

producer prices in future years because of the buildup in stocks.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

Based on projections available at the meetings, the Committee considered alternatives to each of the increases finalized herein. The Committee not only considered leaving the Native spearmint oil salable quantity and allotment percentage unchanged, but also looked at various increases. The Committee reached each of its recommendations to increase the salable quantity and allotment percentage for Native spearmint oil after careful consideration of all available information, and believes that the level now reached will achieve the objectives sought. Without the three increases, the Committee believes the industry would not have been able to meet market needs.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee meetings were widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meetings and participate in Committee deliberations. Like all Committee meetings, the September 13, 2004, October 6, 2004, January 20, 2005, and the February 23, 2005, meetings were public meetings and all entities, both large and small, were able to express their views on each of the recommended increases in the 2004–2005 Native spearmint oil salable quantity and allotment percentage.

The first revision was published as an interim final rule in the **Federal Register** on October 21, 2004 (69 FR 61755). Comments on the interim final rule were solicited from interested persons until December 20, 2004. No comments were received. The second revision was published as an amended interim final rule in the **Federal Register** on February 23, 2005 (70 FR 8712). Comments on the amended interim final rule were solicited from

interested persons until April 25, 2005. No comments were received. Finally, the third revision was published as a further amended interim final rule in the **Federal Register** on March 28, 2005 (70 FR 15557). Comments on the further amended interim final rule were solicited from interested persons until April 25, 2005. No comments were received. Copies of each of these rules were mailed by the Committee's staff to all committee members, producers, handlers, and other interested persons. In addition, each of these rules were made available through the Internet by USDA and the Office of the Federal Register.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent by Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendations, and other information, it is found that finalizing the interim final rules, without change, as published in the **Federal Register** (69 FR 61755, October 21, 2004; 70 FR 8712, February 23, 2005; and 70 FR 15557, March 28, 2005) will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

#### PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ Accordingly, the interim final rules amending 7 CFR part 985 which were published at 69 FR 61755 on October 21, 2004; 70 FR 8712 on February 23, 2005; and 70 FR 15557 on March 28, 2005, are adopted as a final rule without change.

Dated: May 20, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–10441 Filed 5–24–05; 8:45 am]

**BILLING CODE 3410–02–M**

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1439

RIN 0560–AH26

#### American Indian Livestock Feed Program; Livestock Assistance Program

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

**ACTION:** Final rule.

**SUMMARY:** This regulation sets forth the terms and conditions of the 2003/2004 American Indian Livestock Feed Program (AILFP). Assistance will be available to eligible livestock producers for livestock feed crop years 2003 or 2004 whose eligible livestock occupied tribal-governed land at the time of a natural disaster in an area where a significant loss of livestock feed has occurred, creating a livestock feed emergency, as determined by the Commodity Credit Corporation (CCC). Eligible producers can receive benefits for livestock feed crop year 2003, or 2004, but not both. Eligible tribal-governed land must be located in a primary county or counties that have received an emergency declaration by the President or emergency designation by the Secretary of Agriculture on or after January 1, 2003, for losses occurring in calendar year 2003, or calendar year 2004. Although the Presidential declarations and Secretarial designations were issued for natural disasters in those calendar years, tribal governments may request an initial 90-day feeding period and up to three 90-day extensions that extend from the beginning of a livestock feed crop year, to the end of that same livestock feed crop year. Further, livestock owners who sold eligible livestock as a direct result of natural disaster shall report those livestock as owned through the end of the production year (livestock feed crop year) in order to mitigate the livestock owner's losses. This rule is intended to implement legislation and assist affected producers in overcoming the effects of drought. In addition, this rule provides technical revisions for the Livestock Assistance Program regulations.

**DATES:** Effective May 24, 2005.

**FOR FURTHER INFORMATION CONTACT:** Deborah O'Donoghue, Program Specialist, Noninsured Assistance Programs Branch (NAPB), Production, Emergencies, and Compliance Division (PECD), Farm Service Agency (FSA), United States Department of

Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250-0517; telephone (202) 720-5172; e-mail:

*Debbie.O'Donoghue@wdc.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 813 of the Agricultural Act of 1970, 7 U.S.C. 1427a, gave the Secretary of Agriculture some authority to provide assistance resulting from disasters. In 1998, remaining funds under that authority were used to fund the AILFP. Further, AILFP funding was provided for in section 806 of Public Law 106-387, which was appropriations legislation enacted in October of 2000. Section 101(b) of Division B of the Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005, Public Law 108-324, enacted in October of 2004 ("2004 Act"), provides for livestock assistance generally for producer losses in 2003 or 2004 (as elected by the producer). That assistance, generally, will be administered under the 2003-2004 Livestock Assistance Program (LAP). The 2003-2004 LAP provisions will be administered under rules separate from the AILFP regulations promulgated in this notice.

Regarding AILFP, section 101(b) permits the Secretary of Agriculture to use the LAP funds to make assistance available under AILFP, in an amount determined by the Secretary. The AILFP provision is understood to be part of an overall package of livestock assistance. Accordingly, the AILFP rules adopted here follow the same basic statutory conditions for LAP as provided in the 2004 Act. Accordingly, relief is for 2003 losses or 2004 losses, but not both, as the eligible producer elects. The same year must be chosen for all of the participant's farms. Similarly, if the participant participates in both the LAP and AILFP, the same year must be chosen for both programs. Further, LAP, under 101(b) of the 2004 Act, is confined to counties that received an emergency designation after January 1, 2003. This limitation is included in these rules. Other clarifying changes have been made to previous AILFP rules. However, the new rules generally follow the old rules. That adherence comports with the new statute's provisions in 101(b) that assistance be made available in the same manner as that administered under Section 806 of

Public Law 106-387. For calculating benefit eligibilities a formula change was made to clarify and simplify the regulations in a manner that follows the LAP calculation. That change should not materially affect claims. Also, appropriations language in Public Law 108-447 provided that livestock administered in this fiscal year cover bison, elk, and reindeer, and this rule contains that provision. Further, the Secretary operated a program under Section 32 of the Act of August 24, 1935, with respect to 2004 hurricane losses. Section 101(c) of Division B of the 2004 Act provides that persons who received payments under that program are not eligible for payments under Section 101. That provision, too, is reflected in this rule.

In addition, this rule makes two technical changes to the 2003-2004 Livestock Assistance Program regulations at 7 CFR part 1439, subpart B. The first change is to remove an extra decimal place in a payment program formula. The second change removes a provision for payment of interest on delayed payments by CCC in order to conform with previous practice with respect to LAP.

##### Benefit-Cost Analysis

The AILFP began on November 27, 1998, for livestock feed losses suffered for the 1997 and subsequent crop-years due to unfavorable weather conditions. It provided \$12.5 million from the sale of grain previously held in the Disaster Reserve. AILFP replaced the Indian Acute Distress Donation Program which was suspended in 1996. AILFP differed from previous livestock feeding programs because it made direct cash payments instead of grain donations. AILFP funding of \$11.9 million was provided through an appropriation in section 806 of the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 2001 (Pub. L. 106-387, Oct. 28, 2000) (the 2001 Act) for FY 2001.

The 2005 Act appropriates no funds, but empowers the Secretary of Agriculture to use such sums as are necessary in the fiscal year ending September 30, 2005. FSA and CCC estimate that approximately \$33 million in actual outlays will be made for the 2003/2004 AILFP, with some variation possible depending on the severity, extent, intensity, and duration of the drought conditions in counties where Indian reservations are located.

##### 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 accordingly issued as final.

##### Executive Order 12866

This final rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

##### 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

The environmental impacts of this rule have been considered consistent with 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 regulations of the Farm Service Agency (FSA) of the Department of Agriculture (USDA) for compliance with NEPA, 7 CFR part 799. An Environmental Evaluation was completed and it was determined that the proposed action does not have the potential to significantly impact the quality of the human environment and, therefore, the rule is categorically excluded from further review under NEPA. A copy of the environmental evaluation is available for inspection and 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 Division B 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 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 set forth below:

#### PART 1439—EMERGENCY LIVESTOCK ASSISTANCE

■ 1. The statutory authority continues 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—2003-2004 Livestock Assistance Program

##### § 1439.107 [Amended]

■ 2. In § 1439.107(c)(2), revise the figure "\$0.54108797" to read "\$0.5410879".

##### § 1439.112 [Amended]

■ 3. In § 1439.112, remove paragraph (e) and redesignate paragraphs (f) through (k) as paragraphs (e) through (j), respectively.

■ 4. Add Subpart I, to read as follows

#### Subpart I—American Indian Livestock Feed Program

Sec.

1439.900	[Reserved]
1439.901	Applicability.
1439.902	Administration.
1439.903	Definitions.
1439.904	Region.
1439.905	Responsibilities.
1439.906	Program availability.
1439.907	Eligibility.
1439.908	Payment application.
1439.909	Payments.
1439.910	Program suspension and termination.
1439.911	Appeals.
1439.912	Estates, trusts, and minors.
1439.913	Death, incompetence, and disappearance.
1439.914	Violations.

#### Subpart I—American Indian Livestock Feed Program

##### § 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 or 2004 losses under this subpart. Payments may become available as contracts with tribal governments are approved. Unless otherwise specified or 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. Payments will terminate when the specified deadline has been reached, when a tribal government requests termination, or when there is a program violation or a violation of a contract related to the program irrespective of whether the violation involves the current operation of the program for other periods of time.

##### § 1439.902 Administration.

(a) This subpart will be administered by CCC under the general supervision of the Deputy Administrator for Farm Programs. This program shall be carried out in the field as prescribed in these regulations and as directed in the contract executed between the applicable tribal government and CCC, except that in the event any contract provision conflicts with these regulations, the regulations shall apply.

(b) Tribal governments, their representatives, and employees do not have authority to modify or waive any provisions of the regulations of this subpart.

(c) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any provisions of regulations of this subpart.

(d) The Deputy Administrator may authorize State and county committees to waive or modify deadlines and other program requirements in cases where the applicant or tribe, as applicable, shows that circumstances beyond the applicant's or tribe's control precluded compliance with the deadline and where lateness or failure to meet such other requirements does not adversely affect the operation of the program.

(e) The tribal government will, in accordance with this part and in coordination with the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), and FSA State and county committees, recommend the geographical size and shape of the region which will be considered to be eligible to be considered the region where the natural disaster has occurred and where all eligibility conditions are met. Such region must consist solely of tribal-governed land and be located in a primary county or counties named in a Presidential declaration or Secretarial emergency designation. Regional eligibilities will be effective only upon the Deputy Administrator's approval in writing and continued approval thereafter.

(f) The Deputy Administrator will determine all prices with respect to implementing the AILFP.

(g) Subject to review by the Deputy Administrator, the FSA State committee will determine crop yields and livestock carrying capacity with respect to implementing the AILFP.

(h) Participation in the AILFP by a tribal government for either the tribal government's benefits or for the benefit of any eligible owner is voluntary and is with the understanding that CCC will not reimburse the tribal government or its members for any administrative costs associated with the administration or implementation of the program.

(i) Except as otherwise declared by the Deputy Administrator, Subpart A shall not apply to this subpart, except §§ 1439.3 through 1439.10, and 1439.12.

(j) No delegation herein to a State or county committee or a commodity office shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee or employee of the Department of Agriculture.

#### § 1439.903 Definitions.

The definitions set forth in this section shall be applicable to the program authorized by this subpart. The terms defined in § 1439.3 shall also be applicable except where those definitions conflict with the definitions set forth in this subpart. The following terms shall have the following meanings:

*Approving official* means a representative of the tribal government who is authorized to approve an application for assistance made in accordance with this subpart.

*Carrying capacity* means the stocking rate expressed as acres per animal unit that is consistent with maintaining or improving vegetation or related resources.

*Dependent Indian community* means a limited category of Indian lands that are neither reservations nor allotments and is:

(1) Land set aside by the Federal Government for the use of Indians as Indian land, and

(2) Under Federal superintendence.

*Disaster period* means the length of time that damaging weather, adverse natural occurrence, or related condition had a detrimental affect on the production of livestock feed.

*Eligible feed for assistance* means any type of feed (feed grain, oilseed meal, premix, or mixed or processed feed, liquid or dry supplemental feed, roughage, pasture, or forage) that provides net energy requirements, is consistent with acceptable feeding practices, and was not produced by the owner.

*Eligible livestock* means beef and dairy cattle; buffalo and beefalo maintained on the same basis as beef cattle; equine animals used for food or used directly in the production of food; sheep; goats; swine; elk; and reindeer.

*Eligible owner* means an individual or entity, including a tribe, eligible to participate in this program, who:

(1) Contributes to the production of eligible livestock or their products;

(2) Has such contributions at risk;

(3) Meets the criteria set forth in § 1439.907, and elsewhere in this part; and

(4) Meets eligibility criteria set forth by the tribal government in an approved contract.

*Livestock feed crop year* means a period of time beginning on the date grazing first becomes available in each county, as established by each State Committee, and ending one year later.

*Livestock feed emergency* means a situation in which a natural disaster

causes more than a 35-percent reduction in the feed produced in a region, determined in accordance with § 1439.904 for a defined period, as determined by CCC. Any loss of feed production attributable to overgrazing or other factors not considered to be a natural disaster as specified in this subpart shall not be included in the loss used to determine if a livestock feed emergency occurred.

*Natural disaster means* damaging weather, including but not limited to: drought, hail, excessive moisture, freeze, tornado, hurricane, excessive wind, or any combination thereof; or an adverse natural occurrence such as earthquake, flood, or volcanic eruption; or a related condition, including but not limited to heat, or insect infestation, that occurs as a result of aforementioned damaging weather or adverse natural occurrence prior to or during the crop year that directly causes, accelerates, or exacerbates the reduction of livestock feed production.

*Region* means a geographic area suffering a livestock feed emergency because of natural disaster as determined by a tribal government in accordance with § 1439.904.

*Tribal governed land* means:

(1) All land within the limits of any Indian reservation;

(2) Dependent Indian communities;

(3) Any lands title to which is either held in trust by the United States for the benefit of an Indian tribe or Indian, or held by an Indian tribe or Indian subject to a restriction by the United States on alienation; and

(4) Land held by an Alaska Native, Alaska Native Village, or village or regional corporation under the provisions of the Alaska Native Claim Settlement Act, or other Act relating to Alaska Natives.

*Tribe* means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

*Type and weight range* means the weight range by type of livestock; provided further that for purposes of calculations of payment eligibility under this subpart, as provided for in this subpart, such livestock shall be considered to have the following daily feed need expressed in pounds of corn per head per day:

Category	Weight range	Pounds of corn per head, per day
Type—Beef Cattle (Buffalo/Beefalo):		
Beef .....	Under 400 .....	3.5
Beef .....	400–799 .....	6.5
Beef .....	800–1099 .....	8.5
Beef .....	1100+ .....	12.5
Beef, Cow .....	All .....	15.7
Beef, Bull .....	1000+ .....	13.0
Type—Dairy Cattle:		
Dairy .....	Under 400 .....	3.5
Dairy .....	400–799 .....	6.5
Dairy .....	800–1099 .....	8.5
Dairy .....	1100+ .....	12.5
Dairy, Cow .....	Under 1100 .....	27.0
Dairy, Cow .....	1100–1299 .....	31.0
Dairy, Cow .....	1300–1499 .....	33.0
Dairy, Cow .....	1500+ .....	34.5
Dairy, Bull .....	1000+ .....	14.5
Type—Swine:		
Swine .....	Under 45 .....	0.5
Swine .....	45–124 .....	1.1
Swine .....	125+ .....	1.9
Swine, Sow .....	235+ .....	6.5
Swine, Boar .....	235+ .....	3.7
Type—Sheep:		
Sheep .....	Under 44 .....	0.4
Sheep .....	44–82 .....	0.9
Sheep .....	83+ .....	1.1
Sheep, Ewe .....	150+ .....	3.1
Sheep, Ram .....	150+ .....	1.7
Type—Goats:		
Goats .....	Under 44 .....	0.5
Goats .....	44–82 .....	1.1
Goats .....	83+ .....	1.5
Goats, Doe .....	125+ .....	3.5
Goats, Doe (Dairy) .....	125+ .....	5.2
Goats, Buck .....	125+ .....	2.1
Type—Equine:		
Equine .....	Under 450 .....	4.4
Equine .....	450–649 .....	6.3
Equine .....	650–874 .....	8.2
Equine .....	875+ .....	11.6
Type—Reindeer:		
All .....	Under 400 .....	3.5
Type—Elk		
Elk .....	Under 400 .....	3.5
Elk, Cow .....	400–799 .....	6.5
Elk, Bull .....	800–1099 .....	8.5

**§ 1439.904 Region.**

In order for a region to be eligible to generate benefits under this subpart, the region must:

(a) Be located in a primary county or counties named in a Presidential declaration or Secretarial emergency designation;

(b) Be tribal-governed land physically located within the primary disaster designated county; and

(c) Have suffered a livestock feed emergency as defined in § 1439.903.

**§ 1439.905 Responsibilities.**

(a) During the operation of this program, CCC shall:

(1) Provide weather data, crop yields and carrying capacities to tribes requesting such information;

(2) Review contracts submitted by tribal governments requesting disaster regions; and

(3) Act as an agent for disbursing payments to eligible livestock owners in approved disaster regions.

(b) Tribal governments shall be responsible for:

(1) Submitting a contract to participate in the AILFP based on the tribes' voluntary decisions that participation will benefit all livestock owners using tribal governed land;

(2) Gathering, organizing, and reporting accurate information regarding disaster conditions and region;

(3) Advising livestock owners in an approved region that they may be eligible for payments, in addition to the

method and requirements for filing applications;

(4) Determining that the information provided by individual livestock owners on payment applications is accurate and complete and that the owner is eligible for payments under this program;

(5) Submitting only accurate and complete payment applications to the designated FSA office acting as an agent for disbursing payments to eligible livestock owners.

(c) The owner or authorized representative shall:

(1) Furnish all the information specified on the payment application, as requested by CCC;

(2) Provide any other information that the tribal government deems necessary to determine the owner's eligibility; and

(3) Certify that purchased feed was or will be fed to the owner's eligible livestock.

**§ 1439.906 Program availability.**

(a) When a tribal government determines that a livestock feed emergency existed in calendar year 2003 or 2004 on tribal governed land due to a natural disaster, the tribal government may contact the applicable State FSA office to determine if their tribal governed land is located in a primary county or counties named in a Presidential declaration or Secretarial emergency designation made after January 1, 2003, with respect to losses in 2003 or 2004. After a Presidential or Secretarial emergency designation has been confirmed, the tribal government may submit a properly completed contract requesting approval of a region. All contracts requesting region approval must be submitted by the later of July 25, 2005, or 60 days after the end of the disaster period, whichever is later, as specified on the contract.

(b) Properly completed contracts shall consist of:

- (1) A completed Contract to Participate form; and
- (2) A completed Region Designation and Feed Loss Assessment form; and
- (3) Supportive documentation as determined by CCC including, but not limited to:

- (i) A map of the region delineated in accordance with § 1439.904;
- (ii) Historical production data and estimated or actual production data for the disaster year; and
- (iii) Climatological data provided by the State FSA office.

(c) The Deputy Administrator shall make a determination as to whether a livestock feed emergency existed not later than 30 days after receipt of a properly completed contract made in accordance with this subpart and shall notify the tribal government and FSA State office of such determination as applicable. Approvals will be made on the basis of a Presidential or Secretarial emergency designation for the primary county or counties named in the contract, and whether the requisite 35 percent loss on tribal governed land in that county or counties can be substantiated by supporting documentation, and other conditions as required by this subpart, other regulations, the Deputy Administrator, or CCC.

(d) The feeding period provided in the approved contract will be for a term not to exceed 90 days, except as provided in paragraph (e) of this section. The feeding period shall not be extended if

the livestock feed emergency ceased to exist.

(e) The tribal government may request multiple feeding periods for up to three additional 90-day periods in a livestock feed crop year if disaster conditions did not diminish significantly and a livestock feed emergency continued and other conditions for payment are met.

(f) Tribal governments shall submit separate contracts for disasters occurring in both 2003 and 2004 calendar years; however, livestock owners shall elect only one of those years to receive benefits.

**§ 1439.907 Eligibility.**

(a) An eligible owner must own or jointly own the eligible livestock for which payments under this subpart are requested. Notwithstanding any other provision of this subpart, livestock leased under a contractual agreement that has been in effect at least 6 months prior to the beginning of the feeding period made under this subpart shall be considered as being owned by the lessee for that part of the feeding period in which the lease was in effect but only if the lease:

- (1) Required the lessee for the full lease period to furnish the feed for such livestock; and
- (2) Provided for a substantial interest, as determined by the Deputy Administrator, in such livestock in the lessee, such as the right to market a substantial share of the increase in weight of livestock.

(b) A State or non-tribal local government or subdivision thereof, or any individual or entity determined to be ineligible in accordance with § 1400.501 of this chapter are not eligible for benefits under this subpart.

(c) Any eligible owner of livestock, including the tribe, may file a CCC-approved AILFP payment application. When such a payment application is filed, the owner and an authorized tribal government representative shall execute the certification contained on such payment application no later than the deadline established by CCC upon approval of the region.

(d) To be eligible for benefits under this subpart, livestock owners must own or lease tribal-governed land in the approved delineated region, and have had livestock on such land at the time of disaster that is the basis for the region's designation.

(e) Eligible livestock owners shall be responsible for providing information to the tribal government that accurately reflects livestock feed purchases for eligible livestock during the feeding period. False or inaccurate information may affect the owner's eligibility.

**§ 1439.908 Payment application.**

(a) Except as provided in paragraph (d) of this section, payment applications from interested eligible owners must be:

(1) Submitted to the FSA county office where the tribal-governed land is administered, or to the tribal government, by the owner no later than a date announced by the tribe, such date being no later than the applicable date established in § 1439.907(c);

(2) Submitted by the tribal government to the office designated by CCC no later than a date announced by CCC;

(3) Accompanied by valid receipts substantiating purchase of eligible feed for assistance. Valid receipts must also be accompanied by the certification referenced in the AILFP Payment Application, (Form CCC-644 or any replacement form) and shall contain:

- (i) The date of feed purchase, which must fall within the eligible feeding period as approved on the contract;
- (ii) The names and addresses of the buyer and the vendor;
- (iii) The type of feed purchased;
- (iv) The quantity of the feed purchased;
- (v) The cost of the feed; and
- (vi) The vendor's signature if the vendor is not licensed to conduct this type of business transaction.

(b) The tribal government shall review each payment application, as specified by CCC, for completeness and accuracy. Except as provided in paragraphs (c) and (d) of this section, the tribal government shall approve those eligible owners and applications meeting the requirements of this subpart.

(c) No approving tribal government member shall review and approve a payment application for any operation for which such member has a direct or indirect interest. Such payment application may be reviewed for approval by a member of the tribal government who is not related to the applicant by blood or marriage.

(d) Tribal governments do not have the authority to approve a payment application for any operation for which the tribe has a direct or indirect interest. Payment applications for tribal-owned livestock shall contain an original signature of a member of the tribal government, signing as representing all owners of the tribal-owned livestock, who possesses the authority to sign documents on behalf of the tribe and shall be submitted to an office designated by the Secretary for approval.

(e) No payment application shall be approved unless the owner meets all eligibility requirements. Information submitted by the owner and any other

information, including knowledge of the tribal government concerning the owner's normal operations, shall be taken into consideration in making recommendations and approvals. If either the payment application is incomplete or information furnished by the owner is incomplete or ambiguous and sufficient information is not otherwise available with respect to the owner's farming operation in order to make a determination as to the owner's eligibility, the owner's payment application, as specified by CCC, shall be denied. The tribal government shall be responsible for notifying the owner of the reason for the denial and shall provide the owner an opportunity to submit additional information as requested.

(f) All payment applications, as specified by CCC, approved by the tribal government will be submitted to a designated FSA office for calculation of payment.

#### § 1439.909 Payments.

(a) Provided all other eligibility requirements of this subpart are met, all eligible payment applications submitted to the designated FSA office shall have payments issued to the applicant by CCC.

(b) If any term, condition, or requirement of these regulations or contract are not met, payments and benefits previously provided by CCC that were not earned under the provisions of the application shall be refunded.

(c) Each owner's share of the total payment shall be indicated on the application, and each owner shall receive benefits or final payment from CCC according to benefits or payments earned under the provisions of the application and this part.

(d) Owners may file applications for more than one feeding period relating to losses occurring within the same year, either 2003 or 2004, but those years only, and in no case may a person receive payment for losses under this subpart for both 2003 and 2004. That is, eligible persons may receive benefits for one of those livestock feed crop years, but not both. CCC shall provide assistance equal to the amount of benefits determined for the owner for the feeding periods that the owner is eligible to receive benefits.

(e) The failure of any contact person to file the necessary receipts or sales documents showing that the terms and conditions of this part and the contract have been met shall render all of the persons ineligible for any payments and benefits under the contract including any payments previously made.

Payments shall be refunded to CCC with interest, if applicable, as determined under § 1439.8.

(f) If the livestock owner is eligible for the AILFP and the Livestock Assistance Program (LAP), the livestock owner must elect to receive payment for the same year for all farms for both programs, either 2003 or 2004.

(g) Persons that received payments from Section 32 of the Act of August 24, 1935, with respect to 2004 hurricane losses are not eligible for payments under this subpart.

(h) Subject to such other limitations as may apply including those in § 1439.909(i), the amount of assistance provided to any owner shall not exceed the smaller of either:

(1) The dollar amount of eligible livestock feed purchased during the relevant eligible feeding period for the days for which such assistance is allowed (as documented by acceptable purchase receipts), less the dollar amount of any sale of livestock feed (whether purchased or produced) by the owner during the eligible feeding period; or

(2) Subject to adjustments, conditions, and deductions as otherwise may be provided for in this part, including, but not limited to those in paragraph (i) of this section, 30 percent of the amount computed by multiplying:

(i) The amount of the estimated daily feed need, expressed as pounds of corn, for the relevant type and weight range of the livestock using the table contained in the "type and weight range" definition contained in § 1439.3, or some alternative table chosen by the Deputy Administrator, by

(ii) The number of days the eligible owners of the livestock provided feed to the eligible livestock during the eligible days of the eligible feeding period;

(iii) A corn price, per pound of corn, which price shall be \$0.0369642 for 2003 losses, and \$0.0344642 for 2004 losses unless some alternative pricing shall be chosen by the Deputy Administrator (provided further, however, that after the completion of this multiplication, the claim amount shall be reduced by the dollar amount of any sale of livestock feed whether purchased or produced by the owner during the feeding period.

(3) For purposes of the calculation required by paragraph (h)(2) of this section, the number of livestock during the livestock feed crop year on which the claim is calculated, the Deputy Administrator can include, if all other conditions are met, livestock sold as a result of the natural disaster but only subject to such conditions as may be approved by the Deputy Administrator.

#### § 1439.910 Program suspension and termination.

(a) The tribal government that requested the AILFP assistance may, at any time during the operation of a program, recommend suspension or termination of the program.

(b) The Deputy Administrator may suspend or terminate the program at any time if:

(1) The tribal government requests termination or suspension; or

(2) The Deputy Administrator determines a tribal government is not following program provisions when administering the program.

#### § 1439.911 Appeals.

Any person who is dissatisfied with a CCC determination made with respect to this subpart may make a request for reconsideration or appeal of such determination in accordance with part 780 of this chapter. Any person who is dissatisfied with a determination made by the tribal authority should seek reconsideration of such determination with the tribe. Decisions and determinations made under this subpart not rendered by CCC or FSA are not appealable to the National Appeals Division.

#### § 1439.912 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is an owner shall be eligible for assistance under this subpart only if such person meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

#### § 1439.913 Death, incompetence, and disappearance.

In the case of death, incompetence, or disappearance of any person who is eligible to receive assistance in accordance with this part, such person or persons specified in part 707 of this title may receive such assistance.

#### § 1439.914 Violations.

(a) If the owner has failed to utilize the entire quantity of livestock feed purchased under the terms and conditions of the application for assistance and contract of these

programs, the owner shall not dispose of any remaining quantity of such livestock feed except as specified by CCC.

(b) Fraudulent representations by any warehouseman, handler, dealer, or any other person may result in the person being suspended from participation in a program in accordance with part 1407 of this chapter if such person has:

(1) Made a false certification, representation or report in accordance with this subpart; or

(2) Otherwise failed to comply with any provisions of this part or any contracts entered into in accordance with this part. The making of such fraudulent representations shall make such person liable in accordance with applicable State and Federal criminal and civil statutes.

Signed in Washington, DC, on May 19, 2005.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 05-10467 Filed 5-24-05; 8:45 am]

**BILLING CODE 3410-05-P**

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

#### 7 CFR Part 1944

#### Updating of Designated Counties for Housing Application Packaging Grants

**AGENCY:** Rural Housing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Housing Service (RHS) is amending its regulations to update the list of designated counties for Housing Application Packaging Grants (HAPG). Under section 509 of the Housing Act of 1949, grants are provided to package housing applications for loans under sections 502, 504, 514, 515, and 524 and grants under section 533 in colonias and designated underserved counties. The intended effect is to make eligible applicants, including public and private nonprofit organizations and State and local governments, aware of the new list of designated counties, which was based on the 2000 census data.

**EFFECTIVE DATE:** May 25, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Gloria L. Denson, Senior Loan Specialist, Single Family Housing Direct Loan Division, RHS, U.S. Department of Agriculture, STOP 0783, South

Building, Washington, DC 20250-0783, Telephone 202-720-1474. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:**

**Classification**

This action is not subject to the provisions of Executive Order 12866 since it involves only internal Agency management. This action is not published for prior notice and comment under the Administrative Procedure Act since it involves only internal Agency management and publication for comment is unnecessary and contrary to the public interest.

**Programs Affected**

The Catalog of Federal Domestic Assistance number for the programs impacted by this action is 10.442—Housing Application Packaging Grants.

**Paperwork Reduction Act**

This final rule does not revise or impose any new information collection requirements from those previously approved by the Office of Management and Budget.

**Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments, and the private sector. Under section 202 of the UMRA, the agency generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with “Final mandates” that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments, or the private sector. Thus, today’s rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Environment Impact Statement**

This action has been reviewed in accordance with 7 CFR part 1940, subpart G, “Environmental Program.”

The Agency has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

**Discussion**

Based on the 2000 U.S. Census data and applicable criteria for 7 CFR part 1944, subpart B, twenty-four States have designated counties eligible for HAPG funds. This list must be used for any grants processed in Fiscal Year 2005, and until receipt of the 2010 U.S. Census data. Exhibit D of 7 CFR part 1944, subpart B is revised to update this information. To apply for assistance under this program or for more information, contact the Rural Development Office for your area or the individual shown in the **FOR MORE INFORMATION CONTACT** section of the preamble this notice.

Seven States have been completely removed from the original twenty-nine listed in Exhibit D (Kentucky, North Carolina, Ohio, South Carolina, Tennessee, Virginia and West Virginia) and one State (Nebraska) has been added. In addition, some of the designated counties are no longer eligible and have been removed and new ones have been added. Therefore, Exhibit D of 7 CFR part 1944, subpart B is revised to list the current designated counties.

**List of Subjects in 7 CFR Part 1944**

Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Migrant labor, Nonprofit organizations, Reporting requirements, Rural areas.

■ Accordingly, Chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

**PART 1944—HOUSING**

■ 1. This authority citation for part 1944 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 301; 42 U.S.C. 1480.

**Subpart B—Housing Application Packaging Grants**

■ 2. Exhibit D of subpart B is revised to read as follows:

**BILLING CODE 3410-XV-P**