

## 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

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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