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Commodity Credit Corporation

7 CFR Parts 1400 and 1416

Supplemental Agricultural Disaster Assistance Programs, Payment  
Limitations, and Payment Eligibility; Final Rule

**DEPARTMENT OF AGRICULTURE****Commodity Credit Corporation****7 CFR Parts 1400 and 1416**

RIN 0560-AI21

**Supplemental Agricultural Disaster Assistance Programs, Payment Limitations, and Payment Eligibility**

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

**SUMMARY:** This rule implements specific requirements for the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP), Livestock Forage Disaster Program (LFP), Livestock Indemnity Program (LIP), Tree Assistance Program (TAP), and general provisions for Supplemental Agricultural Disaster Assistance Programs authorized by the Agricultural Act of 2014 (2014 Farm Bill). Although there were similar disaster programs under the 2008 Farm Bill, the authority for those programs has expired. The 2014 Farm Bill reauthorizes these programs and they are similar to the 2008 programs, however, there are distinct changes in payment limits, eligible losses, and eligible causes of loss from prior programs. Eligible ELAP, LFP, LIP, and TAP losses must have occurred on or after October 1, 2011 to be eligible for payment. This rule specifies how ELAP, LFP, LIP, and TAP payments are calculated, what losses are eligible, and when producers may apply for payments. Additionally, this final rule implements changes required by the 2014 Farm Bill by amending the regulations that specify maximum income limits (payment eligibility) and maximum benefit amounts (payment limits) for participants in programs funded by the Commodity Credit Corporation (CCC) and some FSA programs. The intended effect of the eligibility requirements is to ensure that program payments and benefits are issued only to those persons and legal entities that meet the income eligibility requirements as specified in the 2014 Farm Bill, and that program participants do not receive any program payments above the maximum allowable payment amount. The payment limits and average Adjusted Gross Income (AGI) limits in this final rule apply to 2014 and subsequent crop, program, or fiscal year benefits, and to benefits for programs that were authorized by the 2014 Farm Bill for retroactive 2012 or 2013 crop, program, or fiscal year benefits.

DATES: *Effective Date:* April 14, 2014.

**FOR FURTHER INFORMATION CONTACT:** For general provisions for Supplemental Agricultural Disaster Assistance Programs, LFP, and LIP: Scotty Abbott; telephone (202) 720-7997. For ELAP: Amy Mitchell; telephone (202) 720-8954. For TAP: Steve Peterson; telephone: (202) 720-7641. For Payment Limits and Payment Eligibility: James Baxa; telephone: (202) 720-4189.

**SUPPLEMENTARY INFORMATION:****Background***Disaster Assistance Programs, Payment Limits, and Payment Eligibility*

The disaster assistance programs, payment limits, and payment eligibility provisions in this rule are CCC programs and provisions; the Farm Service Agency (FSA) administers the programs and provisions for CCC.

**Supplemental Agricultural Disaster Assistance Programs**

This final rule implements the general eligibility provisions and specific requirements for supplemental agricultural disaster assistance programs authorized by Section 1501 of the 2014 Farm Bill (Pub. L. 113-79). Section 1501 authorizes the Secretary of Agriculture to assist producers through four different disaster programs:

- ELAP,
- LFP,
- LIP (referred to as Livestock Indemnity Payments in the 2014 Farm Bill), and
- TAP.

ELAP provides emergency assistance to eligible producers of livestock, honeybees, and farm-raised fish that have losses due to adverse weather, or other conditions, including losses due to blizzards, disease (including cattle tick fever), water shortages, and wildfires, as determined by the Secretary. ELAP assistance is for losses not covered under LFP or LIP.

LFP provides payments to eligible livestock producers that have suffered livestock grazing losses due to qualifying drought or fire. For drought, the losses must have occurred due to a qualifying drought during the normal grazing period for the county on land that is native or improved pastureland with permanent vegetative cover or is planted to a crop planted specifically for grazing covered livestock. LFP also provides payments to eligible livestock producers that have suffered grazing losses on rangeland managed by a Federal agency if the eligible livestock producer is prohibited by the Federal agency from grazing the normally

permitted livestock on the managed rangeland due to a qualifying fire.

LIP provides disaster assistance to livestock owners and contract growers that had losses due to livestock deaths in excess of normal mortality due to adverse weather during the calendar year, the 2014 Farm Bill includes hurricanes, floods, blizzards, disease, wildfires, extreme heat, and extreme cold as “weather.” To use the terms in the normal sense, in this rule, we will refer to “weather or other conditions” and these will include the same list as the 2014 Farm Bill includes as “weather.” LIP also provides assistance to livestock owners and contract growers that had losses due to livestock deaths in excess of normal mortality due to attacks by animals reintroduced into the wild by the Federal Government or protected by Federal law, including wolves and avian predators.

TAP provides disaster assistance to eligible orchardists and nursery tree growers to replant or rehabilitate trees, bushes, and vines that were lost due to natural disaster. Orchardists and nursery tree growers who commercially raise trees, bushes, and vines for which there were mortality losses in excess of 15 percent, after adjustment for normal mortality, are eligible for TAP payments.

With the authorization provided in the 2014 Farm Bill, these disaster assistance programs are permanent or “standing” programs; that is, they are continuing programs not subject to annual appropriations. ELAP, LFP, LIP, and TAP were previously authorized under the 2008 Farm Bill (the Food, Conservation, and Energy Act of 2008, Pub. L. 110-246), however, these programs expired. The 2014 Farm Bill authorizes ELAP, LFP, LIP, and TAP disaster programs and while they are similar to those programs authorized by the 2008 Farm Bill, the newly authorized programs have minor changes from those previously authorized programs. In addition, the 2014 Farm Bill authorizes retroactive payments under these programs for losses in FY 2012 and 2013. The 2014 Farm Bill did not reauthorize the Supplemental Revenue Assistance Payments Program (SURE), which was previously authorized by the 2008 Farm Bill and has expired.

Under the 2008 Farm Bill, payments for ELAP, LFP, LIP, and TAP were made from the funds of the Agricultural Disaster Relief Trust Fund established under section 902 of the Trade Act of 1974. Under the 2014 Farm Bill, payments will be made from CCC funds. Due to this change in funding source, this rule moves the regulations for the

four disaster assistance programs out of 7 CFR chapter VII, which covers FSA programs, and into 7 CFR chapter XIV, which covers CCC programs. The main scope of these programs is, however, unchanged, and that is why the regulations that were located 7 CFR chapter VII for the disaster programs previously authorized by the 2008 Farm Bill are being used as the basis for the regulations located in 7 CFR chapter XIV, subject to changes made by the 2014 Farm Bill.

#### **Terms Used in This Rule**

The terms used in the existing CFR for these programs have not changed. This final rule uses the words “producers” and “participants” in substantive ways. “Producers” may apply for ELAP, LFP, LIP, and TAP. “Participants” are those “producers” who apply for payments under the programs and who must meet the requirements to be eligible to receive ELAP, LFP, LIP, and TAP payments.

Section 1501 of the 2014 Farm Bill uses the words “assistance,” “benefits,” “compensation,” “relief,” and “payments.” The payment for the ELAP, LFP, LIP, and TAP assistance, benefit, relief, or compensation for eligible producers is calculated as specified in this rule.

For LFP, section 1501 of the 2014 Farm Bill and this rule include the terms “eligible livestock producer,” “covered livestock,” and “qualifying drought or fire.” This rule also uses the terms “qualifying grazing loss” and “qualifying grazing land.” For TAP, section 1501 of the 2014 Farm Bill and this rule include the terms “eligible orchardist” and “nursery tree grower.” These terms have not changed.

#### **General Eligibility Requirements for Disaster Assistance Programs**

As specified in the 2014 Farm Bill and in this rule, the total amount of payments that a person or legal entity can receive, directly or indirectly, in any crop year cannot exceed \$125,000 for LIP, LFP, and ELAP; TAP has a separate payment limit of \$125,000 per person or legal entity for any crop year. Under the 2008 Farm Bill, payments under LIP, LFP, ELAP, and SURE were limited to \$100,000 total per person or legal entity per year and TAP benefits were limited to \$100,000 per person or legal entity per year.

The 2014 Farm Bill and this rule specify that a person or legal entity is ineligible for payments if the person’s or legal entity’s average AGI for the applicable benefit year is in excess of \$900,000. This single AGI limit replaces the multiple limits for farm and non-farm income, and the separate limit for

conservation programs, that were required by the 2008 Farm Bill. Therefore this rule removes the references to farm versus non farm income, and the separate limit for conservation programs, from the CFR. Under the 2008 Farm Bill, the average AGI limit for payment eligibility was \$500,000 in non-farm income and \$750,000 in farm income, with a separate limit of \$1 million in nonfarm income for conservation program eligibility.

This rule revises 7 CFR part 1400 to implement the payment limit and AGI regulations specified in the 2014 Farm Bill. (More details on the payment limit and AGI limit changes that apply generally to all CCC-funded programs are provided later in this document.)

#### **Previous Risk Management Purchase Requirement**

The 2014 Farm Bill removes the risk management purchase requirement for all the disaster assistance programs. The 2008 Farm Bill required that producers obtain a Risk Management Agency (RMA) policy or plan of insurance or Noninsured Crop Disaster Assistance Program (NAP) coverage for all crops on the producer’s farm for which the producer had an interest as a condition of payment eligibility for ELAP, LFP, and TAP. For losses occurring on or after October 1, 2011, participants are not required to have an RMA policy or plan of insurance or NAP coverage for any of their crops to be eligible for benefits under ELAP, LFP, LIP, or TAP.

#### **Other General Provisions That Apply to Disaster Assistance Programs**

This rule moves the existing regulations for the general provisions for disaster programs authorized by the 2008 Farm Bill in 7 CFR part 760, subpart B, to 7 CFR part 1416, subpart A, and amends those regulations as required by the 2014 Farm Bill. This rule changes some of the documentation requirements needed to support losses. These discretionary changes recognize the difficulty that producers may face and the need for flexibility regarding documentation, while at the same time recognizing FSA’s need to ensure that participants meet all eligibility requirements specified in the 2014 Farm Bill. For losses on or after October 1, 2011, this rule clarifies that, because FSA must monitor both payment limitation and AGI compliance, as well as specific program eligibility requirements, participants must provide or have on file a farm operating plan for the applicable year to be eligible for payments under ELAP, LFP, LIP, or TAP.

This rule does not change the requirement that participants receiving ELAP, LFP, LIP, and TAP payments must keep records and documentation that support the request for payment under these programs for 3 years following the end of the year in which the application for payment was filed. That recordkeeping requirement is consistent with other FSA rules and programs, as well as with previous similar disaster assistance programs. This final rule changes the requirements for documentation of losses under ELAP, LFP, and LIP, which are discussed in more detail in this document under the supplementary information for each of those programs. For example, for ELAP, if verifiable or reliable records are not available or provided, FSA may now accept producer’s certification of eligible losses if similar producers have comparable eligible losses, as determined by FSA.

As specified in this rule in 7 CFR part 1416 subpart A, other restrictions and compliance requirements that applied under the 2008 Farm Bill will continue to apply to ELAP, LFP, LIP, and TAP under the 2014 Farm Bill including, but not limited to, those pertaining to highly erodible land and wetland conservation provisions specified in 7 CFR part 12. These are not new requirements.

All producers applying for benefits under ELAP, LFP, LIP, and TAP must meet the eligibility requirements provided in this rule; false certifications can carry serious consequences (for example, a reduction or denial of benefits). FSA will validate applications with random spot-checks.

#### **Specific Provisions for ELAP**

This rule moves the existing regulations for ELAP in 7 CFR part 760, subpart C, to 7 CFR part 1416, subpart B, and amends those regulations as required by the 2014 Farm Bill.

Section 1501 of the 2014 Farm Bill directs the Secretary to use up to \$20 million per fiscal year from CCC funds to provide emergency relief to eligible producers of livestock, honeybees, and farm-raised fish. The 2008 Farm Bill provided \$50 million per year for ELAP. ELAP is intended to provide financial assistance to eligible producers to assist in the reduction of losses due to disease (including cattle tick fever), adverse weather, such as blizzards, or other conditions, such as wildfires as determined by the Secretary. The 2014 Farm Bill added cattle tick fever eligibility. ELAP covers losses that are not covered under LFP or LIP. Determination of ELAP payment eligibility will be based on actual losses as determined by the Deputy

Administrator for Farm Programs (Deputy Administrator) due to eligible adverse weather or other eligible loss conditions.

Funding for ELAP is authorized by fiscal year; therefore, the program year is based on the fiscal year. This is a change from the previous ELAP program year, which was based on a calendar year.

Payments will be made after the sign-up deadline for a program year once all applications have been received. Benefits are subject to the availability of funds and may be prorated if the total amount of benefits applied for exceeds \$20 million for a program year. If the total amount requested by all eligible producers for that program year would result in less than \$20 million paid based on the applicable minimum payment rate for each category of losses, as specified in these regulations, then the payment rate may also be increased to a maximum of 80 percent of costs, as determined by the Deputy Administrator. Since ELAP was initially authorized by the 2008 Farm Bill, ELAP claims have never exceeded the annual funding limit.

#### Eligibility Requirements for ELAP

Under this rule, ELAP will continue to provide assistance for losses due to disease, adverse weather, or other conditions, such as blizzards and wildfires as determined by the Secretary. In general, adverse weather includes, but is not limited to, hurricanes, floods, blizzards, wildfires, extreme heat, and extreme cold. This rule clarifies that “eligible adverse weather” means a damaging weather event that is not expected to occur during the loss period which results in losses. In general, adverse weather or other qualifying conditions, as determined by the Deputy Administrator, are conditions that cause damage that result in a financial loss to the producer or require the producer to incur additional expenses. ELAP is intended to provide broad coverage for losses not covered by other programs. As under the previous ELAP provisions, additional eligible adverse weather and other qualifying loss conditions will be specified, as needed, by the Deputy Administrator.

Under the previous ELAP provisions, only bait and game fish were considered eligible farm-raised fish for death losses. However, this rule provides the Deputy Administrator discretion to include other aquatic species as eligible for death losses.

Under this rule, ELAP continues to provide assistance for livestock grazing, feed, and death losses; honeybee feed,

colony, and hive losses; and fish feed and death losses. For livestock feed losses, this rule clarifies that to be eligible for ELAP, the cost incurred for providing or transporting livestock feed to eligible livestock due to an eligible adverse weather or eligible loss condition must occur in combination with an eligible loss of purchased forage or feedstuffs, of mechanically harvested forage or feedstuffs, or from the additional cost of purchasing additional livestock feed, above normal quantities, required to maintain the eligible livestock during an eligible adverse weather or eligible loss condition, until additional livestock feed becomes available.

The 2014 Farm Bill requires that ELAP funds “be used to reduce losses covered by feed or water shortages . . .” Therefore, beginning with the 2014 program year, the costs of providing and transporting water due to an eligible drought will also be covered under ELAP. Although in the past some producers who have incurred expenses for transporting water have received compensation from the Emergency Conservation Program (ECP), this discretionary change to cover these costs under ELAP will allow FSA to provide more effective and timely assistance for producers suffering eligible losses for the additional costs of transporting water. Participants may not receive funds from both ELAP and ECP for the same costs. Only the additional costs associated with transporting the water are eligible for payment; the cost of the water itself is not covered under ELAP. The producer must have had adequate livestock watering systems or facilities prior to the eligible adverse weather or loss condition and normally not need to transport water to the grazing land. In addition, the livestock must be on eligible grazing lands physically located in the county where the eligible adverse weather or eligible loss condition occurred.

While losses due to disease were already covered under the previous ELAP regulations, the 2014 Farm Bill specifically adds cattle tick fever as a covered disease. As a result, ELAP will cover losses due to the cost of gathering cattle for treatment of cattle tick fever occurring on or after October 1, 2011.

#### Applying for ELAP Payment

As under the previous ELAP regulations, a producer must file both a notice for loss and an application for payment to obtain ELAP benefits. For losses in program years 2012 and 2013, producers must file a notice of loss for each program year no later than August 1, 2014. For losses that occur in program

year 2014, producers must file a notice of loss no later than November 1, 2014. For losses that occur in program year 2015 and subsequently, the participant must provide a notice of loss within the earlier of 30 calendar days of when the loss occurred or November 1 following the program year for which benefits are being requested. The program year, as noted earlier, is now the fiscal year. This means, for example, the deadline for the 2015 program year would be November 1, 2015.

For the 2012 and 2013 program years, producers must file an application for payment for each program year no later than August 1, 2014. For 2014 and subsequent program years, producers must file an application for payment no later than November 1 of the year following the program year for which benefits are being requested. The application for payment may be filed at the same time as the notice of loss, but does not have to be filed at the same time.

As under the previous ELAP provisions for grazing losses, a participant with grazing losses that occur during the 2012, 2013, or 2014 program years must certify to the number of days that grazing was lost due to an eligible adverse weather or loss condition. However, a participant with grazing losses that occur in 2015 and subsequent program years must also provide acceptable verifiable or reliable records that additional feed was fed to sustain livestock during an eligible adverse weather or eligible loss condition, or the livestock were removed from the eligible grazing land where the grazing loss occurred. If verifiable or reliable records of additional feed or livestock removal are not available or provided, FSA may accept the producer’s certification of grazing losses if similar producers have comparable grazing losses, as determined by FSA; for 2012, 2013 and 2014 program years, in addition to the producer certification, the producer must provide the normally required documentation for proof of eligibility, which includes, at a minimum, a farm operating plan, proof of the adverse weather event, an AD-1026, and an acreage report. If the producer certifies grazing losses without providing verifiable or reliable records of having moved the livestock or fed the livestock additional feed, then the County committee will review and act on the certification. The provision to accept a producer certification if verifiable or reliable records are not available is new. A similar provision previously applied to documentation losses for eligible livestock feed, honeybee colony,

honeybee hive, honeybee feed, farm-raised fish feed and farm-raised fish death losses. As under the previous ELAP regulation, participants with eligible livestock death losses must provide proof of death and livestock inventory, as required under the LIP.

#### ELAP Payment Calculations

This rule increases the payment rate for honeybee colony and hive losses, fish deaths, and livestock deaths. The payment rate is a discretionary provision that is not specified in the 2014 Farm Bill. Under the provisions implementing the 2008 Farm Bill, ELAP payments were calculated using a payment rate of 60 percent. Under this rule, the payment rate may vary, and will be a minimum of 60 percent for livestock, fish, and honeybee feed losses, and 75 percent for honeybee colony and hive losses, fish deaths, and livestock deaths. The payment rate may be increased, as determined by the Deputy Administrator, to provide additional assistance to producers if total requests for payments in a program year are less than \$20 million, however, the cap for the payment rate will be 80 percent (maximum). The payment rate will be adjusted as needed based on the total requests for payments and other factors. In some years, the payment rate may be decreased and in other years, the payment rate may be increased. For socially disadvantaged, limited resource, and beginning farmers, the payment rate will be 90 percent for all losses under ELAP, independent of funding constraints; this is a discretionary change, which allows CCC to provide additional assistance to producers when funding is available. If approval of all eligible applications in a program year would result in expenditures in excess of the amount available for that program year, FSA will prorate the available funds by a national factor to reduce the total expected payments to the amount available for the program year. As noted earlier, the funding level cap under the 2014 Farm Bill is \$20 million per program (fiscal) year. Since ELAP was initially authorized by the 2008 Farm Bill, ELAP payments have never exceeded the annual funding limit.

This rule does not change the payment calculation for other types of losses previously covered under ELAP. For livestock feed losses, ELAP payments will continue to be based on producers' actual costs. This rule also does not change the calculation for payments due to grazing losses, but it does increase the maximum number of days for which payment may be received from 90 days to 150 days in the

case of grazing losses not caused by wildfires on non-Federal land and for livestock feed losses. This change is not required by the Farm Bill; it is a discretionary change to make grazing loss benefits consistent between ELAP and LFP.

For costs associated with transporting water, ELAP payments will be based on the lesser of the total value of the cost to transport water for 150 days based on the daily water requirements of the eligible livestock, or on the total value of the cost to transport the water to eligible livestock for the program year based on the actual number of gallons transported by the producer in the program year. To determine the daily water requirements of eligible livestock, the number of eligible livestock will be converted to an animal unit basis and multiplied by the gallons of water required per animal unit for maintenance for one day, as determined by the Deputy Administrator. Both calculations will determine the value using the national average price per gallon to transport water adjusted, if appropriate, for local or regional conditions rather than the actual costs paid by a producer. The national average price per gallon will be determined by the Deputy Administrator. The default rate, as specified in this rule, is \$0.04 (4 cents) per gallon.

ELAP payments for losses due to the costs of gathering cattle for treatment due to cattle tick fever will be calculated based upon the actual number of livestock that receive treatment times the average cost per head to gather the cattle, as determined by the Deputy Administrator, subject to the payment rate. The number of animals and treatments reported by a producer will be subject to verification based on treatment records provided to FSA by the Animal and Plant Health Inspection Service (APHIS).

This rule changes the payment calculation for eligible farm-raised fish death losses to take into account normal mortality of fish during the program year, based on a normal mortality rate established by FSA. Fish death losses due to normal mortality are not eligible for fish death loss benefits.

While some payment rates have been adjusted, this rule does not change how payments are calculated for payments due to livestock deaths, honeybee colonies, and honeybee hives.

#### Specific Provisions for LFP

This rule moves the existing regulations for LFP in 7 CFR part 760, subpart D, to 7 CFR part 1416, subpart C. The 2014 Farm Bill has not changed

the basic scope of LFP. Section 1501(c)(2) of the 2014 Farm Bill directs the Secretary to use such sums as are necessary from CCC to compensate eligible livestock producers for eligible grazing losses on eligible grazing land for covered livestock due to a qualifying drought during the normal grazing period for the county, or grazing losses on rangeland managed by a Federal agency if the eligible livestock producer is prohibited by the Federal agency from grazing the normal permitted livestock on the managed rangeland due to a qualifying fire, as determined by the Secretary, during the calendar year. The qualifying drought or fire must occur on or after October 1, 2011. The payment formulas for LFP in the 2014 Farm Bill will, in some cases, provide larger payments than under the 2008 Farm Bill for producers in areas of drought for multiple weeks.

#### Eligibility Requirements

LFP payments and eligibilities will be calculated based on the type of covered livestock and grazing losses, and the calculations will be made by FSA-approved categories. This rule does not change the regulation that specifies covered livestock or eligible producers. As under the previous LFP regulation, reduced payments are available for producers who sold or otherwise disposed of covered livestock due to qualifying drought in 1 or both of the 2 production years immediately preceding the current production year. Where the livestock is in the possession of a contract grower at the time of loss, only the contract grower will be eligible for payment. "Contract growers" under ELAP and LFP only includes producers whose income is dependent on the actual weight gain and survival of the livestock. Livestock that were or would have been in a feedlot are not eligible for LFP. The actual "owner" of the livestock will not be eligible. This is not a change from the existing regulations.

Livestock used for recreational use, such as animals used for roping or pets, are not covered. Animals that were or would have been in a feedlot on the beginning date of the drought or fire are not covered. Yaks and ostriches are not covered. Cattle (including buffalo and beefalo) under 500 pounds on the beginning date of the qualifying drought or fire are not covered. These provisions are not new, and have not changed.

Qualifying drought ratings are specified in this rule using the U.S. Drought Monitor (<http://droughtmonitor.unl.edu>) ratings of drought intensity. For any eligible areas of the United States (including territories and possessions) without U.S.

Drought Monitor coverage for an applicable program year, the Deputy Administrator, in consultation with appropriate weather-related agencies and experts, will establish procedures for rating drought intensity using the same basic categories as the U.S. Drought Monitor such that coverage will be made available. As under the 2008 Farm Bill, drought intensity is specified as one of the eligibility “triggers” for LFP; however, the 2014 Farm Bill changes the payment amount an eligible producer may receive based on the length and intensity of the qualifying drought as follows:

- For an amount equal to 1 monthly payment, the drought length and intensity must be at least a D2 (severe drought) intensity in any area of the county for 8 consecutive weeks during the normal grazing period for the specific type of grazing land or pastureland for the county.

- For an amount equal to 3 monthly payments, the drought length and intensity must be 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 an amount equal to 4 monthly payments, the drought length and intensity must be:

- At least D3 (extreme drought) intensity in any area of the county for at least four weeks during the normal grazing period for the specific type of grazing land or pastureland for the county, or

- D4 (exceptional drought) intensity in any area of the county at any time during the normal grazing period for the specific grazing land or pastureland for the county.

- For an amount equal to 5 monthly payments, the drought length and intensity must be at least D4 (exceptional drought) in any area of the county for at least 4 weeks (not required to be consecutive weeks) during the normal grazing period for the county.

Under the 2008 Farm Bill, LFP provided a maximum of 3 monthly payments. These new provisions for up to 5 monthly payments are as specified in the 2014 Farm Bill and FSA has no discretion to determine otherwise. Total LFP payments to an eligible livestock producer in a calendar year for eligible grazing losses due to a qualifying drought will not exceed an amount equal to 5 monthly payments for the same livestock.

This rule clarifies that for grazing losses on land planted to a crop specifically for the purpose of providing grazing for covered livestock to be eligible for payment, grazing must be

reported as the intended use on the producer’s acreage report. If the land is reported as another intended use but later grazed, losses due to drought on that land will not be covered by LFP. The rule also clarifies that crops planted specifically for the purpose of providing grazing for covered livestock include forage sorghum or small grains may be covered, but corn stalks or grain sorghum stalks will not be covered. This rule also adds the provision that grazing losses that occur on irrigated land are not covered under LFP unless the irrigated land has not been irrigated in the year for which benefits are being requested due to lack of water that is beyond the participant’s control.

A livestock producer may receive LFP payments for a qualifying fire if the grazing loss occurs on rangeland managed by a Federal agency and the eligible livestock producer is prohibited from grazing the normal permitted livestock on the rangeland due to fire. Under this rule, LFP will continue to cover up to 180 days of grazing losses due to fire.

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 is not considered an eligible livestock producer.

As under the previous LFP provisions, grazing losses that are not related to qualifying drought or fire, as determined by the Secretary, are not eligible for LFP, but may be eligible for ELAP, which covers other adverse weather conditions. An eligible livestock producer may not receive LFP payments for grazing losses due to drought that occur on land used for haying or grazing under the Conservation Reserve Program (CRP).

#### Applying for LFP Payment

For losses occurring on or after October 1, 2011, and on or before December 31, 2014, the producer must provide a completed application for payment and supporting documentation to the administrative FSA county office by January 30, 2015.

For the 2015 calendar year and subsequent years, the producer must provide a completed application for payment and required supporting documentation to the administrative FSA county office (physical location county) within 30 calendar days after the end of the calendar year in which the grazing loss occurred.

#### LFP Payment Calculation

Producers are eligible for up to 5 monthly payments for grazing losses due to a qualifying drought, depending

on the intensity and duration of the drought, as described earlier. This rule does not change the basic payment calculations for LFP, although it does provide payments for more months, under certain scenarios, than under the 2008 Farm Bill. Each monthly payment for eligible grazing losses under LFP due to drought may not exceed 60 percent of the lesser of:

- The monthly feed cost for all covered livestock owned or leased by the eligible livestock producer as calculated in § 1416.207(h) or

- The monthly feed cost calculated using the normal carrying capacity of the eligible grazing land of the eligible livestock producer as determined in § 1416.207(l).

In the case of livestock that were sold or otherwise disposed of due to 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 rate just described.

Under this rule, producers will continue to be eligible for payments for grazing losses due to qualifying fire for up to 180 days per calendar year of such losses. Payments for eligible grazing losses due to qualifying fire under LFP may not exceed 50 percent of the monthly feed cost, determined as specified in § 1416.207(h), for the total number of livestock covered by the Federal lease of the eligible livestock producer for grazing losses that occur for not more than 180 days per calendar year. Payment for fire losses is calculated on a daily basis.

#### Specific Provisions for LIP

This rule moves the existing regulations for LIP in 7 CFR part 760, subpart E, to 7 CFR part 1416, subpart D. The 2014 Farm Bill authorizes the LIP, with little changes from the previous LIP under the 2008 Farm Bill. The only substantive change required by the 2014 Farm Bill is the addition of eligible losses due to Federally re-introduced predators or species protected by Federal law, including avian predators and wolves. This rule also makes discretionary changes to the documentation requirements, particularly for losses in 2012 and 2013, and for calf and lamb open range livestock operation losses.

Unchanged from the 2008 Farm Bill, the 2014 Farm Bill provisions require LIP payments to be made at a rate of 75 percent of the market value of the livestock on the day before the date of the death of the livestock. Payments are to be made to eligible producers on farms that have incurred livestock death

losses for the calendar year in excess of the normal mortality.

The eligible livestock death losses must have occurred on or after October 1, 2011, during the calendar year for which benefits are requested. Eligible losses must be due to adverse weather or other conditions, as determined by the Secretary, including hurricanes, floods, blizzards, disease exacerbated by adverse weather, wildfires, extreme heat, and extreme cold, or due to attacks by animals reintroduced into the wild by the Federal Government or protected by Federal law, including wolves and avian predators. The provisions described in this paragraph are mandatory provisions over which FSA has little or no discretion in how to implement.

#### Eligibility Requirements for LIP

Under the 2014 Farm Bill, LIP continues to cover losses due to livestock deaths in excess of normal mortality due to hurricanes, floods, blizzards, disease exacerbated by adverse weather, wildfires, extreme heat, and extreme cold. It also expands eligibility under LIP to cover losses from livestock deaths in excess of normal mortality due to attacks by animals reintroduced into the wild by the Federal Government or protected by Federal law, including wolves and avian predators. As under the 2008 Farm Bill, there is not a State or National “trigger” such as an emergency declaration that provides automatic eligibility for all producers in a particular State, county, or region. For LIP purposes, adverse weather does not include drought (although drought can exacerbate disease such as anthrax, which is eligible under LIP). FSA has the authority to determine eligibility of livestock losses caused by other adverse weather or other conditions, including disease caused by such weather and whether the disease is exacerbated by the adverse weather. This rule clarifies that if a disease is determined by FSA not to be exacerbated by adverse weather events or is preventable by implementing and following acceptable management practices, such as vaccination, the disease is not eligible for payment under LIP. FSA also has the authority to determine eligibility of livestock losses caused by animals other than wolves and avian predators that have been reintroduced into the wild by the Federal Government or protected by Federal law.

LIP payments and eligibilities will be calculated on the type of eligible livestock and the actual losses and the calculations will be made by FSA-approved categories. As under the

previous LIP provisions, benefits are only available for the owners of livestock or for “contract growers”—persons who produce livestock owned by someone else, but have a risk in the livestock (such as a farmer who raises chickens owned by a company that produces chicken products, but does not receive payment for livestock that die before the livestock is mature and returned to the owner). This rule does not change eligible livestock for payment to livestock owners, which includes beef cattle, dairy cattle, buffalo, beefalo, equine, sheep, goats, deer, swine, poultry, reindeer, elk, emus, alpacas, and llamas. It also does not change the eligible livestock for payment to contract growers, which include only swine and poultry because those are the only known examples of that kind of production arrangement. To be eligible livestock for LIP, as of the day they died the livestock must have been both of the following:

- Owned by an eligible owner or in the possession of an eligible contract grower, and
- Maintained for commercial use as part of a farming operation of the participant on the day they died.

As under the previous LIP provisions, eligibility for payments to poultry and swine contract growers will be limited based on the amount of their contractual risk and other payments received. Payments will not exceed their contractual risk, as determined by FSA. Any compensation received by the contract grower from the contractor for loss of income for the dead livestock will be deducted from the contract grower's LIP payment. When a contract grower is in possession of the livestock at the time of death, only the contract grower will be eligible for the payment; the owner is not eligible. Animals kept for recreational purposes, such as hunting animals, animals used for roping practice, pets, and show animals, continue to be ineligible for LIP under this rule.

Determination of LIP payment eligibility will be based on actual losses in excess of normal mortality for the calendar year for the relevant animal type and approved category by an individual producer or contract grower.

#### Applying for LIP Payment

This rule does not change the application process for LIP. Producers must file both a notice of loss and an application. A notice of loss will not automatically qualify a producer for payment. Because the eligible losses are only those above normal mortality and that is calculated on a yearly basis, a loss occurring in, for example, July, will

not necessarily generate a claim depending on how great the losses are, natural or otherwise, for the rest of the year. It could be, however, that a loss in July is so great that the producer is already beyond normal mortality for the year, in which case the producer could already be eligible for payment.

For losses that occurred on or after October 1, 2011, and before January 1, 2015, producers must provide a notice of loss and application for payment to FSA no later than January 30, 2015. For 2015 and subsequent calendar year losses, producers must provide a notice of loss to FSA by the earlier of 30 calendar days of when the loss of livestock is apparent to the participant, or 30 calendar days after the end of the calendar year in which the loss of livestock occurred. Other documentation is required for a complete application for payment, as described in this rule. For 2015 and subsequent calendar year losses, the completed application must be submitted to the FSA county office no later than 30 calendar days after the end of the calendar year in which the loss of livestock occurred. Producers that suffer multiple livestock losses during the calendar year may file multiple notices of loss and multiple applications for payment.

This rule provides less restrictive loss documentation requirements for livestock death losses that occurred from October 1, 2011, to before January 1, 2015, because producers were not provided with advanced notice of program requirements. Additionally, the previous LIP authorized by the 2008 Farm Bill had expired and there was no notice of any future LIP to cover losses beyond the scope of the 2008 Farm Bill. Accordingly, livestock producers may provide proof of death and inventories that may not be verifiable but that are reliable and reasonable documentation according to the provisions in this rule.

This rule provides new provisions to address eligibility of losses for calf and lamb open range livestock operations. Specific provisions for these operations are necessary to determine proof of death and inventory because the calf and lamb open range livestock operations have had difficulties in meeting the previous proof of death and inventory requirements given the dispersed nature of their production practices. Calf and lamb open range livestock operations now may provide proof of inventory and loss by using the livestock beginning inventory history for reporting losses. If inventory records are not available, a default national birthing rate of 90 percent for calves and 160 percent for lambs will be used.

When beginning inventory records are not available, as specified in this rule in addition to submitting other required records, verifiable beginning inventory records for ewes or cow will be submitted along with verifiable or reliable ending inventory records for lambs or calves. With that information, FSA will calculate the beginning inventory for that year. The Deputy Administrator has the authority to make adjustments as necessary. If records are available for less than 3 years, the calculation for inventory will include a reduction for the years of missing data. These provisions are discretionary.

#### LIP Payment Calculations

This rule does not change the LIP payment calculation. As specified in the 2014 Farm Bill, the payment for livestock owners will continue to be calculated based on 75 percent of the average fair market value of the applicable livestock on the day before the date of death of the livestock, as determined by FSA. When determining the market value of applicable livestock, FSA will establish market values for each type and category of livestock using data from credible livestock markets. Credible livestock markets will include sale barns and local sales as well as sales at terminal market centers or slaughtering facilities. For contract growers, the payment will continue to be based on 75 percent of the average income loss sustained by the grower with respect to the dead livestock.

FSA, through the State FSA offices, will obtain recommendations from applicable State livestock organizations, State Cooperative Extension Service, and other knowledgeable and credible sources, to establish the normal mortality rate for each type of livestock on a State-by-State basis when changes are warranted. As under the previous provisions, payments are only available for losses over normal mortality over the course of the year and those rates will be established on a State-by-State basis.

#### Specific Provisions for TAP

This rule moves the existing regulations for TAP in 7 CFR part 760, subpart F, to 7 CFR part 1416, subpart E. The 2014 Farm Bill authorizes the Secretary to assist eligible orchardists and nursery tree growers that have incurred tree, bush, or vine mortality losses in excess of 15 percent, adjusted for normal mortality, due to natural disaster, including plant disease, insect infestation, drought, fire, freeze, flood, earthquake, lightning, or other occurrence, as determined by the Secretary. TAP is a cost-reimbursement program, which means that payments

are calculated based on estimated actual costs to replace or rehabilitate lost or damaged trees, bushes, or vines. The replacement and rehabilitation activities must take place within 12 months after the application is approved. Payment is not made until the activities are completed. TAP was previously authorized under the 2008 Farm Bill, and the program will continue as in prior years, with the mandatory and discretionary changes specified in this rule. The main mandatory change is that the reimbursement rate is reduced, from 70 percent to 65 percent, for replanting costs. The discretionary provisions include the deadline for application for payment for retroactive losses, and that the duration of a plant disease period is determined by the Deputy Administrator and could be longer than the previous limit of one year.

#### Eligibility Requirements

Eligible losses and eligible producers under TAP will not change from the provisions implemented under the 2008 Farm Bill, except for the date (on or after October 1, 2011) that eligible producers must have suffered eligible losses as a result of a natural disaster, which includes plant disease, insect infestation, drought, fire, freeze, flood, earthquake, lightning, or other occurrence, as determined by the Secretary. Commercially grown trees, vines, and bushes are eligible. The 2014 Farm Bill does not change the eligibility “trigger” of mortality losses in excess of 15 percent, adjusted for normal damage and mortality. While mortality for other natural disasters is assessed on a calendar year basis, mortality related to plant disease may be examined over longer periods if determined appropriate considering the typically longer time-scale for these infections. For example, a plant disease may infect an orchard of 1,000 trees where the normal mortality is 2% per year or 20 trees. While the disease causes increased mortality, best management practices can keep infected trees productive and keep the annual mortality to 8% or 80 trees. After three years of infection, the orchard would exceed the 15% trigger and become eligible for TAP assistance for the remainder of the infection (the orchard would have lost 240 trees with 60 due to normal mortality and 180 due to disease). Considering mortality over the length of the infection for purposes of the 15% trigger also encourages proper management to control the impacts of a disease. A 15% annual trigger for plant disease could encourage poor management to try to reach the threshold, although TAP continues to

exclude losses that could be prevented through reasonable and available measures. Specific policies and procedures will be established regarding mortality and reasonable management, as appropriate, depending on the characteristics of the disease in question. For example, citrus canker greening might result in such losses over a period of several years. Normal mortality losses are those associated with the normal upkeep of the orchard or nursery in the region. Damage losses are not eligible for payment unless the 15 percent normal mortality trigger is met. Losses due to causes other than natural disaster will not be eligible for payment.

#### Applying for TAP Payment

To obtain a TAP payment for losses that occurred on or after October 1, 2011, through the end of the 2014 calendar year, a producer must provide an application for payment and supporting documentation to FSA by the later of January 31, 2015, or 90 calendar days after the disaster event or date when the loss is apparent to the producer. During the 2015 calendar year or later, a producer must provide an application for payment and supporting documentation to FSA within 90 calendar days of the disaster event or date upon which the loss of trees, bushes, or vines is apparent. Producers that suffer multiple losses during the year may file multiple applications for payment.

#### TAP Payment Calculation

This rule changes the calculation of TAP payments by reducing the reimbursement amount for the cost of replanting trees lost due to a natural disaster from 70 percent to 65 percent, in excess of 15 percent mortality or, at the option of the Secretary, sufficient seedlings to reestablish a stand. The 65 percent rate is required by the 2014 Farm Bill and FSA has no discretion. The rate for rehabilitation of eligible trees, bushes, or vines, which is 50 percent of the cost of pruning, removal, and other costs incurred for salvaging the existing plants, or in the case of plant mortality, to prepare land for replanting, subject to the maximum allowable FSA rate remains the same as it was under the previous TAP. The 50 percent is only payable for losses that reflect a greater than 15 percent loss taking into account normal mortality and damage. A producer can be eligible for payment for both replanting and rehabilitation costs.

As under the previous provisions, the TAP payment will be calculated based on the actual costs of the approved

practices, or the rates established by the Deputy Administrator, whichever is lower. Calculations will be made using FSA-approved categories of plants and practices. Losses must be verified by a field visit and approved practices must be completed before payment will be made. This rule does not change the requirements regarding documentation to show that practices are complete, such as receipts for labor costs,

equipment rental, and purchases of seedlings or cuttings. Participants may not receive TAP payments on more than 500 acres of eligible trees or tree seedlings per program year. This is a change from the previous regulation.

**Structure and Organization of the Disaster Assistance Regulations**

The regulations in 7 CFR part 760 for general provisions, ELAP, LFP, LIP, and

TAP will be revised in a subsequent rulemaking to remove obsolete provisions that apply to programs that were not reauthorized. Regulations for the new programs will be established in 7 CFR part 1416, as described in the table below:

Program	Current Part and Subpart	New Part and Subpart
General Provisions .....	Part 760, Subpart B (all supplemental disaster assistance programs authorized by the 2008 Farm Bill, including SURE).	Part 1416, Subpart A.
ELAP .....	Part 760, Subpart C (previous ELAP under 2008 Farm Bill) .....	Part 1416, Subpart B.
LFP .....	Part 760, Subpart D (previous LFP under 2008 Farm Bill) .....	Part 1416, Subpart C.
LIP .....	Part 760, Subpart E (previous LIP under 2008 Farm Bill) .....	Part 1416, Subpart D.
TAP .....	Part 760, Subpart F (previous TAP under 2008 Farm Bill) .....	Part 1416, Subpart E.

**Overview—Payment Limit and AGI Changes**

This final rule implements payment limit and AGI provisions in sections 1119, 1501, 1603, 1605, 2005, 2206, and 12305 of the 2014 Farm Bill concerning payment eligibility requirements and payment limits for participants in CCC-funded programs. The 2014 Farm Bill provides revised annual payment limitation amounts per person or legal entity, and revised eligibility requirements based on the average annual income amount of the program participant. Overall, the 2014 Farm Bill simplifies the payment limit and payment eligibility requirements as compared to the requirements specified in the 2008 Farm Bill. This final rule amends 7 CFR Part 1400 to implement these changes. The changes in this rule are required by the 2014 Farm Bill; FSA has no discretion in setting payment limits or income-related payment eligibility requirements.

**Payment Limits**

This rule amends the payment limits specified in 7 CFR 1400.1 “Applicability” as required by the 2014 Farm Bill. This rule removes payment limits for programs that were not reauthorized by the 2014 Farm Bill. Neither this rule nor the 2014 Farm Bill change the method by which payments are attributed to persons and legal entities.

Section 1501(f) of the 2014 Farm Bill specifies the payment limits that apply to the disaster programs. LFP, LIP, and ELAP payments issued under the 2014 Farm Bill are collectively limited to \$125,000 per person or legal entity for each year. This limit applies to payments in 2014 for fiscal year 2012 and 2013 losses. TAP has a separate \$125,000 payment limit. These limits

are slightly higher than the limits specified in the 2008 Farm Bill. In the 2008 Farm Bill, ELAP, LFP, LIP, and SURE were collectively limited to \$100,000 per person or legal entity, and TAP had a separate \$100,000 limit.

The total amount of payments received, directly or indirectly, by a person or legal entity for any crop year for annual payments and benefits received under the new Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) programs, and loan deficiency payments (LDP) and marketing loan gains (MLG) for commodities except peanuts, is \$125,000, as specified in Section 1603(b) of the 2014 Farm Bill. There is a separate limit of \$125,000 per year for payments under ARC, PLC, LDPs and MLGs for peanuts. This rule removes references to payment limits for the Direct and Countercyclical Program (DCP) and the Average Crop Revenue Election Program (ACRE) because those programs were not reauthorized by the 2014 Farm Bill. There was no payment limit for LDP, Marketing Assistance Loans, or MLG in the 2008 Farm Bill.

As specified in Section 1119 of the 2014 Farm Bill, the payments received under the new Transition Assistance for Producers of Upland Cotton program are limited to \$40,000 per person or legal entity for each of the years 2014 and 2015. That program is only authorized for 2014 and 2015.

As specified in section 12305 of the 2014 Farm Bill, NAP payments have an annual limitation of \$125,000 per person or legal entity. The 2008 Farm Bill had a limit of \$100,000 for NAP benefits.

Section 2005 of the 2014 Farm Bill does not change the payment limit for CRP of \$50,000. For contracts signed after October 1, 2008, all CRP payments

are also limited by the direct attribution provisions currently in 7 CFR 1400, which are not changing. CRP contracts that were in place before October 1, 2008, are subject to the payment limitation rules that were in effect on the date of contract approval. Prior to the 2008 Farm Bill, the CRP program had the same payment limit but different provisions for payment attribution to entities.

Section 2206 of the 2014 Farm Bill changes the payment limit for the Environmental Quality Incentives Program (EQIP). A person or legal entity may not receive, directly or indirectly, in excess of \$450,000 in EQIP payments for all EQIP contracts entered into under the 2014 Farm Bill period of fiscal years 2014 through 2018. The EQIP payment limitation under the 2008 Farm Bill was \$300,000, unless the Chief, NRCS, waived the payment limitation up to \$450,000 for a project of special environmental significance. The 2014 Farm Bill did not make any changes to the payment limitations for the Agricultural Management Assistance (AMA) program or the Conservation Stewardship Program (CSP). There is no payment limitation under the Agricultural Conservation Easement Program (ACEP).

This rule removes references to payment limits for conservation programs that were not reauthorized by the 2014 Farm Bill. Except for CRP, there are no payment limits for conservation programs; rather the program payments may be limited by available funding for specific programs. That is not a change from the 2008 Farm Bill, which also had no payment limits for conservation programs other than CRP. The 2014 Farm Bill combines various conservation programs and does not reauthorize others. This rule revises

7 CFR part 1400 to reflect the new names of these programs, and to remove the ones that are not reauthorized.

SURE, as authorized by the 2008 Farm Bill, was not repealed by the 2014 Farm Bill and therefore remains in effect for losses on or before September 30, 2011. The AGI and payment limit regulations in effect when those losses occurred apply. Specifically, the average AGI limits of \$500,000 nonfarm AGI and \$750,000 farm AGI apply, and the \$100,000 per person or legal entity payment limitation. These limits are separate from the AGI requirements and payment limitation amount applicable to the LIP, LFP, TAP, and ELAP benefits authorized under the 2014 Farm Bill.

#### **Income Limits for Payment Eligibility**

The 2014 Farm Bill specifies that persons and legal entities whose income is above a certain threshold are not eligible for most CCC and FSA program benefits. Section 1605 of the 2014 Farm Bill provides a new average AGI limitation applicable to all commodity, price support, disaster assistance, and conservation programs, including but not limited to FSA and CCC programs in titles I, II, and XII of the 2014 Farm Bill. These requirements also apply to the Natural Resource Conservation Service (NRCS) programs funded by CCC, including AMA, CSP, EQIP, and ACEP. This rule amends § 1400.3, “Definitions,” § 1400.500, “Applicability,” and § 1400.501, “Determination of Average Adjusted Gross Income,” to implement the 2014 Farm Bill changes to AGI limitations.

Effective for the 2014 and subsequent crop, program, and fiscal years, all commodity, price support, and disaster assistance program payments and benefits are subject to an average AGI limitation of \$900,000 per person or legal entity. This limit also applies to payments authorized by the 2014 Farm Bill for retroactive benefits for the 2012 or 2013 crop, program, or fiscal year. Effective for the fiscal year 2015 and subsequent years, the same income limitation is applicable to all conservation program payments and benefits. (For conservation programs that were reauthorized by the American Taxpayer Relief Act of 2012, Pub. L. 112–240, the 2008 Farm Bill AGI limits applied for 2013 payments.) How AGI is defined and calculated has not changed, in either the 2014 Farm Bill or in this rule.

The single average AGI limitation of \$900,000 replaces the multiple AGI limitations specified in the 2008 Farm Bill and limitations based on farm and nonfarm income amounts. Therefore, this rule removes all the references to

farm and nonfarm income requirements, leaving only the general AGI requirements, which are only changed in the amount. The limits specified in the 2008 Farm Bill were \$500,000 in nonfarm income and \$750,000 in farm income for commodity programs, with a \$1 million nonfarm income limit for conservation program eligibility. The 2008 Farm Bill allowed a waiver to the AGI limit for conservation programs if at least 66.66 percent of the participant’s income was from farming, and also allowed the Secretary to waive the AGI limit on a case by case basis for other reasons to protect environmentally sensitive land of special significance. The AGI waivers for conservation practices are not reauthorized in the 2014 Farm Bill. However, Section 2401 of the 2014 Farm Bill authorizes the Secretary to waive the AGI limit for payments under the Regional Conservation Partnership Program (RCPP) for participating producers if the Secretary determines that the waiver is necessary to fulfill the objectives of the program.

The 2014 Farm Bill combines various conservation programs and does not reauthorize others. This rule is revised to reflect the new names of these programs, and to remove the ones that are not reauthorized. The average AGI limit of \$900,000 applies to all conservation programs, effective fiscal year 2015. However, the average AGI limit applies to AMA in FY 2014. As noted above, there is no authorization for AGI waivers in the 2014 Farm Bill except for RCPP payments and therefore this rule removes that provision from 7 CFR 1400. Waivers of the AGI limit for RCPP will be addressed in the regulations for the covered programs under RCPP.

This rule makes two minor editorial changes in 1400.502, “Compliance and Enforcement,” to clarify that failure to comply with the AGI requirements of this part will result in ineligibility.

#### **Other Eligibility Requirements in Part 1400 Unchanged**

The 2014 Farm Bill did not change other payment eligibility requirements that are specified in 7 CFR part 1400. For example, the existing eligibility restrictions on foreign entities and state governments did not change. Payment limitation by direct attribution to a person or legal entity did not change from what was specified in the 2008 Farm Bill and is currently specified in 7 CFR part 1400.

#### **Notice and Comment**

In general, the Administrative Procedure Act (5 U.S.C. 553) requires

that a notice of proposed rulemaking be published in the **Federal Register** and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. The regulations to implement the provisions of Title I and the administration of Title I of the 2014 Farm Bill are exempt from the notice and comment provisions of 5 U.S.C. 553 and the Paperwork Reduction Act (44 U.S.C. chapter 35), as specified in section 1601(c)(2) of the 2014 Farm Bill.

#### **Effective Date**

The Administrative Procedure Act (5 U.S.C. 553) provides generally that before rules are issued by Government agencies, the rule must be published in the **Federal Register**, and the required publication of a substantive rule is to be not less than 30 days before its effective date. One of the exceptions is when the agency finds good cause for not delaying the effective date. In making this final rule exempt from notice and comment through section 1601(c)(2) of the 2008 Farm Bill, using the administrative procedure provisions in 5 U.S.C. 553, FSA finds that there is good cause for making this rule effective less than 30 days after publication in the **Federal Register**. This rule allows FSA to provide benefits to producers who losses caused by adverse weather, natural disasters, or other conditions. Therefore, to begin providing benefits to producers as soon as possible, this final rule is effective when published in the **Federal Register**.

#### **Executive Orders 12866 and 13563**

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as economically significant under Executive Order 12866, “Regulatory Planning and Review,” and therefore, OMB has reviewed this rule. This

regulatory action is being taken to implement a major budgetary program required by the 2014 Farm Bill. Consistent with OMB guidance, this type of action is considered a budgetary transfer representing a payment from taxpayers to program beneficiaries unrelated to the provision of any goods or services in exchange for the payment. As such, there are no economic gains, because the benefits and payments to those who receive such a transfer are matched by the costs borne by taxpayers to offset disaster losses by program beneficiaries. The estimated transfer payments for disaster assistance provided by this rule are summarized below. The full cost benefit analysis is available on regulations.gov.

#### **Cost Benefit Analysis Summary**

The 2014 Farm Bill authorizes four permanent livestock disaster assistance programs: LIP, LFP, ELAP, and TAP. The permanent disaster assistance programs provide a permanent means of addressing the same needs as programs provided to producers on an ad hoc basis in the past. The estimated annual payments of LIP, LFP, and ELAP and TAP is approximately \$502 million and provides targeted payments to livestock and honey bee producers who suffer losses from a disaster.

#### **Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because CCC and FSA are not required by any law to publish a proposed rule for public comments on this rule.

#### **Environmental Review**

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA (7 CFR part 799). FSA has determined that the provisions identified in this final rule are administrative in nature, intended to clarify the mandatory requirements of

the programs, as defined in the 2014 Farm Bill, and do not constitute a major Federal action that would significantly affect the quality of the human environment, individually or cumulatively. While OMB has designated this rule as “economically significant” under Executive Order 12866, “. . . economic or social effects are not intended by themselves to require preparation of an environmental impact statement” (40 CFR 1508.14), when not interrelated to natural or physical environmental effects. Therefore, as this rule presents administrative clarifications only, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory action.

#### **Executive Order 12372**

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons specified in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

#### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. As required by the 2014 Farm Bill, the programs in this rule are retroactive to October 1, 2011. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

#### **Executive Order 13132**

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on

State and local governments. Therefore, consultation with the States is not required.

#### **Executive Order 13175**

This rule has been reviewed for compliance with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” This Executive Order imposes requirements on the development of regulatory policies that have Tribal implications or preempt Tribal laws. The policies contained in this rule do not preempt Tribal law.

The policies contained in this rule do not, to our knowledge, impose substantial unreimbursed direct compliance costs on Indian Tribal governments, have Tribal implications, or preempt Tribal law. USDA continues to consult with Tribal officials to have a meaningful consultation and collaboration on the development and strengthening of USDA regulations. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as Webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country.

#### **The Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

#### **Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)**

This rule has been determined to be Major under the Small Business Regulatory Enforcement Fairness Act of 1996, (Pub. L. 104–121) (SBREFA).

SBREFA normally requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. Section 808 of SBREFA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. Section 1601(c)(3) of the 2014 Farm Bill provides that the authority in Section 808 of SBREFA will be used in implementing the changes required by Title I of the 2014 Farm Bill, such as for the changes being made by this rule. Consistent with section 1601(c)(3) of the 2014 Farm Bill, FSA therefore finds that it would be contrary to the public interest to delay implementation of this rule because it would significantly delay implementation of the program changes required by the 2014 Farm Bill by impeding the conduct of future signups without having these additional changes to the program regulations in place. Therefore, this rule is effective on the date of its publication in the **Federal Register**.

**Federal Assistance Programs**

The titles and numbers of the Federal Domestic Assistance Programs found in the Catalog of Federal Domestic Assistance to which this rule applies are:

- 10.069—Conservation Reserve Program
- 10.088—Livestock Indemnity Program
- 10.089—Livestock Forage Disaster Program
- 10.091—Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program
- 10.092—Tree Assistance Program
- 10.912—Environmental Quality Incentives Program
- 10.917—Agricultural Management Assistance

**Paperwork Reduction Act of 1995**

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601(c) of the 2014 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

**E-Government Act Compliance**

FSA and CCC are committed to complying with the E-Government Act,

to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

**List of Subjects**

7 CFR Part 1400

Agriculture, Loan programs—agriculture, Conservation, Price support programs.

7 CFR Part 1416

Dairy products, Indemnity payments, Pesticide and pests, Reporting and recordkeeping requirements.

For the reasons discussed above, CCC and FSA amends 7 CFR parts 1400 and 1416 as follows:

**PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY**

■ 1. The authority citation continues to read as follows:

**Authority:** 7 U.S.C. 1308, 1308–1, 1308–2, 1308–3, 1308–3a, 1308–4, and 1308–5.

■ 2. The heading for part 1400 is revised to read as set forth above.

**Subpart A—General Provisions**

■ 3. Revise § 1400.1 to read as follows:

**§ 1400.1 Applicability.**

(a) This part, except as otherwise noted, is applicable to all of the following programs and any other programs as specified in individual program regulations of this chapter:

- (1) The Agricultural Risk Coverage and Price Loss Coverage Programs and Transition Assistance for Producers of Upland Cotton, part 1412 of this chapter;
- (2) The Conservation Reserve Program (CRP), part 1410 of this chapter;
- (3) The Price Support programs in parts 1421 and 1434 of this chapter;
- (4) The Noninsured Crop Disaster Assistance Program (NAP), part 1437 of this chapter;
- (5) The Livestock Forage Disaster Program (LFP), Livestock Indemnity Program (LIP), and the Emergency Assistance for Livestock, Honey Bees and Farm-raised Fish Program (ELAP), part 1416 of this chapter;

(6) The Tree Assistance Program (TAP), part 1416 of this chapter; and

(7) The Natural Resources Conservation Service (NRCS) conservation programs of this title including the Agricultural Management Assistance (AMA) program, Conservation Stewardship Program (CSP), Environmental Quality Incentives Program (EQIP), and Agricultural Conservation Easement Program (ACEP).

(8) Subparts C and D of this part do not apply to the programs listed in paragraphs (a)(2) through (7) of this section.

(b) This part will apply to the programs specified in:

- (1) Paragraphs (a)(1), (3), (4), (5), and (7) of this section on a crop year basis;
- (2) Paragraph (a)(2) of this section on a fiscal year basis;
- (3) Paragraph (a)(6) of this section on a calendar year basis; and
- (4) Paragraph (a)(7) of this section when funding is available.

(c) This part will be used to determine the manner in which payments will be attributed to persons and legal entities for the payment limitations provided in this section and to other programs as specified in individual program regulations in this chapter.

(d) Where more than one provision of this part may apply, the provision that is most restrictive on the program participant will be applied.

(e) The payment limitations of this part are not applicable to:

(1) Payments made under State conservation reserve enhancement program agreements approved by the Secretary, and

(2) Payments made subject to this part if ownership interest in land or a commodity is transferred as the result of the death of a program participant and the new owner of the land or commodity has succeeded to the contract of the prior owner. If the successor is otherwise eligible, payments cannot exceed the amount the previous owner was entitled to receive at the time of death.

(f) The following amounts are the limitations on payments per person or legal entity for the applicable period for each payment or benefit.

Payment or benefit	Limitation per person or legal entity, per crop, program, or fiscal year
(1) Price Loss Coverage, Agricultural Risk Coverage, Loan Deficiency Program, and Marketing Loan Gain payments (other than Peanuts) .....	\$125,000

Payment or benefit	Limitation per person or legal entity, per crop, program, or fiscal year
(2) Price Loss Coverage, Agricultural Risk Coverage, Loan Deficiency Program, and Marketing Loan Gain payments for Peanuts .....	125,000
(3) Transition Assistance for Producers of Upland Cotton <sup>1</sup> .....	40,000
(4) CRP annual rental payments <sup>2</sup> .....	50,000
(5) NAP payments .....	125,000
(6) TAP .....	125,000
(7) LIP, LFP, and ELAP <sup>3</sup> .....	125,000
(8) CSP <sup>4</sup> .....	200,000
(9) EQIP <sup>5</sup> .....	450,000
(10) AMA program <sup>6</sup> .....	50,000

<sup>1</sup> Transition Assistance for Producers of Upland Cotton is only available in the 2014 and 2015 program years.

<sup>2</sup> CRP contracts approved prior to October 1, 2008 may exceed the limitation, subject to payment limitation rules in effect on the date of contract approval.

<sup>3</sup> Total payments received through LIP, LFP, and ELAP may not exceed \$125,000. A separate limitation applies to TAP payments. (NOTE: For SURE payments for losses on or before September 30, 2011, the payment limit regulations in effect when those losses occurred apply. The SURE limit is separate from the payment limitation amount applicable to the LIP, LFP, TAP, and ELAP benefits authorized under the 2014 Farm Bill.)

<sup>4</sup> The \$200,000 limit is the total limit under all CSP contracts entered into subsequent to enactment of the 2014 Farm Bill during fiscal years 2014 through 2018.

<sup>5</sup> The \$450,000 limit is the total limit under all EQIP contracts entered into subsequent to enactment of the 2014 Farm Bill during fiscal years 2014 through 2018.

<sup>6</sup> The \$50,000 limit is the total limit that a participant may receive under the AMA program in any fiscal year.

■ 4. Amend § 1400.3 as follows:

■ a. Remove the definitions for “Average Adjusted Gross Farm Income” and “Average Adjusted Gross Nonfarm Income”; and

■ b. Revise the definition for “Payment” to read as follows:

**§ 1400.3 Definitions.**

\* \* \* \* \*

*Payment* means:

(1) Payments made in accordance with part 1412 of this chapter or successor regulation of this chapter;

(2) CRP annual rental payments made in accordance with part 1410 of this chapter or successor regulation of this chapter;

(3) NAP payments made in accordance with part 1437 of this chapter or successor regulation of this chapter;

(4) ELAP, LIP, LFP, and TAP payments made in accordance with part 1416 of this chapter or successor regulations of this chapter;

(5) Price support payments made in accordance with parts 1421 and 1434 of this chapter; and

(6) For other programs, any payments designated in individual program regulations in this chapter.

\* \* \* \* \*

**Subpart F—Average Adjusted Gross Income Limitation**

■ 5. Amend § 1400.500 as follows:

■ a. Revise paragraphs (a) and (b);

■ b. Remove paragraph (c) through (e); and

■ c. Redesignate paragraphs (f) through (h) as paragraphs (c) through (e).

The revisions read as follows:

**§ 1400.500 Applicability.**

(a) A person or legal entity, other than a joint venture or general partnership, will not be eligible to receive, directly or indirectly, certain program payments or benefits described in § 1400.1 if the average adjusted gross income of the person or legal entity exceeds \$900,000 for the 3 taxable years preceding the most immediately preceding complete taxable year, as determined by the Deputy Administrator.

(b) Determinations made under this subpart for conservation programs are:

(1) Applicable starting with the 2015 fiscal year, except for AMA which is applicable with the 2014 fiscal year;

(2) Based on the year for which the conservation program contract or agreement is approved; and

(3) Applicable for the entire term of the subject agreement or contract.

\* \* \* \* \*

■ 6. Amend § 1400.501 as follows:

■ a. Revise paragraph (a) introductory text;

■ b. Remove paragraphs (a)(1) through (12), (b), and (c) introductory text;

■ b. Redesignate paragraphs (c)(1) through (6) as (a)(1) through (6); and

■ d. Redesignate paragraph (d) as paragraph (b).

The revision reads as follows:

**§ 1400.501 Determination of average adjusted gross income.**

(a) Except as otherwise provided in this subpart, average adjusted gross income means:

\* \* \* \* \*

**§ 1400.502 [Amended]**

■ 7. Amend § 1400.502 as follows:

■ a. In paragraph (a)(3), at the end, remove the word “or”; and

■ b. In paragraph (c), remove the words “provide necessary and accurate information to verify compliance, or failure to”.

■ 8. Revise part 1416 to read as follows:

**PART 1416—EMERGENCY AGRICULTURAL DISASTER ASSISTANCE PROGRAMS**

**Subpart A—General Provisions for Supplemental Agricultural Disaster Assistance Programs**

Sec.

- 1416.1 Applicability.
- 1416.2 Administration of ELAP, LFP, LIP, and TAP.
- 1416.3 Eligible producer.
- 1416.5 Equitable relief.
- 1416.6 Payment limitation.
- 1416.7 Misrepresentation.
- 1416.8 Appeals.
- 1416.9 Offsets, assignments, and debt settlement.
- 1416.10 Records and inspections.
- 1416.11 Refunds; joint and several liability.
- 1416.12 Minors.
- 1416.13 Deceased individuals or dissolved entities.
- 1416.14 Miscellaneous.

**Subpart B—Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program**

- 1416.101 Applicability.
- 1416.102 Definitions.
- 1416.103 Eligible losses, adverse weather, and other loss conditions.
- 1416.104 Eligible livestock, honeybees, and farm-raised fish.

- 1416.105 Eligible producers, owners, and contract growers.
- 1416.106 Notice of loss and application process.
- 1416.107 Notice of loss and application period.
- 1416.108 Availability of funds.
- 1416.109 National Payment Rate.
- 1416.110 Livestock payment calculations.
- 1416.111 Honeybee payment calculations.
- 1416.112 Farm-raised fish payment calculations.

#### Subpart C—Livestock Forage Disaster Program

- 1416.201 Applicability.
- 1416.202 Definitions.
- 1416.203 Eligible livestock producer.
- 1416.204 Covered livestock.
- 1416.205 Eligible grazing losses.
- 1416.206 Application for payment.
- 1416.207 Payment calculation.

#### Subpart D—Livestock Indemnity Program

- 1416.301 Applicability.
- 1416.302 Definitions.
- 1416.303 Eligible owners and contract growers.
- 1416.304 Eligible livestock.
- 1416.305 Application process.
- 1416.306 Payment calculation.

#### Subpart E—Tree Assistance Program

- 1416.400 Applicability.
- 1416.401 Administration.
- 1416.402 Definitions.
- 1416.403 Eligible losses.
- 1416.404 Eligible orchardists and nursery tree growers.
- 1416.405 Application.
- 1416.406 Payment Calculation.
- 1416.407 Obligations of a Participant.

**Authority:** Title III, Pub. L. 109–234, 120 Stat. 474; 16 U.S.C. 3801, note.

#### Subpart A—General Provisions for Supplemental Agricultural Disaster Assistance Programs

##### § 1416.1 Applicability.

(a) This subpart establishes general conditions for this subpart and subparts B through E of this part and applies only to those subparts. Subparts B through E cover the following programs authorized by the Agricultural Act of 2014 (Pub. L. 113–79, also referred to as the 2014 Farm Bill):

- (1) Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP);
- (2) Livestock Forage Disaster Program (LFP);
- (3) Livestock Indemnity Payments Program (LIP); and
- (4) Tree Assistance Program (TAP).

(b) To be eligible for payments under these programs, participants must comply with all provisions under this subpart and the relevant particular subpart for that program. All other provisions of law also apply.

##### § 1416.2 Administration of ELAP, LFP, LIP, and TAP.

(a) The programs in subparts B through E of this part will be administered under the general supervision and direction of the Administrator, Farm Service Agency (FSA) (who also serves as the Executive Vice-President, CCC), and the Deputy Administrator for Farm Programs, FSA (referred to as the “Deputy Administrator” in this part).

(b) FSA representatives do not have authority to modify or waive any of the provisions of the regulations of this part as amended or supplemented, except as specified in paragraph (e) of this section.

(c) The State FSA committee will take any action required by the regulations of this part that the county FSA committee has not taken. The State FSA committee will also:

(1) Correct, or require a county FSA committee to correct, any action taken by such county FSA committee that is not in accordance with the regulations of this part or

(2) Require a county FSA committee to withhold taking any action that is not in accordance with this part.

(d) No provision or delegation to a State or county FSA committee will preclude the FSA Administrator, the Deputy Administrator, or a designee or other such person, from determining any question arising under the programs of this part, or from reversing or modifying any determination made by a State or county FSA committee.

(e) The Deputy Administrator may authorize State and county FSA committees to waive or modify non-statutory deadlines, or other program requirements of this part in cases where lateness or failure to meet such requirements does not adversely affect operation of the programs in this part. Participants have no right to an exception under this provision. The Deputy Administrator’s refusal to consider cases or circumstances or decision not to exercise this discretionary authority under this provision will not be considered an adverse decision and is not appealable.

##### § 1416.3 Eligible producer.

(a) In general, the term “eligible producer” means, in addition to other requirements as may apply, an individual or entity described in paragraph (b) of this section that, as determined by the Secretary, assumes the production and market risks associated with the agricultural production of crops or livestock on a farm either as the owner of the farm, when there is no contract grower, or a

contract grower of the livestock when there is a contract grower.

(b) To be eligible for benefits, an individual or legal entity must submit a farm operating plan for the purpose of payment limitation review in accordance with part 1400 of this chapter and be a:

- (1) Citizen of the United States;
- (2) Resident alien; for purposes of this part, resident alien means “lawful alien”;
- (3) Partnership of citizens of the United States; or
- (4) Corporation, limited liability corporation, or other farm organizational structure organized under State law.

##### § 1416.5 Equitable relief.

The equitable relief provisions of part 718 of this title will not be used to obtain a different program result, payment, or benefit not otherwise available to a participant who satisfies any and all program eligibility provision, conditions of eligibility, or compliance provision.

##### § 1416.6 Payment limitation.

(a) For 2011, no person or legal entity, excluding a joint venture or general partnership, as determined according to the rules in part 1400 of this chapter may receive more than:

(1) \$125,000 total in 2011 program year payments under LFP, SURE, ELAP, and LIP combined when at least \$25,000 of such total 2011 program year payments is from LFP or LIP for losses from October 1 through December 31, 2011. If no 2011 program year payments are issued under LFP or LIP for losses occurring from October 1, 2011, through December 31, 2011, the total amount of 2011 program year payments under LFP, SURE, ELAP, and LIP combined is limited to \$100,000.

(2) \$125,000 for the 2011 program year under TAP.

(b) For 2012 and subsequent program years, no person or legal entity, excluding a joint venture or general partnership, as determined by the rules in part 1400 of this chapter may receive, directly or indirectly, more than:

(1) \$125,000 per program year total under ELAP, LFP, and LIP combined; or

(2) \$125,000 per program year under TAP.

(c) The Deputy Administrator may take such actions as needed to avoid a duplication of benefits under the programs provided for in this part, or duplication of benefits received in other programs, and may impose such cross-program payment limitations as may be consistent with the intent of this part.

(d) Beginning with the 2014 program year, if a producer is eligible to receive

benefits under this part is also eligible to receive assistance for the same loss under any other program, including, but not limited to, indemnities made under the Federal Crop Insurance Act (7 U.S.C. 1501–1524) or the noninsured crop disaster assistance program (7 U.S.C. 7333), then the producer must elect whether to receive benefits under this part or under the other program, but not both.

(e) For losses incurred beginning on October 1, 2011, and for the purposes of administering LIP, LFP, ELAP, and TAP, the average adjusted gross income (AGI) limitation provisions in part 1400 of this chapter relating to limits on payments for persons or legal entities, excluding joint ventures and general partnerships, with certain levels of AGI will apply under this subpart and will apply to each applicant for ELAP, LFP, LIP, and TAP. Specifically, a person or legal entity with an average AGI that exceeds \$900,000 will not be eligible to receive benefits under this part.

(f) The direct attribution provisions in part 1400 of this chapter apply to ELAP, LFP, LIP, and TAP. Under those rules, any payment to any legal entity will also be considered for payment limitation purposes to be a payment to persons or legal entities with an interest in the legal entity or in a sub-entity. If any such interested person or legal entity is over the payment limitation because of payment made directly or indirectly or a combination thereof, then the payment to the actual payee will be reduced commensurate with the amount of the interest of the interested person in the payee. Likewise, by the same method, if anyone with a direct or indirect interest in a legal entity or sub-entity of a payee entity exceeds the AGI levels that would allow a participant to directly receive a payment under this part, then the payment to the actual payee will be reduced commensurately with that interest. For all purposes under this section, unless otherwise specified in part 1400 of this chapter, the AGI figure that will be relevant for a person or legal entity will be an average AGI for the three taxable years that precede the most immediately preceding complete taxable year, as determined by FSA.

#### § 1416.7 Misrepresentation.

(a) A participant who is determined to have deliberately misrepresented any fact affecting a program determination made in accordance with this part, or any other part that is applicable to this part, to receive benefits for which the participant would not otherwise be entitled, will not be entitled to program payments and must refund all such payments received, plus interest as

determined in accordance with part 1403 of this chapter. The participant will also be denied program benefits for the immediately subsequent period of at least 2 crop years, and up to 5 crop years. Interest will run from the date of the original disbursement by CCC.

(b) A participant will refund to CCC all program payments, in accordance with § 1416.11, received by such participant with respect to all contracts or applications, as may be applicable, if the participant is determined to have knowingly misrepresented any fact affecting a program determination.

#### § 1416.8 Appeals.

Appeal regulations in parts 11 and 780 of this title apply to this part.

#### § 1416.9 Offsets, assignments, and debt settlement.

(a) Any payment to any participant under this part will be made without regard to questions of title under State law, and without regard to any claim or lien against the commodity, or proceeds, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings in part 1403 of this chapter apply to payments made under this part.

(b) Any participant entitled to any payment may assign any payment(s) in accordance with regulations governing the assignment of payments in part 1404 of this chapter.

#### § 1416.10 Records and inspections.

(a) Any participant receiving payments under any program in ELAP, LFP, LIP or TAP, or any other legal entity or person who provides information for the purposes of enabling a participant to receive a payment under ELAP, LFP, LIP, or TAP must:

(1) Maintain any books, records, and accounts supporting the information for 3 years following the end of the year during which the request for payment was submitted, and

(2) Allow authorized representatives of USDA and the Government Accountability Office, during regular business hours, to inspect, examine, and make copies of such books or records, and to enter the farm and to inspect and verify all applicable livestock and acreage in which the participant has an interest for the purpose of confirming the accuracy of information provided by or for the participant.

(b) [Reserved]

#### § 1416.11 Refunds; joint and several liability.

(a) In the event that the participant fails to comply with any term, requirement, or condition for payment

or assistance arising under ELAP, LFP, LIP, or TAP and if any refund of a payment to CCC will otherwise become due in connection with this part, the participant must refund to CCC all payments made in regard to such matter, together with interest and late-payment charges as provided for in part 1403 of this chapter provided that interest will in all cases run from the date of the original disbursement.

(b) All persons with a financial interest in an operation or in an application for payment will be jointly and severally liable for any refund, including related charges, that is determined to be due CCC for any reason under this part.

#### § 1416.12 Minors.

A minor child is eligible to apply for program benefits under ELAP, LFP, LIP, or TAP if all the eligibility requirements are met and the provision for minor children in part 1400 of this chapter are met.

#### § 1416.13 Deceased individuals or dissolved entities.

(a) Payments may be made for eligible losses suffered by an eligible participant who is now a deceased individual or is a dissolved entity if a representative, who currently has authority to act on behalf of the estate of the deceased participant, signs the application for payment.

(b) Legal documents showing proof of authority to sign for the deceased individual or dissolved entity must be provided.

(c) If a participant is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

#### § 1416.14 Miscellaneous.

(a) As a condition to receive benefits under ELAP, LFP, LIP, or TAP, a participant must have been in compliance with the applicable provisions of parts 12 and 718 of this title and 1400 of this chapter, and must not otherwise be precluded from receiving benefits under those provisions or under any law.

(b) [Reserved]

### Subpart B—Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program

#### § 1416.101 Applicability.

(a) This subpart establishes the terms and conditions under which the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP) will be administered.

(b) Eligible producers of livestock, honeybees, and farm-raised fish will be compensated for eligible losses due to an eligible adverse weather or eligible loss condition that occurred in the program year for which the producer requests benefits. The eligible loss must have been a direct result of eligible adverse weather or eligible loss conditions as determined by the Deputy Administrator. ELAP does not cover losses that are covered under LFP or LIP.

#### § 1416.102 Definitions.

The following definitions apply to this subpart and to the administration of ELAP. The definitions in parts 718 of this title and 1400 of this chapter also apply, except where they conflict with the definitions in this section.

*Adult beef bull* means a male beef breed bovine animal that was used for breeding purposes that was at least 2 years old before the beginning date of the eligible adverse weather or eligible loss condition.

*Adult beef cow* means a female beef breed bovine animal that had delivered one or more offspring before the beginning date of the eligible adverse weather or eligible loss condition. A first-time bred beef heifer is also considered an adult beef cow if it was pregnant on or by the beginning date of the eligible adverse weather or eligible loss condition.

*Adult buffalo and beefalo bull* means a male animal of those breeds that was used for breeding purposes and was at least 2 years old before the beginning date of the eligible adverse weather or eligible loss condition.

*Adult buffalo and beefalo cow* means a female animal of those breeds that had delivered one or more offspring before the beginning date of the eligible adverse weather or eligible loss condition. A first-time bred buffalo or beefalo heifer is also considered an adult buffalo or beefalo cow if it was pregnant by the beginning date of the eligible adverse weather or eligible loss condition.

*Adult dairy bull* means a male dairy breed bovine animal that was used primarily for breeding dairy cows and was at least 2 years old by the beginning date of the eligible adverse weather or eligible loss condition.

*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 by the beginning date of the eligible adverse weather or eligible loss condition. A first-time bred dairy heifer is also considered an adult dairy cow if it was pregnant by the beginning

date of the eligible adverse weather or eligible loss condition.

*Agricultural operation* means a farming operation.

*APHIS* means the Animal and Plant Health Inspection Service.

*Application* means CCC or FSA form used to apply for either the emergency loss assistance for livestock or emergency loss assistance for farm-raised fish or honeybees.

*Aquatic species* means any species of aquatic organism grown as food for human consumption, fish raised as feed for fish that are consumed by humans, or ornamental fish propagated and reared in an aquatic medium by a commercial operator on private property in water in a controlled environment. Catfish and crawfish are both defined as aquatic species for ELAP. However, aquatic species do not include reptiles or amphibians.

*Bait fish* means small fish caught for use as bait to attract large predatory fish. For ELAP, it also must meet the definition of aquatic species and not be raised as food for fish; provided, however, that only bait fish produced in a controlled environment are eligible for payment under ELAP.

*Beginning farmer or rancher* means a person or legal entity, including all members, shareholders, partners, beneficiaries, etc., (as fits the circumstances) of an entity, who for a program year both:

(1) Has not operated a farm or ranch in the previous consecutive 10 years, and

(2) Will have or has had for the relevant period materially and substantially participated in the operation of a farm or ranch.

*Buck* means a male goat.

*Cattle tick fever* means a severe and often fatal disease that destroys red blood cells of cattle, commonly known as Texas or cattle fever, which is spread by *Rhipicephalus* (*Boophilus*) *annulatus*, and the southern cattle tick, *R. (Boophilus) microplus*.

*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.

*Controlled environment* means an environment in which everything that can practicably be controlled by the participant with structures, facilities, and growing media (including, but not

limited to, water and nutrients) was in fact controlled by the participant at the time of the eligible adverse weather or eligible loss condition.

*County committee or county office* means the respective FSA committee or office.

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

*Eligible adverse weather* means, as determined by the Deputy Administrator, an extreme or abnormal damaging weather event that is not expected to occur during the loss period, which results in eligible losses. The eligible adverse weather would have resulted in agricultural losses not covered by other programs in this part for which the Deputy Administrator determines financial assistance should be provided to producers. Adverse weather may include, but is not limited to, blizzard, winter storms, and wildfires. Specific eligible adverse weather may vary based on the type of loss. Identification of eligible adverse weather will include locations (National, State, or county-level) and start and end dates.

*Eligible drought* means that any area of the county has been rated by the U.S. Drought Monitor as having a D3 (extreme drought) intensity:

(1) At any time during the program year, for additional honeybee feed loss;

(2) That directly impacts water availability at any time during the normal grazing period (for example, snow pack that feeds streams and springs), as determined by the Deputy Administrator or designee, for losses resulting from transporting water to livestock.

*Eligible grazing land* means land that is native or improved pastureland with permanent vegetative cover or land planted to a crop planted specifically for the purpose of providing grazing for eligible livestock.

*Eligible loss condition* means a condition that would have resulted in agricultural losses not covered by other programs in this part for which the Deputy Administrator determines financial assistance needs to be provided to producers. Specific eligible loss conditions include, but are not limited to, disease (including cattle tick fever), insect infestation, and colony collapse disorder. Identification of eligible loss conditions will include locations (National, State, or county-level) and start and end dates.

*Eligible winter storm* means a storm that lasts for at least three consecutive days and is accompanied by high winds,

freezing rain or sleet, heavy snowfall, and extremely cold temperatures.

*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.

*Farm-raised fish* means any aquatic species that is propagated and reared in a controlled environment.

*FSA* means the Farm Service Agency.

*Game or sport fish* means fish pursued for sport by recreational anglers; provided, however, that only game or sport fish produced in a controlled environment can generate claims under ELAP.

*Goat* means a domesticated, ruminant mammal of the genus *Capra*, including Angora goats. Goats are further delineated into categories by sex (bucks and nannies) and age (kids).

*Grazing loss* means the value, as calculated in § 1416.110(g) or (m), of eligible grazing lost due to an eligible adverse weather or eligible loss condition based on the number of days that the eligible livestock were not able to graze the eligible grazing land during the normal grazing period.

*Kid* means a goat less than 1 year old.

*Lamb* means a sheep less than 1 year old.

*Limited resource farmer or rancher* means a producer who is both:

(1) A producer whose direct or indirect gross farm sales do not exceed \$176,800 (2014 program year) in each of the 2 calendar years that precede the complete taxable year before the relevant program year (for example, for the 2014 program year, the two years would be 2012 and 2011), adjusted upwards in later years for any general inflation, and

(2) A producer whose total household income was at or below the national poverty level for a family of four in each of the same two previous years referenced in paragraph (1) of this definition. (Limited resource farmer or rancher status can be determined using a Web site available through the Limited Resource Farmer and Rancher Online Self Determination Tool through National Resource and Conservation Service at <http://www.lrfstool.sc.egov.usda.gov/tool.aspx>.)

*Livestock owner*, for death loss purposes, means one having legal ownership of the livestock for which benefits are being requested on the day such livestock died due to an eligible adverse weather or eligible loss condition. For all other purposes of loss under ELAP, "livestock owner" means one having legal ownership of the livestock for which benefits are being

requested during the 60 days prior to the beginning date of the eligible adverse weather or eligible loss condition.

*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. For a loss other than death, means a bovine animal less than 2 years old that weighed 500 pounds or more on or before the beginning date of the eligible adverse weather or eligible loss condition.

*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. For a loss other than death, means an animal of those breeds that is less than 2 years old that weighed 500 pounds or more on or before the beginning date of the eligible adverse weather or eligible loss condition.

*Non-adult dairy cattle* means a bovine dairy breed animal 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. For a loss other than death, means a bovine dairy breed animal used for the purpose of providing milk for human consumption that is less than 2 years old that weighed 500 pounds or more on or before the beginning date of the eligible adverse weather or eligible loss condition.

*Normal grazing period*, with respect to a county, means the normal grazing period during the calendar year with respect to each specific type of grazing land or pastureland in the county.

*Normal mortality* means the numerical amount, computed by a percentage of expected livestock, honeybee colony and farm-raised fish deaths, by category, that normally occur during a program year for a producer, as established for the area by the FSA State Committee for livestock and farm-raised fish, and as established nationwide by the Deputy Administrator for honeybee colonies.

*Poultry* means domesticated chickens, turkeys, ducks, and geese. Poultry are further delineated into categories by sex, age, and purpose of production as determined by FSA.

*Program year* means from October 1 through September 30 of the fiscal year in which the loss occurred.

*Ram* means a male sheep.

*Reliable record* means any non-verifiable record available that reasonably supports the eligible loss, as determined acceptable by the COC.

*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.

*Socially disadvantaged farmer or rancher* means a farmer or rancher who is a member of a socially disadvantaged group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. For a legal entity to be considered "socially disadvantaged" a majority of the persons in the entity must in their individual capacities meet this definition. Socially disadvantaged groups include the following and no others unless approved in writing by the Deputy Administrator:

- (1) American Indians or Alaskan Natives;
- (2) Asians or Asian-Americans;
- (3) Blacks or African Americans;
- (4) Native Hawaiians or other Pacific Islanders,
- (5) Hispanics; and
- (6) Women.

*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 into categories by sex and weight as determined by FSA.

*United States* means all 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any other territory or possession of the United States.

*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://droughtmonitor.unl.edu>. Should an eligible area not be covered by the U.S. Drought Monitor, the Deputy

Administrator, in consultation with appropriate weather-related agencies and experts, will establish procedures for rating drought intensity using the same range of categories as the U.S. Drought Monitor and use this information in place of the missing data for eligibility purposes.

*Verifiable record* means a document provided by the producer that can be verified by the County Committee (COC) through an independent source and is used to substantiate the claimed loss.

**§ 1416.103 Eligible losses, adverse weather, and other loss conditions.**

(a) An eligible loss covered under this subpart is a loss that an eligible producer or contract grower of livestock, honeybees, or farm-raised fish incurs due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator.

(b) A loss covered under LFP or LIP is not eligible for ELAP.

(c) To be eligible, the loss must have occurred during the program year for which payment is being requested.

(d) For a livestock feed loss to be considered an eligible loss, the livestock feed loss must be one of the following:

(1) Loss of purchased forage or feedstuffs that was intended for use as feed for the participant's eligible livestock as specified in § 1416.104(a) that was physically located in the county where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition. The loss must be due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, blizzard, eligible winter storms, flood, hurricane, lightning, tidal surge, tornado, volcanic eruption, or wildfire on non-Federal land;

(2) Loss of mechanically harvested forage or feedstuffs intended for use as feed for the participant's eligible livestock as specified in § 1416.104(a) that was physically located in the county where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition. The loss must have occurred after harvest due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, blizzard, eligible winter storms, flood, hurricane, lightning, tidal surge, tornado, volcanic eruption, or wildfire on non-Federal land;

(3) A loss resulting from the additional cost of purchasing additional livestock feed, above normal quantities,

required to maintain the eligible livestock as specified in § 1416.104(a) during an eligible adverse weather or eligible loss condition, until additional livestock feed becomes available, as determined by the Deputy Administrator. To be eligible, the additional feed purchased above normal quantities must be feed that is fed to maintain livestock in the county where the eligible adverse weather or eligible loss condition occurred. Eligible adverse weather or eligible loss conditions, as determined by the Deputy Administrator, including, but not limited to, blizzard, eligible winter storms, flood, hurricane, lightning, tidal surge, tornado, volcanic eruption, or wildfire on non-Federal land;

(4) A loss resulting from the additional cost incurred for transporting livestock feed to eligible livestock as specified in § 1416.104(a) due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, costs associated with equipment rental fees for hay lifts and snow removal. To be eligible, the loss must be incurred in combination with a loss described in paragraphs (d)(1), (2), or (3) of this section. The additional costs incurred must have been incurred for losses suffered in the county where the eligible adverse weather or eligible loss condition occurred. Eligible adverse weather or eligible loss conditions, as determined by the Deputy Administrator, include, but not limited to, blizzard, eligible winter storms, flood, hurricane, lightning, tidal surge, tornado, volcanic eruption, or wildfire on non-Federal land;

(5) For 2014 and subsequent program years, a loss resulting from the additional cost of transporting water to eligible livestock as specified in § 1416.104(a) due to an eligible drought, including, but not limited to, costs associated with water transport equipment rental fees, labor, and contracted water transportation fees. The cost of the water is not eligible for payment. Transporting water to livestock located on land enrolled in CRP is not an eligible loss under this program. To be eligible for additional cost of transporting water to eligible livestock, the livestock must be on eligible grazing lands that meet all of the following:

(i) Physically located in the county where the eligible adverse weather or eligible loss condition occurred;

(ii) That had adequate livestock watering systems or facilities before the eligible adverse weather or eligible loss condition occurred; and

(iii) That the producer is not normally required to transport water to the grazing land.

(e) For a grazing loss to be considered eligible, the grazing loss must have been incurred:

(1) During the normal grazing period, as specified in § 1416.102;

(2) On eligible grazing land that is physically located in the county where the eligible adverse weather or eligible loss condition occurred;

(3) Due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, blizzard, eligible winter storm, flood, hurricane, hail, lightning, tidal surge, volcanic eruption, and wildfire on non-Federal land. The grazing loss will not be eligible if it is due to an adverse weather condition covered by LFP as specified in subpart C of this part, such as drought or wildfire on federally managed land where the producer is prohibited by the Federal agency from grazing the normally permitted livestock on the managed rangeland due to a fire.

(f) For a loss resulting from the additional cost associated with gathering livestock to treat for cattle tick fever, the livestock treated for cattle tick fever must be considered eligible livestock as specified in § 1416.104(d). To be considered an eligible loss, acceptable records, as determined by the Deputy Administrator, must be on file with APHIS, that provide the number of livestock treated for cattle tick fever and the number of treatments given during the program year.

(g) For a loss due to livestock death to be considered eligible, the livestock death must have occurred in the county where the eligible loss condition occurred. The livestock death must be in excess of normal mortality and due to an eligible loss condition determined as eligible by the Deputy Administrator and not related to eligible adverse weather, as specified in subpart D of this part for LIP.

(h) For honeybee feed or farm-raised fish feed losses to be considered an eligible loss, the honeybee feed or farm-raised fish feed loss must be one of the following:

(1) Loss of honeybee feed or farm-raised fish feed that was intended as feed for the participant's eligible honeybees or farm-raised fish that was physically located in the county where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition. The loss must be due to an eligible adverse weather or eligible loss condition, as determined by the Deputy

Administrator, including, but not limited to, earthquake, flood, hurricane, lightning, tidal surge, tornado, volcanic eruption, and wildfire.

(2) A loss resulting from the additional cost of purchasing additional honeybee feed, above normal quantities, required to maintain the honeybees during an eligible adverse weather or eligible loss condition, until additional honeybee feed becomes available, as determined by the Deputy Administrator. To be eligible the additional feed purchased above normal quantities must be feed that is fed to maintain honeybees in the county where the eligible adverse weather or eligible loss condition occurred. The loss must be due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, earthquake, early fall frost, excessive rainfall, flood, hurricane, late spring frost, lightning, tidal surge, tornado, volcanic eruption, wildfire and eligible drought, as specified in § 1416.102.

(i) For honeybee colony or honeybee hive losses to be considered eligible, the hive producer must have incurred the loss in the county where the eligible adverse weather or eligible loss condition occurred. The honeybee colony or hive losses must be due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, colony collapse disorder, earthquake, eligible winter storm, as specified in § 1416.102, excessive wind, flood, hurricane, lightning, tornado, volcanic eruption, and wildfire. To be considered an eligible honeybee colony loss, the colony loss must be in excess of normal mortality, as established by the Deputy Administrator, and the loss could not have been prevented through reasonable and available measures. Acceptable documentation must be provided upon request by FSA to demonstrate an eligible loss occurred, was associated with an eligible adverse weather event or loss condition, and that generally accepted husbandry and production practices had been followed.

(j) For death losses of bait fish, game fish, or other aquatic species, as determined by the Deputy Administrator, to be considered eligible, the producer must have incurred the fish loss, in excess of normal mortality, in the county where the eligible adverse weather or eligible loss condition occurred. The fish death must be due to an eligible adverse weather or eligible loss condition as determined by the Deputy Administrator including, but not limited to, earthquake, flood, hurricane,

tidal surge, tornado, and volcanic eruption.

**§ 1416.104 Eligible livestock, honeybees, and farm-raised fish.**

(a) To be considered eligible livestock for livestock grazing and feed, losses resulting from transporting water, and gathering livestock to treat for cattle tick fever, livestock must meet all the following conditions:

(1) Be alpacas, adult or non-adult dairy cattle, adult or non-adult beef cattle, adult or non-adult buffalo, adult or non-adult beefalo, deer, elk, emus, equine, goats, llamas, poultry, reindeer, sheep, or swine;

(2) Except for livestock losses resulting from gathering livestock to treat cattle tick fever, be 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 where the eligible adverse weather or eligible loss condition occurred;

(3) Be livestock that is owned, cash-leased, purchased, under contract for purchase, or been raised by a contract grower or an eligible livestock producer, during the 60 days prior to the beginning date of the eligible adverse weather or eligible loss condition;

(4) Be livestock that has been maintained for commercial use as part of the producer's farming operation on the beginning date of the eligible adverse weather or eligible loss condition;

(5) Be livestock that has not been produced and maintained for reasons other than commercial use as part of a farming operation; and

(6) Be livestock that was not in a feedlot, on the beginning date of the eligible adverse weather or eligible loss condition, as a part of the normal business operation of the producer, as determined by the Deputy Administrator.

(b) The eligible livestock types for grazing and feed losses, losses resulting from transporting water and gathering livestock to treat for cattle tick fever, 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) Emus,
- (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) Ineligible livestock for grazing and feed losses, and losses resulting from transporting water, include, but are not limited to:

(1) Livestock that were or would have been in a feedlot, on the beginning date of the eligible adverse weather or eligible loss condition, as a part of the normal business operation of the producer, as determined by FSA;

(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 eligible adverse weather or eligible loss condition;

(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 exclusively for recreational purposes, such as:

- (i) Roping,
- (ii) Hunting,
- (iii) Show,
- (iv) Pleasure,
- (v) Use as pets, or
- (vi) Consumption by owner.

(d) For death losses for livestock owners to be eligible, the livestock must meet all of the following conditions:

(1) Be alpacas, adult or non-adult dairy cattle, beef cattle, beefalo, buffalo, deer, elk, emus, equine, goats, llamas, poultry, reindeer, sheep, or swine, and meet all the conditions in paragraph (f) of this section.

(2) Be one of the following categories of animals for which calculations of eligibility for payments will be calculated separately for each producer with respect to each category:

- (i) Adult beef bulls;
- (ii) Adult beef cows;
- (iii) Adult buffalo or beefalo bulls;
- (iv) Adult buffalo or beefalo cows;
- (v) Adult dairy bulls;
- (vi) Adult dairy cows;
- (vii) Alpacas;
- (viii) Chickens, broilers, pullets;
- (ix) Chickens, chicks;
- (x) Chickens, layers, roasters;
- (xi) Deer;
- (xii) Ducks;
- (xiii) Ducks, ducklings;
- (xiv) Elk;
- (xv) Emus;
- (xvi) Equine;
- (xvii) Geese, goose;
- (xviii) Geese, gosling;
- (xix) Goats, bucks;

(xx) Goats, nannies;  
 (xxi) Goats, kids;  
 (xxii) Llamas;  
 (xxiii) Non-adult beef cattle;  
 (xxiv) Non-adult buffalo or beefalo;  
 (xxv) Non-adult dairy cattle;  
 (xxvi) Reindeer;  
 (xxvii) Sheep, ewes;  
 (xxviii) Sheep, lambs;  
 (xxix) Sheep, rams;  
 (xxx) Swine, feeder pigs under 50

pounds;

(xxxi) Swine, sows, boars, barrows, gilts 50 to 150 pounds;

(xxxii) Swine, sows, boars, barrows, gilts over 150 pounds;

(xxxiii) Turkeys, poults; and

(xxxiv) Turkeys, toms, fryers, and roasters.

(e) Under ELAP, "contract growers" will only be deemed to include producers of livestock, other than feedlots, whose income is dependent on the actual weight gain and survival of the livestock. For death losses for contract growers to be eligible, the livestock must meet all of the following conditions:

(1) Be poultry or swine and meet all the conditions in paragraph (f) of this section.

(2) Be one of the following categories of animals for which calculations of eligibility for payments will be calculated separately for each contract grower with respect to each category:

- (i) Chickens, broilers, pullets;
- (ii) Chickens, layers, roasters;
- (iii) Geese, goose;
- (iv) Swine, boars, sows;
- (v) Swine, feeder pigs;
- (vi) Swine, lightweight barrows, gilts;
- (vii) Swine, sows, boars, barrows, gilts; and
- (viii) Turkeys, toms, fryers, and roasters.

(f) For livestock death losses to be considered eligible livestock for the purpose of generating payments under this subpart, livestock must meet all of the following conditions:

(1) They must have died:

- (i) On or after the beginning date of the eligible loss condition; and
- (ii) On or after October 1, 2011, and no later than 60 calendar days from the ending date of the eligible loss condition; and
- (iii) As a direct result of an eligible loss condition that occurs on or after October 1, 2011, and
- (iv) In the program year for which payment is being requested; and

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

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

(g) For honeybee colony, hive, and feed losses to be eligible, the honeybee colony must meet the following conditions:

(1) Been maintained for the purpose of producing honey or pollination for commercial use in a farming operation on the beginning date of the eligible adverse weather or eligible loss condition;

(2) Been physically located in the county where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition;

(3) Been a honeybee colony in which the participant has a risk in the honey production or pollination farming operation on the beginning date of the eligible adverse weather or eligible loss condition;

(4) Been a honeybee colony for which the producer had an eligible loss of a honeybee colony, honeybee hive, or honeybee feed; the feed must have been intended as feed for honeybees.

(h) For fish to be eligible to generate payments under ELAP, the fish must be produced in a controlled environment and the farm-raised fish must:

- (1) For feed losses:
  - (i) Be an aquatic species that is propagated and reared in a controlled environment;
  - (ii) Be maintained and harvested for commercial use as part of a farming operation; and
  - (iii) Be physically located in the county where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition.

(2) For death losses:

- (i) Be bait fish, game fish, or another aquatic species deemed eligible by the Deputy Administrator that are propagated and reared in a controlled environment;
- (ii) Been maintained for commercial use as part of a farming operation; and
- (iii) Been physically located in the county where the eligible loss adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition.

**§ 1416.105 Eligible producers, owners, and contract growers.**

(a) To be considered an eligible livestock producer for feed losses and

losses resulting from transporting water and gathering livestock to treat for cattle tick fever 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; and

(2) Had a loss that is determined to be eligible as specified in § 1416.103(d) or (f).

(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;

(2) Had a loss that is determined to be eligible as specified in § 1416.103(e);

(3) 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;

(4) Provided for the eligible livestock pastureland or grazing land, including cash leased pastureland or grazing land for eligible 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 § 1416.103(g) 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 § 1416.104(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 § 1416.104(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 § 1416.104(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 § 1416.103(h) or (i).

(e) To be considered an eligible farm-raised fish producer for feed and death loss purposes, the participant must have produced eligible farm-raised fish, as specified in § 1416.104(h), 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 § 1416.103(h) or (j);

(f) A producer seeking payments must not be ineligible under the restrictions applicable to foreign persons contained in § 1416.3(b) and must meet all other requirements of subpart A of this part and other applicable USDA regulations.

**§ 1416.106 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 § 1416.107(a),

(2) A completed application as specified in § 1416.107(b) for one or both of the following:

(i) For livestock feed, grazing, and death losses and losses resulting from transporting water and gathering livestock to treat for cattle tick fever, a completed Emergency Loss Assistance for Livestock Application;

(ii) For honeybee feed, honeybee colony, honeybee hive, or farm-raised fish feed or death losses, a completed Emergency Loss Assistance for Honeybees or Farm-Raised Fish Application;

(3) A report of acreage, if applicable, as determined by the Deputy Administrator;

(4) A copy of the participant's grower contract, if the participant is a contract grower;

(5) Other supporting documents required for FSA to determine eligibility of the participant, livestock, honeybee colonies, hives, farm-raised fish, and loss;

(6) A farm operating plan, if a current farm operating plan is not already on file in the FSA county office; and

(7) A socially disadvantaged, limited resource and beginning farmer or rancher certification, if applicable.

(b) For 2014 and previous program years, available reliable or verifiable records must be provided only upon request by FSA. For 2015 and subsequent program years, for livestock grazing losses, participant must provide acceptable, verifiable, or reliable records that:

(1) Additional livestock feed was fed to sustain eligible livestock during an eligible adverse weather or loss condition, or

(2) Eligible livestock were removed from the eligible grazing land where the grazing loss occurred.

(c) For livestock, honeybee, or farm-raised fish feed losses, participant must provide acceptable, verifiable, or reliable records of the following as determined by the COC:

(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 period of time, not to exceed 150 days, until additional feed becomes available, due to an eligible adverse weather or eligible loss condition. Verifiable or reliable records may include, but are not limited to, feed receipts, invoices, settlement sheets, warehouse ledger sheets, load summaries, register tapes, and contemporaneous records.

(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. Verifiable or reliable records may include, but are not limited to, weight tickets, truck scale tickets, pick records, contemporaneous records 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.

(3) A loss resulting from the additional cost incurred for transporting livestock feed to eligible livestock due to an eligible adverse weather or eligible loss condition as determined by the Deputy Administrator, including, but not limited to, costs associated with equipment rental fees for hay lifts and snow removal. Verifiable or reliable records may include, but are not limited to, invoices, commercial receipts, load summaries, and contemporaneous records used to verify transportation cost of additional livestock feed.

(4) Additional cost of transporting water to eligible livestock due to an eligible adverse weather or eligible loss

condition as determined by the Deputy Administrator, including, but not limited to, costs associated with water transport equipment rental fees, labor, and contracted water transportation fees. Verifiable or reliable records include, but are not limited to, commercial receipts, contemporaneous records and invoices. Records must clearly indicate the dates on which water was transported and the total gallons transported.

(d) For eligible honeybee colony, honeybee hive and farm-raised fish losses, the participant must provide verifiable or reliable records of honeybee colony, hive, or farm-raised fish losses. For honeybee colony and hive losses, the participant must also provide verifiable or reliable records of inventory at the beginning of the program year, and records of purchase and sale transactions of honeybee colonies and hives throughout the program year. For farm-raised fish losses, the participant must also provide verifiable or reliable records of inventory on the beginning date and ending date of the eligible adverse weather or eligible loss condition. Verifiable and reliable records may include, but are 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.

(e) For eligible livestock death losses that occur during the 2015 and subsequent program years, the participant must provide proof of livestock death, current physical location of livestock in inventory, and physical location of claimed livestock at the time of death, according to the documentation requirements for the Livestock Indemnity Program in § 1416.305(d) through (f).

(f) For eligible livestock death losses that occur during the 2012, 2013, and 2014 program years, the participant must provide proof of death and livestock inventory, according to the documentation requirements for the Livestock Indemnity Program in § 1416.305 (h).

(g) If verifiable or reliable records are not available or provided, as required in paragraphs (b) through (d) of this section, the COC may accept producer's certification of losses if similar producers have comparable losses, as determined by the COC and approved by the STC (FSA State Committee).

**§ 1416.107 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 in program years 2012 and 2013, provide a separate notice of loss for each program year to FSA no later than August 1, 2014,

(2) For losses that occur in program year 2014, provide a notice of loss to FSA no later than November 1, 2014,

(3) For losses that occur in program year 2015 and subsequent years, 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) November 1 following the program year for which benefits are being requested.

(4) Submit the notice of loss required in paragraph (a) of this section to the administrative FSA county office, unless additional options are otherwise provided for by the Deputy Administrator.

(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) For the 2012 and 2013 program years, August 1, 2014, or

(2) For 2014 and subsequent program years, November 1 following the program year for which benefits are being requested.

**§ 1416.108 Availability of funds.**

Not more than \$20 million for fiscal year 2012 and each succeeding fiscal year will be approved for this program by the Secretary. Within that cap, the only funds that will be considered available to pay eligible losses will be that amount approved by the Secretary. Payments will not be made for claims arising out of a particular program year until, for all claims for that program 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 program year for any reason will not be carried forward for payment under other funds for later years or otherwise, but will be considered, as to any unpaid amount, void and nonpayable.

**§ 1416.109 National Payment Rate.**

(a) For an eligible livestock, honeybee, or farm-raised fish producer that meets the definition of beginning farmer or rancher, socially disadvantaged farmer or rancher, or limited resource farmer or rancher, payments calculated in §§ 1416.110 through 1416.112 will be based on a national payment rate of 90 percent.

(b) For an eligible livestock, honeybee, or farm-raised fish producer, payments calculated in §§ 1416.110(a), (b), (f), (g) and (l), 1416.111(a), and 1416.112(a), will be based on a national payment rate, to be determined by the Deputy Administrator, of not less than 60 percent and not more than 80 percent of the calculated payment.

(c) For an eligible livestock, honeybee, or farm-raised fish producer, payments calculated in §§ 1416.110(n), 1416.111(b) and (c), and 1416.112(b), will be based on a national payment rate, to be determined by the Deputy Administrator, of not less than 75 percent and not more than 80 percent of the calculated payment.

**§ 1416.110 Livestock payment calculations.**

(a) Livestock feed payments for an eligible livestock producer will be calculated based on losses for no more than 150 days during the program year. Payment calculations for feed losses will be based on a national payment rate, as specified in § 1416.109, multiplied by 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 specified in § 1416.103(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 specified in § 1416.103(d)(2);

(3) The additional cost of purchasing additional livestock feed above normal quantities, required to maintain the eligible livestock during an eligible adverse weather or eligible loss

condition until additional livestock feed becomes available, as specified in § 1416.103(d)(3); and

(4) The additional cost incurred for transporting livestock feed to eligible livestock due to an eligible adverse weather or eligible loss condition, as specified in § 1416.103(d)(4);

(b) Payments for losses resulting from the additional cost of transporting water to eligible livestock due to an eligible drought for no more 150 days during the program year, as specified in § 1416.103(d)(5) calculated based on a national payment rate, as determined in § 1416.109, multiplied by the lesser of either:

(1) The total value of the cost to transport water to eligible livestock for 150 days, based on the daily water requirements for the eligible livestock, or

(2) The total value of the cost to transport water to eligible livestock for the program year, based on the actual number of gallons of water the eligible producer transported to eligible livestock for the program year.

(c) The total value of the cost to transport water to eligible livestock for 150 days to be used in the calculation for paragraph (b)(1) of this section is equal to the product obtained by multiplying:

(1) The number of eligible livestock converted to an animal unit basis;

(2) The gallons of water required per animal unit for maintenance for one day, as determined by the Deputy Administrator;

(3) The national average price per gallon to transport water and any appropriate regional or local adjustments as recommended by the STC and determined by the Deputy Administrator; and

(4) 150 days.

(d) The total value of the cost to transport water to eligible livestock for the program year to be used in the calculation for paragraph (b)(2) of this section is equal to the product obtained by multiplying:

(1) Actual number of gallons of water transported by the eligible producer to eligible livestock in the program year; and

(2) The national average price per gallon to transport water and any appropriate regional or local adjustments as recommended by the STC and determined by the Deputy Administrator.

(e) The national average price per gallon to transport water to be used in the calculation for paragraphs (c)(3) and (d)(2) of this section is \$0.04, or such other price determined by the Deputy Administrator.

(f) Payments for an eligible livestock producer, for livestock losses resulting from the additional cost associated with gathering livestock to treat for cattle tick fever will be calculated for the actual number of livestock involved in each treatment. Total payments are equal to the sum of the following for each treatment:

- (1) The national payment rate, as determined in § 1416.109, times
- (2) The number of eligible livestock treated by APHIS for cattle tick fever, times
- (3) The average cost to gather livestock, per head, as established by the Deputy Administrator.

(g) Payments for an eligible livestock producer for grazing losses, except for losses due to wildfires on non-Federal land, will be calculated based on the applicable national payment rate, as determined in § 1416.109, multiplied by 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 150 days of daily feed cost for all eligible 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 150 days of lost grazing.

(h) The total value of feed cost to be used in the calculation for paragraph (g)(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 (i) of this section;

(2) A payment rate equal to the corn price per pound, as determined in paragraph (j) of this section;

(3) The number of all eligible livestock owned by the eligible producer converted to an animal unit basis;

(4) The number of days grazing was lost, not to exceed 150 calendar days during the normal grazing period for the specific type of grazing land; and

(5) The producer's ownership share in the livestock.

(i) The feed grain equivalent to be used in the calculation for paragraph (g)(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.

(j) The corn price per pound to be used in the calculation for paragraph (h)(2) of this section equals the quotient calculated as follows:

(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 program 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 program year for which payments are calculated;

(2) Divided by 56.

(k) The total value of grazing lost to be used in the calculation for paragraph (h)(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 (j) 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 150 calendar days during the normal grazing period for the specific type of grazing land.

(l) Payments for an eligible livestock producer for grazing losses due to a wildfire on non-Federal land will be calculated based on the applicable national payment rate, as determined in § 1416.109, multiplied by:

(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;

(m) If a participant, during the normal grazing period for the eligible grazing land, claims both an eligible loss resulting from the additional cost of

purchasing additional livestock feed above normal quantities, as calculated in paragraph (a)(3) of this section, and an eligible grazing loss, as calculated in paragraphs (g) or (l) of this section, then the participant may receive no more than the larger of the value of the loss resulting from the:

(1) Additional cost of purchasing additional livestock feed, as calculated in paragraph (a)(3) of this section; or

(2) Grazing loss, as determined in:

(i) Paragraph (g) of this section, for losses due to an eligible adverse weather or eligible loss condition, except wildfires on non-Federal lands, or

(ii) Paragraph (l) of this section, for losses due to wildfires on non-Federal lands.

(n) Payments for an eligible livestock producer for eligible livestock death losses will be based on the applicable national payment rate, as determined in § 1416.109, multiplied by the result in paragraph (n)(1) of this section.

(1) Payments will be calculated by multiplying:

(i) The livestock 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 (n)(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) The livestock payment rates to be used in the calculation for paragraph (n)(1) of this section for eligible livestock owners and eligible livestock contract growers are:

(i) A livestock payment rate for eligible livestock owners that is based on the average fair market value of the applicable livestock as computed using nationwide prices for the previous program year unless some other price is approved by the Deputy Administrator.

(ii) A livestock payment rate for eligible livestock contract growers that is based on the relevant average income loss sustained by the contract grower, with respect to the dead livestock.

(o) Payments calculated in this section are subject to the adjustments and limits provided for in this part.

#### **§ 1416.111 Honeybee payment calculations.**

(a) An eligible honeybee producer may receive payments for eligible honeybee feed losses, as specified in § 1416.103(h), based on a national payment rate, as determined in

§ 1416.109, multiplied by the producer's actual cost for honeybee feed that was:

(1) Damaged or destroyed due to an eligible adverse weather or eligible loss condition, as specified in

§ 1416.103(h)(1); and

(2) Purchased, above normal, to maintain the honeybees during an eligible adverse weather or eligible loss condition until additional honeybee feed becomes available, as specified in § 1416.103(h)(2);

(b) An eligible honeybee producer may receive payments for eligible honeybee colony losses, as specified in § 1416.103(i), based on a national payment rate, as determined in § 1416.109(b), multiplied by:

(1) Average fair market value of the honeybee colonies as computed using nationwide prices unless some other price data is approved for use by the Deputy Administrator; and

(2) Number of eligible honeybee colonies that were damaged or destroyed due to an eligible adverse weather or eligible loss condition, in excess of normal honeybee mortality, as determined by the Deputy Administrator.

(c) An eligible honeybee producer may receive payments for eligible honeybee hive losses, as specified in § 1416.103(i), based on a national payment rate, as determined in § 1416.109, multiplied by:

(1) Average fair market value for honeybee hives as computed using nationwide prices unless some other price data is approved for use by the Deputy Administrator; and

(2) Number of honeybee hives that were damaged or destroyed due to an eligible adverse weather or eligible loss condition.

(d) Payments calculated in this section are subject to the adjustments and limits provided for in this part.

#### § 1416.112 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 specified in § 1416.103(h), based on a national payment rate, as determined in § 1416.109, multiplied by the producer's actual cost for the fish feed that was:

(1) Damaged or destroyed due to an eligible adverse weather or eligible loss condition, as specified in § 1416.103(h)(1); and

(2) Purchased, above normal, to maintain the farm-raised fish during an eligible adverse weather or eligible loss condition until additional farm-raised fish feed becomes available, as specified in § 1416.103(h)(2).

(b) An eligible producer of farm-raised fish may receive payments for death losses of farm-raised fish due to an eligible adverse weather or eligible loss condition, as specified in § 1416.103(j), based on a national payment rate, as determined in § 1416.109, multiplied by:

(1) Average fair market value of the bait fish, game fish, or other aquatic species, as determined by the Deputy Administrator, 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; and

(2) Number of eligible bait fish, game fish, or other aquatic species, as determined by the Deputy Administrator, that died as a result of an eligible adverse weather or loss condition, in excess of normal mortality, as determined 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 part 1400 of this chapter.

### Subpart C—Livestock Forage Disaster Program

#### § 1416.201 Applicability.

(a) This subpart establishes the terms and conditions under which the 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 October 1, 2011, and

(2) In the calendar year for which benefits are being requested.

#### § 1416.202 Definitions.

The following definitions apply to this subpart and to the administration of LFP. The definitions in parts 718 of this title and 1400 of this chapter 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.

*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.

*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://droughtmonitor.unl.edu>.

#### **§ 1416.203 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.

(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 prohibited from receiving these benefits as a result of the restrictions applicable to foreign persons contained in § 1416.3(b) and must meet all other requirements of subpart A of this part 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.

#### **§ 1416.204 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:

(i) During the normal grazing period for the specific type of grazing land or pastureland for the county during the qualifying drought; 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.

#### § 1416.205 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, as reported on the producer's acreage report, including crops such as forage sorghum or small grains, but not including corn stalks or grain sorghum stalks; 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 paragraph (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:

(1) 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), or

(2) The grazing loss occurs on irrigated land, unless the irrigated land has not been irrigated in the program year for which benefits are being requested due to lack of water that is beyond the participant's control.

(c) A grazing loss due to 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.

#### § 1416.205 Application for payment.

(a) To apply for LFP, the participant that suffered eligible grazing losses:

(1) On or after October 1, 2011, and on or before December 31, 2014, must submit a completed application for payment and required supporting documentation as specified in this part to the administrative FSA county office no later than January 30, 2015; or

(2) On or after January 1, 2015, 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 that grazing land or pastureland is owned or leased;

(4) A report of acreage according to part 718 of this title for the grazing lands incurring losses for which assistance is being requested under this subpart;

(5) 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 October 1, 2011; and

(iv) Occurred in the calendar year for which payments are being requested;

(6) A farm operating plan, if a current farm operating plan is not already on file in the FSA county office; and

(7) 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 Agency 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.

#### § 1416.207 Payment calculation.

(a) An eligible livestock producer will be eligible to receive payments for grazing losses for qualifying drought as specified in § 1416.205(a), calculated as 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 5 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 A of this part. 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 "1-month" payment, a "3-month" payment, "4-month" payment, or a "5-month" payment based on the provisions of paragraphs (b) through (e) of this section.

(b) To be eligible to receive a 1-month payment, that is a payment equal to the

monthly feed cost as determined under paragraph (h) 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 3-month payment, that is a payment equal to three times the monthly feed cost as determined under paragraph (h) 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 4-month payment, that is a payment equal to four times the monthly feed cost as determined under paragraph (h) 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 (not necessarily consecutive 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) To be eligible to receive a 5-month payment, that is a payment equal to five times the monthly feed cost as determined under paragraph (h) 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 D4 (exceptional drought) in any area of the county for at least 4 weeks (not necessarily consecutive weeks) during the normal grazing period for the specific type of grazing land or pastureland for the county.

(f) The monthly payment rate for LFP for grazing losses due to a qualifying drought, except as specified in paragraph (g) 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 (h) of this section, or

(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.

(g) An eligible livestock producer cannot receive more than a 5-month payment for the same covered livestock during the calendar year regardless of the number of drought intensity ratings the county receives; that is, the maximum payment an eligible livestock producer may receive under LFP in a calendar year cannot exceed 60 percent of 5 times the same covered livestock's monthly feed cost.

(h) 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 (f) of this section.

(i) 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.

(j) 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.

(k) The corn price per pound equals the quotient calculated as follows:

(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) Divided by 56.

(l) 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.

(m) An eligible livestock producer will be eligible to receive payments for grazing losses due to a fire as specified in § 1416.205(c):

(1) For the period, subject to paragraph (l)(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.

(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 § 1416.208(i), pro-rated to a daily rate, for the total number of livestock covered by the Federal lease of the eligible livestock producer.

#### **Subpart D—Livestock Indemnity Program**

##### **§ 1416.301 Applicability.**

(a) This subpart establishes the terms and conditions under which the Livestock Indemnity Program (LIP) will be administered under Title I of the 2014 Farm Bill (Pub. L. 113-79).

(b) Eligible livestock owners and contract growers will be compensated in accordance with § 1416.306 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 or attacks by animals reintroduced into the wild by the Federal Government or protected by Federal law, including wolves and avian predators. The eligible adverse weather event, is one, as determined by the Secretary, that occurs in the program year that directly results in the death of

livestock despite the livestock producer's performance of expected and normal preventative or corrective measures and good farming practices. 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, which is exacerbated by drought, causes the death of eligible livestock.

#### § 1416.302 Definitions.

The following definitions apply to this subpart. The definitions in parts 718 of this title and 1400 of this chapter also apply, except where they conflict with the definitions in this section.

*Actual livestock beginning inventory* means the actual livestock beginning inventory per calendar year for calves or lambs that is calculated from the verifiable or reliable records of death, birthing, docking, inventory, and sales in an open range operation.

*Adjusted livestock beginning inventory* means the livestock beginning inventory history for calves or lambs on the open range that will be adjusted during the base period for years for which continuous actual livestock beginning inventory history records are not provided.

*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.

*Agricultural operation* means a farming operation.

*Application* means the "Livestock Indemnity Program" form.

*Approved livestock beginning inventory* means the approved livestock beginning inventory for calves or lambs on the open range, calculated by the sum of the yearly actual and transitional livestock beginning inventory history divided by the number of years of livestock beginning inventory history.

*Base period* means the five consecutive calendar years immediately preceding the calendar year of the LIP application for which the approved livestock beginning inventory is being established for the open range calf or lambing operation.

*Buck* means a male goat.

*CCC* means Commodity Credit Corporation.

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

*Continuous livestock beginning inventory reports* means livestock beginning inventory reports submitted by a producer for each calendar year that the producer was involved in the livestock open range operation.

*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.

*Cow/Ewe Livestock Beginning Inventory History* means, the applicable calendar year cow or ewe verifiable livestock beginning inventory records provided to FSA by the open range livestock operation to be used in calculating the transitional livestock beginning inventory history.

*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.

*Eligible adverse weather event* means an extreme or abnormal damaging weather event that is not expected to occur during the loss period for which it occurred, which results in eligible livestock death losses in excess of normal mortality. Eligible adverse weather events include, but are not limited to, as determined by the Deputy Administrator or designee, earthquake; lightning; tornado; tropical storm; typhoon; vog if directly related to a volcanic eruption; winter storm if the winter storm last for three consecutive days and is accompanied by high winds, freezing rain or sleet, heavy snowfall,

and extremely cold temperatures; hurricanes; floods; blizzards; wildfires; extreme heat; extreme cold; and anthrax; and disease if exacerbated by another eligible adverse weather event.

*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 beginning inventory history* (LBIH) means a minimum of four, up to a maximum of five, calendar years of actual and transitional beginning inventory records used to calculate the approved livestock beginning inventory history for a calf or lamb open range livestock operation.

*LBIH reporting date* means the LBIH reporting date for which the reports will be accepted for inclusion in the base period for the current calendar year.

*Livestock inventory report* means a written record showing the producer's annual inventory used to determine the livestock beginning inventory history for LIP purposes for the open range calf or lamb open range livestock operation. The report contains livestock beginning inventory history by open range livestock operation by livestock type or kind.

*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 do 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.

*Open range operation* means livestock production that takes place on large parcels of land where the livestock are not gathered into pens, sheds, or other small areas such that accurate overall inventory and resulting death tallies cannot be completed without a round-up, as determined by the Deputy Administrator.

*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.

*Transitional livestock beginning inventory history for offspring (calves/lambs)* means an estimated livestock beginning inventory history, generally determined by multiplying the livestock open range operation's beginning cow or ewe livestock beginning inventory history by the national established birthing rate percentage of 90 percent for calves and 160 percent for lambs. The Deputy Administrator has the authority to make adjustments as necessary. It is to be used in the transitional livestock beginning inventory history calculation process when less than 4 consecutive calendar years of actual livestock beginning inventory history is available.

*United States* means all fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

*Winter storm* means a storm that is severe as to cause fatal injury to livestock and lasts in duration for at least three consecutive days and is accompanied by high winds, freezing

rain or sleet, heavy snowfall, and extremely cold temperatures.

#### **§ 1416.303 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 § 1416.304(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 § 1416.304(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 § 1416.3(b) and must meet all other requirements of subpart A of this part and other applicable USDA regulations.

#### **§ 1416.304 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 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 or attacks by animals reintroduced into the wild by the Federal Government or protected by Federal law, including wolves and avian predators:

(i) On or after October 1, 2011,

(ii) No later than 60 calendar days from the ending date of the eligible adverse weather event, or the date of the attack by animals reintroduced into the wild by the Federal Government or protected by Federal law, including wolves and avian predators, and

(iii) In the calendar year for which benefits are being requested;

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

(3) Before dying, not have been produced or maintained for reasons other 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, poults; 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.

(f) The following livestock are considered to be ineligible livestock for the purpose of generating payments under this subpart:

(1) Livestock that have died due to disease where the disease was not exacerbated by an eligible adverse weather event. Diseases that can be prevented by implementing and following acceptable management practices, such as vaccination, are not considered an eligible livestock death loss under LIP. Livestock that die as a result of the disease are not eligible for payment to be generated under LIP when the disease has been determined to not have been exacerbated by an eligible adverse weather event and vaccination or acceptable management practices can or have been implemented to prevent such disease. Before COC approves LIP applications for payment for disease, COC through STC, must request determination from the Deputy Administrator or designee whether the specific disease is a disease that is exacerbated by an eligible adverse weather event.

**§ 1416.305 Application process.**

(a) A producer or contract grower that suffered livestock losses that creates or could create a claim for benefits must:

(1) For losses on or after October 1, 2011, and before January 1, 2015, provide a notice of loss and application for payment to FSA no later than January 30, 2015.

(2) For 2015 calendar year and subsequent year losses, 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 (2) of this section 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)(2) of this section, a participant must also submit a completed application for payment no later than 30 calendar days after the end of the calendar year in which the loss of livestock occurred.

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

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

(5) A farm operating plan, if a current farm operating plan is not already on file in the FSA county office,

(6) Documentation of the adverse weather event from an official weather reporting data source that is determined by FSA to be reputable and available in the public domain such as, but not limited to, NOAA, from which State and County FSA Offices can validate the adverse weather event occurred, and

(7) Documentation to substantiate eligible animal attacks by animals or avian predators showing confirmation of the eligible animal or avian attack obtained from a source such as, but not limited to, the following:

(i) APHIS,

(ii) State level Department of Natural Resources, or

(iii) Other sources or documentation, as determined by the Deputy Administrator.

(8) The livestock producer may supplement additional documentation to support eligible adverse weather events and eligible attacks by animal or avian predators, as determined by the Deputy Administrator.

(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 or attacks by animals reintroduced into the wild by the Federal Government or protected by Federal law, including wolves and avian predators, 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, dated pictures, and other similar reliable documents as determined by FSA.

(f) Certification of livestock deaths by third parties may be accepted if verifiable beginning and ending inventory data is available 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 eligible 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.

(v) 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.

(g) Calf and lamb open range livestock operations may provide proof of death by using the livestock beginning inventory history for reporting losses.

(1) For 2015 and subsequent calendar years, livestock inventory reports must be provided to the local county FSA office no later than 30 calendar days after the end of the calendar year for which reports will be accepted for inclusion in the base period for the current calendar year. For the 2011 through 2014 calendar years, producers have until January 30, 2015, to provide the applicable livestock inventory reports. The STC may approve a waiver of the reporting deadline if a participant has not previously received benefits under this method.

(i) Livestock inventory reports must provide an accurate account of livestock beginning inventory for the open range livestock type or kind and must be supported by written verifiable records such as but not limited to: Docking records, sales receipts, shearing records, shipping records, bank records, veterinarian records, IRS records, or other records approved by COC. For purposes of determining beginning livestock inventory, livestock inventory reports may require adjustment by COC, not to exceed normal mortality, for when loss occurs at different points during the growing season (for example, inventories from docking may need little to no adjustment, but sales records at the end of the growing season may require an adjustment to account for a full years of normal mortality).

(ii) The open range livestock operation must certify to the accuracy of the information.

(2) The open range livestock operation is solely responsible for the timely submission and certification of accurate, complete livestock beginning inventory to the county FSA office. Livestock beginning inventory records must be provided for all livestock type or kind.

(i) Records may be requested by the applicable COC or STC, on behalf of FSA. The open range livestock operation must provide such records upon request.

(ii) The COC will explain the procedure for the livestock beginning inventory history to open range livestock operation. COC will determine the livestock beginning inventory history in accordance with § 1416.305(g).

(iii) COC will determine if the livestock beginning inventory records are acceptable and calculate the approved livestock beginning inventory history.

(3) The livestock beginning inventory history is calculated utilizing a

minimum of 4 years of data and will be updated each subsequent inventory year. The transitional livestock beginning inventory history may contain a maximum of the 4 most recent calendar years and may include actual and transitional livestock beginning inventories. Transitional livestock beginning inventory history will only be used when less than 4 years of actual records are available. Appropriate adjustments to livestock beginning inventory history may be made to account for variations in ewe and cow stocking levels during the period covered by the history.

(4) The open range livestock operation is required to provide beginning livestock inventory records to determine the livestock beginning inventory history, if livestock beginning inventory records are available.

(i) If no acceptable livestock beginning inventory records are available for either calves or lambs, calculate the 4 transitional livestock beginning inventory histories by multiplying the approved birthing rate or drop rate percentage for the open range livestock operation times the applicable cow or ewe livestock beginning inventory history times 65 percent.

(ii) If acceptable livestock beginning inventory records are provided for only one of the most recent 5 calendar years, calculate the 3 transitional livestock beginning inventory histories by multiplying the approved birthing rate or drop rate percentage for the open range livestock operation times the applicable cow or ewe livestock beginning inventory history times 80 percent.

(iii) If acceptable livestock beginning inventory records are provided for only 2 of the most recent 5 calendar years, calculate the 2 transitional livestock beginning inventory histories by multiplying the approved birthing rate or drop rate percentage for the open range livestock operation times the applicable cow or ewe livestock beginning inventory history times 90 percent.

(iv) If acceptable livestock beginning inventory records are provided for only 3 of the most recent 5 calendar years, calculate the one transitional livestock beginning inventory histories by multiplying the approved birthing rate or drop rate percentage for the open range livestock operation times the applicable cow or ewe livestock beginning inventory history times 100 percent.

(v) If acceptable livestock beginning inventory history records containing information for 4 or more of the most

recent calendar years are provided, calculate the livestock beginning inventory history by taking a simple average of the actual livestock beginning inventory histories.

(h) For livestock death losses that occurred on or after October 1, 2011, and before January 1, 2015, livestock producers who cannot meet the criteria in paragraphs (d) through (g) of this section may provide acceptable documentation of proof of death and inventories according to the requirements in this paragraph (h).

(1) Documents that may provide acceptable evidence of death include, but are not limited to, any or a combination of the following:

(i) Contemporaneous producer records existing at the time of the event, such as, but not limited to: Personal diary listing births, deaths, unaccounted animals, and date of such event; personal diary of cowboy or herdsman showing animal care; calendar listing births, deaths, unaccounted animals, date livestock turned out on pasture; pictures with a date; brand inspection records; dairy herd improvement records; ear tag documentation or records; and other similar reliable documents. COC may require the livestock producer to file a third-party certification to support the contemporaneous records.

(ii) Third-party certification according to paragraph (f) of this section, except that the third-party is not required to certify to the specific number of livestock.

(2) Documents that may provide acceptable evidence of livestock inventory include, but are not limited to, any or a combination of the following:

- (i) Veterinary records;
- (ii) Canceled check documentation;
- (iii) Balance sheets;
- (iv) Inventory records used for tax purposes;
- (v) Loan records;
- (vi) Bank statements;
- (vii) Farm credit balance sheets;
- (viii) Property tax records;
- (ix) Trucking and/or livestock hauling records;
- (x) Brand inspection records;
- (xi) Sales and purchase receipts;
- (xii) Private insurance documents;
- (xiii) Chattel inspections;
- (xiv) IRS records such schedule F and depreciation schedules;
- (xv) Docking records;
- (xvi) Shearing records;
- (xvii) Ear tag records.

(3) COC may compare livestock numbers and carrying capacity to acreage reports filed by a producer during the calendar year of loss to determine reasonableness.

(4) COC must review all documentation provided by the producer and based upon review of the documentation provided by the producer and personal knowledge of the producer's livestock operation, determine whether the number of death losses reported by the livestock producer are reasonable and whether the application for payment should be approved.

**§ 1416.306 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 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 E—Tree Assistance Program**

**§ 1416.400 Applicability.**

(a) This subpart establishes the terms and conditions under which the Tree Assistance Program (TAP) will be administered under Title I of the Agricultural Act of 2014 (Pub. L. 113–79, the 2014 Farm Bill).

(b) Eligible orchardists and nursery tree growers will be compensated as specified in § 1416.406 for eligible tree, bush, and vine losses in excess of 15 percent mortality, or, where applicable,

damage in excess of 15 percent, adjusted for normal mortality and normal damage, that occurred in the calendar year (or loss period in the case of plant disease) for which benefits are being requested and as a direct result of a natural disaster.

**§ 1416.401 Administration.**

The program will be administered as specified in § 1416.2 and in this subpart.

**§ 1416.402 Definitions.**

The following definitions apply to this subpart. The definitions in parts 718 of this title and 1400 of this chapter 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 would normally be damaged during a calendar year for a producer.

*Normal mortality* means percentage, as established for the area by the FSA State Committee, of expected lost trees, bushes, or vines in the individual stand that normally occurs during a calendar year for a producer. This term refers to the number of whole trees, bushes, or vines that are destroyed or damaged beyond rehabilitation. Mortality does not include partial damage such as lost tree limbs.

*Seedling* means an immature tree, bush, or vine that was planted in the ground or other growing medium to grow a new tree, bush, or vine for commercial purposes.

*Stand* means a contiguous acreage of the same type of trees (including Christmas trees, ornamental trees, nursery trees, and potted trees), bushes (including shrubs), or vines.

*State committee* means the respective FSA committee.

*Tree* means a tall, woody plant having comparatively great height, and a single trunk from which an annual crop is produced for commercial purposes, such as a maple tree for syrup, papaya tree, or orchard tree. Trees used for pulp or timber are not considered eligible trees under this subpart.

*Vine* means a perennial plant grown under normal conditions from which an annual fruit crop is produced for commercial market for human consumption, such as grape, kiwi, or passion fruit, and that has a flexible stem supported by climbing, twining, or creeping along a surface. Perennials that are normally propagated as annuals such as tomato plants, biennials such as the plants that produce strawberries, and annuals such as pumpkins, squash, cucumbers, watermelon, and other melons, are excluded from the term vine in this subpart.

**§ 1416.403 Eligible losses.**

(a) To be considered an eligible loss under this subpart:

(1) Eligible trees, bushes, or vines must have been lost or damaged as a result of natural disaster as determined by the Deputy Administrator;

(2) The individual stand must have sustained a mortality loss or damage loss, as the case may be, in excess of 15 percent after adjustment for normal mortality or damage, to be determined based on:

(i) Each eligible disaster event, except for losses due to plant disease;

(ii) For plant disease, the time period, as determined by the Deputy

Administrator, for which the stand is infected.

(3) The loss could not have been prevented through reasonable and available measures; and

(4) The trees, bushes, or vines, in the absence of a natural disaster, would not normally have required rehabilitation or replanting within the 12-month period following the loss.

(b) The damage or loss must be visible and obvious to the county committee representative. If the damage is no longer visible, the county committee may accept other evidence of the loss as it determines is reasonable.

(c) The county committee may require information from a qualified expert, as determined by the county committee, to determine extent of loss in the case of plant disease or insect infestation.

(d) The Deputy Administrator will determine the types of trees, bushes, and vines that are eligible.

(e) An individual stand that did not sustain a sufficient loss as specified in paragraph (a)(2) of this section is not eligible for payment, regardless of the amount of loss sustained.

**§ 1416.404 Eligible orchardists and nursery tree growers.**

(a) To be eligible for TAP payments, the eligible orchardist or nursery tree grower must:

(1) Have planted, or be considered to have planted (by purchase prior to the loss of existing stock planted for commercial purposes) trees, bushes, or vines for commercial purposes, or have a production history, for commercial purposes, of planted or existing trees, bushes, or vines;

(2) Have suffered eligible losses of eligible trees, bushes, or vines occurring on or after October 1, 2011, as a result of a natural disaster or related condition;

(3) Have continuously owned the stand from the time of the disaster until the time that the TAP application is submitted.

(b) A new owner of an orchard or nursery who does not meet the requirements of paragraph (a) of this section may receive TAP payments approved for the previous owner of the orchard or nursery and not paid to the previous owner, if the previous owner of the orchard or nursery agrees to the succession in writing and if the new owner:

(1) Acquires ownership of trees, bushes, or vines for which benefits have been approved;

(2) Agrees to complete all approved practices that the original owner has not completed; and

(3) Otherwise meets and assumes full responsibility for all provisions of this

part, including refund of payments made to the previous owner, if applicable.

(c) A producer seeking payment must not be ineligible under the restrictions applicable to citizenship and foreign corporations contained in § 1416.3(b) and must meet all other requirements of subpart A of this part.

(d) Federal, State, and local governments and agencies and political subdivisions thereof are not eligible for payment under this subpart.

**§ 1416.405 Application.**

(a) To apply for TAP, a producer that suffered eligible tree, bush, or vine losses that occurred:

(1) On or after October 1, 2011, through December 31, 2014, must provide an application for payment and supporting documentation to FSA by the later of January 31, 2015, or 90 calendar days after the disaster event or date when the loss is apparent to the producer.

(2) During the 2015 calendar year or later, must provide an application for payment and supporting documentation to FSA within 90 calendar days of the disaster event or date when the loss of trees, bushes, or vines is apparent to the producer.

(b) The producer must submit the application for payment within the time specified in paragraph (a) of this section to the FSA administrative county office that maintains the producer's farm records for the agricultural operation.

(c) A complete application includes all of the following:

(1) A completed application form provided by FSA;

(2) An acreage report for the farming operation as specified in part 718, subpart B, of this title;

(3) Subject to verification and a loss amount determined appropriate by the county committee, a written estimate of the number of trees, bushes, or vines lost or damaged that is certified by the producer or a qualified expert, including the number of acres on which the loss occurred;

(4) Sufficient evidence of the loss to allow the county committee to calculate whether an eligible loss occurred; and

(5) A farm operating plan, if a current farm operating plan is not already on file in the FSA county office.

(d) Before requests for payment will be approved, the county committee:

(1) Must make an eligibility determination based on a complete application for assistance;

(2) Must verify actual qualifying losses and the number of acres involved by on-site visual inspection of the land and the trees, bushes, or vines;

(3) May request additional information and may consider all relevant information in making its determination; and

(4) Must verify actual costs to complete the practices, as documented by the producer.

**§ 1416.406 Payment calculations.**

(a) Payment to an eligible orchardist or nursery tree grower for the cost of replanting or rehabilitating trees, bushes, or vines damaged or lost due to a natural disaster, in excess of 15 percent damage or mortality (adjusted for normal damage or mortality), will be calculated as follows:

(1) For the cost of planting seedlings or cuttings, to replace lost trees, bushes, or vines, the lesser of:

(i) 65 percent of the actual cost of the practice, or

(ii) The amount calculated using rates established by the Deputy Administrator for the practice.

(2) For the cost of pruning, removal, and other costs incurred for salvaging damaged trees, bushes, or vines, or in the case of mortality, to prepare the land to replant trees, bushes, or vines, the lesser of:

(i) 50 percent of the actual cost of the practice, or

(ii) The amount calculated using rates established by the Deputy Administrator for the practice.

(b) An orchardist or nursery tree grower that did not plant the trees, bushes, or vines, but has a production history for commercial purposes on planted or existing trees and lost the trees, bushes, or vines as a result of a natural disaster, in excess of 15 percent damage or mortality (adjusted for normal damage or mortality), will be eligible for the salvage, pruning, and land preparation payment calculation as specified in paragraph (a)(2) of this section. To be eligible for the replanting payment calculation as specified in paragraph (a)(1) of this section, the orchardist or nursery grower who did not plant the stock must be a new owner who meets all of the requirements of § 1416.404(b) or be considered the owner of the trees under provisions appearing elsewhere in this subpart.

(c) Eligible costs for payment calculation include costs for:

(1) Seedlings or cuttings, for tree, bush, or vine replanting;

(2) Site preparation and debris handling within normal horticultural practices for the type of stand being re-established, and necessary to ensure successful plant survival;

(3) Pruning, removal, and other costs incurred to salvage damaged trees, bushes, or vines, or, in the case of tree

mortality, to prepare the land to replant trees, bushes, or vines;

(4) Chemicals and nutrients necessary for successful establishment;

(5) Labor to plant seedlings or cuttings as determined reasonable by the county committee; and

(6) Labor used to transplant existing seedlings established through natural regeneration into a productive tree stand.

(d) The following costs are not eligible:

(1) Costs for fencing, irrigation, irrigation equipment, protection of seedlings from wildlife, general improvements, re-establishing structures, and windscreens.

(2) Any other costs not listed in paragraphs (c)(1) through (6) of this section, unless specifically determined eligible by the Deputy Administrator.

(e) Producers must provide the county committee documentation of actual costs to complete the practices, such as receipts for labor costs, equipment rental, and purchases of seedlings or cuttings.

(f) When lost stands are replanted, the types planted may be different from those originally planted. The alternative types will be eligible for payment if the new types have the same general end use, as determined and approved by the county committee. Payments for

alternative types will be based on the lesser of rates established to plant the types actually lost or the cost to establish the alternative used. If the type of plantings, seedlings, or cuttings differs significantly from the types lost, the costs may not be approved for payment.

(g) When lost stands are replanted, the types planted may be planted on the same farm in a different location than the lost stand. To be eligible for payment, site preparation costs for the new location must not exceed the cost to re-establish the original stand in the original location.

(h) Eligible orchardists or nursery tree growers may elect not to replant the entire eligible stand. If so, the county committee will calculate payment based on the number of qualifying trees, bushes, or vines actually replanted.

(i) If a practice, such as site preparation, is needed to both replant and rehabilitate trees, bushes, or vines, the producer must document the expenses attributable to replanting versus rehabilitation. The county committee will determine whether the documentation of expenses detailing the amounts attributable to replanting versus rehabilitation is acceptable. In the event that the county committee determines the documentation does not include acceptable detail of cost

allocation, the county committee will pro-rate payment based on physical inspection of the loss, damage, replanting, and rehabilitation.

(j) The cumulative total quantity of acres planted to trees, bushes, or vines for which a producer may receive payment under this part for losses that occurred on or after October 1, 2011, can not exceed 500 acres per program year.

**§ 1416.407 Obligations of a participant.**

(a) Eligible orchardists and nursery tree growers must execute all required documents and complete the TAP-funded practice within 12 months of application approval.

(b) Eligible orchardist or nursery tree growers must allow representatives of FSA to visit the site for the purposes of certifying compliance with TAP requirements.

(c) Producers who do not meet all applicable requirements and obligations will not be eligible for payment.

Signed on April 7, 2014.

**Juan M. Garcia,**

*Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.*

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