

into a contract, on behalf of the participant, signs the application for payment.

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

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

#### **§ 760.909 Payment calculation.**

(a) Under this subpart separate payment rates are established for eligible livestock owners and eligible livestock contract growers in accordance with paragraphs (b) and (c) of this section. Payments for the 2005–2007 LIP are calculated by multiplying the national payment rate for each livestock category, as determined in paragraphs (b) and (c) of this section, by the number of eligible livestock in each category, as provided in § 760.906. Adjustments will be applied in accordance with paragraphs (d) and (e) of this section.

(b) The 2005–2007 LIP national payment rate for eligible livestock owners is based on 26 percent of the average fair market value of the livestock.

(c) The 2005–2007 LIP national payment rate for eligible livestock contract growers is based on 26 percent of the average income loss sustained by the contract grower with respect to the dead livestock.

(d) The 2005 payment calculated under 2005–2007 LIP for eligible livestock owners will be reduced by the amount the participant received under:

(1) The Livestock Indemnity Program (subpart E of this part);

(2) The Aquaculture Grant Program (subpart G of this part); and

(3) The Livestock Indemnity Program II (part 1416, subpart C of this title).

(e) The 2005 payment calculated under 2005–2007 LIP for eligible livestock contract growers will be reduced by the amount the participant received:

(1) Under the Livestock Indemnity Program (subpart E of this part);

(2) For the loss of income from the dead livestock from the party who contracted with the producer to grow the livestock; and

(3) Under the Livestock Indemnity Program II (part 1416, subpart C of this title).

#### **§ 760.910 Appeals.**

The appeal regulations set forth at parts 11 and 780 of this title apply to determinations made pursuant to this subpart.

#### **§ 760.911 Offsets, assignments, and debt settlement.**

(a) Any payment to any participant will be made without regard to questions of title under State law and without regard to any claim or lien against the commodity, or proceeds, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 792 of this chapter apply to payments made under this subpart.

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

#### **§ 760.912 Records and inspections.**

Participants receiving payments under this subpart or any other person who furnishes information for the purposes of enabling such participant to receive a payment under this subpart must maintain any books, records, and accounts supporting any information so furnished for 3 years following the end of the year during which the application for payment was filed. Participants receiving payments or any other person who furnishes such information to FSA must allow authorized representatives of USDA and the General Accountability Office, during regular business hours, to inspect, examine, and make copies of such books or records, and to enter upon, inspect and verify all applicable livestock and acreage in which the participant has an interest for the purpose of confirming the accuracy of information provided by or for the participant.

#### **§ 760.913 Refunds; joint and several liability.**

In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under this subpart, and if any refund of a payment to FSA will otherwise become due in connection with this subpart, all payments made in regard to such matter must be refunded to FSA together with interest and late-payment charges as provided for in part 792 of this chapter.

Signed in Washington, DC, December 18, 2007.

**Teresa C. Lasseter,**

*Administrator, Farm Service Agency.*

[FR Doc. 07–6153 Filed 12–19–07; 9:03 am]

**BILLING CODE 3410–05–P**

## **DEPARTMENT OF AGRICULTURE**

### **Farm Service Agency**

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

**RIN 0560–AH72**

#### **2005–2007 Livestock Compensation and Catfish Grant Programs**

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes the Farm Service Agency (FSA) regulations for the 2007 Emergency Agricultural Assistance. The rule implements legislation that provides funds for agricultural disaster aid for eligible producers, specifically the continuation of the Livestock Compensation Program (LCP) and the Catfish Grant Program (CGP). The programs will provide financial assistance to eligible livestock and catfish producers in counties designated as a major disaster or emergency by the President or those declared a natural disaster by the Secretary of Agriculture. Counties designated disasters by the President may be eligible even though agricultural loss was not covered by the designation if there has been an FSA Administrator's Physical Loss Notice covering such losses. The natural disaster declarations by the Secretary or designations by the President must have been issued between January 1, 2005, and February 28, 2007; that is after January 1, 2005, and before February 28, 2007. Counties contiguous to such counties will also be eligible. These programs are designed to provide financial assistance to producers who suffered feed losses due to natural disasters in the eligible counties.

**DATES:** This rule is effective December 19, 2007.

#### **FOR FURTHER INFORMATION CONTACT:**

Salomon Ramirez, Director, Production, Emergencies, and Compliance Division; Farm Service Agency; United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517; telephone (202) 720–7641; e-mail [salomon.ramirez@wdc.usda.gov](mailto:salomon.ramirez@wdc.usda.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

This final rule implements certain agricultural assistance provisions of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Public Law 110–28) (the 2007 Emergency Supplemental). The 2007 Emergency Supplemental authorizes the

Secretary of Agriculture (Secretary) to assist producers of livestock through programs administered by the Farm Service Agency (FSA).

All counties, owners, lessees, livestock, and losses, must meet the eligibility criteria provided in this rule. False certifications carry severe ramifications. FSA will validate applications with random spot-checks.

A payment limitation of \$80,000 per program will be applicable to payments made under the 2007 Emergency Supplemental. The amount of any payment, for which a participant is eligible under either of these programs, will be reduced by any amount received by the participant for the same or any similar loss. Other restrictions apply including, but not limited to, those pertaining to highly erodible land and wetland conservation provisions. Livestock losses that are not weather-related are not covered.

The average adjusted gross income (AGI) limitation, as administered under 7 CFR part 1400, subpart G, will also apply. AGI eligibility will be based on the average of the adjusted gross incomes for the three tax years immediately preceding the tax year for which disaster assistance is being requested, with the exclusion of any year(s) the individual or entity did not have income or had an AGI of zero.

Section 9002(a) of the 2007 Emergency Supplemental appropriates to the Secretary such sums as necessary to remain available until expended, to provide compensation in eligible "disaster counties" to livestock producers, including catfish producers, who, between January 1, 2005, and February 28, 2007, that is after January 1, 2005 and before February 28, 2007, suffered feed losses or incurred additional feed costs directly resulting from natural disasters. This would include losses due to blizzards that started in 2006 and continued into January, 2007. This also means livestock producers can elect to receive compensation for losses in the calendar year 2007 grazing season that are attributable to wildfires occurring during the applicable period, as determined by the Secretary so long as the loss occurred before February 28, 2007.

Accordingly, to be eligible for assistance under the 2005–2007 Livestock Compensation Program (LCP) or 2005–2007 Catfish Grant Program (CGP), the participant must have suffered certain feed losses between January 1, 2005, and February 28, 2007, that is after January 1, 2005 and before February 28, 2007. By statute, the livestock operation must be physically

located in a county, or contiguous to that county, having a major disaster or emergency designated by the President or a natural disaster declared by the Secretary, where, in both cases, the declaration was made after January 1, 2005, but before February 28, 2007. For timely Presidential declarations that do not cover agricultural loss, the subject counties may still be eligible if the county was the subject because of the same disaster of an Administrator's Physical Loss Notification (APLN). Livestock producers, including catfish producers, incurring a loss in more than one of the 2005, 2006, and 2007 calendar years, must select only one year for which to receive benefits.

The 2007 Emergency Supplemental directed the Secretary of Agriculture to continue the livestock compensation program established under subpart B of part 1416 of title 7, Code of Federal Regulations as announced by the Secretary on February 12, 2007 (72 FR 6443). The regulations in part 1416 are operated under the Commodity Credit Corporation. However, no appropriations were specifically made to CCC for LCP or CGP; rather, appropriations were made to the Secretary. Therefore, the programs will be continued in a similar manner to the existing programs, but are being established as FSA programs in 7 CFR part 760.

To the greatest extent possible, however, the related regulations in 7 CFR part 1416, subparts A, B, and I have been duplicated in 7 CFR part 760 as new subparts K, L, and M. Subpart K specifies general provisions for the 2005–2007 LCP and CGP. These general provisions cover a range of requirements and information common to both programs, including applicability; eligible counties, disaster events, and disaster periods; definitions, and limitations on payments and benefits. Subpart L provides the provisions for the 2005–2007 LCP. Subpart M provides the provisions for the 2005–2007 CGP. Subparts L and M each provide details about the administration of the program, application for payment, eligible producers, and payment calculation. In addition, Subpart L also provides details about applicability; definitions; eligible livestock; application process, appeals, offsets, assignments, and debt settlement; recordkeeping and inspections; and refund liability.

The 2007 Emergency Supplemental also contains provisions relating to the manner in which loss elections would be made, how sales of livestock during the disaster would be handled, and other eligibility matters. The regulations are consistent with those specifications.

With respect to sales made specifically due to the disaster, the rules base payment caps on the number of animals held at the beginning date of the disaster period, thus avoiding a penalty for sales as a result of the disaster, except when livestock are normally sold before the beginning date of the grazing period.

LCP will provide assistance for eligible producers (owners and cash lessees) of eligible livestock located in a total of 2,944 counties. These 2,944 counties refer to the total number of declared, designated, and FSA Administrator Physical Loss Notice counties, regardless of the number of times for which they received disaster declarations between January 1, 2005, and February 28, 2007, as well as counties contiguous to these counties. A list of eligible counties is located on the FSA website. For catfish payments, a cap is set that limits payments to 61 percent of 1/6th of the cost of a normal ton of feed. Six months is the normal feeding period for catfish. This cap effectively limits the potential payment for a year's worth of feed purchases, even if for 2007 they are all purchased in the eligible part of 2007, to 30 days worth of payments.

#### Notice and Comment

These regulations are exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. 553), as specified in section 9005 of the 2007 Emergency Supplemental, which requires that the regulations be promulgated and administered without regard to the notice and comment provisions of Section 553 of title 5, United States Code or of the Statement of Policy of the Secretary effective July 24, 1971 (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking.

#### Executive Order 12866

This rule has been determined to be economically significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget. A Cost-Benefit Analysis (CBA) was completed and is available from the contact person listed above.

#### Summary of Economic Impacts

The natural disasters covered by the 2005–2007 LCP include various hurricanes, droughts, wildfires, and blizzards that occurred after January 1, 2005, but before February 28, 2007. The purpose of the 2005–2007 LCP is to provide compensation to eligible livestock producers for the value of actual feed lost or certain feed costs incurred as the result of an eligible disaster. To be eligible for payments,

producers self-certify to the livestock owned or cash leased on the beginning date of the applicable disaster period and to their feed losses.

Expected feed losses were calculated for the states that were known to have incurred feed losses or additional feed costs, due to droughts, hurricanes, blizzards, or other disasters, after January 1, 2005, but before February 28, 2007. Potentially, all states could have incurred grazing or forage losses or higher forage costs from drought that occurred during that time interval because nearly all rural counties in the United States were designated primary disaster counties because of drought sometime during that period, or were counties located contiguously to such primary counties. Covered losses include eligible, forage losses that may have been incurred from blizzards that occurred in December 2006 and January 2007 in southeastern Colorado, western Kansas, one county in Oklahoma, and two counties in Northeastern New Mexico, and from wildfires in early 2007 in the southeastern United States.

Payments under the 2005–2007 LCP should provide benefits to those immediate communities where feed loss or increased feed cost occurred as a result of the disasters such as drought, hurricanes, ice storms, blizzards, and tornados after January 1, 2005, but before February 28, 2007. These payments could have noticeable regional effects, particularly in counties severely affected by declared disasters, but overall, payments are not expected to have a measurable economic impact nationally.

The 2005–2007 LCP authorizes assistance for eligible owners and cash lessees of eligible livestock located in a total of 2,944 counties timely declared or designated as disaster counties by the Secretary of Agriculture, the President, including those Presidentially declared counties with a qualifying FSA Administrator's Physical Loss Notification, plus counties contiguous to those counties so declared or designated counties. These counties are located in all fifty states and Puerto Rico. These 2,944 counties refer to the total number of individual counties regardless of the number of years or disasters in which they qualify. Qualifying declarations of designations must, to qualify, have been made after January 1, 2005, and before February 28, 2007.

The value of expected claims under the 2005–2007 LCP is estimated at \$684 million. To the extent program payments are ultimately spent on forage or grain or affect the total supply of available livestock, the impacts of the

2005–2007 LCP on any sector of the economy, including livestock feed prices, livestock prices, and consumer prices, are not expected to be measurable. The effect on aggregate social welfare of any slight redistribution of wealth and income resulting from the 2005–2007 LCP payment claims is expected to be slight. However, for those producers who have suffered losses due to any of several disasters that occurred after January 1, 2005, but before February 28, 2007, and qualify for payments under the 2005–2007 LCP, their farm income losses will be somewhat offset or reduced by these payments, and they and their local communities will benefit accordingly.

The purpose of the CGP is to provide grants to states for the purpose of compensating catfish producers for eligible disaster-related feed losses that occurred after January 1, 2005, but before February 28, 2007. The states then are to distribute the grant monies to catfish producers who suffered eligible feed losses. Most of the losses for which compensation is likely to be made are for producers located in Louisiana, Mississippi, and Texas, where about 59 percent of the nation's catfish are produced, and which bore the brunt of hurricane Katrina, which is believed responsible for most of the feed losses by catfish in these States. Producers must prove their feed losses.

FSA estimates the expected value of the block grants necessary to compensate expected feed losses to be \$3.7 million. The estimated \$3.7 million is calculated from maximum possible feed losses of \$16.5 million for all states. FSA believes eligible feed losses in Louisiana, Mississippi, and Texas could account for 30 percent of maximum possible losses in those states and eligible feed losses could approximate 10 percent of maximum possible losses in the other 7 major catfish producing states.

Expected grant assistance of \$3.7 million should help catfish producers to restore their purchasing power from feed losses incurred by disasters (mainly hurricanes) that occurred after January 1, 2005, but before February 28, 2007.

#### **Regulatory Flexibility Act**

This rule is not subject to the Regulatory Flexibility Act since the Farm Service Agency is not required to publish a notice of proposed rulemaking for this rule.

#### **Environmental Review**

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act

(NEPA), 42 U.S.C. 4321–4347, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA (7 CFR part 799). The following final rule was determined to be Categorically Excluded because it is considered a ministerial action solely involving the transfer of funds to offset disaster related losses with no site-specific or ground-disturbing actions occurring as a requirement or an immediate result of program implementation. Therefore, no environmental assessment or environmental impact statement will be completed for this final rule.

#### **Executive Order 12372**

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

#### **Executive Order 12612**

This rule does not have Federalism implications that warrant the preparation of a Federalism Assessment. This rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

#### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988. This final rule is not retroactive and it does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

#### **Unfunded Mandates**

This rule contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local, and tribal government or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### **Paperwork Reduction Act**

These regulations are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 9005(b)(3) of the 2007 Emergency Supplemental, which provides that these regulations, which are necessary to implement title IX of the 2007 Emergency Supplemental, be

promulgated and administered without regard to the Paperwork Reduction Act.

### E-Government Act Compliance

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

### Small Business Regulatory Enforcement Fairness Act of 1996

This rule has been determined to be Major under the Small Business Regulatory Enforcement Fairness Act of 1996, (Pub. L. 104–121) (SBREFA). SBREFA normally requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. Section 808 of SBREFA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. Consistent with section 9005(c) of the 2007 Emergency Supplemental, FSA finds that it would be contrary to the public interest to delay implementation of this rule because it would significantly delay assistance to the many people affected by the disasters addressed by this rule. Therefore, this rule is effective immediately.

### List of Subjects in 7 CFR Part 760

Agriculture, Disaster assistance, Fish, Livestock.

■ For the reasons explained above, 7 CFR part 760 is amended as follows:

### PART 760—INDEMNITY PAYMENT PROGRAMS

■ 1. Revise the authority citation for 7 CFR part 760 to read as follows:

**Authority:** 7 U.S.C. 612c; Pub. L. 106–387, 114 Stat. 1549; Pub. L. 107–76, 115 Stat. 704; Title III, Pub. L. 109–234, 120 Stat. 474; 16 U.S.C. 3801, note; and Title IX, Pub. L. 110–28.

■ 2. Amend 7 CFR part 760 by adding new subparts K, L, and M to read as follows:

#### Subpart K—General Provisions for 2005–2007 Livestock Compensation and Catfish Grant Programs

Sec.

- 760.1000 Applicability.
- 760.1001 Eligible counties, disaster events, and disaster periods.
- 760.1002 Definitions.
- 760.1003 Limitations on payments and other benefits.

#### Subpart L—2005–2007 Livestock Compensation Program

- 760.1100 Applicability.
- 760.1101 Administration.

- 760.1102 Definitions.
- 760.1103 Eligible livestock and producers.
- 760.1104 Application for payment.
- 760.1105 Application process.
- 760.1106 Payment calculation.
- 760.1107 Appeals.
- 760.1108 Offsets, assignments, and debt settlement.
- 760.1109 Recordkeeping and inspections.
- 760.1110 Refunds; joint and several liability.

#### Subpart M—2005–2007 Catfish Grant Program

- 760.1200 Administration.
- 760.1201 Application for payment.
- 760.1202 Eligible producers.
- 760.1203 Payment calculation.

### Subpart K—General Provisions for 2005–2007 Livestock Compensation and Catfish Grant Programs

#### § 760.1000 Applicability.

(a) This subpart establishes the terms and conditions under which the following programs will be administered under Title IX of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 for participants affected by eligible disaster events and located in counties that are eligible as specified in § 760.1001:

(1) The 2005–2007 Livestock Compensation Program (2005–2007 LCP); and

(2) The 2005–2007 Catfish Grant Program (2005–2007 CGP).

(b) Farm Service Agency (FSA) funds as are necessary for the programs in subparts L and M of this part are available under Title IX of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007.

#### § 760.1001 Eligible counties, disaster events, and disaster periods.

(a) Except as provided in this subpart, FSA will provide assistance under the programs listed in § 760.1000 to eligible participants who have suffered certain losses due to eligible disaster events in eligible disaster counties provided in paragraph (c) of this section.

(b) The "Disaster Period" is the time period in which losses occurred for the particular disaster that may be considered eligible for the programs under subparts L and M of this part. The start and end dates for each eligible disaster period are specified at <http://disaster.fsa.usda.gov>.

(c) Eligible counties are those primary counties declared by the Secretary or designated for the applicable loss by the President, including counties contiguous to those counties, between

January 1, 2005, and February 28, 2007 (that is after January 1, 2005 and before February 28, 2007). The listing is provided at <http://disaster.fsa.usda.gov>. For counties where there was an otherwise timely Presidential declaration, but the declarations do not cover agricultural physical loss, the subject counties may still be eligible if the counties were the subject of an approved Administrator's Physical Loss Notice (APLN) when the APLN applies to a natural disaster timely designated by the President.

#### § 760.1002 Definitions.

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

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

*Farming operation* means a business enterprise engaged in producing agricultural products.

#### § 760.1003 Limitations on payments and other benefits.

(a) A participant may receive benefits for eligible livestock feed losses, including additional feed costs, for only one of the 2005, 2006, or 2007 calendar years under 2005–2007 LCP, subpart L of this part, or under the CGP of subpart M of this part.

(b) As specified in § 760.1106(c), the payment under the 2005–2007 LCP may not exceed the smaller of the calculated payment in § 760.1106(a) or the value of the producer's eligible feed loss, increased feed costs, or forage or grazing loss.

(c) A person may receive no more than \$80,000 under 2005–2007 LCP, subpart L of this part. In applying the \$80,000 per person payment limitation, regardless of whether the 2005, 2006, or 2007 calendar year benefits are at issue or sought, the most restrictive "person" determination for the participant in the years 2005, 2006, and 2007, will be used to limit benefits. The rules and definitions of part 1400 of this title apply in construing who is a qualified separate "person" for purposes of this limit. All payment eligibility requirements of part 1400 as they apply to any other payments, also apply to payments under subpart L of this part.

(d) For payments under 2005–2007 CGP, a farming operation may receive no more than \$80,000, except for general partnerships and joint ventures, in which case assistance will not exceed

\$80,000 times the number of eligible members of the general partnership or joint venture. This limit must be enforced by the state government administering the grant program.

(e) The provisions of part 1400, subpart G, of this title apply to these programs. That is the rules that limit the eligibility for benefits of those individuals or entities with an adjusted gross income greater than a certain limit will be applied in the same manner to payments under subparts L and M of this part.

(f) As a condition to receive benefits under subparts L and M of this part, a participant must have been in compliance with the provisions of parts 12 and 718 of this title for the calendar year for which benefits are being requested and must not otherwise be precluded from receiving benefits under any law.

(g) An individual or entity determined to be a foreign person under part 1400 of this title is not eligible to receive benefits under subparts L and M of this part.

(h) In addition to limitations provided in subparts L and M of this part, participants cannot receive duplicate benefits under subparts L and M of this part for the same loss or any similar loss under:

(1) An agricultural disaster assistance provision contained in the announcement of the Secretary on January 26, 2006, or August 29, 2006;

(2) The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Pub. L. 109–234; 120 Stat. 418); or

(3) Any other disaster assistance program.

#### **Subpart L—2005–2007 Livestock Compensation Program**

##### **§ 760.1100 Applicability.**

This subpart sets forth the terms and conditions applicable to the 2005–2007 Livestock Compensation Program (LCP).

##### **§ 760.1101 Administration.**

(a) This program is administered under the general supervision of the Administrator, Farm Service Agency (FSA).

(b) FSA representatives do not have authority to modify or waive any of the provisions of the regulations of this subpart.

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

(1) Correct, or require a county committee to correct, any action taken

by such county committee that is not in accordance with the regulations of this subpart; or

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

(d) No provision or delegation to a State or county FSA committee will preclude the FSA Deputy Administrator for Farm Programs (Deputy Administrator), or a designee of such, from determining any question arising under the program or from reversing or modifying any determination made by a State or county FSA committee.

(e) The Deputy Administrator for Farm Programs may authorize state and county committees to waive or modify nonstatutory deadlines or other program requirements in cases where lateness or failure to meet such does not adversely affect the operation of the program.

##### **§ 760.1102 Definitions.**

The following definitions apply to this subpart.

*Adult beef bull* means a male beef bovine animal that was at least 2 years old and used for breeding purposes on the beginning date of the disaster period.

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

*Adult buffalo and beefalo bull* means a male animal of those breeds that was at least 2 years old and used for breeding purposes on the beginning date of the disaster period.

*Adult buffalo and beefalo cow* means a female animal of those breeds that had delivered one or more offspring before the beginning date of the applicable disaster period. A first-time bred buffalo or beefalo heifer is also considered to be an adult buffalo or beefalo cow if it was pregnant on the beginning date of the disaster period.

*Adult dairy bull* means a male dairy bovine breed animal at least 2 years old used primarily for breeding dairy cows on the beginning date of the disaster period.

*Adult dairy cow* means a female bovine animal used for the purpose of providing milk for human consumption that had delivered one or more offspring before the beginning date of the applicable disaster period. A first-time bred dairy heifer is also considered an adult dairy cow if it was pregnant on the beginning date of the disaster period.

*Agricultural operation* means a farming operation.

*Application* means the “2005/2006/2007 Livestock Compensation Program” form.

*Application period* means the date established by the Deputy Administrator for Farm Programs for participants to apply for program benefits.

*Disaster period* means the applicable disaster period specified in § 760.1001.

*Equine animal* means a domesticated horse, mule, or donkey.

*Goat* means a domesticated, ruminant mammal of the genus *Capra*, including Angora goats.

*Non-adult beef cattle* means a bovine animal that weighed 500 pounds or more on the beginning date of the disaster period, but does not meet the definition of an adult beef cow or bull.

*Non-adult buffalo/beefalo* means an animal of those breeds that weighed 500 pounds or more on the beginning date of the disaster period, but does not meet the definition of an adult buffalo or beefalo cow or bull.

*Non-adult dairy cattle* means a bovine livestock, of a breed used for the purpose of providing milk for human consumption, that weighed 500 pounds or more on the beginning date of the disaster period, but does not meet the definition of an adult dairy cow or bull.

*Owner* means one who had legal ownership of the livestock for which benefits are being requested under this subpart on the beginning date of the applicable disaster period as set forth in § 760.1001.

*Poultry* means a domesticated chicken, turkey, duck, or goose. Poultry are further delineated by sex, age and purpose of production, as determined by FSA.

*Sheep* means a domesticated, ruminant mammal of the genus *Ovis*.

*Swine* means a domesticated omnivorous pig, hog, and boar. Swine are further delineated by sex and weight as determined by FSA.

##### **§ 760.1103 Eligible livestock and producers.**

(a) To be considered eligible livestock to generate benefits under this subpart, livestock must meet all the following conditions:

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

(2) Been physically located in the eligible disaster county on the beginning date of the disaster period;

(3) Been maintained for commercial use as part of the producer's farming operation on the beginning date of the disaster period; and

(4) Not have been produced and maintained for reasons other than

commercial use as part of a farming operation. Such excluded uses include, but are not limited to, wild free roaming animals or animals used for recreational purposes, such as pleasure, roping, hunting, pets, or for show.

(b) To be considered an eligible livestock producer, the participant's eligible livestock must have been located in the eligible disaster county on the beginning date of the disaster period. To be eligible, also, the livestock producer must have:

(1) Owned or cash-leased eligible livestock on the beginning date of the disaster period (provided that if there is a cash lease, only the cash lessee and not the owner will be eligible); and

(2) Suffered any of the following:

(i) A grazing loss on eligible grazing lands physically located in the eligible disaster county, where the forage was damaged or destroyed by an eligible disaster event, and intended for use as feed for the participant's eligible livestock;

(ii) A loss of feed from forage or feedstuffs physically located in the eligible disaster county, that was mechanically harvested and intended for use as feed for the participant's eligible livestock, that was damaged or destroyed after harvest as the result of an eligible disaster event;

(iii) A loss of feed from purchased forage or feedstuffs physically located in the eligible disaster county, intended for use as feed for the participant's eligible livestock, that was damaged or destroyed by an eligible disaster event; or

(iv) Increased feed costs incurred in the eligible disaster county, due to an eligible disaster event, to feed the participant's eligible livestock.

(c) The eligible livestock categories are:

- (1) Adult beef cows or bulls;
- (2) Non-adult beef cattle;
- (3) Adult buffalo or beefalo cows or bulls;
- (4) Non-adult buffalo or beefalo;
- (5) Adult dairy cows or bulls;
- (6) Non-adult dairy cattle;
- (7) Goats;
- (8) Sheep;
- (9) Equine;
- (10) Reindeer;
- (11) Elk;
- (12) Poultry; and
- (13) Deer.

(d) Ineligible livestock include, but are not limited to, livestock:

(1) Livestock that were or would have been in a feedlot regardless of whether there was a disaster or where such livestock were in a feedlot as part of a participant's normal business operation, as determined by FSA;

- (2) Emus;
- (3) Yaks;
- (4) Ostriches;
- (5) Llamas;
- (6) All beef and dairy cattle, and buffalo and beefalo that weighed less than 500 pounds on the beginning date of the disaster period;
- (7) Any wild free roaming livestock, including horses and deer;

(8) Livestock produced or maintained for reasons other than commercial use as part of a farming operation, including, but not limited to, livestock produced or maintained for recreational purposes, such as:

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

#### **§ 760.1104 Application for payment.**

(a) To apply for 2005–2007 LCP, an application and required supporting documentation must be submitted to the administrative county FSA office.

(b) The application must be filed during the application period announced by the Deputy Administrator for Farm Programs.

(c) Payments may be made for eligible losses suffered by an eligible livestock producer who is now a deceased individual or is a dissolved entity if a representative who currently has authority to enter into a contract, on behalf of the livestock producer, signs the application for payment. Legal documents showing proof of authority to sign for the deceased individual or dissolved entity must be provided. If a participant is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

(d) Data furnished by the participant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without all required data program benefits will not be approved or provided.

(e) A minor child is eligible to apply for program benefits if all eligibility requirements are met and one of the following conditions exists:

(1) The right of majority has been conferred upon the minor by court proceedings or statute;

(2) A guardian has been appointed to manage the minor's property, and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which a surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

#### **§ 760.1105 Application process.**

(a) Participants must submit to FSA:

(1) A completed application in accordance with § 760.1104;

(2) Adequate proof, as determined by FSA, that the feed lost:

(i) Was for the claimed eligible livestock;

(ii) Was lost as a direct result of an eligible disaster event during an eligible disaster period specified in § 760.1001;

(iii) Was lost after January 1, 2005, but before February 28, 2007; and

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

(3) Any other supporting documentation as determined by FSA to be necessary to make a determination of eligibility of the participant. Supporting documents include, but are not limited to: verifiable purchase records; veterinarian records; bank or other loan papers; rendering truck receipts; Federal Emergency Management Agency records; National Guard records; written contracts; production records; Internal Revenue Service records; property tax records; private insurance documents; sales records, and similar documents determined acceptable by FSA.

(b) [Reserved]

#### **§ 760.1106 Payment calculation.**

(a) Preliminary, unadjusted LCP payments are calculated for a producer by multiplying the national payment rate for each livestock category, as provided in paragraph (c) of this section, by the number of eligible livestock for the producer in each category. The national payment rate represents the cost of the amount of corn needed to maintain the specific livestock for 30 days, as determined by FSA. As provided in subpart K of this part, a producer may receive benefits for only one of the three program years, 2005, 2006, or 2007. The producer must indicate which year has been chosen. Payments are available only with respect to disaster-related feed losses in the period from January 2, 2005 through February 27, 2007, in eligible counties for losses during the times specified for the disaster periods as specified in § 760.1001(b).

(b) The preliminary LCP payment calculated in accordance with paragraph (a) of this section:

(1) For 2005 LCP provided for under this subpart will be reduced by the amount the participant received for the specific livestock under the Feed Indemnity Program in accordance with subpart D of this part and LCP for the 2005 hurricanes under subpart B of part 1416 of this title; and

(2) For 2006 LCP under this subpart will be reduced by the amount the

participant received for the same or similar loss under the Livestock Assistance Grant Program in accordance with subpart H of this part.

(c) Subject to such other limitations as may apply, including those in paragraph (b) of this section, the payment under the 2005–2007 LCP may not exceed for the relevant year chosen by the producer the smaller of either the:

(1) Payment calculated in paragraph (a) of this section for that year; or

(2) Value of the producer's eligible feed loss, increased feed costs, or forage or grazing loss as determined by FSA for that year.

(d) The actual payment to the producer will be the amount provided for in paragraph (c) of this section subject to the adjustments and limits provided for in this section or in this part.

#### **§ 760.1107 Appeals.**

The appeal regulations in parts 11 and 780 of this title apply to determinations made under this subpart.

#### **§ 760.1108 Offsets, assignments, and debt settlement.**

(a) Any payment to any participant will be made without regard to any claim or lien against the commodity, or proceeds, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings in parts 792 and 1403 of this title apply to payments made under this subpart.

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

#### **§ 760.1109 Recordkeeping and inspections.**

Participants receiving payments under this subpart or any other person who furnishes information for the purposes of enabling the participant to receive a payment under this subpart must maintain any books, records, and accounts supporting that information for a minimum of 3 years following the end of the year during which the application for payment was filed. Participants receiving payments or any other person who furnishes the information to FSA must allow authorized representatives of USDA and the General Accounting Office, during regular business hours, and to enter upon, inspect, examine, and make copies of the books or records,

and to inspect and verify all applicable livestock and acreage in which the participant has an interest for the purpose of confirming the accuracy of the information provided by or for the participant.

#### **§ 760.1110 Refunds; joint and several liability.**

In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under this subpart, and if any refund of a payment to FSA will otherwise become due in connection with this subpart, all payments made in regard to such matter must be refunded to FSA together with interest and late-payment charges as provided for in part 792 of this title, provided that interest will run from the date of the disbursement of the refund to the producer.

### **Subpart M—2005–2007 Catfish Grant Program**

#### **§ 760.1200 Administration.**

FSA will administer a limited 2005–2007 CGP to provide assistance to catfish producers in eligible counties that suffered catfish feed and related losses between January 1, 2005, and February 28, 2007, that is after January 1, 2005, and before February 28, 2007. Under the 2005–2007 CGP, FSA will provide grants to State governments in those States that have catfish producers that are located in eligible counties and that have agreed to participate in the 2005–2007 CGP. The amount of each grant will be based on the total value of catfish feed and related losses suffered in eligible counties in the subject state. Each State must submit a work plan providing a summary of how the State will implement the 2005–2007 CGP.

#### **§ 760.1201 Application for payment.**

Application procedures for 2005–2007 CGP will be as determined by the State governments.

#### **§ 760.1202 Eligible producers.**

(a) To be considered an eligible catfish producer, a participant must:

(1) Raise catfish in a controlled environment and be physically located in an eligible county on the beginning date of the disaster period;

(2) Maintain the catfish for commercial use as part of a farming operation;

(3) Have a risk in production of such catfish; and

(4) Have suffered one of the following types of losses relating to catfish feed as a direct result of the county's disaster event that occurred in that year:

(i) Physical loss of feed that was damaged or destroyed,

(ii) Cost to the extent allowed by FSA, associated with lost feeding days, or

(iii) Cost associated with increased feed prices.

(b) [Reserved]

#### **§ 760.1203 Payment calculation.**

(a) Producers must be paid for feed losses of higher costs only for one of the three years, 2005, 2006, or 2007, and the loss must be for eligible catfish feed losses in an eligible county, as determined pursuant to subpart K of this part. Further, the feed loss or higher costs must be caused by the disaster that caused the county to qualify as an eligible county. The loss, moreover, to qualify for payment, must have occurred during the allowable time period provided in this part, namely the period beginning on January 2, 2005 and ending February 27, 2007. The producer must pick the year of the benefits sought.

(b) Subject to all adjustments and limits provided for in this part the amount of assistance provided to each participant from the State will be equal to the smaller of:

(1) Depending on the year chosen by the producer, the value of the participant's 2005, 2006, or 2007 catfish feed and related losses as a direct result of an eligible disaster event, as determined by the State or

(2) Result of multiplying:

(i) Total tons of catfish feed purchased by the participant in depending on the year chosen by the producer 2005 (entire year), 2006 (entire year), or 2007 (through February 27, 2007, only), times,

(ii) Catfish feed payment rate for 2005, 2006, or 2007, as applicable, as set by FSA.

(c) The catfish feed rate represents 61 percent of the normal cost of a ton of feed for a year divided by six to reflect the normal feeding price for catfish.

Signed in Washington, DC, December 18, 2007.

**Teresa C. Lasseter,**

*Administrator, Farm Service Agency.*

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