

For: State and County Offices

**2008 and 2009 Late-Filed Provisions and Additional Policy and Procedure for
the Emergency Assistance for Livestock, Honey Bees, and Farm-Raised Fish Program (ELAP)**

Approved by: Deputy Administrator, Farm Programs



1 Overview

A Background

On November 2, 2009, 1-LDAP was amended to provide policy and procedure for implementing ELAP. Further, ELAP policy and procedure development and clarification has occurred. In addition, a technical correction to 7 CFR Part 760 is in the clearance process. As a result, some aspects of ELAP policy and procedure cannot be finalized until the technical correction to the regulation is published in the FR.

In an effort to expedite the delivery of 2008 and 2009 ELAP payments to eligible livestock, honey bees, and farm-raised fish producers soon after the technical correction is published in the FR, this notice is being issued to State and County Offices to clarify and provide additional ELAP policy and procedure.

Policy and procedure in this notice will be included in a forthcoming 1-LDAP amendment.

B Purpose

This notice provides State and County Offices with policy and procedure with respect to the following:

- late-filed provisions for 2008 and 2009 ELAP
- risk management purchase requirements (RMPR's) for 2008 and 2009
- submitting requests for eligible adverse weather or loss conditions
- eligible livestock death losses
- eligible honey bee producers
- establishing average market prices for farm-raised bait and game fish.

Disposal Date	Distribution
January 1, 2011	State Offices; State Offices relay to County Offices

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2 2008 and 2009 Late-Filed Provisions

A FSA-918 and FSA-930 Late-Filed Provisions

The ELAP signup deadline ended December 10, 2009, for 2008 losses and February 1, 2010, for 2009 losses. However, because of changes in eligibility provisions provided in this notice, late-filed notices of loss and applications for payments (FSA-918's and FSA-930's) for 2008 and 2009 calendar year losses shall be accepted no later than 14 calendar days after the date that the technical correction to 7 CFR Part 760 is published in the FR.

B Accepting 2008 and 2009 Late-Filed FSA-578's

For 2008 and 2009 ELAP, late-filed FSA-578's will be accepted without requiring the producer to pay a late-filed fee. All other requirements for late-filed FSA-578's must be met according to 2-CP.

Evidence of existence or disposition of the crop **must** be provided. FSA-578's will be accepted when the user provides acceptable evidence of existence or disposition of the crop according to Exhibit 1.

Late-filed FSA-578's cannot be used to satisfy eligibility requirements for other programs unless all 2-CP late-filed provisions are met.

3 RMPR

A Overview

Generally, for producers to be eligible for assistance under ELAP for eligible losses of livestock, honey bees, or farm-raised fish, producers must meet RMPR as described in 1-LDAP, subparagraph 242 J. There are some exceptions to this requirement as detailed in this paragraph.

B Farm-Raised Fish Producers

NAP coverage or a policy or plan of insurance administered by RMA was **not** available for farm-raised fish for 2008 or 2009. Therefore, to be eligible for 2008 or 2009 farm-raised fish losses under ELAP, a producer who does **not** have any other crop planted or intended to be planted for harvest on the whole farm, excluding grazing, does **not** have to:

- meet RMPR
- pay a buy-in fee equal to the applicable NAP service fee or catastrophic risk protection plan fee.

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3 RMPR (Continued)

C Honey Bee Producers

Honey bee producers, who have a risk in honey production for the purpose of producing honey for commercial use as part of a farming operation, must meet RMPR.

A pasture, rangeland, and forage pilot policy:

- is available for honey producers in certain areas of the country
- covers all aspects of honey production, including the loss of hives or colonies
- will allow the producer to meet RMPR; however, it is **not** required for all producers because it is a pilot.

NAP coverage is **not** available for loss of honey bee colonies or hives. Therefore, a honey bee producer meeting **all** of the following criteria does **not** have to meet RMPR to be eligible for 2008 and 2009 honey bee losses under ELAP:

- does **not** have any other crop planted or intended to be planted for harvest on the whole farm, excluding grazing
- has a risk in a honey bee pollination or breeding operation
- does **not** produce honey for commercial use.

In addition, honey bee producers meeting this criteria do **not** have to pay a buy-in fee equal to the applicable NAP service fee or catastrophic risk protection plan fee to become eligible for ELAP payments.

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3 RMPR (Continued)

D 2008 and 2009 Equitable Relief for Livestock and Honey Bee Producers

1-LDAP, subparagraph 242 N provides equitable relief provisions for eligible livestock producers who:

- suffered losses on grazing land during the 2008 calendar year
- failed to meet RMPR.

In addition to eligible livestock producers who suffered grazing losses in 2008, equitable relief may be granted on a case-by-case basis to the following producers who failed to meet RMPR:

- eligible livestock producers who suffered eligible:
 - grazing losses in calendar year 2009
 - livestock death or feed losses in calendar year 2008 or 2009
- eligible honey bee producers who:
 - have a risk in honey production for the purpose of producing honey for commercial use
 - suffered calendar year 2008 or 2009 honey bee losses.

E Equitable Relief for 2008

Equitable relief cases for eligible ELAP producers who failed to meet RMPR for 2008 and requested relief after May 18, 2009, shall be submitted to DAFP for review.

State and County Offices shall follow 7-CP for submitting equitable relief cases to DAFP.

Note: FSA-321's are not required.

F Equitable Relief for 2009

STC has authority to act on equitable relief cases for eligible ELAP producers who failed to meet RMPR for 2009. State and County Offices shall follow guidelines in Notice DAP-317 when determining relief for eligible producers who did **not** meet RMPR for 2009.

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4 Eligible Adverse Weather or Loss Conditions

A Requests for Eligibility of Additional Adverse Weather or Loss Conditions

1-LDAP, subparagraphs 242 E, F, and H list the eligible adverse weather or eligible loss conditions for livestock grazing, honey bees, and farm-raised fish. See subparagraph B for eligible loss conditions for livestock death losses.

In the event that livestock, honey bees, or farm-raised fish producers suffer severe losses because of adverse weather or loss conditions **not** listed in 1-LDAP, STC may request that DAFP determine the adverse weather or loss condition as eligible for livestock, honeybees, or farm-raised fish losses under ELAP.

Requests to determine adverse weather or loss conditions eligible under ELAP may be submitted to Amy Mitchell, Special Programs Manager, by either of the following:

- e-mail at amy.mitchell1@wdc.usda.gov
- FAX at 202-690-2130.

Requests to DAFP must include, at a minimum, the following with respect to the adverse weather or loss condition:

- location (National, State, or county level)
- start and end dates
- explanation of how the adverse weather or loss condition affects the loss of livestock, honey bees, or farm-raised fish
- extent of known losses affected by the adverse weather or loss condition.

B Wolf Depredation

Wolf depredation has been determined to be an eligible loss condition under ELAP for livestock death losses occurring on or after January 1, 2008, and before October 1, 2011.

To date, wolf depredation is the only loss condition approved on a National level as an eligible loss condition for livestock death losses under ELAP.

5 Livestock Deaths

A Eligible Livestock Losses

1-LDAP, subparagraph 242 C provides that the physical loss of livestock because of an eligible adverse loss condition **not** covered under LIP is considered an eligible livestock loss under ELAP. However, to be an eligible livestock loss under ELAP, the death must be:

- because of the direct result of an eligible adverse loss condition
- **in excess of normal mortality.**

B Proof of Death

Participants must provide verifiable documentation of livestock deaths, including livestock that the participant claims died because of normal mortality. Adequate documentation must be provided that proves the death of eligible livestock occurred as a direct result of an eligible loss condition in the calendar year for which benefits are being requested, including deaths because of normal mortality. Types of acceptable verifiable evidence of livestock death losses under ELAP are the same documents required under LIP and may be found in 1-LDAP, subparagraph 73 E.

If adequate verifiable proof of death documentation is **not** available, including proof of death for normal mortality, the participant may provide reliable records, along with verifiable beginning and ending inventory records, as proof of death. 1-LDAP, subparagraphs 73 F and H provide types of reliable records and proof and reasonableness of livestock inventory under LIP. These subparagraphs will also apply to livestock death losses under ELAP.

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6 Honey Bees

A Eligible Producer

1-LDAP, paragraph 261 provides that an eligible honey bee producer is a producer who has a risk in the honey production or pollination farming operation for the purpose of producing honey or pollination for commercial use as part of a farming operation on the beginning of the eligible adverse weather or eligible loss condition.

In addition to producers who have a risk in the honey production or pollination, a honey bee producer who has a risk in a honey bee breeding operation for the purpose of breeding honey bees for commercial use as part of a farming operation on the beginning date of the eligible adverse weather or eligible loss condition is also considered an eligible honey bee producer under ELAP.

B Colony Collapse Disorder (CCD)

Notice LDAP-17 provides that for 2010 and 2011 calendar year honey bee colony losses, third party certification that the loss of honey bees was because of the existence of at least 3 of the 5 symptoms of CCD may be possible documentation that the producer is required to provide to prove the loss of honey bees because of CCD.

The National Office is in the process of developing a form, similar to FSA-926 used for LIP, to document third party certification of CCD for 2010 and 2011 losses.

7 Farm-Raised Fish

A Physical Losses

1-LDAP, subparagraph 271 E provides that ELAP will compensate for the physical losses of game fish and bait fish. Because of the technical correction to 7 CFR Part 760, it is anticipated that an eligible producer of farm-raised game and bait fish may be compensated for death losses because of an eligible adverse weather or eligible loss condition, based on 60 percent of the average fair market value for the applicable type of bait and/or game fish.

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7 Farm-Raised Fish (Continued)

B Establishing Average Fair Market Prices

In anticipation of publishing the technical correction in the FR, State Offices shall begin establishing average fair market prices for the different types of bait and/or game fish farmed in the State.

STC's shall use the best available information when establishing average fair market prices. Source of information may include, but are not limited to, the following:

- NASS
- National Institute of Food and Agriculture, formerly known as CSREES
- Rural Development
- County Agricultural Commissioner's Office
- local markets
- COC's knowledge
- prices in similar areas
- other reliable sources, such as universities, AMS Market News, and buyers.

8 Action

A State Office Action

State Offices shall ensure that County Offices are immediately informed of the contents of this notice.

B County Office Action

COC or CED must begin acting on all completed and signed FSA-918's submitted for livestock losses, according to 1-LDAP, subparagraph 297 A.

Important: Because of the technical correction to 7 CFR Part 760, COC or CED should not act on completed and signed FSA-930's submitted for honey bee or farm-raised fish losses until the technical correction is published in the FR.

Acceptable Evidence of Existence or Disposition of Crops

The following provides examples of acceptable evidence of existence or disposition of crops.

IF the evidence is to prove...	THEN COC may accept nonphysical evidence, such as...
existence of the crop	<ul style="list-style-type: none"> • seed receipts showing the amount, variety, and date purchased • receipts for cleaning, treating, etc., for the seed planted • documentation obtained and certified by another Government agency indicating the acreage, location, and crop year • written contract or documentation of an oral contract to produce a specific crop • aerial imagery, if a positive determination can be made of the crop's identity and boundaries.
disposition of the crop	<ul style="list-style-type: none"> • receipts, ledger sheets, diary, log book, or similar producer records showing the number and units sold • written contract or documentation of an oral contract to produce a specific crop • records showing the crop was fed to livestock • positive documentation of payment for custom harvesting indicating acreage, location, and crop year • if unharvested, a producer statement that includes final use, date of destruction, method of destruction, and any supporting farm records.