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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 248

[FNS–2007–0008]

RIN 0584–AD74

WIC Farmers' Market Nutrition Program (FMNP): Nondiscretionary Provisions of Public Law 108–265, the Child Nutrition and WIC Reauthorization Act of 2004

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This is an affirmation by the Department of an interim rule as a final rule, without change amending the WIC Farmers' Market Nutrition Program (FMNP) regulations to codify three FMNP nondiscretionary provisions mandated in the Child Nutrition and WIC Reauthorization Act of 2004. The three nondiscretionary provisions include the option to authorize roadside stands, a reduction in the required amount of State matching funds, and an increase in the maximum Federal benefit level. These changes are intended to increase State agency flexibility in managing the Program. The first two provisions became effective on October 1, 2004, while the increased maximum Federal FMNP benefit level was effective as of June 30, 2004.

DATES: Effective on October 13, 2009 the Department is adopting as a final rule the interim rule published at 73 FR 65246 on November 3, 2008.

FOR FURTHER INFORMATION CONTACT: Debra R. Whitford, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, VA 22302, (703) 305–2746, or *Debbie.Whitford@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The WIC Farmers' Market Nutrition Program: Nondiscretionary Provisions of Public Law 108–265, the Child Nutrition and WIC Reauthorization Act of 2004, was published on November 3, 2008, as an interim rule in the **Federal Register** (73 FR 65246). The rule provided a 60 day comment period that ended on January 2, 2009. No comment letters were submitted during the comment period. This interim rule amended the FMNP regulations to codify the three FMNP nondiscretionary provisions exactly as set forth in the Child Nutrition and WIC Reauthorization Act of 2004. The three nondiscretionary provisions include the option to authorize roadside stands, a reduction in the required amount of State matching funds, and an increase in the maximum Federal benefit level. These changes are intended to increase State agency flexibility in managing the Program.

Because the nondiscretionary provisions have been implemented as set forth in the law, they are retained as written in this final rule.

For reasons given in the interim rule, the Department is adopting the interim rule as a final rule without change.

This action also affirms information contained in the interim rule concerning Executive Order 12866, the Regulatory Flexibility Act, Executive Order 12988, and the Paperwork Reduction Act. Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 248

Food assistance programs, Food donations, Grant programs—Social programs, Indians, Infants and children, Maternal and child health, Nondiscrimination, Nutrition education, Public assistance programs, WIC, Women.

PART 248—WIC FARMERS' MARKET NUTRITION PROGRAM (FMNP)

■ Accordingly, the Department is adopting as a final rule, without change, the interim rule that amended 7 CFR part 248 and was published at 73 FR 65246 on November 3, 2008.

Dated: August 25, 2009.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. E9–21468 Filed 9–10–09; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 760

RIN 0560–AH94

Livestock Forage Disaster Program and Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish; Supplemental Agricultural Disaster Assistance

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule implements specific requirements for the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP) and the Livestock Forage Disaster Program (LFP) authorized by the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). LFP provides payments to eligible livestock producers that have suffered livestock grazing losses due to qualifying drought or fire. For drought, the losses must have occurred on land that is native or improved pastureland with permanent vegetative cover or is planted to a crop planted specifically for grazing for covered livestock due to a qualifying drought during the normal grazing period for the county. For fire, LFP provides payments to eligible livestock producers that have suffered grazing losses on rangeland managed by a Federal agency if the eligible livestock producer is prohibited by the Federal agency from grazing the normal permitted livestock on the managed rangeland due to a qualifying fire. ELAP provides emergency assistance to eligible producers of livestock, honeybees, and farm-raised fish that have losses due to disease, adverse weather, or other conditions, including losses due to blizzards and wildfires, as determined by the Secretary. ELAP assistance is for losses not covered under other Supplemental Agricultural Disaster Assistance Payment programs established by the 2008 Farm Bill, specifically LFP, Livestock Indemnity Program (LIP), and Supplemental

Revenue Assistance Program (SURE). Eligible LFP and ELAP losses must have occurred on or after January 1, 2008, and before October 1, 2011. This rule specifies how LFP and ELAP payments are calculated, what losses are eligible, and when producers may apply for payments.

DATES: *Effective Date:* September 9, 2009.

FOR FURTHER INFORMATION CONTACT:
Scotty Abbott, Production, Emergencies, and Compliance Division, Farm Service Agency, United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517; telephone (202) 720–7997; e-mail *Scotty.Abbott@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

This final rule implements specific requirements for LFP and ELAP authorized by the 2008 Farm Bill (Pub. L. 110–246). Sections 12033 and 15101 of the 2008 Farm Bill authorize the Secretary of Agriculture (Secretary) to provide eligible livestock producers with payment for grazing losses during a calendar year for covered livestock due to a drought or due to fire on Federally managed lands, which is the scope of LFP. Sections 12033 and 15101 of the Farm Bill also authorize the Secretary to provide payments to producers of livestock, honeybees, and farm-raised fish to aid in the reduction of losses due to disease, adverse weather, or other conditions such as blizzards and wildfires. That is the scope of ELAP. ELAP covers some species, loss conditions, and losses that are not eligible for other disaster assistance programs, including colony collapse disorder and wildfires on non-Federal land. This preamble first discusses the background and general requirements that apply to both ELAP and LFP, then the specific requirements for each program.

The 2008 Farm Bill establishes a collection of permanent standing disaster assistance programs, ELAP and LFP among them, referred to as Supplemental Agricultural Disaster Assistance. These supplemental agricultural disaster assistance programs will be administered by FSA using funds from the Agricultural Disaster Relief Trust Fund (Trust Fund) established under section 902 of the Trade Act of 1974 (19 U.S.C. 2497a). The disaster assistance programs authorized by the 2008 Farm Bill are permanent or ''standing'' programs, that is, they are continuing programs not subject to annual appropriations that are similar in scope to the previous ad hoc programs.

The Supplemental Agricultural Disaster Assistance permanent disaster programs authorized by the 2008 Farm Bill include in addition to ELAP and LFP, LIP, SURE, and the Tree Assistance Program (TAP). This rule implements ELAP and LFP. LIP, SURE, and TAP are being implemented through separate rulemakings. The LIP final rule was published in the **Federal Register** on July 2, 2009 (74 FR 31567–31578). This final rule establishes the regulations for ELAP in 7 CFR part 760 subpart C and for LFP in subpart D.

These disaster programs that will be conducted under regulations in 7 CFR part 760 are provided for in two separate places in the 2008 Farm Bill. First, section 12033 adds, to cover these programs, a new section, 531, to the Federal Crop Insurance Act (7 U.S.C. 1531). Second, Section 15101 of the Farm Bill does the same by adding Section 902 of the 1974 Trade Act (7 U.S.C. 2497). The provisions of the two sections as enacted are identical except that the Trade Act of 1974 provisions contains the trust fund provisions. Since the Farm Bill, there have been some amendments to the programs and in some cases the amendments have been to one of the two relevant Farm Bill sections but not the other, but the two sections of the 2008 Farm Bill are considered to be interchangeable for the purposes of this rule and an amendment to one is, as a practical matter, an amendment to the other.

In the past, legislation provided disaster assistance through ad hoc programs to address the needs of specific areas or the results of specific disasters. Previous ad hoc disaster assistance programs included the Livestock Compensation Programs (LCP), which were implemented in the regulations in 7 CFR part 760, subparts K and L, and part 1416, subparts B and C, and were administered by FSA and the Commodity Credit Corporation (CCC), respectively, depending on the funding source. LCP provided payments to livestock owners and cash lessees for certain livestock feed losses, including grazing losses and feed costs. There was no ad hoc program that covered the full scope of the losses now potentially covered by ELAP; some losses now potentially covered by ELAP were covered by the previous Feed Indemnity Program.

Terms Used in this Rule

This final rule uses the words ''producers'' and ''participants'' in substantive ways. ''Producers'' may apply for ELAP and LFP. ''Participants'' are those ''producers'' that meet the requirements to be eligible producers to receive ELAP or LFP payments.

Sections 12033 and 15101 of the 2008 Farm Bill use the words ''assistance,'' ''benefits,'' ''compensation,'' ''relief,'' and ''payments''. The form of ELAP or LFP assistance, benefit, relief, or compensation for eligible producers is a payment calculated as specified in this rule.

For LFP, sections 12033 and 15101 of the 2008 Farm Bill and this rule include the terms ''eligible livestock producer,'' ''covered livestock,'' and ''qualifying drought or fire.'' This rule also uses the terms ''qualifying grazing loss'' and ''qualifying grazing land.''

General Eligibility Requirements That Apply to Both ELAP and LFP

This rule specifies the eligibility requirements for ELAP and LFP in part 760, subparts C and D. The LIP final rule revised subpart B of part 760 to provide the general eligibility requirements for all of the Supplemental Agricultural Disaster Assistance programs including ELAP, LFP, LIP, SURE, and TAP. Subpart B specifies administration of the programs, general requirements to be an eligible producer, risk management purchase requirements, buy-in waivers, equitable relief, payment limitations, and other generally applicable requirements. These general requirements that apply to all the standing disaster programs are described below.

Payment Limits

The 2008 Farm Bill limits how much a producer may receive from FSA disaster assistance programs.

In applying payment limitation for 2008, no person, as defined and determined by the regulations in 7 CFR part 1400 in effect for 2008, may receive more than $100,000 total per crop year under ELAP, LFP, LIP, and SURE.

For 2009 through 2011, no person or legal entity (excluding a joint venture or general partnership), as defined and determined by the rules provided for in 7 CFR part 1400, may receive, directly or indirectly, more than $100,000 total per crop year under ELAP, LFP, LIP, and SURE.

For the payment limits, both indirect and direct benefits are counted by attribution. In the case of a legal entity, the same payment is attributed to the direct payee in the full amount and those that have an indirect interest to the amount of the interest. For example, under the attribution rules that applies to these programs, assume:

• Corporation A is in line to receive a $100,000 LFP payment,

• Corporation A is owned 50 percent by Individual A and 50 percent by Corporation B, and

• Corporation B is owned by Individual B with a 30 percent interest and by Individual C with a 70 percent interest.

If so, Corporation A, for payment limitation purposes would be considered to have received $100,000 and Individual C (who owns 70 percent of Corporation B, which owns half of Corporation A) would be considered to have indirectly benefitted by the amount of $35,000 (50 percent times 70 percent of the $100,000). Even though no part of the $100,000 was actually paid to Individual C, the amount of $35,000 would count against individual C's overall payment limitation from all sources and farms. Assume Individual C was already at the maximum payment limit, then Individual C would not have been eligible to receive $35,000; as a result, the payment to Corporation A would be reduced by $35,000.

The amount of any payment for which a participant may be eligible under any of these programs may be reduced by any amount received by the participant for the same or any similar loss from any Federal disaster assistance program. Producers can receive LFP payments for drought or fire, but not both for the same loss. In addition, a producer who receives SURE payments cannot receive payments for the same loss under LFP. A producer who receives LFP, LIP, or SURE payments cannot receive payments for the same loss under ELAP.

As reflected in the general provisions issued with LIP, there are certain average adjusted gross income limitations that apply. In applying the limitation on average adjusted gross income (AGI) for 2008, an individual or entity is ineligible for payment under ELAP or LFP if the individual's or entity's average AGI exceeds $2.5 million for 2005, 2006, and 2007 under the provisions in 7 CFR part 1400 in effect for 2008. For 2009 through 2011, the average AGI limitation provisions in 7 CFR part 1400 applicable to CCC commodity programs also apply to ELAP and LFP. Specifically, as specified in the 2008 Farm Bill, for 2009 through 2011, a person or legal entity with an average adjusted gross nonfarm income, as defined in 7 CFR 1400.3, that exceeds $500,000 for the relevant period will be not be eligible to receive payments under these programs. Likewise, if a person with an indirect interest in a legal entity has an average nonfarm AGI over $500,000, then the payment to the legal entity will be reduced as calculated based on the percent of interest in the legal entity receiving the payment. For example, continuing with the assumptions in the example above, if Individual B had an average AGI that was over the limit, then the payment to Corporation A will be reduced by 15 percent (Individual B's 30 percent interest in Corporation B times Corporation B's 50 percent interest in Corporation A).

The relevant AGI period for these programs is the 3 calendar years that precede the program year involved. For livestock losses, the program year is the calendar year of the loss of the livestock.

The regulations in 7 CFR 1400.105 specify how payments will be attributed and how far the attribution will go. Attribution will be tracked through four levels of ownership in legal entities. The 2008 Farm Bill removed the previous ''3 entity rule,'' so a person can now receive benefits attributed through an unlimited number of entities, subject to the payment limits and the rules of attribution described in this final rule and in 7 CFR part 1400. In addition to these limits, the 2008 Farm Bill imposes limitations of payments to foreign persons. Those limits are specified in the regulations in § 760.103 as issued with the LIP rules.

Risk Management Purchase Requirement

To be eligible for program payments under ELAP, eligible producers on a farm, as specified by the 2008 Farm Bill, must have purchased insurance for each insurable commodity, excluding grazing land; a few exceptions allowed by the 2008 Farm Bill are discussed later in this section. ''Insurable commodities'' are those for which a plan of insurance can be obtained from the USDA's Risk Management Agency (RMA) that makes coverage for crops available under the Federal Crop Insurance Act (FCIA). Benefits for ''noninsurable'' commodities are generally available through the Noninsured Crop Disaster Assistance Program (NAP) run by FSA. Except for grazing land, producers for ELAP must have obtained an RMA policy or plan of insurance or NAP coverage for all of their crops. For LFP, producers must have obtained an RMA policy or plan of insurance or NAP coverage for those grazing lands for which they seek benefits.

Producers who did not purchase required coverage are not eligible for benefits unless an exception applies. ''Socially disadvantaged farmers and ranchers,'' as well as ''limited resource farmers and ranchers,'' or ''beginning farmers or ranchers,'' are exempt. For the 2008 crop, persons who paid a certain buy-in fee were exempt from the purchase requirement if the buy-in fee was paid by September 16, 2008. By an amendment to the 2008 Farm Bill, Congress allowed a second buy-in enabling producers to buy in from February 17, 2009, up to May 18, 2009; however, if the buy-in occurred after the first deadline, or the waiver was not granted administratively through some form of equitable relief, the producer had to agree to buy crop insurance or NAP for the next year for the crops to which the buy-in applied. Also, there were special benefit calculation provisions for producers who made use of the second deadline. The buy-in fee was equal to the cost of the insurance or NAP coverage, but did not entitle the producer to insurance or NAP coverage. Further, an amendment allowed a 2009 crop buy-in for crops if the 2009 Federal Crop Insurance Corporation (FCIC) sales closing date was prior to August 14, 2008. The deadline for the 2009 crop buy-in was January 12, 2009. In addition to these provisions, section 531(g)(5) of the FCIA (and the corresponding provisions of the Trade Act of 1974) have some more general provisions allowing the Secretary discretion to grant equitable relief to persons with a lack of coverage. The buy-in fees were different for 2008 and 2009.

Equitable Relief

The Secretary may provide equitable relief on a case-by-case basis to eligible participants that are otherwise ineligible or unintentionally fail to meet the risk management purchase requirements specified in § 760.104 for one or more covered crops or livestock on the farm. The equitable relief provisions are specified in § 760.106, as issued with the LIP rule, and apply to all the Supplemental Agricultural Disaster Assistance programs. The granting of equitable relief is at the discretion of the Secretary and is not appealable.

Miscellaneous

As specified in 7 CFR part 760 subpart B, participants receiving ELAP and LFP payments must keep records and supporting documentation for 3 years following the end of the year in which the application for payment was filed. This discretionary recordkeeping requirement is consistent with other FSA rules and programs, as well as with previous similar disaster assistance programs.

As specified in 7 CFR part 760 subpart B, other restrictions apply to ELAP and LFP including, but not limited to, those pertaining to highly erodible land and wetland conservation provisions specified in 7 CFR part 12 (which limit eligibility for payments in cases where highly erodible land is converted to cropland or is used without a conservation plan or where wetlands have been converted after the 1986 Farm Bill to crop use).

All livestock owners, contract growers, producers, livestock, honeybees, farm-raised fish, and losses must meet the eligibility requirements provided in this rule; false certifications can carry serious consequences. FSA will validate applications with random spot-checks.

Specific Provisions for ELAP

Overview

Sections 12033 and 15101 of the 2008 Farm Bill direct the Secretary to use up to $50 million per year from the Trust Fund to provide emergency relief to eligible producers of livestock, honeybees, and farm-raised fish. The emergency relief is intended to provide financial assistance to reduce the amount of losses due to disease, adverse weather, or other conditions, such as blizzards and wildfires as determined by the Secretary. ELAP covers losses that are not covered under LFP, LIP, or SURE. These provisions are statutory. The ELAP details in this rule on what kinds of livestock and other species are eligible, what types of losses are covered, acceptable documentation of loss, and the application process for payment, are discretionary provisions in the sense of not being specified in the statutory provisions enacted in the Farm Bill. FSA is implementing many of the ''discretionary'' provisions of ELAP in a manner consistent with the rules and polices used in implementing LFP or LIP and those used for previous ad hoc disaster assistance programs because those rules and policies are known to the public and to Congress and because they have worked well to apportion benefits for the types of losses involved in ELAP.

Eligibility Requirements for ELAP

The 2008 Farm Bill specified that ELAP is for losses due to ''disease, adverse weather, or other conditions, such as blizzards and wildfires, as determined by the Secretary.'' Under the rule, eligible adverse weather and eligible loss conditions include disease, adverse weather, and other conditions and will be determined by FSA's Deputy Administrator for Farm Programs (Deputy Administrator) on behalf of the Secretary. Determination of ELAP payment eligibility will be based on actual losses as determined by the Deputy Administrator due to eligible adverse weather or eligible loss conditions. These determinations are all subject to the availability of funds. In general, adverse weather includes, but is not limited to, events such as hurricanes, floods, blizzards, wildfires, extreme heat, and extreme cold. Adverse weather is a factor in eligibility for other disaster assistance programs; however, there are other conditions that result in significant losses to agricultural producers. ELAP is being implemented to fill in the gap and provide assistance under other conditions as the Deputy Administrator determines are appropriate. FSA will determine eligibility of livestock, honeybee, and farm-raised fish losses caused by eligible adverse weather or eligible loss conditions, for example, disease caused by adverse weather. Additional eligible adverse weather and other qualifying loss conditions will be specified, as needed, by the Deputy Administrator. Specific examples of currently known qualifying loss conditions are described below.

The eligibility requirements for ELAP include limits that go to: the type of producer, the type of loss, the cause of the loss, and the location of the loss. In general, adverse weather or other qualifying conditions, as determined by the Deputy Administrator, are conditions that cause damage that result in a financial loss to the producer or require the producer to incur additional expenses. ELAP is intended to provide broad coverage for losses not covered by other programs; at this time, nine different types of losses have been identified as examples and are explained in this section.

The location requirement for the loss is that the loss must have occurred in the county for which assistance is being provided; examples are included below. To distribute payments to participants, funds are first allocated to the counties and the loss must have occurred in the county that is providing the payment.

As stated above, producers of livestock, honeybees, and farm-raised fish are eligible for ELAP if they have losses due to adverse weather and other conditions such as blizzards and wildfires that are not covered under LFP, LIP, and SURE.

Livestock producers are eligible for ELAP if they have eligible grazing losses due to eligible adverse weather or eligible loss conditions, on eligible grazing lands that are physically located in a county that experienced such eligible adverse weather or eligible loss conditions. Eligible adverse weather and eligible loss conditions may include, but are not limited to, blizzards, floods, hurricanes, wildfires on non-Federal grazing lands, and tidal surges. Losses resulting from drought or wildfire on rangeland managed by a Federal agency are not eligible losses for ELAP because those losses will be covered by LFP.

Livestock producers of forage or feedstuffs intended as feed for the producer's livestock are eligible for ELAP if the feed was damaged or destroyed due to an eligible adverse weather or eligible loss condition and if the feed that was damaged or destroyed was physically located in a county that experienced the eligible adverse weather or eligible loss condition. Livestock producers are eligible for ELAP to cover a portion of the loss related to additional costs incurred for providing or transporting livestock feed to eligible livestock that is needed due to an eligible adverse weather or eligible loss condition. Specific examples of eligible losses for the additional costs of providing or transporting feed include, but are not limited to, costs associated with equipment costs for hay lifts or snow removal.

Livestock producers are eligible for ELAP to cover a portion of the loss related to the cost of purchasing additional livestock feed above normal quantities to maintain the eligible livestock due to an eligible adverse weather or eligible loss condition until additional livestock feed becomes available. To be eligible, the additional feed purchased above normal quantities must be feed that is fed to maintain the livestock in the county where the eligible adverse weather or eligible loss condition occurred. Eligible livestock for grazing and feed losses will be the same kinds and types of livestock that will be eligible for LFP.

Livestock producers are eligible for ELAP if they have losses due to livestock death in excess of normal mortality due to an eligible loss condition that is not an eligible adverse weather event under LIP. LIP covers livestock death losses due to adverse weather; therefore, ELAP covers livestock death losses due to other eligible loss conditions. For example, based on conditions at the time, the Deputy Administrator may determine that livestock deaths due to a specific catastrophic disease outbreak would be an eligible loss condition for ELAP, but those livestock deaths would not be eligible for LIP. Eligible livestock for death losses will be the same kinds and types of livestock eligible under LIP. Although the list of livestock eligible for LIP appears to be the same as the list for ELAP, the definitions are different. For example, for ELAP, the age of certain animals for losses other than death is relative to the beginning date of the eligible adverse weather or eligible loss condition and there are differences in the weights of certain animals if the loss is for a death as opposed to another type of loss. Unlike some previous livestock-related programs, ELAP does not cover catfish or crawfish death losses because losses of that kind are covered by SURE, the Farm Bill prohibits duplicative payments and there is not a loss if it has been paid for under another program.

Honeybee or farm-raised fish producers are eligible for ELAP if they have losses of feed that was intended as feed for the honeybees or farm-raised fish. The feed must have been damaged or destroyed due to eligible adverse weather or eligible loss conditions including, but not limited to, an earthquake, flood, hurricane, tidal surge, tornado, volcanic eruption, or wildfires. To be eligible, the honeybee or farm-raised fish feed loss must have occurred in the county where the eligible adverse weather or loss condition occurred.

Honeybee producers are eligible for ELAP if they have honeybee colony or honeybee hive losses due to eligible adverse weather or eligible loss conditions including, but not limited to, colony collapse disorder, earthquakes, floods, hurricanes, tornadoes, and volcanic eruptions. To be eligible, the honeybee colony or honeybee hive loss must have occurred in the county where the eligible adverse weather or eligible loss condition occurred. In the case of colony collapse, the collapse must be certified or otherwise documented by a third party such as a registered entomologist, Cooperative Extension specialist, or Land Grant University.

Producers of farm-raised bait fish and game fish are eligible for ELAP if they have fish death losses due to eligible adverse weather or eligible loss conditions including, but not limited to, earthquake, floods, hurricanes, tidal surges, tornadoes, and volcanic eruptions. To be eligible, the farm-raised fish deaths must occur in the county where the eligible adverse weather or eligible loss condition occurs.

Livestock, honeybee, and farm-raised fish losses that are not related to eligible adverse weather or eligible loss conditions as determined by the Deputy Administrator are not covered by this rule.

Applying for ELAP Payment

There are two basic steps for a producer to obtain ELAP payments. One step is to file a notice of loss when there is a condition that does or could generate a claim because of a loss in grazing, feed, animal, or an eligible additional expense is incurred, as applicable, for eligible livestock, honey bees, and farm-raised fish due to eligible weather or loss conditions. The second part of the process is to file the application for benefits. Both steps can be performed simultaneously. As to the first step, producers must provide a notice of loss to the FSA county office within 30 days of when the loss was apparent, or within 30 days after the end of the calendar year in which the loss occurred, whichever comes first. Due to the timing of the implementation of this rule and the losses to which it will apply, producers who potentially had suffered an eligible loss during calendar year 2008 and in calendar year 2009 prior to this rule being published in the **Federal Register** must provide a notice of loss within 90 calendar days after this rule is published. As indicated, however, a notice of loss is one part of the application process; other documentation is required for a complete application for payment as described in this rule. The completed application and required documents must be submitted to the FSA county office no later than 30 calendar days after the end of the calendar year in which the loss occurred or, for 2008 losses, 90 calendar days after publication of this rule in the **Federal Register**.

The statute allows up to $50 million per year for the ELAP program. Since the funding level has a cap, FSA plans to accept applications on a calendar year basis, and issue payments by calendar year. If approval of all eligible applications in a calendar year would result in expenditures in excess of the amount available for that calendar year, FSA plans to prorate the available funds by a national factor to reduce the total expected payments to the amount available for the calendar year. The funding level cap for ELAP is $50 million ''per year,'' with a provision for carryover of funds, which is understood to allow unused cap authority in a particular year that was otherwise approved by the Secretary to be ''carried over'' and effectively increase the cap for a later year. However, payments will, by this rule, be accounted for by year and if a proration is needed because of the cap or because the Secretary has not approved the full cap amount or if payments go unpaid for whatever reason, the unpaid applications will not be carried forward. Otherwise, payments for one year could be so great as to reduce the availability of funds for future payments.

ELAP Payment Calculations

Payments for eligible livestock feed losses, not to exceed 90 days of costs for feed losses, that the producer incurred during the calendar year will be based on 60 percent of the producer's actual cost for:

(1) Replacing livestock feed that was intended for feed for the producer's eligible livestock that was damaged or destroyed due to an eligible adverse weather or eligible loss condition;

(2) The additional cost incurred for providing or transporting livestock feed to eligible livestock due to an eligible adverse weather or eligible loss condition; or

(3) The additional cost of purchasing additional livestock feed above normal quantities to maintain the eligible livestock during an eligible adverse weather or eligible loss condition until additional feed becomes available.

Payments for grazing losses due to an eligible adverse weather or eligible loss condition other than drought or wildfires will be based on the lesser of 60 percent of:

(1) The total value of the feed cost for all covered livestock owned by the eligible livestock producer based on the number of days grazing was lost, not to exceed 90 days of daily feed cost for all eligible livestock or

(2) The total value of grazing lost for all eligible livestock based on the carrying capacity of the eligible grazing land for the number of grazing days lost, not to exceed 90 days of lost grazing.

Payments for grazing losses due to wildfires on non-Federal grazing lands will be based on 50 percent of the value of lost grazing based on the carrying capacity of the eligible grazing land, not to exceed 180 days of lost grazing.

Payments for livestock death losses due to eligible loss conditions will be based on 75 percent of the market value of the eligible livestock lost in excess of normal mortality. This is consistent with the payment calculation for LIP.

Payments for honeybee or farm-raised fish feed losses will be based on 60 percent of the producer's actual costs for feed that was intended as feed for the honeybees or farm-raised fish that was damaged or destroyed due to an eligible adverse weather or eligible loss condition.

Payments for honeybee colony or honeybee hive losses will be based on 60 percent of the producer's actual replacement cost for honeybee colonies or honeybee hives that were lost due to an eligible adverse weather or eligible loss condition.

Payments for producers of farm-raised game or sport fish who have losses due to fish death will be based on 60 percent of the producer's actual replacement cost of the game or sport fish that died as a direct result of an eligible adverse weather or eligible loss condition.

As stated above, any payments for these losses are limited so a producer will not receive duplicate payments under any Federal disaster assistance program. However, other Federal payments, such as NAP payments, may be made in addition to the disaster assistance payments. Therefore, to ensure that a producer is not paid for more than the amount of losses, the ELAP program will cap assistance at 95 percent of maximum losses. Specifically, total ELAP assistance provided to a participant in any given year, together with any amount provided to the same participant for the same loss as a result of any Federal crop insurance program, NAP, or any other Federal disaster program, plus the value of the commodity that was not lost, will not exceed 95 percent of the value of the commodity in the absence of a loss, as estimated by FSA. This rule amends § 760.108(c) to specify the 95 percent cap for ELAP payments.

Specific Provisions for LFP

Overview

The 2008 Farm Bill directs the Secretary to use such sums as are necessary from the Trust Fund to compensate eligible livestock producers for eligible grazing losses on eligible grazing land for covered livestock due to a qualifying drought during the normal grazing period for the county, or grazing losses on rangeland managed by a Federal agency if the eligible livestock producer is prohibited by the Federal agency from grazing the normal permitted livestock on the managed rangeland due to a qualifying fire, as determined by the Secretary, during the calendar year. The qualifying drought or fire must occur on or after January 1, 2008, but before October 1, 2011. All the provisions described in this paragraph, which are implemented in this rule, are statutory provisions. The payment rate, the minimum risk purchase requirement, the definition of ''covered livestock,'' and the definitions of ''qualifying drought'' or ''fire,'' are also statutory provisions.

The details in this rule on what kinds of additional livestock and other species are covered, acceptable documentation of loss, and the application process for payment, are discretionary provisions. Generally, FSA is implementing many of the discretionary provisions of LFP to be consistent with the rules and polices used in implementing ELAP and LIP and those used for previous ad hoc disaster assistance programs because those rules and policies are known to the public and to Congress and because they have worked well in the past to apportion payments for the type of loss involved in this program.

Eligibility Requirements

LFP payments and eligibilities will be calculated based on the type of covered livestock and grazing losses and the calculations will be made by FSA-approved categories. Covered livestock are specified in § 760.304 and include beef cattle, alpacas, buffalo, beefalo, dairy cattle, deer, elk, emus, equine, goats, llamas, poultry, reindeer, sheep, and swine for which the eligible livestock producer suffered a grazing loss due to a qualifying drought, or was prohibited from grazing on Federally managed rangeland due to a fire. The livestock must also be:

- During the 60 days prior to the beginning date of the qualifying drought or fire:
  - Owned, leased, purchased, the subject of a contract to purchase, or in the possession of an eligible contract grower and
  - Maintained for commercial use as part of a farming operation of the participant or
- During the current production year or one or both of the production years immediately preceding the current production year:
  - Sold or otherwise disposed of due to a qualifying drought and
  - Maintained for commercial use as part of a farming operation of the participant.

The definitions of the covered livestock in this rule are similar to those used in the previous LCP program, and those used in the ELAP program. Based on input from affected producers, alpacas, emus, and llamas were added to the list of previously covered livestock. Reduced payments are available for producers who sold or otherwise disposed of covered livestock due to qualifying drought in 1 or both of the 2 production years immediately preceding the current production year. Where the livestock is in the possession of a contract grower at the time of loss, only the contract grower will be eligible for payment. ''Contract growers'' under ELAP and LFP will only include producers, other than feedlots, whose income is dependent on the actual weight gain and survival of the livestock. The actual ''owner'' of the livestock will not be eligible.

Livestock used for recreational use, such as animals used for roping or pets, are not covered. Animals that were or would have been on a feedlot on the beginning date of the drought or fire are not covered. Yaks and ostriches are not covered. Cattle (including buffalo and beefalo) under 500 pounds on the beginning date of the qualifying drought or fire are not covered.

LFP is different from past ad hoc disaster programs that required a county to have had a Secretarial designation or Presidential declaration for producers in that county to receive payments.

Qualifying drought ratings are specified in this rule using the U.S. Drought Monitor (*http://www.drought.unl.edu/dm/monitor.html*) ratings of drought intensity. The U.S. Drought Monitor is the only such rating tool available; it is a widely recognized and objective source of drought information. It is specified in the 2008 Farm Bill as one of the eligibility ''triggers'' for LFP. A livestock producer may receive LFP payments for grazing losses due to drought on owned or leased grazing land or pastureland that is physically located in a county that is, during the normal grazing period for the specific type of grazing land or pastureland for the county, rated by the U.S. Drought Monitor as having a drought rating of D2 (severe drought), D3 (extreme drought), or D4 (exceptional drought) for a specified period. The payment amount an eligible producer may receive depends on the length and intensity of the qualifying drought as follows:

- For an amount equal to one monthly payment, the drought length and intensity must be at least a D2 (severe drought) intensity in any area of the county for 8 consecutive weeks during the normal grazing period for the specific type of grazing land or pastureland for the county.
- For an amount equal to two monthly payments, the drought length and intensity must be at least a D3 (extreme drought) intensity in any area of the county at any time during the normal grazing period for the specific type of grazing land or pastureland.
- For an amount equal to three monthly payments, the drought length and intensity must be:
  - At least D3 (extreme drought) intensity in any area of the county for at least four weeks during the normal grazing period for the specific type of grazing land or pastureland for the county or
  - D4 (exceptional drought) intensity in any area of the county at any time during the normal grazing period for the specific grazing land or pastureland for the county.

Total LFP payments to an eligible livestock producer in a calendar year for eligible grazing losses due to qualifying drought will not exceed an amount equal to three monthly payments for the same livestock.

A livestock producer may receive LFP payments for a qualifying fire if the grazing loss occurs on rangeland managed by a Federal agency and the eligible livestock producer is prohibited from grazing the normal permitted livestock on the rangeland due to fire. The payments will cover up to 180 days of grazing losses due to fire.

Any owner, cash or share lessee, or contract grower of livestock that rents or leases pastureland or grazing land owned by another person on a rate-of-gain basis is not considered an eligible livestock producer.

Grazing losses that are not related to qualifying drought or fire, as determined by the Secretary, are not eligible for LFP, but may be eligible for ELAP, which covers other adverse weather conditions. An eligible livestock producer may not receive LFP payments for grazing losses due to drought that occur on land used for haying or grazing under the Conservation Reserve Program (CRP).

Applying for LFP Payment

In general, the producer must provide a completed application for payment and required supporting documentation to the administrative FSA county office within 30 calendar days after the end of the calendar year in which the grazing loss occurred. Due to the timing of the implementation of this rule and the losses to which it will apply, producers who potentially had an eligible loss in calendar year 2008 will have 90 calendar days after this rule is published to provide the required documents for calendar year 2008 to the FSA county office.

LFP Payment Calculation

Producers are eligible for up to three monthly payments for grazing losses due to qualifying drought, depending on the intensity and duration of the drought, as described earlier. Each monthly payment for eligible grazing losses under LFP due to drought may not exceed 60 percent of the lesser of:

- The monthly feed cost for all covered livestock owned or leased by the eligible livestock producer as calculated in § 760.308(g) or
- The monthly feed cost calculated using the normal carrying capacity of the eligible grazing land of the eligible livestock producer as determined in § 760.308(j).

In the case of livestock that were sold or otherwise disposed of due to qualifying drought in 1 or both of the 2 production years immediately preceding the current production year, the payment rate is 80 percent of the monthly rate just described.

Producers are eligible for LFP payments for grazing losses due to qualifying fire for up to 180 days per calendar year of such losses. Payments for eligible grazing losses due to qualifying fire under LFP may not exceed 50 percent of the monthly feed cost, determined as specified in § 760.308(g), for the total number of livestock covered by the Federal lease of the eligible livestock producer for grazing losses that occur for not more than 180 days per calendar year. Payment for fire losses is calculated on a daily basis.

Notice and Comment

The 2008 Consolidated Security, Disaster Assistance, and Continuing Appropriations Act (Pub. L. 110–329) made section 1601(c)(2) of the 2008 Farm Bill applicable in implementing section 12033 of the 2008 Farm Bill. To the extent relevant, the exemption applies to the corresponding provision enacted in section 15101 since they are identical except for the provision for funding in section 15101 that does not appear at all in section 12033. Otherwise, the provisions of Public Law 110–329 would have no meaning. Therefore, these regulations are exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. 553), as specified in section 1601(c)(2) of the 2008 Farm Bill, which requires that the regulations be promulgated and administered without regard to the notice and comment provisions of section 553 of Title 5 of the United States Code 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.

Effective Date

In making this final rule exempt from notice and comment through section 1601(c)(2) of the 2008 Farm Bill, using the administrative procedure provisions in 5 U.S.C. 553, FSA finds that there is good cause for making this rule effective less than 30 days after publication in the **Federal Register**. This rule allows FSA to provide benefits to producers who suffered grazing, feed and livestock death losses caused by drought, fire, disease, adverse weather and other conditions. Therefore, to begin providing benefits to producers as soon as possible, this final rule is effective when filed for public inspection by the Office of the Federal Register.

Executive Order 12866

The Office of Management and Budget designated this rule as economically significant under Executive Order 12866 and has reviewed this rule. A cost benefit analysis was completed, is summarized below, and is available from the contact person listed above.

Summary of Economic Impacts

The ELAP program is likely to result in costs of the entire authorized $50 million per year each year, providing benefits of $50 million each year to producers of livestock, honeybees, and farm-raised fish. The benefits of the honeybee loss compensation aspect of the program could also include substantial indirect benefits to the agricultural sector as a whole, because honeybees pollinate more than $14 billion worth of fruits, vegetables, and other crops in the United States.

The honeybee portion of the program is expected to be the most expensive part of ELAP, due to losses resulting from colony collapse disorder. According to the USDA Agricultural Research Service, honeybee colony losses from colony collapse disorder were reported to be 31 percent in 2007, with surveys in 2008 indicating losses of about 36 percent. Those losses represent about twice the percentage of losses sustained during a typical winter. In other words, honeybee hives suffer about 18 percent depopulation in a normal winter, but losses of twice that percentage have occurred since colony collapse disorder was identified. The cost of honeybee hive rental has risen by $22 per honeybee hive in some East Coast states, and risen $80 per honeybee hive in California, due to a shortage of honeybees caused by colony collapse disorder. Assuming an average ELAP payment of $22 per honeybee hive for the 2.4 million honeybee hives in the United States in 2007 to compensate for the costs caused by colony collapse disorder implies additional costs of $52.8 million. This suggests that estimates for honeybee losses alone due to colony collapse disorder could easily exceed $50 million per year, particularly if losses in some states are significantly above $22 per honeybee hive.

The aquaculture portion of ELAP is expected to have average costs of about $6 million per year, based on costs of previous ad hoc hurricane relief programs, with significant variation in costs per year because adverse weather events that impact aquaculture are relatively infrequent.

The cost of the livestock portion of ELAP is likely to be of similar magnitude to the aquaculture portion, and will depend on relatively infrequent events such as floods and blizzards.

LFP is expected to cost about $409 million per year, providing the same amount in benefits to livestock producers. The indirect benefit of the program is to reduce income variability of livestock producers due to drought and fire losses beyond their control.

The annual average expected costs for LFP were calculated using the payment amounts from the previous ad hoc LCP that covered the three years from 2005 to 2007, adjusted for the differences in the conditions under which LFP will operate. The projected costs were adjusted to reflect that the cost of feed corn differs significantly from 2005 to 2007, and that the previous program allowed eligible livestock producers to select the worst of three years to use as the basis for payment calculation. The higher cost of corn required an upward adjustment; not including the worst year provision required a downward adjustment.

Higher corn costs are expected to result in a payment rate 212 percent above the payment rate used in LCP. Multiplying the approved LCP payments of just under $340 million by 212 percent would imply a maximum expected annual cost for LFP of $720.8 million. However, annual average expected costs for LFP are likely to be significantly less than $720.8 million because $720.8 million is based on participants choosing the worst year as the basis for payment calculations.

Inspection of total emergency payments for all livestock-related disasters (including a small amount for tree assistance) since fiscal year 1999 indicates substantial variability in payments over time, ranging from as low as $3 million in 2007 to as high as $1.384 billion in 2008. The average amount of livestock-related disaster assistance from 1999 to 2006 was 13.55 percent of the amount expected to be paid in 2008 and provides a lower bound on the expected costs of LFP.

As a permanent disaster program, LFP is likely to generate costs substantially above 13.55 percent of the expected 2008 emergency assistance on average. Since past ad hoc programs required a threshold disaster loss before legislation was passed, some producers who had disasters may not have received assistance, which they would under permanent disaster legislation.

Therefore, the estimated cost for LFP was calculated by multiplying the maximum expected cost of $720.8 million by the midpoint of the range extending from 13.55 percent to 100 percent, or by 57 percent. Annual average expected costs are therefore determined to be $409 million ($720.8 million multiplied by 56.8 percent). Not including the worst year provision will reduce some of the variability in program payments for LFP as compared to previous programs.

The only alternatives for implementation of LFP were on what kinds of additional livestock and other species are covered, acceptable documentation of loss, and the application process for payment, which are discretionary provisions. Generally, FSA is implementing many of the discretionary provisions of LFP to be consistent with the rules and polices used in implementing ELAP and LIP and those used for previous ad hoc disaster assistance programs because those rules and policies are known to the public and to Congress and because they have worked well in the past to apportion payments for the type of loss involved in LFP.

Similarly, the only alternatives for implementation of ELAP were on what kinds of livestock and other species are eligible, what types of losses are covered, acceptable documentation of loss, and the application process for payment, which are discretionary provisions. FSA is implementing many of the discretionary provisions of ELAP to be consistent with the rules and polices used in implementing LFP or LIP and those used for previous ad hoc disaster assistance programs because those rules and policies are known to the public and to Congress and because they have worked well to apportion benefits for the types of losses involved in ELAP.

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act since FSA is not required to publish a notice of proposed rulemaking for this rule.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799). The LFP provisions required by the 2008 Farm Bill that are identified in this rule are non-discretionary in nature, solely providing financial assistance. Therefore, FSA has determined that provisions for further NEPA review do not apply to this rule. Therefore, no environmental assessment or environmental impact statement will be prepared.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

Executive Order 12988

This rule has been reviewed under Executive Order 12988. This final rule is not retroactive and it does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and States, or on the distribution of power and responsibilities among various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with States was not required.

Executive Order 13175

The policies contained in this rule do not impose substantial unreimbursed direct compliance costs on Indian tribal governments or have tribal implications that preempt tribal law.

Unfunded Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local, and tribal government or the private sector. In addition, FSA was not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Federal Assistance Programs

This rule applies to the following Federal assistance programs that are not in the Catalog of Federal Domestic Assistance: ELAP and LFP.

Paperwork Reduction Act

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601(c)(2) of the 2008 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule has been determined to be Major under the Small Business Regulatory Enforcement Fairness Act of 1996, (Pub. L. 104–121) (SBREFA). SBREFA normally requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. Section 808 of SBREFA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. FSA finds that it would be contrary to the public interest to delay implementation of this rule because it would significantly delay assistance to the many people affected by the disasters addressed by this rule. Therefore, this rule is effective immediately.

List of Subjects in 7 CFR Part 760

Dairy products, Indemnity payments, Pesticide and pests, Reporting and recordkeeping requirements.

■ Accordingly, 7 CFR part 760 is amended as follows:

PART 760—INDEMNITY PAYMENT PROGRAMS

■ 1. The authority citation for part 760 continues to read as follows:

Authority: 7 U.S.C. 4501, 7 U.S.C. 1531, 16 U.S.C. 3801, note, and 19 U.S.C. 2497; Title III, Pub. L. 109–234, 120 Stat. 474; and Title IX, Pub. L. 110–28, 121 Stat. 211.

§ 760.104 [Amended]

■ 2. Amend § 760.104(a)(1)(i) by removing the words ''forage crops'' and by adding, in their place, the words ''forage crops intended for grazing''.

■ 3. In § 760.108, add paragraphs (c)(1) and (c)(2) to read as follows:

§ 760.108 Payment limitation.

* * * * *

(c) * * *

(1) FSA will review ELAP payments after the funding factor as specified in § 760.208 is determined to be 100 percent. FSA will ensure that total ELAP payments provided to a participant in a year, together with any amount provided to the same participant for the same loss as a result of any Federal crop insurance program, the Noninsured Crop Disaster Assistance Program, or any other Federal disaster program, plus the value of the commodity that was not lost, is not more than 95 percent of the value of the commodity in the absence of the loss, as estimated by FSA.

(2) [Reserved]

■ 4. Add subpart C to part 760 to read as follows:

Subpart C—Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program

Sec.

Subpart C—Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program

§ 760.201 Applicability.

(a) This subpart establishes the terms and conditions under which the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP) will be administered.

(b) Eligible producers of livestock, honeybees, and farm-raised fish will be compensated to reduce eligible losses that occurred in the calendar year for which the producer requests benefits. The eligible loss must have been a direct result of eligible adverse weather or eligible loss conditions as determined by the Deputy Administrator, including, but not limited to, blizzards, wildfires, disease, and insect infestation. ELAP does not cover losses that are covered under LFP, LIP, or SURE.

§ 760.202 Definitions.

The following definitions apply to this subpart and to the administration of ELAP. The definitions in parts 718 and 1400 of this title also apply, except where they conflict with the definitions in this section.

Adult beef bull means a male beef breed bovine animal that was used for breeding purposes that was at least 2 years old before the beginning date of the eligible adverse weather or eligible loss condition.

Adult beef cow means a female beef breed bovine animal that had delivered one or more offspring before the beginning date of the eligible adverse weather or eligible loss condition. A first-time bred beef heifer is also considered an adult beef cow if it was pregnant on or by the beginning date of the eligible adverse weather or eligible loss condition.

Adult buffalo and beefalo bull means a male animal of those breeds that was used for breeding purposes and was at least 2 years old before the beginning date of the eligible adverse weather or eligible loss condition.

Adult buffalo and beefalo cow means a female animal of those breeds that had delivered one or more offspring before the beginning date of the eligible adverse weather or eligible loss condition. A first-time bred buffalo or beefalo heifer is also considered an adult buffalo or beefalo cow if it was pregnant by the beginning date of the eligible adverse weather or eligible loss condition.

Adult dairy bull means a male dairy breed bovine animal that was used primarily for breeding dairy cows and was at least 2 years old by the beginning date of the eligible adverse weather or eligible loss condition.

Adult dairy cow means a female bovine dairy breed animal used for the purpose of providing milk for human consumption that had delivered one or more offspring by the beginning date of the eligible adverse weather or eligible loss condition. A first-time bred dairy heifer is also considered an adult dairy cow if it was pregnant by the beginning date of the eligible adverse weather or eligible loss condition.

Agricultural operation means a farming operation.

Application means FSA form used to apply for either the emergency loss assistance for livestock or emergency loss assistance for farm-raised fish or honeybees.

Aquatic species means any species of aquatic organism grown as food for human consumption, fish raised as feed for fish that are consumed by humans, or ornamental fish propagated and reared in an aquatic medium by a commercial operator on private property in water in a controlled environment. Catfish and crawfish are both defined as aquatic species for ELAP. However, aquatic species do not include reptiles or amphibians.

Bait fish means small fish caught for use as bait to attract large predatory fish. For ELAP, it also must meet the definition of aquatic species and not be raised as food for fish; provided, however, that only bait fish produced in a controlled environment can generate claims under ELAP.

Buck means a male goat.

Commercial use means used in the operation of a business activity engaged in as a means of livelihood for profit by the eligible producer.

Contract means, with respect to contracts for the handling of livestock, a written agreement between a livestock owner and another individual or entity setting the specific terms, conditions, and obligations of the parties involved regarding the production of livestock or livestock products.

Controlled environment means an environment in which everything that can practicably be controlled by the participant with structures, facilities, and growing media (including, but not limited to, water and nutrients) was in fact controlled by the participant at the time of the eligible adverse weather or eligible loss condition.

County committee or county office means the respective FSA committee or office.

Deputy Administrator or DAFP means the Deputy Administrator for Farm Programs, Farm Service Agency, U.S. Department of Agriculture or the designee.

Eligible adverse weather or eligible loss condition means any disease, adverse weather, or other loss condition as determined by the Deputy Administrator. The eligible adverse weather or eligible loss condition would have resulted in agricultural losses not covered by other programs in this part for which the Deputy Administrator determines financial assistance needs to be provided to producers. The disease, adverse weather, or other conditions may include, but are not limited to, blizzards, wildfires, water shortages, and other factors. Specific eligible adverse weather and eligible loss conditions may vary based on the type of loss. Identification of eligible adverse weather and eligible loss conditions will include locations (National, State, or county-level) and start and end dates.

Equine animal means a domesticated horse, mule, or donkey.

Ewe means a female sheep.

Farming operation means a business enterprise engaged in producing agricultural products.

Farm-raised fish means any aquatic species that is propagated and reared in a controlled environment.

FSA means the Farm Service Agency.

Game or sport fish means fish pursued for sport by recreational anglers; provided, however, that only game or sport fish produced in a controlled environment can generate claims under ELAP.

Goat means a domesticated, ruminant mammal of the genus Capra, including Angora goats. Goats are further delineated into categories by sex (bucks and nannies) and age (kids).

Kid means a goat less than 1 year old.

Lamb means a sheep less than 1 year old.

Livestock owner, for death loss purposes, means one having legal ownership of the livestock for which benefits are being requested on the day such livestock died due to an eligible adverse weather or eligible loss condition. For all other purposes of loss under ELAP, ''livestock owner'' means one having legal ownership of the livestock for which benefits are being requested during the 60 days prior to the beginning date of the eligible adverse weather or eligible loss condition.

Nanny means a female goat.

Non-adult beef cattle means a beef breed bovine animal that does not meet the definition of adult beef cow or bull. Non-adult beef cattle are further delineated by weight categories of either less than 400 pounds or 400 pounds or more at the time they died. For a loss other than death, means a bovine animal less than 2 years old that that weighed 500 pounds or more on or before the beginning date of the eligible adverse weather or eligible loss condition.

Non-adult buffalo or beefalo means an animal of those breeds that does not meet the definition of adult buffalo or beefalo cow or bull. Non-adult buffalo or beefalo are further delineated by weight categories of either less than 400 pounds or 400 pounds or more at the time of death. For a loss other than death, means an animal of those breeds that is less than 2 years old that weighed 500 pounds or more on or before the beginning date of the eligible adverse weather or eligible loss condition.

Non-adult dairy cattle means a bovine dairy breed animal used for the purpose of providing milk for human consumption that does not meet the definition of adult dairy cow or bull. Non-adult dairy cattle are further delineated by weight categories of either less than 400 pounds or 400 pounds or more at the time they died. For a loss other than death, means a bovine dairy breed animal used for the purpose of providing milk for human consumption that is less than 2 years old that weighed 500 pounds or more on or before the beginning date of the eligible adverse weather or eligible loss condition.

Normal grazing period, with respect to a county, means the normal grazing period during the calendar year with respect to each specific type of grazing land or pastureland in the county.

Normal mortality means the numerical amount, computed by a percentage, as established for the area by the FSA State Committee, of expected livestock deaths, by category, that normally occur during a calendar year for a producer.

Poultry means domesticated chickens, turkeys, ducks, and geese. Poultry are further delineated into categories by sex, age, and purpose of production as determined by FSA.

Ram means a male sheep.

Secretary means the Secretary of Agriculture or a designee of the Secretary.

Sheep means a domesticated, ruminant mammal of the genus Ovis. Sheep are further defined by sex (rams and ewes) and age (lambs) for purposes of dividing into categories for loss calculations.

State committee, State office, county committee, or county office means the respective FSA committee or office.

Swine means a domesticated omnivorous pig, hog, or boar. Swine for purposes of dividing into categories for loss calculations are further delineated into categories by sex and weight as determined by FSA.

United States means all 50 States of the United States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, and the District of Columbia.

§ 760.203 Eligible losses, adverse weather, and other loss conditions.

(a) An eligible loss covered under this subpart is a loss that an eligible producer or contract grower of livestock, honeybees, or farm-raised fish incurs due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, (including, but not limited to, blizzards and wildfires).

(b) A loss covered under LFP, LIP, or SURE is not eligible for ELAP.

(c) To be eligible, the loss must have occurred:

(1) During the calendar year for which payment is being requested and

(2) On or after January 1, 2008, and before October 1, 2011.

(d) For a livestock feed loss to be considered an eligible loss, the livestock feed loss must be one of the following:

(1) Loss of purchased forage or feedstuffs that was intended for use as feed for the participant's eligible livestock that was physically located in the county where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition. The loss must be due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, blizzard, flood, hurricane, tidal surge, tornado, volcanic eruption, wildfire on non-Federal land, or lightning;

(2) Loss of mechanically harvested forage or feedstuffs intended for use as feed for the participant's eligible livestock that was physically located in the county where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition. The loss must have occurred after harvest due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, blizzard, flood, hurricane, tidal surge, tornado, volcanic eruption, wildfire on non-Federal land, or lightning;

(3) A loss resulting from the additional cost incurred for providing or transporting livestock feed to eligible livestock due to an eligible adverse weather or eligible loss condition as determined by the Deputy Administrator, including, but not limited to, costs associated with equipment rental fees for hay lifts and snow removal. The additional costs incurred must have been incurred for losses suffered in the county where the eligible adverse weather or eligible loss condition occurred;

(4) A loss resulting from the additional cost of purchasing additional livestock feed, above normal quantities, required to maintain the eligible livestock during an eligible adverse weather or eligible loss condition, until additional livestock feed becomes available, as determined by the Deputy Administrator. To be eligible, the additional feed purchased above normal quantities must be feed that is fed to maintain livestock in the county where the eligible adverse weather or eligible loss condition occurred.

(e) For a grazing loss to be considered eligible, the grazing loss must have been incurred on eligible grazing lands physically located in the county where the eligible adverse weather or eligible loss condition occurred. The grazing loss must be due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, flood, freeze, hurricane, hail, tidal surge, volcanic eruption, and wildfire on non-Federal land. The grazing loss will not be eligible if it is due to an adverse weather condition covered by LFP as specified in subpart D, such as drought or wildfire on federally managed land where the producer is prohibited by the Federal agency from grazing the normally permitted livestock on the managed rangeland due to a fire.

(f) For a loss due to livestock death to be considered eligible, the livestock death must have occurred in the county where the eligible loss condition occurred. The livestock death must be due to an eligible loss condition determined as eligible by the Deputy Administrator and not related to an eligible adverse weather event as specified in Subpart E for LIP.

(g) For honeybee or farm-raised fish feed losses to be considered eligible, the honeybee or farm-raised fish feed producer must have incurred the loss in the county where the eligible adverse weather or eligible loss condition occurred. The honeybee or farm-raised fish feed losses must be for feed that was intended as feed for the honeybees or farm-raised fish that was damaged or destroyed due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, earthquake, excessive wind, flood, hurricane, tidal surge, tornado, volcanic eruption, and wildfire.

(h) For honeybee colony or honeybee hive losses to be considered eligible, the honeybee colony or honeybee hive producer must have incurred the loss in the county where the eligible adverse weather or eligible loss condition occurred. The honeybee colony or honeybee hive losses must be due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, earthquake, excessive wind, flood, hurricane, tornado, volcanic eruption, and wildfire. To be eligible for a loss of honeybees due to colony collapse disorder, the eligible honeybee producer must provide documentation to support that the loss was due to colony collapse disorder. Acceptable documentation includes, but is not limited to, a colony collapse certification by a registered entomologist, Cooperative Extension specialist, or Land Grant University.

(i) For a death loss for bait fish or game fish to be considered eligible, the producer must have incurred the loss in the county where the eligible adverse weather or eligible loss condition occurred. The bait fish or game fish death must be due to an eligible adverse weather or eligible loss condition as determined by the Deputy Administrator including, but not limited to, an earthquake, flood, hurricane, tidal surge, tornado, and volcanic eruption.

§ 760.204 Eligible livestock, honeybees, and farm-raised fish.

(a) To be considered eligible livestock for livestock feed losses and grazing losses, livestock must meet all the following conditions:

(1) Be alpacas, adult or non-adult dairy cattle, adult or non-adult beef cattle, adult or non-adult buffalo, adult or non-adult beefalo, deer, elk, emus, equine, goats, llamas, poultry, reindeer, sheep, or swine;

(2) Be livestock that would normally have been grazing the eligible grazing land or pastureland during the normal grazing period for the specific type of grazing land or pastureland for the county;

(3) Be livestock that is owned, cash-leased, purchased, under contract for purchase, or been raised by a contract grower or an eligible livestock producer, during the 60 days prior to the beginning date of the eligible adverse weather or eligible loss condition;

(4) Be livestock that has been maintained for commercial use as part of the producer's farming operation on the beginning date of the eligible adverse weather or eligible loss condition;

(5) Be livestock that has not been produced and maintained for reasons other than commercial use as part of a farming operation; and

(6) Be livestock that was not in a feedlot, on the beginning date of the eligible adverse weather or eligible loss condition, as a part of the normal business operation of the producer, as determined by the Deputy Administrator.

(b) The eligible livestock types for feed losses and grazing losses are:

(1) Adult beef cows or bulls,

(2) Adult buffalo or beefalo cows or bulls,

(3) Adult dairy cows or bulls,

(4) Alpacas,

(5) Deer,

(6) Elk,

(7) Emus,

(8) Equine,

(9) Goats,

(10) Llamas,

(11) Non-adult beef cattle,

(12) Non-adult buffalo or beefalo,

(13) Non-adult dairy cattle,

(14) Poultry,

(15) Reindeer,

(16) Sheep, and

(17) Swine;

(c) Ineligible livestock for feed losses and grazing losses include, but are not limited to:

(1) Livestock that were or would have been in a feedlot, on the beginning date of the eligible adverse weather or eligible loss condition, as a part of the normal business operation of the producer, as determined by FSA;

(2) Yaks;

(3) Ostriches;

(4) All beef and dairy cattle, and buffalo and beefalo that weighed less

than 500 pounds on the beginning date of the eligible adverse weather or eligible loss condition;

(5) Any wild free roaming livestock, including horses and deer;

(6) Livestock produced or maintained for reasons other than commercial use as part of a farming operation, including, but not limited to, livestock produced or maintained exclusively for recreational purposes, such as:

(i) Roping,

(ii) Hunting,

(iii) Show,

(iv) Pleasure,

(v) Use as pets, or

(vi) Consumption by owner.

(d) For death losses for livestock owners to be eligible, the livestock must meet all of the following conditions:

(1) Be alpacas, adult or non-adult dairy cattle, beef cattle, beefalo, buffalo, deer, elk, emus, equine, goats, llamas, poultry, reindeer, sheep, or swine, and meet all the conditions in paragraph (f) of this section.

(2) Be one of the following categories of animals for which calculations of eligibility for payments will be calculated separately for each producer with respect to each category:

(i) Adult beef bulls;

(ii) Adult beef cows;

(iii) Adult buffalo or beefalo bulls;

(iv) Adult buffalo or beefalo cows;

(v) Adult dairy bulls;

(vi) Adult dairy cows;

(vii) Alpacas;

(viii) Chickens, broilers, pullets;

(ix) Chickens, chicks;

(x) Chickens, layers, roasters;

(xi) Deer;

(xii) Ducks;

(xiii) Ducks, ducklings;

(xiv) Elk;

(xv) Emus;

(xvi) Equine;

(xvii) Geese, goose;

(xviii) Geese, gosling;

(xix) Goats, bucks;

(xx) Goats, nannies;

(xxi) Goats, kids;

(xxii) Llamas;

(xxiii) Non-adult beef cattle;

(xxiv) Non-adult buffalo or beefalo;

(xxv) Non-adult dairy cattle;

(xxvi) Reindeer;

(xxvii) Sheep, ewes;

(xxviii) Sheep, lambs;

(xxix) Sheep, rams;

(xxx) Swine, feeder pigs under 50 pounds;

(xxxi) Swine, sows, boars, barrows, gilts 50 to 150 pounds;

(xxxii) Swine, sows, boars, barrows, gilts over 150 pounds;

(xxxiii) Turkeys, poults; and

(xxxiv) Turkeys, toms, fryers, and roasters.

(e) Under ELAP, ''contract growers'' will only be deemed to include producers of livestock, other than feedlots, whose income is dependent on the actual weight gain and survival of the livestock. For death losses for contract growers to be eligible, the livestock must meet all of the following conditions:

(1) Be poultry or swine, as defined in § 760.202, and meet all the conditions in paragraph (f) of this section.

(2) Be one of the following categories of animals for which calculations of eligibility for payments will be calculated separately for each contract grower with respect to each category:

(i) Chickens, broilers, pullets;

(ii) Chickens, layers, roasters;

(iii) Geese, goose;

(iv) Swine, boars, sows;

(v) Swine, feeder pigs;

(vi) Swine, lightweight barrows, gilts;

(vii) Swine, sows, boars, barrows, gilts; and

(viii) Turkeys, toms, fryers, and roasters.

(f) For livestock death losses to be considered eligible livestock for the purpose of generating payments under this subpart, livestock must meet all of the following conditions:

(1) They must have died as a direct result of an eligible loss condition:

(i) On or after the beginning date of the eligible loss condition; and

(ii) No later than 60 calendar days from the ending date of the eligible loss condition; and

(iii) On or after January 1, 2008, and before October 1, 2011; and

(iv) In the calendar year for which payment is being requested; and

(2) Been maintained for commercial use as part of a farming operation on the day the livestock died; and

(3) Before dying, not have been produced or maintained for reasons other than commercial use as part of a farming operation, such non-eligible uses being understood to include, but not be limited to, any uses of wild free roaming animals or use of the animals for recreational purposes, such as pleasure, hunting, roping, pets, or for show.

(g) For honeybee losses to be eligible, the honeybee colony must meet the following conditions:

(1) Been maintained for the purpose of producing honey or pollination for commercial use in a farming operation on the beginning date of the eligible adverse weather or eligible loss condition;

(2) Been physically located in the county where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition;

(3) Been a honeybee colony in which the participant has a risk in the honey production or pollination farming operation on the beginning date of the eligible adverse weather or eligible loss condition;

(4) Been a honeybee colony for which the producer had an eligible loss of a honeybee colony, honeybee hive, or honeybee feed; the feed must have been intended as feed for honeybees.

(h) For fish to be eligible to generate payments under ELAP, the fish must be produced in a controlled environment so to be considered ''farm raised fish'' as defined in this subpart, and the farm-raised fish must:

(1) For feed losses:

(i) Be an aquatic species that is propagated and reared in a controlled environment;

(ii) Be maintained and harvested for commercial use as part of a farming operation; and

(iii) Be physically located in the county where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition.

(2) For death losses:

(i) Be bait fish or game fish that are propagated and reared in a controlled environment;

(ii) Been maintained for commercial use as part of a farming operation; and

(iii) Been physically located in the county where the eligible loss adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition.

§ 760.205 Eligible producers, owners, and contract growers.

(a) To be considered an eligible livestock producer for livestock feed losses and to receive payments, the participant must have owned, cash-leased, purchased, entered into a contract to purchase, or been a contract grower of eligible livestock during the 60 days prior to the beginning date of the eligible adverse weather or eligible loss condition and must have had a loss that is determined to be eligible as specified in § 760.203(d), and the producer's eligible livestock must have been livestock that would normally have been grazing the eligible grazing land or pastureland during the normal grazing period for the specific type of grazing land or pastureland for the county as specified in paragraph (b)(1)(i) or (ii) of this section.

(b) To be considered an eligible livestock producer for grazing losses and to receive payments, the participant must have:

(1) Owned, cash-leased, purchased, entered into a contract to purchase, or been a contract grower of eligible livestock during the 60 days prior to the beginning date of the eligible adverse weather or eligible loss condition, must have had a loss that is determined to be eligible as specified in § 760.203(e), and the loss must have occurred on land that is:

(i) Native or improved pastureland with permanent vegetative cover or

(ii) Planted to a crop planted specifically for the purpose of providing grazing for covered livestock;

(2) Have had eligible livestock that would normally have been grazing the eligible grazing land or pastureland during the normal grazing period for the specific type of grazing land or pastureland for the county as specified in paragraph (b)(1)(i) or (ii) of this section;

(3) Provided for the eligible livestock pastureland or grazing land, including cash leased pastureland or grazing land for covered livestock that is physically located in the county where the eligible adverse weather or loss condition occurred during the normal grazing period for the county.

(c) For livestock death losses to be eligible the producer must have had a loss that is determined to be eligible as specified in § 760.203(f) and in addition to other eligibility rules that may apply to be eligible as a:

(1) Livestock owner for the payment with respect to the death of an animal under this subpart, the applicant must have had legal ownership of the livestock on the day the livestock died and under conditions in which no contract grower could have been eligible for ELAP payment with respect to the animal. Eligible types of animal categories for which losses can be calculated for an owner are specified in § 760.204(d).

(2) Contract grower for ELAP payment with respect to the death of an animal, the animal must be in one of the categories specified in § 760.204(e), and the contract grower must have had:

(i) A written agreement with the owner of eligible livestock setting the specific terms, conditions, and obligations of the parties involved regarding the production of livestock;

(ii) Control of the eligible livestock on the day the livestock died; and

(iii) A risk of loss in the animal.

(d) To be considered an eligible honeybee producer, a participant must have an interest and risk in an eligible honeybee colony, as specified in § 760.204(g), for the purpose of producing honey or pollination for commercial use as part of a farming operation and must have had a loss that is determined to be eligible as specified in § 760.203(g) or (h).

(e) To be considered an eligible farm-raised fish producer for feed loss purposes, the participant must have produced eligible farm-raised fish, as specified in § 760.204(h)(1), with the intent to harvest for commercial use as part of a farming operation and must have had a loss that is determined to be eligible as specified in § 760.203(g);

(f) A producer seeking payments must not be ineligible under the restrictions applicable to foreign persons contained in § 760.103(b) and must meet all other requirements of subpart B and other applicable USDA regulations.

§ 760.206 Notice of loss and application process.

(a) To apply for ELAP, the participant that suffered eligible livestock, honeybee, or farm-raised fish losses must submit, to the FSA administrative county office that maintains the participant's farm records for the agricultural operation, the following:

(1) A notice of loss to FSA as specified in § 760.207(a),

(2) A completed application as specified in § 760.207(b) for one or both of the following:

(i) For livestock feed, grazing and death losses, the participant must submit a completed Emergency Loss Assistance for Livestock Application;

(ii) For honeybee feed, honeybee colony, honeybee hive, or farm-raised fish feed or death losses, the participant must submit a completed Emergency Loss Assistance for Farm-Raised Fish or Honeybees Application;

(3) A report of acreage;

(4) A copy of the participant's grower contract, if the participant is a contract grower; and

(5) Other supporting documents required for FSA to determine eligibility of the participant, livestock, and loss.

(b) For livestock, honeybee, or farm-raised fish feed losses, participant must provide verifiable documentation of:

(1) Purchased feed intended as feed for livestock, honeybees, or farm-raised fish that was lost, or additional feed purchased above normal quantities to sustain livestock, honeybees, and farm-raised fish for a short period of time until additional feed becomes available, due to an eligible adverse weather or eligible loss condition. To be considered acceptable documentation, the participant must provide original feed receipts and each feed receipt must include the date of feed purchase, name, address, and telephone number of feed vendor, type and quantity of feed purchased, cost of feed purchased, and signature of feed vendor if the vendor does not have a license to conduct this type of transaction.

(2) Harvested feed intended as feed for livestock, honeybees, or farm-raised fish that was lost due to an eligible adverse weather or eligible loss condition. Documentation may include, but is not limited to, weight tickets, truck scale tickets, contemporaneous diaries used to verify that the crop was stored with the intent to feed the crop to livestock, honeybees, or farm-raised fish, and custom harvest documents that clearly identify the amount of feed produced from the applicable acreage. Documentation must clearly identify the acreage from which the feed was produced.

(c) For eligible honeybee colony and honeybee hive losses and eligible farm-raised fish losses, the participant must also provide documentation of inventory on the beginning date of the eligible adverse weather or loss condition and the ending inventory. Documentation may include, but is not limited to, any combination of the following:

(1) A report of acreage,

(2) Loan records,

(3) Private insurance documents,

(4) Property tax records,

(5) Sales and purchase receipts,

(6) State colony registration documentation, and

(7) Chattel inspections.

(d) For the loss of honeybee colonies and honeybee hives due to colony collapse disorder, the participant must also provide documentation or certification that the loss of the honeybee colony or honeybee hive was due to colony collapse disorder from an appropriate third party, as determined by the Deputy Administrator, such as from a registered entomologist, Cooperative Extension specialist, or Land Grant University.

(e) For livestock death losses, the participant must provide evidence of loss, current physical location of livestock in inventory, and physical location of claimed livestock at the time of death. The participant must provide:

(1) Documentation listing the quantity and kind of livestock that died as a direct result of the eligible loss condition during the calendar year for which payment is being requested, which must include: Purchase records, veterinarian records, bank or other loan papers, rendering truck receipts, Federal Emergency Management Agency records, National Guard records, written contracts, production records, Internal Revenue Service records, property tax

records, private insurance documents, or other similar verifiable documents as determined by FSA.

(2) Adequate proof that the death of the eligible livestock occurred as a direct result of an eligible loss condition in the calendar year for which payment is requested.

(3) If adequate verifiable proof of death documentation is not available, the participant must provide reliable records, in conjunction with verifiable beginning and ending inventory records, as proof of death. Reliable records may include: Contemporaneous producer records, dairy herd improvement records, brand inspection records, vaccination records, pictures, and other similar reliable documents, as determined by FSA.

(4) Certification of livestock deaths by third parties will be acceptable for eligibility determination only if verifiable proof of death records or reliable proof of death records in conjunction with verifiable beginning and ending inventory records are not available and both of the following conditions are met:

(i) The livestock owner or livestock contract grower, as applicable, certifies in writing:

(A) That there is no other verifiable or reliable documentation of death available;

(B) The number of livestock, by category as determined by FSA, was in inventory at the time the applicable loss condition occurred;

(C) The physical location of the livestock, by category, in inventory when the deaths occurred; and

(D) Any other details required for FSA to determine the certification acceptable; and

(ii) The third party is an independent source who is not affiliated with the farming operation such as a hired hand and is not a ''family member,'' defined as a person to whom a member in the farming operation or their spouse is related as a lineal ancestor, lineal descendant, sibling, spouse, or otherwise by marriage, and provides their telephone number, address, and a written statement containing specific details about:

(A) Their knowledge of the livestock deaths;

(B) Their affiliation with the livestock owner;

(C) The accuracy of the deaths claimed by the livestock owner or contract grower including, but not limited to, the number and kind or type of the participant's livestock that died because of the eligible loss condition; and

(D) Any other information required for FSA to determine the certification acceptable.

(f) FSA will use the data furnished by the participant and the third party to determine eligibility for program payment. Furnishing the data is voluntary; however, without all required data program, payment will not be approved or provided.

§ 760.207 Notice of loss and application period.

(a) In addition to submitting an application for payment at the appropriate time, the participant that suffered eligible livestock, honeybee, or farm-raised fish losses that create or could create a claim for benefits must:

(1) For losses during calendar year 2008 and in calendar year 2009 prior to September 11, 2009, provide a notice of loss to FSA no later than December 10, 2009;

(2) For losses on or after September 11, 2009, the participant must provide a notice of loss to FSA within the earlier of:

(i) 30 calendar days of when the loss is apparent to the participant or

(ii) 30 calendar days after the end of the calendar year in which the loss occurred.

(3) The participant must submit the notice of loss required in paragraphs (a)(1) and (a)(2) of this section to the administrative FSA county office

(b) In addition to the notices of loss required in paragraph (a) of this section, a participant must also submit a completed application for payment no later than:

(1) 30 calendar days after the end of the calendar year in which the loss occurred or

(2) December 10, 2009 for losses that occurred during 2008.

§ 760.208 Availability of funds.

By law, ''up to'' $50 million per year for the years in question may be approved for use by the Secretary and accordingly, within that cap, the only funds that will be considered available to pay claims will be that amount approved by the Secretary. Nothing in these regulations will limit the ability of the Secretary to restrict the availability of funds for the program as permitted by the relevant legislation. Payments will not be made for claims arising out of a particular year until, for all claims for that year, the time for applying for a payment has passed. In the event that, within the limits of the funding made available by the Secretary within the statutory cap, approval of eligible applications would result in expenditures in excess of the amount available, FSA will prorate the available funds by a national factor to reduce the total expected payments to the amount made available by the Secretary. FSA will make payments based on the factor for the national rate determined by FSA. FSA will prorate the payments in such manner as it determines appropriate and reasonable. Claims that are unpaid or prorated for a calendar year for any reason will not be carried forward for payment under other funds for later years or otherwise, but will be considered, as to any unpaid amount, void and nonpayable.

§ 760.209 Livestock payment calculations.

(a) Payments for an eligible livestock producer will be calculated based on losses for no more than 90 days during the calendar year. Payment calculations for feed losses will be based on 60 percent of the producer's actual cost for:

(1) Livestock feed that was purchased forage or feedstuffs intended for use as feed for the participant's eligible livestock that was physically damaged or destroyed due to the direct result of an eligible adverse weather or eligible loss condition, as provided in § 760.203(d)(1);

(2) Livestock feed that was mechanically harvested forage or feedstuffs intended for use as feed for the participant's eligible livestock that was physically damaged or destroyed after harvest due to the direct result of an eligible adverse weather or eligible loss condition, as provided in § 760.203(d)(2);

(3) The additional cost incurred for providing or transporting livestock feed to eligible livestock due to an eligible adverse weather or eligible loss condition, as provided in § 760.203(d)(3); or

(4) The additional cost of purchasing additional livestock feed above normal, to maintain the eligible livestock during an eligible adverse weather or eligible loss condition until additional livestock feed becomes available, as provided in § 760.203(d)(4).

(b) Payments for an eligible livestock producer for grazing losses, except for losses due to wildfires on non-Federal land, will be calculated based on 60 percent of the lesser of:

(1) The total value of the feed cost for all covered livestock owned by the eligible livestock producer based on the number of days grazing was lost, not to exceed 90 days of daily feed cost for all covered livestock, or

(2) The total value of grazing lost for all eligible livestock based on the normal carrying capacity, as determined by the Secretary, of the eligible grazing land of the eligible livestock producer

for the number of grazing days lost, not to exceed 90 days of lost grazing.

(c) The total value of feed cost to be used in the calculation for paragraph (b)(1) of this section is based on the number of days grazing was lost and equals the product obtained by multiplying:

(1) A payment quantity equal to the feed grain equivalent, as determined in paragraph (d) of this section;

(2) A payment rate equal to the corn price per pound, as determined in paragraph (e) of this section;

(3) The number of all covered livestock owned by the eligible producer converted to an animal unit basis;

(4) The number of days grazing was lost, not to exceed 90 calendar days during the normal grazing period for the specific type of grazing land; and

(5) The producer's ownership share in the livestock.

(d) The feed grain equivalent to be used in the calculation for paragraph (c)(1) of this section equals, in the case of:

(1) An adult beef cow, 15.7 pounds of corn per day or

(2) Any other type or weight of livestock, an amount determined by the Secretary that represents the average number of pounds of corn per day necessary to feed that specific type of livestock.

(e) The corn price per pound to be used in the calculation for paragraph (c)(2) of this section equals the quotient obtained by dividing:

(1) The higher of:

(i) The national average corn price per bushel of corn for the 12-month period immediately preceding March 1 of the calendar year for which payments are calculated; or

(ii) The national average corn price per bushel of corn for the 24-month period immediately preceding March 1 of the calendar year for which payments are calculated; by

(2) 56.

(f) The total value of grazing lost to be used in the calculation for paragraph (b)(2) of this section equals the product obtained by multiplying:

(1) A payment quantity equal to the feed grain equivalent of 15.7 pounds of corn per day;

(2) A payment rate equal to the corn price per pound, as determined in paragraph (e) of this section;

(3) The number of animal units the eligible livestock producer's grazing land or pastureland can sustain during the normal grazing period in the county for the specific type of grazing land or pastureland, in the absence of an eligible adverse weather or eligible loss condition, determined by dividing the:

(i) Number of eligible grazing land or pastureland acres of the specific type of grazing land or pastureland by

(ii) The normal carrying capacity of the specific type of eligible grazing land or pastureland; and

(4) The number of days grazing was lost, not to exceed 90 calendar days during the normal grazing period for the specific type of grazing land.

(g) Payments for an eligible livestock producer for grazing losses due to a wildfire on non-Federal land will be calculated by multiplying:

(1) The result of dividing:

(i) The number of acres of grazing land or pastureland acres affected by the fire by

(ii) The normal carrying capacity of the specific type of eligible grazing land or pastureland; times

(2) The daily value of grazing as calculated by FSA under this section; times

(3) The number of days grazing was lost due to fire, not to exceed 180 calendar days; times

(4) 50 percent.

(h) Payments for an eligible livestock producer for eligible livestock death losses due to an eligible loss condition will be based on the following:

(1) Payments will be calculated by multiplying:

(i) The national payment rate for each livestock category times

(ii) The number of eligible livestock that died in each category as a result of an eligible loss condition in excess of normal mortality, as determined in paragraph (d)(2) of this section;

(2) Normal mortality for each livestock category as determined by FSA on a statewide basis using local data sources including, but not limited to, State livestock organizations and the Cooperative Extension Service for the State.

(3) National payment rates to be used in the calculation for paragraph (b)(1) of this section for eligible livestock owners and eligible livestock contract growers are:

(i) A national payment rate for eligible livestock owners that is based on 75 percent of the average fair market value of the applicable livestock as computed using nationwide prices for the previous calendar year unless some other price is approved by the Deputy Administrator.

(ii) A national payment rate for eligible livestock contract growers that is based on 75 percent of the relevant average income loss sustained by the contract grower, with respect to the dead livestock.

(i) Payments calculated in this section are subject to the adjustments and limits provided for in this part.

§ 760.210 Honeybee payment calculations.

(a) An eligible honeybee producer may receive payments for honeybee feed losses due to an eligible adverse weather or loss condition, as provided in § 760.203(g), based on 60 percent of the producer's actual cost for honeybee feed that was:

(1) Damaged or destroyed due to an eligible adverse weather or eligible loss condition and

(2) Intended as feed for an eligible honeybee colony, as provided in § 760.204(g);

(b) An eligible honeybee producer may receive payments for honeybee colony losses due to an eligible adverse weather or eligible loss condition, as provided in § 760.203(h), based on 60 percent of the producer's actual replacement cost for a honeybee colony that was damaged or destroyed due to an eligible adverse weather or eligible loss condition.

(c) An eligible honeybee producer may receive payments for honeybee hive losses due to an eligible adverse weather or eligible loss condition, as provided in § 760.203(h), based on 60 percent of the producer's actual replacement cost for a honeybee colony that was damaged or destroyed due to an eligible adverse weather or eligible loss condition.

(d) Payments calculated in this section are subject to the adjustments and limits provided for in this part.

§ 760.211 Farm-raised fish payment calculations.

(a) An eligible farm-raised fish producer may receive payments for fish feed losses due to an eligible adverse weather or eligible loss condition, as provided in § 760.203(g), based on 60 percent of the producer's actual replacement cost for the fish feed that was:

(1) Damaged or destroyed due to an eligible adverse weather or eligible loss condition and

(2) Intended as feed for the eligible farm-raised fish, as provided in § 760.204(h)(1).

(b) An eligible producer of farm-raised game or sport fish may receive payments for death losses of farm-raised fish due to an eligible adverse weather or eligible loss condition, as provided in § 760.203(i), based on 60 percent of the producer's actual replacement cost of the game or sport fish that died as a direct result of an eligible adverse weather or eligible loss condition.

(c) Payments calculated in this section or elsewhere with respect to ELAP are subject to the adjustments and limits provided for in this part and are also subject to the payment limitations and average adjusted gross income limitations that are contained in subpart B.

■ 5. Add subpart D to part 760 to read as follows:

Subpart D—Livestock Forage Disaster Program

Sec.

Subpart D—Livestock Forage Disaster Program

§ 760.301 Applicability.

(a) This subpart establishes the terms and conditions under which the Livestock Forage Disaster Program (LFP) will be administered.

(b) Eligible livestock producers will be compensated for eligible grazing losses for covered livestock that occur due to a qualifying drought or fire that occurs:

(1) On or after January 1, 2008, and before October 1, 2011, and

(2) In the calendar year for which benefits are being requested.

§ 760.302 Definitions.

The following definitions apply to this subpart and to the administration of LFP. The definitions in parts 718 and 1400 of this title also apply, except where they conflict with the definitions in this section.

Adult beef bull means a male beef breed bovine animal that was at least 2 years old and used for breeding purposes on or before the beginning date of a qualifying drought or fire.

Adult beef cow means a female beef breed bovine animal that had delivered one or more offspring. A first-time bred beef heifer is also considered an adult beef cow if it was pregnant on or before the beginning date of a qualifying drought or fire.

Adult buffalo and beefalo bull means a male animal of those breeds that was at least 2 years old and used for breeding purposes on or before the beginning date of a qualifying drought or fire.

Adult buffalo and beefalo cow means a female animal of those breeds that had delivered one or more offspring. A first-time bred buffalo or beefalo heifer is also considered an adult buffalo or beefalo cow if it was pregnant on or before the beginning date of a qualifying drought or fire.

Adult dairy bull means a male dairy breed bovine animal at least 2 years old used primarily for breeding dairy cows on or before the beginning date of a qualifying drought or fire.

Adult dairy cow means a female dairy breed bovine animal used for the purpose of providing milk for human consumption that had delivered one or more offspring. A first-time bred dairy heifer is also considered an adult dairy cow if it was pregnant on or before the beginning date of a qualifying drought or fire.

Agricultural operation means a farming operation.

Application means the ''Livestock Forage Disaster Program'' form.

Commercial use means used in the operation of a business activity engaged in as a means of livelihood for profit by the eligible livestock producer.

Contract means, with respect to contracts for the handling of livestock, a written agreement between a livestock owner and another individual or entity setting the specific terms, conditions, and obligations of the parties involved regarding the production of livestock or livestock products.

Covered livestock means livestock of an eligible livestock producer that, during the 60 days prior to the beginning date of a qualifying drought or fire, the eligible livestock producer owned, leased, purchased, entered into a contract to purchase, was a contract grower of, or sold or otherwise disposed of due to a qualifying drought during the current production year. It includes livestock that the producer otherwise disposed of due to drought in one or both of the two production years immediately preceding the current production year as determined by the Secretary. Notwithstanding the foregoing portions of this definition, covered livestock for ''contract growers'' will not include livestock in feedlots. ''Contract growers'' under LFP will only include producers of livestock not in feedlots whose income is dependent on the actual weight gain and survival of the livestock.

Equine animal means a domesticated horse, mule, or donkey.

Farming operation means a business enterprise engaged in producing agricultural products.

Federal Agency means, with respect to the control of grazing land, an agency of the Federal government that manages rangeland on which livestock is generally permitted to graze. For the purposes of this section, it includes, but is not limited to, the U.S. Department of the Interior (DOI) Bureau of Indian Affairs (BIA), DOI Bureau of Land Management (BLM), and USDA Forest Service (FS).

Goat means a domesticated, ruminant mammal of the genus *Capra,* including Angora goats.

Non-adult beef cattle means a beef breed bovine animal that weighed 500 pounds or more on or before the beginning date of a qualifying drought or fire but that does not meet the definition of adult beef cow or bull.

Non-adult buffalo or beefalo means an animal of those breeds that weighed 500 pounds or more on or before the beginning date of a qualifying drought or fire, but does not meet the definition of adult buffalo or beefalo cow or bull.

Non-adult dairy cattle means a bovine animal, of a breed used for the purpose of providing milk for human consumption, that weighed 500 pounds or more on or before the beginning date of a qualifying drought or fire, but that does not meet the definition of adult dairy cow or bull.

Normal carrying capacity means, with respect to each type of grazing land or pastureland in a county, the normal carrying capacity that would be expected from the grazing land or pastureland for livestock during the normal grazing period in the county, in the absence of a drought or fire that diminishes the production of the grazing land or pastureland.

Normal grazing period means, with respect to a county, the normal grazing period during the calendar year with respect to each specific type of grazing land or pastureland in the county served by the applicable county committee.

Owner means one who had legal ownership of the livestock for which benefits are being requested during the 60 days prior to the beginning of a qualifying drought or fire.

Poultry means a domesticated chicken, turkey, duck, or goose. Poultry are further delineated by sex, age, and purpose of production, as determined by FSA.

Sheep means a domesticated, ruminant mammal of the genus *Ovis.*

Swine means a domesticated omnivorous pig, hog, or boar. Swine are further delineated by sex and weight, as determined by FSA.

U.S. Drought Monitor is a system for classifying drought severity according to a range of abnormally dry to exceptional drought. It is a collaborative effort between Federal and academic partners, produced on a weekly basis, to synthesize multiple indices, outlooks, and drought impacts on a map and in narrative form. This synthesis of indices is reported by the National Drought Mitigation Center at *http://www.drought.unl.edu/dm/monitor.html.*

§ 760.303 Eligible livestock producer.

(a) To be considered an eligible livestock producer, the eligible producer on a farm must:

(1) During the 60 days prior to the beginning date of a qualifying drought or fire, own, cash or share lease, or be a contract grower of covered livestock or

(2) Provide pastureland or grazing land for covered livestock, including cash-leased pastureland or grazing land, that is:

(i) Physically located in a county affected by a qualifying drought during the normal grazing period for the county or

(ii) Rangeland managed by a Federal agency for which the otherwise eligible livestock producer is prohibited by the Federal agency from grazing the normal permitted livestock due to a qualifying fire.

(b) The eligible livestock producer must have certified that the livestock producer has suffered a grazing loss due to a qualifying drought or fire to be eligible for LFP payments.

(c) An eligible livestock producer does not include any owner, cash or share lessee, or contract grower of livestock that rents or leases pastureland or grazing land owned by another person on a rate-of-gain basis. (That is, where the lease or rental agreement calls for payment based in whole or in part on the amount of weight gained by the animals that use the pastureland or grazing land.)

(d) A producer seeking payment must not be ineligible for payments under the restrictions applicable to foreign persons contained in § 760.103(b) and must meet all other requirements of subpart B and other applicable USDA regulations.

(e) If a contract grower is an eligible livestock producer for covered livestock, the owner of that livestock is not eligible for payment.

§ 760.304 Covered livestock.

(a) To be considered covered livestock for LFP payments, livestock must meet all the following conditions:

(1) Be adult or non-adult beef cattle, adult or non-adult beefalo, adult or non-adult buffalo, adult or non-adult dairy cattle, alpacas, deer, elk, emus, equine, goats, llamas, poultry, reindeer, sheep, or swine;

(2) Be livestock that would normally have been grazing the eligible grazing land or pastureland on the beginning date:

(i) Of the qualifying drought during the normal grazing period for the specific type of grazing land or pastureland for the county or

(ii) When the Federal agency prohibited the eligible livestock producer from using the managed rangeland for grazing due to a fire;

(3) Be livestock that the eligible livestock producer:

(i) During the 60 days prior to the beginning date of a qualifying drought or fire:

(A) Owned,

(B) Leased,

(C) Purchased,

(D) Entered into a contract to purchase, or

(E) Was a contract grower of; or

(ii) Sold or otherwise disposed of due to qualifying drought during:

(A) The current production year or

(B) 1 or both of the 2 production years immediately preceding the current production year;

(4) Been maintained for commercial use as part of the producer's farming operation on the beginning date of the qualifying drought or fire;

(5) Not have been produced and maintained for reasons other than commercial use as part of a farming operation. Such excluded uses include, but are not limited to, any uses of wild free roaming animals or use of the animals for recreational purposes, such as pleasure, roping, hunting, pets, or for show; and

(6) Not have been livestock that were or would have been in a feedlot, on the beginning date of the qualifying drought or fire, as a part of the normal business operation of the eligible livestock producer, as determined by the Secretary.

(b) The covered livestock categories are:

(1) Adult beef cows or bulls,

(2) Adult buffalo or beefalo cows or bulls,

(3) Adult dairy cows or bulls,

(4) Alpacas,

(5) Deer,

(6) Elk,

(7) Emu,

(8) Equine,

(9) Goats,

(10) Llamas,

(11) Non-adult beef cattle,

(12) Non-adult buffalo or beefalo,

(13) Non-adult dairy cattle,

(14) Poultry,

(15) Reindeer,

(16) Sheep, and

(17) Swine.

(c) Livestock that are not covered include, but are not limited to:

(1) Livestock that were or would have been in a feedlot, on the beginning date of the qualifying drought or fire, as a part of the normal business operation of the eligible livestock producer, as determined by the Secretary;

(2) Yaks;

(3) Ostriches;

(4) All beef and dairy cattle, and buffalo and beefalo that weighed less than 500 pounds on the beginning date of the qualifying drought or fire;

(5) Any wild free roaming livestock, including horses and deer; and

(6) Livestock produced or maintained for reasons other than commercial use as part of a farming operation, including, but not limited to, livestock produced or maintained for recreational purposes, such as:

(i) Roping,

(ii) Hunting,

(iii) Show,

(iv) Pleasure,

(v) Use as pets, or

(vi) Consumption by owner.

§ 760.305 Eligible grazing losses.

(a) A grazing loss due to drought is eligible for LFP only if the grazing loss for the covered livestock occurs on land that:

(1) Is native or improved pastureland with permanent vegetative cover or

(2) Is planted to a crop planted specifically for the purpose of providing grazing for covered livestock; and

(3) Is grazing land or pastureland that is owned or leased by the eligible livestock producer that is physically located in a county that is, during the normal grazing period for the specific type of grazing land or pastureland for the county, rated by the U.S. Drought Monitor as having a:

(i) D2 (severe drought) intensity in any area of the county for at least 8 consecutive weeks during the normal grazing period for the specific type of grazing land or pastureland for the county, as determined by the Secretary, or

(ii) D3 (extreme drought) or D4 (exceptional drought) intensity in any area of the county at any time during the normal grazing period for the specific type of grazing land or pastureland for the county, as determined by the Secretary. (As specified elsewhere in this subpart, the amount of potential payment eligibility will be higher than under (a)(3)(i) of this section where the D4 trigger applies or where the D3 condition as determined by the Secretary lasts at least 4 weeks during the normal grazing period for the specific type of grazing land or pastureland for the county.)

(b) A grazing loss is not eligible for LFP if the grazing loss due to drought on land used for haying or grazing under the Conservation Reserve Program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831–3835a).

(c) A fire qualifies for LFP only if:

(1) The grazing loss occurs on rangeland that is managed by a Federal agency and

(2) The eligible livestock producer is prohibited by the Federal agency from grazing the normal permitted livestock on the managed rangeland due to a fire.

(d) An eligible livestock producer may be eligible for LFP payments only on those grazing lands incurring losses for which the livestock producer:

(1) Meets the risk management purchase requirements specified in § 760.104; or

(2) Does not meet the risk management purchase requirements specified in § 760.104 because the risk management purchase requirement is waived according to §§ 760.105, 760.106, or 760.107.

§ 760.306 Application for payment.

(a) To apply for LFP, the participant that suffered eligible grazing losses:

(1) During 2008, must submit a completed application for payment and required supporting documentation to the administrative FSA county office no later than December 10, 2009 or

(2) During 2009 and later years, must submit a completed application for payment and required supporting documentation to the administrative FSA county office no later than 30 calendar days after the end of the calendar year in which the grazing loss occurred.

(b) A participant must also provide a copy of the grower contract, if a contract grower, and other supporting documents required for determining eligibility as an applicant at the time the participant submits the completed application for payment. Supporting documents must include:

(1) Evidence of loss,

(2) Current physical location of livestock in inventory,

(3) Evidence of meeting risk management purchase requirements as specified in subpart B,

(4) Evidence that grazing land or pastureland is owned or leased,

(5) A report of acreage according to part 718 of this chapter for the grazing lands incurring losses for which assistance is being requested under this subpart;

(6) Adequate proof, as determined by FSA that the grazing loss:

(i) Was for the covered livestock;

(ii) If the loss of grazing occurred as the result of a fire that the:

(A) Loss was due to a fire and

(B) Participant was prohibited by the Federal agency from grazing the normal permitted livestock on the managed rangeland due to a fire;

(iii) Occurred on or after January 1, 2008, and before October 1, 2011; and

(iv) Occurred in the calendar year for which payments are being requested;

(7) Adequate proof, absent an appropriate waiver (if there is a waiver, it itself must be documented by the producer), as determined by FSA, that the participant had obtained, for the grazing land incurring the losses for which assistance is being requested, one or both of the following:

(i) A policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501–1524); or

(ii) Filed the required paperwork, and paid the administrative fee by the applicable State filing deadline, for the noninsured crop disaster assistance program;

(8) Any other supporting documentation as determined by FSA to be necessary to make a determination of eligibility of the participant. Supporting documents include, but are not limited to: Verifiable purchase and sales records; grower contracts; veterinarian records; bank or other loan papers; rendering truck receipts; Federal Emergency Management Records; National Guard records; written contracts; production records; private insurance documents; sales records; and similar documents determined acceptable to FSA.

(c) Data furnished by the participant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without all required data, program benefits will not be approved or provided.

§ 760.307 Payment calculation.

(a) An eligible livestock producer will be eligible to receive payments for grazing losses for qualifying drought as specified in § 760.305(a) equal to one, two, or three times the monthly payment rate specified in paragraphs (e) or (f) of this section. Total LFP payments to an eligible livestock producer in a calendar year for grazing losses due to qualifying drought will not exceed three monthly payments for the same livestock. Payments calculated in this section or elsewhere with respect to LFP are subject to the adjustments and limits provided for in this part and are also subject to the payment limitations and average adjusted gross income provisions that are contained in subpart B. Payment may only be made to the extent that eligibility is specifically provided for in this subpart. Hence, with respect to drought, payments will be made only as a ''one month'' payment, a ''two month'' payment, or a ''three month'' payment based on the provisions of paragraphs (b), (c), and (d) of this section.

(b) To be eligible to receive a one month payment, that is a payment equal to the monthly feed cost as determined under paragraph (g) of this section, the eligible livestock producer must own or lease grazing land or pastureland that is physically located in a county that is rated by the U.S. Drought Monitor as having at least a D2 severe drought (intensity) in any area of the county for at least 8 consecutive weeks during the normal grazing period for the specific type of grazing land or pastureland in the county.

(c) To be eligible to receive a two month payment, that is a payment equal to twice the monthly feed cost as determined under paragraph (g) of this section, the eligible livestock producer must own or lease grazing land or pastureland that is physically located in a county that is rated by the U.S. Drought Monitor as having at least a D3 (extreme drought) intensity in any area of the county at any time during the normal grazing period for the specific type of grazing land or pastureland for the county.

(d) To be eligible to receive a three month payment, that is a payment equal to three times the monthly feed cost as determined under paragraph (g) of this section, the eligible livestock producer must own or lease grazing land or pastureland that is physically located in a county that is rated by the U.S. Drought Monitor as having at least a D3 (extreme drought) intensity in any area of the county for at least 4 weeks during the normal grazing period for the specific type of grazing land or pastureland for the county, or is rated as having a D4 (exceptional drought) intensity in any area of the county at any time during the normal grazing period for the specific type of grazing land or pastureland for the county.

(e) The monthly payment rate for LFP for grazing losses due to a qualifying drought, except as provided in paragraph (f) of this section, will be equal to 60 percent of the lesser of:

(1) The monthly feed cost for all covered livestock owned or leased by the eligible livestock producer, as determined in paragraph (g) of this section or

(2) The monthly feed cost calculated by using the normal carrying capacity of the eligible grazing land of the eligible livestock producer, as determined in paragraph (j) of this section.

(f) In the case of an eligible livestock producer that sold or otherwise disposed of covered livestock due to a qualifying drought in 1 or both of the 2 production years immediately preceding the current production year, the payment rate is 80 percent of the monthly payment rate calculated in paragraph (e) of this section.

(g) The monthly feed cost for covered livestock equals the product obtained by multiplying:

(1) 30 days;

(2) A payment quantity equal to the amount referred to in paragraph (h) of this section as the ''feed grain equivalent'', as determined under paragraph (h) of this section; and

(3) A payment rate equal to the corn price per pound, as determined in paragraph (i) of this section.

(h) The feed grain equivalent equals, in the case of:

(1) An adult beef cow, 15.7 pounds of corn per day or

(2) In the case of any other type or weight of covered livestock, an amount determined by the Secretary that represents the average number of pounds of corn per day necessary to feed that specific type of livestock.

(i) The corn price per pound equals the quotient obtained by dividing:

(1) The higher of:

(i) The national average corn price per bushel for the 12-month period immediately preceding March 1 of the calendar year for which LFP payment is calculated or

(ii) The national average corn price per bushel for the 24-month period immediately preceding March 1 of the calendar year for which LFP payment is calculated

(2) By 56.

(j) The monthly feed cost using the normal carrying capacity of the eligible grazing land equals the product obtained by multiplying:

(1) 30 days;

(2) A payment quantity equal to the feed grain equivalent of 15.7 pounds of corn per day;

(3) A payment rate equal to the corn price per pound, as determined in paragraph (i) of this section; and

(4) The number of animal units the eligible livestock producer's grazing land or pastureland can sustain during the normal grazing period in the county for the specific type of grazing land or pastureland, in the absence of a drought or fire, determined by dividing the:

(i) Number of eligible grazing land or pastureland acres of the specific type of grazing land or pastureland by

(ii) The normal carrying capacity of the specific type of eligible grazing land or pastureland as determined under this subpart.

(k) An eligible livestock producer will be eligible to receive payments for grazing losses due to a fire as specified in § 760.305(c):

(1) For the period, subject to paragraph (l)(2) of this section:

(i) Beginning on the date on which the Federal Agency prohibits the eligible livestock producer from using the managed rangeland for grazing and

(ii) Ending on the earlier of the last day of the Federal lease of the eligible livestock producer or the day that would make the period a 180 day period and

(2) For grazing losses that occur on not more than 180 days per calendar year.

(3) For 50 percent of the monthly feed cost, as determined under § 760.308(g), pro-rated to a daily rate, for the total number of livestock covered by the Federal lease of the eligible livestock producer.

Signed in Washington, DC, September 4, 2009.

Jonathan W. Coppess,

Administrator, Farm Service Agency.

[FR Doc. E9–21906 Filed 9–9–09; 11:15 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0352; FRL–8430–4]

Saflufenacil; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of saflufenacil and its metabolites and degradates in or on various plant and livestock commodities. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 11, 2009. Objections and requests for hearings must be received on or before November 10, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0352. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Kathryn Montague, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–1243; e-mail address: *montague.kathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance