

§ 1437.6

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§ 1437.6 Area.

(a) For the purposes of this part, acreage affected by a natural disaster, or any adjustment thereto, will be included in the area recommended by the state FSA committee and submitted to CCC for approval, regardless of whether the commodity produced on the affected acreage suffered a loss.

(b) Except for eligible areas identified in paragraph (f) of this section, an approved area shall include at least five producers of crops on separate and distinct farms for which the area has been approved for NAP payments. Notwithstanding this provision, CCC may approve an area having fewer than five producers if the Executive Vice President, or a designee, determines that such area will suffer significant economic consequences as a result of the disaster.

(c) An area may be designated as follows:

- (1) A county;
- (2) Aggregated acreage that is at least 320,000 acres; or
- (3) Aggregated acreage with not less than \$80 million average value for all crops produced annually.

(d) If the aggregated acreage affected by the natural disaster does not meet the minimum requirement specified in paragraph (c) (2) or (3) of this section, the aggregated acreage will be expanded by adding acres from around the affected acreage, until the minimum requirement is met.

(e) The area may not be defined in any manner that intentionally includes or excludes producers or crops.

(f) Notwithstanding the provisions of paragraphs (a) and (c) of this section, for areas outside the 50 states of the United States, the area shall include 10 or more producers of the crop except CCC may approve an area outside the 50 United States having fewer than 10 producers of the crop for which the area is requested if the Executive Vice President determines that such area will suffer significant economic consequences as a result of the disaster.

§ 1437.7 Yield determinations.

(a) CCC will establish expected area yields or an equivalent measure in the event yield data are not available, for eligible crops for each county or area

for which the NAP is available, using available information, which may include, but is not limited to, National Agricultural Statistics Service data, Cooperative State Research, Education, and Extension Service records, Federal Crop Insurance Corporation data, credible nongovernment studies, yields in similar areas, and reported approved yield data. For planted annual crops, such yields will be based on the acreage planted for harvest.

(b) CCC may make county yield adjustments taking into consideration different yield variations due to different farming practices in the county such as: irrigated, nonirrigated, organic, nonorganic, different types and varieties of a crop and intended use.

(c) In establishing expected area yields for eligible crops:

(1) If the approved area corresponds to a single county, the expected area yield will be the yield established by CCC for that county, including any adjustments permitted by this section;

(2) If the approved area encompasses portions of counties or more than one county, the expected area yield will be the weighted average of the yields established by CCC for those counties in the area, including any adjustments permitted by this section; and

(3) CCC may adjust expected area yields if:

(i) The cultural practices, including the age of the planting or plantings, are different from those used to establish the yield; or

(ii) The expected area yield established on a state or county level is determined to be incorrect for the area.

(d) CCC will establish approved yields for purposes of providing assistance under this part. Approved yields for the eligible crop will be based on the producer's actual production history in accordance with the provisions of part 400, subpart G, of this title.

(e) The approved yield established for the producer for the year in which the NAP payments are offered will be equal to the average of the consecutive crop year yields, as established by CCC, reported and certified by that producer for that eligible crop.

(f) If a producer receives an assigned yield for a year of natural disaster because production records were not submitted by the production reporting deadline, the producer will be ineligible to receive an assigned yield for the year of the next natural disaster unless adequate production records for the eligible crop from all the interim crop years are provided to the local office. The producer shall receive a zero yield for those years the producer is ineligible to receive an assigned yield.

(g) CCC will select certain producers on a random or targeted basis and require those selected to provide records acceptable to CCC to support the information provided. Producers may also be required to support the yield certification at the time of loss adjustment or on post-audit. Each certification must be supported by records acceptable to CCC. Failure to produce records acceptable to CCC will result in CCC establishing the yield in accordance with actual production history and may subject the producer to criminal and civil false claims actions under various Federal statutes as well as refund of any amount received. In addition, sanctions, as set out at §1437.16, may be imposed for false certification.

(h) Records acceptable to CCC may include:

(1) Commercial receipts, settlement sheets, warehouse ledger sheets, or load summaries if the eligible crop was sold or otherwise disposed of through commercial channels provided the records are reliable or verifiable; and

(2) Such documentary evidence as is necessary in order to verify the information provided by the producer if the eligible crop has been sold, fed to livestock, or otherwise disposed of other than through commercial channels such as contemporaneous measurements, truck scale tickets, and contemporaneous diaries, provided the records are reliable or verifiable.

(i) Any producer who has a contract to receive a guaranteed payment for production, as opposed to delivery, of an eligible crop will have the production adjusted upward by the amount of the production corresponding to the amount of the contract payment received.

(j)(1) Producers will not be eligible to receive an assigned yield if the acreage of the crop in a county for the crop year has increased by more than 100 percent over any year in the preceding seven crop years, unless:

(i) The producer provides adequate records of production costs, acres planted, and yield for the crop year for which NAP payments are being sought; or

(ii) CCC determines that the records provided under this paragraph are inadequate. CCC may require proof that the eligible crop could have been marketed at a reasonable price had the crop been harvested.

(2) The provisions of this section will not apply if:

(i) The crop has been inspected prior to the occurrence of a loss by a third party acceptable to CCC; or

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

(k) Prior to the beginning of the crop year, CCC in its own discretion will with respect to forage:

(1) Identify each species or type and variety of forage found in the county;

(2) Categorize each species or type and variety of forage identified as either:

(i) Predominantly mechanical harvested, or

(ii) Predominantly grazed;

(3) Establish a carrying capacity for each forage species or type and variety identified and determined by CCC to be predominantly grazed;

(4) Determine total acreage of forage determined by CCC to be predominantly grazed; and

(5) Calculate expected Animal Unit Day by dividing the total acres of forage in the county categorized by CCC as predominantly grazed by the approved carrying capacity and multiplying the result by the number of days of grazing used to determine the carrying capacity.

(1) In the event CCC receives a notice of loss of forage determined by CCC to be predominantly grazed, CCC will:

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(1) Calculate utilized Animal Unit Day by dividing the total acres of forage reported to FSA determined by CCC to be predominantly grazed by the reported number of animal units grazed and multiplying the result by the number of days grazing occurred;

(2) Subtract the value of supplemental feed fed to the grazing livestock during the grazing period from the value of the utilized Animal Unit Day, as determined by CCC;

(3) Determine area utilization by dividing total area utilized Animal Unit Day by the expected Animal Unit Day; and

(4) Determine unit utilization by dividing the unit utilized Animal Unit Day by the expected unit Animal Unit Day.

[61 FR 69005, Dec. 31, 1996, as amended at 62 FR 53931, Oct. 17, 1997]

§ 1437.8 Acreage and production reports.

(a) Producers must file one or more acreage reports at the local office no later than the date specified by CCC for each crop the producer wants to insure future eligibility for the NAP program. The acreage report may be filed by the farm operator. Any producer will be bound by the acreage report filed by the farm operator unless the producer files a separate acreage report prior to the acreage reporting date.

(b) Acreage reports required by paragraph (a) must include all of the following information:

(1) All acreage in the county of the eligible crop (for each planting in the event of multiple planting) in which the producer has a share;

(2) The producer's share at the time of planting or the beginning of the crop year;

(3) The FSA farm serial number;

(4) The crop, practice, intended use, and for forage, the predominant species or type and variety and the intended harvest method, i.e. grazing or mechanical harvest.

(5) All persons sharing in the crop (including the identity of any person having an interest in the crop as producer) and the person's employer identification number or social security number, if the person wishes to receive any payment under the Act;

(6) The date the crop was planted; and

(7) Acreage prevented from being planted.

(c) For each crop for which an acreage report is filed in accordance with this section, the producer must report the production for that acreage by the immediately subsequent crop year acreage reporting date for the crop.

(d) A person's failure to submit the required information by the designated acreage reporting dates may result in the denial of payments under this part. If there is a change of ownership, operation, or share within the farming operation after the acreage reporting date, the local office must be notified not later than 30 calendar days after the change and proof of the change must be provided to maintain eligibility for payments under this part.

(e) In lieu of a production report, producers of forage that is predominantly grazed shall, in the crop year in which the producer files a notice of loss, report grazing animals by type and weight range and the number of days grazing occurred, and the amount and type of feed fed such grazing animals during any grazing period within the crop year.

(f) Animal Unit Day adjustments, as determined by CCC, may be calculated when a producer of forage predominantly grazed, provides adequate evidence, as determined by CCC, that unit forage management and maintenance practices provide different carrying capacity than practices generally provided forage acreage used to calculate the approved county expected carrying capacity.

[61 FR 69005, Dec. 31, 1996, as amended at 62 FR 53931, Oct. 17, 1997]

§ 1437.9 Loss requirements.

(a) To qualify for payment under this part, the loss or prevented planting of the eligible crop must be due to a natural disaster.

(b) Assistance under this part will not cover losses due to:

(1) The neglect or malfeasance of the producer;

(2) The failure of the producer to reseed or replant to the same crop in the county where it is practicable to reseed or replant;