

relocation due to PCS orders. This commenter believes agencies have been applying the 2-year eligibility period for PCS spouses inconsistently. As noted in the preceding paragraph, eligibility for PCS spouses begins on the date of the service member's PCS orders. We believe this is a clear standard that can and should be applied consistently.

One commenter stated these provisions do not apply to military spouses in the Department of Defense's (DoD) Priority Placement Program. Neither E.O. 13473 nor OPM's implementing regulation prevents an individual in any DoD military spouse program from utilizing these provisions, assuming that individual is otherwise eligible under 5 CFR 315.612.

Another commenter stated that service members should have the same hiring advantage as military spouses. Executive Order 13473 authorizes noncompetitive appointment only for certain military spouses. We do note that service members may be eligible under several veterans-specific hiring authorities, including Veterans Recruitment Act (VRA) appointments. In addition, service members may be entitled to veterans' preference, depending on when they served on active duty and the character of that service.

One individual asked that we clarify whether these provisions apply to military spouses who are current Federal employees, or individuals who have never been in Federal service. These provisions apply to any military spouse who is otherwise eligible under section 315.612.

Another commenter asked whether the proposed changes apply to all widows of 100 percent disabled veterans. Per E.O. 13473, the proposed changes apply to any spouse of a service member who incurred a 100 percent disability because of the service member's active duty service, provided the individual is otherwise eligible under section 315.612.

One individual commented that non-military spouses should have the same opportunity for obtaining a Federal job as do military spouses. As noted above, E.O. 13473 authorizes noncompetitive appointment only for certain military spouses. Individuals not eligible under this authority must seek consideration under any hiring authority for which they are eligible, or apply through the competitive examining process. Use of the military spouse hiring authority, as is the case with all other noncompetitive hiring authorities, is completely discretionary on the part of the hiring agency. This authority does not constitute, establish, or convey a

hiring preference or a selection priority for eligible military spouses.

Two of the comments we received were beyond the scope of the proposed changes. One individual asked that OPM reinstitute the Defense Civilian Intelligence Personnel System (DCIPS) interchange agreement. The other commenter suggested an improvement in the USAJOBS Web site.

#### **Executive Order 13563 and Executive Order 12855, Regulatory Review**

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 13563 and E.O. 12866.

#### **Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal agencies and employees.

#### **List of Subjects in 5 CFR Part 315**

Government employees.

U.S. Office of Personnel Management.

**John Berry,**

*Director.*

Accordingly, OPM is amending 5 CFR part 315 as follows:

#### **PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT**

- 1. The authority citation for part 315 continues to read as follows:

**Authority:** 5 U.S.C. 1302, 3301, and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp. p. 218, unless otherwise noted; and E.O. 13162. Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652. Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104. Sec. 315.603 also issued under 5 U.S.C. 8151. Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp. p. 111. Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp. p. 303. Sec. 315.607 also issued under 22 U.S.C. 2506. Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp. p. 293. Sec. 315.610 also issued under 5 U.S.C. 3304(c). Sec. 315.611 also issued under 5 U.S.C. 3304(f). Sec. 315.612 also issued under E.O. 13473. Sec. 315.708 also issued under E.O. 13318, 3 CFR, 2004 Comp. p. 265. Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1978 Comp. p. 229. Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp. p. 264.

#### **Subpart F—Career or Career-Conditional Appointment Under Special Authorities**

- 2. In § 315.612, revise paragraph (d)(1) to read as follows:

#### **§ 315.612 Noncompetitive appointment of certain military spouses.**

\* \* \* \* \*

(d) *Conditions.* (1) In accordance with the provisions of this section, spouses

are eligible for noncompetitive appointment:

(i) For a maximum of 2 years from the date of the service member's permanent change of station orders;

(ii) From the date of documentation verifying the member of the armed forces is 100 percent disabled; or

(iii) From the date of documentation verifying the member of the armed forces was killed while on active duty.

\* \* \* \* \*

[FR Doc. 2011–22268 Filed 8–30–11; 8:45 am]

**BILLING CODE 6325–39–P**

## **DEPARTMENT OF AGRICULTURE**

### **Farm Service Agency**

#### **7 CFR Part 760**

#### **RIN 0560-AH95**

### **Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program, Livestock Indemnity Program, and General Provisions for Supplemental Agricultural Disaster Assistance Programs**

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Final rule, technical amendment.

**SUMMARY:** The Farm Service Agency (FSA) is making several clarifying amendments and corrections to the regulations for the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP) and the Livestock Indemnity Program (LIP) to clarify when livestock death losses must have occurred to be eligible losses for LIP and ELAP benefits. This rule also clarifies when adverse weather events or loss conditions must have occurred to be eligible losses of livestock, honeybee, crops, and farm-raised fish for ELAP and Supplemental Revenue Assistance Payments Program (SURE) benefits. This rule clarifies an equitable relief provision for the risk management purchase requirement that applies to the Supplemental Agricultural Disaster Assistance Programs, authorized by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill), except LIP.

**DATES:** Effective Date: August 31, 2011.

**FOR FURTHER INFORMATION CONTACT:** Candace Thompson; phone (202) 720–7641; e-mail:

*Candy.Thompson@wdc.usda.gov.*

Persons with disabilities or who require alternative means for communication (Braille, large print, audio tape, *etc.*) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:** This rule makes minor clarifying amendments and corrections to the regulations that were published to implement disaster assistance programs authorized by the 2008 Farm Bill (Pub. L. 110–246). This rule amends the regulations to specify dates for eligible losses for SURE, ELAP and LIP, and to amend an equitable relief provision for the risk management purchase requirement for the Supplemental Agricultural Disaster Assistance Programs, except LIP. The Supplemental Agricultural Disaster Assistance Programs authorized by the 2008 Farm Bill include ELAP, LIP, the Livestock Forage Disaster Program (LFP), SURE, and the Tree Assistance Program (TAP).

A final rule for ELAP was published in the **Federal Register** on September 11, 2009 (74 FR 46665–46683) and amendments were published in the **Federal Register** on April 14, 2010 (75 FR 19185–19193). The final rule that included both the specific provisions for LIP and the general provisions that apply to all the Supplemental Agricultural Disaster Assistance Programs was published in the **Federal Register** on July 2, 2009 (74 FR 31567–31578). The final rule for SURE was published in the **Federal Register** on December 28, 2009 (74 FR 68480–68498) and amendments were published in the **Federal Register** on April 14, 2010 (75 FR 19185–19193).

The amendments in this rule are needed to clarify the dates for eligible losses, to clarify that it is the producer's responsibility to provide documentation to justify equitable relief for the risk management purchase requirement, and to correct typographical errors.

#### **Amendments to General Provisions for Equitable Relief**

7 CFR part 760 “Indemnity Payment Programs,” Subpart B, “General Provisions for Supplemental Agricultural Disaster Assistance Programs” specifies the general provisions that apply to all the Supplemental Agricultural Disaster Assistance Programs authorized by the 2008 Farm Bill. This rule clarifies a provision in Subpart B that specifies the requirements for equitable relief of the risk management purchase requirement.

As specified in the 2008 Farm Bill and in Subpart B, all of the Supplemental Agricultural Disaster Assistance Programs except LIP have a risk management purchase requirement. This means that producers must have purchased insurance or Noninsured Crop Disaster Assistance Program (NAP) coverage, as applicable, to be eligible for disaster assistance benefits. The current

regulations specify that except for grazing land, producers must have obtained insurance or NAP coverage for all of their crops to be eligible for ELAP, SURE, and TAP, and for LFP, producers must have obtained insurance or NAP coverage for those grazing lands for which they seek benefits to be eligible. Producers who fail to meet the risk management purchase requirement are not eligible for benefits unless an exception applies. Exceptions include the Secretary's authority to grant equitable relief on a case-by-case basis to producers who fail to meet the risk management purchase requirement through no fault of their own and unintentionally.

The risk management purchase requirement is not changing with this rule, and neither are the exceptions to it. This rule amends § 760.106 to clarify that if equitable relief is sought, it is a producer's responsibility to provide evidence, to the satisfaction of FSA, that the failure to meet the requirement was unintentional. It is not FSA's responsibility to provide documentation that a failure to meet the risk management purchase requirement was or was not intentional. It is the producer who has failed to meet the risk management purchase requirement and who is seeking relief for that failure who must provide evidence as to intent, to the satisfaction of FSA. This clarifying amendment will impact all producers who seek equitable relief for the reason of unintentional failure to meet the risk management purchase requirement, by requiring them to provide evidence of intent.

This rule also makes a correction to section § 760.107 to correct an internal paragraph reference.

#### **Amendments to Eligible Loss Dates for ELAP and LIP**

This rule makes a technical correction to 7 CFR 760, subpart C, “Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program,” to clarify dates for eligible ELAP livestock, honeybee, and farm-raised fish losses. This correction is being made to be consistent with the program eligibility dates specified in the 2008 Farm Bill. A parallel change is being made to Subpart E, “Livestock Indemnity Program,” to clarify the dates on which livestock deaths must have occurred to qualify as an eligible loss and to Subpart G, “Supplemental Revenue Assistance Payments Program,” to clarify the time frame in which eligible losses must have occurred. Specifically, § 760.404(c) is being amended to correct the eligibility dates for eligible livestock deaths. The change extends the eligibility period

from no later than 60 days from the ending date of the adverse weather event, but before October 1, 2011, to no later than 60 days from the ending date of the adverse weather event, but before November 30, 2011. For crop losses, § 760.601 and § 760.610 are being amended to clarify that the disaster event that causes crop losses must occur on or before September 30, 2011 for the crop losses to be eligible.

The intent of the amendment is to be consistent with the 2008 Farm Bill, and to provide benefits to producers who had eligible losses due to adverse weather events that occurred in 2008–2011. The 2008 Farm Bill specifies that the weather events that caused the losses, but not necessarily the losses, had to occur on or before September 30, 2011, for losses to be eligible. As specified in the current regulations, eligible livestock producers who suffered eligible livestock death losses in calendar years 2008 through 2010 were eligible to receive compensation for livestock that died no later than 60 calendar days from the ending date of the applicable adverse weather event. However, as specified in the current regulations, producers who suffer 2011 livestock death losses would not have the same opportunity to claim losses that occurred 60 calendar days after the eligible adverse weather event if the adverse weather event occurs in the last two months of fiscal year 2011 (the 60 calendar days before October 1, 2011), because the current regulation specifies that the eligible loss must have occurred before October 1, 2011. To provide fair and equitable treatment to all producers in a manner that is consistent with the 2008 Farm Bill, § 760.404(c) is being amended to provide that the eligible livestock must have died no later than 60 calendar days from the ending date of the applicable adverse weather event, but before November 30, 2011.

Similar changes are being made to the ELAP regulations in 7 CFR part 760, Subpart C, “Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program,” for the same reasons. The changes to the ELAP regulations also impact other losses, such as livestock feed and grazing losses, honeybee colony, hive, and feed losses, and farm-raised fish feed and fish death losses. Specifically, § 760.204(f)(1) is being amended to clarify the ending date by which eligible losses must have occurred is November 30, 2011.

These clarifications will provide eligibility to producers who had losses due to adverse events that occurred in the last two months of fiscal year 2011, for those cases where the actual losses occurred in October or November of

2011. For example, if a flood in September 2011 caused subsequent livestock deaths in mid-November of 2011, those losses would not be eligible under the current rule, but will be eligible with this correction.

Additional minor clarifying changes are being made to the regulations for LIP and ELAP to make it clear which date requirements apply to the adverse weather event or loss condition and which apply to the livestock deaths or other losses.

A clarification is being made to the SURE regulations in 7 CFR part 760, Subpart G, "Supplemental Revenue Assistance Payments Program," for similar reasons. To be eligible for SURE payments, a producer must certify that at least one crop of economic significance suffered at least a 10 percent crop loss due to a disaster event occurring on or before September 30, 2011.

#### Notice and Comment

The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 made the exemption from notice and comments provisions contained in section 1601(c)(2) of the 2008 Farm Bill applicable in implementing section 12033 of the 2008 Farm Bill. Therefore, these regulations are exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553), as specified in section 1601(c)(2) of the 2008 Farm Bill, which requires that the regulations be promulgated and administered without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking.

#### Executive Order 12866

This technical amendment did not require Office of Management and Budget (OMB) designation under Executive Order 12866, "Regulatory Planning and Review," and therefore OMB has not reviewed this rule.

#### 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). This rule is not subject to the Regulatory Flexibility Act since FSA is

not required to publish a notice of proposed rulemaking for this rule.

#### Environmental Review

The environmental impacts of this 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 FSA regulations for compliance with NEPA (7 CFR part 799). The rule change is a technical amendment and is solely administrative in nature. Therefore, FSA has determined that NEPA does not apply to this Final Rule and no environmental assessment or environmental impact statement will be prepared.

#### 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. This rule neither provides Federal Financial assistance or direct Federal development; it does not provide either grants or cooperative agreements. Therefore this program is not subject to Executive Order 12372.

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, "Civil Justice Reform." This rule would not preempt State and or local laws, and regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought concerning the provisions of this rule, appeal provisions of 7 CFR parts 11 and 780 would need to be exhausted. This rule would not preempt a State or Tribal government law, including any State or Tribal government liability law.

#### 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. 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." The policies contained in this rule do not have Tribal implications that preempt Tribal law. FSA continues to consult with Tribal officials to have a meaningful consultation and collaboration on the development and strengthening of FSA regulations.

#### Unfunded Mandates

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, or 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 by Title II of UMRA for State, local, or Tribal governments or for 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

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, SBREFA). Therefore, FSA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review and this rule is effective on the date of publication in the **Federal Register**.

#### Federal Assistance Programs

The titles and numbers of the Federal assistance programs as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are:

Livestock Indemnity Program—10.088.

Livestock Forage Disaster Program—10.089.

Supplemental Revenue Assistance Program—10.090.

Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program—10.091.

Tree Assistance Program—10.092.

**Paperwork Reduction Act**

These regulations are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. chapter 35), as specified in section 1601(c)(2) of the 2008 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

**E-Government Act Compliance**

FSA is 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 in 7 CFR Part 760**

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

For the reasons discussed in the preamble, the Farm Service Agency (USDA) amends 7 CFR part 760 as follows:

**PART 760—INDEMNITY PAYMENT PROGRAMS**

- 1. The authority citation for part 760 continues to read as follows:

**Authority:** 7 U.S.C. 4501, 7 U.S.C. 1531, 16 U.S.C. 3801, note, and 19 U.S.C. 2497; Title III, Pub. L. 109–234, 120 Stat. 474; Title IX, Pub. L. 110–28, 121 Stat. 211; and Sec. 748, Pub. L. 111–80, 123 Stat. 2131.

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

- 2. Revise § 760.106 paragraph (a)(1), to read as follows:

**§ 760.106 Equitable relief.**

(a) \* \* \*  
(1) Are otherwise ineligible or provide evidence, satisfactory to FSA, that the failure to meet the requirements of § 760.104 for one or more eligible crops on the farm was unintentional and not because of any fault of the participant, as determined by the Secretary, or

\* \* \* \* \*

**§ 760.107 [Amended]**

- 3. Amend § 760.107, in paragraph (b)(2)(ii), by removing the words “paragraph (a)” and adding, in their place, the words “paragraph (b)(2)(i)”.

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

- 4. Revise § 760.203, paragraph (c)(2) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(2) Due to an eligible adverse weather event or loss condition that occurred on or after January 1, 2008, and before October 1, 2011.

\* \* \* \* \*

- 5. Revise § 760.204, paragraph (f)(1) to read as follows:

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

\* \* \* \* \*

(f) \* \* \*

(1) They must have died:  
(i) On or after the beginning date of the eligible loss condition; and  
(ii) On or after January 1, 2008, and no later than 60 calendar days from the ending date of the eligible loss condition, but before November 30, 2011; and  
(iii) As a direct result of an eligible loss condition that occurs on or after January 1, 2008, and before October 1, 2011; and

(iv) In the calendar year for which payment is being requested; and

\* \* \* \* \*

**Subpart E—Livestock Indemnity Program**

- 4. Revise § 760.404, paragraph (c) to read as follows:

**§ 760.404 Eligible livestock.**

\* \* \* \* \*

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

- (1) Died as a direct result of an eligible adverse weather event that occurred on or after January 1, 2008, and before October 1, 2011;  
(2) Died no later than 60 calendar days from the ending date of the applicable adverse weather event, but before November 30, 2011;  
(3) Died in the calendar year for which benefits are being requested;  
(4) Been maintained for commercial use as part of a farming operation on the day they died; and  
(5) Before dying, not have been produced or maintained for reasons other 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.

\* \* \* \* \*

**Subpart G—Supplemental Revenue Assistance Payments Program**

- 5. Amend § 760.601 by adding a sentence at the end of paragraph (b) to read as follows:

**§ 760.601 Applicability.**

\* \* \* \* \*

(b) \* \* \* Crop losses must have occurred in crop year 2008 or subsequent crop years due to an eligible disaster event that occurs on or before September 30, 2011.

\* \* \* \* \*

- 6. Revise § 760.610, paragraph (a)(2), to read as follows:

**§ 760.610 Participant eligibility.**

(a) \* \* \*

(2) Crop losses must have occurred in crop year 2008 or subsequent crop years due to an eligible disaster event that occurred on or before September 30, 2011.

(i) For insured crops, the coverage period, as defined in the insurance policy, must have begun on or before September 30, 2011;

(ii) For NAP crops, the coverage period must have begun on or before September 30, 2011; and

(iii) The final planting date for that crop according to the Federal crop insurance or NAP policy must have been on or before September 30, 2011.

\* \* \* \* \*

**Carolyn B. Cooksie,**

*Acting Administrator, Farm Service Agency.*

[FR Doc. 2011–22323 Filed 8–30–11; 8:45 am]

**BILLING CODE 3410–05–P**

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 927**

[Doc. No. AMS–FV–11–0060; FV11–927–2 IR]

**Pears Grown in Oregon and Washington; Assessment Rate Decrease for Fresh Pears**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule decreases the assessment rate established for the Fresh Pear Committee (Committee) for the 2011–2012 and subsequent fiscal periods from \$0.501 to \$0.471 per standard box or equivalent of fresh winter pears handled. The Committee locally administers the marketing order