



Billing Code 3410-05-P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1400 and 1416

RIN: 0560-AH69

Supplemental Agricultural Disaster Assistance Programs, Payment Limitation and Payment Eligibility

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule implements changes to the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP); Livestock Indemnity Program (LIP); and Tree Assistance Program (TAP) as required by the Bipartisan Budget Act of 2018 (BBA), including changes to the payment limitations, the funding limitation for ELAP, and losses for injured livestock sold at a reduced price under LIP. An application period for ELAP, LIP, TAP and the Livestock Forage Disaster Program (LFP) is included in this rule to allow additional time for producers to apply. Additionally, FSA implements changes to TAP for 2017 losses to pecan trees as specified in the Consolidated Appropriations Act, 2018. This rule also includes several clarifying amendments and corrections to the regulations for the programs.

DATES: *Effective date:* **[Insert date of publication in the FEDERAL REGISTER].**

Deadline for reopened 2017 and 2018 application period: **[Insert date 60 days from publication in Federal Register]**

FOR FURTHER INFORMATION CONTACT: Lisa Berry; (202) 720–7641.

Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

The disaster assistance programs, payment limits, and payment eligibility provisions in this rule are Commodity Credit Corporation (CCC) programs and provisions; the Farm Service Agency (FSA) administers the programs and provisions for CCC. Specific requirements for supplemental agricultural disaster assistance programs will be implemented as authorized by BBA (Pub. L. 115-123), which amended the Agricultural Act of 2014 (the 2014 Farm Bill, Pub. L. 113–79), and the Consolidated Appropriations Act, 2018 (Pub. L. 115-141), which expanded TAP eligibility for producers with losses to pecan trees during the 2017 calendar year. FSA is also making minor clarifying amendments and corrections to the regulations in 7 CFR part 1416.

Payment Limitation and Extension of Application Periods

The payment limitations for supplemental disaster programs are being changed in §§ 1400.1 and 1416.6, retroactive to the 2017 program year. Under the previous payment limitation established by the 2014 Farm Bill, the total amount of payments that a person or legal entity could receive under LIP, LFP, and ELAP combined, directly or indirectly, could not exceed \$125,000 in any program year, and TAP had a separate payment limit of \$125,000 per person or legal entity for any crop year. As authorized by BBA, and effective with the 2017 program year, the payment limits for LIP and TAP are being removed. Effective with the 2017 program year, for LFP and ELAP, the total amount of

payments that a person or legal entity can receive, directly or indirectly, in any crop year cannot exceed \$125,000 under the two programs combined.

Producers may have chosen not to apply for losses under ELAP, LFP, LIP, and TAP for which the 2017 or 2018 deadlines have passed if they had reached the payment limitation under the previous rules. Therefore, the 2017 application periods for these four programs are being re-opened until **[Insert 60 days from publication in Federal Register]**, and the 2018 sign-up periods are extended for any 2018 applications that would have had a sign-up deadline earlier than **[Insert 60 days from publication in Federal Register]**. Producers who previously submitted an application and received a decision that was administratively final are not eligible to reapply during the extended sign-up period, unless their application was denied only because their application or notice of loss, if required, was filed after the applicable deadline. Additionally, producers that previously applied for disaster assistance and earned payments up to the applicable payment limit under the prior payment limit for such disaster program or programs will automatically have their applications reprocessed to determine if they are now entitled to receive additional payments under the new payment limit, in which case the additional payment will automatically issue to such producer. Benefits for lower threshold mortality pecan tree losses for eligible orchardists and nursery tree growers under TAP, made available under the 2018 Consolidated Appropriations Act provisions are limited to losses on acres that were previously reported on the FSA-578, Report of Acreage. Nothing in this rule or the 2018 Consolidated Appropriations Act opened an opportunity for persons and legal entities to now file 2017 pecan acreage reports. Persons or legal entities are not required to re-apply for assistance under the programs in order for new

payment limitation provisions to take effect. FSA will apply the new payment limitation and payment eligibility provisions to all applications for each program year regardless of time of filing.

Supplemental Disaster General Provisions

This rule removes duplicative provisions at § 1416.6(d) that provided that producers who are eligible to receive benefits for the same loss under both 7 CFR part 1416 and any other program, including indemnities under the Federal Crop Insurance Act (7 U.S.C. 1501-1524), could not receive benefits under both and had to elect whether to receive benefits under part 1416 or the other program. There is, however, a similar statutory provision that remains in effect under the Noninsured Crop Disaster Assistance Program (NAP) that precludes a producer from receiving assistance under NAP and assistance for the same loss under any other program – including TAP, LIP, ELAP and LFP – administered by the Secretary, subject to certain exceptions. In addition, the rule clarifies provisions at § 1416.6(c) that allows the Deputy Secretary to take action to avoid the duplication of benefits between these programs and other programs to prevent a person or legal entity from being paid the total value of their loss.

The provisions related to direct attribution and adjust gross income limitations are removed from § 1416.6(f) because those provisions are also included in 7 CFR part 1400, which applies to the programs in part 1416; therefore, repeating those provisions in § 1416.6 is unnecessary. Application of direct attribution and adjusted gross income limits provisions at 7 CFR § 1400 are not affected by this rule.

The provisions related to eligible producers in § 1416.3; misrepresentation in § 1416.7; offsets, assignments, and debt settlement in § 1416.9; and miscellaneous

provisions in § 1416.14 are clarified. These changes are only intended to make the regulation easier to understand and do not affect the administration of the programs. The provisions related to deceased individuals and dissolved entities in § 1416.13 are removed, and the provisions in 7 CFR part 707, Payments Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent, will apply to the programs in part 1416 to be consistent with how such payments are treated under other FSA programs.

Specific provisions for ELAP

Effective with the 2017 program year, BBA removes the annual funding limitation for ELAP of \$20 million per program year; this rule implements this change and removes provisions regarding availability of funds and application of a national payment factor in § 1416.108. However, as all program payments are generally subject to availability of funds under Federal law, § 1416.2 has been amended to specify the actions FSA will take in response to changes in availability or incidence.

In § 1416.102, the definitions of “adult beefalo bull,” “adult beefalo cow,” “adult buffalo or bison bull,” “adult buffalo or bison cow,” “blizzard,” “grazing animals,” “newborn livestock,” “non-adult beefalo,” and “non-adult buffalo or bison,” are being added. This rule clarifies the definitions of “commercial use,” “eligible adverse weather,” “livestock owner,” “non-adult beef cattle,” and “normal grazing period”. This rule removes the definitions of “adult buffalo and beefalo bull,” “adult buffalo and beefalo cow”, and “non-adult buffalo or beefalo” because this rule is changing the categories and different terms are being used. This rule removes the definition of “Deputy Administrator or DAFP” because these definitions are now included at 7 CFR part 718, which applies to the programs in part 1416.

In § 1416.103, this rule clarifies that eligible losses must have been apparent during a program year to be an eligible loss in that year. In § 1416.104(a)(1), FSA specifies that to be eligible for losses relating to livestock grazing and feed, transporting water, or gathering livestock to treat for cattle fever, the livestock must be grazing animals, which is consistent with the intent of the program. Poultry and swine are removed from the listing of livestock types eligible for grazing and feed losses and losses from transporting water in § 1416.104(b) to be consistent with the amended requirement that eligible livestock be grazing animals. Poultry, and swine were added to the livestock types ineligible for those categories of assistance in § 1416.104(c).

The provisions related to eligible death losses are amended to correct livestock types for beefalo and bison in § 1416.104(d) and § 1416.104(b), add a separate livestock type for “chickens, pullets, and Cornish hens (small size),” and clarify two previously included poultry categories at § 1416.104(d) and (e). The rule clarifies when eligible livestock must have died and adds a separate provision for newborn livestock, which must have died within 7 calendar days from the ending date of the eligible loss condition. It also clarifies the requirement that livestock be produced or maintained for commercial use or for a commercial operation for producing livestock products, consistent with similar changes in § 1416.104(a)(1) and (c)(9).

This rule also clarifies provisions regarding length of time of ownership in § 1416.105 and updates applicable program years and the deadline in §§ 1416.106 and 1416.107, including dates for the extension of the 2017 application period.

Specific Provisions for LFP

This rule amends the definitions in § 1416.202 for beefalo, buffalo, and bison to be consistent with changes made to ELAP and LIP provisions and makes technical corrections to the definition of “Federal Agency.” This rule clarifies the LFP provisions related to contract growers by removing provisions from the definition of covered livestock and adding a separate definition of “contract grower” in § 1416.202 and clarifying provisions in § 1416.203(a). This rule clarifies the provisions related to grazing animals by adding a definition of “grazing animals” and amending the definition of “normal grazing period” to clarify that it is the time period when grazing animals receive daily nutrients and satisfy net energy requirements without supplemental feed. In § 1416.204, the section is amended to specify that covered livestock must be grazing animals and do not include poultry and swine, consistent with similar changes under ELAP. The requirement that eligible livestock must have been produced or maintained for commercial use or for producing livestock products in § 1416.204 is clarified, and categories for beefalo, bison, and buffalo are amended to be consistent with the clarifications for ELAP and LIP.

This rule updates the applicable program years and deadlines in § 1416.206 and makes technical corrections in § 1416.202 to the definition of “Federal Agency.” It also makes changes in § 1416.205, to specify that eligible grazing losses include losses occurring on land planted to annual planted ryegrass and annual planted crabgrass, and in § 1416.207 to correct paragraph references and numbering.

Specific Provisions for LIP

In addition to removing the payment limitation for LIP benefits, this rule adds provisions in § 1416.301 to provide LIP benefits for the sale of animals at a reduced price if the sale occurred due to injury that was a direct result of an eligible adverse weather event or due to an attack by an animal reintroduced into the wild by the Federal Government or protected by Federal law, including wolves or avian predators, as authorized by the BBA. It also amends provisions throughout part 1416 to include conforming language regarding the sale of animals at a reduced price where applicable, and amends § 1416.306(e) to specify that payments for sales of injured animals at a reduced price will be calculated by multiplying the national payment rate for each livestock category by the number of eligible livestock sold at a reduced price, minus the amount the producer received for the livestock. If the reduced sale price of the livestock is greater than the national payment rate, the producer will not receive a payment for that livestock.

The definitions in § 1416.302 for beefalo, buffalo, and bison are amended to be consistent with changes made to ELAP and LFP. This rule clarifies the existing definitions of “Commercial use,” “Eligible adverse weather event,” and “Winter storm.” To clarify existing regulations, this rule adds definitions of “acceptable animal husbandry,” “blizzard,” “eligible attack,” “eligible disease,” “eligible loss condition,” “livestock unit,” and “newborn livestock.” This rule removes definitions of “CCC,” “Deputy Administrator,” “Secretary,” “State committee, State office, county committee, or county office” and “United States” because these definitions are included at 7 CFR part 718, which applies to the programs in part 1416.

In § 1416.303, the eligibility of livestock owners and contract growers is clarified. This rule adds the provision at § 1416.303(c) to specify that a livestock owner's interest must be summarized by livestock unit for a county when determining payment eligibility. It amends § 1416.304 to clarify that ostriches are included as eligible livestock. It amends the time period in § 1416.304(c) during which an animal must have died due to an eligible adverse weather event or attack, from 60 days to 30 days, and within 7 days for newborn animals. The provisions in § 1416.304 regarding commercial use and categories for beefalo, buffalo, bison, and poultry are clarified. This rule updates applicable program years and notice of loss and application requirements in § 1416.305, including changes to extend the 2017 application period, to change the deadline for filing an application for payment and livestock inventory reports to 60 calendar days after the end of the calendar year, and to allow a licensed veterinarian to provide a certification of livestock deaths due to disease in cases where reliable beginning inventory data is available and the veterinarian personally observed the animals, had knowledge of how the deaths due to disease were caused or exacerbated by an eligible adverse weather event and were not avoidable or preventable by using good animal husbandry and management practices.

Specific Provisions for TAP

In addition to removing the TAP payment limitation of \$125,000 per year, BBA required increases in the number of acres for which a producer can receive payment from 500 to 1,000 acres per year, which is being implemented by this final rule in § 1416.406(j). Growers who previously received TAP benefits for the 2017 or 2018 program years that were limited to only 500 acres may receive benefits on additional

acres, up to 1,000 acres. If those growers already filed applications for their entire stand and received an administrative decision for that stand, there is no need to re-file those applications because the extent of eligibility decisions were all based on the entire stand. To the extent that payments were limited merely because the acreage limitation was reached, the previously limited payments will automatically issue without any action required by the participant.

The provisions of the Consolidated Appropriations Act of 2018 are being implemented to expand coverage under TAP by providing \$15 million for 2017 pecan tree losses for growers who suffered a pecan stand mortality loss that exceeds 7.5 percent (rather than a mortality loss that exceeds 15 percent) due to an eligible natural disaster. The provisions only apply to producers with mortality losses that exceed 7.5 percent. Pecan growers who had more than a 15 percent mortality loss are already eligible under regular 2017 TAP provisions and are not affected by this change. Accordingly, this rule only changes the eligibility provisions to allow pecan growers with lower stand mortality losses that exceed 7.5 percent to be eligible; it does not change the payment calculation for TAP benefits. If TAP applications for these losses exceed the available \$15 million, FSA may factor payments. Pecan growers who suffered eligible 2017 losses can apply for these benefits through **[Insert 60 days from publication in Federal Register]**.

TAP provisions are revised to make technical corrections and clarifications in the rule. The 2014 Farm Bill established a qualifying loss threshold of greater than 15 percent mortality; a person or legal entity who is otherwise eligible for payment qualifies for TAP only if the tree, bush, or vine mortality of the eligible orchardist or nursery tree grower, as a result of damaging weather or related condition, exceeds 15 percent

(adjusted for normal mortality). Growers may receive payment for damage losses in excess of 15 percent (adjusted for normal damage) only if they meet the qualifying loss threshold of 15 percent mortality. This rule amends §§ 1416.403, 1416.404, and 1416.406 to correct and clarify the qualifying mortality loss threshold. Growers who only sustain damage, and no mortality in excess of the requisite 15 percent loss threshold for mortality, adjusted for normal mortality, are not eligible. In § 1416.406(d)(3), this rule also clarifies that if someone other than the orchardist or nursery tree grower bore or incurred costs or expenses, or the orchardist or nursery tree grower was reimbursed for expenses under another program, those expenses are not eligible for cost share under TAP.

In addition, the terms of “individual stand” and “eligible stand” have been changed to “stand” in §§ 1416.403 and 1416.406(h). This change was made for clarity and consistency to use the defined term “stand” because “individual stand” and “eligible stand” are not defined in the rule. The definitions in §§ 1416.402 of “county committee,” “Deputy Administrator,” and “State committee” are being removed because those definitions are included in 7 CFR part 718, which applies to the programs in part 1416.

Notice and Comment

In general, the Administrative Procedure Act (5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the Federal Register and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. The regulations to implement the provisions of Title I and the administration of Title I of the

2014 Farm Bill are exempt from the notice and comment provisions of 5 U.S.C. 553 and the Paperwork Reduction Act (44 U.S.C. chapter 35), as specified in section 1601(c)(2) of the 2014 Farm Bill.

Executive Orders 12866, 13563, 13771 and 13777

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13777, “Enforcing the Regulatory Reform Agenda,” established a federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, “Regulatory Planning and Review,” and therefore, OMB has not reviewed this rule.

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” requires that in order to manage the private costs required to comply with Federal regulations that for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. This rule does not rise to the level required to comply with Executive Order 13771; however, the cost savings will be accounted for through the USDA regulatory reform initiative and will be banked to be used as needed for future offsetting costs.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553). This rule is not subject to the Regulatory Flexibility Act since FSA is not required to publish a notice of proposed rulemaking for this rule.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and FSA regulations for compliance with NEPA (7 CFR part 799). This rule change is a technical amendment and is solely administrative in nature. Accordingly, this action is covered by the Categorical Exclusion, found at 7 CFR part 799.31(b)(3)(i), that applies to the issuance of minor technical corrections to regulations. No Extraordinary Circumstances (§799.33) exist. As such, the implementation of the technical corrections provided in this rule does not constitute a major Federal action that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory action and this rule serves as documentation of the programmatic environmental compliance decision for this federal action.

Executive Order 12372

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

Executive Order 12988

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

Executive Order 13132

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

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” The Executive Order 13175 requires to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal government and Indian tribes.

FSA has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that required tribal consultation under Executive Order 13175. If a tribe requests consultation, FSA will work with USDA Office of Tribal Relations to ensure meaningful consultation is provided.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates as defined by Title II of UMRA for State, local, or Tribal governments

or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

SBREFA

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

Federal Assistance Programs

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

10.088—Livestock Indemnity Program

10.089—Livestock Forage Disaster Program

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

10.092—Tree Assistance Program

Paperwork Reduction Act

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

E-Government Act Compliance

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

List of Subjects

7 CFR Part 1400

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

7 CFR Part 1416

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

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

PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY

1. The authority citation for part 1400 is revised to read as follows:

Authority: 7 U.S.C. 1308, 1308-1, 1308-2, 1308-3, 1308-3a, 1308-4, and 1308-5; and Title I, Pub. L. 115-123.

2. In § 1400.1, revise the table in paragraph (f) to read as follow:

§ 1400.1 Applicability.

(f) * * *

Payment or Benefit	Limitation per Person or Legal Entity, per Crop, Program, or Fiscal Year
(1) Price Loss Coverage, Agricultural Risk Coverage, Loan Deficiency Program, and Marketing Loan Gain payments (other than Peanuts).....	\$125,000
(2) Price Loss Coverage, Agricultural Risk Coverage, Loan Deficiency Program, and Marketing Loan Gain payments for Peanuts	125,000
(3) Transition Assistance for Producers of Upland Cotton ¹	40,000
(4) CRP annual rental payments ²	50,000
(5) NAP payments.....	125,000
(6) TAP ³	125,000
(7) LIP, LFP, and ELAP ⁴	125,000
(8) CSP ⁵	200,000
(9) EQIP ⁶	450,000
(10) AMA program ⁷	50,000

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

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

³A separate limitation applies to TAP payments for 2011 through 2016 program years. Lastly, there is no program payment limitation for either LIP or TAP in 2017 and subsequent program years.

⁴Total payments received through LIP, LFP, and ELAP may not exceed \$125,000 for each of the 2011 through 2016 program years. For the 2017 and subsequent program years, LIP is no longer included in the combined program limitation.

⁵The \$200,000 limit is the total limit under all CSP contracts entered into subsequent to enactment of the 2014 Farm Bill during fiscal years 2014 through 2018.

⁶The \$450,000 limit is the total limit under all EQIP contracts entered into subsequent to enactment of the 2014 Farm Bill during fiscal years 2014 through 2018.

⁷The \$50,000 limit is the total limit that a participant may receive under the AMA program in any fiscal year.

PART 1416—EMERGENCY AGRICULTURAL DISASTER ASSISTANCE PROGRAMS

3. The authority citation for part 1416 is revised to read as follows:

Authority: Title I, Pub. L. 113-79, 128 Stat. 649; Title I, Pub. L. 115-123; Title VII, Pub. L. 115-141.

Subpart A – General Provisions for Supplemental Agricultural Disaster Assistance Programs

4. In § 1416.2, add paragraph (f) to read as follows:

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

* * * * *

(f) Payments issued under this part are subject to the availability of funds under Federal law. Within whatever funding limitation that may exist under law, the only funds that will be considered available to pay eligible losses will be that amount approved by the Secretary. If funds are limited, for a particular program year payments may be delayed until the time for applying for the payment for that program year has passed. In the event that, within the limits of the funding made available by the Secretary, approval of eligible applications would result in expenditures in excess of the amount available, FSA will prorate the available funds by a national factor to reduce the total expected payments to the amount made available by the Secretary. FSA will make payments based on the factor for the national rate determined by FSA. FSA will prorate the payments in such manner as it determines necessary and appropriate and reasonable. Applications for payment that are unpaid or prorated for a program year for any reason will not be carried forward for payment under other funds for later years or otherwise, but will be considered, as to any unpaid amount, void and nonpayable.

5. In § 1416.3, revise paragraphs (a), (b) introductory text, and (b)(4) to read as follows:

§ 1416.3 Eligible Producer.

(a) *Eligible producer* means, in addition to other requirements as may apply, an individual or legal entity who is an owner, operator, landlord, tenant, or sharecropper, who shares in the risk of producing a crop or livestock and who is entitled to share in the crop or livestock available for marketing from the farm, or would have shared had the crop or livestock been produced, and who also meets the requirements of paragraph (b) of this section. The term eligible producer can include a livestock owner or contract grower who satisfies other requirements of this part.

(b) An individual or legal entity seeking to be an eligible producer under this part must submit a farm operating plan in accordance with part 1400 of this chapter and be a:

* * * * *

(4) Corporation, limited liability company, or other organizational structure organized under State law.

6. Revise § 1416.6 to read as follows:

§ 1416.6 Payment eligibility and limitation.

(a) For 2017 and subsequent program years, a person or legal entity, excluding a joint venture or general partnership, as determined in part 1400 of this chapter, must not receive ELAP and LFP payments combined, directly or indirectly, in excess of \$125,000 per program year.

(b) The Deputy Administrator may take such actions as needed to avoid a duplication of benefits under the programs provided for in this part, or duplication of

benefits received in other programs, and may impose such cross-program payment limitations as may be consistent with the intent of this part in order to help prevent a person or legal entity being paid more than the total value of their loss.

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

(d) The direct attribution provisions in part 1400 of this chapter apply to ELAP, LFP, LIP, and TAP.

7. Revise § 1416.7 to read as follows:

§ 1416.7 Misrepresentation.

(a) A person or legal entity who is determined to have deliberately misrepresented any fact affecting a program determination made in accordance with this part, or any other part that is applicable to this part, to receive benefits for which that person or legal entity would not otherwise be entitled, is ineligible for program payments under this part and must refund all such payments received, plus interest as determined in accordance with part 1403 of this chapter. The person or legal entity is ineligible and will be denied program benefits under this part for the immediately subsequent period of at least 2 crop years, and up to 5 crop years. Interest will run from the date of the original disbursement by CCC.

(b) For each year of ineligibility determined according to paragraph (a) of this section, a person or legal entity will refund to CCC all program payments, in accordance with §1416.11, received by such person or legal entity with respect to all applications under this part, as may be applicable, if the person or legal entity is determined to have knowingly misrepresented any fact affecting a program determination.

§ 1416.9 [Amended]

8. Amend § 1416.9 as follows:

a. In paragraph (a), remove the words “to any participant”, and

b. In paragraph (b), remove the words “Any participant entitled to any payment” and add the words “A participant” in their place, and add the words “under this part” immediately before the words “in accordance”.

9. Revise § 1416.13 to read as follows:

§ 1416.13 Deceased individuals or dissolved entities.

(a) The provisions of part 707 of this chapter apply to the programs of this part.

(b) [Reserved].

§ 1416.14 [Amended]

10. In § 1416.14, in paragraph (a), remove “to receive benefits” and add “of payment eligibility” in its place, and remove “from receiving benefits” and add the word “from receiving payments” in its place.

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

11. Amend § 1416.102 as follows:

- a. Remove the definitions of “Adult buffalo and beefalo bull” and “Adult buffalo and beefalo cow”;
- b. Add definitions for “Adult beefalo bull”, “Adult beefalo cow”, “Adult buffalo or bison bull”, “Adult buffalo or bison cow”, and “Blizzard” in alphabetical order;
- c. In the definition of “Commercial use”, remove “by the eligible producer”;
- d. Remove the definition of “Deputy Administrator or DAFP”;
- e. In the definition of “eligible adverse weather”, remove “ extreme or” and add “extreme and” in its place;
- f. Add a definition for “Grazing animals” in alphabetical order;
- g. Revise the definition of “Livestock owner”;
- h. Add a definition for “Newborn livestock” in alphabetical order;
- i. In the definition of “Non-adult beef cattle”, remove “at the time they died” and add “on or before the beginning date of the eligible adverse weather or eligible loss condition that caused death” in its place;
- j. Remove the definition of “Non-adult buffalo or beefalo”;
- k. Add definitions for “Non-adult beefalo” and “Non-adult buffalo or bison” in alphabetical order;
- l. In the definition of “Non-adult dairy cattle”, remove “at the time they died” and add “on or before the beginning date of the eligible adverse weather or eligible loss condition that caused death” in its place; and
- m. Revise the definition of “Normal grazing period”.

The revisions and additions read as follows:

§ 1416.102 Definitions.

* * * * *

Adult beefalo bull means a male hybrid of beef and bison that was used for breeding purposes and was at least 2 years old before the beginning date of the eligible adverse weather or eligible loss condition.

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

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

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

* * * * *

Blizzard means, as defined by the National Weather Service, a storm which contains large amounts of snow or blowing snow with winds in excess of 35 miles per hour and visibility of less than one-fourth of a mile for an extended period of time.

* * * * *

Grazing animals mean those species of livestock that, from a nutritional and physiological perspective, satisfy more than 50 percent of their net energy requirement through the consumption of growing forage grasses and legumes. Species of livestock for which more than 50 percent of their net energy requirements are not recommended to be met from consumption of forage grasses and legumes, such as poultry and swine, are excluded regardless of whether those species are grazing or are present on grazing land or pastureland.

* * * * *

Livestock owner means one having legal ownership of the livestock for which benefits are being requested on the day of the eligible adverse weather or eligible loss condition.

* * * * *

Newborn livestock means livestock that are within 10 calendar days of the date of birth.

* * * * *

Non-adult beefalo means a hybrid of beef and bison that does not meet the definition of adult beefalo cow or bull. Non-adult beefalo are further delineated by weight categories of either less than 400 pounds or 400 pounds or more on or before the beginning date of the eligible adverse weather or eligible loss condition that caused death. For a loss other than death, means an animal of those breeds that is less than 2 years old that weighed 500 pounds or more on or before the beginning date of the eligible adverse weather or eligible loss condition.

Non-adult buffalo or bison means an animal of those breeds that does not meet the definition of adult buffalo or adult bison cow or bull. Non-adult buffalo or bison are further delineated by weight categories of either less than 400 pounds or 400 pounds or more on or before the beginning date of the eligible adverse weather or eligible loss condition that caused death. For a loss other than death, means an animal of those breeds that is less than 2 years old that weighed 500 pounds or more on or before the beginning date of the eligible adverse weather or eligible loss condition.

* * * * *

Normal grazing period means, as determined by FSA, with respect to a specific type of grazing land or pastureland in the county, the period during the calendar year when grazing animals receive daily nutrients and satisfy net energy requirements without supplemental feed.

* * * * *

12. In § 1416.103, revise paragraphs (a) and (c) to read as follows:

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

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

* * * * *

(c) To be an eligible loss in a program year, the loss must have been apparent to the person or legal entity providing the notice and to FSA in the program year for which payment is being requested.

* * * * *

13. In § 1416.104, revise paragraphs (a) through (f) to read as follows:

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

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

(1) Be grazing animals such as alpacas, adult or non-adult dairy cattle, adult or non-adult beef cattle, adult or non-adult beefalo, adult or non-adult buffalo or bison, deer, elk, emus, equine, goats, llamas, reindeer, or sheep;

(2) Except for livestock losses resulting from gathering livestock to treat cattle tick fever, be livestock that would normally have been grazing the eligible grazing land or pastureland during the normal grazing period for the specific type of grazing land or pastureland for the county where the eligible adverse weather or eligible loss condition occurred;

(3) Be livestock that is owned, cash-leased, purchased, under contract for purchase, or been raised by a contract grower or an eligible livestock owner, for not less than 60 days before the beginning date of the eligible adverse weather or eligible loss condition;

(4) Be livestock produced or maintained for commercial use or be livestock that is produced or maintained for producing livestock products for commercial use, such as milk from dairy, as part of the contract grower's or livestock owner's farming operation on the beginning date of the eligible adverse weather or eligible loss condition;

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

(b) The eligible livestock types for grazing and feed losses, losses resulting from transporting water, and gathering livestock to treat for cattle tick fever, are:

- (1) Adult beef cows or bulls,
- (2) Adult beefalo cows or bulls,
- (3) Adult buffalo or bison cows or bulls,
- (4) Adult dairy cows or bulls,
- (5) Alpacas,
- (6) Deer,
- (7) Elk,
- (8) Emus,
- (9) Equine,
- (10) Goats,
- (11) Llamas,
- (12) Non-adult beef cattle,
- (13) Non-adult beefalo,
- (14) Non-adult buffalo or bison,
- (15) Non-adult dairy cattle,
- (16) Reindeer, and
- (17) Sheep.

(c) Ineligible livestock for grazing and feed losses, and losses resulting from transporting water, include, but are not limited to:

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

(2) Animals that are not grazing animals;

(3) Yaks;

(4) Ostriches;

(5) Poultry;

(6) Swine;

(7) All beef and dairy cattle, and buffalo or bison and beefalo that weighed less than 500 pounds on the beginning date of the eligible adverse weather or eligible loss condition;

(8) Any wild free roaming livestock, including horses and deer; and

(9) Livestock that are not produced for commercial use or those that are not produced or maintained in a commercial operation for livestock products, such as milk from dairy, including, but not limited to, livestock produced or maintained exclusively for recreational purposes, such as:

(i) Roping,

(ii) Hunting,

(iii) Show,

(iv) Pleasure,

(v) Use as pets, or

(vi) Consumption by owner.

(d) For death losses, the livestock must meet all of the following conditions:

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

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

(i) Adult beef bulls;

(ii) Adult beef cows;

(iii) Adult beefalo bulls;

(iv) Adult beefalo cows;

(v) Adult buffalo or bison bulls;

(vi) Adult buffalo or bison cows;

(vii) Adult dairy bulls;

(viii) Adult dairy cows;

(ix) Alpacas;

(x) Chickens, broilers, pullets (regular size);

(xi) Chickens, chicks;

(xii) Chickens, layers;

(xiii) Chickens, pullets or Cornish hens (small size);

(xiv) Deer;

(xv) Ducks;

- (xvi) Ducks, ducklings;
- (xvii) Elk;
- (xviii) Emus;
- (xix) Equine;
- (xx) Geese, goose;
- (xi) Geese, gosling;
- (xii) Goats, bucks;
- (xxiii) Goats, nannies;
- (xxiv) Goats, kids;
- (xxv) Llamas;
- (xxvi) Non-adult beef cattle;
- (xxvii) Non-adult beefalo;
- (xxviii) Non-adult buffalo or bison;
- (xxix) Non-adult dairy cattle;
- (xxx) Reindeer;
- (xxxi) Sheep, ewes;
- (xxxii) Sheep, lambs;
- (xxxiii) Sheep, rams;
- (xxxiv) Swine, feeder pigs under 50 pounds;
- (xxxv) Swine, sows, boars, barrows, gilts 50 to 150 pounds;
- (xxxvi) Swine, sows, boars, barrows, gilts over 150 pounds;
- (xxxvii) Turkeys, poult; and
- (xxxviii) Turkeys, toms, fryers, and roasters.

(e) Under ELAP, “contract growers” only includes producers of livestock, other than feedlots, whose income is dependent on the survival of the livestock and any of the following: actual weight gain of the livestock, number of offspring produced from the livestock, or quantity of products (eggs, milk, etc.) produced from the livestock. For death losses for contract growers to be eligible, the livestock must meet all of the following conditions:

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

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

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

(f) For livestock death losses in the 2017 and subsequent program years, livestock must meet all of the following conditions:

- (1) They must have died:

- (i) On or after the beginning date of the eligible loss condition; and
 - (ii) Within 30 calendar days from the ending date of the eligible loss condition, or for newborn livestock within 7 calendar days from the ending date of the eligible loss condition; and
 - (iii) As a direct result of an eligible loss condition.
- (2) Been produced for commercial use or maintained in a commercial operation for producing livestock products, such as milk from dairy or eggs from poultry, on the day of the eligible adverse weather or eligible loss condition that caused the livestock to die; and
- (3) Before dying, not have been produced or maintained for reasons other than commercial use as part of a farming operation, such non-eligible uses being understood to include, but not be limited to, any uses of wild free roaming animals or use of the animals for recreational purposes, such as pleasure, hunting, roping, pets, or for show.

* * * * *

§ 1416.105 [Amended]

14. In § 1416.105, in paragraphs (a)(1) and (b)(1), remove the words “during the 60 days prior to” and add the words “for not less than 60 days before” in their places.

§ 1416.106 [Amended]

15. Amend § 1416.106 as follows:

- a. In paragraph (b) introductory text, remove the first sentence, and remove “2015” and add “2017” in its place;
- b. In paragraph (e), remove “2015” and add “2017” in its place;
- c. Remove paragraph (f); and

d. Redesignate paragraph (g) as paragraph (f).

16. Revise § 1416.107 to read as follows:

§ 1416.107 Notice of loss and application period.

(a) Notices of loss and applications for payment that had been filed under the regulations in effect at the time of filing and which had been issued an administrative decision for either a 2017 or 2018 program year loss are not eligible for consideration under paragraphs (b) and (c) of this section, unless the decision was based only on failure to submit the notice of loss or application for payment by the prior applicable deadline.

(b) In addition to submitting an application for payment at the appropriate time, the participant that suffered eligible livestock, honeybee, or farm-raised fish losses that create or could create a claim for benefits must:

(1) For losses in the 2017 and subsequent program years, provide a notice of loss to FSA by the later of 30 calendar days of when the loss of livestock is first apparent or **[Insert date 60 days after publication in the FEDERAL REGISTER]**;

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

(c) In addition to the notices of loss required in paragraph (b) of this section, a participant must also submit a completed application for payment by the later of November 1 following the program year for which benefits are being requested or **[Insert date 60 days after publication in the FEDERAL REGISTER]**.

§ 1416.108 [Removed and Reserved]

17. Remove and reserve § 1416.108.

Subpart C – Livestock Forage Disaster Program

18. Amend § 1416.202 as follows:

a. Remove the definitions of “Adult buffalo and beefalo bull” and “Adult buffalo and beefalo cow”;

b. Add definitions for “Adult beefalo bull”, “Adult beefalo cow”, “Adult buffalo or bison bull”, “Adult buffalo or bison cow”, and “Contract grower” in alphabetical order;

c. In the definition of “Covered livestock”, remove the words and punctuation “for “contract growers”” from the third sentence and remove the last sentence;

d. In the definition of “Federal Agency”, add a comma after “U.S. Department of the Interior (DOI)” and remove the acronym “DOI” before the words “Bureau of Land Management”;

e. Add a definition for “Grazing animals” in alphabetical order;

f. Remove the definition of “Non-adult buffalo or beefalo”;

g. Add definitions for “Non-adult beefalo” and “Non-adult buffalo or bison” in alphabetical order; and

h. Revise the definition of “Normal grazing period”.

The additions and revision read as follows:

§ 1416.202 Definitions

* * * * *

Adult beefalo bull means a male hybrid of beef and bison that was used for breeding purposes and was at least 2 years old before the beginning date of the qualifying drought or fire.

Adult beefalo cow means a female hybrid of beef and bison that had delivered one or more offspring before the beginning date of the qualifying drought or fire. A first-time bred beefalo heifer is also considered an adult beefalo cow if it was pregnant by the beginning date of the qualifying drought or fire.

Adult buffalo or bison bull means a male animal of those breeds that was used for breeding purposes and was at least 2 years old before the beginning date of the qualifying drought or fire.

Adult buffalo or bison cow means a female animal of those breeds that had delivered one or more offspring before the beginning date of the qualifying drought or fire. A first-time bred buffalo or bison heifer is also considered an adult buffalo or bison cow if it was pregnant by the beginning date of the qualifying drought or fire.

* * * * *

Contract grower means a person or legal entity, other than a feedlot, that was engaged in a farming operation not as an owner of covered livestock but in a business whose income is dependent on the survival of the livestock and either the actual weight gain of the livestock or number of offspring produced from the livestock.

* * * * *

Grazing animals mean those species of livestock that, from a nutritional and physiological perspective, satisfy more than 50 percent of their net energy requirement through the consumption of growing forage grasses and legumes. Species of livestock for which more than 50 percent of their net energy requirements are not recommended to be met from consumption of forage grasses and legumes, such as poultry and swine, are excluded regardless of whether those species are present on grazing land or pastureland.

* * * * *

Non-adult beefalo means a hybrid of beef and bison that weighed 500 pounds or more on or before the beginning date of the qualifying drought or fire, but does not meet the definition of adult beefalo cow or bull.

Non-adult buffalo or bison means an animal of those breeds that weighed 500 pounds or more on or before the beginning date of beginning date of the qualifying drought or fire, but does not meet the definition of adult buffalo or bison cow or bull.

* * * * *

Normal grazing period means, as determined by FSA, with respect to a specific type of grazing land or pastureland in the county, the period during the calendar year when grazing animals receive daily nutrients and satisfy net energy requirements without supplemental feed.

* * * * *

19. In § 1416.203, revise the section heading and paragraph (a) introductory text to read as follows:

§ 1416.203 Eligibility.

(a) In addition to meeting all other requirements, to be eligible for benefits under this subpart, an individual or legal entity with an eligible producer interest in grazing land acreage who is either an owner or contract grower of grazing animals, must:

* * * * *

20. In § 1416.204, revise paragraphs (a)(1), (a)(4), (b), and (c)(2) through (6) and add paragraphs (c)(7) through (9) to read as follows:

§ 1416.204 Covered livestock.

(a) * * *

(1) Be grazing animals such as adult or non-adult beef cattle, adult or non-adult beefalo, adult or non-adult buffalo or bison, adult or non-adult dairy cattle, alpacas, deer, elk, emu, equine, goats, llamas, reindeer, or sheep;

* * * * *

(4) Been livestock produced or maintained for commercial use or be livestock that is produced and maintained for producing livestock products for commercial use, such as milk from dairy, as part of the contract grower's or livestock owner's farming operation on the beginning date of the qualifying drought or fire;

* * * * *

(b) The covered livestock categories are:

- (1) Adult beef cows or bulls,
- (2) Adult beefalo cows or bulls,
- (3) Adult buffalo or bison cows or bulls,
- (3) Adult dairy cows or bulls,
- (4) Alpacas,
- (5) Deer,
- (6) Elk,
- (7) Emu,
- (8) Equine,

- (9) Goats,
- (10) Llamas,
- (11) Non-adult beef cattle,
- (12) Non-adult beefalo,
- (13) Non-adult buffalo or bison,
- (14) Non-adult dairy cattle,
- (15) Reindeer, and
- (16) Sheep.

(c) * * *

(2) Animals that are not grazing animals;

(3) Yaks;

(4) Ostriches;

(5) Poultry;

(6) Swine;

(7) All beef and dairy cattle, beefalo, buffalo and bison that weighed less than 500 pounds on the beginning date of the qualifying drought or fire;

(8) Any wild free roaming livestock, including horses and deer; and

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

(i) Roping,

(ii) Hunting,

(iii) Show,

- (iv) Pleasure,
- (v) Use as pets, or
- (vi) Consumption by owner.

§ 1416.205 [Amended]

21. In the first § 1416.205, entitled “Eligible grazing losses,” in paragraph (a)(2), remove “sorghum or small grains,” and add “sorghum, small grains, annual planted ryegrass, or annual planted crabgrass,” in their place.

§ 1416.205 [Redesignated as § 1416.206]

22. Redesignate the second § 1416.205, entitled “Application for payment” as § 1416.206.

23. Amend newly redesignated § 1416.206 as follows:

- a. Redesignate paragraphs (a), (b), and (c) as (b), (c), and (d), respectively;
- b. Add new paragraph (a);
- c. Revise newly redesignated paragraphs (b)(1) and (2);
- d. In newly redesignated paragraph (c)(5)(ii)(B), add the word “and” at the end;
- e. Remove newly redesignated paragraph (c)(5)(iii); and
- f. Redesignate paragraph (c)(5)(iv) as (c)(5)(iii) and remove “calendar” and add “program” in its place.

The addition and revisions read as follows:

§ 1416.206 Application for payment.

(a) A completed application for payment that had been filed under the regulations that were in effect at the actual time of the filing of that application and which had been issued an administrative decision for either a 2017 or 2018 program year loss is not

eligible for consideration under paragraph (b) of this section, unless the decision was based only on failure to submit the application for payment by the prior applicable deadline.

(b) * * *

(1) For the 2017 program year, must submit a completed application for payment and required supporting documentation as specified in this part, including some supporting documentation such as an acreage report that may have been required at an earlier date as determined by FSA, to the administrative FSA county office by **[Insert date 60 days after publication in the FEDERAL REGISTER]**; or

(2) For the 2018 and subsequent program years, must submit a completed application for payment and required supporting documentation, including some supporting documentation such as an acreage report that may have been required at an earlier date, to the administrative FSA county office no later than 30 calendar days after the end of the calendar year in which the grazing loss occurred.

* * * * *

§ 1416.207 [Amended]

24. Amend § 1416.207 as follows:

a. In paragraph (a), remove the reference to “paragraphs (e) or (f)” and add the reference to “paragraphs (f) or (h)” in its place;

b. In paragraph (f) introductory text, remove the reference to “paragraph (g)” and add the reference to “paragraph (h)” in its place;

c. In paragraph (f)(1), remove the reference “paragraph (h)” and add the reference “paragraph (i)” in its place;

d. In paragraph (f)(2), remove the reference “paragraph (j)” and add the reference “paragraph (l)” in its place;

e. In paragraph (i)(2), remove “referred to in paragraph (h) of this section as” and add “of” in its place, and remove “under paragraph (h)” and add “under paragraph (j)” in its place;

f. In paragraph (i)(3), remove the reference “paragraph (i)” and add the reference “paragraph (k)” in its place;

g. In paragraph (l)(3), remove the reference “paragraph (i)” and add the reference “paragraph (k)” in its place;

h. In paragraph (m)(1) introductory text, remove the words and punctuation “, subject to paragraph (l)(2) of this section”; and

i. In paragraph (m)(3), remove the reference “§ 1416.208(i)” and add “paragraph (i) of this section” in its place.

Subpart D – Livestock Indemnity Program

25. Revise § 1416.301 to read as follows:

§ 1416.301 Applicability.

(a) This subpart establishes the terms and conditions under which the Livestock Indemnity Program (LIP) is administered under Title I of the 2014 Farm Bill (Pub. L. 113-79), as amended by the Bipartisan Budget Act of 2018 (Pub. L. 115-123).

(b) Eligible livestock owners and contract growers will be compensated in accordance with §1416.306 for eligible livestock deaths in excess of normal mortality, or livestock owners will be compensated for sales of injured livestock for a reduced price, if either the death or injury that results in sale at a reduced price occurred as a direct result

of an eligible cause of loss. The eligible cause of loss is one, as determined by FSA, that directly results in the death of livestock or injury and sale of livestock at a reduced price, despite the livestock owner's or contract grower's performance of expected and normal preventative or corrective measures and acceptable animal husbandry practices.

26. Amend § 1416.302 as follows:

- a. Add a definition for "Acceptable animal husbandry" in alphabetical order,
- b. In the definition of "Adult beef bull", remove the words "before it died";
- c. In the definition of "Adult beef cow", remove the words "before dying" and in the last sentence, after the word "died", add the words "or was sold at a reduced price";
- d. Remove the definitions of "Adult buffalo and beefalo bull" and "Adult buffalo and beefalo cow";
- e. Add definitions for "Adult beefalo bull", "Adult beefalo cow"; "Adult buffalo or bison bull"; and "Adult buffalo or bison cow" in alphabetical order;
- f. In the definition of "Adult dairy bull", remove the words "before it died";
- g. In the definition of "Adult dairy cow", remove the words "before dying" and in the last sentence, after the word "died", add the words "or was injured and sold at a reduced price";
- h. Add a definition for "Blizzard" in alphabetical order;
- i. Remove the definition of "CCC";
- j. In the definition of "Commercial use", remove the words "by the eligible producer";
- k. Remove the definition of "Deputy Administrator or DAFP";
- l. Revise the definition of "Eligible adverse weather event";

m. Add definitions for “Eligible attack”, “Eligible disease”, and “Eligible loss condition” in alphabetical order;

n. In the definition of “Livestock owner”, add the words “or were sold at a reduced sale price” at the end;

n. Add definitions for “Livestock unit” and “Newborn livestock” in alphabetical order;

o. In the definition of “Non-adult beef cattle”, add the words “or were sold at a reduced price” at the end;

o. Remove the definition of “Non-adult buffalo or beefalo”;

p. Add definitions for “Non-adult beefalo” and “Non-adult buffalo or bison” in alphabetical order;

q. In the definition of “Non-adult dairy cattle”, add the words “or were sold at a reduced price” at the end;

r. Remove the definitions of “Secretary” and “State committee, State office, county committee, or county office”;

s. Add a definition for “State office or county office” in alphabetical order;

t. Remove the definition of “United States”; and

u. Revise the definition of “Winter storm”.

The additions and revisions read as follows:

§ 1416.302 Definitions.

* * * * *

Acceptable animal husbandry means animals raised and cared for to produce offspring, meat, fiber, milk, eggs, or other products. Includes day-to-day care and

selective breeding and raising of livestock. The practices are those that are generally recognized by the commercial livestock industry.

* * * * *

Adult beefalo bull means a male hybrid of beef and bison that was at least 2 years old and used for breeding purposes.

Adult beefalo cow means a female hybrid of beef and bison that had delivered one or more offspring before dying or being injured and sold at a reduced price. A first-time bred beefalo heifer is also considered an adult beefalo cow if it is pregnant at the time it died or was sold at a reduced price.

Adult buffalo or bison bull means a male animal of those breeds that was at least 2 years old and used for breeding purposes.

Adult buffalo or bison cow means a female animal of those breeds that had delivered one or more offspring before it died or was injured and sold at a reduced price. A first-time bred buffalo or bison heifer is also considered an adult buffalo or bison cow if it was pregnant at the time it died or was sold at a reduced price.

* * * * *

Blizzard means, as defined by the National Weather Service, a storm which contains large amounts of snow or blowing snow with winds in excess of 35 miles per hour and visibility of less than one-fourth of a mile for an extended period of time.

* * * * *

Eligible adverse weather event means extreme and abnormal damaging weather in the calendar year for which benefits are being requested that is not expected to occur during the loss period for which it occurred, which directly results in eligible livestock

death losses in excess of normal mortality or injury and sale of livestock at a reduced price. Eligible adverse weather events include, but are not limited to, as determined by the Deputy Administrator or designee, earthquake; hail; lightning; tornado; tropical storm; typhoon; vog if directly related to a volcanic eruption; winter storm if the winter storm meets the definition provided in this section; hurricanes; floods; blizzards; wildfires; extreme heat; extreme cold; and straight-line wind. Drought is not an eligible adverse weather event except when associated with anthrax, a condition that occurs because of drought and results in the death of eligible livestock.

Eligible attack means an attack by animals reintroduced into the wild by the Federal government or protected by Federal law, including wolves and avian predators, that directly results in the death of eligible livestock in excess of normal mortality or injury and sale of eligible livestock at reduced price. Eligible livestock owners or contract growers are responsible for showing to FSA's satisfaction that eligible attacks are substantiated according to § 1416.305 in order to be considered eligible for payment.

Eligible disease means a disease that, as determined by the Deputy Administrator, is exacerbated by an eligible adverse weather event that directly results in the death of eligible livestock in excess of normal mortality, including, but not limited to anthrax, cyanobacteria, and larkspur poisoning. Eligible diseases are not an eligible cause of loss for benefits based on injury and sales of eligible livestock at reduced price.

Eligible loss condition means any of the following that occur in the calendar year for which benefits are requested: eligible adverse weather event, eligible attack, and eligible disease. Eligible disease is not an eligible loss condition for injured livestock.

* * * * *

Livestock unit means all eligible livestock in the physical location county where the livestock losses occurred for the program year:

(1) In which a person or legal entity has 100 percent share interest; or

(2) Which is owned individually by more than one person or legal entity on a shared basis.

* * * * *

Newborn livestock means livestock that are within 10 calendar days of date of birth.

* * * * *

Non-adult beefalo means a hybrid of beef and bison that does not meet the definition of adult beefalo cow or bull. Non-adult beefalo are further delineated by weight categories of either less than 400 pounds or 400 pounds or more at the time they died or were sold at a reduced price.

Non-adult buffalo or bison means an animal of those breeds that does not meet the definition of adult buffalo or bison cow or bull. Non-adult buffalo or bison are further delineated by weight categories of either less than 400 pounds or 400 pounds or more at the time they died or were sold at a reduced price.

* * * * *

State office or county office means the respective FSA office.

* * * * *

Winter storm means, for an eligible adverse weather event, an event that so severe as to directly cause injury to livestock and lasts in duration for at least 3 consecutive days and includes a combination of high winds, freezing rain or sleet, heavy snowfall, and

extremely cold temperatures. For a determination of winter storm, the wind, precipitation, and extremely cold temperatures must occur with the 3-day period, with wind and extremely cold temperatures occurring in each of the 3 days.

27. In § 1416.303, revise paragraphs (a)(1) and (b) and add paragraphs (c) and (d) to read as follows:

§ 1416.303 Eligible owners and contract growers.

(a) * * *

(1) Livestock owner for benefits with respect to the death of an animal or sale of an injured animal at a reduced price under this subpart, the applicant must have had legal ownership of the eligible livestock on the day the livestock died or was injured and sold at a reduced price and under conditions in which no contract grower could have been eligible for benefits with respect to the animal. Eligible types of animal categories for which losses can be calculated for an owner are specified in §1416.304(a).

* * * * *

(b) A livestock owner or contract grower seeking payment must be an eligible producer as defined in subpart A of this part and other applicable USDA regulations.

(c) All of an eligible livestock owner's or contract grower's interest in livestock in a physical location county must be taken into account and summarized by livestock unit when determining the extent of payment eligibility.

(d) Livestock owners are eligible for benefits for injured animals sold at reduced price only when those animals are not in a contract grower's inventory for which a contract grower seeks benefits for death losses. Contract growers are not eligible for benefits for injured animals sold at a reduced price.

28. Revise § 1416.304 to read as follows:

§ 1416.304 Eligible livestock.

(a) To be considered eligible livestock for livestock owners, the kind of livestock must be alpacas, adult or non-adult dairy cattle, beef cattle, beefalo, bison, buffalo, elk, emus, equine, llamas, sheep, goats, swine, poultry, deer, ostriches, or reindeer and meet all the conditions in paragraph (c) of this section.

(b) To be considered eligible livestock for contract growers, the kind of livestock must be poultry or swine and meet all the conditions in paragraph (c) of this section.

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

(1) Died as a direct result of an eligible loss condition:

(i) With the eligible loss condition occurring in the program year for which benefits are sought;

(ii) No later than 30 calendar days for livestock, or 7 calendar days for newborn livestock, from the ending date of the eligible adverse weather event or the date of the attack by animals reintroduced into the wild by the Federal Government or protected by Federal law, including wolves and avian predators; or

(2) Been injured and sold at a reduced price as a direct result of an eligible adverse weather event or attack by animals reintroduced into the wild by the Federal Government or protected by Federal law, including wolves and avian predators:

(i) On or after January 1, 2017;

(ii) No later than 30 calendar days for livestock, or 7 calendar days for newborn livestock, from the ending date of the eligible adverse weather event or the date of the

attack by animals reintroduced into the wild by the Federal Government or protected by Federal law, including wolves and avian predators;

(3) Been maintained for commercial use for livestock sale or for the production of livestock products such as milk or eggs as part of a farming operation on the day they died or until the event that resulted in their sale at a reduced price; and

(4) Not be produced or maintained for reasons other than commercial use for livestock sale or for the production of livestock products such as milk or eggs. Livestock excluded from being eligible include, but are not limited to, wild free roaming animals and animals maintained for recreational purposes, such as pleasure, hunting, roping, pets, or for show.

(d) The following categories of animals owned by a livestock owner are eligible livestock and calculations of eligibility for payments will be calculated separately for each producer with respect to each category:

- (1) Adult beef bulls;
- (2) Adult beef cows;
- (3) Adult beefalo bulls;
- (4) Adult beefalo cows;
- (5) Adult buffalo or bison bulls;
- (6) Adult buffalo or bison cows;
- (7) Adult dairy bulls;
- (8) Adult dairy cows;
- (9) Alpacas;
- (10) Chickens, broilers, pullets (regular size);

- (11) Chickens, chicks;
- (12) Chickens, layers;
- (13) Chickens, pullets or Cornish hens (small size);
- (14) Deer;
- (15) Ducks;
- (16) Ducks, ducklings;
- (17) Elk;
- (18) Emus;
- (19) Equine;
- (20) Geese, goose;
- (21) Geese, gosling;
- (22) Goats, bucks;
- (23) Goats, nannies;
- (24) Goats, kids;
- (25) Llamas;
- (26) Non-adult beef cattle;
- (27) Non-adult beefalo;
- (28) Non-adult buffalo or bison;
- (29) Non-adult dairy cattle;
- (30) Reindeer;
- (31) Sheep, ewes;
- (32) Sheep, lambs;
- (33) Sheep, rams;

- (34) Swine, feeder pigs under 50 pounds;
- (35) Swine, sows, boars, barrows, gilts 50 to 150 pounds;
- (36) Swine, sows, boars, barrows, gilts over 150 pounds;
- (37) Turkeys, poult;
- (38) Turkeys, toms, fryers, and roasters; and
- (39) Ostriches.

(e) The following categories of animals are eligible livestock for contract growers and calculations of eligibility for payments will be calculated separately for each producer with respect to each category:

- (1) Chickens, broilers, pullets (regular size);
- (2) Chickens, layers;
- (3) Chickens, pullets or Cornish hens (small size);
- (4) Geese, goose;
- (5) Swine, boars, sows;
- (6) Swine, feeder pigs;
- (7) Swine, lightweight barrows, gilts;
- (8) Swine, sows, boars, barrows, gilts; and
- (9) Turkeys, toms, fryers, and roasters.

(f) Ineligible livestock for the purpose of generating payments under this subpart include those livestock that died due to disease that is not an eligible disease; eligible livestock suffering injury due to disease or eligible disease which are sold for reduced price; and any eligible livestock that died or were injured by anything other than an eligible cause of loss.

29. Amend § 1416.305 as follows:

a. Redesignate paragraphs (a) through (e), (f) and (g), and (h) as paragraphs (b) through (f), (h) and (i), and (k), respectively;

b. Add new paragraph (a);

c. Revise newly redesignated paragraphs (b) through (f);

d. Add new paragraph (g);

e. Revise newly redesignated paragraphs (h) introductory text and (i)(1) introductory text; and

f. Add paragraph (j).

The additions and revisions read as follows:

§ 1416.305 Application process.

(a) Notices of loss and applications for payment that had been filed under the regulations in effect at the time of filing and which had been issued an administrative decision for either a 2017 or 2018 program year loss are not eligible for consideration under paragraph (b) of this section, unless the administrative decision was based only on a failure to submit the notice of loss or application for payment by the prior applicable deadline. In that instance, the owner or contract grower must file a notice under paragraph (b) to receive a new decision.

(b) A livestock owner or contract grower that suffered livestock losses must:

(1) For 2017 and subsequent program years, provide a notice of loss, by livestock unit, to FSA by the later of 30 calendar days of when the loss of livestock is first apparent to the livestock owner or contract grower or **[Insert date 60 days after publication in the FEDERAL REGISTER]**.

(2) Submit the notice of loss required in paragraph (b)(1) of this section to the FSA county office responsible for servicing the physical location county where the loss occurred.

(c) In addition to the notice of loss required in paragraph (b) of this section, a participant must also submit a completed application for payment, by livestock unit:

(1) For losses apparent in 2017, by **[Insert date 60 days after publication in the FEDERAL REGISTER]**

(2) For losses apparent in 2018 and subsequent years, by no later than 60 calendar days after the end of the calendar year in which the eligible loss condition occurred.

(d) A participant must provide other supporting documents required for determining eligibility as an applicant at the time the participant submits the completed application for payment. Supporting documents must include:

(1) Evidence of loss,

(2) Current physical location of livestock in inventory,

(3) Physical location of claimed livestock at the time of death or injury,

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

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

(6) Documentation of the adverse weather event from an official weather reporting data source that is determined by FSA to be reputable and available in the

public domain such as, but not limited to, NOAA, from which State and County FSA Offices can validate the adverse weather event occurred,

(7) Documentation to substantiate eligible attacks obtained from a source such as, but not limited to, the following:

(i) APHIS,

(ii) State level Department of Natural Resources, or

(iii) Other sources or documentation, such as third parties, as determined by the Deputy Administrator, and

(8) If livestock are injured and sold at a reduced price.

(i) Documentation of injured livestock's gross price, and

(ii) Documentation to substantiate injury of livestock due to an eligible adverse weather event or eligible attack.

(9) The livestock producer may supplement additional documentation to support the eligible loss condition, as determined by the Deputy Administrator.

(10) In addition, contract growers must provide a copy of the grower contract.

(e) For death losses or losses resulting from injured livestock sold at a reduced price, the participant must provide adequate proof that the death or injury of the eligible livestock occurred as a direct result of an eligible loss condition, as opposed to any other possible or potential cause of loss. The quantity and kind of livestock that died as a direct result of the eligible loss condition may be documented by: Purchase records; veterinarian records; bank or other loan papers; rendering-plant truck receipts; Federal Emergency Management Agency records; National Guard records; written contracts; production records; Internal Revenue Service records; property tax records; private

insurance documents; and other similar verifiable documents as determined by FSA. The quantity and kind of livestock that died or has been injured and sold at a reduced price as a direct result of an eligible attack must be substantiated by documentation of confirmed kills observed by an acceptable source as specified in paragraphs (d)(7) and (g) of this section.

(f) If adequate verifiable proof of death or injury documentation is not available, the participant may provide reliable records, in conjunction with verifiable beginning and ending inventory records, as proof of death or injury. Reliable records may include contemporaneous producer records, dairy herd improvement records, brand inspection records, vaccination records, dated pictures, and other similar reliable documents as determined by FSA.

(g) For 2018 and subsequent calendar years, for livestock death losses due to disease, a licensed veterinarian's certification of livestock deaths may be accepted as verifiable proof of death, if reliable beginning inventory data is available, only if the veterinarian provides a written statement containing all of the following:

(1) Veterinarian's personal observation of the animals and knowledge of how the deaths of the livestock were because of disease caused or exacerbated by an eligible adverse weather event;

(2) Livestock deaths were not otherwise avoidable and preventable using good animal husbandry and management protocols and practices by the livestock producer; and

(3) Other information required by FSA to determine the certification acceptable.

(4) Information furnished by the participant and the veterinarian will be used to determine eligibility for program benefits. Furnishing the information is voluntary; however, without all required information program benefits will not be approved or provided.

(h) Certification of livestock deaths or injuries by third parties may be accepted if verifiable beginning and ending inventory data is available only if proof of death records in conjunction with verifiable beginning and ending inventory records are not available and both of the following conditions are met:

* * * * *

(i) * * *

(1) For 2017 and subsequent calendar years, livestock inventory reports by livestock unit must be provided to the local county FSA office by the later of **[Insert date 60 days after publication in the FEDERAL REGISTER]** or 60 calendar days after the end of the calendar year of the eligible adverse weather event. The STC may approve a waiver of the reporting deadline if a participant has not previously received benefits under this method.

* * * * *

(j) When an eligible owner claims eligible livestock were injured by an eligible loss condition and were sold for a reduced price, the owner must provide verifiable evidence of the gross sale price of the livestock. The injured livestock must be sold through an independent third party (sale barn, slaughter facility, or rendering facility). Only verifiable proof of sale with price is acceptable. The gross sale price of the livestock is the amount received for the injured livestock before any reductions, such as

sale yard fees. The owner must provide verifiable evidence of livestock sold at a reduced price. Documents that may satisfy this requirement include but are not limited to, any or a combination of the following: sales receipt from a livestock auction, sale barn, or other similar livestock sales facility; bona-fide commercial sales receipts; private insurance documents; and processing plant receipts.

* * * * *

30. In § 1416.306, revise paragraphs (a) and (c) and add paragraph (e) to read as follows:

§ 1416.306 Payment calculation.

(a) Under this subpart, separate payment rates for eligible livestock owners and eligible livestock contract growers are specified in paragraphs (b) and (c) of this section, respectively. Payments for death losses are calculated by multiplying the national payment rate for each livestock category by the number of eligible livestock in excess of normal mortality in each category that died as a result of an eligible loss condition. Normal mortality for each livestock category will be determined by FSA on a State-by-State basis using local data sources including, but not limited to, State livestock organizations and the Cooperative Extension Service for the State. Adjustments will be applied as specified in paragraph (d) of this section.

* * * * *

(c) The LIP national payment rate for eligible livestock contract growers is based on 75 percent of the average income loss sustained by the contract grower with respect to the dead livestock. The rate that applies is based on the type, class, and weight of the animal at the time of the eligible loss condition and death.

* * * * *

(e) Payments to livestock owners for losses due to sale of livestock at a reduced price because of injury from an eligible loss condition are calculated by multiplying the national payment rate for each livestock category by the number of eligible livestock sold at a reduced price as a result of an eligible loss condition, minus the gross amount the eligible livestock owner received for the livestock up to the applicable national payment rate. In the event livestock sells for a reduced price that is in excess of the national payment rate, the national payment rate will be subtracted resulting in no payment for that livestock.

Subpart E – Tree Assistance Program

31. Amend § 1416.400 as follows:

a. In paragraph (a), add the words and punctuation “, as amended by the Bipartisan Budget Act of 2018 (Pub. L. 115-123), and the Consolidated Appropriations Act, 2018 (Pub. L. 115-141)” at end of the paragraph; and

b. Add paragraph (c).

The addition reads as follows:

§ 1416.400 Applicability.

* * * * *

(c) Eligible pecan tree losses incurred in the 2017 calendar year not meeting the mortality loss threshold of paragraph (b) of this section with a tree mortality loss in excess of 7.5 percent (adjusted for normal mortality) will be compensated for eligible losses as specified in §1416.406, up to a maximum of \$15,000,000.

§ 1416.402 [Amended]

32. Amend § 1416.402 as follows:

a. Remove the definitions of “County committee” and “Deputy Administrator or DAFP”;

b. In the definitions of “normal damage” and “normal mortality”, remove the word “individual”; and

c. Remove the definition of “State committee”.

33. Revise § 1416.403 to read as follows:

§1416.403 Eligible losses.

(a) To qualify for any assistance under this subpart, except for assistance under § 1416.400(c), the eligible orchardist or nursery tree grower must first have suffered more than a 15 percent tree, bush, or vine mortality loss on a stand (adjusted for normal mortality) as a result of natural disaster as determined by the Deputy Administrator. For assistance for losses to pecan trees under § 1416.400(c), the eligible orchardist or nursery tree grower must first have suffered a mortality loss of more than 7.5 percent (adjusted for normal mortality) on a stand as a result of natural disaster as determined by the Deputy Administrator.

(b) The qualifying loss of a stand of trees, bushes, or vines specified in paragraph (a) of this section will be determined based on:

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

(2) For plant disease, the time period, as determined by the Deputy Administrator, for which the stand is infected.

(c) Mortality or damage loss not eligible for inclusion as a qualifying loss under this section or for payment under § 1416.406 includes those losses where:

(1) The loss or damage could have been prevented through reasonable and available measures; and

(2) The trees, bushes, or vines, in the absence of a natural disaster, would normally have required rehabilitation or replanting within the 12-month period following the loss.

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

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

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

(g) A stand that did not suffer a qualifying mortality loss as specified in paragraph (a) of this section is not eligible for payment.

§ 1416.404 [Amended]

34. In § 1416.404, in paragraph (a), remove “To” and add “Once the requisite qualifying eligible mortality loss is determined according to § 1416.403, to”.

35. Amend § 1416.405 as follows:

a. Redesignate paragraphs (a) through (d) as paragraphs (b) and (e);

b. Add new paragraph (a); and

c. Revise newly redesignated paragraph (b).

The addition and revision read as follows:

§ 1416.405 Application.

(a) Applications for payment that had been filed under the regulations in effect at the time of filing and which were issued an administrative decision for either a 2017 or 2018 program year loss are not eligible for consideration under paragraph (b) of this section, unless the decision was based only on failure to submit the application for payment by the prior applicable deadline,

(b) To apply for TAP, a producer that suffered eligible tree, bush, or vine losses that occurred during the 2017 and subsequent calendar years must provide an application for payment and supporting documentation to FSA by the later of **[Insert date 60 days after publication in the FEDERAL REGISTER]** or within 90 calendar days of the disaster event or date when the loss of trees, bushes, or vines is apparent to the producer.

* * * * *

36. Amend § 1416.406 as follows:

a. In paragraph (a) introductory text, remove “Payment” and add “Once the loss threshold in § 1416.403(a) is satisfied, payment” in its place;

b. In paragraph (b), remove the words “damage or” in both places where they appear;

c. Add paragraph (d)(3);

d. In paragraph (h), remove “eligible” before the word “stand”; and

e. In paragraph (j), remove the number “500” and add the number “1,000” in its place.

The addition reads as follows:

§ 1416.406 Payment Calculation

* * * * *

(d) * * *

(3) Costs or expenses that the eligible orchardist or nursery tree grower did not actually bear or incur because someone or some other entity bore or incurred those costs or expenses, or the costs were reimbursed under another program. For example, if under any other program the expenses are paid for on behalf of the eligible orchardist or nursery tree grower, those expenses are not eligible for cost share under this subpart.

* * * * *

Richard Fordyce,
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[FR Doc. 2018-21257 Filed: 10/1/2018 8:45 am; Publication Date: 10/2/2018]