

DEPARTMENT OF AGRICULTURE**Commodity Credit Corporation****7 CFR Part 1437**

RIN 0560-AG82

Noninsured Crop Disaster Assistance for Sea Grass and Sea Oats**AGENCY:** Commodity Credit Corporation, USDA.**ACTION:** Final rule.

SUMMARY: This rule amends the Commodity Credit Corporation (CCC) regulations governing the Noninsured Crop Disaster Assistance Program (NAP) to add sea grass and sea oats as eligible crops as provided for in the Farm Security and Rural Investment Act of 2002 (2002 Act). The intended affect of this rule is to make producers of these crops eligible for disaster assistance under NAP.

EFFECTIVE DATE: October 7, 2002.**FOR FURTHER INFORMATION CONTACT:**

Steve Peterson, Chief, 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 Steve_Peterson@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:**Notice and Comment**

Section 196 of the Federal Agriculture Improvement Act of 1996 (1996 Act) is the statutory authority for NAP. Section 10101 of the 2002 Act amended section 196 to provide for the new crop eligibility implemented by this rule. Section 161 of the 1996 Act requires that the provisions of Title I of the 1996 Act, which includes section 196, be issued 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 notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final.

Executive Order 12866

This final rule has been determined to be not significant under Executive Order 12866 and therefore has not 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:

Noninsured Crop Disaster Assistance—10.451.

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 Assessment

The environmental impacts of this rule have been considered in accordance with the provisions of 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 FSA's regulations for compliance with NEPA, 7 CFR part 799. FSA has concluded that this rule is categorically excluded from further environmental review and documentation as evidenced by the completion of an environmental evaluation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. 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 to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are not retroactive. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require 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

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) do 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.

Paperwork Reduction Act

Section 196 of the 1996 Act requires that these regulations be issued without regard to the Paperwork Reduction Act. This means that the normal 60-day public comment period and OMB approval of the information collections required by this rule are not necessary before the regulations may be made effective. However, FSA will still request approval of the new information collections required by this rule.

Government Paperwork Elimination Act

CCC and FSA are committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general, and 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 by participation in the Noninsured Crop Disaster Assistance Program are not yet fully implemented in a way that would allow the public to conduct business with FSA electronically. Accordingly, applications for this program may be submitted at FSA offices by mail or FAX.

Background

The Noninsured Crop Disaster Assistance Program is operated by FSA and CCC under the authority section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333) (the 1996 Act). The 1996 Act requires that eligible program crops be crops that are used for food or fiber or that are specifically identified by the statute. Sea grass and sea oats were neither and therefore were not eligible. Section 10101 of the 2002 Act amended section 196 of the 1996 Act to specifically identify them as eligible crops.

Section 196 of the 1996 Act provides that the Secretary of Agriculture shall operate a noninsured crop disaster assistance program to provide coverage equivalent to the catastrophic risk protection otherwise available under section 508(b) of the Federal Crop Insurance Act (7 U.S.C. 1508(b)). Coverage under section 196 is limited to crops that are commercial or agricultural in nature for which

catastrophic risk protection under section 508(b) is not available and that are produced for food or fiber or are specifically included by the statute. Qualifying losses must be due to drought, flood, or other natural disaster, as determined by the Secretary. Among other requirements, the 1996 Act specifies that a producer shall submit an application for noninsured crop disaster assistance at a local office of the Department, that the application must be in such form and contain such information as the Secretary may specify and must be submitted not later than 30 days before the beginning of the coverage period. The coverage period is determined by the Secretary. There are also provisions in the law for acreage reports. Under the statute, differing qualifying loss thresholds are based on whether the crop was planted and failed or whether instead the crop could not be planted because of a qualifying condition. If all other conditions are met, payments will be determined by multiplying the amount by which the harvest is less than 50 percent of the established yield for the crop by 55 percent of the average market price for the crop (or any comparable coverage determined by the Secretary) by a payment rate that takes in other factors. Provisions are also made in the statute for yield determinations. Further details are set out in the final rule published on March 19, 2002, which was a major revision of the NAP regulations.

The rule provides that sea oats and sea grass will be treated as 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. The rule provides that claims involving ornamental sea oat and sea grass plants will be compensable in the same manner and subject to the same conditions as ornamental nursery stock under section 1437.305 of the existing regulations. For propagation stock (seed or transplant), claims will be compensable under new provisions set out in the rule. The limitations in the rule reflect the limited purpose of the statute and the limitations that apply to other crops under the same program. They include the requirement that an application for coverage be filed at least 30 days in advance of the coverage period. That rule establishes, among other things, the manner in which the beginning of the coverage period, and hence the last date for filing the application for coverage, is determined.

This rule provides that sea oats and sea grass will be treated as "value loss" crops, as opposed to field crops where

the loss is not based on the loss of particular plants, but based on loss of an expected yield of a particular plot. As with ornamental crops, all plants that survive the disaster will be treated as not involving a compensable loss even though there may be some damage to the plant. This reflects the orientation of the program to actual yield, rather than quality, losses. In any event, gradations of loss to individual plants would be difficult (a difficulty not contemplated by the statute). It would also be imprecise. Further, in many cases, damaged plants can be rejuvenated.

List of Subjects in 7 CFR Part 1437

Crop insurance, Nursery stock, Plants.

For the reasons set out above, 7 CFR Part 1437 is amended as follows:

PART 1437—NONINSURED CROP DISASTER ASSISTANCE PROGRAM

1. The authority citation for part 1437 continues to read as follows:

Authority: 15 U.S.C. 714 *et seq.*; and 7 U.S.C. 7333.

Subpart A—General Provisions

2. Amend § 1437.4 by removing the word "and" at the end of paragraph (c)(4)(vi), removing the period at the end of paragraph (c)(4)(vii) and inserting a semicolon and the word "and" in its place, and adding paragraph (c)(4)(viii) to read as follows:

§ 1437.4 Eligibility.

* * * * *

(c) * * *

(4) * * *

(viii) Sea grass and sea oats.

Subpart D—Determining Coverage Using Value

3. Add section 1437.310 to read as follows:

§ 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

(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.

Signed in Washington, DC, on September 20, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 417

[Docket No. 00-022N]

E. coli O157:H7 Contamination of Beef Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Compliance with the HACCP system regulations and request for comment.

SUMMARY: The Food Safety and Inspection Service (FSIS) is publishing this document to inform manufacturers of beef products of the Agency's views about the application of the hazard analysis and critical control point (HACCP) system regulations to contamination with *Escherichia coli* (*E. coli*) O157:H7.

FSIS believes that the availability of certain scientific data on *E. coli* O157:H7 constitutes a change that could affect an establishment's hazard analysis or alter its HACCP plans for raw beef products. Therefore, under the HACCP regulations, if establishments have not already reassessed their HACCP plans for raw beef products in light of this data, they must do so now.

Establishments that have not already reassessed their HACCP plans in light of this data must reassess their HACCP plans to determine whether *E. coli* O157:H7 contamination is a hazard reasonably likely to occur in their production process. This requirement applies to HACCP plans for all raw beef products, including ground beef, other non-intact beef products, and intact beef products. If reassessment results in a determination that *E. coli* O157:H7 contamination is a food safety hazard reasonably likely to occur in the establishment's production process, then it must be addressed in a HACCP plan.

All establishments producing raw beef products are required to reassess their HACCP plans. However,

establishments receiving product for grinding may have purchase specifications requiring all their suppliers to have one or more critical control points (CCPs) validated to eliminate or to reduce *E. coli* O157:H7 below detectable levels. Such establishments may determine that no additional steps to address this pathogen are necessary in their production process. Establishments adopting this approach should incorporate these purchase specifications and their means of ensuring that their specifications are met in their HACCP plans, in their Sanitation SOPs, which FSIS has recognized as prerequisites for HACCP, or in other prerequisite programs.

In addition, FSIS is issuing new guidance material related to the control of *E. coli* O157:H7 and is making available the Agency's draft comparative risk assessment of intact and non-intact (blade tenderized) steaks. (*See ADDRESSES.*) Additionally, FSIS will be issuing a revised *E. coli* O157:H7 sampling and testing Directive and this notice discusses the revisions expected to be made.

FSIS invites comments on the matters presented in this notice, on its guidance material, and on the draft comparative risk assessment.

DATES: Comments may be submitted by December 6, 2002. Establishments that produce raw beef products, and that have not already reassessed their HACCP plans for those products in light of the scientific data on *E. coli* O157:H7 discussed in this notice, are to reassess their HACCP plans by the following dates according to plant size: December 6, 2002 for large plants (all establishments with 500 or more employees); February 4, 2003 for small plants (all establishments with 10 or more employees but fewer than 500); and April 7, 2003 for very small plants (all establishments with fewer than 10 employees or annual sales of less than \$2.5 million).

See the **SUPPLEMENTARY INFORMATION** for FSIS verification dates.

ADDRESSES: Submit one original and two copies of written comments to FSIS Docket Clerk, Docket No. 00-022N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250-3700. All comments submitted in response to this document and the guidance material will be available for public inspection in the Docket Clerk's office between 8:30 a.m. and 4:30 p.m., Monday through Friday. The draft comparative risk assessment of intact and non-intact

(blade tenderized) steaks is also available on the Internet at: <http://www.fsis.usda.gov/OPPDE/rdad/publications.htm>. FSIS is making the guidance material available today at the same Internet address.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Engeljohn, Director, Regulations and Directives Development Staff, Food Safety and Inspection Service, U.S. Department of Agriculture (202) 720-5627.

SUPPLEMENTARY INFORMATION:

HACCP

The Food Safety and Inspection Service (FSIS) administers a regulatory program under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) to protect the health and welfare of consumers by preventing the distribution of meat and poultry products that are unwholesome, adulterated, or misbranded. To further the goal of reducing the risk of foodborne illness from meat and poultry products to the maximum extent possible, FSIS issued final regulations on July 25, 1996, mandating Pathogen Reduction-Hazard Analysis and Critical Control Point (HACCP) Systems for federally inspected establishments (61 FR 38806). These regulations require that federally inspected establishments take preventive and corrective measures at each stage of the food production process where food safety hazards occur.

Part 417, the regulations on HACCP systems, requires a hazard analysis to determine the food safety hazards reasonably likely to occur in the production process and to identify the preventive measures an establishment can apply to control those hazards in the production of particular products (§ 417.2(a)). Ten potential hazard areas, including microbiological contamination, are listed to guide establishments in this analysis (§ 417.2(a)(3)). Whenever a hazard analysis reveals one or more such hazards are reasonably likely to occur in the production process, the regulations require that the establishment develop and implement a written HACCP plan, for each product, that includes specified control measures for each hazard so identified (§ 417.2(b)(1) and (c)).

Section 417.2(a)(1) provides that a food safety hazard is reasonably likely to occur if a prudent establishment would establish control measures because the hazard historically has occurred, or because there is a reasonable possibility that it will occur