

## § 1439.108

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 \$0.5410879 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 (ALLFP) 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.

[70 FR 16394, Mar. 31, 2005, as amended at 70 FR 29922, May 25, 2005]

## § 1439.108 Availability of funds.

Subject to the availability of funds, the Secretary shall use such sums as

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

(f) 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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: