



DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1416

[Docket ID: CCC-2024-0003]

RIN 0560-AI68

Supplemental Agricultural Assistance Programs

AGENCY: Commodity Credit Corporation (CCC) and Farm Service Agency (FSA), Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This rule makes discretionary changes to simplify and streamline deadlines for the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP), the Livestock Forage Disaster Program (LFP), and the Livestock Indemnity Program (LIP). It also makes changes to clarify ELAP provisions for assistance for transportation of livestock feed.

DATES: *Effective* [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: For ELAP: Seth Cross; telephone: (402) 309-3338; e-mail: seth.cross@usda.gov. For LFP and LIP: Kelly Breinig; telephone: (202) 720-1603; e-mail: kelly.breinig@usda.gov. Individuals who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Background

ELAP, LFP, and LIP use CCC funds to provide emergency relief to eligible producers (7 U.S.C. 9081). FSA administers ELAP, LFP and LIP on behalf of CCC. ELAP provides assistance to producers of livestock, honeybees, and farm-raised fish to aid in the reduction of losses due to disease, adverse weather, or other conditions, such as blizzards and wildfires, as determined by the Secretary, that are not covered by LIP or LFP.¹ LFP provides assistance to livestock producers who suffer eligible grazing losses on land physically located in a county experiencing a qualifying drought during the normal grazing period for the county or are prohibited by a Federal agency from grazing the normal permitted livestock on managed rangeland due to a qualifying fire.² LIP provides assistance for livestock deaths in excess of normal mortality caused by adverse weather or by attacks by animals reintroduced into the wild by the Federal Government.³

This rule makes discretionary changes to simplify and streamline the deadlines for ELAP, LFP, and LIP. It also makes discretionary changes to the ELAP regulations for assistance for transportation of livestock feed.

Deadlines for ELAP, LFP, and LIP

This rule amends the regulations for ELAP, LFP, and LIP to have a single deadline across all three programs for filing a notice of loss (required for ELAP⁴ and LIP⁵), an application for payment, and other required documentation. Previously, each of the three programs had multiple deadlines and time frames for submitting required forms and documentation, and those deadlines also varied among the three programs. These

¹More information on ELAP is available at <https://www.fsa.usda.gov/programs-and-services/disaster-assistance-program/emergency-assist-for-livestock-honey-bees-fish/index>.

²More information on LFP is available at <https://www.fsa.usda.gov/programs-and-services/disaster-assistance-program/livestock-forage/index>.

³More information about LIP is available at <https://www.fsa.usda.gov/programs-and-services/disaster-assistance-program/livestock-indemnity/index>.

⁴See 7 CFR 1416.107(a).

⁵See 7 CFR 1416.305(b).

changes are intended to improve efficiencies for producers and FSA staff, provide clarity regarding program timelines, and give FSA staff sufficient time to deliver support to producers who have suffered eligible losses due to disaster events.

This rule changes the deadlines in §§ 1416.107, 1416.202, and 1416.305 to specify that the deadline to file a notice of loss, an application for payment, and required documentation for each program is March 1 following the end of the applicable program year, which is based on the calendar year for the three programs. The deadline changes are effective beginning with the 2024 program year, which began on January 1, 2024. Producers who suffered eligible losses for the 2024 program year prior to the publication of this rule may submit documents or make changes to previously filed documents for these programs by the new deadline of March 1, 2025, even if the previous deadline had passed.

ELAP Assistance for Feed Transportation

Under ELAP, in addition to the purposes described in 7 U.S.C. 9081(d)(1), the CCC funds are authorized to be used to reduce losses caused by feed or water shortages, disease, or other factors as determined by the Secretary, including inspections of cattle tick fever (7 U.S.C. 9081(d)(2)). Feed transportation was added as an eligible loss for ELAP in a final rule published on April 6, 2022 (87 FR 19783-19786), to provide assistance to livestock producers in areas suffering from eligible adverse weather, an eligible loss condition, or eligible drought, who incur additional hauling costs because they are forced to transport feed from unaffected areas. To be eligible for ELAP assistance for feed transportation, producers must have a loss resulting from the additional cost to transport livestock feed to eligible livestock for additional mileage above normal, due to eligible adverse weather, an eligible loss condition, or eligible drought.⁶ Payments are calculated by multiplying a national payment rate by the national

⁶See 7 CFR 1416.103(d)(6).

average price per mile to transport a truckload of livestock feed, multiplied by the actual number of additional miles the feed was transported by the producer in excess of 25 miles per truckload of livestock feed and for no more than 1,000 miles per truckload of feed during the program year.⁷ This rule makes several changes to the ELAP regulations to clarify the feed transportation eligibility and documentation requirements and ensure that ELAP assistance for feed transportation is provided only for eligible losses as authorized and described in the April 2022 final rule.

The first of those changes adds provisions to the ELAP regulations in § 1416.103(d)(6) to specify that an eligible loss from the additional cost to transport livestock feed is limited to the cost to transport feed to meet the feed needs for eligible livestock during the program year in which the eligible adverse weather, eligible loss condition, or eligible drought occurred. The provisions also clarify that the cost to transport livestock feed is not an eligible loss if the feed is purchased or obtained:

- in excess of the amount needed for the program year in which the eligible adverse weather, eligible loss condition, or eligible drought occurred, which will be determined as described below in the changes to § 1416.110(q);
- to sell to another producer;
- for another producer's livestock; or
- for ineligible livestock.

This rule also amends provisions in § 1416.106(c)(5) regarding documentation to specify that a participant must provide verifiable or reliable records, as defined in § 1416.102, that show the additional livestock feed was only purchased or obtained to sustain eligible livestock during an eligible adverse weather or loss condition. The provisions also specify that handwritten receipts are not considered eligible

⁷See 7 CFR 1416.110(n).

documentation for feed transportation without accompanying truck logs or other documentation to verify the cost of transportation, and payments in cash must have a verifiable record to verify that the transaction was made between two parties. These changes allow FSA to confirm that losses claimed for feed transportation are eligible losses as described above.

To prevent payments for ineligible feed transportation costs, this rule also adds provisions in § 1416.110(q) that limit the amount of an ELAP payment for feed transportation based on the expected feed need of a producer's eligible animals.

First, FSA will convert the number of eligible livestock identified on the application to an animal unit basis, using the same methodology used for ELAP assistance for water transportation and grazing losses.⁸ As provided in 7 CFR 1416.110(i)(1), FSA determined that the corn need for an adult cow, which is equal to 1 animal unit, is 15.7 pounds per day. Forage or hay requirements for an adult beef cow are approximately 24 pounds of dry hay matter per day, or approximately 26 pounds of hay with 8 percent moisture.⁹ To allow for a reasonable variation in the amount of feed consumed by eligible livestock, FSA will multiply the number of animal units by 24 pounds of corn or corn equivalent (equal to 15.7 pounds multiplied by 150 percent, rounded up to the nearest pound) or 39 pounds of hay or forage (equal to 26 pounds of hay multiplied by 150 percent). FSA will multiply the result of that calculation by the number of calendar days in the time period from the beginning date of the eligible drought or other eligible loss condition until the end of the program year to determine the maximum amount of feed for which transportation assistance will be provided. Any

⁸One animal unit is equal to one adult beef, buffalo, or beefalo adult cow or bull. FSA has determined animal unit equivalents for other eligible livestock types. For example, FSA has determined that one adult dairy cow is equal to 2.6 animal units.

⁹See <https://u.osu.edu/beef/2015/11/18/how-much-hay-will-a-cow-consume>.

loads hauled in excess of that amount during the program year are not eligible for assistance.

Notice and Comment, Effective Date, and Exemptions

The Administrative Procedure Act (5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves a matter relating to agency management or personnel, or to public property, loans, grants, benefits, or contracts. This rule involves programs for payments to certain agricultural commodity producers and thus falls within the exemption for rules related to benefits. Further, as specified in 7 U.S.C. 9091(c)(2), the regulations to implement ELAP, LFP, and LIP are:

- Exempt from the notice and comment provisions of 5 U.S.C. 553; and
- Exempt from the Paperwork Reduction Act (44 U.S.C. chapter 35).

In addition, 7 U.S.C. 9091(c)(3) directs the Secretary to use the authority provided in 5 U.S.C. 808 (part of the Congressional Review Act), which provides that when an agency finds there is good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the rule may take effect at such time as the agency determines. The beneficiaries of this rule have been impacted by eligible disaster events, which have resulted in economic losses, and the changes made by this rule simplify and streamline the delivery of assistance and ensure assistance is directed to eligible losses. FSA finds that a delay in the effective date of the rule is contrary to the public interest and therefore this rule is effective upon publication in the *Federal Register*.

This rule is exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996.

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act) requires a delay in the effective date for 60 days from the date of publication to allow for Congressional review of rules that meet the criteria specified in 5 U.S.C. 804(2). The Office of Information and Regulatory Affairs has determined that this rule meets the criteria in 5 U.S.C. 804(2). As discussed above, FSA finds that a delay in the effective date of the rule is contrary to the public interest and therefore this rule is effective upon publication in the *Federal Register*.

Executive Orders 12866, 13563, and 14094

Executive Order 12866, “Regulatory Planning and Review,” was amended by Executive Order 13563, “Improving Regulation and Regulatory Review,” and Executive Order 14094, “Modernizing Regulatory Review.” Executive Orders 12866 and 13563 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. The assessment should include potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant.

Executive Order 14094 requires Federal agencies to increase and improve public participation in the regulatory process. The Executive order’s objective is to improve public trust in the regulatory process by reducing the risk or appearance of unequal or unfair influence in regulatory development.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, and therefore, OMB has not reviewed this rule

and an analysis of costs and benefits is not required under either Executive Order 12866 or 13563.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500 through 1508), the USDA regulation for compliance with NEPA (7 CFR part 1b), and because FSA will be making the payments to producers, the FSA regulation for compliance with NEPA (7 CFR part 799).

This rule makes discretionary, administrative changes to ELAP, LFP, and LIP. The discretionary aspects are to improve administration of these programs and clarify existing program requirements. FSA is providing the disaster assistance under ELAP, LFP, and LIP to eligible producers. The discretionary, administrative provisions would not alter any environmental impacts resulting from implementing the mandatory changes to ELAP, LFP, and LIP. Accordingly, these discretionary, administrative aspects are covered by the following Categorical Exclusion in 7 CFR 799.31(b)(6)(vi) safety net programs administrated by FSA.

Through this review, FSA determined that the proposed discretionary changes in this rule fit within the categorical exclusions listed above. Categorical exclusions apply when no extraordinary circumstances (§ 799.33) exist. This rule presents only discretionary amendments that will not have an impact on the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this rule. This rule serves as documentation of the environmental compliance decision for this Federal action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The changes made by this rule will be effective retroactively for the 2024 program year, as discussed above. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments, or 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 significant Tribal implications that require ongoing adherence to Executive Order 13175 at this time. If a Tribe requests consultation, the USDA Office of Tribal Relations will ensure meaningful consultation is provided where changes, additions, and modifications are not expressly mandated by law.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal

mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance

The title and number of the Federal assistance programs, as found in the Assistance Listing¹⁰ to which this rule applies are:

10.088—Livestock Indemnity Program;

10.089—Livestock Forage Disaster Program; and

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

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

¹⁰See <https://sam.gov/content/assistance-listings>.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language) should contact the responsible Agency or USDA TARGET Center at (202) 720-2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

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List of Subjects in 7 CFR Part 1416

Administrative practice and procedure, Agriculture, Bees, Dairy products, Disaster assistance, Fruits, Livestock, Nursery stock, Reporting and recordkeeping requirements, Seafood.

For the reasons discussed above, Commodity Credit Corporation amends 7 CFR part 1416 as follows:

PART 1416—EMERGENCY AGRICULTURAL DISASTER ASSISTANCE PROGRAMS

1. The authority citation for part 1416 continues 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; and Title I, Pub. L. 116-20.

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

2. In § 1416.103, revise paragraph (d)(6) to read as follows.

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

* * * * *

(d) * * *

(6) A loss resulting from the additional cost incurred on or after January 1, 2021, to transport eligible livestock to feed or livestock feed to eligible livestock for additional mileage above normal, due to eligible adverse weather, an eligible loss condition, or eligible drought, as determined by the Deputy Administrator, including costs associated with treating livestock feed to prevent the spread of invasive pests. The cost of the feed is not eligible for payment. Negligence, mismanagement, or wrongdoing by the producer is not considered an eligible loss condition for livestock or feed transportation costs. To be eligible for a loss under this paragraph (d)(6), the livestock must be livestock that would normally have been on eligible grazing lands physically located in the county where the eligible adverse weather, eligible loss condition, or eligible drought, as determined by the Deputy Administrator, occurred. The eligible loss from the additional cost to transport livestock feed is limited to the cost to transport feed to meet the feed needs of eligible livestock for the program year in which the eligible adverse weather, eligible loss condition, or eligible drought occurred. The cost to transport livestock feed is not an eligible loss if the feed is purchased or obtained:

(i) In excess of the amount needed for the program year in which eligible adverse weather, eligible loss condition, or eligible drought occurred, as determined according to § 1416.110(q);

- (ii) To sell to another producer;
- (iii) For another producer's livestock; or
- (iv) For ineligible livestock.

* * * * *

3. In § 1416.106, revise paragraph (c)(5) to read as follows.

§ 1416.106 Notice of loss and application process.

* * * * *

(c) * * *

(5) Additional cost incurred to transport eligible livestock to feed or livestock feed to eligible livestock for additional mileage above normal, due to an eligible adverse weather, an eligible loss condition, or eligible drought, as determined by the Deputy Administrator, including costs associated with treating livestock feed to prevent the spread of invasive pests. Verifiable or reliable records include, but are not limited to, commercial receipts, contemporaneous records, and invoices. Handwritten receipts are not acceptable without accompanying truck logs or other documentation to verify the cost of transportation. Cash payments must be supported by a verifiable record indicating that the transaction was made between two parties. Records must clearly indicate the dates on which livestock or feed was transported and the total mileage transported. A participant must provide verifiable records or reliable records that show additional livestock feed was only purchased or obtained to sustain eligible livestock during eligible adverse weather, an eligible loss condition, or eligible drought.

* * * * *

4. Revise § 1416.107 to read as follows.

§ 1416.107 Notice of loss and application period.

(a) To receive an ELAP payment, the participant must submit the following to the FSA county office by March 1 after the end of the applicable program year:

- (1) A notice of loss;
- (2) A complete application for payment; and
- (3) Any other documentation required by this subpart.

(b) [Reserved]

5. In § 1416.110:

- a. Redesignate paragraph (q) as paragraph (r); and
- b. Add new paragraph (q).

The addition reads as follows.

§ 1416.110 Livestock payment calculations.

* * * * *

(q) For the purpose of payments under paragraph (n) of this section, losses resulting from the additional cost of transporting livestock feed to eligible livestock are limited to the additional cost of transportation of feed to satisfy the feed needs of the eligible livestock identified on the application during the program year in which the eligible drought or other eligible loss condition occurred. Therefore, FSA will:

- (1) Convert the number of eligible livestock identified on the application to an animal unit basis;
- (2) Multiply the animal units determined in paragraph (q)(1) of this section by 24 pounds of corn or corn equivalent or 39 pounds of hay or forage;
- (3) Multiply the result of paragraph (q)(2) of this section by the number of calendar days in the time period from the beginning date of the eligible drought or other eligible loss condition until the end of the program year; and
- (4) Limit the truckloads used in the calculation to the total pounds calculated in paragraph (q)(3) of this section. Any loads hauled in excess of that amount during the program year are not eligible for assistance.

* * * * *

Subpart C—Livestock Forage Disaster Program

§ 1416.206 [Amended]

6. In § 1416.206, in paragraph (a), remove the words “30 calendar days” and add “March 1” in their place.

Subpart D—Livestock Indemnity Program

7. In § 1416.305:

a. Revise paragraph (b)(1);

b. In paragraph (c), remove the year “2019” and add “2024” in its place, and remove the words “60 calendar days” and add “March 1” in its place; and

c. In paragraph (i)(1), remove the words “60 calendar days” and add “March 1” in their place.

The revision reads as follows.

§ 1416.305 Application process.

* * * * *

(b) * * *

(1) Provide a notice of loss, by livestock unit, to FSA by March 1 after the end of the calendar year in which the eligible loss occurred.

* * * * *

Steven Peterson,
Acting Executive Vice President,
Commodity Credit Corporation, and
Acting Administrator,
Farm Service Agency.

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