

**§ 1437.310**

(e) In addition to the records required in §1437.7, producers seeking payment must provide information to CCC regarding the average number of square yards per acre and all unharvested areas.

**§ 1437.310 Sea grass and sea oats.**

(a) Sea grass and sea oats are value loss crops and eligibility will be limited to ornamental plants grown for commercial sale and seeds and transplants produced for commercial sale as propagation stock.

(b) An eligible commodity under this section intended for sale on a commercial basis as:

(1) An ornamental plant can produce a claim in the event of a loss due to a qualifying condition only in the same manner and subject to the same conditions as ornamental nursery stock under §1437.305 and such claims shall not, as such, be subject to the provisions of paragraphs (c) through (h) of this section, except to the extent that similar provisions apply to claims under §1437.305.

(2) Propagation stock (seed or transplant) can produce a claim under this part but only in accord with the provisions that follow in this section and subject to other conditions on payment as may be imposed elsewhere in this part.

(c) For purposes of a loss calculation arising under paragraph (b)(2) of this section, the value of:

(1) Seed will be determined on a yield basis made in accordance with subpart B of this part and average market price established in accordance with §1437.11.

(2) Transplant losses will be determined based on inventory that existed immediately before and after the disaster and average market price established in accordance with §1437.11.

(d) Transplant producers must have up-to-date inventory and sales records and other documents, sufficient to document actual losses, as determined by CCC.

(e) The land, waterbed, or facility in which the eligible commodity was located at the time of loss must:

- (1) Be owned or leased by the producer;
- (2) Have readily identifiable boundaries; and

**7 CFR Ch. XIV (1–1–05 Edition)**

(3) Be managed and maintained using acceptable growing practices for the geographical region, as determined by CCC.

(f) The producer must have control of the land, waterbed, or facility and must ensure adequate and proper:

- (1) Flood prevention;
- (2) Growing medium;
- (3) Fertilization or feeding;
- (4) Irrigation and water quality;
- (5) Weed control;
- (6) Pest and disease control;
- (7) Rodent and wildlife control; and
- (8) Over-winterization facilities, as applicable.

(g) The eligible commodity must be:

- (1) Grown in a region or controlled environment conducive to successful production, as determined by CCC; and
- (2) Placed in the waterbed or facility in which the loss occurs and not be indigenous to the waterbed or facility.

(h) Eligible commodities having any dollar value after the disaster shall be considered as having full value when making loss calculations. Also, damaged plants that do not have any value after the disaster but that can be rejuvenated or may, if not fully rejuvenated, reacquire value, shall be counted as worth full value as well.

(i) In the crop year in which a notice of loss is filed, producers may be required, at the discretion of CCC, to provide evidence that the eligible commodity was produced in accordance with paragraphs (e), (f), and (g) of this section and other provisions of this part.

[67 FR 62324, Oct. 7, 2002]

**§§ 1437.311–1437.400 [Reserved]**

**Subpart E—Determining Coverage of Forage Intended for Animal Consumption**

**§ 1437.401 Forage.**

(a) Forage eligible to generate benefits under this part is limited to vegetation produced for animal consumption in a commercial operation using 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. Forage to be mechanically harvested shall be treated under the rules for low-yield crops as calculated under §1437.103. Claims on forage for grazing benefits will, contrariwise, be determined under this subpart. However, the provisions in this subpart shall govern for all claims including forage for mechanical harvest.

(b) Producers of forage must, in addition to the records required in §1437.7, specify the intended method of harvest of all acreage intended as forage for livestock consumption as either mechanically or grazed.

(c) Producers must, in the administrative FSA office for the unit, request an appraisal 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 which is subsequently completely grazed will be considered for crop definition purposes as mechanically harvested. Expected production of the specific acreage will be calculated on the basis of carrying capacity.

(e) Small grain forage is the specific acreage of wheat, barley, oats, triticale, or rye intended for use as forage. Small grain forage shall be considered separate crops and distinct from any other forage commodities and other intended uses of the small grain commodity. In addition to the records required in §1437.7 producers must specify whether the intended forage crop is intended for fall/winter, spring, or total season forage. In addition to other eligibility requirements, CCC will consider other factors, such as, water sources and available fencing, and adequate fertilization to determine small grain forage eligibility, yields, and production.

(f) CCC will establish forage losses of acreage intended to be grazed on the basis of:

(1) For improved pasture, as determined by CCC, a similar percentage of loss of mechanically harvested forage acreage on the farm, or similar farms in the area; or

(2) For native pasture, as determined by CCC, the percentage of loss as determined by two independent assessments of pasture conditions.

#### § 1437.402 Carrying capacity.

(a) CCC will establish a carrying capacity for all grazed forage present in the county for purposes of administering this program and to that end:

(1) Multiple carrying capacities may be determined for a specific vegetation if factors, such as soil type, elevation, and topography, result in a significant difference of carrying capacity within the county.

(2) CCC may establish separate carrying capacities for irrigated and non-irrigated forage acreage when acreage of traditionally irrigated forage (forage actually irrigated 3 of the last 5 crop years) is present in the county.

(b) Producers may provide evidence that unit forage management and maintenance practices are improvements over those practices generally associated with the established carrying capacity. Based on this evidence, CCC may adjust the expected AUD for the specific forage acreage upward for the crop year NAP assistance is requested by:

(1) Three percent when at least 1 practice was completed at least 1 time in the previous 5 crop years and such practice can be expected to have a positive impact on the forage's carrying capacity in the crop year NAP assistance is requested;

(2) Five percent when 2 or more practices were completed at least 1 time in the previous 5 crop years and such practices can be expected to have a positive impact on the forage's carrying capacity in the crop year NAP assistance is requested; and

(3) Greater than 5 percent when producers provide acceptable records, as determined by CCC, of higher forage production or an increase in animal units supported on the specific forage acreage in 3 of the 5 crop years immediately before the crop year NAP assistance is requested.

#### § 1437.403 Determining payments.

Subject to payment limits, availability of funds, and other limits as