

**Farm Service Agency, USDA**

**§ 760.401**

(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

livestock deaths in excess of normal mortality that occurred in the calendar year for which benefits are being requested as a direct result of an eligible adverse weather event. An “eligible adverse weather event” is one, as determined by the Secretary, occurring in the program year that could and did, even when normal preventative or corrective measures were taken and good farming practices were followed, directly result in the death of livestock. Because feed can be purchased or otherwise obtained in the event of a drought, drought is not an eligible adverse weather event except when anthrax, resulting from drought, causes the death of eligible livestock.

#### § 760.402 Definitions.

The following definitions apply to this subpart. 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 before it died.

*Adult beef cow* means a female beef breed bovine animal that had delivered one or more offspring before dying. A first-time bred beef heifer is also considered an adult beef cow if it was pregnant at the time it died.

*Adult buffalo and beefalo bull* means a male animal of those breeds that was at least 2 years old and used for breeding purposes before it died.

*Adult buffalo and beefalo cow* means a female animal of those breeds that had delivered one or more offspring before dying. A first-time bred buffalo or beefalo heifer is also considered an adult buffalo or beefalo cow if it was pregnant at the time it died.

*Adult dairy bull* means a male dairy breed bovine animal at least 2 years old used primarily for breeding dairy cows before it died.

*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 before dying. A first-time bred dairy heifer is also considered an adult dairy cow if it was pregnant at the time it died.

*Adverse weather* means damaging weather events, including, but not limited to, hurricanes, floods, blizzards, disease, wildfires, extreme heat, and extreme cold.

*Agricultural operation* means a farming operation.

*Application* means the “Livestock Indemnity Program” form.

*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.

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

*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.

*FSA* means the Farm Service Agency.

*Goat* means a domesticated, ruminant mammal of the genus *Capra*, including Angora goats. Goats are further defined 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* means one having legal ownership of the livestock for which benefits are being requested on the day such livestock died.

*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.

*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.

*Non-adult dairy cattle* means a dairy breed bovine animal, of a breed 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.

*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 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 by sex and weight as determined by FSA.

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

#### **§ 760.403 Eligible owners and contract growers.**

(a) In addition to other eligibility rules that may apply, to be eligible as a:

(1) Livestock owner for benefits with respect to the death of an animal under this subpart, the applicant must have had legal ownership of the eligible livestock on the day the livestock died and under conditions in which no contract

grower could have been eligible for benefits with respect to the animal. Eligible types of animal categories for which losses can be calculated for an owner are specified in § 760.404(a).

(2) Contract grower for benefits with respect to the death of an animal, the animal must be in one of the categories specified on § 760.404(b), 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.

(b) A producer seeking payment 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.

#### **§ 760.404 Eligible livestock.**

(a) To be considered eligible livestock for livestock owners, the kind of livestock must be alpacas, adult or non-adult dairy cattle, beef cattle, buffalo, beefalo, elk, emus, equine, llamas, sheep, goats, swine, poultry, deer, or reindeer and meet all the conditions in paragraph (c) of this section.

(b) To be considered eligible livestock for contract growers, the kind of livestock must be poultry or swine as defined in § 760.402 and meet all the conditions in paragraph (c) of this section.

(c) To be considered eligible livestock for the purpose of generating payments under this subpart, livestock must meet all of the following conditions:

(1) Died as a direct result of an eligible adverse weather event that occurred on or after January 1, 2008, and before October 1, 2011;

(2) Died no later than 60 calendar days from the ending date of the applicable adverse weather event, but before November 30, 2011;

(3) Died in the calendar year for which benefits are being requested;

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

(5) Before dying, not have been produced or maintained for reasons other

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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.

(d) The following categories of animals owned by a livestock owner are eligible livestock and calculations of eligibility for payments will be calculated separately for each producer with respect to each category:

- (1) Adult beef bulls;
- (2) Adult beef cows;
- (3) Adult buffalo or beefalo bulls;
- (4) Adult buffalo or beefalo cows;
- (5) Adult dairy bulls;
- (6) Adult dairy cows;
- (7) Alpacas;
- (8) Chickens, broilers, pullets;
- (9) Chickens, chicks;
- (10) Chickens, layers, roasters;
- (11) Deer;
- (12) Ducks;
- (13) Ducks, ducklings;
- (14) Elk;
- (15) Emus;
- (16) Equine;
- (17) Geese, goose;
- (18) Geese, gosling;
- (19) Goats, bucks;
- (20) Goats, nannies;
- (21) Goats, kids;
- (22) Llamas;
- (23) Non-adult beef cattle;
- (24) Non-adult buffalo or beefalo;
- (25) Non-adult dairy cattle;
- (26) Reindeer;
- (27) Sheep, ewes;
- (28) Sheep, lambs;
- (29) Sheep, rams;
- (30) Swine, feeder pigs under 50 pounds;
- (31) Swine, sows, boars, barrows, gilts 50 to 150 pounds;
- (32) Swine, sows, boars, barrows, gilts over 150 pounds;
- (33) Turkeys, poult; and
- (34) Turkeys, toms, fryers, and roasters.

(e) The following categories of animals are eligible livestock for contract growers and calculations of eligibility for payments will be calculated separately for each producer with respect to each category:

- (1) Chickens, broilers, pullets;
- (2) Chickens, layers, roasters;

- (3) Geese, goose;
  - (4) Swine, boars, sows;
  - (5) Swine, feeder pigs;
  - (6) Swine, lightweight barrows, gilts;
  - (7) Swine, sows, boars, barrows, gilts;
- and
- (8) Turkeys, toms, fryers, and roasters.

[74 FR 31575, July 2, 2009, as amended at 76 FR 54075, Aug. 31, 2011]

**§ 760.405 Application process.**

(a) In addition to submitting an application for payment at the appropriate time, a producer or contract grower that suffered livestock losses that create or could create a claim for benefits must:

(1) For losses during 2008 and losses in 2009, prior to July 13, 2009, provide a notice of loss to FSA no later than September 13, 2009.

(2) For losses on or after July 13, 2009, provide a notice of loss to FSA within the earlier of:

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

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

(3) The participant must submit the notice of loss required in paragraphs (a)(1) and (a)(2) to the FSA administrative county office that maintains the participant's farm records for the agricultural operation.

(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 of livestock occurred or

(2) September 13, 2009 for losses during 2008.

(c) Applicants must submit supporting documentation with their application. For contract growers, the information must include a copy of the grower contract and other documents establishing their status. In addition, for all applicants, including contract growers, supporting documents must show:

- (1) Evidence of loss,
- (2) Current physical location of livestock in inventory,

(3) Physical location of claimed livestock at the time of death, and

(4) Inventory numbers and other inventory information necessary to establish actual mortality as required by FSA.

(d) The participant must provide adequate proof that the death of the eligible livestock occurred as a direct result of an eligible adverse weather event in the calendar year for which benefits are requested. The quantity and kind of livestock that died as a direct result of the eligible adverse weather event during the calendar year for which benefits are being requested may be documented by: purchase records; veterinarian records; bank or other loan papers; rendering-plant truck receipts; Federal Emergency Management Agency records; National Guard records; written contracts; production records; Internal Revenue Service records; property tax records; private insurance documents; and other similar verifiable documents as determined by FSA.

(e) If adequate verifiable proof of death documentation is not available, the participant may 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.

(f) Certification of livestock deaths by third parties may be accepted 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:

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

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

(ii) The number of livestock, by category identified in this subpart and by FSA were in inventory at the time the applicable adverse weather event occurred;

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

(iv) Other details required for FSA to determine the certification acceptable; and

(2) 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 whom a member in the farming operation or their spouse is related as lineal ancestor, lineal descendant, sibling, spouse, and provides their telephone number, address, and a written statement containing specific details about:

(i) Their knowledge of the livestock deaths;

(ii) Their affiliation with the livestock owner;

(iii) 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 adverse weather event; and

(iv) Other information required by FSA to determine the certification acceptable.

(g) Data furnished by the participant and the third party 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.

#### § 760.406 Payment calculation.

(a) Under this subpart, separate payment rates for eligible livestock owners and eligible livestock contract growers are specified in paragraphs (b) and (c) of this section, respectively. Payments for LIP are calculated by multiplying the national payment rate for each livestock category by the number of eligible livestock in excess of normal mortality in each category that died as a result of an eligible adverse weather event. Normal mortality for each livestock category will be determined by FSA on a State-by-State basis using local data sources including, but not limited to, State livestock

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organizations and the Cooperative Extension Service for the State. Adjustments will be applied as specified in paragraph (d) of this section.

(b) The LIP national payment rate for eligible livestock owners 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.

(c) The LIP national payment rate for eligible livestock contract growers is based on 75 percent of the average income loss sustained by the contract grower with respect to the dead livestock.

(d) The LIP payment calculated for eligible livestock contract growers will be reduced by the amount the participant received from the party who contracted with the producer to raise the livestock for the loss of income from the dead livestock.

### Subpart F—Tree Assistance Program

SOURCE: 75 FR 25108, May 7, 2010, unless otherwise noted.

#### § 760.500 Applicability.

(a) This subpart establishes the terms and conditions under which the Tree Assistance Program (TAP) will be administered under Titles XII and XV of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246, the 2008 Farm Bill).

(b) Eligible orchardists and nursery tree growers will be compensated as specified in § 760.506 for eligible tree, bush, and vine losses in excess of 15 percent mortality, or, where applicable, 15 percent damage, adjusted for normal mortality and normal damage, that occurred in the calendar year for which benefits are being requested and as a direct result of a natural disaster.

#### § 760.501 Administration.

The program will be administered as specified in § 760.102 and in this subpart.

#### § 760.502 Definitions.

The following definitions apply to this subpart. The definitions in parts

718 and 1400 of this title also apply, except where they conflict with the definitions in this section.

*Bush* means, a low, branching, woody plant, from which at maturity of the bush, an annual fruit or vegetable crop is produced for commercial purposes, such as a blueberry bush. The definition does not cover plants that produce a bush after the normal crop is harvested such as asparagus.

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

*County committee* means the respective FSA committee.

*County office* means the FSA or U.S. Department of Agriculture (USDA) Service Center that is responsible for servicing the farm on which the trees, bushes, or vines are located.

*Cutting* means a piece of a vine which was planted in the ground to propagate a new vine for the commercial production of fruit, such as grapes, kiwi fruit, passion fruit, or similar fruit.

*Deputy Administrator* or DAFP means the Deputy Administrator for Farm Programs, FSA, USDA, or the designee.

*Eligible nursery tree grower* means a person or legal entity that produces nursery, ornamental, fruit, nut, or Christmas trees for commercial sale.

*Eligible orchardist* means a person or legal entity that produces annual crops from trees, bushes, or vines for commercial purposes.

*FSA* means the Farm Service Agency.

*Lost* means, with respect to the extent of damage to a tree or other plant, that the plant is destroyed or the damage is such that it would, as determined by FSA, be more cost effective to replace the tree or other plant than to leave it in its deteriorated, low-producing state.

*Natural disaster* means plant disease, insect infestation, drought, fire, freeze, flood, earthquake, lightning, or other natural occurrence of such magnitude or severity so as to be considered disastrous, as determined by the Deputy Administrator.

*Normal damage* means the percentage, as established for the area by the FSA State Committee, of trees, bushes, or vines in the individual stand that