

it considers to be the best information available including but not limited to: Cooperative State Research, Education, and Extension Service; Natural Resources Conservation Service; aerial photography; rainfall data; and general knowledge of losses due to flooding.

(b) With respect to each eligible county, the FSA county committee for that county shall establish a separate payment rate for crop-land and pasture-land. These rates shall be reviewed by the FSA state committee and shall be equal to the average rental rate for the years 1996 through 2000 for all such land of each type in the county. Where these rates cannot be set in the manner provided for in paragraph (c) of this section, the FSA state committee may take into account rates established for the Conservation Reserve Program operated under 7 CFR part 1410 and ensure, subject to paragraph (c) of this section, that the rates are comparable. The Deputy Administrator shall review and may adjust the rates for reasonableness and consistency.

(c) Except as provided by the Deputy Administrator, rental rates shall be equal to the applicable county average for the kind of land involved using established NASS data in all locations where NASS has established rental rates on a county-by-county basis for 2000.

§ 1439.506 Eligible land and loss criteria.

(a) The flooded land for which a producer requests benefits must be within the physical boundary of an eligible county. Producers in unapproved counties contiguous to an eligible county will not receive benefits under this subpart.

(b) To be eligible for benefits under this subpart, a producer in an eligible county must have land in a county which is eligible for payment. Such land, to be eligible for payment must meet all of the following criteria:

(1) The land is cropland or pasture land used for the production of feed for livestock (haying, grazing, or feed grain production) or other agricultural use in one or more years during the period beginning October 1, 1991, through September 30, 1999;

(2) The land is inaccessible or unable to be used for crop production, grazing, or haying because of flooding or excess moisture during all of the period beginning October 1, 1999, through September 30, 2000 unless some other period is established as the 2000-crop year for the commodity by the Deputy Administrator;

(3) The land was not used for planting during October 1, 1999, through September 30, 2000;

(4) The land has been owned, leased or under a binding cash lease by the producer continuously since October 1, 1999;

(5) The land is a contiguous parcel of land with an area equal to one acre or more;

(6) The land was not, except as determined by the Deputy Administrator, the subject of, nor will be the subject of, any other federal payment for activities or lack of activity during the period October 1, 1999, through September 30, 2000, whether or not disaster-related, with the exception of the production flexibility contract (PFC) program payments received under 7 CFR part 1412. This prohibition includes but is not limited to other payments under this part, or payments under the Conservation Reserve Program (7 CFR part 1410), the Wetlands Reserve Program (7 CFR part 1467), any Emergency Watershed Protection Program, or Federal Easement Program.

(c) On Form CCC-454 producers shall be required to certify by tract on each farm the number of flooded cropland and non-cropland acres for the farm in 2000 and the number of flooded cropland and non-cropland acres in 1992. To establish the acreage eligible for payment, flooded land certified for 1992 for each type shall be subtracted from the flooded land certified for 2000 for the applicable type. The difference will be the acreages of cropland and non-cropland subject to flooding and eligible for FCP payment, except that the difference may be adjusted as needed to ensure, to the extent practicable, an accurate estimate of the net increased flooding on the farm after October 1, 1993.

(d) All determinations as to the amount of land eligible for enrollment and compensation under this subpart

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are subject to approval by the county committee.

(e) The FSA county committee may use any available documentation to make the determinations under paragraphs (b) and (c) of this section, including but not limited to: maps, acreage reports, slides, precipitation data, water table levels and disaster reports.

§ 1439.507 Producer eligibility.

(a) Payments under this subpart shall be subject to the provisions of §1439.1 through §1439.12, except as otherwise provided in this subpart.

(b) No person (as defined and determined under 7 CFR part 1400) may receive more than \$40,000 under this subpart.

(c) No person (as defined and determined under 7 CFR part 1400) will be eligible for payment under this subpart if that person's annual gross receipts for calendar year 1999 were in excess of \$2.5 million. That determination shall be made in the manner provided for in §1439.11.

(d) 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 7 CFR 1400.501 and 1400.502.

§ 1439.508 Calculation of assistance.

(a) The unadjusted value of FCP assistance determined with respect to the flooded land in an eligible county for each producer shall not exceed the amount obtained by adding the amounts in paragraphs (b) and (c) of this section.

(b) For each eligible producer with respect to the applicable qualifying cropland which is determined, consistent with this subpart, to be eligible land for the payment purposes, the established local payment rate for cropland will be multiplied by the number of acres determined to be qualifying acres, as determined by the County Committee in accordance with instructions of the Deputy Administrator.

(c) For each eligible producer with respect to the applicable qualifying non-cropland acres consistent with this subpart, as determined by the county

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committee in accordance with instructions of the Deputy Administrator, the acres will be multiplied by the established payment rate for non-cropland acres.

(d) Payments will be adjusted as determined necessary to comply with other provisions of this subpart such as those set in §1439.509.

§ 1439.509 Availability of funds.

In the event that the total amount of claims submitted under this subpart exceeds the \$24 million authorized for FCP by Public Law 106-224, each payment to a producer shall be reduced by a uniform national percentage. Such payment reductions shall be after the imposition of applicable payment limitation provisions.

Subpart I—American Indian Livestock Feed Program

SOURCE: 70 FR 29922, May 25, 2005, unless otherwise noted.

§ 1439.900 [Reserved]

§ 1439.901 Applicability.

This subpart sets forth, subject to the availability of funds, the terms and conditions of a government-to-government program titled the American Indian Livestock Feed Program (AILFP). Assistance will be available in those regions that Commodity Credit Corporation (CCC) determines have been affected by natural disaster and are located in a primary county or counties that have received a Presidential declaration or Secretarial emergency designation issued on or after January 1, 2003, for eligible losses in 2003 or 2004. Eligible producers may receive benefits for 2003 losses, or 2004 losses, but not both. Eligible areas will only include those where a determination is made by the Deputy Administrator for Farm Programs, Farm Service Agency (FSA) (Deputy Administrator) that a livestock feed emergency exists on tribal-governed land. Contiguous counties that were not designated as a primary disaster county in their own right will not be eligible for participation for 2003