) and (x); and

■ e. Revise paragraphs (c) and (d).

The revisions and addition read as follows:

§ 1437.4 Eligibility.

(a) Noninsured crop disaster assistance is available during the coverage period specified in § 1437.6 for loss of production or loss of value for value loss crops or prevented planting of eligible commercial crops or other eligible agricultural commodities:

* * * * *

(4) Determined by FSA to be eligible crops for which:

(i) Catastrophic risk protection under the Federal Crop Insurance Act (7 U.S.C. 1508(b)) is not available;

(ii) Additional coverage under the Federal Crop Insurance Act (7 U.S.C. 1508(c) or (h)) is not available (excluding pilot policies or plans of insurance) and for which the Deputy Administrator determines are appropriate for NAP coverage; or

(iii) These specific practices for these crops are not included under the Federal Crop Insurance Act (7 U.S.C. 1508), but only when the Deputy Administrator determines in advance of a coverage period that the specific practice is appropriate for NAP coverage and is not available for coverage under Federal crop insurance.

(iv) The producer applies good farming practices.

(b) * * *

(4) * * *

(vi) Sweet sorghum;

(vii) Biomass sorghum;

(viii) Industrial crops (including those grown expressly for the purpose of producing a feedstock for renewable biofuel, renewable electricity, or biobased products);

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

(x) Sea grass and sea oats.

(c) Except as specified in paragraph (d) of this section, during the first 4 crop years of planting, as determined by the Secretary, native sod acreage in Iowa, Minnesota, Montana, Nebraska, North Dakota, and South Dakota that has been tilled for the production of an annual crop after February 7, 2014, will be subject to the following:

(1) The approved yield will be determined by using a yield equal to 65 percent of the producer's T-yield for the annually planted crop; and

(2) The service fee or premium for the annual covered crop planted on native sod will be equal to 200 percent of the amount determined in § 1437.7, as applicable, but the premium will not exceed the maximum amount specified in § 1437.7(d)(2).

(d) If the producer's total native sod acreage that is tilled in a crop year is 5 acres or less, the approved yield, service fee, and premium provisions specified in paragraph (c) of this section will not apply.

* * * * *

§§ 1437.5 through 1437.15 [Redesignated as §§ 1437.6 through 1437.16]

■ 13. Redesignate §§ 1437.5 through 1437.15 as §§ 1437.6 through 1437.16, respectively.

■ 14. Add § 1437.5 to read as follows:

§ 1437.5 Coverage levels.

(a) NAP coverage for prevented planting is provided for approved prevented planting of an eligible NAP covered crop due to an eligible cause of loss in the coverage period. Payment is based on the approved prevented planted acreage in excess of 35 percent of the total intended acres to be planted.

(b) Except as provided in paragraph (d) of this section, NAP coverage is equal to 50 percent of the yield or inventory value specified in paragraph (c) of this section at 55 percent of the average market price established by FSA.

(c) Except as provided in paragraph (d) of this section, to be eligible for a NAP payment a producer must have suffered a yield or inventory value loss greater than 50 percent as the result of

an eligible cause of loss in the coverage period as follows:

(1) For yield-based crops, a yield loss in excess of 50 percent of the approved yield;

(2) For value loss crops, a loss of value in excess of 50 percent of the total value of eligible inventory at the time of disaster;

(d) For 2015 through 2018 crop years, producers of eligible NAP crops, other than crops and grasses intended for grazing, may elect buy-up coverage at 100 percent of the average market price in amounts of 50 percent to 65 percent, in 5 percent increments, of:

(1) For yield-based crops, your approved yield; and

(2) For value loss crops, the lesser of the total value of eligible inventory at the time of disaster or the maximum dollar value for coverage sought.

(e) The quantity or value of any eligible NAP crop will not be reduced for any quality consideration unless a zero value is established based on a total loss of quality, except as specified in § 1437.105.

(f) For crop acreage intended to be grazed, to be eligible for a NAP payment, a producer must have suffered a loss of AUD in excess of 50 percent of expected AUD determined on the basis of acreage, carrying capacity, and grazing period.

■ 15. Revise newly redesignated § 1437.6 to read as follows:

§ 1437.6 Coverage period.(a) *Coverage period.* The coverage period is the time during which coverage is available against prevented planting, a loss of production, or loss of value, as applicable, of the eligible crop as a result of an eligible cause of loss specified in § 1437.10. Except as provided in paragraph (h) of this section, coverage periods start no earlier than 30 days after date of filing of a valid application for coverage as specified in § 1437.7.

(1) Relief provisions cannot be used to change or modify the date an application is filed.

(2) If an application for coverage is filed within 30 days of the end of a coverage period, the application for coverage is invalid and will not be processed by FSA. In the event the application for coverage is invalid as discussed in this paragraph, service fees will not be refunded.

(3) Except as provided in paragraph (h) of this section, coverage is never retroactive.

(b) *Annual crops.* Except as provided in paragraph (h) of this section, the coverage period for annual crops, including annual forage crops,

(1) Begins the later of:

(i) 30 calendar days after the date the application for coverage is filed; or

(ii) The date the crop is planted, not to exceed the late planting period; and

(2) Ends on the earlier of:

(i) The date harvest is complete;

(ii) The normal harvest date of the crop in the area;

(iii) The date the crop is abandoned;

or

(iv) The date the crop is destroyed.

(c) *Biennial and perennial crops.*

Except as otherwise specified in this part, the coverage period for biennial and perennial crops begins the later of 30 calendar days after the date the application for coverage is filed or 30 calendar days after the application closing date. The coverage ends as determined by FSA.

(d) *Value loss crops.* Except as otherwise specified in this part, the coverage period for value loss crops, including ornamental nursery, aquaculture, Christmas tree crops, ginseng, and turfgrass sod; and other eligible crops, including floriculture and mushrooms begins the later of 30 calendar days after the date the application for coverage is filed or 30 calendar days after the application closing date. The coverage ends the last day of the crop year, as determined by FSA.(e) *Honey.* Except as provided in paragraph (h) of this section, the coverage period for honey begins the later of 30 calendar days after the date the application for coverage is filed or 30 calendar days after the application closing date. The coverage ends the last day of the crop year, as determined by FSA.(f) *Maple sap.* Except as provided in paragraph (h) of this section, the coverage period for maple sap begins the later of 30 calendar days after the date the application for coverage is filed or 30 calendar days after the application closing date. The coverage ends on the earlier of the date harvest is complete; or the normal harvest date.(g) *Biennial and perennial forage crops.* Except as provided in paragraph (h) of this section, for biennial and perennial forage crops the coverage period begins the later of 30 calendar days after the date the application for coverage is filed or 30 days after the application closing date; for first year seedlings, the date the crop was planted; or the date following the normal harvest date. The coverage ends on the normal harvest date of the subsequent year.(h) *2015 crop year.* For the 2015 crop year only, if a crop's application closing date is before January 14, 2015, the coverage period of the crop will be as

specified in paragraphs (a) through (g) of this section except that the date coverage begins will be retroactive as long as the application for coverage is filed by the application closing date as specified in § 1437.7(i). This limited retroactive coverage for the 2015 crop year only will begin 30 days after the established application date, which would be the same as if they had filed by the deadlines as specified in paragraphs (a) through (g) of this section.

■ 16. Revise newly redesignated § 1437.7 to read as follows:

§ 1437.7 Application for coverage, service fee, premium, and transfers of coverage.

(a) Except as provided in paragraph (i) of this section, with respect to each crop, commodity, or acreage, producers must file an application for coverage under this part in the administrative county office by the application closing date.

(b) The service fee or request for service fee waiver under paragraph (g) of this section must accompany the application for coverage in order for it to be considered filed. The service fee is \$250 per crop per administrative county, up to \$750 per producer per administrative county, not to exceed \$1,875 per producer.

(c) The service fee will be applied per administrative county by crop and by planting period, as determined by FSA.

(d) Producers who elect buy-up coverage must pay a premium, in addition to the service fee, equal to the lesser of:

(1) The product obtained by multiplying:

(i) A 5.25-percent premium fee; and

(ii) The applicable payment limit; or

(2) The sum of the premiums for each eligible crop, with the premium for each eligible crop obtained by multiplying:

(i) The producer's share of the eligible crop;

(ii) The number of acres devoted to the eligible crop;

(iii) The approved yield;

(iv) The coverage level elected by the producer;

(v) The average market price; and

(vi) A 5.25-percent premium fee.

(e) For value loss crops, premiums will be calculated based on the maximum dollar value for which coverage is sought by the applicant, subject to applicable payment limitation, times the 5.25 percent premium.

(f) Premiums will be calculated separately for each crop, type, and intended use as reported on the acreage report and as specified in the basic provisions.

(g) Beginning farmers and ranchers, limited resource farmers and ranchers, and socially disadvantaged farmers or ranchers will receive, upon certification, a waiver of the service fee and a 50 percent premium reduction. The certification is required on or before the time the application for coverage is filed using the form specified by FSA.

(h) Transfers of NAP coverage are governed by the basic provisions.

(i) For the 2015 crop year, if a crop's application closing date is before January 14, 2015, FSA will accept applications for coverage without regard to whether or not the application for coverage was filed by the crop's application closing date, provided that the application for coverage includes buy-up coverage according to § 1437.5(d) and is filed by January 14, 2015. Except as specifically stated in this rule, the provisions of this paragraph (i) do not apply to crops having an application closing date established on or after December 15, 2014 or to applications for coverage that do not include buy-up coverage as an option selected by the applicant. The coverage period for applications for coverage filed according to this paragraph (i) will be as specified in § 1437.6.

■ 17. Amend newly redesignated § 1437.8 as follows:

■ a. Revise paragraph (a) introductory text, add paragraph (a)(3), and revise paragraphs (b)(1) and (2) and (c) introductory text;

■ b. In paragraph (d), revise the introductory text, redesignate paragraphs (d)(6) through (8) as paragraphs (d)(7) through (9), respectively, and add paragraph (d)(6); and

■ c. Add paragraphs (i), (j), and (k).

The revisions and additions read as follows:

§ 1437.8 Records.

(a) Producers must maintain records of crop acreage, acreage yields, and production for the crop for which an application for coverage is filed in accordance with § 1437.7. For those crops or commodities for which it is impractical, as determined by FSA, to maintain crop acreage, yields, or production data, producers must maintain records, in addition to the available records required by this section, as may be required in subparts C, D, and E of this part. Producers must retain records of the production and acreage yield for a minimum of 3 years for each crop for which an application for coverage is filed in accordance with § 1437.7. Producers may be selected and be required to provide records

acceptable to FSA to support any certification provided. For each harvested crop for which producers file an application for payment in accordance with § 1437.11, producers must provide documentary evidence acceptable to FSA of production and the date harvest was completed, including production of crops planted after the planting period or late planting period. Such documentary evidence must be provided no later than the acreage reporting date for the crop in the subsequent crop year or, for crops with a coverage period of more than 12 months, no later than 60 days after the normal harvest date. Records of a previous crop year's production for inclusion in the actual production history database used to calculate an approved yield for the current crop year must be certified by the producer no later than the acreage reporting date for the crop in the current crop year. Production data provided after the acreage reporting date in the current crop year for the crop may be included in the actual production history data base for the calculation of subsequent approved yield calculations if accompanied by acceptable records of production as determined by FSA. Records of production acceptable to FSA may include:

* * * * *

(3) For quality losses specified in § 1437.105, verifiable records substantiating a quality loss due to an eligible cause of loss in the coverage period. The record submitted must come from tests or analysis substantiating that the loss of quality occurred from an eligible cause of loss during the coverage period. FSA will disapprove quality adjustments under § 1437.105 if FSA determines the evidence does not substantiate a loss of quality occurred due to an eligible cause of loss in the coverage period. For example, if FSA determines the tests or analysis of the specific crop's production were taken too late to determine if the measured loss of quality occurred from an eligible cause of loss in the coverage period (regardless whether a loss of quality was in fact measured or determined), no quality loss adjustment will be made or permitted. There is no presumption that a measured loss of quality occurred due to an eligible cause of loss in the coverage period. It is a NAP covered producer's burden to present evidence, satisfactory to FSA, substantiating that the alleged quality loss occurred to the NAP covered crop in the coverage period.

(b) * * *

(1) Producers of hand-harvested crops must, in addition to providing acceptable production records according to this part, notify the administrative county office that harvest is complete. This notification must be made within 72 hours of when harvest is complete. If an appraisal of the crop acreage is requested by the producer or determined necessary by FSA, the producer must not destroy the crop residue until the crop acreage is released by an FCIC- or FSA-qualified loss adjustor. Producers may, at their expense, request that an appraisal by certified FCIC or FSA loss adjusters of hand-harvested crop acreage be completed during non-loss crop years in order to maintain accurate actual production history.

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

(c) Producers must provide acceptable evidence, as determined by FSA, of:

* * * * *

(d) Reports of acreage planted or intended but prevented from being planted must be provided to FSA at the administrative county office for the acreage no later than the date specified by FSA for each crop and location. Reports of acreage filed beyond the date specified by FSA for the crop and location may, however, be processed and used for determining acres devoted to the eligible crop if all the provisions of 7 CFR part 718 are met. In the case of a crop-share arrangement, all producers will be bound by the acreage report filed by the landowner or operator unless the producer files a separate acreage report by the date specified by FSA for the crop and location. Reports of acreage planted or intended and prevented from being planted must include all of the following information:

* * * * *

(6) For organic crops with an average market price established under § 1437.12(b), the identity of the crop planted on:

- (i) Acreage using conventional farming practices;
- (ii) Certified organic acreage;
- (iii) Transitional acreage being converted to certified organic acreage;

(iv) Buffer zone acreage;

* * * * *

(i) Producers requesting payment under this part for a crop grown on certified organic acreage for which a price and T-yield are established, as provided in §§ 1437.12(b) and 1437.102, must provide, no later than the acreage reporting date specified by FSA for the crop and location:

(1) A written certification in effect from a certifying agency indicating the name of the entity certified, effective date of certification, certificate number, types of commodities certified, and name and address of the certifying agent (a certificate issued to a tenant may be used to qualify a landlord or other similar arrangement); and

(2) Records from the certifying agent showing the specific location of certified organic, transitional, and buffer zone acreage, and acreage not subject to organic farming practices according to an organic system plan.

(j) Producers providing reports of acreage that include transitional acreage being converted to certified organic acreage in accordance with an organic system plan must provide, no later than the acreage reporting date specified by FSA for the crop and location:

(1) Written documentation from a certifying agent indicating an organic system plan is in effect for the acreage; and

(2) Records from the certifying agent showing the specific location of certified organic, transitional, and buffer zone acreage, and acreage not subject to organic farming practices according to an organic system plan.

(k) Producers who are exempt from National Organic certification requirements, as specified in § 205.101 of this title, and are requesting payment under this part for a crop grown on organic acreage for which a price and T-yield is established, as provided in §§ 1437.12(b) and 1437.102, must provide, no later than the acreage reporting date specified by FSA for the crop and location, a copy of their organic system plan, which must be developed with an organic certifying agent.

■ 18. Revise newly redesignated § 1437.10 to read as follows:

§ 1437.10 Causes of loss.

(a) To qualify for assistance, production losses or prevented planting must occur as a result of an eligible cause of loss during the coverage period. Not all causes of loss are eligible causes of loss for all crops or all commodities.

(b) An eligible cause of loss is:

(1) Damaging weather, including, but not limited to:

- (i) Drought;
- (ii) Hail;
- (iii) Excessive moisture;
- (iv) Freeze;
- (v) Tornado;
- (vi) Hurricane;
- (vii) Excessive wind;
- (viii) Insufficient chill hours, but only for specific crops and locations for which FSA has determined in advance of a coverage period, based on FSA's review of sufficient scientific evidence that a requisite amount of chill hours is required for the crop to produce and a lack of chill hours is adverse to the crop's production without any regard to any management. In this context, "without regard to any management" means if a crop's inability to produce due to lack of chill hours can be mitigated by any managerial practices, application of chemical, or other management intervention, the lack of chill hours will not be included as an eligible cause of loss for the crop. In cases where FSA makes the decision to include insufficient chill hours as a cause of loss by itself for a crop and location, the crop and location and subsequent crop year coverage period for which the decision will apply will be specified in a list maintained by FSA. If the crop and location is not on that list, then insufficient chill hours can only be an eligible cause of loss if the insufficient chill hours were related to a damaging weather event or an adverse natural occurrence included in paragraphs (b)(1) or (2) of this section; or

(ix) Any combination of paragraphs (b)(1)(i) through (viii) of this section;

(2) Adverse natural occurrence, including, but not limited to:

- (i) Earthquake;
- (ii) Flood; or
- (iii) Volcanic eruption; or

(3) A condition related to an eligible cause of loss in paragraphs (b)(1) or (2) of this section (in this context, the related condition must result from the damaging weather or adverse natural occurrence; it is not eligible if it occurs on its own) including, but not limited to:

- (i) Heat;
- (ii) Insect infestation;
- (iii) Disease;
- (iv) Insufficient chill hours; or
- (v) Any combination thereof.

(c) The damaging weather, adverse natural occurrence, or related condition as specified in paragraph (b) of this section must occur in the coverage period before or during harvest and directly cause, accelerate, or exacerbate destruction or deterioration of the eligible crop as determined by the county committee.

(d) NAP coverage is provided against only eligible causes of loss. All specified causes of loss must be due to a naturally occurring event during the coverage period. All other causes of loss, including, but not limited to, the following, are not covered:

(1) Negligence, mismanagement, or wrongdoing by the NAP covered producer or anyone else;

(2) Failure to follow recognized good farming practices for the eligible crop;

(3) 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;

(4) Failure or breakdown of the irrigation equipment facilities, unless the failure or breakdown is due to an eligible cause of loss. If damage is due to an eligible cause of loss, the producer must make all reasonable efforts to restore the equipment or facilities to proper working order within a reasonable amount of time unless FSA determines it is not practical to do so. Cost will not be considered when determining whether it is practical to restore the equipment or facilities;

(5) Failure to carry out a good irrigation practice for the covered crop, if applicable;

(6) Any cause of loss that results in damage that is not evident or would not have been evident during the NAP coverage period. Even though FSA may not inspect the damaged crop until after the end of the NAP coverage period, only damage due to eligible causes that would have been evident during the NAP coverage period will be covered;

(7) Except for lack of chill hours as specified in paragraph (b)(1)(viii) of this section, normal variance of temperatures from average normal temperatures including, but not limited to, cyclic yield variations that occur for a crop that are not causes of loss included in paragraphs (b)(1) or (2) of this section;

(8) Any managerial decision to attempt to grow or produce a crop in an area that is not suited for successful commercial production of the eligible NAP crop as determined by FSA;

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

(10) Except for tree crops and perennials and as provided for in § 1437.201, inadequate irrigation resources at time of planting;

(11) Except as specified in § 1437.303, a loss of inventory or yield of aquaculture (including ornamental fish), floriculture, or ornamental nursery

stemming from drought or any failure to provide water, soil, or growing media to such crop for any reason;

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

(13) Except as provided for mollusks in § 1437.303, any alleged or actual loss of inventory or missing non-containerized inventory resulting from a managerial decision not to seed or raise the eligible NAP crop in containers, net pens, or wire baskets, on ropes, or using similar devices;

(14) For crops grown using organic farming practices, failure to comply with organic standards;

(15) Contamination by application or drift of prohibited substances onto land on which crops are grown using organic farming practices; or

(16) Weeds.

(e) The lack of an eligible cause of loss during a coverage period is not a compliance matter or issue. NAP will not provide assistance for crops that do not suffer from an eligible cause of loss during a coverage period. The relief provisions of these regulations and of 7 CFR part 718 cannot be used to pay producers of crops that did not suffer from an eligible cause of loss during the coverage period.

■ 19. Amend newly redesignated § 1437.11 as follows:

■ a. Revise paragraphs (a) through (c) and (e) through (g);

■ b. In paragraphs (d)(3) remove the words “FSA administrative county office” and add the words “administrative county office” in their place;

■ c. In paragraph (d)(4) remove the words “FSA administrative county office” and add the words “administrative county office” in their place, and remove the acronym “CCC” and add the acronym “FSA” in its place both times it appears;

■ d. In paragraph (d)(5) remove the words “FSA administrative county office” and add the words “administrative county office” in their place; and

■ e. Add paragraph (h).

The revisions and addition read as follows:

§ 1437.11 Notice of loss, appraisal requirements, and application for payment.

(a) In addition to the written notice of loss requirements specified for all crops in paragraphs (b) and (c) of this section, for hand-harvested crops and for other crops determined by FSA, at least one producer having a share in the unit must notify FSA of the damage or loss

through the administrative county office for the unit within 72 hours of the date damage or loss on the unit first becomes apparent. Notification required under this paragraph may be via telephone to the administrative county office during business hours or via written notice on a form prescribed by FSA as specified in paragraph (c) of this section.

(b) Unless written notice for hand-harvested crops has already been provided within 72 hours of date of damage or loss as specified in paragraphs (a) and (c) of this section, in case of damage to any NAP covered crop, at least one producer having a share in the unit must file a notice of loss in the administrative county office:

(1) For prevented planting claims, within 15 days after the final planting date;

(2) For low yield claims, the earlier of:

- (i) 15 days after the disaster occurrence or date of loss or damage to the crop first becomes apparent; or
- (ii) 15 days after the normal harvest date.

(c) The notice of loss specified in paragraph (b) of this section must be for each crop and be in writing on a form prescribed by FSA and include:

(1) The alleged cause of crop damage;

(2) Date the disaster occurred and when the damage or loss first became apparent;

(3) A copy of the contract or agreement if a contract or agreement of a guaranteed payment for planted acreage exists;

(4) The type of loss that occurred, for example, prevented planting or low yield;

(5) Practices used, for example, irrigated or non-irrigated;

(6) For prevented planting:

(i) Total intended planted acreage of the crop on the unit;

(ii) Total acreage of the crop planted on the unit;

(iii) Whether seed, chemicals, fertilizer, etc. was purchased, delivered, or an arrangement for purchase or delivery was made for the intended to be planted crop;

(iv) What and when land preparation measures were completed, and

(v) What has been done or will be done with the acreage, for example, abandoned, replanted, etc.;

(7) For low yield:

(i) Total acreage devoted to the crop in the unit;

(ii) Total acreage of the crop affected;

(iii) What and when land preparation measures and practices were completed before and after the loss; and

(iv) What will be done with the affected crop acreage, for example, harvested, destroyed, replanted to a different crop, abandoned, etc.; and

(8) Any other information requested by an FSA authorized representative.

* * * * *

(e) Crop acreage for which an application for coverage has been filed, that is intended for production of forage seed and for which a notice of loss is filed indicating the crop acreage will not be harvested as seed, will be appraised for potential production of seed when producers provide FSA acceptable evidence of a contract to produce seed for the current crop year or acceptable records of acreage and seed production for three or more of the last 5 consecutive crop years, as determined by FSA.

(f) Forage acreage for which a notice of loss is filed and:

(1) Catastrophic coverage was obtained for forage intended to be grazed will have NAP benefits calculated based on § 1437.401(f);

(2) Catastrophic coverage was obtained for forage that was intended to be mechanical harvested but will be grazed and not mechanical harvested;

(i) Must have an appraisal and release for the unit to have NAP benefits calculated based on mechanical harvested forage; or

(ii) For which an appraisal or release was not obtained, will have a loss calculated as specified in § 1437.401(f).

(3) Buy-up coverage was obtained for forage intended to be mechanically harvested but will be grazed and not mechanically harvested:

(i) Must have an appraisal and release in order for the unit to have NAP benefits calculated based on the loss of expected mechanically harvested forage; or

(ii) For which an appraisal or release was not obtained is ineligible for payment consideration and will have the unit guarantee assigned to the forage crop acreage.

(g) Producers must file an application for payment on a form specified by FSA to apply for NAP payments within 60 days of the last day of coverage for the crop year for any NAP covered crop in the unit.

(h) A notice of loss under paragraph (a) of this section filed beyond the time specified in this section or notification provided under paragraph (b) of this section may satisfy the requirements of these provisions, if, at the discretion of FSA, the notice is filed at such time that permits:

(1) An authorized FSA representative to verify information on the notice of loss by inspecting the affected acreage or the crop or commodity involved; and

(2) The county committee or an authorized FSA representative the

opportunity to determine that eligible disaster conditions caused the damage or loss.

■ 20. Amend newly redesignated § 1437.12 as follows:

■ a. Redesignate paragraph (b) as paragraph (e);

■ c. Remove paragraphs (c) and (d); and

■ d. Add paragraphs (b) through (d) and (f) through (i).

The additions read as follows:

§ 1437.12 Average market price and payment factors.

* * * * *

(b) For each crop and location (State or county or other location as determined appropriate by FSA), FSA will establish an average market price using the following method:

(1) Obtaining market prices for each crop for the 5 consecutive crop years immediately preceding the crop year of coverage, if available; then

(2) Dropping the crop years in the 5 consecutive crop years with the highest and lowest prices; and then

(3) Averaging the prices for the remaining 3 crop years in the 5 consecutive crop years; and

(4) If 5 crop years of data is not available for determining the average market price, FSA will use the best data available, as determined by FSA, for as many crop years of average market price data as possible within the 5 consecutive crop years immediately preceding the previous crop year and determine an average market price for the crop by computing a simple average of the prices for those years.

(c) FSA will disregard small differences in prices for a crop based on different types or varieties or various intended uses. If FSA determines there is a significant amount of production being marketed in a location or region at significantly different prices, FSA will determine whether or not to establish different average market prices for subsequent crop years.

(d) Separate average market prices may be established within a State based on conventional or organic practices or the intended market, as determined by FSA.

* * * * *

(f) Payment factors will be used to calculate assistance for crops produced with significant and variable harvesting expenses that are not incurred because the crop acreage was prevented planted, or planted but not harvested, as determined by FSA. The imposition of payment factors is based on the acre status and disposition not whether a NAP participant actually incurs or does not incur expenses.

(g) The average market price used to determine the amount of NAP assistance for crop acreage reported with a specific intended use will be based on the smaller of the approved average market price established for either the specific intended use reported on the acreage report or actual market or actual use for which more than 50 percent of the acreage's harvested production is marketed. For example: A producer reports 50 acres of carrots intended for fresh market and the producer suffers a 70 percent loss of production on the acreage. Additionally, more than 50 percent of the carrots actually produced from the 50 acres are sold as processed carrots. Because the established average market price for processed carrots is less than fresh carrots and more than 50 percent of the harvested crop was marketed as processed carrots, the established average market price for processed carrots will be used to compute the producer's NAP assistance. If an average market price had not been established for processed carrots in this example before the coverage period, then the average market price for fresh carrots would be used.

(1) The provisions of this paragraph do not apply to secondary use, peanuts, seed intended uses, and small grain intended for use as forage.

(2) [Reserved]

(h) For crops with an established yield and market price for multiple intended uses, the average market price will be as provided in paragraph (g) of this section except that for producers who choose buy-up coverage under § 1437.5(d), the average market price used to determine assistance may be based on historical production and acreage evidence provided by the participant. The evidence of actual final use of historical production must come from the 3 previous crop years immediately preceding the coverage year. Only years in which the producer had acreage and production harvested will be counted. In other words, if a producer only marketed a crop in 1 previous year, FSA will review the evidence of final use in that year and based on the evidence for that year, determine a percent of production attributable to each use. Based on that determined percentage, an appropriate average market price and use will be calculated and determined, respectively. If more than 1 and up to 3 years of final use evidence are available, FSA will count all years and production and determine the average. If a producer had crop acreage and evidence of final use for any year in the 3-year period, but the producer does not submit evidence for any other year in the 3-year period for

which the producer also had acreage, the average market price will be as provided in paragraph (g) of this section.

(i) A final payment price will be determined by multiplying, as appropriate, the average market price determined in this section by the applicable payment factor (that is, harvested, unharvested, or prevented planting).

§ 1437.14 [Amended]

■ 21. Amend newly redesignated § 1437.14 as follows:

- a. In paragraph (a), remove the word “shall” and add the word “will” in its place;
- b. Remove paragraph (b)(2);
- c. Redesignate paragraphs (b)(3) through (5) as paragraphs (b)(2) through (4), respectively;
- d. In newly redesignated paragraphs (b)(2) through (4) remove the reference “part 760 of this title” and add the reference “part 1416 of this chapter” in its place each time it appears; and
- e. In paragraph (d), remove the word “FSA” and add the word “county” in its place.

§ 1437.15 [Amended]

■ 22. Amend newly redesignated § 1437.15 as follows:

- a. Remove paragraph (b); and
 - c. Redesignate paragraph (c) as paragraph (b).
- 23. Amend newly redesignated § 1437.16 as follows:
- a. In paragraph (b), remove the word “shall”;
 - b. In paragraph (c) introductory text, remove the words “shall be” and add the word “is” in their place;
 - c. In paragraph (e), remove the words “shall be” and add the word “are” in their place, and remove the acronym “CCC” and add the acronym “FSA” in its place;
 - d. In paragraph (f), remove the word “shall” and add the word “will” in its place;
 - e. Revise paragraph (g);
 - f. In paragraph (i), remove the word “shall” and add the word “will” in its place;
 - g. Revise paragraph (j); and
 - h. Add paragraphs (m) through (p).

The additions and revisions read as follows:

§ 1437.16 Miscellaneous provisions.

* * * * *

(g) The liability of any person for any penalty under this part is in addition to any other liability under any civil or criminal fraud statute or any other provision of law.

* * * * *

(j) For the purposes of 28 U.S.C. 3201(e), the Secretary waives the ineligibility to receive benefits under this program but only for beneficiaries who as a condition of such waiver agree to apply the benefits to reduce the amount of the judgment lien.

* * * * *

(m) Any person or legal entity who has a debt from nonpayment of the premium for coverage levels specified in § 1437.5(c) will be ineligible for assistance under any subsequent crop year NAP coverage on any crop from the crop year of nonpayment of premium until the debt is paid in full.

(1) If a person or legal entity is ineligible for NAP assistance due to the debt because of the nonpayment of premium, FSA will permit the person or legal entity to file an application for coverage together with payment of any service fees; however, that application and payment of service fees will not make the person or legal entity eligible for any assistance until the premium debt is paid in full.

(2) Service fees paid with applications for coverage that are filed by persons or legal entities who are ineligible for NAP assistance as specified in paragraph (m) of this section will not be credited to any unpaid premium debt nor are they refundable.

(n) A person or legal entity ineligible for NAP assistance under paragraph (m) of this section may become eligible for future NAP assistance if they remit all unpaid debt related to the nonpayment of premium before the application for payment filing deadline (see § 1437.11(g)).

(o) Any NAP payment that was not issued for a prior NAP crop year due to an outstanding debt as specified in paragraph (m) of this section will not be issued.

(p) Unpaid debt related to the failure to pay any premium satisfied by administrative offset will reinstate the eligibility of a person or legal entity from the date the offset satisfies all the unpaid premium debt with interest.

■ 24. Add § 1437.17 to read as follows:

§ 1437.17 Matters of general applicability.

(a) The regulations in this part and FSA’s interpretation of the regulations in this part, the basic provisions, and internal agency directives issued to FSA State and county offices are matters of general applicability and are not individually appealable in administrative appeals according to §§ 11.3 and 780.5 of this title. Additionally, the regulations in this part and any FSA decisions that are not based on specific facts derived from an

individual participant’s application, contract, or file are not appealable under parts 11 or 780 of this title. Examples of such decisions include how NAP is generally administered, sign-up deadlines, payment rates, or any other generally applicable matter or determination that is made by FSA for use in all similarly situated applications. The only extent to which the matters referenced in this section are reviewable administratively in an appeal forum is whether FSA’s determination of facts incidental to the case and decision to apply the generally applicable matter is in conformance with the regulations in this part.

(b) The relief provisions of 7 CFR part 718 are applicable only to participant ineligibility and noncompliance decisions. The relief provisions cannot be used to extend a benefit or assistance not otherwise available under law or not otherwise available to others who have satisfied or complied with all the eligibility and compliance requirements of this part. Equitable relief provisions of part 718 of this title cannot be used to obtain a review of either these regulations, the requirements of this part, the agency’s interpretations of this part, or compliance provisions of this part.

Subpart B—Determining Yield Coverage Using Actual Production History

■ 25. Amend § 1437.102 as follows:

- a. In paragraph (b)(1), remove the year “2005” and add the year “2015” in its place, and remove the term “1999 through 2003” and add the term “2009 through 2013” in its place;
- b. In paragraph (b)(5)(i), remove the words “irrigated, non-irrigated, and organic practices” and add the words “irrigated and non-irrigated” in their place;
- c. Redesignate paragraphs (b)(6) through (8) as paragraphs (b)(8) through (10), respectively;
- d. Add paragraphs (b)(6) and (7);
- e. In paragraphs (c)(1) and (2), add the words “in a crop year that is not a bypass year” immediately after the words “report of production”;
- f. In paragraph (c)(3), remove the reference “§ 1437.7” and add the reference “§ 1437.8” in its place;
- g. In paragraph (d)(1), remove the words “production, as determined by CCC” add the words “production in a crop year that is not a bypass year, as determined by CCC” in their place;
- h. In paragraph (d)(2), remove the reference “§ 1437.7” and add the reference “§ 1437.8” in its place;

- i. In paragraph (e)(3), remove the word “Shall” and add the word “Will” in its place;
- j. In paragraph (g), remove the year “2000” and add the year “2014” in its place and remove the acronym “CCC” and add the acronym “FSA” in its place;
- k. In paragraph (h), remove the words “50 percent of the initial approved yield” and add the words “the unit guarantee” in their place, and remove the acronym “CCC” each time it appears and add the acronym “FSA” in its place; and
- l. Revise paragraph (j).

The additions and revision read as follows:

§ 1437.102 Yield determinations.

* * * * *

(b) * * *

(6) Will be adjusted on a State-wide basis, for crops grown on certified organic and transitional acreage for which FSA has established a separate organic price as specified in § 1437.12(b), based on an average of FCIC organic yield reductions, as determined by FSA, for the same crop in the same State.

(7) May be adjusted on a county-wide or regional basis for crops grown on certified organic and transitional acreage for which FSA has established a separate organic price as specified in § 1437.12(b), based on the most representative available historical information, as determined by FSA.

* * * * *

(j) A producer who has not shared in the risk of the production of the crop for more than two crop years during the base period, as determined by FSA, will have an approved yield calculated based on a combination of 100 percent of the applicable T-yield and any actual yield for the minimum crop years of the producer’s APH base period. Producers who have produced the crop for one or more crop years must provide FSA, at the administrative county office serving the area in which the crop is located, a certification of production and production records for the applicable crop years as specified in § 1437.8.

* * * * *

■ 26. Revise § 1437.103 to read as follows:

§ 1437.103 Late-planted acreage.

(a) Producers planting crop acreage after the final planting date and during the late planting period, as determined by FSA, may be eligible for reduced coverage as specified in paragraphs (b) and (c) of this section.

(b) Crops with multiple planting periods and value loss crops are not

eligible for reduced coverage for late planting. Exceptions to this are the last planting period of multiple planted crops and multiple-planting periods having a defined gap of 60 days or more between harvest date of the previous planting period and beginning of the immediately following planting period.

(c) For crops with a growing period of:

(1) 60 days or less and planted:

(i) From 1 to 5 calendar days after the final planting date, production will be assigned equal to 5 percent of unit expected production for each day the crop is actually planted after the final planting date;

(ii) From 6 days after the final planting date, production will be assigned equal to the unit guarantee for the late planted crop acreage.

(2) 61 to 120 calendar days and planted:

(i) From 1 to 5 calendar days after the final planting date, production will be assigned equal to 5 percent of expected unit production of the applicable late-planted crop acreage and for days 6 through 20 an additional 1 percent for each day the crop is planted after the final planting date;

(ii) From 21 days after the final planting date, production will be assigned equal to the unit guarantee for the late planted crop acreage.

(3) 121 calendar days or more and planted:

(i) From 1 to 5 calendar days after the final planting date, production will be assigned equal to 5 percent of expected production of the applicable late-planted crop acreage and for days 6 through 25 an additional 1 percent for each day the crop is planted after the final planting date.

(ii) From 26 or more calendar days after the final planting date, production will be assigned equal to unit guarantee of the producer’s expected production of the applicable late-planted crop acreage.

§ 1437.104 [Amended]

■ 27. In § 1437.104(a)(2) remove the reference “§ 1437.10(d)” and add the reference “§ 1437.11(e)” in its place.

■ 28. Amend § 1437.105 as follows:

■ a. In paragraph (a) introductory text, remove the word “shall” and add the word “will” in its place;

■ b. In paragraph (a)(1), remove the words “eligible acreage planted” and add the words “acres devoted” in their place;

■ c. In paragraph (a)(2), remove the words “50 percent” and add the words and punctuation “50, 55, 60, or 65 percent, as selected by the producer as specified in § 1437.5;” in their place; and

■ d. Revise paragraph (a)(5); and
 ■ e. Add paragraphs (c), (d), (e), and (f).
 The revision and additions read as follows:

§ 1437.105 Determining payments for low yield.

(a) * * *

(5) Multiplying the amount calculated as specified in paragraph (a)(4) of this section by 55 or 100 percent (selected by the producer as specified in § 1437.5) of the final payment price calculated as specified in § 1437.12; and

* * * * *

(c) The crops and locations eligible for quality adjustments will be determined by the Deputy Administrator in advance of the coverage period, only if supporting documentation of industry standards for quality adjustments are available. For specific crops and locations determined by the Deputy Administrator for which buy-up coverage under § 1437.5(d) is elected and for which adjustments to net production based on quality losses will be authorized for a coverage period in accordance with this paragraph, producers may opt for an adjustment of net production of a covered crop as specified in paragraph (a)(3) of this section based on a specific measure of quality against a set of standards that are acceptable to FSA. The standards and permissible adjustments to net production based on alleged quality losses stemming from eligible causes of loss in a coverage period will be based on FSA’s review of sufficient documentation and are subject to FSA acceptance and State committee recommendation to the Deputy Administrator. The crops and locations where quality adjustments will be permitted will be as specified on a list maintained by FSA.

(d) Production will not be adjusted under this section unless all other provisions of this section are met and the crop and location are included on a list of approved crops and locations before the beginning of the coverage period for the crop.

(e) A producer of a NAP covered crop in a location and coverage period approved by FSA as specified in paragraphs (c) and (d) of this section who opts for the quality loss adjustment option must submit verifiable records obtained by testing or analysis of the specific crop’s production and the alleged loss of quality stemming from an eligible cause of loss in the coverage period. Records must meet requirements of § 1437.8(a)(3).

(f) If a quality adjustment option is sought by a producer and approved for a crop year, FSA will enter the adjusted

value of net production into the producer's actual production history yield database for the loss year. The lower actual yield that results from the quality adjustment will be used for future approved yield calculations.

■ 29. Amend § 1437.106 as follows:

■ a. Revise paragraph (d);

■ b. In paragraph (e), remove the words "shall consist" and add the word "consists" in its place;

■ c. In paragraph (g) introductory text, remove the words "Administrative FSA" and add the words "administrative county" in their place;

■ d. In paragraph (g)(2), remove the reference "\$ 1437.10" and add the reference "\$ 1437.11" in its place;

■ e. In paragraph (i), remove the words "in excess of a 50 percent loss level" and add the words "based on the applicable guarantee" in their place; and

■ f. Add paragraph (j).

The revision and addition read as follows:

§ 1437.106 Honey.

* * * * *

(d) In addition to filing a report of acreage in accordance with § 1437.8, honey producers must provide a record of colonies to FSA. The report of colonies must be filed before the crop year for which producers seek to maintain coverage. The report of colonies must include:

* * * * *

(j) Premiums for coverage levels specified in § 1437.5(c) will be calculated based on the highest number of colonies reported during the program year.

■ 30. Amend § 1437.107 as follows:

■ a. In paragraph (c), remove the reference "\$ 1437.6" and add the reference "\$ 1437.7" in its place, and remove the acronym "CCC" and add the acronym "FSA" in its place;

■ b. In paragraph (d) introductory text, remove the reference "\$ 1437.7" and add the reference "\$ 1437.8" in its place;

■ c. In paragraph (e), remove the words "shall be" and add the word "is" in their place, and remove the acronym "CCC" in both places it appears and add the acronym "FSA" in its place;

■ d. In paragraph (f), remove the words "shall be" and add the word "is" in their place;

■ e. In paragraph (g), remove the words "shall be" and add the word "will" in their place;

■ f. In paragraph (i), remove the words "in excess of a 50 percent loss level" and add the words "based on the applicable guarantee" in its place; and

■ g. Add paragraph (j).

The addition reads as follows:

§ 1437.107 Maple sap.

* * * * *

(j) Premiums for coverage levels specified in § 1437.5(c) will be calculated based on the number of taps reported by the producer.

Subpart C—Determining Coverage For Prevented Planted Acreage

§ 1437.201 [Amended]

■ 31. In § 1437.201(a), remove the word "shall".

§ 1437.202 [Amended]

■ 32. Amend § 1437.202 as follows:

■ a. In paragraph (a)(7), remove the words "by the final" and add the words "by 55 or 100 percent, as selected by the producer as specified in § 1437.5, of the final" in their place, and remove the reference "\$ 1437.11" and add the reference "\$ 1437.12" in its place; and

■ b. In paragraph (b), remove the word "shall" and add the word "will" in its place.

Subpart D—Determining Coverage Using Value

■ 33. Amend § 1437.301 as follows:

■ a. Revise paragraph (a);

■ b. In paragraph (c) introductory text, remove the reference "\$ 1437.6" and add the reference "\$ 1437.7" in its place; and

■ c. Add paragraph (d).

The revision and addition read as follows:

§ 1437.301 Value loss.

(a) Special provisions are required to assess losses and calculate assistance for a few crops and commodities that do not lend themselves to yield loss situations. Assistance for these commodities is calculated based on the loss of value at the time of disaster. FSA determines which crops are value-loss crops, but unless otherwise announced, value-loss crops are those identified in §§ 1437.303 through 1437.309. Lost production of value loss crops is eligible for payment only as specified in this subpart.

* * * * *

(d) For coverage levels specified in § 1437.5(c), producers must pay a premium equal to the lesser of:

(1) The producer's share, times the maximum dollar value for coverage sought, times the coverage level, times the average market price, times a 5.25 percent premium fee; or

(2) A 5.25 percent premium fee times the applicable payment limitation.

■ 34. Revise § 1437.302 to read as follows:

§ 1437.302 Determining payments.

(a) Subject to all restrictions and the availability of funds, value loss payments for qualifying losses will be determined by:

(1) Multiplying the field market value of the crop before the disaster, or for buy-up coverage specified in § 1437.5(c), the lesser of the field market value of the crop before the disaster or the maximum dollar value for coverage sought, by 50, 55, 60, or 65 percent, as selected by the producer as specified in § 1437.5;

(2) Subtracting the sum of the field market value after the disaster and value of ineligible causes of loss from the result from paragraph (a)(1) of this section;

(3) Multiplying the result from paragraph (a)(2) of this section by the producer's share;

(4) Multiplying the result from paragraph (a)(3) of this section by 55 or 100 percent, as selected by the producer as specified in § 1437.5, plus whatever appropriate factor reflects savings from non-harvesting of the damaged crop or other factors as appropriate; and

(5) Subtracting the producer's share of any salvage value, if applicable.

(b) [Reserved]

■ 35. Amend § 1437.303 as follows:

■ a. In paragraph (a) introductory text, remove the words "is compensable" and add the words "will have NAP assistance calculated" in their place, and remove the word "shall";

■ b. In paragraph (d)(3), add the words and punctuation "on ropes," immediately after "net pens,";

■ c. Redesignate paragraphs (e) and (f) as paragraphs (f) and (g); and

■ d. Add paragraph (e).

The addition reads as follows:

§ 1437.303 Aquaculture, including ornamental fish.

* * * * *

(e) For mollusks that are not planted or seeded in containers, net pens, on ropes, wire baskets, or similar device designed for the containment and protection of the mollusks, the only eligible cause of loss of mollusks or missing mollusk inventory will be a direct result of a National Oceanic and Atmospheric Administration-determined tropical storm, typhoon, or hurricane.

* * * * *

§ 1437.304 [Amended]

■ 36. Amend § 1437.304 as follows:

■ a. In paragraph (a) introductory text, remove the words "shall be" and add the word "is" in their place; and

■ b. In paragraph (g), remove the words “shall be” and add the word “are” in their place both times they appear.

§ 1437.305 [Amended]

■ 37. In § 1437.305(e), remove the word “shall” and add the word “will” in its place.

§ 1437.306 [Amended]

■ 36. In § 1437.306(c), remove the word “shall” and add the word “will” in its place.

§ 1437.308 [Amended]

■ 39. In § 1437.308(d)(3), remove the words “a CCC-certified” and add the words “an FSA-certified” in their place.

§ 1437.309 [Amended]

■ 40. Amend § 1437.309 as follows:

■ a. In paragraph (c), remove the words “shall be” and add the word “is” in their place;

■ b. In paragraph (d), removed the word “shall” and add the word “will” in its place; and

■ c. In paragraph (e), remove the reference “§ 1437.7” and add the reference “§ 1437.8” in its place, and remove the acronym “CCC” and add the acronym “FSA” in its place.

§ 1437.310 [Amended]

■ 41. Amend § 1437.310 as follows:

■ a. In paragraph (b)(1), remove the word “shall” and add the word “will” in its place;

■ b. In paragraphs (c)(1) and (2), remove the reference “§ 1437.11” and add the reference “§ 1437.12” in its place both times it appears; and

■ c. In paragraph (h), remove the word “shall” and add the word “will” in its place both times it appears.

Subpart E—Determining Coverage of Forage Intended for Animal Consumption

■ 42. Revise § 1437.401 to read as follows:

§ 1437.401 Forage.

(a) Forage eligible for benefits under this part is limited to mature vegetation, as determined by FSA, produced in a commercial operation. Benefits are not available for first-year seeding of alfalfa and similar vegetation when production is not produced in the seeding year, as determined by FSA. The commercial operation must use acceptable farming, pasture, and range management practices for the location necessary to sustain sufficient quality and quantity of the vegetation so as to be suitable for grazing livestock or mechanical harvest as hay or seed. Forage to be

mechanically harvested will be treated under the rules for low-yield crops as calculated under § 1437.103, except claims on forage for grazing benefits will be determined according to paragraph (f) of this section. The provisions in this subpart apply to all claims including forage for mechanical harvest.

(b) Producers of forage must, in addition to the records required in § 1437.8, specify the intended method of harvest of all acreage intended as forage for livestock consumption as either mechanically or grazed.

(c) Producers must request an appraisal from the administrative county office for the unit prior to the onset of grazing of any intended mechanically harvested forage acreage that will be both mechanically harvested and grazed.

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

(e) Small grain forage is the specific acreage of wheat, barley, oats, triticale, or rye intended for use as forage. Small grain forage is a separate crop and distinct from any other forage commodities and other intended uses of the small grain commodity. In addition to the records required in § 1437.8, producers must specify whether the intended forage crop is intended for fall and winter, spring, or full season forage. In addition to other eligibility requirements, FSA will consider other factors, such as water sources and available fencing, and adequate fertilization to determine small grain forage eligibility, yields, and production.

(f) FSA will establish forage losses of acreage intended to be grazed including, in some cases, acreage intended to be mechanically harvested but instead

subsequently grazed for producers with catastrophic coverage, on the basis of:

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

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

(i) The assessments must be completed by forage or range specialists in Federal, State, and local government agencies, educational institutions, and private companies not having a financial interest in the outcome of the assessment. Collective percentage of loss determined by FSA for the geographical region may be based on any or all the following methods as may be available and as determined appropriate by the Deputy Administrator:

(A) Independent assessments of grazed forage acreage conditions;

(B) The U.S. Drought Monitor;

(C) Information obtained from loss adjusters with sufficient forage knowledge to provide grazing loss assessments;

(D) Data obtained from approved areas where clippings are obtained on a regular basis to compare with expected levels of production in a geographical region; or

(E) Information from Natural Resources Conservation Service technical service providers having a specialized knowledge.

(ii) Neither the assessments themselves, nor collective loss percentages established in accordance with this section are subject to appeal. FSA’s determinations of geographical area for assessments and collective grazing loss are generally applicable to all similarly situated participants farming in such defined geographical region.

§ 1437.402 [Amended]

■ 43. In § 1437.402(b) introductory text, add the words “with catastrophic coverage” immediately after the word “acreage”, and remove the acronym “CCC” and add the acronym “FSA” in its place.

■ 44. Revise § 1437.403 to read as follows:

§ 1437.403 Determining payments.

(a) Subject to payment limits, availability of funds, and other limits as may apply, payments for catastrophic

coverage of losses of forage reported to FSA as intended to be grazed will be determined by:

(1) Multiplying the eligible acreage by the producer's share;

(2) Dividing the result from paragraph (a)(1) of this section by the carrying capacity or adjusted per day carrying capacity established for the specific catastrophic coverage acreage, as determined by FSA;

(3) Multiplying the result from paragraph (a)(2) of this section by the number of days established as the grazing period;

(4) Adding adjustments of AUD for practices and production to the product of paragraph (a)(3) of this section;

(5) Multiplying the result from paragraph (a)(4) of this section by the applicable percentage of loss established by FSA;

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

(7) Subtracting the result from paragraph (a)(6) of this section from the result from paragraph (a)(5) of this section;

(8) Multiplying the result from paragraph (a)(4) of this section by 0.50;

(9) Subtracting the result from paragraph (a)(8) of this section from the result from paragraph (a)(7) of this section; and

(10) Multiplying the result from paragraph (a)(9) of this section by 55 percent of the final payment price established in accordance with § 1437.12.

(b) [Reserved]

Subpart F—Determining Coverage in the Tropical Region

■ 45. Amend § 1437.501 as follows:

■ a. Revise paragraph (a);

■ b. Remove paragraph (b)(2); and

■ c. Redesignate paragraph (b)(3) as paragraphs (b)(2).

The revision reads as follows:

§ 1437.501 Applicability; definition of “tropical region” and additional definitions.

(a) This subpart applies to covered tropical crops in the tropical region, as those terms are defined in this subpart. Benefits under this part may be extended to those crops only to the extent that they are otherwise eligible for assistance under this part. Covered crops do not include “value loss” crops, as defined elsewhere in this part. For those crops that are covered by this subpart, loss and payment determinations for NAP covered in this part are determined by the rules that otherwise apply to NAP subject to the modifications provided by this subpart. The rules that otherwise apply include, but are not limited to, limitations on payments that are specified in part 1400 of this chapter.

* * * * *

§ 1437.502 [Amended]

■ 46. Amend § 1437.502 as follows:

■ a. In paragraph (a), remove the words “beginning in 2006 through subsequent years”;

■ b. Redesignate paragraphs (d)(1) and (2) as paragraphs (d) and (e), respectively; and

■ c. In newly redesignated paragraph (d), remove the word “shall” and add the words “will be interpreted to” in its place.

§ 1437.504 [Amended]

■ 47. Amend § 1437.504 as follows:

■ a. In paragraph (a), remove the reference “§ 1437.10(c)” and add the reference “§ 1437.11(d)” in its place; and

■ b. In paragraph (b) introductory text, remove the reference “§ 1437.10” and add the reference “§ 1437.11” in its place.

§ 1437.505 [Amended]

■ 48. In § 1437.505(a) and (b)(1), remove the reference “§ 1437.10” and add the reference “§ 1437.11” in its place both times it appears.

§§ 1437.3, 1437.4, 1437.8, 1437., 1437.11, 1437.12, 1437.13, 1437.16, 1437.102, 1437.104, 1437.201, 1437.301, 1437.304, 1437.305, 1437.307, 1437.308, 1437.309, 1437.310, 1437.402, 1437.502, 1437.503, 1437.504 [Amended]

■ 49. In addition to the amendments set forth above, in 7 CFR part 1437, remove the word “CCC” and add, in its place, the word “FSA” in the following places:

■ a. In § 1437.3, in the definitions of “Fiber”, “Final planting date”, “Food”, “Multiple planted”, and “Normal harvest date”;

■ b. In § 1437.4(a)(1) and (3);

■ c. In newly redesignated § 1437.8(a)(1) and (2), (e), both times it appears, and (f);

■ d. In newly redesignated § 1437.11(d) introductory text and (d)(2)(ii) and (iii);

■ e. In newly redesignated § 1437.12(a)(2) and (4);

■ f. In newly redesignated § 1437.13, each time it appears;

■ g. In newly redesignated § 1437.16(d), each time it appears;

■ h. In § 1437.102(b)(4), newly redesignated paragraph (b)(9), (c)(4) introductory text, (c)(4)(ii), (c)(5)(i) and (ii), and (f), both times it appears;

■ i. In § 1437.104(a) introductory text;

■ j. In § 1437.201(c)(2)(i) and (ii);

■ k. In § 1437.301(c)(1) and (3);

■ l. In § 1437.304(a)(1), (c), and (f);

■ m. In § 1437.305(f);

■ n. In § 1437.307(e);

■ o. In § 1437.308(d)(1) and (4), and (e);

■ p. In § 1437.310(d), (e)(3), (g)(1), and (i);

■ q. In § 1437.402(a) introductory text, (a)(2), and (b)(3);

■ r. In § 1437.502(c)(1) and (2);

■ s. In § 1437.503(c)(2); and

■ t. In § 1437.504(f).

Signed on December 5, 2014.

Val Dolcini,

Executive Vice President, Commodity Credit Corporation, and Administrator, Farm Service Agency.

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