

# Farmers' Guide to Disaster Assistance

## Volume 2: Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program

June 2019



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# **Farmers' Guide to Disaster Assistance**

Seventh Edition

## **Volume 2: Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP)**

June 2019

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## Table of Contents

	<b>Page</b>
I. Introduction .....	1
II. Rules that Govern ELAP—Including Recent Changes .....	1
A. Statute, Regulations, Handbooks, and Notices .....	1
B. Recent Changes to ELAP .....	2
1. 2018 Budget Act .....	2
2. Changes to FSA Handbook in 2018 .....	2
3. Regulation Changes in 2018 .....	2
4. 2018 Farm Bill.....	3
C. ELAP: A Confusing Hodgepodge .....	3
III. ELAP Eligibility in General .....	3
A. General Producer Eligibility Rules .....	3
1. Must Be an “Eligible Producer” .....	3
2. Can Be an Individual or Eligible Entity .....	4
3. Adjusted Gross Income of \$900,000 or Less .....	4
4. Conservation Compliance .....	5
B. General Loss Eligibility Rules.....	5
1. Loss Due to Adverse Weather or Eligible Loss Conditions.....	5
a. Eligible Adverse Weather .....	5
b. Eligible Loss Condition.....	5
2. Not Covered by LFP or LIP .....	6
3. Apparent in Program Year .....	6
IV. Eligible Livestock Losses.....	6
A. Livestock Feed and Water Transport Losses.....	6
1. Types of Livestock Feed and Water Transport Losses.....	6
a. Loss of Purchased Forage or Feed.....	6
(i) Feed Intended for Eligible Grazing Livestock.....	7
(ii) Feed Located in County Affected by Eligible Weather Event or Loss Condition.....	7
(iii) Feed Destroyed by an Eligible Adverse Weather Event or Loss Condition.....	7
b. Loss of Mechanically Harvested Forage or Feed.....	7
(i) Forage or Feed Intended for Eligible Livestock .....	7
(ii) Forage or Feed Located in Affected County .....	7
(iii) Forage or Feed Destroyed After Harvest by an Eligible Adverse Weather Event or Loss Condition .....	8
c. Loss of Cost of Purchasing Additional Livestock Feed.....	8

(i)	Necessary to Maintain Eligible Livestock During Adverse Weather Event or Loss Condition and until Additional Feed is Available .....	8
(ii)	Purchased During or After an Eligible Adverse Weather Event or Loss Condition.....	9
(iii)	Purchased Above Normal Quantities .....	9
d.	Loss of Additional Costs for Transporting Feed to Livestock .....	9
(i)	Due to a Loss of Purchased Feed, Mechanically Harvested Feed, or Additional Feed Only.....	9
(ii)	Costs Incurred for Losses in County Where Eligible Weather Event or Loss Condition Occurred.....	9
e.	Loss of Costs Related to Transporting Water to Livestock on Grazing Land Due to Drought .....	10
(i)	Need Arises Because of an Eligible Drought.....	10
(ii)	Livestock Located on Eligible Grazing Land Where Drought Occurred, but Not on CRP Land.....	10
(iii)	Land Must have been Equipped with Watering System .....	11
(iv)	Farmer Must Not Normally Transport Water to Land .....	11
2.	General Eligibility for Livestock Feed and Water Transport Losses .....	11
a.	Producer Eligibility for Feed and Water Transport Losses: Sixty Day Rule .....	11
b.	Must be Grazing Livestock .....	11
(i)	Grazing Animals.....	11
(ii)	Normally Grazing on Eligible Grazing Land.....	12
c.	Livestock Must be Maintained for Commercial Use .....	13
d.	Livestock Cannot be Kept on Feedlots .....	13
e.	Cannot be Roaming Livestock.....	13
f.	Types of Livestock Eligible for Feed and Water Transport Losses .....	14
(i)	Beef Cattle—Adult Cows, Adult Bulls, Non-Adults .....	14
(ii)	Dairy Cattle—Adult Cows, Adult Bulls, Non-Adults .....	14
(iii)	Beefalo—Adult Cows, Adult Bulls, Non-Adults.....	15
(iv)	Buffalo and Bison—Adult Cows, Adult Bulls, Non-Adults.....	15
(v)	Goats.....	15
(vi)	Sheep .....	15
(vii)	Other Eligible Livestock Types for Feed and Water Transport Losses .....	15
g.	Types of Livestock NOT Eligible for Feed and Water Transport Losses.....	15
B.	Livestock Grazing Losses.....	16
1.	Producer Eligibility for Grazing Losses: Sixty Day Rule.....	16
2.	Eligible Adverse Weather Events and Loss Conditions .....	16
3.	Loss Not Otherwise Eligible for Livestock Forage Program (LFP).....	16

4. Must be Grazing Livestock.....	16
a. Grazing Animals .....	17
b. Normally Grazing on Eligible Grazing Land .....	17
5. Livestock Must be Maintained for Commercial Use.....	18
6. Livestock Cannot be Kept on Feedlots.....	18
7. Cannot be Roaming Livestock.....	18
8. Types of Livestock Eligible for Grazing Losses .....	19
a. Beef Cattle—Adult Cows, Adult Bulls, Non-Adults .....	19
b. Dairy Cattle—Adult Cows, Adult Bulls, Non-Adults .....	19
c. Beefalo—Adult Cows, Adult Bulls, Non-Adults.....	20
d. Buffalo and Bison—Adult Cows, Adult Bulls, Non-Adults .....	20
e. Goats.....	20
f. Sheep .....	20
g. Other Eligible Livestock Types for Grazing Losses .....	20
9. Types of Livestock NOT Eligible for Grazing Losses .....	20
C. Livestock Death Losses.....	21
1. Producer Eligibility for Death Losses—Owner or Contract Grower .....	21
a. Livestock Owner .....	21
b. Livestock Contract Grower .....	21
2. Types of Livestock Eligible for Death Losses .....	22
a. Eligible Livestock Types—Livestock Owners .....	22
(i) Dairy Cattle.....	22
(ii) Beef Cattle .....	22
(iii) Poultry .....	22
(iv) Swine .....	23
(v) Goats and Sheep.....	23
(vi) Other Eligible Livestock Types for Death Losses.....	23
b. NOT Eligible Livestock Types—Livestock Owners.....	24
c. Eligible Livestock Types—Contract Growers .....	24
(i) Poultry .....	24
(ii) Swine .....	24
3. General Eligibility Requirements for Livestock Death Losses.....	24
a. Livestock Must be Maintained for Commercial Use .....	25
b. Death Must be in Excess of Normal Mortality Rates .....	25
c. Death Must be the Direct Result of an Eligible Loss Condition that is Not Otherwise Eligible for Livestock Indemnity Program (LIP) .....	25
d. Death Must Occur in the County of an Eligible Loss Condition .....	26

e.	Timing of Death.....	26
(i)	Non-Newborn Livestock .....	26
(ii)	Newborn Livestock.....	26
D.	Livestock Losses Related to Cattle Tick Fever .....	26
1.	Loss When Gathering Livestock for Cattle Tick Fever Treatment.....	27
a.	Eligibility for a Loss of Gathering Livestock for Cattle Tick Fever Treatment.....	27
(i)	Costs Incurred from Gathering Livestock for Treatment .....	27
(ii)	Producer Eligibility: Sixty Day Rule.....	27
(iii)	Must be Grazing Animals .....	27
(iv)	Livestock Must be Maintained for Commercial Use .....	28
(v)	Livestock Not on Feedlot.....	28
b.	Types of Livestock Eligible for Cattle Tick Fever Treatment Gathering Losses.....	28
(i)	Beef Cattle—Adult Cows, Adult Bulls, Non-Adults .....	29
(ii)	Dairy Cattle—Adult Cows, Adult Bulls, Non-Adults .....	29
(iii)	Beefalo—Adult Cows, Adult Bulls, Non-Adults.....	30
(iv)	Buffalo and Bison—Adult Cows, Adult Bulls, Non-Adults.....	30
(v)	Goats.....	30
(vi)	Sheep .....	30
(vii)	Other Eligible Livestock Types for Gathering Cattle for Cattle Tick Fever Treatment .....	30
2.	Loss for Cattle Tick Fever Testing.....	30
V.	Eligible Losses Related to Honeybees .....	31
A.	Loss Eligibility—Honeybee Losses .....	31
1.	Loss of Feed for Honeybees .....	31
a.	Feed Purchased or Harvested and Intended for Producer's Eligible Honeybees .....	31
b.	Damaged or Destroyed by an Eligible Adverse Weather Event or Loss Condition .....	31
c.	Honeybee Colony Located in County Where Eligible Weather Event or Loss Condition Occurred.....	31
2.	Costs of Purchasing Additional Feed for Honeybees.....	32
a.	Purchased Above Normal Quantities .....	32
b.	Necessary to Maintain Colony Until Other Feed Becomes Available .....	32
c.	Result of Adverse Weather Event or Loss Condition .....	32
d.	Honeybees Located in County where Weather Event or Loss Condition Occurred .....	32
3.	Loss of Honeybee Hive or Colony .....	32

a.	Loss Incurred in County where an Eligible Weather Event or Loss Condition Occurs .....	32
b.	Loss must be a Direct Result of an Eligible Weather Event or Loss Condition .....	33
B.	Producer Eligibility—Honeybee Losses .....	33
1.	Interest and Risk in an Eligible Honeybee Colony .....	33
2.	Maintain Honeybee Colony for Commercial Use .....	33
C.	Eligible Honeybees .....	34
VI.	Eligible Losses Related to Farm-Raised Fish .....	34
A.	Loss Eligibility for Farm-Raised Fish .....	34
1.	Loss of Feed for Farm-Raised Fish .....	34
a.	Feed Purchased or Harvested and Intended for Producer's Eligible Farm-Raised Fish .....	34
b.	Damaged or Destroyed by an Eligible Adverse Weather Event or Loss Condition .....	34
c.	Fish Located in County where Eligible Weather Event or Loss Condition Occurred .....	35
2.	Death of Farm-Raised Bait and Game Fish .....	35
a.	Death of Bait Fish or Game Fish Only .....	35
b.	Death in Excess of Normal Mortality .....	35
c.	Death a Direct Result of an Adverse Weather Event or Loss Condition .....	35
d.	Fish Located in County where Weather Event or Loss Condition Occurred .....	35
B.	Producer Eligibility—Farm-Raised Fish Losses .....	35
1.	Produce Eligible Farm-Raised Fish for Commercial Use .....	36
2.	Relationship to Property Where Fish are Raised .....	36
C.	Eligible Farm-Raised Fish .....	36
1.	Eligible Farm-Raised Fish for Feed Losses .....	36
a.	Aquatic Organism Grown as Food for Human Consumption .....	36
b.	Fish Raised as Feed for Fish to be Consumed by Humans .....	36
c.	Ornamental Fish .....	37
2.	Eligible Types of Farm-Raised Fish for Death Losses .....	37
a.	Farm-Raised Game Fish .....	37
b.	Farm-Raised Bait Fish .....	37
3.	Ineligible Farm-Raised Fish for Feed and Death Losses .....	37
VII.	Applying for ELAP: Sign-Up Periods and Applications .....	37
A.	Program Years .....	38
B.	ELAP Deadlines are Final .....	38
C.	2019 Losses—and Future Years .....	38
1.	Notice of Loss .....	38



2.	Completed Application.....	38
D.	2017 and 2018 Losses .....	38
1.	2017 Program Year Losses—Deadlines Are Past.....	38
2.	2018 Program Year Losses—Deadlines are Past.....	39
E.	Documentation to Support ELAP Applications.....	39
1.	Documentation for All ELAP Losses.....	39
a.	Notice of Loss .....	39
b.	Completed Application.....	39
c.	Report of Acreage .....	39
d.	Grower Contract—If There Is One.....	40
e.	Farm Operating Plan.....	40
f.	Socially Disadvantaged, Limited Resource, Beginning Farmer .....	40
g.	Other Supporting Documents .....	40
2.	Additional Documentation for Specific ELAP Losses.....	40
a.	Documentation for Livestock Grazing Losses.....	40
b.	Documentation for Purchased Livestock Feed Losses and Costs of Additional Feed.....	41
c.	Documentation of Losses Related to Transporting Livestock Feed.....	42
d.	Documentation of Mechanically Harvested Feed Losses.....	42
e.	Documentation of Losses Related to the Transport of Water.....	43
f.	Documentation of Losses Related to Treating Livestock for Cattle Tick Fever .....	44
g.	Documentation of Livestock Death Losses .....	44
h.	Documentation of Honeybee Losses .....	44
(i)	Documentation of Purchased Honeybee Feed Losses .....	44
(ii)	Documentation of Harvested Honeybee Feed Losses.....	45
(iii)	Documentation of the Loss of a Honeybee Hive or Colony .....	45
i.	Documentation of Farm-Raised Fish Losses .....	46
(i)	Documentation of Purchased Farm-Raised Fish Feed Losses.....	46
(ii)	Documentation of Harvested Farm-Raised Fish Feed Losses.....	47
(iii)	Documentation of Farm-Raised Fish Death Losses.....	48
VIII.	ELAP Payments.....	48
A.	ELAP Payment Limitations .....	49
1.	Producer Payment Limitation.....	49
2.	Payment Reduction for Duplication of Assistance .....	49
3.	Payment Limitation on Multiple Benefits.....	49
4.	Recent Changes Eliminate ELAP Budget Limits .....	49
B.	Payment Calculations for Particular Types of ELAP Losses.....	50

1.	Payments for Livestock Feed Losses.....	50
a.	150-Calendar-Day Feed Costs .....	51
b.	Farmer's Actual Costs of Livestock Feed Losses .....	51
(i)	Value of a Purchased Forage or Feedstuffs Loss .....	51
(ii)	Value of a Mechanically Harvested Forage or Feedstuffs Loss.....	51
(iii)	Value of a Loss Related to Purchasing Additional Feed.....	52
(iv)	Value of a Loss Related to Transporting Feed .....	52
c.	Determining Ultimate ELAP Payment .....	52
2.	Payments for Losses Related to Transporting Water to Livestock.....	53
a.	150-Calendar-Day Water Transport Costs .....	53
b.	Farmer's Actual Cost of Transporting Water .....	54
c.	Determining Ultimate ELAP Payment .....	54
3.	Payments for Losses Related to Cattle Tick Fever .....	55
a.	Calculating Payments for Treating for Cattle Tick Fever .....	55
b.	Payments for Testing for Cattle Tick Fever—No Formula Yet .....	56
4.	Payments for Livestock Grazing Losses .....	56
a.	Payments for Grazing Losses Due to Wildfire on Non-Federal Land.....	56
b.	Payments for Livestock Grazing Losses NOT Due to Wildfire.....	57
(i)	Calculating the Total Feed Cost Value .....	57
(ii)	Calculating the Total Value of Lost Grazing.....	57
(iii)	Determining Ultimate ELAP Payment.....	57
5.	Payments for Livestock Death Losses .....	58
a.	Payment Calculation for a Livestock Owner .....	58
b.	Payment Calculation a Contract Grower .....	59
6.	Payments for Honeybee Losses.....	59
a.	ELAP Payments for the Loss of Honeybee Feed .....	59
b.	Payments for the Cost of Purchasing Additional Honeybee Feed.....	60
c.	Payments for the Loss of a Honeybee Hive.....	60
d.	Payments for the Loss of a Honeybee Colony .....	61
7.	Payments for Farm-Raised Fish Losses .....	62
a.	Payments for the Loss of Farm-Raised Fish Feed.....	62
b.	Payments for the Cost of Purchasing Additional Farm-Raised Fish Feed.....	62
c.	Payments for Farm-Raised Game Fish and Bait Fish Death Losses.....	62
IX.	ELAP Appeals.....	63
X.	Discrimination Is Illegal.....	63

## **Farmers' Guide to Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP)**

### **I. Introduction**

Through the Emergency Assistance for Livestock, Honey Bees, and Farm-Raised Fish Program (ELAP), the Farm Service Agency (FSA) provides emergency relief for losses that are not covered by other disaster assistance programs. In this respect, ELAP is a catchall program that attempts to fill in the gap in disaster assistance for agricultural losses.

ELAP rules set out a number of different losses that are eligible for assistance.<sup>1</sup> In general, these losses can be categorized into three broad groups—livestock losses, honeybee losses, and farm-raised fish losses.

Some eligibility rules apply to all ELAP losses, while others apply only to certain types of losses.

This Guide first describes the rules that govern ELAP, and some of the recent changes in those rules. Next, the Guide looks at general rules for producer eligibility, and then describes the specific rules that cover livestock, honeybee, and farm-raised fish losses. The Guide then discusses the application process for ELAP and outlines the documentation that the farmer must supply to support an application. The final sections of the Guide describe the payments that are made under ELAP and informs farmers of their rights to appeal should they be subject to adverse decisions.

### **II. Rules that Govern ELAP—Including Recent Changes**

ELAP is governed by a variety of rules and regulations. Some of these rules have recently changed, as described below.

#### **A. Statute, Regulations, Handbooks, and Notices**

The rules for ELAP are found in several places. First, ELAP payments are made possible by federal statute.<sup>2</sup>

Second, rules found in the Code of Federal Regulations (C.F.R.) govern ELAP.<sup>3</sup>

Third, rules for ELAP can also be found in what FSA calls Handbooks. These are thick documents that contain detailed policies and procedures for the administration of FSA programs, and they are available online.<sup>4</sup> On March 28, 2019, FSA released a new Handbook that governs the ELAP program.<sup>5</sup>

Finally, FSA issues what are called Notices, which provide guidance on various topics and changes to FSA programs.<sup>6</sup>

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<sup>1</sup> See generally 7 C.F.R. § 1416.101 et. seq. (2019).

<sup>2</sup> See 7 U.S.C. § 1531(e).

<sup>3</sup> ELAP regulations are found at 7 C.F.R. pt. 1416, Subps. A, B (2019).

<sup>4</sup> Downloadable copies of FSA's Handbooks can be found here:  
<https://www.fsa.usda.gov/FSA/webapp?area=home&subject=empl&topic=hbk>.

<sup>5</sup> See FSA Handbook 1-LDAP (Revision 1), Livestock Disaster Assistance Programs for 2011 and Subsequent Years (March 28, 2019).

<sup>6</sup> FSA Notices have a published date, as well as a disposal, or expiration, date. See, for example, FSA Notice LDAP-91, "Issuing 2017 ELAP Payments and Additional 2018 and 2018 LIP and LFP

Often, ELAP rules that are found in the Handbook and Notices are more up to date than those found in the C.F.R., but not always.

This Guide refers to C.F.R. regulations that are still valid, as well as relevant Handbooks and Notices.

## **B. Recent Changes to ELAP**

A number of recent changes affect ELAP coverage. The changes mentioned below are included in this Guide.

### **1. 2018 Budget Act**

The Bipartisan Budget Act of 2018 (2018 Budget Act) became law on February 9, 2018.<sup>7</sup> It made two important changes ELAP.<sup>8</sup>

First, for ELAP losses occurring in 2017 and later years, the 2018 Budget Act removed the \$20 million payment cap that had been put in place following the 2014 Farm Bill.<sup>9</sup> What this means is that for eligible losses that occurred in 2017 and subsequent years, ELAP payments will be made throughout the program year as applications are approved.<sup>10</sup> Previously, when the \$20 million payment cap was in place, ELAP payments were calculated by applying a reduction—known as a national payment factor—that helped to ensure FSA did not exceed the \$20 million funding cap for ELAP. With the passing of the 2018 Budget Act, the national payment factor is no longer applicable to losses occurring in 2017 and subsequent years.

Second, because of the changes in the 2018 Budget Act, ELAP assistance for 2017 losses were reopened on June 4, 2018.<sup>11</sup> This meant that as of June 4, 2018, farmers could apply for ELAP assistance for both 2017 and 2018 losses. The application process and deadlines are described in more detail later in this Guide.

### **2. Changes to FSA Handbook in 2018**

On March 28, 2019, FSA released a new Handbook that governs ELAP programs.<sup>12</sup>

### **3. Regulation Changes in 2018**

On October 2, 2018, FSA issued a number of regulation changes that affect ELAP in the Federal Register.<sup>13</sup> These changes will become a part of the Code of Federal Regulations.

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Payments” (April 6, 2018). The Notices may be downloaded from the FSA website. To search for downloadable FSA Notices, visit <https://www.fsa.usda.gov/FSA/notices>.

<sup>7</sup> Pub. L. 115-123 (Feb. 9, 2018).

<sup>8</sup> See H.R. 1892, 115th Cong. § 20101 (2018) (codified at 7 U.S.C. § 9081(d)(1)).

<sup>9</sup> FSA Notice LDAP-93, “Re-Opening 2017 ELAP Signup and 2018 ELAP Payment Process,” at page 1 (June 1, 2018).

<sup>10</sup> LDAP Handbook, page 10-205, para. 875.B (March 28, 2019).

<sup>11</sup> Notice LDAP-93, at page 2 (June 1, 2018).

<sup>12</sup> See FSA Handbook 1-LDAP (Revision 1), Livestock Disaster Assistance Programs for 2011 and Subsequent Years (March 28, 2019).

<sup>13</sup> 83 Fed Reg. 49,459 (Oct. 2, 2018).

#### **4. 2018 Farm Bill**

The 2018 Farm Bill—technically the Agricultural Improvement Act of 2018—became law on December 20, 2018.<sup>14</sup> It added provisions that cover the cost of inspections for cattle tick fever.<sup>15</sup> It also confirmed that Native American tribes and tribal organizations are eligible for ELAP.<sup>16</sup>

#### **C. ELAP: A Confusing Hodgepodge**

The ELAP program is a bit of a hodgepodge that offers assistance to several different types of farmers for a wide range of losses that result from eligible adverse weather events or loss conditions.<sup>17</sup> For example, ELAP can provide relief for livestock losses related to grazing, feed, water, and cattle tick fever; livestock death losses; honeybee losses; and farm-raised fish losses.<sup>18</sup> In part, this variety of eligible losses exists because ELAP is a program that provides financial assistance for agricultural losses that are not covered by other disaster assistance programs. As a result, however, the types of losses that are eligible for ELAP, and the rules that govern their eligibility, can seem confusing.

### **III. ELAP Eligibility in General**

As noted above, ELAP applies to a wide variety of losses. Although many eligibility rules are loss specific, a number of rules apply to all forms of ELAP-eligible losses. These rules are discussed below.

#### **A. General Producer Eligibility Rules**

To be eligible for ELAP assistance for any type of loss, farmers must satisfy the following requirements.

##### **1. Must Be an “Eligible Producer”**

To receive benefits under ELAP, the farmer must be what FSA calls an “eligible producer.”<sup>19</sup> This means the farmer must be an owner, operator, landlord, tenant, or sharecropper. The farmer must share in the risk of producing the crop or livestock. The farmer must also be entitled to share in the crop or livestock available for marketing from the farm. This includes crops or livestock that would have been produced but were not.

Under this definition of an eligible producer, both livestock owners and contract growers can be eligible for ELAP.<sup>20</sup> A livestock owner is defined as having legal

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<sup>14</sup> Agriculture Improvement Act of 2018, Pub. L. No. 115-334 (Dec. 20, 2018).

<sup>15</sup> Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(c) (2018) (codified at 7 U.S.C. § 9081(d)(2)).

<sup>16</sup> Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(a) (2018) (codified at 7 U.S.C. § 9081(a)(2)(B)(iii)).

<sup>17</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. §1416.103(a)).

<sup>18</sup> 7 C.F.R. §1416.103(d)-(j) (2019).

<sup>19</sup> 83 Fed. Reg. 49,459, 49,463 (Oct. 2, 2018) (to be codified at 7 C.F.R. §1416.3(a)).

<sup>20</sup> 83 Fed. Reg. 49,459, 49,463 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.3(a)).



ownership of the livestock on the day of the eligible adverse weather event or loss condition.<sup>21</sup>

The definition of a contract grower, for the purpose of ELAP, has several parts.<sup>22</sup> First, a contract grower must raise livestock. Second, a contract grower must have income that depends on the survival of the livestock. Third, the income of a contract grower must depend on weight gain, offspring produced, or the quantity of a product (such as eggs or milk) that is produced by the livestock. Finally, the livestock must not be on a feedlot. Additional requirements apply for contract growers seeking payments for death losses. Those requirements are described later in this Guide.

An eligible producer can also be a producer of honeybees or farm-raised fish.<sup>23</sup>

## **2. Can Be an Individual or Eligible Entity**

An eligible producer can be either an individual person or a legal entity.<sup>24</sup> If an individual, the farmer must be a citizen or legal resident alien of the United States.<sup>25</sup>

If a legal entity, the farmer can be any of the following: (1) a partnership made up of U.S. citizens;<sup>26</sup> (2) a corporation, limited liability corporation, or other organizational structure organized under state law;<sup>27</sup> or (3) a Native American tribe, or, with some limitations, a Native American organization, entity, or economic enterprise.<sup>28</sup> The 2018 Farm Bill confirms that tribes and tribal organizations are eligible.<sup>29</sup>

## **3. Adjusted Gross Income of \$900,000 or Less**

In general, the farmer must have an average adjusted gross income of \$900,000 or less in order to be eligible for ELAP.<sup>30</sup> The gross income limitation applies to a person and a legal entity, but it does not apply to a joint venture or legal partnership.

<sup>21</sup> 83 Fed. Reg. 49,459, 49,464 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, “Livestock owner”).

<sup>22</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(e)).

<sup>23</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.103(a)).

<sup>24</sup> 83 Fed. Reg. 49,459, 49,463 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.3(a), (b)); LDAP Handbook, page 10-47, para. 816.N (March 28, 2019). A farm operating plan must be submitted. See 7 C.F.R. pt. 1400 (2019).

<sup>25</sup> 7 C.F.R. 1416.3(b)(1)-(2) (2019); LDAP Handbook, page 10-47, para. 816.N (March 28, 2019). Minor children can apply for program benefits under ELAP so long as all other ELAP eligibility requirements are met and the specific requirements for minors are met under 7 C.F.R. pt. 14. See 7 C.F.R. § 1416.12 (2019).

<sup>26</sup> 7 C.F.R. 1416.3(b)(3) (2019); LDAP Handbook, page 10-47, para. 816.N (March 28, 2019).

<sup>27</sup> 7 C.F.R. 1416.3(b)(3) (2019); LDAP Handbook, page 10-47, para. 816.N (March 28, 2019).

<sup>28</sup> LDAP Handbook, page 10-47, para. 816.N (March 28, 2019). According to the Handbook, tribes, as defined in the Indian Self-Determination and Education Assistance Act, are eligible, as are organizations chartered under the Indian Reorganization Act, and economic enterprises under the Indian Financing Act of 1974. See 25 U.S.C. § 5304(e); 25 U.S.C. chs. 17, 45, 51.

<sup>29</sup> The 2018 Farm Bill authorizes Indian tribes and tribal organizations for this purpose. Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(a) (2018) (to be codified at 7 U.S.C. § 9081(a)(2)(B)(iii)). The 2018 Farm Bill may allow tribal organizations to participate that were previously excluded.

<sup>30</sup> 7 U.S.C. § 1308-3a; 83 Fed. Reg. 49,459, 49,464 (to be codified at 7 C.F.R. § 1416.6(c)); LDAP Handbook, page 10-206, para. 875.E (March 28, 2019).

The 2018 Farm Bill changed this requirement by allowing FSA to waive the adjusted gross income cap if FSA decides that environmentally sensitive land of special significance would be protected by the waiver.<sup>31</sup> FSA may waive the requirement only on a case by case basis. This waiver provision, however, does not apply to the 2018 crop year.<sup>32</sup>

#### **4. Conservation Compliance**

The farmer must be in compliance with general FSA restrictions against conversion of highly erodible land and wetlands and must not otherwise be precluded from receiving USDA benefits.<sup>33</sup>

### **B. General Loss Eligibility Rules**

ELAP provides assistance for a wide variety of losses. Although there are many rules specific to the type of loss a farmer suffers, the rules described below apply to all forms of ELAP-eligible losses.

#### **1. Loss Due to Adverse Weather or Eligible Loss Conditions**

For ELAP to apply, the loss must be due to either an eligible adverse weather event or what FSA calls an “eligible loss condition.”<sup>34</sup> In general, FSA decides when adverse weather events or loss conditions make ELAP available. Sometimes eligible weather events or eligible loss conditions will seem obvious, like bad weather, but other times the meaning can seem surprising—like an insect infestation or colony collapse disorder.<sup>35</sup>

##### ***a. Eligible Adverse Weather***

Eligible adverse weather is extreme and abnormal damaging weather that is not expected, and which results in ELAP-eligible losses.<sup>36</sup> So long as a weather event satisfies this definition, FSA can decide if a specific weather event qualifies for ELAP assistance.<sup>37</sup> Examples of eligible adverse weather events include blizzard, winter storms, and wildfires.

##### ***b. Eligible Loss Condition***

An eligible loss condition is a condition that would have resulted in agricultural losses that are not covered by other programs and for which FSA determines

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<sup>31</sup> Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1704(a)(2) (2018) (to be codified at 7 U.S.C. § 1308-3a(b)(3)).

<sup>32</sup> Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1704(c) (2018).

<sup>33</sup> 7 C.F.R. § 1416.14(a) (2019); LDAP Handbook, page 10-209, para. 876.D (March 28, 2019). The regulations governing highly erodible land and wetland conservation can be found at 7 C.F.R. pt. 12 (2019).

<sup>34</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. §1416.103(a)).

<sup>35</sup> See 7 C.F.R. § 1416.102, “Eligible loss condition” (2019); LDAP Handbook, page 10-37, para. 816.B, and page 10-46.5, para. 86.L (March 28, 2019).

<sup>36</sup> 7 C.F.R. § 1416.102, “Eligible adverse weather” (2019).

<sup>37</sup> See FSA Notice LDAP-98, “Delegation of Authority to Determine Eligible Adverse Weather Under ELAP” (April 25, 2019).

financial assistance needs to be provided to farmers.<sup>38</sup> Examples of eligible loss conditions include disease, insect infestation, and colony collapse disorder.

## **2. Not Covered by LFP or LIP**

For ELAP to apply, the loss must not be covered under the Livestock Forage Disaster Program (LFP) or the Livestock Indemnity Program (LIP).<sup>39</sup> Both of these programs are covered in other Volumes of the Farmers' Guide to Disaster Assistance published by FLAG.

## **3. Apparent in Program Year**

In order for a loss to be an ELAP-eligible loss during a given year, FSA rules say that the loss must have been apparent to both FSA and the farmer who files a Notice of Loss with FSA during that program year.<sup>40</sup> A program year runs from October 1 to September 30.<sup>41</sup> The 2018 program year therefore ran from October 1, 2017, to September 30, 2018, and the 2019 program year runs from October 1, 2018, to September 30, 2019, and so forth. So, for there to be an eligible loss in the 2019 program year, the loss must have been apparent between October 1, 2018 and September 30, 2019.

# **IV. Eligible Livestock Losses**

A wide range of livestock losses are eligible for ELAP. In general, these losses can be divided into four categories: (1) feed and water transport losses; (2) grazing losses; (3) death losses; and (4) losses related to cattle tick fever. Although the various loss types have similar rules, sometimes small differences separate them. The rules for each livestock loss are described below.

## **A. Livestock Feed and Water Transport Losses**

Livestock feed and water transport losses are eligible for ELAP.

### **1. Types of Livestock Feed and Water Transport Losses**

Within the category of livestock feed losses and feed and water transport losses, ELAP provides assistance for five specific types of losses: (1) loss of purchased forage or feed; (2) loss of mechanically harvested forage or feed; (3) loss of costs for purchasing additional livestock feed; (4) loss of costs required to transport additional feed to livestock; or (5) loss of costs for transporting water to livestock due to drought.<sup>42</sup> The following rules apply.

#### ***a. Loss of Purchased Forage or Feed***

For a loss of purchased forage or feed to be eligible for ELAP, the following requirements must be met.

<sup>38</sup> 7 C.F.R. § 1416.102, "Eligible loss condition" (2019).

<sup>39</sup> 7 C.F.R. §1416.103(b) (2019); LDAP Handbook, page 10-37, para. 816.B (March 28, 2019).

<sup>40</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.103(c)).

<sup>41</sup> LDAP Handbook, page 10-12, para. 802.A, "Program year" (March 28, 2019).

<sup>42</sup> 7 C.F.R. § 1416.103(d) (2019); LDAP Handbook, pages 10-38 and 10-40, para. 816.C (March 28, 2019).

**(i) Feed Intended for Eligible Grazing Livestock**

The purchased forage or feed that was destroyed must have been intended as feed for the farmer's eligible livestock.<sup>43</sup>

**(ii) Feed Located in County Affected by Eligible Weather Event or Loss Condition**

The destroyed forage or feed must have been physically located in the county affected by the eligible weather event or loss condition on the date it began.<sup>44</sup>

**(iii) Feed Destroyed by an Eligible Adverse Weather Event or Loss Condition**

The forage or feed must have been destroyed due to an eligible adverse weather event or loss condition.<sup>45</sup>

Eligible weather events and loss conditions for a loss of purchased livestock forage or feed include, but are not limited to, the following: blizzards,<sup>46</sup> eligible winter storms,<sup>47</sup> excessive wind, floods, hurricanes, lightning, tidal surge, tornados, volcanic eruption, and wildfires on non-Federally managed grazing lands.<sup>48</sup>

**b. Loss of Mechanically Harvested Forage or Feed**

For a loss of mechanically harvested forage or feed to be eligible for ELAP, the following requirements must be satisfied.

**(i) Forage or Feed Intended for Eligible Livestock**

The mechanically harvested forage or feed must have been intended as feed for the farmer's eligible livestock.<sup>49</sup>

**(ii) Forage or Feed Located in Affected County**

The mechanically harvested forage or feed must have been physically located in the county affected by the eligible adverse weather event or loss

<sup>43</sup> 7 C.F.R. § 1416.103(d)(1) (2019); LDAP Handbook, page 10-38, para. 816.C (March 28, 2019).

<sup>44</sup> 7 C.F.R. § 1416.103(d)(1) (2019); LDAP Handbook, page 10-38, para. 816.C (March 28, 2019).

The rules are somewhat unclear on this point. As written, it seems possible that FSA requires the livestock, not the feed, to be located in the county affected by the weather event or loss condition.

<sup>45</sup> 7 C.F.R. § 1416.103(d)(1) (2019); LDAP Handbook, page 10-38, para. 816.C (March 28, 2019).

<sup>46</sup> A blizzard has large amount of snow, or blowing snow, with winds of at least 35 miles per hour, and less than one-fourth of a mile of visibility for an extended time. 83 Fed. Reg. 49,459, 49,464 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, "Blizzard").

<sup>47</sup> An eligible winter storm is 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. 7 C.F.R. § 1416.102, "Eligible winter storm" (2019).

<sup>48</sup> LDAP Handbook, page 10-44, para. 816.F (March 28, 2019).

<sup>49</sup> 7 C.F.R. § 1416.103(d)(2) (2019); LDAP Handbook, page 10-38, para. 816.C (March 28, 2019).

condition, on the day it began.<sup>50</sup>

**(iii) Forage or Feed Destroyed After Harvest by an Eligible Adverse Weather Event or Loss Condition**

The mechanically harvested forage or feed must have been destroyed—after harvest—due to an eligible adverse weather event or loss condition.<sup>51</sup>

Eligible weather events and loss conditions for a loss of mechanically harvested forage or feed include, but are not limited to, the following: blizzards,<sup>52</sup> eligible winter storms,<sup>53</sup> excessive wind, floods, hurricanes, lightning, tidal surge, tornados, volcanic eruption, and wildfires on non-Federally managed grazing lands.<sup>54</sup>

**c. Loss of Cost of Purchasing Additional Livestock Feed**

ELAP can compensate farmers for the cost of purchasing additional feed when the following requirements are met.

**(i) Necessary to Maintain Eligible Livestock During Adverse Weather Event or Loss Condition and until Additional Feed is Available**

The purchased feed must be necessary to maintain eligible livestock during an adverse weather event or loss condition and until other feed becomes available.<sup>55</sup> The livestock must be physically located in the county where the eligible weather event or loss condition occurred.

Eligible weather events and loss conditions for a loss of additionally purchased livestock feed include, but are not limited to: blizzards,<sup>56</sup> eligible winter storms,<sup>57</sup> excessive wind, floods, hurricanes, lightning, tidal surge, tornados, volcanic eruption, and wildfires on non-Federally managed grazing lands.<sup>58</sup>

<sup>50</sup> 7 C.F.R. § 1416.103(d)(2) (2019); LDAP Handbook, page 10-38, para. 816.C (March 28, 2019). The rules are somewhat unclear on this point. As written, it seems possible that FSA requires the livestock, not the feed, to be located in the county affected by the weather event or loss condition.

<sup>51</sup> 7 C.F.R. § 1416.103(d)(2) (2019); LDAP Handbook, page 10-38, para. 816.C (March 28, 2019).

<sup>52</sup> A blizzard has large amount of snow, or blowing snow, with winds of at least 35 miles per hour, and less than one-fourth of a mile of visibility for an extended time. 88 Fed. Reg. 49,459, 49,464 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, “Blizzard”).

<sup>53</sup> An eligible winter storm is 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. 7 C.F.R. § 1416.102, “Eligible winter storm” (2019).

<sup>54</sup> LDAP Handbook, page 10-44, para. 816.F (March 28, 2019).

<sup>55</sup> 7 C.F.R. § 1416.103(d)(3) (2019); LDAP Handbook, page 10-39, para. 816.C (March 28, 2019).

<sup>56</sup> A blizzard has large amount of snow, or blowing snow, with winds of at least 35 miles per hour, and less than one-fourth of a mile of visibility for an extended time. 88 Fed. Reg. 49,459, 49,464 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, “Blizzard”).

<sup>57</sup> An eligible winter storm is 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. 7 C.F.R. § 1416.102, “Eligible winter storm” (2019).

<sup>58</sup> LDAP Handbook, page 10-44, para. 816.F (March 28, 2019).



**(ii) Purchased During or After an Eligible Adverse Weather Event or Loss Condition**

The additional feed purchases must be made during or after an eligible adverse weather event or loss condition.<sup>59</sup> They do not, however, need to be made during the county's normal grazing period for the land.<sup>60</sup>

**(iii) Purchased Above Normal Quantities**

Only feed that is purchased above normal quantities will be eligible for ELAP benefits.<sup>61</sup> The value of additional feed, however, cannot exceed what is necessary to feed the livestock during the eligible weather event or loss condition.<sup>62</sup>

**d. Loss of Additional Costs for Transporting Feed to Livestock**

Under certain circumstances, ELAP can compensate farmers for the additional costs incurred when providing or transporting feed to livestock.<sup>63</sup> Such costs could include, among other things, equipment rental fees for hay lifts or snow removal. The following rules apply.

**(i) Due to a Loss of Purchased Feed, Mechanically Harvested Feed, or Additional Feed Only**

ELAP will only compensate farmers for feed transportation costs when those costs are incurred as a result of: (1) a loss of purchased forage or feed; (2) a loss of mechanically harvested forage or feed; or (3) a loss of additional feed purchased to maintain livestock.<sup>64</sup>

**(ii) Costs Incurred for Losses in County Where Eligible Weather Event or Loss Condition Occurred**

The transportation costs must have been incurred for losses that were suffered in the county where an eligible adverse weather event or loss

<sup>59</sup> LDAP Handbook, page 10-39, para. 816.C (March 28, 2019).

<sup>60</sup> Normal grazing period is defined as the period during the year in which grazing animals receive daily nutrients and satisfy energy requirements without supplemental feed. FSA makes this determination based on the type of land in the county. Additional feed purchases made during the county's normal grazing period will not be eligible for compensation if the producer is receiving ELAP grazing loss assistance for the same livestock as a result of the same eligible weather event or loss condition. 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, "Normal grazing period").

<sup>61</sup> 7 C.F.R. § 1416.103(d)(3) (2019); LDAP Handbook, page 10-39, para. 816.C (March 28, 2019). To help establish what amount of feed exceeds "normal quantities" for the producer, FSA will require that the producer provide receipts for feed purchases made during the two preceding years. See LDAP Handbook, pages 10-109 to 10-110, para. 832.D (March 28, 2019).

<sup>62</sup> LDAP Handbook, page 10-39, para. 816.C (March 28, 2019). To determine the feed needs of livestock during an eligible adverse weather event or loss condition, FSA uses a formula found in form CCC-851-1. An example of this formula can be found at LDAP Handbook, page 10-114, para. 832.G (March 28, 2019).

<sup>63</sup> 7 C.F.R. § 1416.103(d)(4) (2019); LDAP Handbook, page 10-39, para. 816.C (March 28, 2019).

<sup>64</sup> 7 C.F.R. § 1416.103(d)(4) (2019); LDAP Handbook, page 10-39, para. 816.C (March 28, 2019).

condition occurred.<sup>65</sup>

Eligible adverse weather events and loss conditions for a loss of costs related to providing feed to livestock include, but are not limited to, the following: blizzards,<sup>66</sup> eligible winter storms,<sup>67</sup> excessive wind, floods, hurricanes, lightning, tidal surge, tornados, volcanic eruption, and wildfires on non-Federally managed grazing lands.<sup>68</sup>

***e. Loss of Costs Related to Transporting Water to Livestock on Grazing Land Due to Drought***

A farmer may seek ELAP benefits for the additional costs associated with transporting water to eligible livestock during an eligible drought.<sup>69</sup> Examples of eligible water transportation costs include those associated with water transport equipment rental fees, labor, and contracted water transportation fees.<sup>70</sup> The cost of the water itself is not covered under ELAP.<sup>71</sup>

The following rules apply.

**(i) Need Arises Because of an Eligible Drought**

ELAP will only compensate farmers for costs related to the transport of water to livestock during an eligible drought.<sup>72</sup> To qualify as an eligible drought, the U.S. Drought Monitor must have rated the county where the livestock are located as having, at minimum, an extreme (D3) drought.<sup>73</sup> In addition, the drought must directly impact the availability of water during the normal grazing period for the area.<sup>74</sup>

**(ii) Livestock Located on Eligible Grazing Land Where Drought Occurred, but Not on CRP Land**

The livestock must be located on eligible grazing land that is physically located in the county where the eligible drought occurred.<sup>75</sup>

Eligible grazing land is defined as native or improved pastureland with permanent vegetative cover, or land planted to a crop that is specifically

<sup>65</sup> 7 C.F.R. § 1416.103(d)(4) (2019); LDAP Handbook, page 10-39, para. 816.C (March 28, 2019).

<sup>66</sup> A blizzard has large amount of snow, or blowing snow, with winds of at least 35 miles per hour, and less than one-fourth of a mile of visibility for an extended time. 88 Fed. Reg. 49,459, 49,464 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, “Blizzard”).

<sup>67</sup> An eligible winter storm is 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. 7 C.F.R. § 1416.102, “Eligible winter storm” (2019).

<sup>68</sup> LDAP Handbook, page 10-44, para. 816.F (March 28, 2019).

<sup>69</sup> 7 C.F.R. § 1416.103(d)(5) (2019); LDAP Handbook, page 10-40, para. 816.C (March 28, 2019).

<sup>70</sup> 7 C.F.R. § 1416.103(d)(5) (2019); LDAP Handbook, page 10-49, para. 816.N (March 28, 2019).

<sup>71</sup> 7 C.F.R. § 1416.103(d)(5) (2019).

<sup>72</sup> 7 C.F.R. § 1416.103(d)(5) (2019); LDAP Handbook, page 10-85, para. 830.L (March 28, 2019).

<sup>73</sup> LDAP Handbook, page 10-45, para. 816.H (March 28, 2019).

<sup>74</sup> For example, a drought that impacts snow pack that feeds streams and springs could be considered to directly impact the availability of water during a normal grazing period. LDAP Handbook, page 10-45, para. 816.H (March 28, 2019).

<sup>75</sup> 7 C.F.R. § 1416.103(d)(5) (2019); LDAP Handbook, pages 10-85 to 10-86, para. 830.L (March 28, 2019).

intended to provide grazing for eligible livestock.<sup>76</sup> In general, however, land enrolled in the Conservation Reserve Program (CRP) is not considered eligible grazing land for water transport losses.<sup>77</sup>

**(iii) Land Must have been Equipped with Watering System**

The eligible grazing land must have been equipped with adequate watering systems or facilities before the drought began.<sup>78</sup>

**(iv) Farmer Must Not Normally Transport Water to Land**

The eligible grazing land cannot be land to which the farmer is normally required to transport water.<sup>79</sup>

**2. General Eligibility for Livestock Feed and Water Transport Losses**

In addition to the specific rules described above for each type of feed and water transport loss, there are several general eligibility rules that apply to all feed and water transport losses. These are described in the next sections.

***a. Producer Eligibility for Feed and Water Transport Losses: Sixty Day Rule***

To be an eligible producer for feed and water transport losses, the farmer must have done one of the following for at least sixty days before the beginning date of the eligible adverse weather event or eligible loss condition: (1) owned the eligible livestock; (2) cash-leased the eligible livestock; (3) purchased or entered into a contract to purchase the eligible livestock; or (4) been a contract grower of the eligible livestock.<sup>80</sup>

***b. Must be Grazing Livestock***

ELAP feed and water transport losses are limited to grazing livestock and to animals that would normally be grazing. This means that the species of animal must be that of a grazing animal, and the animals in question must normally have been grazing on the farmer's pastureland or grazing land when the eligible weather event or loss condition occurred.

**(i) Grazing Animals**

Eligible livestock for livestock feed and water transport losses must be

<sup>76</sup> 7 C.F.R. § 1416.102, "Eligible grazing land" (2019); LDAP Handbook, page 10-10, para. 802.A and page 10-75, para. 830.A (March 28, 2019).

<sup>77</sup> 7 C.F.R. § 1416.103(d)(5) (2019). An exception to the rule that land enrolled in CRP is ineligible for ELAP assistance applies if all of the following conditions are met: (1) the acreage is native or improved pasture with permanent vegetative cover; (2) the acreage is not first year seeding of a perennial or biennial forage crop for grazing; (3) the acreage is not devoted to pollinator habitat with CRP conditions that do not allow for grazing; and (4) the acreage is not mechanically harvested. LDAP Handbook, page 10-81, para. 830.G (March 28, 2019).

<sup>78</sup> 7 C.F.R. § 1416.103(d)(5) (2019); LDAP Handbook, page 10-85, para. 830.L (March 28, 2019).

<sup>79</sup> 7 C.F.R. § 1416.103(d)(5) (2019); LDAP Handbook, page 10-40, para. 816.C; page 10-85, para. 830.L (March 28, 2019).

<sup>80</sup> 82 Fed. Reg. 49,459, 49,465-66 (Oct. 2, 2018) (to be codified at C.F.R. §§ 1416.104(a)(3), 1416.105(a)(1)); LDAP Handbook, page 10-48, para. 816.N (March 28, 2019).

grazing animals.<sup>81</sup> For ELAP purposes, grazing animals are livestock that satisfy more than 50 percent of their net energy needs through forage grasses and legumes.<sup>82</sup> The following types of animals fall within this definition of grazing animals: dairy cattle, beef cattle, goats, sheep, llamas, reindeer, beefalo, buffalo or bison, deer, elk, emus, equine,<sup>83</sup> and alpacas.<sup>84</sup>

When determining what species qualify as grazing animals, the rules focus on whether the species is recommended to get 50 percent of its nutritional requirements from pasture.<sup>85</sup> Because certain types of livestock—such as poultry and swine—are thought by FSA not to have a recommended net energy requirement of at least 50 percent from pasture, those livestock are not eligible as grazing animals even if a farmer’s particular poultry or swine are pasture-raised.

## **(ii) Normally Grazing on Eligible Grazing Land**

To be eligible grazing livestock, the livestock must normally have been grazing on eligible pastureland or grazing land during the normal grazing period for that type of land in the county where the eligible adverse weather event or loss condition occurred.<sup>86</sup> This part of the rule appears to mean that even if the species of animal—such as cattle—are normally eligible as grazing animals, if the particular animals are not grazing as part of the farmer’s operation, they are not eligible as grazing animals under ELAP.<sup>87</sup>

Eligible grazing land is defined as either (1) native or improved pastureland with permanent vegetative cover; or (2) land planted to a crop that is specifically intended to provide grazing for eligible livestock.<sup>88</sup> In general, land enrolled in the Conservation Reserve Program (CRP) is

<sup>81</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. §§ 1416.104(a)(1), 1416.104(c)(2)); LDAP Handbook, page 10-75, para. 830.A (March 28, 2019).

<sup>82</sup> 83 Fed. Reg. 49,459, 49,464 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, “Grazing animals”).

<sup>83</sup> Equine animals are defined as domesticated horses, mules, or donkeys. 7 C.F.R. § 1416.102, “Equine animal” (2019).

<sup>84</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(a)(1)). This includes adult and non-adult dairy cattle, beef cattle, beefalo, and bison or buffalo.

<sup>85</sup> 83 Fed. Reg. 49,459, 49,464-65 (Oct. 2, 2018) (to be codified at 7 C.F.R. §§ 1416.102, “Grazing animals,” 1416.104(c)(5)-(6)).

<sup>86</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(a)(2)); LDAP Handbook, page 10-75, para. 830.A (March 28, 2019). A normal grazing period is defined as the period during the year in which grazing animal receive daily nutrients and satisfy energy requirements without supplemental feed. FSA makes this determination based on the type of land in the county. 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, “Normal grazing period”).

<sup>87</sup> If the livestock would normally have been grazing eligible grazing land but the producer had to move them to another county for grazing, the livestock would be eligible to be included when calculating the feed cost. LDAP Handbook, page 10-75, para. 830.A (March 28, 2019).

<sup>88</sup> 7 C.F.R. § 1416.102, “Eligible grazing land” (2019); LDAP Handbook, page 10-10, para. 802.A and page 10-75, para. 830.A (March 28, 2019).

not considered eligible grazing land for purposes of ELAP.<sup>89</sup>

***c. Livestock Must be Maintained for Commercial Use***

As of the beginning date of the eligible adverse weather event or loss condition, the livestock must be maintained for commercial use or be produced or maintained for producing livestock products for commercial use.<sup>90</sup> Commercial use is defined as use in a business operation that is a means of livelihood for profit.<sup>91</sup> The livestock that are produced or maintained for commercial production must be a part of the contract grower's or livestock owner's farming operation on the start date of the eligible adverse weather event or loss condition.<sup>92</sup>

Livestock used only for what FSA calls recreational purposes are not eligible.<sup>93</sup> FSA mentions several examples of recreational uses. They include roping, hunting, for show, for sport, for pleasure, for use as pets, and consumption by the owner.

***d. Livestock Cannot be Kept on Feedlots***

The livestock may not have been on a feedlot on the day the adverse weather event or loss condition began.<sup>94</sup> The rules, however, do not look at where the livestock actually were on that day. Instead, the rules look at the normal business operations of the farmer. So, if under normal conditions the animals would have been on a feedlot the day the adverse weather event or loss condition began, the livestock are not eligible for ELAP.

***e. Cannot be Roaming Livestock***

Wild, free roaming animals, including horses and deer, are not eligible for ELAP.<sup>95</sup> FSA rules also include wild free roaming hogs as falling within this category of ineligible livestock.<sup>96</sup>

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<sup>89</sup> LDAP Handbook, page 10-81, para. 830.G (March 28, 2019). An exception to the rule that land enrolled in CRP is ineligible for ELAP assistance applies if all of the following conditions are met: (1) the acreage is native or improved pasture with permanent vegetative cover; (2) the acreage is not first year seeding of a perennial or biennial forage crop for grazing; (3) the acreage is not devoted to pollinator habitat with CRP conditions that do not allow for grazing; and (4) the acreage is not mechanically harvested.

<sup>90</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(a)(4)); LDAP Handbook, page 10-75, para. 830.A (March 28, 2019). Dairy cows producing milk are an example of livestock that are maintained to produce products for a commercial use. 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(a)(4)).

<sup>91</sup> 83 Fed. Reg. 49,459, 49,464 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, "Commercial use"); LDAP Handbook, page 10-9, para. 802.A (March 28, 2019).

<sup>92</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(a)(4)).

<sup>93</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(c)(9)); LDAP Handbook, page 10-78, para. 830.D (March 28, 2019).

<sup>94</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. §§ 1416.104(a)(5), 1416.104(c)(1)); LDAP Handbook, page 10-75, para. 830.A (March 28, 2019).

<sup>95</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(c)(8)); LDAP Handbook, page 10-79, para. 830.D (March 28, 2019).

<sup>96</sup> LDAP Handbook, page 10-79, para. 830.D (March 28, 2019).



***f. Types of Livestock Eligible for Feed and Water Transport Losses***

The following types of animals are eligible for ELAP feed and water transport losses so long as all other ELAP eligibility requirements are met.

**(i) Beef Cattle—Adult Cows, Adult Bulls, Non-Adults**

Beef cattle, including adult cows, adult bulls, and non-adults are eligible for ELAP feed and water transport losses.<sup>97</sup>

An adult beef bull is defined as an animal used for breeding purposes that is at least two years old at the beginning of the eligible adverse weather event or eligible loss condition.<sup>98</sup> An adult beef cow is defined as an animal that has delivered at least one calf before the date of the eligible adverse weather event or eligible loss condition.<sup>99</sup> A first-time bred heifer is considered an adult beef cow if she was bred on or before the beginning date of the eligible adverse weather event or eligible loss condition.

Non-adult beef cattle are defined as those that do not qualify as either an adult beef cow or bull.<sup>100</sup> In addition, to be eligible for feed and water transport losses, the non-adult beef cattle must be less than two years old—but weigh 500 pounds or more—on the start date of the eligible adverse weather event or loss condition.

**(ii) Dairy Cattle—Adult Cows, Adult Bulls, Non-Adults**

Dairy cattle, including adult cows, adult bulls, and non-adults, are eligible for ELAP feed and water transport losses.<sup>101</sup>

An adult dairy bull is defined as a bull that was primarily used to breed dairy cows and was at least two year old at the beginning date of the eligible adverse weather event or eligible loss condition.<sup>102</sup> An adult dairy cow is defined as a dairy breed cow that is used for providing milk for human consumption and that has delivered at least one calf by the beginning of the eligible adverse weather event or loss condition.<sup>103</sup> A first-time bred heifer is considered an adult dairy cow if she was bred by the date of the eligible adverse weather event or loss condition.

Non-adult dairy cattle are defined as those that do not qualify as either an adult dairy cow or bull.<sup>104</sup> In addition, to be eligible for feed and water transport losses, the non-adult dairy cattle must be less than two years

<sup>97</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(b)(1), (b)(12)); LDAP Handbook, page 10-75, para. 830.A (March 28, 2019).

<sup>98</sup> 7 C.F.R. § 1416.102, “Adult beef bull” (2019).

<sup>99</sup> 7 C.F.R. § 1416.102, “Adult beef cow” (2019).

<sup>100</sup> 7 C.F.R. § 1416.102, “Non-adult beef cattle” (2019).

<sup>101</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(b)(4)); LDAP Handbook, page 10-75, para. 830.A (March 28, 2019).

<sup>102</sup> 7 C.F.R. § 1416.102, “Adult dairy bull” (2019).

<sup>103</sup> 7 C.F.R. § 1416.102, “Adult dairy cow” (2019).

<sup>104</sup> 7 C.F.R. § 1416.102, “Non-adult dairy cattle” (2019).

old—but must weigh 500 pounds or more—on the start date of the eligible adverse weather event or loss condition.

**(iii) Beefalo—Adult Cows, Adult Bulls, Non-Adults**

Beefalo, including adult cows, adult bulls, and non-adults are all eligible for ELAP feed and water transport losses so long as they weigh at least 500 pounds.<sup>105</sup> Non-adult beefalo must be less than two years old.

**(iv) Buffalo and Bison—Adult Cows, Adult Bulls, Non-Adults**

Buffalo and bison, including adult cows, adult bulls, and non-adults are eligible for ELAP feed and water transport losses so long as they weigh at least 500 pounds.<sup>106</sup> Non-adult buffalo and bison must be less than two years old.

**(v) Goats**

Goats are eligible for ELAP feed and water transport losses.<sup>107</sup>

**(vi) Sheep**

Sheep are eligible for ELAP feed and water transport losses.<sup>108</sup>

**(vii) Other Eligible Livestock Types for Feed and Water Transport Losses**

A number of other types of livestock are eligible for feed and water transport losses.<sup>109</sup> These include alpacas, deer, elk, emus, equine,<sup>110</sup> llamas, and reindeer.

***g. Types of Livestock NOT Eligible for Feed and Water Transport Losses***

There are four specific types of livestock that are not eligible for ELAP feed and water transport losses under any conditions.<sup>111</sup> They are poultry, swine, yaks, and ostriches. Previously, it had been unclear if poultry and swine were eligible for

<sup>105</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(b)(2), (b)(13), (c)(7)). Definitions of adult cows, adult bulls, and non-adults are similar to those used for beef cattle. See 83 Fed. Reg. 49,464, 49,265 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, “Adult beefalo cow,” “Adult beefalo bull,” “Non-adult beefalo”).

<sup>106</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(b)(3), (b)(14), (c)(7)). Definitions of adult cows, adult bulls, and non-adults are similar to those used for beef cattle. See 83 Fed. Reg. 49,459, 49,464-65 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, “Adult buffalo or bison cow,” “Adult buffalo or bison bull,” “Non-adult buffalo or bison”).

<sup>107</sup> 7 C.F.R. § 1416.104(a)(1) (2019); LDAP Handbook, page 10-75, para. 830.A (March 28, 2019).

<sup>108</sup> 7 C.F.R. § 1416.104(a)(1) (2019); LDAP Handbook, page 10-75, para. 830.A (March 28, 2019).

<sup>109</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(a)(1)); LDAP Handbook, page 10-75, para. 830.A (March 28, 2019).

<sup>110</sup> Equine animals are defined as domesticated horses, mules, or donkeys. 7 C.F.R. § 1416.102, “Equine animal” (2019).

<sup>111</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(c)(3)-(6)).

ELAP feed and water transport losses. The rules issued in October 2018 make clear that they are not.<sup>112</sup>

## **B. Livestock Grazing Losses**

Grazing losses are an eligible form of livestock loss. Several eligibility rules apply.

### **1. Producer Eligibility for Grazing Losses: Sixty Day Rule**

To be an eligible producer for grazing losses, the farmer must have done one of the following for at least sixty days before the beginning date of the eligible adverse weather event or eligible loss condition: (1) owned the eligible livestock; (2) cash-leased the eligible livestock; (3) purchased or entered into a contract to purchase the eligible livestock; or (4) been a contract grower of the eligible livestock.<sup>113</sup>

### **2. Eligible Adverse Weather Events and Loss Conditions**

Eligible adverse weather events and loss conditions for ELAP livestock grazing losses include, but are not limited to, the following: blizzards, eligible winter storms,<sup>114</sup> floods, hail,<sup>115</sup> hurricanes, lightening, tidal surges, volcanic eruption, and wildfire on non-Federal land.<sup>116</sup>

### **3. Loss Not Otherwise Eligible for Livestock Forage Program (LFP)**

To be eligible as an ELAP grazing loss, the loss cannot otherwise qualify for assistance under the Livestock Forage Program (LFP).<sup>117</sup> This means, for example, that neither a drought nor a wildfire that occurs on federally-managed land will qualify as a grazing loss under ELAP.

### **4. Must be Grazing Livestock**

ELAP livestock grazing losses are limited to grazing livestock and to animals that would normally be grazing on eligible grazing land. This means that the species of animal must be that of a grazing animal, and the animals in question must normally have been grazing on the farmer's pastureland or grazing land when the eligible weather event or loss condition occurred.

<sup>112</sup> 83 Fed. Reg. 49,459, 49,460 (Oct. 2, 2018) (prefatory remarks).

<sup>113</sup> 82 Fed. Reg. 49,459, 49,465-66 (Oct. 2, 2018) (to be codified at C.F.R. § 1416.104(a)(3), 1416.105(b)(1)); LDAP Handbook, page 10-49, para. 816.N (March 28, 2019).

<sup>114</sup> An eligible winter storm is 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. 7 C.F.R. § 1416.102, "Eligible winter storm" (2019).

<sup>115</sup> In order for a grazing loss that results from hail to be eligible for ELAP, specific requirements must be met. See LDAP Handbook, pages 10-86.6 and 10-86.7, para. 830.O (March 28, 2019).

<sup>116</sup> 7 C.F.R. § 1416.103(e)(3) (2019); LDAP Handbook, page 10-44, para. 816.G (March 28, 2019). FSA has the authority to add to the list of eligible adverse weather events and loss conditions.

<sup>117</sup> 7 C.F.R. § 1416.103(e)(3) (2019); LDAP Handbook, page 10-38, para. 816.C (March 28, 2019). LFP provides benefits for grazing losses due to droughts or wildfires that occur on federally managed rangeland. The Federal Regulations governing LFP are found at 7 C.F.R. § 1416 Subp. A, C (2019).

### ***a. Grazing Animals***

Eligible livestock for a livestock grazing loss must be grazing animals.<sup>118</sup> For ELAP purposes, grazing animals are livestock that satisfy more than 50 percent of their net energy needs through eating forage grasses and legumes.<sup>119</sup> The following types of animals fall within this definition of grazing animals: dairy cattle, beef cattle, goats, sheep, llamas, reindeer, beefalo, buffalo or bison, deer, elk, emus, equine,<sup>120</sup> and alpacas.<sup>121</sup>

When determining what species qualify as grazing animals, the rules focus on whether the species is recommended to get 50 percent of its nutritional requirements from pasture.<sup>122</sup> Accordingly, because certain types of livestock—such as poultry and swine—are thought by FSA not to have a recommended net energy requirement of at least 50 percent from pasture, those livestock are not eligible as grazing animals even if the particular animals are pasture-raised.<sup>123</sup>

### ***b. Normally Grazing on Eligible Grazing Land***

To be eligible grazing livestock, the livestock must normally have been grazing on eligible pastureland or grazing land during the normal grazing period for that type of land in the county where the eligible adverse weather event or loss condition occurred.<sup>124</sup> This part of the rule appears to mean that even if the species of animal—such as cattle—are normally eligible as grazing animals, if the particular animals are not grazing as part of the farmer's operation, they are not eligible as grazing animals under ELAP.

Eligible grazing land is defined as native or improved pastureland with permanent vegetative cover, or land planted to a crop that is specifically intended to provide grazing for eligible livestock.<sup>125</sup> In general, however, land enrolled in the Conservation Reserve Program (CRP) is not considered eligible grazing land

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<sup>118</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. §§ 1416.104(a)(1), 1416.104(c)(2)); LDAP Handbook, page 10-75, para. 830.A (March 28, 2019).

<sup>119</sup> 83 Fed. Reg. 49,459, 49,464 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, "Grazing animals").

<sup>120</sup> Equine animals are defined as domesticated horses, mules, or donkeys. 7 C.F.R. § 1416.102, "Equine animal" (2019).

<sup>121</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(a)(1)). This list includes both adult and non-adult dairy cattle, beef cattle, beefalo, and bison or buffalo.

<sup>122</sup> Species for which 50 percent consumption of forage grasses and legumes is not recommended, such as poultry and swine, do not qualify as grazing animals even if the producer's specific animals mostly graze. 83 Fed. Reg. 49,459, 49,464 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, "Grazing animals").

<sup>123</sup> 83 Fed. Reg. 49,459, 49,464 (Oct. 2, 2018) (to be codified at 7 C.F.R. §§ 1416.102, "Grazing animals," 1416.104(c)(5)-(6)).

<sup>124</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(a)(2)); LDAP Handbook, page 10-75, para. 830.A (March 28, 2019). A normal grazing period is defined as the period during the year in which grazing animal receive daily nutrients and satisfy energy requirements without supplemental feed. FSA makes this determination based on the type of land in the county. 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, "Normal grazing period").

<sup>125</sup> 7 C.F.R. § 1416.102, "Eligible grazing land" (2019); LDAP Handbook, page 10-10, para. 802.A and page 10-75, para. 830.A (March 28, 2019).

for ELAP grazing losses.<sup>126</sup>

## **5. Livestock Must be Maintained for Commercial Use**

As of the beginning date of the eligible adverse weather event or loss condition, the livestock must be maintained for commercial use or be produced or maintained for producing livestock products for commercial use.<sup>127</sup> Commercial use is defined as use in a business operation that is a means of livelihood for profit.<sup>128</sup> The livestock that are produced or maintained for commercial production must be a part of the contract grower's or livestock owner's farming operation.<sup>129</sup>

Livestock used only for what FSA calls "recreational purposes" are not eligible.<sup>130</sup> This means, for example, that livestock which are used for roping, hunting, show, pleasure, as pets, for consumption by owner, or for sport are all ineligible for ELAP funding.

## **6. Livestock Cannot be Kept on Feedlots**

In order to be eligible for grazing losses, the livestock may not have been on a feedlot on the day the adverse weather event or loss condition began.<sup>131</sup> The rules, however, do not look at where the livestock actually were on that day. Instead, the rules look at the normal business operations of the farmer. So, if under normal conditions the animal would have been on a feedlot the day of the adverse weather event or loss condition began, the livestock are not eligible for ELAP.

## **7. Cannot be Roaming Livestock**

Wild, free roaming animals, including horses, deer, and hogs are not eligible for ELAP.<sup>132</sup>

<sup>126</sup> LDAP Handbook, page 10-81, para. 830.G (March 28, 2019). An exception to the rule that land enrolled in CRP is ineligible for ELAP assistance applies if all of the following conditions are met: (1) the acreage is native or improved pasture with permanent vegetative cover; (2) the acreage is not first year seeding of a perennial or biennial forage crop for grazing; (3) the acreage is not devoted to pollinator habitat with CRP conditions that do not allow for grazing; and (4) the acreage is not mechanically harvested.

<sup>127</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(a)(4)); LDAP Handbook, page 10-75, para. 830.A (March 28, 2019). Dairy cows producing milk are an example of livestock that are maintained to produce products for a commercial use. 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(a)(4)).

<sup>128</sup> 83 Fed. Reg. 49,459, 49,464 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, "Commercial use"); LDAP Handbook, page 10-9, para. 802.A (March 28, 2019).

<sup>129</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(a)(4)).

<sup>130</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(c)(9)); LDAP Handbook, page 10-78, para. 830.D (March 28, 2019).

<sup>131</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. §§ 1416.104(a)(5), 1416.104(c)(1)); LDAP Handbook, page 10-75, para. 830.A (March 28, 2019).

<sup>132</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(c)(8)); LDAP Handbook, page 10-79, para. 830.D (March 28, 2019).

## 8. Types of Livestock Eligible for Grazing Losses

The following specific types of animals are eligible for ELAP grazing losses so long as all other ELAP eligibility requirements are met.

### **a. Beef Cattle—Adult Cows, Adult Bulls, Non-Adults**

Beef cattle, including adult cows, adult bulls, and non-adults, are eligible for ELAP grazing losses.<sup>133</sup>

An adult beef bull is defined as an animal used for breeding purposes that is at least two years old at the beginning of the eligible adverse weather event or eligible loss condition.<sup>134</sup> An adult beef cow is defined as an animal that has delivered at least one calf before the date of the eligible adverse weather event or eligible loss condition.<sup>135</sup> A first-time bred heifer is considered an adult beef cow if she was bred on or before the beginning date of the eligible adverse weather event or eligible loss condition.

Non-adult beef cattle are defined as those that do not qualify as either an adult beef cow or bull.<sup>136</sup> In addition, to be eligible for grazing losses, the non-adult beef cattle must be less than two years old—but weigh 500 pounds or more—on the start date of the eligible adverse weather event or loss condition.

### **b. Dairy Cattle—Adult Cows, Adult Bulls, Non-Adults**

Dairy cattle, including adult cows, adult bulls, and non-adults, are eligible for ELAP grazing losses.<sup>137</sup>

An adult dairy bull is defined as a bull that was primarily used to breed dairy cows and was at least two year old at the beginning date of the eligible adverse weather event or eligible loss condition.<sup>138</sup> An adult dairy cow is defined as a dairy breed cow that is used for providing milk for human consumption and that has delivered at least one calf by the beginning of the eligible adverse weather event or loss condition.<sup>139</sup> A first-time bred heifer is considered an adult dairy cow if she was bred by the date of the eligible adverse weather event or loss condition

Non-adult dairy cattle are defined as bovine dairy breed animals that are used for the purpose of providing milk for human consumption, but which do not qualify as either adult dairy cows or bulls.<sup>140</sup> In addition, to be eligible for grazing losses, the non-adult dairy cattle must be less than two years old—but must weigh 500 pounds or more—on the start date of the eligible adverse weather event or loss condition.

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<sup>133</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(b)); LDAP Handbook, page 10-75, para. 830.A (March 28, 2019).

<sup>134</sup> 7 C.F.R. § 1416.102, “Adult beef bull” (2019).

<sup>135</sup> 7 C.F.R. § 1416.102, “Adult beef cow” (2019).

<sup>136</sup> 7 C.F.R. § 1416.102, “Non-adult beef cattle” (2019).

<sup>137</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(b)); LDAP Handbook, page 10-75, para. 830.A (March 28, 2019).

<sup>138</sup> 7 C.F.R. § 1416.102, “Adult dairy bull” (2019).

<sup>139</sup> 7 C.F.R. § 1416.102, “Adult dairy cow” (2019).

<sup>140</sup> 7 C.F.R. § 1416.102, “Non-adult dairy cattle” (2019).

**c. *Beefalo—Adult Cows, Adult Bulls, Non-Adults***

Beefalo, including adult cows, adult bulls, and non-adults are all eligible for ELAP grazing losses so long as they weigh at least 500 pounds.<sup>141</sup> Non-adult beefalo must also be less than two years old.

**d. *Buffalo and Bison—Adult Cows, Adult Bulls, Non-Adults***

Buffalo and Bison, including adult cows, adult bulls, and non-adults are all eligible for ELAP grazing losses so long as they weigh at least 500 pounds.<sup>142</sup> Non-adult buffalo and bison must also be less than two years old.

**e. *Goats***

Goats are eligible for ELAP grazing losses.<sup>143</sup>

**f. *Sheep***

Sheep are eligible for ELAP grazing losses.<sup>144</sup>

**g. *Other Eligible Livestock Types for Grazing Losses***

A number of other types of livestock are eligible for grazing losses.<sup>145</sup> These include alpacas, deer, elk, emus, equine,<sup>146</sup> llamas, and reindeer.

**9. Types of Livestock NOT Eligible for Grazing Losses**

There are four specific types of livestock that are not eligible for ELAP grazing losses under any conditions.<sup>147</sup> They are poultry, swine, yaks, and ostriches. Previously, it had been unclear if poultry and swine were eligible for ELAP grazing losses. The rules issued in October 2018 make clear that they are not.<sup>148</sup>

<sup>141</sup> 83 Fed. Reg. 49,459, 49,464-65 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(b), (c)(7)). Definitions of adult cows, adult bulls, and non-adults are similar to those used for beef cattle. See 83 Fed. Reg. 49,459, 49,464-65 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, “Adult beefalo cow,” “Adult beefalo bull,” “Non-adult beefalo”).

<sup>142</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(b), (c)(7)). Definitions of adult cows, adult bulls, and non-adults are similar to those used for beef cattle. See 83 Fed. Reg. 49,459, 49,464-65 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, “Adult buffalo or bison cow,” “Adult buffalo or bison bull,” “Non-adult buffalo or bison”).

<sup>143</sup> 7 C.F.R. § 1416.104(a)(1) (2019); LDAP Handbook, page 10-75, para. 830.A (March 28, 2019).

<sup>144</sup> 7 C.F.R. § 1416.104(a)(1) (2019); LDAP Handbook, page 10-75, para. 830.A (March 28, 2019).

<sup>145</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(a)(1)); LDAP Handbook, page 10-75, para. 830.A (March 28, 2019).

<sup>146</sup> Equine animals are defined as domesticated horses, mules, or donkeys. 7 C.F.R. § 1416.102, “Equine animal” (2019).

<sup>147</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(c)(3)-(6)).

<sup>148</sup> 83 Fed. Reg. 49,459, 49,460 (Oct. 2, 2018) (prefatory remarks).

## C. Livestock Death Losses

ELAP provides assistance to eligible producers who suffer livestock death losses that are not otherwise covered under the Livestock Indemnity Program (LIP).<sup>149</sup> In order to receive ELAP compensation for a livestock death loss, the following eligibility rules must be satisfied.

### 1. Producer Eligibility for Death Losses—Owner or Contract Grower

To be an eligible producer for death losses, the farmer must have control of the livestock as either an owner or a contract grower.<sup>150</sup>

#### a. Livestock Owner

A livestock owner is defined as someone having legal ownership of the livestock on the day of the eligible adverse weather event or loss condition.<sup>151</sup> Therefore, to be eligible for a death loss as a livestock owner, the farmer must have had legal ownership of the livestock on the date of death.<sup>152</sup> This means that no contract grower could be eligible for ELAP for the same livestock deaths because of the same adverse weather event or loss condition.

#### b. Livestock Contract Grower

To be eligible for death loss payments as a contract grower, the grower must satisfy the general requirements that apply to all contract growers seeking ELAP assistance, and must meet requirements that apply specifically to death losses. Accordingly, to receive payments for death losses, a contract grower must meet the following six requirements: (1) raise either swine or poultry in an environment other than a feedlot;<sup>153</sup> (2) have income that depends on the survival of the livestock;<sup>154</sup> (3) have income that depends on the actual weight gain of the livestock, the number of offspring produced from the livestock, or the quantity of products (such as eggs) produced from the livestock;<sup>155</sup> (4) have a written agreement with the livestock owner;<sup>156</sup> (5) have control of the livestock on the date of their death;<sup>157</sup> and (6) have a risk of loss in the livestock.<sup>158</sup>

<sup>149</sup> 7 C.F.R. § 1416.103(g) (2019); LDAP Handbook, page 10-40, para. 816.C, and page 10-45 para. 816.I (March 28, 2019).

<sup>150</sup> 7 C.F.R. § 1416.105(c) (2019); LDAP Handbook, pages 10-49 and 10-50, para. 816.N (March 28, 2019).

<sup>151</sup> 83 Fed. Reg. 49,459, 49,464 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, "Livestock owner").

<sup>152</sup> 7 C.F.R. § 1416.105(c)(1) (2019); 82 Fed. Reg. 49,459, 49,464 (Oct. 2, 2018) (to be codified at 7 C.F.R. 1416.102, "Livestock owner"); LDAP Handbook, page 10-49, para. 816.N (March 28, 2019).

<sup>153</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(e)(1)).

<sup>154</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(e)).

<sup>155</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(e)).

<sup>156</sup> 7 C.F.R. § 1416.105(c)(2) (2019); LDAP Handbook, page 10-50, para. 816.N (March 28, 2019).

<sup>157</sup> 7 C.F.R. § 1416.105(c)(2) (2019); LDAP Handbook, page 10-50, para. 816.N (March 28, 2019).

<sup>158</sup> 7 C.F.R. § 1416.105(c)(2) (2019); LDAP Handbook, page 10-50, para. 816.N (March 28, 2019).



## **2. Types of Livestock Eligible for Death Losses**

The type of livestock that are covered by ELAP for livestock death losses differs depending on whether the farmer is the owner or contract grower of the livestock.

### ***a. Eligible Livestock Types—Livestock Owners***

The following are eligible livestock types for owners of livestock that suffer a death loss.

#### **(i) Dairy Cattle**

Both adult and non-adult dairy cattle are eligible for livestock owner death losses.<sup>159</sup> Payments vary depending on whether the adult is a bull or a cow.

For death losses, non-adult dairy cattle are defined as bovine dairy breed animals that are used for the purpose of providing milk for human consumption, but which do not qualify as either adult dairy cows or bulls.<sup>160</sup>

#### **(ii) Beef Cattle**

Both adult and non-adult beef cattle are eligible for livestock owner death losses.<sup>161</sup> Payments differ depending on if the adult is a bull or a cow.

For death losses, non-adult beef cattle are defined as those that do not qualify as either an adult beef cow or bull.<sup>162</sup>

#### **(iii) Poultry**

Poultry are eligible for livestock owner death losses.<sup>163</sup> Payments for livestock owners will differ depending on the specific type of poultry that die.

For chickens, payments will be based on whether the chickens are: (1) chicks; (2) layers; (3) broilers or regular sized pullets; or (4) or small size pullets or Cornish hens.<sup>164</sup>

For ducks, payments will differ for ducks and ducklings.<sup>165</sup>

<sup>159</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(d)); LDAP Handbook, page 10-76, para. 830.B (March 28, 2019).

<sup>160</sup> 7 C.F.R. § 1416.102, “Non-adult dairy cattle” (2019).

<sup>161</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(d)); LDAP Handbook, page 10-76, para. 830.B (March 28, 2019).

<sup>162</sup> 7 C.F.R. § 1416.102, “Non-adult beef cattle” (2019).

<sup>163</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(d)); LDAP Handbook, page 10-76, para. 830.B (March 28, 2019).

<sup>164</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(d)(2)).

<sup>165</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(d)(2)).

For geese, payments will differ for geese and goslings.<sup>166</sup>

For turkeys, payments will depend on whether they are: (1) poults; or (2) toms, fryers, or roasters.<sup>167</sup>

#### **(iv) Swine**

Swine are eligible for livestock owner death loss payments.<sup>168</sup> For livestock owners of swine, payments differ for: (1) feeder pigs under fifty pounds; (2) sows, boars, barrows and gilts of fifty to 150 pounds; and (3) sows, boars, barrows and gilts of over 150 pounds.<sup>169</sup>

#### **(v) Goats and Sheep**

Goats and sheep are eligible for livestock owner death loss.<sup>170</sup> Payments for livestock owners with goats will differ for bucks, nannies, and kids.<sup>171</sup> For sheep, payments for livestock owners differ for ewes, lambs, and rams.<sup>172</sup>

#### **(vi) Other Eligible Livestock Types for Death Losses**

A number of other types of livestock are eligible for livestock owner death losses.<sup>173</sup> These include alpaca, beefalo (adult and non-adult),<sup>174</sup> buffalo (adult and non-adult),<sup>175</sup> bison (adult and non-adult),<sup>176</sup> deer, elk, emus, equine,<sup>177</sup> llamas, and reindeer.

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<sup>166</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(d)(2)).

<sup>167</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(d)(2)).

<sup>168</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(d)(1)-(2)); LDAP Handbook, page 10-76, para. 830.B (March 28, 2019).

<sup>169</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(d)(2)).

<sup>170</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(d)(1)-(2)); LDAP Handbook, page 10-76, para. 830.B (March 28, 2019).

<sup>171</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(d)(1)-(2)).

<sup>172</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(d)(2)).

<sup>173</sup> 83 Fed. Reg. 49,459, 49,465-66 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(d)(1)-(2)); LDAP Handbook, page 10-76, para. 830.B (March 28, 2019).

<sup>174</sup> For death losses, non-adult beefalo means a hybrid of beef and bison that does not meet the definition of adult beefalo cow or bull. See 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, "Non-adult beefalo").

<sup>175</sup> For death losses, non-adult buffalo means an animal of those breeds that does not meet the definition of an adult buffalo. See 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, "Non-adult buffalo or bison").

<sup>176</sup> For death losses, non-adult bison means an animal of those breeds that does not meet the definition of an adult bison cow or bull. See 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, "Non-adult buffalo or bison").

<sup>177</sup> Equine animals are defined as domesticated horses, mules, or donkeys. 7 C.F.R. § 1416.102, "Equine animal" (2019).

***b. NOT Eligible Livestock Types—Livestock Owners***

Any livestock that do not fall within one of the categories listed immediately above will not be eligible for livestock owner death loss payments.<sup>178</sup> This includes animals such as ostriches, yaks, and any wild, free-roaming livestock, such as wild horses, wild hogs, and wild deer.

***c. Eligible Livestock Types—Contract Growers***

ELAP death loss payments for contract growers are only available for certain poultry and swine.

**(i) Poultry**

Some poultry are eligible for contract grower death losses.<sup>179</sup> Payments for contract growers will differ depending on the specific type of poultry that die.

For chickens, payments will be based on whether the chickens are: (1) broilers or regular sized pullets; (2) small size pullets or Cornish hens; or (3) layers.<sup>180</sup>

For turkeys, payments will depend on whether they are toms, fryers, or roasters.<sup>181</sup>

For geese, only a goose—and not a gosling—is eligible for contract grower death loss payments.<sup>182</sup>

**(ii) Swine**

Swine are eligible for contract grower death loss payments.<sup>183</sup> For contract growers of swine, payments differ for: (1) boars, sows, barrows, and gilts; (2) feeder pigs; and (3) lightweight barrows and gilts.<sup>184</sup>

**3. General Eligibility Requirements for Livestock Death Losses**

In order for a farmer to receive ELAP benefits for a livestock death loss, the death loss must satisfy the following requirements. These requirements apply regardless of whether the farmer is a livestock owner or contract grower.

<sup>178</sup> 83 Fed. Reg. 49,459, 49,465-66 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(d)); LDAP Handbook, page 10-79, para. 830.D (March 28, 2019).

<sup>179</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(e)); LDAP Handbook, page 10-77, para. 830.B (March 28, 2019).

<sup>180</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(e)(2)).

<sup>181</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(e)(2)).

<sup>182</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(e)(2)).

<sup>183</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(e)(1)-(2)); LDAP Handbook, page 10-77, para. 830.B (March 28, 2019).

<sup>184</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(e)(2)).

**a. Livestock Must be Maintained for Commercial Use**

On the day the eligible adverse weather event or loss condition caused the livestock to die, the farmer must have been maintaining the livestock for commercial use or for producing livestock products for commercial use.<sup>185</sup> Commercial use is defined as use in a business operation that is a means of livelihood for profit.<sup>186</sup>

Livestock that—before their death—were produced or maintained for reasons other than a commercial use are not eligible for ELAP.<sup>187</sup> This includes, for example, livestock that are produced or maintained for recreational purposes, such as for roping, hunting, show, pleasure, sport, or as pets.

**b. Death Must be in Excess of Normal Mortality Rates**

To receive ELAP compensation for livestock death losses, the deaths must occur above normal mortality rates.<sup>188</sup> FSA determines the normal mortality rates for each type of livestock.<sup>189</sup>

**c. Death Must be the Direct Result of an Eligible Loss Condition that is Not Otherwise Eligible for Livestock Indemnity Program (LIP)**

Eligible livestock death losses must be directly due to an eligible loss condition.<sup>190</sup> However, to be eligible under ELAP, the death loss cannot be related to an adverse weather event that otherwise qualifies for assistance under the Livestock Indemnity Program (LIP).<sup>191</sup>

Examples of ELAP-eligible loss conditions for death losses include disease and insect infestation.<sup>192</sup> Disease can qualify as an eligible loss condition for a death loss so long as the disease is caused and/or transmitted by vectors, and so long as vaccination and best management practices are not available for the disease.<sup>193</sup>

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<sup>185</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(f)(2)); LDAP Handbook, pages 10-76 and 10-77, para. 830.B (March 28, 2019). Dairy cows producing milk and eggs from poultry are examples of livestock that are maintained to produce products for a commercial use. 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(f)(2)).

<sup>186</sup> 83 Fed. Reg. 49,459, 49,464 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, “Commercial use”); LDAP Handbook, page 10-9, para. 802.A (March 28, 2019).

<sup>187</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(f)(3)); LDAP Handbook, pages 10-76 and 10-77, para. 830.B (March 28, 2019).

<sup>188</sup> 7 C.F.R. § 1416.103(g) (2019); LDAP Handbook, page 10-40, para. 816.C (March 28, 2019).

<sup>189</sup> LDAP Handbook, page 10-101, para. 831.H (March 28, 2019). The normal mortality rates used for ELAP payment calculations are the same as those FSA uses for LIP payment calculations.

<sup>190</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(f)(1)(iii)); 7 C.F.R. § 1416.103(g) (2019); LDAP Handbook, page 10-40, para. 816.C (March 28, 2019).

<sup>191</sup> 7 C.F.R. § 1416.103(g) (2018); LDAP Handbook, page 10-45 para. 816.I (March 28, 2019). LIP provides benefits for eligible livestock deaths or injuries.

<sup>192</sup> 7 C.F.R. § 1416.102, “Eligible loss condition” (2019); LDAP Handbook, page 10-10, para. 802.A (March 28, 2019).

<sup>193</sup> LDAP Handbook, page 10-45, para. 816.I (March 28, 2019). For purposes of ELAP, it does not matter whether a potential vaccine or management practice was actually utilized—so long as either exists, the disease will not qualify as an eligible loss condition for a livestock death loss.

**d. Death Must Occur in the County of an Eligible Loss Condition**

A farmer may only seek ELAP benefits for livestock death losses that occur in a county where the eligible loss condition—such as eligible disease—occurred.<sup>194</sup>

**e. Timing of Death**

To be eligible for ELAP, livestock death losses must satisfy specific timeframe requirements. These requirements depend on whether the livestock are non-newborn livestock or newborn livestock.

**(i) Non-Newborn Livestock**

Non-newborn livestock must have died on or after the beginning date of the eligible loss condition, but no later than thirty calendar days from the end date of the loss condition.<sup>195</sup>

**(ii) Newborn Livestock**

Newborn livestock, defined as livestock that are within ten days of their date of birth, can be eligible for ELAP death loss payments.<sup>196</sup> To qualify, the newborn livestock must have been born on or during the eligible loss condition.<sup>197</sup> The newborn livestock must have died on or after the beginning date of the loss condition, but no later than seven calendar days from the end date of the loss condition.<sup>198</sup>

**D. Livestock Losses Related to Cattle Tick Fever**

A farmer may seek benefits for losses related to cattle tick fever. Two types of losses of this type are eligible—costs related to gathering cattle for treatment of cattle tick fever, and losses due to the cost of testing for cattle tick fever.

Cattle tick fever is defined as a severe and often fatal disaster that destroys red blood cells of cattle and is commonly known as Texas or cattle fever.<sup>199</sup>

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For a list of current diseases that do not qualify as eligible loss conditions, see LDAP Handbook, page 10-46, para. 816.I (March 28, 2019).

<sup>194</sup> 7 C.F.R. § 1416.103(g) (2019).

<sup>195</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(f)(1)(i)-(ii)); LDAP Handbook, page 10-76, para. 830.B (March 28, 2019).

<sup>196</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, “Newborn livestock”).

<sup>197</sup> LDAP Handbook, page 10-78, para. 830.C (March 28, 2019). Newborn livestock that are born after the last day of the eligible loss condition are not eligible for ELAP.

<sup>198</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(f)(1)(i)-(ii)); LDAP Handbook, page 10-78, para. 830.C (March 28, 2019).

<sup>199</sup> 7 C.F.R. § 1416.102, “Cattle tick fever” (2019).

## **1. Loss When Gathering Livestock for Cattle Tick Fever Treatment**

A farmer may seek ELAP benefits for a loss resulting from the additional costs associated with gathering livestock to be treated for cattle tick fever.<sup>200</sup> A number of rules apply.

### ***a. Eligibility for a Loss of Gathering Livestock for Cattle Tick Fever Treatment***

The following eligibility rules apply for farmer with losses due to the cost of gathering livestock to treat cattle tick fever.

#### **(i) Costs Incurred from Gathering Livestock for Treatment**

To qualify as an eligible loss under this provision, the farmer must incur additional costs associated with gathering eligible livestock for the treatment of cattle tick fever.<sup>201</sup>

#### **(ii) Producer Eligibility: Sixty Day Rule**

To be an eligible producer for losses from gathering livestock for treatment of cattle tick fever, the farmer must have done one of the following for at least sixty days before the beginning date of the eligible adverse weather event or eligible loss condition: (1) owned the eligible livestock; (2) cash-leased the eligible livestock; (3) purchased or entered into a contract to purchase the eligible livestock; or (4) been a contract grower of the eligible livestock.<sup>202</sup>

#### **(iii) Must be Grazing Animals**

ELAP losses from gathering livestock for cattle tick fever treatment are limited to grazing animals.<sup>203</sup> This means that the species of animal must be that of a grazing animal. For ELAP purposes, grazing animals are livestock that satisfy more than 50 percent of their net energy needs through forage grasses and legumes.<sup>204</sup> The following types of animals fall within this definition of grazing animals: dairy cattle, beef cattle, goats, sheep, llamas, reindeer, beefalo, buffalo or bison, deer, elk, emus, equine,<sup>205</sup> and alpacas.<sup>206</sup>

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<sup>200</sup> 7 C.F.R. § 1416.103(f) (2019); LDAP Handbook, page 10-40, para. 816.C, and page 10-86.5, para. 830.N (May 30, 2018).

<sup>201</sup> 7 C.F.R. § 1416.103(f) (2019); LDAP Handbook, page 10-49, para. 816.N, and page 10-86.5, para. 830.N (May 30, 2018).

<sup>202</sup> 82 Fed. Reg. 49,459, 49,465-66 (Oct. 2, 2018) (to be codified at C.F.R. §§ 1416.104(a)(3), 1416.105(a)(1)); LDAP Handbook, page 10-48, para. 816.N (March 28, 2019).

<sup>203</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. §§ 1416.104(a)(1), 1416.104(c)(2)); LDAP Handbook, page 10-75, para. 830.A (March 28, 2019).

<sup>204</sup> 83 Fed. Reg. 49,459, 49,464 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, "Grazing animals").

<sup>205</sup> Equine animals are defined as domesticated horses, mules, or donkeys. 7 C.F.R. § 1416.102, "Equine animal" (2019).

<sup>206</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(a)(1)). This includes adult and non-adult dairy cattle, beef cattle, beefalo, and bison or buffalo.

When determining what species qualify as grazing animals, the rules focus on whether the species is recommended to get 50 percent of its nutritional requirements from pasture.<sup>207</sup> Accordingly, because certain types of livestock—such as poultry and swine—are thought by FSA not to have a recommended net energy requirement of at least 50 percent from pasture, those livestock are not eligible as grazing animals even if a farmer’s particular poultry or swine are pasture-raised.

**(iv) Livestock Must be Maintained for Commercial Use**

As of the beginning date of the eligible adverse loss condition, the livestock must be maintained for commercial use or be produced or maintained for producing livestock products for commercial use.<sup>208</sup> Commercial use is defined as use in a business operation that is a means of livelihood for profit.<sup>209</sup> The livestock that are produced or maintained for commercial production must be a part of the contract grower or livestock owner’s farming operation.<sup>210</sup>

Livestock used only for what FSA calls recreational purposes are not eligible.<sup>211</sup> This means, for example, that livestock which are used for roping, hunting, show, pleasure, as pets, for consumption by owner, or for sport are all ineligible for ELAP funding.

**(v) Livestock Not on Feedlot**

The livestock may not have been on a feedlot on the day the loss condition began.<sup>212</sup> The rules, however, do not look at where the livestock actually were on that day. Instead, the rules look at the normal business operations of the farmer. So, if under normal conditions the animals would have been on a feedlot the day the adverse weather event or loss condition began, the livestock are not eligible for ELAP.

***b. Types of Livestock Eligible for Cattle Tick Fever Treatment Gathering Losses***

The following types of animals are eligible for ELAP cattle tick fever treatment gathering losses, so long as all other ELAP eligibility requirements are met.

<sup>207</sup> 83 Fed. Reg. 49,459, 49,464-65 (Oct. 2, 2018) (to be codified at 7 C.F.R. §§ 1416.102, “Grazing animals,” 1416.104(c)(5)-(6)).

<sup>208</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(a)(4)); LDAP Handbook, page 10-75, para. 830.A (March 28, 2019). Dairy cows producing milk are an example of livestock that are maintained to produce products for a commercial use. 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(a)(4)).

<sup>209</sup> 83 Fed. Reg. 49,459, 49,464 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, “Commercial use”); LDAP Handbook, page 10-9, para. 802.A (March 28, 2019).

<sup>210</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(a)(4)).

<sup>211</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(c)(9)); LDAP Handbook, page 10-78, para. 830.D (March 28, 2019).

<sup>212</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. §§ 1416.104(a)(5), 1416.104(c)(1)); LDAP Handbook, page 10-75, para. 830.A (March 28, 2019).

**(i) Beef Cattle—Adult Cows, Adult Bulls, Non-Adults**

Beef cattle, including adult cows, adult bulls, and non-adults, are eligible for losses due to gathering cattle for cattle tick fever treatment.<sup>213</sup>

An adult beef bull is defined as an animal used for breeding purposes that is at least two years old at the beginning of the eligible adverse weather event or eligible loss condition.<sup>214</sup> An adult beef cow is defined as an animal that has delivered at least one calf before the date of the eligible adverse weather event or eligible loss condition.<sup>215</sup> A first-time bred heifer is considered an adult beef cow if she was bred on or before the beginning date of the eligible adverse weather event or eligible loss condition.

Non-adult beef cattle are defined as those that do not qualify as either an adult beef cow or bull.<sup>216</sup> In addition, to be eligible for feed and water transport losses, the non-adult beef cattle must be less than two years old—but weigh 500 pounds or more—on the start date of the eligible adverse weather event or loss condition.

**(ii) Dairy Cattle—Adult Cows, Adult Bulls, Non-Adults**

Dairy cattle, including adult cows, adult bulls, and non-adults, are eligible for losses due to gathering cattle for cattle tick fever treatment.<sup>217</sup>

An adult dairy bull is defined as a bull that was primarily used to breed dairy cows and was at least two year old at the beginning date of the eligible adverse weather event or eligible loss condition.<sup>218</sup> An adult dairy cow is defined as a dairy breed cow that is used for providing milk for human consumption and that has delivered at least one calf by the beginning of the eligible adverse weather event or loss condition.<sup>219</sup> A first-time bred heifer is considered an adult dairy cow if she was bred by the date of the eligible adverse weather event or loss condition.

Non-adult dairy cattle are defined as those that do not qualify as either an adult dairy cow or bull.<sup>220</sup> In addition, to be eligible for feed and water transport losses, the non-adult dairy cattle must be less than two years old—but must weigh 500 pounds or more—on the start date of the eligible adverse weather event or loss condition.

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<sup>213</sup> 83 Fed. Reg. 49,459, 49,464 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(b)); LDAP Handbook, page 10-75, para. 830.A (March 28, 2019).

<sup>214</sup> 7 C.F.R. § 1416.102, “Adult beef bull” (2019).

<sup>215</sup> 7 C.F.R. § 1416.102, “Adult beef cow” (2019).

<sup>216</sup> 7 C.F.R. § 1416.102, “Non-adult beef cattle” (2019).

<sup>217</sup> 83 Fed. Reg. 49,459, 49,464 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(b)); LDAP Handbook, page 10-75, para. 830.A (March 28, 2019).

<sup>218</sup> 7 C.F.R. § 1416.102, “Adult dairy bull” (2019).

<sup>219</sup> 7 C.F.R. § 1416.102, “Adult dairy cow” (2019).

<sup>220</sup> 7 C.F.R. § 1416.102, “Non-adult dairy cattle” (2019).



**(iii) Beefalo—Adult Cows, Adult Bulls, Non-Adults**

Beefalo, including adult cows, adult bulls, and non-adults, are eligible for ELAP losses due to gathering cattle for cattle tick fever treatment so long as they weigh at least 500 pounds.<sup>221</sup> Non-adult beefalo must also be less than two years old.

**(iv) Buffalo and Bison—Adult Cows, Adult Bulls, Non-Adults**

Buffalo and bison, including adult cows, adult bulls, and non-adults, are eligible for ELAP losses due to gathering cattle for cattle tick fever treatment so long as they weigh at least 500 pounds.<sup>222</sup> Non-adult buffalo and bison must also be less than two years old.

**(v) Goats**

Goats are eligible for ELAP for losses due to gathering cattle for cattle tick fever treatment.<sup>223</sup>

**(vi) Sheep**

Sheep are eligible for ELAP for losses due to gathering cattle for cattle tick fever treatment.<sup>224</sup>

**(vii) Other Eligible Livestock Types for Gathering Cattle for Cattle Tick Fever Treatment**

A number of other types of livestock are eligible for losses due to gathering cattle for cattle tick fever treatment.<sup>225</sup> These include alpacas, deer, elk, emus, equine,<sup>226</sup> llamas, and reindeer.

**2. Loss for Cattle Tick Fever Testing**

The 2018 Farm Bill provides that an eligible loss can be the expense of testing for cattle tick fever.<sup>227</sup> This change took effect for inspections that occurred after the 2018 Farm

<sup>221</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(b), (c)(7)). Definitions of adult cows, adult bulls, and non-adults are similar to those used for beef cattle. See 83 Fed. Reg. 49,459, 49,464-65 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, “Adult beefalo cow,” “Adult beefalo bull,” “Non-adult beefalo”).

<sup>222</sup> 83 Fed. Reg. 49,459, 49,464-65 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(b), (c)(7)). Definitions of adult cows, adult bulls, and non-adults are similar to those used for beef cattle. See 83 Fed. Reg. 49,459, 49,464-65 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, “Adult buffalo or bison cow,” “Adult buffalo or bison bull,” “Non-adult buffalo or bison”).

<sup>223</sup> 7 C.F.R. § 1416.104(a)(1) (2019); LDAP Handbook, page 10-75, para. 830.A (March 28, 2019).

<sup>224</sup> 7 C.F.R. § 1416.104(a)(1) (2019); LDAP Handbook, page 10-75, para. 830.A (March 28, 2019).

<sup>225</sup> 83 Fed. Reg. 49,459, 49,465 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.104(a)(1)); LDAP Handbook, page 10-75, para. 830.A (March 28, 2019).

<sup>226</sup> Equine animals are defined as domesticated horses, mules, or donkeys. 7 C.F.R. § 1416.102, “Equine animal” (2019).

<sup>227</sup> Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(c) (2018) (to be codified at 7 U.S.C. § 9081(d)(2)).

Bill became law on December 20, 2018. The addition of this loss, and any associated rules, are not yet reflected in the Code of Federal Regulations or FSA Handbooks.

## **V. Eligible Losses Related to Honeybees**

A farmer may seek ELAP benefits for certain losses related to honeybee hives or colonies when those losses are caused by an eligible adverse weather event or loss condition.<sup>228</sup> To receive ELAP compensation for a honeybee loss, farmers must satisfy the following requirements for loss eligibility, producer eligibility, and livestock eligibility.

### **A. Loss Eligibility—Honeybee Losses**

ELAP provides compensation for three types of honeybee losses: (a) damaged or destroyed honeybee feed; (b) the cost of purchasing additional honeybee feed; and (c) the loss of a honeybee hive or colony.

#### **1. Loss of Feed for Honeybees**

A farmer may seek ELAP benefits for the loss of purchased or harvested honeybee feed.<sup>229</sup> The following rules apply.

##### ***a. Feed Purchased or Harvested and Intended for Producer's Eligible Honeybees***

The feed must have been purchased or harvested as feed for the producer's eligible honeybees.<sup>230</sup>

##### ***b. Damaged or Destroyed by an Eligible Adverse Weather Event or Loss Condition***

The feed must have been damaged or destroyed by an eligible adverse weather event or loss condition.<sup>231</sup>

Eligible adverse weather events and loss conditions for honeybee feed losses include, but are not limited to: earthquakes, floods, hurricanes, lightning, tidal surge, tornado, volcanic eruption, and wildfires.<sup>232</sup>

##### ***c. Honeybee Colony Located in County Where Eligible Weather Event or Loss Condition Occurred***

The honeybee colony must have been located in the county where the eligible weather event or loss condition occurred, on the date that it began.<sup>233</sup>

<sup>228</sup> 7 C.F.R. § 1416.103(h), (i) (2019); LDAP Handbook, page 10-42 and 10-43, para. 816.D (May 30, 2018).

<sup>229</sup> 7 C.F.R. § 1416.103(h)(1) (2019); LDAP Handbook, pages 10-42, 10-43 and 10-132, paras. 816.D and 845.D (May 30, 2018).

<sup>230</sup> 7 C.F.R. § 1416.103(h)(1) (2019); LDAP Handbook, page 10-132, para. 845.D (May 30, 2018).

<sup>231</sup> 7 C.F.R. § 1416.103(h)(1) (2019); LDAP Handbook, page 10-42, para. 816.D (May 30, 2018).

<sup>232</sup> 7 C.F.R. § 1416.103(h)(1) (2019); LDAP Handbook, page 10-46, para. 816.J (May 30, 2018).

<sup>233</sup> 7 C.F.R. § 1416.103(h)(1) (2019); LDAP Handbook, page 10-42, para. 816.D (May 30, 2018).

## **2. Costs of Purchasing Additional Feed for Honeybees**

A farmer may seek ELAP benefits for the cost of purchasing additional honeybee feed required to sustain a honeybee colony. The following rules apply.

### ***a. Purchased Above Normal Quantities***

Only honeybee feed that is purchased above normal quantities will be eligible for ELAP benefits.<sup>234</sup>

### ***b. Necessary to Maintain Colony Until Other Feed Becomes Available***

The additional honeybee feed must have been purchased in order to sustain honeybee colonies for a period of time until additional feed becomes available.<sup>235</sup>

### ***c. Result of Adverse Weather Event or Loss Condition***

The lack of available honeybee feed—and the need for additional feed—must be the result of an eligible adverse weather event or loss condition.<sup>236</sup> The feed must therefore be purchased during or after the occurrence of the eligible weather event or loss condition.

Eligible adverse weather events and loss conditions for the loss of purchased additional honeybee feed include, but are not limited to: early fall frost, earthquake, eligible drought, excessive rainfall, flood, hurricane, late spring frost, lightning, tidal surge, tornado, volcanic eruption, and wildfires.<sup>237</sup>

### ***d. Honeybees Located in County where Weather Event or Loss Condition Occurred***

The feed must be fed to honeybees that are physically located in the county where the adverse weather event or loss condition occurred.<sup>238</sup>

## **3. Loss of Honeybee Hive or Colony**

A farmer may seek ELAP benefits for the loss of honeybee hives or colonies. The following rules apply.

### ***a. Loss Incurred in County where an Eligible Weather Event or Loss Condition Occurs***

The hive or colony must have been physically located in a county where an

<sup>234</sup> 7 C.F.R. § 1416.103(h)(2) (2019); LDAP Handbook, page 10-42, para. 845.D and page 10-132, para. 846.G (May 30, 2018). To help establish what amount of feed exceeds “normal quantities” for the producer, FSA will require that the producer provide receipts for honeybee feed purchases made during the two preceding years. See LDAP Handbook, page 10-140, para. 846.G (May 30, 2018).

<sup>235</sup> 7 C.F.R. § 1416.103(h)(2) (2019); LDAP Handbook, page 10-42, para. 816.D and page 10-132, para. 845.D (May 30, 2018).

<sup>236</sup> 7 C.F.R. § 1416.103(h)(2) (2019); LDAP Handbook, page 10-42, para. 816.D (May 30, 2018).

<sup>237</sup> 7 C.F.R. § 1416.102(h)(2) (2019); LDAP Handbook, page 10-46.5, para. 816.K (May 30, 2018).

<sup>238</sup> 7 C.F.R. § 1416.103(h)(2) (2019); LDAP Handbook, page 10-42, para. 816.D (May 30, 2018).

eligible adverse weather event or loss condition occurred, on the day it began.<sup>239</sup>

Eligible weather events and loss conditions for a hive or colony loss include, but are not limited to: colony collapse disorder,<sup>240</sup> earthquakes, eligible extreme cold, eligible sustained cold, eligible winter storms,<sup>241</sup> excessive winds, floods, hurricanes, lightning, tornados, volcanic eruptions and wildfires.<sup>242</sup> Losses due to controllable conditions, such as varroa mites, are not eligible honeybee losses under ELAP.<sup>243</sup> In addition, drought is not an ELAP-eligible honeybee loss condition.

***b. Loss must be a Direct Result of an Eligible Weather Event or Loss Condition***

For a honeybee hive loss, the hive must have been damaged or destroyed as a result of an eligible loss condition.<sup>244</sup>

For a honeybee colony loss, the loss of the honeybees must have been a direct result of an eligible weather event or loss condition.<sup>245</sup> The loss must also have occurred in excess of normal mortality, as determined by FSA.<sup>246</sup>

**B. Producer Eligibility—Honeybee Losses**

In addition to meeting general ELAP eligibility rules, the following producer eligibility rules apply for honeybee losses.

**1. Interest and Risk in an Eligible Honeybee Colony**

An eligible producer must have had an interest and risk in an eligible honeybee colony on the beginning date of the eligible weather event or loss condition.<sup>247</sup> This means the farmer must have had a risk of loss in honey production, pollination, or honeybee breeding as part of a farming operation.<sup>248</sup>

**2. Maintain Honeybee Colony for Commercial Use**

As of the beginning date of an eligible adverse weather event or loss condition, the farmer must have been maintaining the honeybee hive or colony for commercial use in a farming operation.<sup>249</sup> Commercial use is defined as used in a business operation that

<sup>239</sup> 7 C.F.R. § 1416.103(i) (2019); LDAP Handbook, page 10-42, para. 816.D (May 30, 2018).

<sup>240</sup> Although colony collapse disorder (CCD) is an eligible honeybee loss condition, if CCD causes a loss of income under a pollinator contract, that loss is not eligible for ELAP. LDAP Handbook, page 10-135, para. 845.E (May 30, 2018).

<sup>241</sup> An eligible winter storm is 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. 7 C.F.R. § 1416.102, "Eligible winter storm" (2019).

<sup>242</sup> 7 C.F.R. § 1416.103(i) (2019); LDAP Handbook, page 10-46.5, para 816.L (May 30, 2018).

<sup>243</sup> LDAP Handbook, page 10-135, para 845.E (May 30, 2018).

<sup>244</sup> 7 C.F.R. § 1416.103(i) (2019); LDAP Handbook, page 10-42, para 816.D (May 30, 2018).

<sup>245</sup> 7 C.F.R. § 1416.103(i) (2019); LDAP Handbook, page 10-42, para 816.D (May 30, 2018).

<sup>246</sup> FSA establishes the normal mortality rates for honeybee colonies. See LDAP Handbook, page 10-138, para. 846.C (May 30, 2018).

<sup>247</sup> 7 C.F.R. § 1416.105(d) (2019); LDAP Handbook, page 10-50, para. 816.N (May 30, 2018).

<sup>248</sup> 7 C.F.R. § 1416.104(g)(3) (2019); LDAP Handbook, page 10-131, para. 845.C (May 30, 2018).

<sup>249</sup> 7 C.F.R. §§ 1416.104(g)(1), 1416.105(d) (2019); LDAP Handbook, pages 10-50 and 10-131, paras. 816.N, 845.C (May 30, 2018).

is a means of livelihood for profit.<sup>250</sup> The honeybees must have been maintained for the purpose of producing honey, pollination, or honeybee breeding.

### **C. Eligible Honeybees**

In order for a honeybee colony loss or honeybee feed loss to be eligible for ELAP, the honeybees must be maintained for a commercial purpose of honey production, pollination, or honeybee breeding.<sup>251</sup> Wild bees, feral honeybees, leaf cutter bees, or other bee species that are not used for producing honey, pollinating, or breeding honeybees are not eligible under ELAP.<sup>252</sup>

## **VI. Eligible Losses Related to Farm-Raised Fish**

A farmer may seek ELAP benefits for certain losses related to farm-raised fish when those losses are the result of an eligible adverse weather event or loss condition.<sup>253</sup> To receive ELAP compensation for farm-raised fish losses, farmers must satisfy the following requirements for loss eligibility, producer eligibility and farm-raised fish eligibility.

### **A. Loss Eligibility for Farm-Raised Fish**

ELAP provides compensation for two types of losses when farm-raised fish are affected by an eligible adverse weather event or loss condition: (a) the loss of feed for farm-raised fish; and (b) the death of bait fish or game fish.<sup>254</sup>

#### **1. Loss of Feed for Farm-Raised Fish**

A farmer may seek ELAP benefits for the loss of farm-raised fish feed. The following rules apply.

##### ***a. Feed Purchased or Harvested and Intended for Producer's Eligible Farm-Raised Fish***

The feed must have been purchased or harvested as feed for the producer's eligible farm-raised fish.<sup>255</sup>

##### ***b. Damaged or Destroyed by an Eligible Adverse Weather Event or Loss Condition***

The feed must have been damaged or destroyed by an eligible adverse weather event or loss condition.<sup>256</sup>

Eligible adverse weather events and loss conditions for farm-raised fish feed losses include, but are not limited to: earthquakes, floods, hurricanes, lightning,

<sup>250</sup> 83 Fed. Reg. 49,459, 49,464 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, "Commercial use"); LDAP Handbook, page 10-9, para. 802.A (March 28, 2019).

<sup>251</sup> 7 C.F.R. § 1416.104(g)(1) (2019); LDAP Handbook, page 10-131, paras. 845.B and 845.C (May 30, 2018).

<sup>252</sup> LDAP Handbook, page 10-131, para. 845.B (May 30, 2018).

<sup>253</sup> 7 C.F.R. § 1416.103(h), (i) (2019); LDAP Handbook, page 10-43 para. 816.E (May 30, 2018).

<sup>254</sup> 7 C.F.R. § 1416.103(h)(1) (2019); LDAP Handbook, page 10-43, para. 816.E (May 30, 2018).

<sup>255</sup> 7 C.F.R. § 1416.103(h)(1) (2019); LDAP Handbook, page 10-177, para. 860.D (May 30, 2018).

<sup>256</sup> 7 C.F.R. § 1416.103(h)(1) (2019); LDAP Handbook, page 10-43, para. 816.E (May 30, 2018).

tidal surge, tornado, volcanic eruption, and wildfires.<sup>257</sup>

***c. Fish Located in County where Eligible Weather Event or Loss Condition Occurred***

The farm-raised fish must have been located in the county where the eligible weather event or loss condition occurred, on the date that it began.<sup>258</sup>

**2. Death of Farm-Raised Bait and Game Fish**

A farmer may seek ELAP benefits for the death of farm-raised bait or game fish. The following rules apply.

***a. Death of Bait Fish or Game Fish Only***

ELAP currently provides benefits for the death loss of bait fish or game fish only.<sup>259</sup> The death of any other type of farm-raised fish is not eligible for ELAP.

***b. Death in Excess of Normal Mortality***

ELAP only provides benefits for the deaths of bait fish and game fish that are in excess of normal mortality, as determined by FSA.<sup>260</sup>

***c. Death a Direct Result of an Adverse Weather Event or Loss Condition***

The deaths must be the direct result of an eligible adverse weather event or loss condition.<sup>261</sup>

Eligible weather events and loss conditions for the death loss of bait or game fish include, but are not limited to: earthquakes, excessive winds, excessive heat, floods, hurricanes, tidal surge, tornados, volcanic eruptions and eligible freeze.<sup>262</sup>

***d. Fish Located in County where Eligible Weather Event or Loss Condition Occurred***

The bait fish or game fish must have been physically located in the county where the eligible weather event or loss condition occurred, on the day it began.<sup>263</sup>

**B. Producer Eligibility—Farm-Raised Fish Losses**

In addition to satisfying the general ELAP requirements for producer eligibility, a farmer with farm-raised fish losses must also meet the following eligibility rules.

<sup>257</sup> 7 C.F.R. § 1416.103(h)(i) (2019); LDAP Handbook, page 10-47, para. 816.M (May 30, 2018).

<sup>258</sup> 7 C.F.R. § 1416.103(h)(1) (2019); LDAP Handbook, page 10-42, para. 816.D (May 30, 2018).

<sup>259</sup> 7 C.F.R. § 1416.103(j) (2019); LDAP Handbook, page 10-178 para. 860.E (May 30, 2018).

<sup>260</sup> 7 C.F.R. § 1416.103(j) (2019); LDAP Handbook, page 10-43 para. 816.E (May 30, 2018). FSA state offices will establish the normal mortality rates for bait fish and game fish. See LDAP Handbook, page 10-181, para. 861.E (May 30, 2018).

<sup>261</sup> 7 C.F.R. § 1416.103(j) (2019); LDAP Handbook, page 10-43, para. 816.E (May 30, 2018).

<sup>262</sup> 7 C.F.R. § 1416.102(i) (2019); LDAP Handbook, page 10-47, para 816.M (May 30, 2018).

<sup>263</sup> 7 C.F.R. § 1416.103(j) (2019); LDAP Handbook, page 10-43, para. 816.E (May 30, 2018).

## **1. Produce Eligible Farm-Raised Fish for Commercial Use**

The farmer must propagate and rear eligible farm-raised fish in a controlled environment with the intent to harvest them for commercial use as part of a farming operation.<sup>264</sup> Commercial use is defined as used in a business operation that is a means of livelihood for profit.<sup>265</sup>

## **2. Relationship to Property Where Fish are Raised**

The farmer must own or lease the property on which the farm-raised fish are raised.<sup>266</sup> The property must have identifiable borders, and the farmer must have control over all portions of the aquatic environment, including the waterbed.<sup>267</sup>

For purposes of ELAP, sufficient “control” over the aquatic environment means that the farmer must have implemented flood prevention measures, provided adequate growing medium and food for the aquatic species, and afforded the fish sufficient and quality water.<sup>268</sup>

## **C. Eligible Farm-Raised Fish**

Under ELAP, “farm-raised fish” are defined as any aquatic species that are propagated and reared in a controlled environment.<sup>269</sup> The fish must also be harvested for sale as part of a commercial operation.<sup>270</sup>

### **1. Eligible Farm-Raised Fish for Feed Losses**

To be eligible for ELAP assistance for a loss of feed for farm-raised fish, the farm-raised fish must be a species of aquatic organism that falls into one of the following three categories.

#### ***a. Aquatic Organism Grown as Food for Human Consumption***

Aquatic organisms grown as food for human consumption are eligible for ELAP.<sup>271</sup>

#### ***b. Fish Raised as Feed for Fish to be Consumed by Humans***

Fish that are raised as feed for other fish that are to be consumed by humans are eligible for ELAP.<sup>272</sup>

<sup>264</sup> 7 C.F.R. §§ 1416.104(h), 1416.105(e) (2019); LDAP Handbook, pages 10-50 and 10-51, para. 816.N (May 30, 2018).

<sup>265</sup> 83 Fed. Reg. 49,459, 49,464 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.102, “Commercial use”); LDAP Handbook, page 10-9, para. 802.A (March 28, 2019).

<sup>266</sup> LDAP Handbook, page 10-175, para. 860.A (May 30, 2018).

<sup>267</sup> A waterbed refers to the ground under the water. LDAP Handbook, page 10-175, para. 860.A (May 30, 2018).

<sup>268</sup> LDAP Handbook, pages 10-175 and 10-176, para. 860.B (May 30, 2018).

<sup>269</sup> 7 C.F.R. § 1416.102, “Farm-raised fish” (2019).

<sup>270</sup> LDAP Handbook, page 10-176, para. 860.C (May 30, 2018).

<sup>271</sup> 7 C.F.R. § 1416.102, “Aquatic species” (2019).

<sup>272</sup> 7 C.F.R. § 1416.102, “Aquatic species” (2019).

### ***c. Ornamental Fish***

Ornamental fish that are propagated and reared in an aquatic medium by a commercial operator on private property are eligible for ELAP.<sup>273</sup>

## **2. Eligible Types of Farm-Raised Fish for Death Losses**

Currently, ELAP only provides compensation for the death losses of farm-raised game fish or bait fish.<sup>274</sup> Physical losses of all other aquatic species are covered under the Noninsured Crop Disaster Assistance Program (NAP), and accordingly are not eligible for ELAP assistance.<sup>275</sup>

### ***a. Farm-Raised Game Fish***

ELAP defines game fish as fish that are pursued for sport by recreational anglers.<sup>276</sup> As with any farm-raised fish loss under ELAP, the game fish must be produced in a controlled environment in order to qualify for ELAP assistance.

### ***b. Farm-Raised Bait Fish***

Bait fish are small fish that are caught for use as bait to attract large predatory fish.<sup>277</sup> To be eligible for ELAP, the bait fish must be produced in a controlled environment and must meet the definition of an aquatic species, as defined above. However, bait fish do not include any fish that are raised specifically as food for other fish.

## **3. Ineligible Farm-Raised Fish for Feed and Death Losses**

For both farm-raised fish feed losses and death losses, any aquatic species that is indigenous to the facility in which it is being raised will not be eligible for ELAP benefits.<sup>278</sup> In addition, any species that FSA determines is not an aquatic species will be ineligible for ELAP. This includes alligators and turtles, which are reptilian species.

## **VII. Applying for ELAP: Sign-Up Periods and Applications**

To apply for ELAP assistance, a farmer must file both a completed notice of loss and a completed application for payment.<sup>279</sup> The deadlines for each can be different. The timing for ELAP sign-up can be confusing and has changed recently.

<sup>273</sup> 7 C.F.R. § 1416.102, "Aquatic species" (2019).

<sup>274</sup> 7 C.F.R. § 1416.103(j) (2019); LDAP Handbook, page 10-178, para. 860.E (May 30, 2018). The Federal Regulations provide FSA with the authority to add other aquatic species to the list of ELAP-eligible fish for purposes of a death loss. To date, however, only the death of game fish and bait fish are eligible for assistance under ELAP.

<sup>275</sup> LDAP Handbook, page 10-178, para. 860.E (May 30, 2018).

<sup>276</sup> 7 C.F.R. § 1416.102, "Game fish" (2019).

<sup>277</sup> 7 C.F.R. § 1416.102, "Bait fish" (2019).

<sup>278</sup> LDAP Handbook, page 10-176, para. 860.C (May 30, 2018).

<sup>279</sup> 7 C.F.R. §§ 1416.106(a); 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.107); LDAP Handbook, page 10-34, para. 815.C (May 30, 2018). For livestock losses, the applicable notice of loss can be found in Parts A and C of Form CCC-851. For honeybee and farm-raised fish losses, the applicable notice of loss can be found in Parts A and B of Form CCC-934. See LDAP Handbook, page 10-35, para. 815.D (May 30, 2018).



## **A. Program Years**

FSA rules sometimes refer to program years when discussing deadlines. Unlike a calendar year, a program year runs from October 1 to September 30.<sup>280</sup> So, the 2016 program year ran from October 1, 2015, to September 30, 2016, the 2017 program year ran from October 1, 2016, to September 30, 2017, and so forth.

## **B. ELAP Deadlines are Final**

ELAP deadlines are final.<sup>281</sup> FSA will deny payment to anyone who does not file the required forms by the deadline.<sup>282</sup>

## **C. 2019 Losses—and Future Years**

For losses that are apparent in the 2019 program year, the following deadlines apply.<sup>283</sup> These rules have changed recently.

### **1. Notice of Loss**

For program year 2019 and future calendar years, the deadline for filing a notice of loss is thirty days from when the loss is apparent.<sup>284</sup> In general, the notice of loss must go to the local FSA office, although FSA has the power to allow it to be submitted in other ways.<sup>285</sup>

### **2. Completed Application**

A completed application must be submitted no later than November 1 following the program year for which the payments are being requested.<sup>286</sup> So, for losses first apparent during the 2019 program year—which runs from October 1, 2018 through September 30, 2019—the deadline for a completed application would be November 1, 2019.

## **D. 2017 and 2018 Losses**

With the passing of the 2018 Budget Act, and new rules issued on October 3, 2018, the ELAP signup period for 2017 and 2018 program year losses has changed.<sup>287</sup>

### **1. 2017 Program Year Losses—Deadlines Are Past**

The 2018 Budget Act reopened ELAP signup for 2017 program year losses.<sup>288</sup> The 2017 program year ran from October 1, 2016 through September 30, 2017. Under the

<sup>280</sup> LDAP Handbook, page 10-12, para. 802.A, “Program year” (May 30, 2018).

<sup>281</sup> LDAP Handbook, page 10-35, para. 815.E (May 30, 2018).

<sup>282</sup> LDAP Handbook, page 10-35, para. 815.E (May 30, 2018).

<sup>283</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.107(b)).

<sup>284</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.107(b)(1)).

<sup>285</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.107(b)(2)).

<sup>286</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.107(c)).

<sup>287</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.107(a)-(c)).

<sup>288</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.107(a)-(b)(1)); LDAP Handbook, page 10-34, para. 815.C (May 30, 2018). This delayed deadline did not apply to producer who already applied for ELAP unless they applied were denied because the notice of loss or complete application was ruled late by FSA. 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.107(a)).

reopened signup, the deadline for filing a notice of loss for the 2017 program year was December 3, 2018 for most farmers. This means it is too late for a farmer to file an ELAP notice of loss claim for the 2017 program year. It is also now too late to file a completed application for payment for a loss for ELAP losses that were first apparent during the 2017 program year.

## **2. 2018 Program Year Losses—Deadlines are Past**

It is now too late to file an ELAP notice of loss for losses during the 2018 program year, which ran from October 1, 2017 through September 30, 2018.<sup>289</sup> As a result of the 2018 Budget Act, the deadline to file a notice of loss claim for the 2018 program year was December 3, 2018 for most farmers. It is also too late to file a completed application for payment for ELAP losses that were first apparent during the 2018 program year.

## **E. Documentation Requirements to Support ELAP Applications**

In addition to filing both a notice of loss and an application for payment, farmers must also submit documentation in support of their ELAP losses.<sup>290</sup> As described below, the documents that are required will vary depending on the type of ELAP loss that a farmer suffers.

### **1. Documentation Requirements for All ELAP Losses**

For all types of ELAP-eligible losses, FSA requires farmers to submit the following documents.<sup>291</sup>

#### ***a. Notice of Loss***

A notice of loss must be submitted.<sup>292</sup>

#### ***b. Completed Application***

A completed application must be submitted.<sup>293</sup> The application for livestock related losses is different from the application for honeybee and farm-raised fish losses.

#### ***c. Report of Acreage***

In some cases, a report of acreage must be submitted.<sup>294</sup> FSA decides if one is needed.

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<sup>289</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.107(a)-(c)); LDAP Handbook, page 10-34, para. 815.C (May 30, 2018).

<sup>290</sup> 7 C.F.R. § 1416.106(a) (2019).

<sup>291</sup> 7 C.F.R. § 1416.106(a) (2019).

<sup>292</sup> 7 C.F.R. § 1416.106(a)(1) (2019).

<sup>293</sup> 7 C.F.R. § 1416.106(a)(2) (2019).

<sup>294</sup> 7 C.F.R. § 1416.106(a)(3) (2019); LDAP Handbook, page 10-36, para. 815.F (May 30, 2018). A copy of the Report of Acreage, or FSA Form-578, can be found here: [https://forms.sc.egov.usda.gov/efcommon/eFileServices/eFormsAdmin/FSA0578MANUAL\\_031015V01.pdf](https://forms.sc.egov.usda.gov/efcommon/eFileServices/eFormsAdmin/FSA0578MANUAL_031015V01.pdf).

***d. Grower Contract—If There Is One***

If the farmer is a contract grower, the grower must submit the grower contract.<sup>295</sup>

***e. Farm Operating Plan***

A farm operation plan must be submitted.<sup>296</sup> Some farmers will already have one on file with FSA.

***f. Socially Disadvantaged, Limited Resource, Beginning Farmer***

If the farmer wishes to qualify as what FSA calls a socially disadvantaged farmer or rancher, a limited resource farmer or rancher, or a beginning farmer or rancher, a certification must be given to FSA.<sup>297</sup>

***g. Other Supporting Documents***

Other supporting documents may be required by FSA.<sup>298</sup> These documents could be used to decide if the farmer is eligible, or whether the livestock, honeybee colonies and hives, or farm-raised fish are eligible. Documentation may also be needed to show the eligible loss.

**2. Additional Documentation Requirements for Specific ELAP Losses**

In addition to the general documentation requirements described above, FSA may require other records that provide support for the type of loss the farmer has suffered.

As a general rule, FSA will accept either “verifiable” or “reliable” records as supporting documentation. Verifiable records are records provided by the farmer which can be verified through an independent source and support the claimed loss.<sup>299</sup> Reliable records, by contrast, are any available non-verifiable records that reasonably support the eligible loss, as determined by FSA.<sup>300</sup>

In a number of cases, if a farmer is unable to provide verifiable or reliable documentation, FSA may accept a certification of the loss from the farmer, so long as other similar producers have suffered comparable losses.<sup>301</sup> Places where this rule applies are mentioned below.

***a. Documentation of Livestock Grazing Losses***

To support an ELAP application for a livestock grazing loss, the farmer must provide verifiable or reliable records showing either that eligible livestock were removed from grazing land where an eligible grazing loss occurred, or that the

<sup>295</sup> 7 C.F.R. § 1416.106(a)(4) (2019).

<sup>296</sup> 7 C.F.R. § 1416.106(a)(6) (2019).

<sup>297</sup> 7 C.F.R. § 1416.106(a)(7) (2019). For a complete definition of each of these types of farmers and ranchers, see LDAP Handbook, para. 802.A (May 30, 2018).

<sup>298</sup> 7 C.F.R. § 1416.106(a)(5) (2019).

<sup>299</sup> LDAP Handbook, page 10-13, para. 802.A, “Verifiable record” (May 30, 2018).

<sup>300</sup> LDAP Handbook, page 10-12, para. 802.A, “Reliable record” (May 30, 2018).

<sup>301</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.106(f)); LDAP Handbook, page 10-107, para. 832.C (May 30, 2018).

farmer had to purchase additional livestock feed in order to sustain the livestock during an eligible adverse weather event or loss condition.<sup>302</sup>

If a farmer is unable to provide verifiable or reliable documentation, FSA may accept a certification of the loss from the farmer, so long as other similar producers have suffered comparable losses.<sup>303</sup>

***b. Documentation of Purchased Livestock Feed Losses and Costs of Additional Feed***

To support an ELAP application for the loss of purchased livestock feed, or for the costs of feed purchased above the normal needs for the livestock, a farmer must submit verifiable or reliable records showing that either: (1) the previously-purchased livestock feed was destroyed by an eligible adverse weather event or loss condition;<sup>304</sup> or (2) the farmer purchased feed, above normal quantities, in order to sustain the livestock for a short time due to an eligible weather event or loss condition.<sup>305</sup>

Records that could be considered reliable or verifiable include, but are not limited to, the following:

Contemporaneous records,

Feed receipts,

Feed invoices,

Load summaries,

Register tapes,

Settlement sheets, and

Warehouse ledger sheets.<sup>306</sup>

In order for receipts to qualify as verifiable records, FSA will generally want original receipts showing the date of purchase, the seller's name, address and phone number, the type, quantity and cost of the feed purchased, and the signature of the seller if the seller is unlicensed.<sup>307</sup>

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<sup>302</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.106(b)).

<sup>303</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.106(f)); LDAP Handbook, page 10-107, para. 832.C (May 30, 2018).

<sup>304</sup> 7 C.F.R. § 1416.106 (c)(1) (2019); LDAP Handbook, pages 10-105 and 10-106, para. 832.A (May 30, 2018).

<sup>305</sup> 7 C.F.R. § 1416.106 (c)(1) (2019); LDAP Handbook, pages 10-109 and 10-110, para. 832.D (May 30, 2018).

<sup>306</sup> 7 C.F.R. § 1416.106 (c)(1) (2019); LDAP Handbook, pages 10-105 and 10-106, para. 832.A, and pages 10-109 and 10-110, para. 832.D (May 30, 2018).

<sup>307</sup> LDAP Handbook, page 10-106, para. 832.A, and page 10-110, para. 832.D (May 30, 2018).

If a farmer is unable to provide verifiable or reliable documentation, FSA may accept a certification of the feed loss from the farmer, so long as other similar producers have suffered comparable losses.<sup>308</sup>

***c. Documentation of Losses Related to Transporting Livestock Feed***

To support an ELAP application for losses related to the cost of transporting feed to livestock due to an eligible adverse weather event or loss condition, a farmer must submit verifiable or reliable documentation. They can include, but are not limited to the following:

Commercial receipts,

Contemporaneous records that verify transportation costs,

Invoices, and

Load summaries.<sup>309</sup>

If a farmer is unable to provide verifiable or reliable documentation, FSA may accept a certification of the feed loss from the farmer, so long as other similar producers have suffered comparable losses.<sup>310</sup>

***d. Documentation of Mechanically Harvested Feed Losses***

To support an ELAP application for the loss of mechanically harvested feed that was intended for livestock, but which was lost due to an eligible adverse weather event or loss condition, FSA requires verifiable or reliable documentation showing that the farmer either had the ability to produce the kind and quantity of livestock feed or that the farmer paid for the production of the livestock feed.<sup>311</sup> Such documentation could include, but is not limited to, the following:

Equipment receipts,

Fertilizer receipts,

Custom harvest records clearly identifying the amount of feed produced from the identified acreage,

Seed receipts,

Acres and yields,

Processing receipts,

Pick records,

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<sup>308</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.106(f)); LDAP Handbook, page 10-105, para. 832.A (May 30, 2018).

<sup>309</sup> 7 C.F.R. § 1416.106 (c)(3) (2019).

<sup>310</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.106(f)); LDAP Handbook, page 10-105, para. 832.A (May 30, 2018).

<sup>311</sup> LDAP Handbook, page 10-108, para. 832.C (May 30, 2018).

Truck scale tickets,

The farmer's contemporaneous notes verifying that the crop was stored with the intent to feed it to the livestock, and

Weigh tickets.<sup>312</sup>

If a farmer is unable to provide verifiable or reliable documentation, FSA may accept a certification of the loss from the farmer, so long as other similar producers have suffered comparable losses.<sup>313</sup>

***e. Documentation of Losses Related to the Transport of Water***

To support an ELAP application for losses related to the cost of transporting water to livestock due to an eligible drought, FSA requires verifiable or reliable documentation that shows the method used to transport the water (personal labor or hired labor, etc.), the number of gallons of water that was transported, as well as the number of eligible livestock that received the additional water.<sup>314</sup> The records must clearly indicate the date on which the water was transported.<sup>315</sup>

Acceptable verifiable records include, but are not limited to:

Water bills and invoices,

Hired labor receipts for the water transport, and

Contract receipts for the water transport.

Acceptable reliable records include, but are not limited to:<sup>316</sup>

Contemporaneous records of the farmer,

Producer diaries, and

Calendars.<sup>317</sup>

If a farmer is unable to provide verifiable or reliable documentation, FSA may accept a certification of the loss from the farmer, so long as other similar producers have suffered comparable losses.<sup>318</sup>

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<sup>312</sup> 7 C.F.R. § 1416.106(c)(2) (2019); LDAP Handbook, page 10-108, para. 832.C (May 30, 2018).

<sup>313</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.106(f)); LDAP Handbook, page 10-107, para. 832.C (May 30, 2018).

<sup>314</sup> 7 C.F.R. § 1416.106(c)(4) (2019); LDAP Handbook, page 10-86, para. 830.M (May 30, 2018).

<sup>315</sup> 7 C.F.R. § 1416.106(c)(4) (2019).

<sup>316</sup> 7 C.F.R. § 1416.106(c)(4) (2019); LDAP Handbook, page 10-86, para. 830.M (May 30, 2018).

<sup>317</sup> 7 C.F.R. § 1416.106(c)(4) (2019); LDAP Handbook, page 10-86, para. 830.M (May 30, 2018).

<sup>318</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.106(f)); LDAP Handbook, page 10-86.5, para. 830.M (May 30, 2018).

***f. Documentation of Losses Related to Treating Livestock for Cattle Tick Fever***

To support an ELAP application for a loss related to treating for cattle tick fever, farmers must certify that they have suffered additional costs for the gathering of livestock to treat for cattle tick fever.<sup>319</sup>

***g. Documentation of Livestock Death Losses***

To support an ELAP application for livestock death loss, the farmer must provide proof of livestock deaths, the current physical location of livestock in inventory, and the physical location of livestock at the time of their death.<sup>320</sup> FSA requires that some documentation be “verifiable,” while others be “reliable.”<sup>321</sup> According to FSA, the types of documentation that are required to support an ELAP death loss claim, and the acceptable alternatives, are the same types of documentation as required by FSA’s Livestock Indemnity Program (LIP).<sup>322</sup> Those rules can be found in a FLAG publication, the Farmers’ Guide to the Livestock Indemnity Program (LIP).

***h. Documentation of Honeybee Losses***

The ELAP documentation requirements for farmers who have suffered a honeybee loss will vary depending on the type of loss the farmer has suffered.

***(i) Documentation of Purchased Honeybee Feed Losses***

For eligible honeybee feed losses—both losses of purchased feed that is later destroyed and losses arising from the need to purchase additional honeybee feed to sustain the bees—farmers must submit verifiable or reliable records evidencing the loss.<sup>323</sup> When the loss is of additional honeybee feed that was purchased in order to sustain the honeybees, farmers must provide documentation of the feed purchases for the year in which the ELAP benefits are being sought, as well as the two preceding years.<sup>324</sup>

Acceptable verifiable or reliable records of purchased honeybee losses include, but are not limited to, the following:

Feed receipts that provide: the date of feed purchase; name, address, and telephone number of the feed vendor; type and quantity of feed purchased; cost of feed purchased; and signature of the feed vendor if the vendor does not have a license to conduct this type of transaction;

Settlement sheets;

Warehouse ledger sheets;

<sup>319</sup> LDAP Handbook, page 10-86.5, para. 830.N, and page 10-104, para. 831.K (May 30, 2018).

<sup>320</sup> 83 Fe. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.106(e)).

<sup>321</sup> LDAP Handbook, pages 10-84 and 10-85, para. 830.K (May 30, 2018).

<sup>322</sup> 83 Fe. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.106(e)).

<sup>323</sup> 7 C.F.R. § 1416.106(c)(1) (2019); LDAP Handbook, page 10-132, para. 845.D (May 30, 2018).

<sup>324</sup> 7 C.F.R. § 1416.106 (c)(1) (2019); LDAP Handbook, page 10-132, para. 845.D (May 30, 2018).

Load summaries;

Invoices;

Register tapes; and

Contemporaneous records.<sup>325</sup>

If a farmer cannot provide verifiable or reliable documentation, FSA may accept a certification of the loss from the farmer, so long as other similar producers have suffered comparable losses.<sup>326</sup>

## **(ii) Documentation of Harvested Honeybee Feed Losses**

For losses related to the loss of harvested honeybee feed, farmers must provide verifiable or reliable records demonstrating that the feed was intended for the farmer's honeybees but was lost due to an eligible adverse weather event or loss condition.<sup>327</sup>

Acceptable verifiable or reliable records of harvested honeybee losses include, but are not limited to, the following:

Weight tickets,

Truck scale tickets,

Pick records,

Contemporaneous diaries used to verify that the crop was stored with the intent to feed to honeybees, and

Custom harvest documents that clearly identify the amount of feed produced from the applicable acreage.<sup>328</sup>

If a farmer cannot provide verifiable or reliable documentation, FSA may accept a certification of the loss from the farmer, so long as other similar honeybee producers have comparable harvested feed losses.<sup>329</sup>

## **(iii) Documentation of a Honeybee Hive or Colony Loss**

For eligible honeybee hive and colony losses, farmers must submit verifiable or reliable records of the honeybee colony or hive loss.<sup>330</sup> This

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<sup>325</sup> 7 C.F.R. § 1416.106 (c)(1) (2019); LDAP Handbook, page 10-133, para. 845.D (May 30, 2018).

<sup>326</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.106(f)); LDAP Handbook, page 10-133, para. 845.D (May 30, 2018).

<sup>327</sup> 7 C.F.R. 1416.106(c)(2) (2019); LDAP Handbook, page 10-134, para. 845.D (May 30, 2018).

<sup>328</sup> 7 C.F.R. § 1416.106 (c)(2) (2019); LDAP Handbook, page 10-134, para. 845.D (May 30, 2018).

<sup>329</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.106(f)); LDAP Handbook, page 10-134, para. 845.D (May 30, 2018).

<sup>330</sup> 7 C.F.R. § 1416.106(d) (2019); LDAP Handbook, page 10-135, para. 845.E (May 30, 2018).



includes providing proof of the farmer's beginning inventory as well as proof of the farmer's ending inventory from immediately after the hive or colony loss. FSA also requires that farmers submit records of any purchases and sales transactions involving honeybee hives and colonies that occurred during the program year.<sup>331</sup>

Verifiable and reliable records of a honeybee hive or colony loss include, but are not limited to, the following:

- Chattel inspections,
- Loan records,
- Private insurance documents,
- Property tax records,
- Sales and purchase receipts, and
- State colony registration documentation.<sup>332</sup>

In addition, farmers must provide proof that they were following best honeybee management practices, as determined by FSA.<sup>333</sup> Such proof could include documents showing that the farmer provided the honeybees with proper nutrition, proper preventative treatment for varroa mites and other disease, proper colony management, and proper maintenance and hygiene of hive equipment. Any documents indicating the lack of mites or disease—such as state health certifications—should also be submitted.

If a farmer cannot provide verifiable or reliable documentation, FSA may accept a certification of the loss from the farmer, so long as other similar honeybee producers have comparable losses.<sup>334</sup>

#### ***i. Documentation of Farm-Raised Fish Losses***

To support an ELAP application for a farm-raised fish loss, a farmer must submit the following documents, depending on which type of farm-raised fish loss the farmer has suffered.

##### **(i) Documentation of Purchased Farm-Raised Fish Feed Losses**

For eligible farm-raised fish feed losses, farmers must submit verifiable or reliable records showing that feed which was purchased for eligible farm-

<sup>331</sup> 7 C.F.R. § 1416.106(d) (2019).

<sup>332</sup> 7 C.F.R. § 1416.106(d) (2019); LDAP Handbook, page 10-135, para. 845.E (May 30, 2018).

<sup>333</sup> LDAP Handbook, page 10-136, para. 845.E (May 30, 2018).

<sup>334</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.106(f)).

raised fish was later destroyed by an eligible adverse weather event or loss condition.<sup>335</sup>

Acceptable verifiable or reliable records include, but are not limited to, the following:

Contemporaneous records;

Feed receipts that provide: the date of feed purchase; name, address, and telephone number of the feed vendor; type and quantity of feed purchased; cost of feed purchased; and signature of the feed vendor if the vendor does not have a license to conduct this type of transaction;

Register tapes;

Load summaries;

Settlement sheets;

Invoices; and

Warehouse ledger sheets.<sup>336</sup>

If a farmer cannot provide verifiable or reliable documentation, FSA may accept a certification of the feed loss from the farmer, so long as other similar farm-raised fish producers have comparable losses.<sup>337</sup>

#### **(ii) Documentation of Harvested Farm-Raised Fish Feed Losses**

For a loss of harvested farm-raised fish feed, farmers must provide verifiable or reliable records demonstrating that the purchased or harvested feed was intended for the farmer's farm-raised fish but was lost due to an eligible adverse weather event or loss condition.<sup>338</sup>

Acceptable verifiable or reliable records include, but are not limited to, the following:

Weight tickets,

Truck scale tickets,

Pick records,

Contemporaneous records used to verify that the crop was stored with the intent to feed to farm-raised fish, and

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<sup>335</sup> LDAP Handbook, page 10-177, para. 860.D (May 30, 2018).

<sup>336</sup> 7 C.F.R. § 1416.106 (c)(1) (2019); LDAP Handbook, page 10-177, para. 860.D (May 30, 2018).

<sup>337</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.106(f)); LDAP Handbook, page 10-177, para. 860.D (May 30, 2018).

<sup>338</sup> LDAP Handbook, page 10-177, para. 860.D (May 30, 2018).

Custom harvest documents that clearly identify the amount of feed produced from the applicable acreage.<sup>339</sup>

If a farmer cannot provide verifiable or reliable documentation, FSA may accept a certification of the feed loss from the farmer, so long as other similar farm-raised fish producers have comparable losses.<sup>340</sup>

### **(iii) Documentation of Farm-Raised Fish Death Losses**

For eligible farm-raised fish death losses, farmers must submit verifiable or reliable records that the bait fish or game fish losses were caused by an eligible adverse weather event or loss condition.<sup>341</sup> This includes providing proof of the farmer's inventory on the beginning and ending dates of the weather event or loss condition. If the farmer does not provide acceptable documentation to help FSA determine the farmer's beginning and ending fish inventory, the farmer will not be eligible to receive ELAP benefits.<sup>342</sup>

Acceptable verifiable and reliable records of a bait and game fish death losses include, but are not limited to, the following:

- Chattel inspections,
- Loan records,
- Private insurance documents,
- Property tax records, and
- Sales and purchase receipts.<sup>343</sup>

If a farmer cannot provide verifiable or reliable documentation, FSA may accept a certification of the loss from the farmer, so long as other similar farm-raised fish producers have comparable losses.<sup>344</sup>

## **VIII. ELAP Payments**

ELAP benefits are subject to limitations that can affect the amount of assistance a farmer is eligible to receive. The payment limitations, as well as the calculations for each type of ELAP loss, are described in the sections below.

<sup>339</sup> 7 C.F.R. § 1416.106 (c)(2) (2019).

<sup>340</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.106(f)); LDAP Handbook, page 10-177, para. 860.D (May 30, 2018).

<sup>341</sup> 7 C.F.R. § 1416.106(d) (2019); LDAP Handbook, page 10-178, para. 860.E (May 30, 2018).

<sup>342</sup> LDAP Handbook, page 10-179, para. 860.E (May 30, 2018).

<sup>343</sup> 7 C.F.R. § 1416.106(d) (2019); LDAP Handbook, page 10-178, para. 860.E (May 30, 2018).

<sup>344</sup> 83 Fed. Reg. 49,459, 49,466 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.106(f)).

## **A. ELAP Payment Limitations**

The following payment limitations apply to ELAP. They include changes made by the 2018 Budget Act as well as recent regulatory changes.

### **1. Producer Payment Limitation**

No ELAP-eligible producer, excluding a joint venture or general partnership, may receive more than \$125,000 total in any one year under ELAP and the Livestock Forage Disaster Program (LFP) combined.<sup>345</sup>

### **2. Payment Reduction for Duplication of Assistance**

ELAP benefits are only provided for losses that are not eligible for assistance under other programs, such as the Livestock Indemnity Program (LIP) and the Livestock Forage Disaster Program (LFP).<sup>346</sup> Accordingly, FSA may reduce a farmer's ELAP payment by the amount the farmer receives from either LIP or LFP for the same or similar loss.<sup>347</sup>

### **3. Payment Limitation on Multiple Benefits**

Recent changes in the federal regulations have resulted in unclear rules regarding potential payment limitations for farmers seeking benefits under more than one program. According to the prefatory remarks to the new federal regulations, farmers may be unable to receive assistance for the same loss under two different assistance programs and may also be unable to receive benefits that exceed the total value of their loss.<sup>348</sup> Under these regulations, FSA has the authority to take actions to avoid any such duplication of benefits or excessive payments. The prefatory remarks also suggest that the Noninsured Crop Disaster Assistance Program (NAP) prevents farmers from receiving benefits under NAP and any other program for the same loss, though the actual regulations governing NAP and the most recent LDAP Handbook do not seem to prevent this type of duplication of benefits.<sup>349</sup> As a result of this confusing language, it is not clear how FSA will handle situations in which a farmer is eligible to receive benefits under multiple programs for the same loss.

### **4. Recent Changes Eliminate ELAP Budget Limits**

Before the passing of the 2018 Budget Act, ELAP was subject to a funding cap of \$20 million per year. To avoid exceeding this budget, FSA would prorate each farmer's calculated ELAP payment by a certain percentage—ranging from 60 percent to 90

<sup>345</sup> 83 Fed. Reg. 49,459, 49,463 (October 2, 2018) (to be codified at 7 C.F.R. §§ 1400.1(f), 1416.6(a)); LDAP Handbook, page 10-205, para. 875.D (May 30, 2018); FSA Notice LDAP-91, "Issuing 2017 ELAP Payments and Additional 2018 and 2018 LIP and LFP Payments," at 1 (April 6, 2018). Previously, the \$125,000 limit applied to the combined benefits of ELAP, LFP and the Livestock Indemnity Program (LIP). As a result of the 2018 Budget Act, LIP is now removed from this limit. See 83 Fed. Reg. 49,459 (October 2, 2018).

<sup>346</sup> LDAP Handbook, page 10-1, para. 800.A (May 30, 2018).

<sup>347</sup> LDAP Handbook, page 10-206, para. 875.F (May 30, 2018).

<sup>348</sup> 83 Fed. Reg. 49,459, 49,463 (Oct. 2, 2018) (to be codified at 1416.6 and prefatory remarks).

<sup>349</sup> Compare 83 Fed. Reg. 49,459, 49,463 (Oct. 2, 2018) (prefatory remarks) with 7 C.F.R. § 1437.14(a)-(b) (2019) and LDAP Handbook, page 10-206, para. 875.G (May 30, 2018).

percent—known as the “national payment factor.”<sup>350</sup> This resulted in a reduction in the ELAP payments that farmers would otherwise have been eligible for. It also ensured that the program did not exceed its available funding.

With the enactment of the 2018 Budget Act, ELAP is no longer subject to a funding cap.<sup>351</sup> The removal of the budget cap applies to ELAP losses occurring in 2017 and later years. Accordingly, it appears that a farmer’s ELAP payment will no longer be subject to a reduction based on the national payment factor.

It will always be the case, however, that ELAP depends on federal funding. If farmers would be eligible for more ELAP money than has been appropriated to ELAP by Congress, payments for individual farmers could be reduced.<sup>352</sup>

## **B. Payment Calculations for Particular Types of ELAP Losses**

The following sections describe the calculations that apply when determining a farmer’s ELAP payment. The calculations differ depending on what type of loss the farmer has suffered.

In addition, although the current FSA Handbook references the 2018 Budget Act’s removal of the ELAP budget cap,<sup>353</sup> the sections of the Handbook that outline the payment calculations for various ELAP losses have not been updated to reflect this change. Consequently, the Handbook and its examples describe how payments are calculated using the national payment factor, which may no longer be applicable. The calculations in this Guide therefore focus on how ELAP payments are calculated without consideration of the national payment factor (though the national payment factor will be referenced so that farmers are able to understand how the factor affects an ELAP payment, should it be reinstituted by FSA in the future).

### **1. Payments for Livestock Feed Losses**

In no case can a farmer receive ELAP payments for more than 150 calendar days’ worth of feed losses in a single calendar year—whether a loss of purchased forage or feedstuffs, a loss of mechanically harvested livestock forage or feedstuff, a loss associated with the cost of purchasing additional feed, or a loss related to transporting additional feed to livestock.<sup>354</sup>

Because of this limitation, each of the payment calculations for a livestock feed loss is based on the lesser of two values.<sup>355</sup> The first is the value of what FSA calls the 150-

<sup>350</sup> 7 C.F.R. § 1416.108 (2018). When applicable, the value of the national payment factor differs depending on what type of loss the producer suffered. For all losses, however, any producer that qualifies as a beginning, socially-disadvantaged, or limited resource farmer or rancher would be eligible for a 90 percent national payment rate. See 7 C.F.R. § 1416.109 (2019).

<sup>351</sup> See H.R. 1892, 115th Cong. § 20101 (2018) (codified at 7 U.S.C. § 9081(d)(1)); Notice LDAP-93, at page 1 (June 1, 2018).

<sup>352</sup> 83 Fed. Reg. 49,459, 49,463 (Oct. 2, 2018) (to be codified at 7 C.F.R. § 1416.2).

<sup>353</sup> LDAP Handbook, page 10-205, para. 875.B (May 30, 2018).

<sup>354</sup> 7 C.F.R. § 1416.110(a) (2019); LDAP Handbook, page 10-94 to 10-98, para. 831.F (May 30, 2018). The C.F.R. does not specify that the 150-day limitation is counted in calendar days, but the Handbook expressly states so.

<sup>355</sup> See LDAP Handbook, pages 10-94 through 10-98, para. 831.F, Examples 1-3 (May 30, 2018).

calendar-day feed cost for the eligible loss. The second is the value of the farmer's actual costs associated with the feed loss.

In order to determine a farmer's ELAP payment, both the 150-calendar day feed cost and the farmer's actual costs must be calculated. The ELAP payment will be the lesser of the two values.

**a. 150-Calendar-Day Feed Costs**

For all ELAP-eligible livestock feed losses, FSA will use the following equation to determine the 150-calendar-day feed cost.<sup>356</sup>

150-day feed cost = (number of livestock affected by the feed loss) x (animal unit conversion factor, as determined by FSA)<sup>357</sup> x (producer's share in the livestock) x (daily feed payment rate per head of livestock, as determined by FSA)<sup>358</sup> x (150 calendar days).

**b. Farmer's Actual Costs of Livestock Feed Losses**

As described below, determining the actual cost of a farmer's feed loss requires that the farmer be able to demonstrate the actual value of the loss.

**(i) Value of a Purchased Forage or Feedstuffs Loss**

For a purchased forage or feedstuffs loss, farmers must demonstrate the value of the livestock feed or forage that the farmers purchased as feed for their livestock, but which was physically damaged or destroyed by an eligible adverse weather event or loss condition.<sup>359</sup> As described more fully in Section VII of this Guide, farmers will need to submit verifiable or reliable documentation to support the value of this loss.<sup>360</sup>

**(ii) Value of a Mechanically Harvested Forage or Feedstuffs Loss**

For a loss of mechanically harvested forage or feedstuffs, farmers must demonstrate the value of the mechanically harvested forage or feed that was intended to be fed to the farmers' eligible livestock, but which was physically damaged or destroyed due to an eligible adverse weather event or loss condition.<sup>361</sup> In order to sufficiently demonstrate the value of this loss, farmers will need to submit verifiable or reliable evidence to show that they had the ability to produce the forage or feed, or that they paid

<sup>356</sup> LDAP Handbook, page 10-96, para. 831.F (May 30, 2018).

<sup>357</sup> FSA publishes the animal unit conversion factors used to calculate ELAP payments. See LDAP Handbook, page 10-88 to 10-89, para. 831.C, Exhibit 16 (May 30, 2018).

<sup>358</sup> FSA determines the daily payment rates per animal unit. See LDAP Handbook, page 10-87, para. 831.A (May 30, 2018).

<sup>359</sup> 7 C.F.R. § 1416.110(a)(1) (2019); LDAP Handbook, pages 10-106 and 10-107, para. 832.B (May 30, 2018).

<sup>360</sup> For a more detailed description of the type of documentation that FSA requires, see LDAP Handbook, pages 10-105 and 10-106, para. 832.A (May 30, 2018).

<sup>361</sup> 7 C.F.R. § 1416.110(a)(2) (2019); LDAP Handbook, page 10-108, para. 832.C (May 30, 2018).

for the production of the destroyed forage or feed.<sup>362</sup> These documentation requirements are described in more detail in Section VII of this Guide.

### **(iii) Value of a Loss Related to Purchasing Additional Feed**

For a loss of the cost of purchasing additional livestock feed, farmers must demonstrate the value of any additional feed that was purchased, above normal amounts, in order to maintain eligible livestock during an eligible adverse weather event or loss condition until additional feed became available.<sup>363</sup> As described more fully in Section VII of this Guide, farmers will need to submit verifiable or reliable documentation to support the value of this loss.<sup>364</sup>

### **(iv) Value of a Loss Related to Transporting Feed**

For a loss of the costs associated with transporting livestock feed to eligible livestock due to an eligible adverse weather event or loss condition, farmers must demonstrate the value of those transportation costs, including any costs associated with equipment rental fees for hay lifts or snow removal.<sup>365</sup> As described more fully in Section VII of this Guide, farmers will need to submit verifiable or reliable documentation to support the value of this loss.<sup>366</sup>

## ***c. Determining Ultimate ELAP Payment***

For a livestock feed loss, the farmer's ultimate ELAP payment will be the lesser of either the 150-calendar-day feed cost or the farmer's actual costs associated with the loss.

To take an example from the FSA Handbook, suppose a farmer has a 100 percent interest in 100 head of beef cows.<sup>367</sup> A hurricane forced the farmer to hire a helicopter to take feed to the 100 stranded cows. The farmer purchased 1,000 bushels of corn to be taken to the stranded cows. These 1,000 bushels of corn were more than what the farmer would normally have purchased to feed the cows.

When applying for ELAP, the farmer provided documentation to show the helicopter feed delivery cost a total of \$1,000, and a purchase receipt showed that the additional 1,000 bushels of corn cost the farmer \$5,000. The farmer's ELAP payment calculation would look as follows.

### **Step One: 150-Calendar-Day Costs**

<sup>362</sup> For a more detailed description of the type of documentation that FSA requires, see LDAP Handbook, pages 10-107 and 10-108, para. 832.C (May 30, 2018).

<sup>363</sup> 7 C.F.R. § 1416.110(a)(3) (2019); LDAP Handbook, page 10-111, para. 832.E (May 30, 2018).

<sup>364</sup> For a more detailed description of the type of documentation that FSA requires, see LDAP Handbook, pages 10-109 and 10-110, para. 832.D (May 30, 2018).

<sup>365</sup> 7 C.F.R. §§ 1416.103(d)(4), 1416.110(a)(4) (2019).

<sup>366</sup> For a more detailed description of the type of documentation that is required, see 7 C.F.R. § 1416.106(c)(3) (2019);

<sup>367</sup> LDAP Handbook, pages 10-96 and 10-97, para. 831.F, Example 2 (May 30, 2018).

100 head cows (number of livestock for which additional corn was fed and helicopter was hired) x 1.00 (FSA animal unit conversion factor) x 1.00 percent (producer's share in the cows) x \$1.909 (daily payment rate per head, according to FSA) x 150 calendar days = \$28,635 for 150 days.

**Step Two: Farmer's Actual Costs**

\$1,000 (helicopter cost) + \$5,000 (value of additional corn purchased) = \$6,000 in actual feed losses above normal expenses.

Because the value of the farmer's actual feed losses is less than the 150-calendar-day feed cost calculation, the farmer's ultimate ELAP payment—without taking into account any applicable reductions or the national payment factor—would be \$6,000. If a national payment factor were applied, the \$6,000 ELAP payment would be multiplied by a percentage—ranging from 60 percent to 90 percent—in order to determine the final ELAP payment amount.<sup>368</sup>

## **2. Payments for Losses Related to Transporting Water to Livestock**

A farmer cannot receive ELAP payments for more than 150 days' worth of water transport costs in a single calendar year.<sup>369</sup> Because of this payment limitation, the ELAP payment calculation for a livestock water transport loss is based on the lesser of two values.<sup>370</sup> The first is the value of 150-calendar-days' worth of water transport costs, as determined by FSA. The second is the value of the farmer's actual costs related to the transportation of water to livestock during an eligible drought.

In order to determine a farmer's ELAP payment, therefore, both the 150-calendar day water transport cost and the farmer's actual costs must be calculated.<sup>371</sup> The ELAP payment will be the lesser of the two values.

### **a. 150-Calendar-Day Water Transport Costs**

FSA uses the following equation to determine the value of transporting water to eligible livestock for 150 calendar days.<sup>372</sup>

Value of transporting water to livestock for 150 days = (number of livestock) x (animal unit conversion factor, as determined by FSA)<sup>373</sup> x (number of gallons of water required per animal unit for one day, as determined by FSA)<sup>374</sup> x (national average price per gallon to

<sup>368</sup> For example, in the Handbook, the producer in this scenario is a beginning farmer who qualifies for a 90 percent payment factor. Accordingly, the producer's ELAP payment would be \$5,400 (\$6,000 x 0.90) if the national payment factor were taken into account. See LDAP Handbook, page 10-96 to 10-97, para. 831.F, Example 2 (May 30, 2018).

<sup>369</sup> 7 C.F.R. § 1416.110(b) (2019).

<sup>370</sup> 7 C.F.R. § 1416.110(b) (2019); LDAP Handbook, page 10-102, 831.J (May 30, 2018).

<sup>371</sup> See LDAP Handbook, pages 10-95 through 10-98, para. 831.F, Examples 1-3 (May 30, 2018).

<sup>372</sup> 7 C.F.R. § 1416.110(c) (2019).

<sup>373</sup> FSA publishes the animal unit conversion factors used to calculate ELAP payments. See LDAP Handbook, page 10-88, para. 831.C, Exhibit 16 (May 30, 2018).

<sup>374</sup> FSA determines the gallons of water required per animal unit for one day. See LDAP Handbook, page 10-103, para. 831.J (May 30, 2018).



transport water, as determined by FSA)<sup>375</sup> x (150 calendar days).

***b. Farmer's Actual Costs of Transporting Water***

To determine a farmer's actual cost of transporting water to livestock, the following equation is used.<sup>376</sup>

Farmer's actual cost of transporting water = (actual number of gallons of water transported by the farmer to eligible livestock) x (the national average price per gallon to transport water, as determined by FSA).<sup>377</sup>

***c. Determining Ultimate ELAP Payment***

For a loss related to the cost of transporting water to livestock, the farmer's ultimate ELAP payment will be the lesser of the 150-calendar-day cost or the farmer's actual water transportation costs.

As an example, suppose an eligible drought causes a farmer to transport water to 1,000 eligible sheep that were grazing on native pasture.<sup>378</sup> In total, the farmer used personal labor and equipment to transport 15,000 gallons of water over a six-week period to the sheep. The farmer's ELAP payment calculation would look as follows:

**Step One: 150-Calendar-Day Cost**

1,000 (head of sheep) x 0.25 (animal unit conversion factor) x 16 (daily water requirement per head of sheep) x \$0.035 (national price per gallon) x 150 (days) = \$21,000.

**Step Two: Farmer's Actual Costs**

15,000 (gallons of water) x \$0.035 (national price per gallon) = \$525.

Because the farmer's actual cost of transporting the water is less than the 150-day calculation, the farmer's ELAP payment should be \$525. If the national payment factor were applicable, the \$525 payment would then be multiplied by the national payment factor rate in order to determine the value of the final ELAP payment.<sup>379</sup>

<sup>375</sup> Under the Federal Regulation, FSA determines the national average price per gallon that is used in this calculation. 7 C.F.R. § 1416.110(e) (2019). The current national average price per gallon can be found in the LDAP Handbook at page 10-103, para. 831.J (May 30, 2018).

<sup>376</sup> 7 C.F.R. § 1416.110(d) (2019); LDAP Handbook at page 10-102, para. 831.J (May 30, 2018).

<sup>377</sup> The national average price per gallon, used by FSA in this calculation, can be found in the LDAP Handbook at page 10-103, para. 831.J (May 30, 2018).

<sup>378</sup> LDAP Handbook, page 10-104, para. 831.J (May 30, 2018).

<sup>379</sup> For example, in the Handbook the producer in this scenario is subject to a 60 percent national payment factor. Accordingly, the producer's ELAP payment would be \$315 with the application of the national payment factor (\$525 x 0.60 = \$315). See LDAP Handbook, page 10-104, para. 831.J (May 30, 2018).

### 3. Payments for Losses Related to Cattle Tick Fever

Prior to the passing of the 2018 Farm Bill, farmers could only be compensated for costs related to gathering cattle for treatment of cattle tick fever<sup>380</sup>. Now, however, the 2018 Farm Bill allows farmers to be compensated for the cost of testing for cattle tick fever as well.

#### *a. Calculating Payments for Treatment of Cattle Tick Fever*

The ELAP payment calculation for a loss related to the treatment of cattle tick fever involves two main steps.<sup>381</sup>

First, determine the actual cost of gathering the livestock for treatment. This is done by multiplying the number of livestock that APHIS treated by both the number of treatments and the average cost per head to gather the livestock for treatment, as determined by FSA.<sup>382</sup>

Second, calculate the total sum of the treatments for each type of affected livestock.

For example, suppose a farmer has 50 cows, 2 bulls, 47 calves, and 25 goats that are all treated by APHIS for cattle tick fever ten different times.<sup>383</sup> The farmer's state FSA office has determined that the average cost per head to gather cows, bulls and calves for treatment is \$4, and the cost per head to gather goats is \$2. The farmer's ELAP payment for this loss would look as follows:

#### Step One: Farmer's Actual Costs

99 (number of cows, bulls and calves) x 10 (treatments) x \$4 (treatment cost per head) = \$3,690 to treat cattle, bulls and calves.

25 (number of goats) x 10 (treatments) x \$2 (treatment cost per head) = \$500 to treat goats.

#### Step Two: Sum of All Livestock Treatments

\$3,690 (cost to treat cows, bulls and calves) + \$500 (cost to treat goats) = \$4,190.

The farmer's ELAP payment, before applying any applicable reductions or the national payment rate, would therefore be \$4,190.<sup>384</sup> If the national payment rate were applied, the \$4,190 payment would be multiplied by the applicable national

<sup>380</sup> Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(c) (2018) (codified at 7 U.S.C. § 9081(d)(2)).

<sup>381</sup> 7 C.F.R. § 1416.110(f) (2019); LDAP Handbook, page 10-104, para. 831.K (May 30, 2018).

<sup>382</sup> FSA state officers determine the average cost per head required to gather livestock for treatment. See LDAP Handbook, page 10-104, para. 831.K (May 30, 2018).

<sup>383</sup> LDAP Handbook, page 10-105, para. 831.K (May 30, 2018).

<sup>384</sup> LDAP Handbook, page 10-105, para. 831.K (May 30, 2018).

payment factor rate in order to determine the value of the farmer's ultimate ELAP payment.<sup>385</sup>

***b. Payments for Testing for Cattle Tick Fever—No Formula Yet***

To date, neither the federal regulations nor the FSA Handbook has been updated to show how payments for the testing of cattle tick fever will be compensated.

**4. Payments for Livestock Grazing Losses**

For livestock grazing losses, the payment calculations differ depending on whether or not the loss was due to a wildfire on non-federal land.

***a. Payments for Grazing Losses Due to Wildfire on Non-Federal Land***

Three steps are involved in determining the ELAP payment for an eligible livestock grazing loss that is due to a wildfire on non-federal land.<sup>386</sup>

First, divide the number of acres of grazing land or pastureland affected by the fire by the normal carrying capacity for the affected land, as determined by FSA.<sup>387</sup>

Second, multiply the result of the first step by the daily grazing feed rate, which is based on the normal carrying capacity for the land, as determined by FSA.<sup>388</sup>

Finally, multiply the result of step two by the number of grazing days that were lost due to the fire (not to exceed 180 calendar days).<sup>389</sup>

As an example, suppose a fire affected 934 acres of a farmer's grazing land, which prevented the farmer from grazing the affected area for 30 calendar days. If the carrying capacity of the affected land is 5 acres per animal unit, and the daily grazing feed rate is \$1.909, the farmer's ELAP payment calculation would look as follows:

Step One:  $934 \text{ (number of acres that cannot be grazed)} \div 5 \text{ (carrying capacity as determined by FSA)} = 186.8 \text{ acres.}$

Step Two:  $186.8 \text{ (result of Step One)} \times \$1.909 \text{ (daily grazing feed rate)} = \$356.6.$

Step Three:  $\$356.6 \text{ (result of Step Two)} \times 30 \text{ (number of calendar days of lost grazing)} = \$10,698.$

The farmer's ELAP payment, before applying any applicable reductions or the

<sup>385</sup> For example, in the Handbook, the producer in this scenario is a socially disadvantaged farmer who is eligible for a 90 percent national payment factor rate. Accordingly, the producer's ultimate ELAP payment, with the national payment factor taken into account, would be \$3,771 ( $\$4,190 \times 0.90 = \$3,771$ ). See LDAP Handbook, page 10-105, para. 831.K (May 30, 2018).

<sup>386</sup> 7 C.F.R. § 1416.110(l) (2019); LDAP Handbook, page 10-94, para. 831.E (May 30, 2018).

<sup>387</sup> 7 C.F.R. § 1416.110(l)(1) (2019).

<sup>388</sup> The complete calculation FSA uses to determine the daily grazing feed rate can be found at 7 C.F.R. § 1416.110(h) – (k) (2019).

<sup>389</sup> 7 C.F.R. § 1416.110(l)(3) (2019).

national payment factor, would therefore be \$10,698.<sup>390</sup> If the national payment factor were applicable, the \$10,698 would be multiplied by the national payment factor percentage in order to determine the farmer's ultimate ELAP payment.<sup>391</sup>

***b. Payments for Livestock Grazing Losses NOT Due to Wildfire***

When a livestock grazing loss is not the result of wildfire on federally-managed land, ELAP will compensate the farmer based upon the number of days that grazing was lost, not to exceed 150 calendar days.<sup>392</sup>

Calculating the ELAP payment requires determining the lesser of two values.<sup>393</sup> The first is the total feed cost value for the eligible livestock. The second is the total value of lost grazing based on the normal carrying capacity of the land. The farmer's ELAP payment will be the lesser of the two values

**(i) Calculating the Total Feed Cost Value**

The total feed cost value for the farmer's livestock is determined by multiplying the number of animal units<sup>394</sup> by both the daily feed cost, as determined by FSA,<sup>395</sup> as well as the number of lost grazing days (not to exceed 150 calendar days).<sup>396</sup>

**(ii) Calculating the Total Value of Lost Grazing**

The total value of the farmer's lost grazing is based on the normal carrying capacity of the land.<sup>397</sup> This value is determined by first dividing the number of lost grazing acres by the animal unit carrying capacity conversion factor for the land, as determined by FSA.<sup>398</sup> Next, that result is multiplied by both the daily feed cost, as determined by FSA, as well as the number of lost grazing days (not to exceed 150 calendar days).

**(iii) Determining Ultimate ELAP Payment**

For a livestock grazing loss that was not due to wildfire, the farmer's ultimate ELAP payment will be the lesser of the total feed cost value for the eligible livestock or the total value of lost grazing based on the normal carrying capacity of the land.

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<sup>390</sup> LDAP Handbook, page 10-94, para. 831.E (May 30, 2018).

<sup>391</sup> For example, in the Handbook, the producer in this scenario was subject to a 60 percent national payment factor. Accordingly, the producer's ultimate ELAP payment would be \$6,419 ( $\$10,698 \times 0.60 = \$6,418.8$ ). See LDAP Handbook, page 10-94, para. 831.E (May 30, 2018).

<sup>392</sup> 7 C.F.R. § 1416.110(g) (2019); LDAP Handbook, page 10-89, para. 831.C (May 30, 2018).

<sup>393</sup> 7 C.F.R. § 1416.110(g) (2019); LDAP Handbook, pages 10-88 and 10-89, para. 831.C (May 30, 2018).

<sup>394</sup> FSA converts each livestock type to an animal unit (AU) basis using a chart in the Handbook. See LDAP Handbook, page 10-89, para. 831.C, Exhibit 16 (May 30, 2018).

<sup>395</sup> The complete calculation required to determine the daily feed cost for one animal unit can be found at 7 C.F.R. § 1416.110(h) – (k) (2019).

<sup>396</sup> 7 C.F.R. § 1416.110(g)(1) (2019); LDAP Handbook, pages 10-88 and 10-89, para. 831.C (May 30, 2018).

<sup>397</sup> 7 C.F.R. § 1416.110(g)(2) (2019); LDAP Handbook, page 10-90, para. 831.C (May 30, 2018).

<sup>398</sup> LDAP Handbook, page 10-90, para. 831.C (May 30, 2018).

As an example, suppose a farmer suffers a grazing loss due to a flood.<sup>399</sup> Because of the flood, the farmer has 1,000 sheep that are unable to graze on 1,000 acres of native pasture for 45 calendar days. If the carrying capacity for the grazing land in the farmer's county is five acres per animal unit, and the farmer's daily feed cost to maintain one animal unit is \$1.909, the farmer's ELAP payment calculation would look as follows:

**Step One: Total Feed Cost Value**

250 (animal units)<sup>400</sup> x \$1.909 (daily cost to maintain one animal unit) x 45 (number of calendar days of lost grazing) = \$21,476.25 total daily feed cost.

**Step Two: Total Value of Lost Grazing**

1,000 (number of lost grazing acres) ÷ 5 (carrying capacity conversion factor) x \$1.909 (daily cost to maintain one animal unit) x 45 (number of calendar days of lost grazing) = \$17,181 total value of lost grazing.

The lesser of the two values—the \$17,181 calculation for lost grazing—should be the farmer's ELAP payment, without applying any applicable reductions or the national payment factor. If the national payment factor were applicable, the \$17,181 would be multiplied by the national payment factor in order to determine the farmer's ultimate ELAP payment.<sup>401</sup>

## **5. Payments for Livestock Death Losses**

ELAP payments for eligible livestock death losses differ depending on whether the farmer is a livestock owner or a contract grower.

### ***a. Payment Calculation for a Livestock Owner***

For a livestock owner, the payment for livestock death losses is calculated by multiplying the livestock payment rate, as determined by FSA,<sup>402</sup> by the number of eligible livestock that died in excess of normal mortality.<sup>403</sup> The normal mortality rates for each type of livestock are determined by FSA.<sup>404</sup>

<sup>399</sup> LDAP Handbook, page 10-91, para. 831.C (May 30, 2018).

<sup>400</sup> The total of 250 animal units comes from multiplying 1,000 (the number of sheep that are unable to graze) by FSA's conversion factor for sheep of 0.25.

<sup>401</sup> For example, in the Handbook, the producer in this scenario is a beginning rancher who is subject to a 90 percent national payment factor. Therefore, the producer's ultimate ELAP payment would be \$15,463 (\$17,181 x 0.90 = \$15,462.90) with application of the national payment factor. See LDAP Handbook, page 10-91, para. 831.C (May 30, 2018).

<sup>402</sup> The livestock payment rates for livestock owners can be found in the Handbook at pages 10-98 through 10-100, para. 831.G (May 30, 2018). These payment rates are based on the average fair market value for each type of livestock.

<sup>403</sup> 7 C.F.R. § 1416.110(n) (2019); LDAP Handbook, page 10-98, para. 831.G (May 30, 2018).

<sup>404</sup> 7 C.F.R. § 1416.110(n) (2019); LDAP Handbook, pages 10-98 and 10-101, paras. 831.G and 831.H (May 30, 2018). Normal mortality rates are established by FSA, on a statewide basis, using local data from sources such as state livestock organizations and the Cooperative Extension Service for each state. 7 C.F.R. § 1416.110(n)(2) (2019).

As an example, suppose a farmer has 100 non-adult beef cattle that all weigh less than 400 pounds.<sup>405</sup> Due to an ELAP-eligible loss event, twenty of the farmer's cattle die. FSA has determined that the normal mortality rate for this category of beef cattle is three percent, and the livestock payment rate is \$454.46 per head of cattle. The farmer's ELAP payment calculation would look as follows:

Step One:  $100 \text{ (total number of cattle)} \times 0.03 \text{ (normal mortality rate)} = 3 \text{ cattle.}$

Step Two:  $20 \text{ (number of cattle that died)} - 3 \text{ (normal mortality for the producer's 100 cattle)} = 17 \text{ cattle.}$

Step Three:  $17 \text{ (number of cattle eligible for an ELAP payment)} \times \$454.46 \text{ (payment rate per head of non-adult beef cattle)} = \$7,725.82.$

Step Four:  $\$7,725.82 \text{ (fair market value of the livestock that died in excess of normal mortality)} \times 0.75 \text{ (applicable national payment rate)} = \$5,794.37.$

The farmer's ELAP payment, before applying any applicable reductions or the national payment factor, is \$7,726.<sup>406</sup> If the national payment factor were taken into account, the \$7,726 would be multiplied by the applicable national payment factor rate in order to determine the farmer's ultimate ELAP payment.

#### ***b. Payment Calculation for a Contract Grower***

For a contract grower, the payment for livestock death losses is calculated by multiplying the livestock payment rate, as determined by FSA,<sup>407</sup> by the number of eligible livestock that died in excess of normal mortality.<sup>408</sup>

### **6. Payments for Honeybee Losses**

The ELAP payment calculations for honeybee losses differs depending on the type of honeybee loss the farmer suffers. The payment calculations for each type of ELAP-eligible honeybee loss are described below.

#### ***a. ELAP Payments for the Loss of Honeybee Feed***

The ELAP payment for the loss of purchased or harvested honeybee feed is the value of the farmer's actual costs of the honeybee feed that was intended to be fed to an eligible honeybee colony, but which was damaged or destroyed due to an eligible adverse weather event or loss condition.<sup>409</sup>

For example, suppose a farmer spent \$500 to purchase 1,000 pounds of sugar to

<sup>405</sup> LDAP Handbook, page 10-102, para. 831.I (May 30, 2018).

<sup>406</sup> LDAP Handbook, page 10-102, para. 831.I (May 30, 2018).

<sup>407</sup> The livestock payment rates for contract growers can be found in the Handbook at page 10-100, para. 831.G (May 30, 2018). These payment rates are based on the average income loss sustained by the contract grower with respect to the dead livestock.

<sup>408</sup> 7 C.F.R. §§ 1416.109(c), 1416.110(n)(3)(ii) (2019); LDAP Handbook, page 10-98, para. 831.G (May 30, 2018). Normal mortality rates are established by FSA, on a statewide basis, using local data from sources such as state livestock organizations and the Cooperative Extension Service for each state. 7 C.F.R. § 1416.110(n)(2) (2019).

<sup>409</sup> 7 C.F.R. § 1416.111(a)(1) (2019); LDAP Handbook, page 10-139, para. 846.F (May 30, 2018).

feed eligible honeybees.<sup>410</sup> If an ELAP-eligible flood later destroys the feed, the farmer's ELAP payment would be \$500. If the national payment factor were applicable, the \$500 would be multiplied by the national payment factor rate in order to determine the farmer's ultimate ELAP payment.<sup>411</sup>

***b. Payments for the Cost of Purchasing Additional Honeybee Feed***

There are two steps in determining the ELAP payment for a loss of purchasing additional honeybee feed, above normal quantities, when that feed is necessary to sustain the honeybees for a period of time during an eligible adverse weather event or loss condition.<sup>412</sup>

First, determine the farmer's most recent two-year average cost of honeybee feed.<sup>413</sup>

Second, subtract the result of step one from the farmer's actual cost of purchasing the additional honeybee feed.<sup>414</sup>

As an example, suppose an unexpected blizzard hits and a farmer must spend \$600 to purchase 600 pounds of sugar in order to sustain eligible honeybees throughout the blizzard.<sup>415</sup> During the previous year, the farmer spent \$100 on honeybee feed, and the year before that the farmer spent \$50 on honeybee feed. The farmer's ELAP payment calculation would look as follows:

Step One:  $(\$100 + \$50) \div 2 = \$75$  (average feed cost for previous two years).

Step Two:  $\$600$  (cost of additional feed for current year)  $- \$75$  (average feed cost for previous two years)  $= \$525$ .

The farmer's ELAP payment, before applying any applicable reductions or the national payment factor, would therefore be \$525.<sup>416</sup> If the national payment factor were applicable, the \$525 would be multiplied by the national payment factor rate in order to determine the farmer's ultimate ELAP payment.<sup>417</sup>

***c. Payments for the Loss of a Honeybee Hive***

The ELAP payment for an eligible honeybee hive loss is calculated by multiplying the number of honeybee hives that were damaged or destroyed due to an eligible adverse weather event or loss condition by the average fair market value (FMV)

<sup>410</sup> LDAP Handbook, page 10-139, para. 846.F (May 30, 2018).

<sup>411</sup> For example, in the Handbook, the producer in this scenario is subject to a 60 percent national payment factor. Accordingly, the producer's ELAP payment would be \$300 ( $\$500 \times 0.60 = \$300$ ) after taking into consideration the national payment factor. See LDAP Handbook, page 10-139, para. 846.F (May 30, 2018).

<sup>412</sup> 7 C.F.R. § 1416.111(a)(2) (2019); LDAP Handbook, page 10-140, para. 846.G (May 30, 2018).

<sup>413</sup> LDAP Handbook, page 10-140, para. 846.G (May 30, 2018).

<sup>414</sup> LDAP Handbook, page 10-140, para. 846.G (May 30, 2018).

<sup>415</sup> LDAP Handbook, page 10-142, para. 846.G (May 30, 2018).

<sup>416</sup> LDAP Handbook, page 10-142, para. 846.G (May 30, 2018).

<sup>417</sup> For example, in the Handbook, the producer in this scenario is subject to a 60 percent national payment factor. Accordingly, the producer's ELAP payment would be \$315 ( $\$525 \times 0.60 = \$315$ ) after taking into consideration the national payment factor. See LDAP Handbook, page 10-142, para. 846.F (May 30, 2018).

of a honeybee hive, as determined by FSA.<sup>418</sup>

For example, suppose a farmer had twenty hives, but a tornado destroyed five of those hives.<sup>419</sup> If FSA has determined that the average fair market value of a honeybee hive is \$210, the farmer's ELAP payment calculation would look as follows:

$$5 \text{ (number of lost hives)} \times \$210 \text{ (FMV of a honeybee hive)} = \$1,050.$$

The farmer's ELAP payment, before applying any applicable reductions or the national payment factor, would therefore be \$1,050.<sup>420</sup> If the national payment factor were applicable, the \$1,050 would be multiplied by the national payment factor rate in order to determine the farmer's ultimate ELAP payment.<sup>421</sup>

#### ***d. Payments for the Loss of a Honeybee Colony***

Three steps are involved in determining the ELAP payment for an eligible honeybee colony loss.<sup>422</sup>

First, determine the farmer's loss threshold by multiplying the initial number of honeybee colonies by the farmer's normal mortality rate for honeybee colonies.<sup>423</sup>

Second, determine the number of colonies that are eligible for an ELAP payment by subtracting the number of colonies damaged or destroyed due to an eligible adverse weather event or loss condition from the result of step one.<sup>424</sup>

Finally, multiply the number of ELAP-eligible lost colonies by the fair market value of a honeybee colony.<sup>425</sup>

For example, suppose a farmer had 120 colonies of bees in operation before colony collapse disorder (CCD) resulted in the destruction of 50 of those colonies.<sup>426</sup> The farmer's normal mortality rate for the honeybee colonies is 17.5 percent. If FSA determines that the fair market value of a honeybee colony is \$75, the farmer's ELAP payment calculation would look as follows:

Step One:  $120 \text{ (number of initial colonies)} \times 17.5\% \text{ (normal mortality rate)} = 21 \text{ colonies (producer's loss threshold).}$

Step Two:  $50 \text{ (number of colonies lost due to CCD)} - 21 \text{ (producer's loss threshold)} = 29 \text{ colonies eligible for ELAP payment.}$

<sup>418</sup> 7 C.F.R. § 1416.111(c) (2019); LDAP Handbook, pages 10-137 and 10-139, paras. 846.B, 846.E (May 30, 2018).

<sup>419</sup> LDAP Handbook, page 10-139, para. 846.E (May 30, 2018).

<sup>420</sup> LDAP Handbook, page 10-139, para. 846.E (May 30, 2018).

<sup>421</sup> For example, in the Handbook, the producer in this scenario is subject to a 75 percent national payment factor. Accordingly, the producer's ELAP payment would be \$788 ( $\$1,050 \times 0.675 = \$787.50$ ) after taking into consideration the national payment factor. See LDAP Handbook, page 10-139, para. 846.E (May 30, 2018).

<sup>422</sup> 7 C.F.R. § 1416.111(b) (2019); LDAP Handbook, page 10-138, para. 846.D (May 30, 2018).

<sup>423</sup> LDAP Handbook, page 10-138, paras. 846.C, 846.D (May 30, 2018).

<sup>424</sup> LDAP Handbook, page 10-138, para. 846.D (May 30, 2018).

<sup>425</sup> LDAP Handbook, pages 10-137 and 10-138, paras. 846.B, 846.D (May 30, 2018).

<sup>426</sup> LDAP Handbook, page 10-138, para. 846.D (May 30, 2018).



Step Three: 29 (number of eligible colonies) x \$75 (FMV of a honeybee colony) = \$2,175.

The farmer's ELAP payment, before applying any applicable reductions or the national payment factor, would therefore be \$2,175.<sup>427</sup> If the national payment factor were applicable, the \$2,175 would be multiplied by the national payment factor rate in order to determine the farmer's ultimate ELAP payment.<sup>428</sup>

## **7. Payments for Farm-Raised Fish Losses**

The ELAP payment calculations for farm-raised fish losses differs depending on the type of loss the farmer suffers. The payment calculations for each type of ELAP-eligible farm-raised fish loss are described below.

### ***a. Payments for the Loss of Farm-Raised Fish Feed***

The ELAP payment for the loss of farm-raised fish feed that was intended to be fed to eligible farm-raised fish, but which was damaged or destroyed due to an eligible adverse weather event or loss condition, is the value of the fish feed that was destroyed.<sup>429</sup> Farmers will need to provide documentation to verify the type and cost of feed that was destroyed.<sup>430</sup>

If the national payment factor is taken into account, the farmer's ultimate ELAP payment would be calculated by multiplying the value of the farmer's destroyed fish feed by the applicable national payment factor rate.<sup>431</sup>

### ***b. Payments for the Cost of Purchasing Additional Farm-Raised Fish Feed***

The ELAP payment for a loss of purchasing additional farm-raised fish feed, above normal quantities, when that feed is necessary to sustain the fish for a period of time during an eligible adverse weather event or loss condition, is based on the farmer's actual cost of purchasing the additional fish feed.<sup>432</sup>

### ***c. Payments for Farm-Raised Game Fish and Bait Fish Death Losses***

There are two steps in calculating the ELAP payment for the deaths of farm-raised game fish or bait fish because of an adverse weather event or loss condition.

First, determine the number or pounds of eligible farm-raised fish that died in

<sup>427</sup> LDAP Handbook, page 10-138, para. 846.D (May 30, 2018).

<sup>428</sup> For example, in the Handbook, the producer in this scenario is subject to a 75 percent national payment factor. Accordingly, the producer's ELAP payment would be \$1,631 (\$2,175 x 0.675 = \$1,631.25) after taking into consideration the national payment factor. See LDAP Handbook, page 10-138, para. 846.D (May 30, 2018).

<sup>429</sup> LDAP Handbook, page 10-180, para. 861.B (May 30, 2018).

<sup>430</sup> 7 C.F.R. § 1416.112(a)(1) (2019); LDAP Handbook, page 10-180, para. 861.B (May 30, 2018). For a more detailed description of the type of documentation that FSA requires, see LDAP Handbook, page 10-177, para. 860.D (May 30, 2018).

<sup>431</sup> LDAP Handbook, page 10-180, para. 861.B (May 30, 2018).

<sup>432</sup> 7 C.F.R. § 1416.112(a)(2) (2019). If a national payment factor were to apply, the producer's actual costs would be multiplied by that payment factor in order to determine the ELAP payment.

excess of normal mortality.<sup>433</sup> The normal mortality rates for eligible farm-raised fish are established by state FSA offices.<sup>434</sup>

Second, multiple the result of step one by the average fair market value (FMV) of the farm-raised fish, as established by FSA.<sup>435</sup>

For example, suppose a farmer suffers a death loss of 500 game fish because of an eligible adverse weather event or loss condition.<sup>436</sup> If the average fair market value for the type of game fish is \$100, and the farmer's state FSA office has determined the normal mortality rate is 17 percent, the farmer's ELAP payment calculation would look as follows:

Step One: 500 (number of dead game fish) x 0.17 (mortality rate) = 85 fish. The number of game fish that died in excess of normal mortality is therefore 415 (500 – 85).

Step Two: 415 (number of dead fish in excess of normal mortality) x \$100 (FMV) = \$41,500.

The farmer's ELAP payment, before applying any applicable reductions or the national payment factor, would therefore be \$41,500.<sup>437</sup> If the national payment factor were applied, the \$41,500 would be multiplied by the national payment factor rate in order to determine the farmer's ultimate ELAP payment.<sup>438</sup>

## **IX. ELAP Appeals**

In general, adverse decisions made by FSA concerning ELAP can be appealed.<sup>439</sup> For example, a determination of ineligibility for ELAP, denial of ELAP benefits, or a decision that the farmer has not complied with ELAP requirements should all be subject to appeal.<sup>440</sup> A lengthy set of rules governs the USDA appeals system.<sup>441</sup>

## **X. Discrimination Is Illegal**

FSA is prohibited from subjecting any person to discrimination on the basis of race, color, religion, sex, age, national origin, marital status, familial/parental status, sexual orientation, gender identity, disability, political beliefs, or because all or part of an individual's income is derived from any public assistance program.<sup>442</sup>

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<sup>433</sup> 7 C.F.R. § 1416.112(b)(2) (2019); LDAP Handbook, page 10-181, para. 861.E (May 30, 2018).

<sup>434</sup> LDAP Handbook, page 10-181, para. 861.E (May 30, 2018).

<sup>435</sup> 7 C.F.R. § 1416.112(a)(1) (2019); LDAP Handbook, page 10-180, para. 861.C (May 30, 2018).

<sup>436</sup> LDAP Handbook, page 10-180, para. 861.C (May 30, 2018).

<sup>437</sup> LDAP Handbook, page 10-180, para. 861.C (May 30, 2018).

<sup>438</sup> For example, in the Handbook, the producer in this scenario is subject to a 90 percent national payment factor. Accordingly, the producer's ultimate ELAP payment would be \$37,250 (\$41,500 x 0.90 = \$37,250) after applying the national payment factor. See LDAP Handbook, page 10-180, para. 861.C (May 30, 2018).

<sup>439</sup> 7 C.F.R. § 1416.8 (2019); LDAP Handbook, page 10-242, para. 888.B (Sept. 10, 2015).

<sup>440</sup> See FSA Handbook, 1-APP (Rev. 2), Program Appeals, Mediation, and Litigation, page 2-3, para. 9.A (Sept. 12, 2016).

<sup>441</sup> ELAP Appeals are governed by the FSA Handbook, 1-APP (Rev. 2), Program Appeals, Mediation, and Litigation (Sept. 12, 2016).

<sup>442</sup> 7 C.F.R. § 15d.3(a) (2019).