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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 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.

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(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;

(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.