

Farm Service Agency, USDA

§ 760.201

(b) Any participant entitled to any payment may assign any payment(s) in accordance with regulations governing the assignment of payments in part 1404 of this title.

§ 760.112 Records and inspections.

(a) Any participant receiving payments under any program in ELAP, LFP, LIP, SURE, or TAP, or any other legal entity or person who provides information for the purposes of enabling a participant to receive a payment under ELAP, LFP, LIP, SURE, or TAP, must:

(1) Maintain any books, records, and accounts supporting the information for 3 years following the end of the year during which the request for payment was submitted, and

(2) Allow authorized representatives of USDA and the Government Accountability Office, during regular business hours, to inspect, examine, and make copies of such books or records, and to enter the farm and to inspect and verify all applicable livestock and acreage in which the participant has an interest for the purpose of confirming the accuracy of information provided by or for the participant.

(b) [Reserved]

§ 760.113 Refunds; joint and several liability.

(a) In the event that the participant fails to comply with any term, requirement, or condition for payment or assistance arising under ELAP, LFP, LIP, SURE, or TAP and if any refund of a payment to FSA will otherwise become due in connection with this part, the participant must refund to FSA all payments made in regard to such matter, together with interest and late-payment charges as provided for in part 792 of this chapter provided that interest will in all cases run from the date of the original disbursement.

(b) All persons with a financial interest in an operation or in an application for payment will be jointly and severally liable for any refund, including related charges, that is determined to be due FSA for any reason under this part.

§ 760.114 Minors.

A minor child is eligible to apply for program benefits under ELAP, LFP, LIP, SURE, or TAP if all the eligibility requirements are met and the provision for minor children in part 1400 of this title are met.

§ 760.115 Deceased individuals or dissolved entities.

(a) Payments may be made for eligible losses suffered by an eligible participant who is now a deceased individual or is a dissolved entity if a representative, who currently has authority to enter into a contract, on behalf of the participant, signs the application for payment.

(b) Legal documents showing proof of authority to sign for the deceased individual or dissolved entity must be provided.

(c) If a participant is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

§ 760.116 Miscellaneous.

(a) As a condition to receive benefits under ELAP, LFP, LIP, SURE, or TAP, a participant must have been in compliance with the provisions of parts 12 and 718 of this title, and must not otherwise be precluded from receiving benefits under those provisions or under any law.

(b) Rules of the Commodity Credit Corporation that are cited in this part will be applied to this subpart in the same manner as if the programs covered in this subpart were programs funded by the Commodity Credit Corporation.

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

SOURCE: 74 FR 46673, Sept. 11, 2009, unless otherwise noted.

§ 760.201 Applicability.

(a) This subpart establishes the terms and conditions under which the

§ 760.202

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 pri-

7 CFR Ch. VII (1-1-16 Edition)

marily 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 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.

§ 760.203

7 CFR Ch. VII (1–1–16 Edition)

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) Due to an eligible adverse weather event or loss condition that occurred 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 acceptable documentation to support that the loss was due to colony collapse disorder. Except for 2008 and 2009 honeybee losses, acceptable documentation must include an acceptable colony collapse disorder certification by an independent third party as determined by the Deputy Administrator, plus any other documentation requested by FSA. For 2008 and 2009 honeybee losses such an independent certification is not required in all cases, but rather a self-certification by the honeybee producer as determined acceptable by the Deputy Administrator may be allowed in addition to whatever other documentation might be requested.

(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.

[74 FR 46673, Sept. 11, 2009, as amended at 75 FR 19188, Apr. 14, 2010; 76 FR 54075, Aug. 31, 2010]

§ 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,

§ 760.204

7 CFR Ch. VII (1-1-16 Edition)

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 nor-

mal 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, poult; 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:
 - (i) On or after the beginning date of the eligible loss condition; and
 - (ii) On or after January 1, 2008, and no later than 60 calendar days from the ending date of the eligible loss condition, but before November 30, 2011; and
 - (iii) As a direct result of an eligible loss condition that occurs 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

§ 760.205

7 CFR Ch. VII (1–16 Edition)

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.

[74 FR 46673, Sept. 11, 2009, as amended at 76 FR 54075, Aug. 31, 2011]

§ 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 due to colony collapse disorder, the participant must also provide acceptable documentation or certification that the loss of the honeybee colony was due to colony collapse disorder. Except for 2008 and 2009 honeybee colony losses, acceptable documentation must include an independent third party certification determined acceptable by the Deputy Administrator, plus such additional information and documentation as may be requested. For

§ 760.207

7 CFR Ch. VII (1–1–16 Edition)

2008 and 2009 honeybee colony losses a self-certification may be accepted by FSA together with any additional information demanded by FSA as determined appropriate by the Deputy Administrator.

(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.

[74 FR 46673, Sept. 11, 2009, as amended at 75 FR 19188, Apr. 14, 2010]

§ 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;

Farm Service Agency, USDA

§ 760.209

(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 other-

wise, 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

Farm Service Agency, USDA

§ 760.301

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 average fair market value for the number of honeybee colonies that were damaged or destroyed due to an eligible adverse weather or eligible loss condition, as computed using nationwide prices unless some other price data is approved for use by the Deputy Administrator, for losses in excess of normal honeybee mortality, as determined by the Deputy Administrator.

(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 average fair market value for the number of honeybee hives that were damaged or destroyed due to an eligible adverse weather or eligible loss

condition, as computed using nationwide prices unless some other price data is approved for use by the Deputy Administrator.

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

[74 FR 46673, Sept. 11, 2009, as amended at 75 FR 19188, Apr. 14, 2010]

§ 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 average fair market value of the game fish or sport fish that died as a direct result of an eligible adverse weather or eligible loss condition, as computed using nationwide prices unless some other price data is approved for use by the Deputy Administrator.

(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.

[74 FR 46673, Sept. 11, 2009, as amended at 75 FR 19189, Apr. 14, 2010]

Subpart D—Livestock Forage Disaster Program

SOURCE: 74 FR 46680, Sept. 11, 2009, unless otherwise noted.

§ 760.301 Applicability.

(a) This subpart establishes the terms and conditions under which the