

TABLE 1—Continued

| Column A Variety               | Column B Maturity guide |
|--------------------------------|-------------------------|
| Flavorcrest .....              | G                       |
| Flavor Queen .....             | H                       |
| Flavor Red .....               | G                       |
| Franciscan .....               | G                       |
| Goldcrest .....                | H                       |
| Golden Princess .....          | L                       |
| Honey Red .....                | G                       |
| Island Princess .....          | H                       |
| Joanna Sweet .....             | J                       |
| John Henry .....               | J                       |
| July Elberta .....             | C                       |
| June Lady .....                | G                       |
| June Pride .....               | J                       |
| Kaweah .....                   | L                       |
| Kern Sun .....                 | H                       |
| Kingscrest .....               | H                       |
| Kings Lady .....               | I                       |
| Kings Red .....                | I                       |
| Lacey .....                    | I                       |
| Lady Sue .....                 | L                       |
| Late Ito Red .....             | L                       |
| Madonna Sun .....              | J                       |
| Magenta Queen .....            | J                       |
| May Crest .....                | G                       |
| May Sun .....                  | I                       |
| May Sweet .....                | I                       |
| Merrill Gem .....              | G                       |
| Merrill Gemfree .....          | G                       |
| Morning Lord .....             | J                       |
| O'Henry .....                  | I                       |
| Pacifica .....                 | G                       |
| Pretty Lady .....              | J                       |
| Prima Gattie 8 .....           | L                       |
| Prima Gattie 10 .....          | J                       |
| Prima Peach IV .....           | J                       |
| Prima Peach 23 .....           | J                       |
| Queencrest .....               | G                       |
| Ray Crest .....                | G                       |
| Red Dancer (Red Boy) .....     | I                       |
| Redhaven .....                 | G                       |
| Red Lady .....                 | G                       |
| Redtop .....                   | G                       |
| Regina .....                   | G                       |
| Rich Lady .....                | J                       |
| Rich May .....                 | H                       |
| Rich Mike .....                | H                       |
| Rio Oso Gem .....              | I                       |
| Royal Lady .....               | J                       |
| Royal May .....                | G                       |
| Ruby May .....                 | H                       |
| Ryan Sun .....                 | I                       |
| September Sun .....            | I                       |
| Shelly .....                   | J                       |
| Sierra Gem .....               | J                       |
| Sierra Lady .....              | I                       |
| Sparkle .....                  | I                       |
| Sprague Last Chance .....      | L                       |
| Springcrest .....              | G                       |
| Spring Delight .....           | G                       |
| Spring Gem .....               | J                       |
| Spring Lady .....              | H                       |
| Springtreat .....              | I                       |
| Summer Kist .....              | J                       |
| Summer Lady .....              | L                       |
| Summerset .....                | I                       |
| Summer Zee .....               | L                       |
| Suncrest .....                 | G                       |
| Supechfour (Amber Crest) ..... | G                       |
| Super Rich .....               | H                       |
| Sweet Amber .....              | J                       |

TABLE 1—Continued

| Column A Variety      | Column B Maturity guide |
|-----------------------|-------------------------|
| Sweet Dream .....     | J                       |
| Sweet Gem .....       | J                       |
| Sweet Mick .....      | J                       |
| Sweet Scarlet .....   | J                       |
| Sweet September ..... | I                       |
| Topcrest .....        | H                       |
| Tra Zee .....         | J                       |
| Vista .....           | J                       |
| Willie Red .....      | G                       |
| Zee Diamond .....     | J                       |
| Zee Lady .....        | L                       |

\* \* \* \* \*

(2) Any package or container of April Snow, Earlitreat, Sugar Snow, or Supeachsix (91002) variety peaches unless:

\* \* \* \* \*

(5) Any package or container of Babcock, Bev's Red, Brittney Lane, Burpeachone (Spring Flame® 21), Burpeachfourteen (Spring Flame® 20), Crimson Lady, Crown Princess, David Sun, Early May Crest, Flavorcrest, Ivory Queen, June Lady, Magenta Queen, May Crest, May Sun, May Sweet, Prima Peach IV, Queencrest, Rich May, Scarlet Queen, Snow Brite, Snow Prince, Springcrest, Spring Lady, Spring Snow, Springtreat (60EF32), Sugar Time (214LC68), Sunlit Snow (172LE81), Supecheight, Sweet Scarlet, Zee Diamond, or 012-094 variety peaches unless:

\* \* \* \* \*

(iii) Such peaches in any container when packed other than as specified in paragraph (a)(5)(i) and (ii) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 77 peaches except for Peento type peaches.

(6) Any package or container of August Lady, Autumn Flame, Autumn Red, Autumn Rich, Autumn Rose, Autumn Ruby, Autumn Snow, Burpeachtwo (Henry II®), Burpeachthree (September Flame®), Burpeachfour (August Fame®), Burpeachfive (July Flame®), Burpeachsix (June Flame®), Burpeachseven (Summer Flame® 29), Cherry Red, Coral Princess, Country Sweet, Crimson Queen, Diamond Princess, Earlich, Early Elegant Lady, Early O'Henry, Elegant Lady, Fancy Lady, Fay Elberta, Full Moon, Gypsy Red, Henry III, Henry IV, Ice Princess, Ivory Princess, Jillie White, Joanna Sweet, John Henry, Jupiter, Kaweah, Klondike, Last Tango, Late Ito Red, Magenta Gold, O'Henry, Pink Giant, Pink Moon, Pretty Lady, Prima Gattie 8,

Prima Peach 13, Prima Peach XV, Prima Peach 20, Prima Peach 23, Prima Peach XXVII, Princess Gayle, Red Giant, Rich Lady, Royal Lady, Ruby Queen, Ryan Sun, Saturn (Donut), Scarlet Snow, September Snow, September Sun, Sierra Gem, Sierra Rich, Snow Beauty, Snow Blaze, Snow Fall, Snow Gem, Snow Giant, Snow Jewel, Snow King, Snow Princess, Sprague Last Chance, Spring Gem, Sugar Crisp, Sugar Giant, Sugar Lady, Summer Dragon, Summer Lady, Summer Sweet, Summer Zee, Supechfour (Amber Crest), Sweet Blaze, Sweet Dream, Sweet Kay, Sweet September, Tra Zee, Vista, White Lady, Zee Lady, 24-SB, or 244LE379 variety peaches unless:

\* \* \* \* \*

(iii) Such peaches in any container when packed other than as specified in paragraphs (a)(6)(i) and (ii) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 66 peaches, or if the peaches are "well matured," not more than 73 peaches, except for Peento type peaches.

\* \* \* \* \*

Dated: March 28, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05-6418 Filed 3-29-05; 9:00 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1439

#### RIN 0560-AH25

### 2003 and 2004 Livestock Assistance Program

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

**ACTION:** Final rule.

**SUMMARY:** This rule sets forth the terms and conditions of the 2003/2004 Livestock Assistance Program (LAP) as provided for by the Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005. Under LAP, assistance will be available to livestock producers for either 2003 or 2004 grazing losses in a county that was designated as a primary disaster county by the President or the Secretary of Agriculture after January 1, 2003, for certain losses occurring through December 31, 2004. Assistance will be made available in the same manner as was provided under the 2002 LAP.

**DATES:** *Effective Date:* March 30, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Dolores Painter, Emergency Preparedness and Program Branch, Production, Emergencies, and Compliance Division, Farm Service Agency (FSA), United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250-0517; telephone (202) 720-6602; e-mail [Dolores.Painter@usda.gov](mailto:Dolores.Painter@usda.gov).

Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 101 of Division B of the Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act (Pub. L. 108-324, 118 Stat. 1220, October 13, 2004) (the 2004 Act), requires the Secretary of Agriculture to use such sums as are necessary from funds of the Commodity Credit Corporation to make and administer payments to livestock producers for either 2003 or 2004 grazing losses in a county that has received an emergency designation as a primary county by the President or the Secretary after January 1, 2003, for losses occurring through December 31, 2004. The designated county must have suffered a 40 percent or greater grazing loss for 3 consecutive months during the selected calendar year as a result of damage due to a natural disaster. The eligible producer must elect whether they want payments for 2003 or 2004, but payments may not be received for both years.

By statute, assistance shall be made available in the same manner as provided under section 806 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Pub. L. 106-387; 114 Stat. 1549A-51, October 6, 2000), (*see* 66 FR 15542, March 21, 2001, for losses occurring in calendar year 2000 (the 2000 program)). However, by statute, for the 2003/2004 LAP eligibility and payment amounts, a producer may not be penalized for actions (recognizing disaster conditions) that reduced the average number of livestock the producer owned for grazing in an eligible county during the production year for which assistance is being provided. Also, this rule includes elk, bison, and reindeer as eligible livestock for LAP, as authorized by section 785 of Division A of the Agriculture, Rural Development, Food

and Drug Administration, and Related Agencies Appropriations Act, 2005, of the Consolidated Appropriations Act, 2005 (Pub. L. 108-447, December 8, 2004).

As with the 2000 program, other limitations on the 2003/2004 LAP include the following:

- Producers in counties contiguous to an approved county are not eligible.
- Producers in an approved county must have suffered at least a 40-percent loss of normal grazing for their eligible livestock for a minimum of 3 consecutive months.
- Losses will be calculated for up to 80 percent of the total grazing available.
- A producer's loss may not exceed the county maximum set by the local FSA county committee.
- Maximum assistance shall not exceed 50 percent of the calculated loss.
- Payments will be made according to a formula developed by CCC.
- Payments will be subject to a \$2.5 million gross revenue limitation and \$40,000 per person payment limitation.

**Cost/Benefit Assessment**

The 2003/2004 LAP is intended to relieve financial stress to eligible livestock producers when natural disasters cause significant losses in livestock feed production. As of January 18, 2005, a total of 944 counties in 34 states had been designated as primary natural disaster areas by the Secretary of Agriculture due to production losses from all causes during 2004.

The 2004 Act provided no limit for total 2003/2004 LAP outlays. FSA estimates the 2003/2004 LAP will make payments totaling approximately \$500 million. Actual outlays could range from around \$475 million to \$584 million. If total FSA payments to farmers and ranchers for all programs for fiscal 2005 reach \$20 billion, as expected, 2003/2004 LAP expenditures would represent about 2.5 percent of program payments made.

Based on the most recent data, estimated expenditures represent about 0.7 percent of the value of all cattle and calves in the United States and about 1.22 percent of the gross receipts from the sale of cattle and calves.

Payments under the 2003/2004 LAP should provide significant benefits to producers who actually suffered losses in 2003 and 2004 and for those communities where livestock operations predominately depend on grazing. These would include regions characterized by cow-calf and stocker operations. For example, FSA estimates that over 37 percent of 2003/2004 LAP payments, approximately \$190 million, will be paid to producers in the states

of Montana, North Dakota, South Dakota, and Wyoming. Nearly all cattle sold in these states are raised on pasture and the total sales of cattle and calves in these states was nearly \$4.0 billion in 2002. Thus, estimated 2003/2004 LAP disbursements to these states would total nearly 5 percent of total livestock sales in these states.

Impacts of 2003/2004 LAP disbursements on U.S. feed grain markets are not likely to be measurable. While the 2003/2004 LAP payments compensate for past losses, it is possible that some of the payments will be used to purchase supplemental feed grains in the near future. However, estimated expenditures are only about 2 percent of the total \$23.6 billion value of the 11.8 billion bushel U.S. corn crop, assuming an average price of \$2.00 per bushel.

In conclusion, payments under the 2003/2004 LAP are not expected to significantly affect national U.S. agricultural markets, but are expected to provide significant benefits to producers in specific regions who suffered losses from drought in 2003 and 2004.

**Notice and Comment**

Section 101(g) of Division B of the 2004 Act requires that these regulations be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804), relating to notice and comment rulemaking and public participation in rulemaking. These regulations are thus issued as final.

**Executive Order 12866**

This rule has been determined to be economically significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB). A cost/benefit assessment was prepared and is summarized in the Preamble.

**Federal Assistance Programs**

The title and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: 10.066, Livestock Assistance Program.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act is not applicable to this rule because neither the Secretary of Agriculture nor CCC are required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

## Environmental Review

Due to the weather-related disasters requiring the Agency to provide rapid relief, sufficient time was not available to complete an environmental review prior to implementing this program. Therefore, an environmental assessment is being completed to consider the potential impacts of this proposed action on the human environment consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA at 7 CFR part 799. A copy of the draft environmental assessment will be available after completion for review upon request.

## Executive Order 12778

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

## Executive Order 12372

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

## Unfunded Mandates

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

## Small Business Regulatory Enforcement Fairness Act of 1996

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

## Paperwork Reduction Act

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

## Government Paperwork Elimination Act

CCC is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general, and the FSA in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required to be utilized by a person subject to this rule are implemented in a way that would allow the public to conduct business with CCC electronically. Accordingly, at this time, forms required to be submitted under this rule may be submitted to CCC in person, by mail, FAX, or electronically.

## Executive Order 12612

This rule has no Federalism implications warranting a Federalism Assessment. This rule will not affect States, or their political subdivisions, or the distribution of power and responsibilities among levels of government.

## List of Subjects in 7 CFR 1439

Agricultural commodities, Disaster assistance, Indian tribes, Livestock, Livestock feed.

■ Accordingly, 7 CFR part 1439 is amended as follows:

## PART 1439—EMERGENCY LIVESTOCK ASSISTANCE

■ 1. The authority citation for part 1439 is revised to read as follows:

**Authority:** 7 U.S.C. 1427a; 15 U.S.C. 714 *et seq.*; Sec 1103 Pub. L. 105–277, 112 Stat. 2681–42–44; Pub. L. 106–31, 113 Stat. 57; Pub. L. 106–78, 113 Stat. 1135; Pub. L. 106–113, 113 Stat. 1501; Sec. 257 Pub. L. 106–224, 114 Stat. 358; Sec's. 802, 806, & 813 Pub. L. 106–387, 114 Stat. 1549; Pub. L. 108–7, 117 Stat. 11; Sec 101 of Division B, Pub. L. 108–324, 118 Stat. 1220; Sec. 785 of Division A, Pub. L. 108–447, 118 Stat. 2809.

## Subpart B—Livestock Assistance Program

■ 3. Revise Subpart B to read as follows:

## Subpart B—2003–2004 Livestock Assistance Program

|          |                                                           |
|----------|-----------------------------------------------------------|
| Sec.     |                                                           |
| 1439.100 | Administration.                                           |
| 1439.101 | Applicability.                                            |
| 1439.102 | Definitions.                                              |
| 1439.103 | Eligible loss.                                            |
| 1439.104 | Application process.                                      |
| 1439.105 | County committee determinations of general applicability. |
| 1439.106 | Livestock producer eligibility.                           |
| 1439.107 | Calculation of assistance.                                |
| 1439.108 | Availability of funds.                                    |
| 1439.109 | Additional limitations on payments.                       |
| 1439.110 | Appeals.                                                  |
| 1439.111 | Refunds to CCC; joint and several liability.              |
| 1439.112 | Miscellaneous.                                            |

## § 1439.100 Administration.

(a) The regulations in this subpart provide for what will be referred to as the 2003/2004 Livestock Assistance Program (LAP) which will be administered under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), and the Deputy Administrator for Farm Programs, Farm Service Agency (FSA). In the field, the regulations in this part will be administered by FSA State and county committees.

(b) The FSA State executive directors, county executive directors, and State and county committees do not have the authority to modify or waive any of the provisions in this part unless specifically authorized by the Deputy Administrator.

(c) The FSA State committee may take any action authorized or required by this part to be taken by the FSA county committee that has not been taken by such committee, such as:

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

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

(d) No delegation herein to an FSA State or county committee shall preclude the Executive Vice President, CCC, or a designee, or the Deputy Administrator from determining any question arising under this part or from reversing or modifying any determination made by an FSA State or county committee.

(e) Data furnished by the applicants will be used to determine eligibility for program benefits. Although

participation in the 2003/2004 LAP is voluntary, program benefits will not be provided unless the participant furnishes all requested data.

#### **§ 1439.101 Applicability.**

(a) Subject to the availability of funds, this subpart sets forth the terms and conditions applicable to the 2003/2004 LAP authorized by Public Law 108-324. Program regulations for prior livestock assistance programs can be found at 7 CFR 1439 as it was published on January 1, 2001, January 1, 2002, and January 1, 2004. Benefits will be provided to eligible livestock producers in the United States under this subpart in declared disaster counties that were subsequently approved for relief under this part by the Deputy Administrator.

(b) Unless otherwise determined by the Deputy Administrator, a livestock producer is not eligible to receive payments for the same loss under both this subpart and another Federal program.

#### **§ 1439.102 Definitions.**

The definitions set forth in this section shall be applicable for all purposes of administering this subpart. The definitions in § 1439.3 shall also be applicable, except where those definitions conflict with the definitions set forth in this subpart, in which case the definitions in this section will apply.

*Application* means the Livestock Assistance Program Application. The Application is available at FSA county offices.

*Disaster county* means a county included in the geographic area covered by a qualifying natural disaster declaration approved in calendar year 2003 or calendar year 2004, with respect to losses which occurred no earlier than January 1, 2003, and no later than December 31, 2004. The eligible disaster county is only the primary county where the disaster occurred and does not include a contiguous county which is not itself a disaster county.

*Livestock* means beef and dairy cattle, elk, reindeer, bison and beefalo (when maintained on the same basis as beef cattle), sheep, goats, swine, and equine animals where such equine animals are used commercially for human food or kept for the production of food or fiber on the owner's farm.

*Production year* means calendar year.

*Qualifying natural disaster declaration* means:

(1) A natural disaster declared by the Secretary under section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961(a)); or

(2) A major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

#### **§ 1439.103 Eligible loss.**

(a) To be eligible for 2003/2004 LAP, for losses during the 2003 or 2004 calendar years, a producer must have owned or leased grazing land within the physical boundary of a disaster county that was approved as a primary county under a Secretarial disaster designation or Presidential disaster declaration in 2003 or 2004, or approved as a primary county after December 31, 2004, for qualifying losses that occurred prior to January 1, 2005 (That is, losses in 2003 and 2004).

(b) To be eligible for benefits under this subpart, a livestock producer in an eligible county must have suffered a loss of grazing production in an eligible county equivalent to at least a 40-percent loss of normal carrying capacity for a minimum of 3 consecutive months during the 2003 or 2004 production year as defined in § 1439.102.

(c)(1) Producers in counties contiguous to an eligible county that were not designated as a disaster county in their own right will not receive benefits under this subpart.

(2) Grazing losses must have occurred on native and improved pasture with permanent vegetative cover and other crops planted specifically for the sole purpose of providing grazing for livestock, but such losses do not include losses on, or with respect to, land seeded to small grain forage crops.

(d) The percentage of loss eligible for compensation shall not exceed the maximum percentage of grazing loss for the county as determined by the FSA county committee and not be greater than 80 percent; and

(e) The FSA county committee shall determine the producer's grazing loss and shall consider the amount of available grazing production during the LAP normal grazing period, whether more than the normal acreage of grazing land was required to support livestock during the LAP normal grazing period, and whether supplemental feeding of livestock began earlier or later than normal. The FSA county committee shall request the producer to provide proof of loss of grazing production if the FSA county committee determines the producer's certified loss exceeds other similarly situated livestock producers.

(f) The percentage of loss claimed by a livestock producer shall not exceed the maximum allowable percentage of grazing loss for the county as determined by the FSA county

committee in accordance with § 1439.105(a). Livestock producers will not receive benefits under this subpart for any portion of their loss that exceeds 80 percent of normal carrying capacity.

#### **§ 1439.104 Application process.**

(a) Livestock producers must submit a completed application prior to the close of business on the date established and announced by the Deputy Administrator. The application and any other supporting documentation shall be submitted to the FSA county office with administrative authority over a producer's eligible grazing land or to the FSA county office that maintains the farm records for the livestock producer. A producer may submit an application for both 2003 and 2004 losses, as applicable; however, LAP assistance to the producer under this subpart shall be provided only for one of the years 2003 or 2004.

(b) A producer shall specify each type of pasture and percentage of loss suffered by each type within the approved county on the application. In establishing the percentage of grazing loss, producers shall consider the amount of available grazing production during the LAP normal grazing period, whether more than the normal acreage of grazing land was required to support livestock during the LAP normal grazing period, and whether supplemental feeding of livestock began earlier or later than normal.

(c) Livestock producers shall certify as to the accuracy of all the information contained in the application, and provide any other information that CCC determines to be necessary to determine the livestock producer's eligibility.

#### **§ 1439.105 County committee determinations of general applicability.**

(a) FSA county committees shall determine whether due to natural disasters their county has suffered a 40-percent loss affecting pasture and normal grazing crops for at least 3 consecutive months during LAP crop year during calendar year 2003 for 2003 eligibility and during calendar year 2004 for 2004 eligibility. In making this determination, FSA county committees, using the best information available from sources including but not limited to: The Extension Service; the Natural Resources Conservation Service; the Drought Monitor; the Palmer Drought Index; and general knowledge of local rainfall data, pasture losses, grazing livestock movement out of county, abnormal supplemental feeding practices for livestock on pasture and liquidation of grazing livestock, shall determine the percentage of grazing

losses for pastures on a county-wide basis. The FSA county committee shall submit rainfall data, percentage of grazing losses for each general type of pasture, and the weighted average percentage of grazing loss for the county, to the FSA State committee for concurrence. The maximum grazing losses the FSA county committees shall submit is 80 percent. These determinations shall be subject to review by the Deputy Administrator. For purposes of this subpart, such counties are called "eligible counties."

(b) In each eligible county, the FSA county committee shall determine a LAP normal grazing period. The LAP normal grazing period shall be that period of time in a calendar year that begins with the date grazing of new growth pasture normally begins and ends on the date grazing without supplemental feeding normally ends in the county.

(c) For each eligible county, the FSA county committee shall determine normal carrying capacities for each type of grazing or pasture during the LAP normal grazing period. The normal carrying capacity for the LAP normal grazing period shall be the normal carrying capacity the county committee determines could be expected from pasture and normal grazing crops for livestock for the LAP normal grazing period if a natural disaster had not diminished the production of these grazing crops.

(d) For each eligible county, the FSA county committee shall determine the payment period for the county. The payment period for the county shall be the period of time during the county's LAP crop year where for 3 consecutive months, as applicable, during 2003 or 2004, the carrying capacity for grazing land or pasture was reduced by 40 percent or more from the normal carrying capacity.

(e) Conservation Reserve Program acres released for haying or grazing and seeded small grain forage crops shall not be used to calculate losses under this subpart.

#### **§ 1439.106 Livestock producer eligibility.**

(a) Only one livestock producer will be eligible for benefits under this subpart with respect to an individual animal.

(b) Only owners, cash or share lessees, or contractors of livestock who themselves provide the pasture or grazing land, including cash-leased pasture or grazing land, for the livestock may be considered as livestock producers eligible to apply for benefits under this subpart.

(c) An owner, or cash or share lessee, or contractor of livestock who uses another person to provide pasture or grazing land on a rate-of-gain basis is not considered to be a livestock producer eligible to apply for benefits under this subpart.

(d) An owner who pledges livestock as security for a loan shall be considered as the person eligible to apply for benefits under this subpart if all other requirements of this part are met. Livestock leased or being purchased under a contractual agreement that has been in effect at least 3 months and establishes an interest for the lessee in such livestock shall be considered as being owned by the lessee.

(e) Livestock must have been owned or leased by the producer for at least 3 months before becoming eligible for generating a payment.

(f) The following entities are not eligible for benefits under this subpart:

(1) State or local governments or subdivisions thereof; or

(2) Any individual or entity who is a foreign person as determined in accordance with the provisions of §§ 1400.501 and 1400.502 of this chapter.

(g) Livestock sold due to disaster conditions by an eligible producer shall be considered as eligible to generate assistance and may be included in making the calculations in § 1439.107(a).

#### **§ 1439.107 Calculation of assistance.**

(a) The gross value of LAP assistance determined with respect to a livestock producer for each type and weight class of livestock owned, leased, contracted, or sold according to § 1439.106 by such producer shall be the lesser of the amount calculated under paragraph (b) of this section (the total value of lost feed needs for eligible livestock) or calculated under paragraph (c) of this section (the total value of lost eligible pasture).

(b) The total value of lost feed needs shall be the amount obtained by multiplying:

(1) The number of days in the payment period the livestock are owned or, in the case of purchased livestock, meet the 3-month ownership requirement; by

(2) The number of pounds of corn-equivalent per day, as established by CCC, that is determined necessary to provide the energy requirements established for the weight class and type of livestock; by

(3) The 5-year national average market price for corn, (\$0.0369642 per pound for 2003, or \$0.0344642 for 2004); by

(4) The number of eligible animals of each type and weight range of livestock owned or leased by the person; by

(5) The percent of the producer's grazing loss during the relevant period as certified by the producer and approved by the FSA county committee in accordance with § 1439.105.

(c) The total value of lost eligible pasture shall be the amounts for each type of pasture calculated by:

(1) Dividing the number of acres of each pasture type by the carrying capacity established for the pasture; and multiplying;

(2) The result of paragraph (c)(1) of this section for each pasture type; by \$0.5803379 for 2003 ( $\$0.0369642 \times 15.7$ ) or \$0.54108797 for 2004 ( $\$0.0344642 \times 15.7$ ) by:

(3) The applicable number of days in the LAP payment period; by

(4) The percent of the producer's grazing loss during the relevant period as certified by the producer and approved by the FSA county committee in accordance with § 1439.105.

(d) The final payment shall not exceed 50 percent of the smaller amount calculated under paragraphs (b) or (c) of this section.

(e) If the livestock owner is eligible for the LAP program and the American Indian Livestock Feed Program (AILFP) with respect to the same natural disaster, the livestock owner may elect to receive payment only for the same year for both programs, either 2003 or 2004. Payments for both programs cannot be issued for different years to the same producer.

(f) Land seeded to small grain forage crops shall not be counted as grazing land under paragraph (c) of this section with respect to supporting eligible livestock.

(g) The number of equine animals that are used to calculate benefits under this subpart and in paragraph (a) of this section are limited to the number actually needed to produce food and fiber on the producer's farm or breed horses and mules used to produce food and fiber on the owner's farm, and shall not include animals that are used for recreational purposes or other non-covered purposes are running wild or uncontrolled on land owned or leased by the owner.

#### **§ 1439.108 Availability of funds.**

Subject to the availability of funds, the Secretary shall use such sums as are necessary of funds of the Commodity Credit Corporation to make and administer payments to livestock producers for 2003 or 2004 grazing losses. Such payment shall be made

after the imposition of applicable payment limitation provisions.

**§ 1439.109 Additional limitations on payments.**

(a) Sections 1439.10 and 1439.11 as in effect at the time of publication of this subpart shall apply to the 2003/2004 LAP and shall limit payments accordingly.

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

**§ 1439.110 Appeals.**

Determinations made under this subpart are subject to reconsideration or appeal in accordance with parts 780 and 11 of this title.

**§ 1439.111 Refunds to CCC; joint and several liability.**

(a) In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under this part, and if any refund of a payment to CCC shall otherwise become due in connection with this part, all payments made in regard to such matter shall be refunded to CCC, together with interest as determined in accordance with paragraph (b) of this section and late-payment charges as provided for in part 1403 of this chapter.

(b) All signatories on a LAP application with a financial interest in the operation or in an application for payment shall be jointly and severally liable for any refund including related charges that is determined to be due CCC for any reason under this part.

(c) Interest shall be applicable to refunds required of the livestock owner or other party receiving assistance or a payment if CCC determines that payments or other assistance were provided to the owner and the owner was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges CCC for funds, as of the date CCC made such benefits. Such interest that is determined to be due CCC shall accrue from the date such benefits were made available by CCC to the date of repayment or the date interest increases in accordance with part 1403 of this chapter. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any action of the livestock owner or other individual or entity receiving benefits.

(d) Interest otherwise determined due in accordance with paragraph (c) of this

section may be waived with respect to refunds required of the owner or other program recipient because of unintentional action on the part of the owner or other individual or entity, as determined by CCC.

(e) Late-payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in part 1403 of this chapter.

(f) Individuals or entities who are a party to any program operated under this part must refund to CCC any excess payments made by CCC with respect to such program.

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

**§ 1439.112 Miscellaneous.**

(a) Any remedies permitted CCC under this part shall be in addition to any other remedy, including, but not limited to criminal remedies, or actions for damages in favor of CCC, or the United States, as may be permitted by law.

(b) Absent a scheme or device to defeat the purpose of the program, CCC may waive a demand that could otherwise be made for refunds.

(c) Payments under this subpart are subject to provisions contained in Subpart A of this part including, but not limited to, provisions concerning misrepresentations, payment limitations, and refunds to CCC, liens, assignment of payments, and appeals, and maintenance of books and records. In addition, other parts of this chapter and of chapter VII of this title relating to payments in event of death, the handling of claims, and other matters may apply, as may other provisions of law and regulation.

(d) Any payments not earned that have been paid must be returned with interest subject to such other remedies as may be allowed by law.

(e) No interest will be paid or accrue on benefits under this subpart that are delayed or otherwise not timely issued unless otherwise mandated by law.

(f) Nothing in this subpart shall require a commitment of funds in excess of that determined to be appropriate by the Deputy Administrator or CCC.

(g) Payments under this subpart shall be made without regard to questions of title under State law and without regard to any claim or lien against the livestock, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government.

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

(i) In those instances in which, prior to the issuance of this regulation, a producer has signed a power of attorney for a person or entity indicating that such power shall extend to "all above programs", without limitation, such power will be considered to extend to this program unless by April 14, 2005, the person granting the power notifies the local FSA office for the control county that the grantee of the power is not authorized to handle transactions for this program for the grantor.

(j) Livestock producers or any other individual or entity seeking or receiving assistance under this part shall maintain and retain records that will permit verification of livestock and grazing for at least 3 years following the end of the calendar year in which payment was made, or for such additional period as CCC may request. An examination of such records by a duly authorized representative of the United States Government shall be permitted at any time during business hours.

(k) A person shall be ineligible to receive assistance under 2003/2004 LAP and be subject to such other remedies as may be allowed by law, if, with respect to the 2003/2004 LAP, it is determined by the FSA State or county committee or an official of FSA that such person has:

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

(2) Made any fraudulent representation with respect to such program; or

(3) Misrepresented any fact affecting a program determination.

Signed in Washington, DC, March 25, 2005.

**Thomas B. Hofeller,**

*Acting Executive Vice President, Commodity Credit Corporation.*

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