

Farm Service Agency, USDA

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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

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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.

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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.

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§ 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 in the county:

(i) 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.

[74 FR 46680, Sept. 11, 2009, as amended at 75 FR 19189, Apr. 14, 2010]

§ 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

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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

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(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 (1)(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.

Subpart E—Livestock Indemnity Program

SOURCE: 74 FR 31575, July 2, 2009, unless otherwise noted.

§ 760.401 Applicability.

(a) This subpart establishes the terms and conditions under which the Livestock Indemnity Program (LIP) will be administered under Titles XII and XV of the 2008 Farm Bill (Pub. L. 110-246).

(b) Eligible livestock owners and contract growers will be compensated in accordance with § 760.406 for eligible