Chapter 6

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## I. Introduction

There is no single overarching disaster assistance program for livestock producers. Over the past several years, a variety of programs have been offered to assist farmers affected by livestock mortality, feed shortages, damage to pasture or rangeland, lost milk production, and damage to barns, fences, and equipment. Yet almost all of these programs have been provided on an ad hoc basis, created to respond to a specific natural disaster, months and sometimes years after the losses occurred.

Shortly before this book went to press, Congress enacted the Food, Conservation, and Energy Act of 2008, also known as the 2008 Farm Bill.[1] For the first time in two decades, the 2008 Farm Bill established standing livestock disaster assistance programs that will be available to all eligible livestock producers immediately following a natural disaster. These programs are: the Livestock Indemnity Program, the Livestock Forage Disaster Program, and the Emergency Assistance for Livestock, Honey Bees, and Farm-Raised Fish (EALHF) Program.

This chapter will discuss these new programs in general terms. The specific requirements for each program will not be known until the Farm Service Agency (FSA) publishes program regulations.

This chapter also gives a general description of disaster assistance programs that have been made available to livestock producers since 2005. Although the new programs created by the 2008 Farm Bill are presumably intended to eliminate the need for additional ad hoc livestock assistance programs, it is possible that future disasters could cause losses not covered by the new programs. This may create pressure for Congress to step in again with targeted relief. Livestock producers who experience disaster losses not covered by the new programs should contact their FSA county or state offices to report their losses and request up-to-date information on assistance programs. Producers may also contact FLAG or check its website for livestock program updates.[2]

## II. New Programs Created by the 2008 Farm Bill

Prior to enactment of the 2008 Farm Bill, Congress had frequently provided assistance to livestock producers to address specific types of losses caused by one or more specific natural disasters. In the 2008 Farm Bill, Congress established disaster assistance programs for livestock producers which are not limited to a particular disaster or a particular period of time.

### A. Livestock Indemnity Program

The Livestock Indemnity Program (LIP) will provide cash payments to eligible producers who have incurred livestock death losses in excess of normal mortality due to adverse weather.[3] Eligible losses may include those determined by USDA to have been caused by hurricanes, floods, blizzards, disease, wildfires, extreme heat, and extreme cold.

Indemnity payments will be made to eligible producers at a rate of 75 percent of the market value of the livestock, as determined by USDA, on the day before the date of death of the livestock.[4]

The 2008 Farm Bill contains no other specifics on LIP. More details about LIP requirements will not be known until program regulations are published by FSA.[5] A brief discussion of LIP as it was implemented in 2005-2007 is included later in this chapter and may provide some guidance about how FSA will likely administer the new LIP program.

### B. Livestock Forage Disaster Program

The Livestock Forage Disaster Program (LFP) will provide cash payments to eligible producers who suffered grazing losses for eligible livestock because of drought or fire.[6]

### 1. Eligible Livestock

Livestock eligible for LFP assistance will include livestock that was, during the 60 days prior to the beginning of the drought or fire condition, either (a) owned; (b) leased; (c) purchased; (d) the subject of a contract to purchase; or (e) the subject of a contract to produce or grow by the producer.[7] If certain conditions are met, LFP will also cover livestock that were sold or otherwise disposed of due to qualifying drought conditions.[8] Eligible livestock will not include livestock that was or would have been in a feedlot on the beginning date of the qualifying drought or fire condition as a part of the normal business operations of the eligible livestock producer.[9]

### 2. Eligible Livestock Producer

An eligible livestock producer for LFP means a producer who is an owner, cash or share lessee, or contract grower of eligible livestock. An eligible livestock producer must also own or cash-lease pastureland or grazing land for the livestock.[10] A producer who leases pastureland or grazing land on a rate-of-gain basis will not be an eligible livestock producer for purposes of LFP.[11] The eligible livestock producer must certify his or her grazing loss and meet all other eligibility requirements.[12]

Producers of mechanically harvested forage crops and other crops ineligible for LFP may be eligible for the crop loss program created by the 2008 Farm Bill, discussed briefly in Chapter 1 of this book.[13]

### 3. Eligible Land

For losses due to drought conditions, LFP will be available only for land located in a county affected by drought that is (1) native or improved pastureland with permanent vegetative cover, or (2) planted to a crop specifically for the purpose of providing grazing for eligible livestock.[14] Land that is under a Conservation Reserve

Program contract which is used for haying or grazing will not be eligible land for drought assistance under LFP.[15]

For losses due to fire, LFP will be available only for rangeland that is managed by a federal agency.[16] The federal agency must have prohibited the producer from grazing the normal permitted livestock on the managed rangeland due to fire.

### 4. LFP Benefits

As mentioned earlier, LFP program specifics will not be known until FSA publishes regulations for the program. What we can know from the 2008 Farm Bill language is that LFP benefits will be based upon the producer's monthly feed cost, as determined by USDA.[17] LFP benefits will also be based on the severity of the drought.[18]

#### a. Severe Drought

In counties rated by the U.S. Drought Monitor as experiencing severe drought (D2) in any area for at least eight consecutive weeks during the normal grazing period, the LFP benefit will be a payment equal to 60 percent of the producer's monthly feed cost, as determined by USDA.

#### b. Extreme Drought

In counties experiencing an extreme drought (D3) in any area at any time during the normal grazing period, the LFP benefit will be equal to two payments of 60 percent of the producer's monthly feed cost, as determined by USDA.

#### c. Exceptional Drought or Extended Severe Drought

In counties experiencing an exceptional drought (D4) in any area at any time during the normal grazing period, and in counties experiencing extreme drought (D3) for at least four weeks in any area during the normal grazing period, the LFP benefit will be equal to three payments of 60 percent of the producer's monthly feed cost, as determined by USDA.

#### d. Fire on Federally Managed Rangeland

If an eligible producer is prohibited from grazing normally permitted livestock on federally managed rangeland due to a fire, the LFP benefit will be a payment equal to 50 percent of the producer's monthly feed cost, as determined by USDA, from the beginning of the exclusion from the rangeland until the end of the producer's federal rangeland lease, up to a maximum of 180 days per year.[19]

### 5. No Duplication of Assistance

Producers who receive assistance under LFP for drought losses, may not also receive LFP assistance for fire on federally managed rangeland based on the same losses.[20] Similarly, producers may not receive assistance under LFP and under the new 2008 Farm Bill crop loss program for losses to crops on the same land with the same intended use.[21]

### 6. General Requirement that Producer Have Crop Insurance or NAP Coverage to be Eligible for LFP

In general, in order to be eligible for the new LFP, a livestock producer will need to have obtained crop insurance or NAP coverage, if available, for crops grown on grazing land.[22] Crop insurance is discussed in Chapter 3 of this book. NAP is discussed in Chapter 4.

#### a. Crop Insurance/NAP Requirement May Be Waived

The requirement to obtain crop insurance or NAP coverage to be eligible for LFP may be waived in certain circumstances.

#### *(1) Waiver for Socially Disadvantaged, Limited Resource, or Beginning Farmer or Rancher*

FSA may waive the requirement that the producer have obtained crop insurance or NAP coverage in the case of farmers who qualify as socially disadvantaged, limited resource, or beginning farmers or ranchers.[23] For producers receiving this waiver, FSA may provide disaster assistance at a level that it determines to be equitable and appropriate.

#### *(2) General Waiver for 2008 Calendar Year*

FSA must waive the requirement that a producer have obtained crop insurance or NAP coverage to be eligible for LFP in 2008 if the producer pays an administrative fee by August 20, 2008.[24] The amount of the administrative fee for the 2008 waiver is still being determined. Producers should contact their local FSA offices for more information.

### b. Equitable Relief from Crop Insurance/NAP Requirement

FSA may provide equitable relief on a case-by-case basis to producers who unintentionally fail to satisfy the requirement to obtain crop insurance or NAP coverage on affected crops.[25]

FSA must take special consideration to provide equitable relief to producers who suffer crop losses during the 2008 calendar year and who failed to satisfy the requirement to obtain crop insurance or NAP coverage on affected crops due to the passage of the 2008 Farm Bill after the closing date for applications for crop insurance and NAP coverage.[26]

## C. Emergency Assistance for Livestock, Honeybees, and Fish

The 2008 Farm Bill authorizes USDA to spend up to $50 million per year for an Emergency Assistance for Livestock, Honey Bees, and

Farm-Raised Fish (EALHF) Program.[27] EALHF is intended to provide emergency relief for losses due to feed or water shortages, disease, adverse weather, or other conditions, such as blizzards and wildfires, that are not adequately addressed by other disaster programs.[28]

In addition to the possibility of assistance for feed or water shortages under EALHP, it would seem that this would be the only standing disaster program created by the 2008 Farm Bill that might provide assistance for livestock production losses.

## III. Haying and Grazing on Conservation Reserve Program (CRP) Lands

Under the Conservation Reserve Program (CRP), USDA enters into long-term contracts with landowners, farm operators, and farm tenants to dedicate eligible land to a conserving use during the contract period in return for financial payments and technical assistance.[29] The land is commonly referred to as "set-aside" land, and it is generally not available for agricultural use, including making commercial use of forage, such as by grazing livestock and mechanically harvesting hay.[30]

### A. Usually Only Very Limited Haying and Grazing Permitted

Managed haying and grazing is authorized on CRP lands for short periods in order to improve the quality and performance of CRP cover crops.[31] In general, managed haying and grazing may not take place more than once every three years.[32]

### B. Emergency Haying and Grazing on CRP Land Due to Natural Disaster

Emergency haying and grazing may be permitted on CRP land in order to provide emergency relief to livestock producers due to severe drought or other disaster. CRP participants who are not themselves livestock owners may rent or lease the grazing privileges on their land to livestock producers.[33] This practice has been authorized by FSA from time to time over the past several years as an exercise of discretion by the Secretary of Agriculture in implementing CRP and has been carried out through an internal agency handbook rather than regulations.[34]

The 2008 Farm Bill contained a provision that specifically authorizes emergency haying and grazing on CRP land in order to provide emergency relief to livestock producers due to severe drought or other emergency.[35] Although the 2008 Farm Bill gives no specific direction to FSA regarding emergency haying and grazing on CRP land, the statutory authorization should ensure that this originally discretionary practice will continue. Given the new statutory authorization, it seems likely that FSA will now adopt specific regulations for this practice.

Until regulations for emergency haying and grazing are adopted, FSA state and county offices will likely continue to use the internal agency handbook on CRP policies and procedures when administering the emergency haying and grazing practice. Producers can request a copy of this handbook from their local FSA offices; it is also available on the FSA website.[36]

### 1. Timing of Emergency Haying and Grazing

CRP participants must file a request with their local FSA office indicating the acreage to be hayed or grazed before the activity begins.[37] Before CRP acreage will be declared eligible for emergency haying or grazing, the participant must obtain a modified conservation plan developed by the Natural Resources Conservation Service or an approved technical service provider.[38]

In general, emergency haying and grazing are not allowed until after the end of the primary nesting and broodrearing season, in order to avoid interference with CRP wildlife conservation goals.[39]

### 2. Reductions in Payments to the CRP Contract Holder

If emergency haying or grazing takes place on land covered by a CRP contract, the rental payment otherwise due to the landowner under the contract will be reduced. The 2008 Farm Bill changed the calculation of the reduction amount. Under the policy adopted by FSA and in effect before the 2008 Farm Bill change was enacted, the reduction for emergency haying or grazing would be a specific percentage of the payment otherwise due under the CRP contract. The handbook provision, adopted in October 2003, requires a 25 percent reduction in the CRP payment on each acre actually hayed or grazed.[40] For the 2004 crop year, a special policy was adopted requiring only a 10 percent reduction of the CRP payment.[41]

In place of these percentage reductions, the 2008 Farm Bill directs FSA to now reduce a participant's CRP payment by an amount equal to the economic value of the authorized haying or grazing activity.[42]

### 3. Special Haying and Grazing Authorization in 2008

At the end of May 2008, USDA announced that it will allow CRP participants nationwide, whether or not they are in a disaster county, to modify their CRP contracts to engage in haying and grazing upon CRP lands, without a reduction in their CRP rental payments.[43]

To participate in this "critical feed use" haying and grazing, CRP participants must pay a $75 administrative fee and obtain a modified conservation plan from the Natural Resources Conservation Service or an approved technical service provider. All critical feed use activity on the CRP acreage must be completed by November 10, 2008.

This policy was adopted under USDA's existing authority to modify CRP contracts, and was not a result of changes made by the 2008 Farm Bill.[44]

## IV. Crop Insurance and NAP for Livestock Producers

In general, federal crop insurance and NAP do not cover livestock losses.[45] However, coverage under NAP and, to a certain extent, crop insurance is available for many feed crops planted and grown for livestock consumption, whether mechanically harvested or grazed forage.[46] And new insurance policies are being developed that provide some coverage for livestock losses.

This section briefly discusses the issues related to crop insurance and NAP that may be of particular interest to livestock producers. More thorough discussions of these programs can be found in Chapter 3 (crop insurance) and Chapter 4 (NAP) of this book.

### A. Crop Insurance or NAP Coverage May Be Required to Be Eligible for Other USDA Programs

As discussed in more detail in the crop insurance and NAP chapters of this book, eligibility for many USDA programs requires that a producer have obtained crop insurance or NAP coverage for all crops for which that coverage is available. Because crop insurance and NAP coverage for livestock tends to be experimental, to the extent it is offered at all, none of the linkage requirements currently require that any available coverage be obtained for livestock.

However, as crop insurance and NAP coverage is expanded to cover more and more crops, including feed crops, these so-called "linkage" requirements take on new importance for livestock producers. For example, as noted earlier in this chapter, forage crop losses will only be eligible for program benefits under LFP—a new disaster program created by the 2008 Farm Bill—if the crops were covered by crop insurance or NAP, if available.[47] Livestock producers should therefore make an effort to keep informed about changes in NAP and crop insurance availability for their livestock and any feed or forage crops, and to understand the extent to which their eligibility for other USDA programs may require obtaining such coverage.

### B. Insuring Livestock as Part of the Whole Farm—Adjusted Gross Revenue Insurance

Adjusted Gross Revenue (AGR) insurance is a revenue-based insurance plan that guarantees a certain level of producer revenue combined for several commodities under a single policy.[48] The AGR revenue guarantee is based on a five-year average of income and expenses taken from the producer's income tax returns.[49] As a "whole farm" type of insurance, AGR does cover lost revenue from livestock as well as crops. However, AGR is not available if more than 35 percent of the producer's expected revenue will come from animals and animal products.[50]

For the 2008 crop year, AGR policies were available in selected counties in California, Connecticut, Delaware, Florida, Idaho, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington.[51] For availability in future years, contact an approved crop insurance agent.

A modified version of AGR—Adjusted Gross Revenue-Lite, or AGR-Lite—offers whole farm revenue protection without a limit on the amount of expected revenue from animals or animal products.[52] Like AGR, AGR-Lite coverage is based on the producer's income and expense data from the previous five years' tax returns.[53]

For the 2008 crop year, AGR-Lite policies were available in Alabama, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Kansas, Maine, Maryland, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Jersey, North Carolina, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.[54] Policies were available in selected counties in Alaska, New York, and Pennsylvania. For availability in future years, contact an approved crop insurance agent.

## C. Pasture, Rangeland, and Forage (PRF) Pilot Insurance Program

Beginning with the 2007 crop year, the Federal Crop Insurance Corporation (FCIC) began offering a Pasture, Rangeland, and Forage (PRF) pilot insurance program intended to provide federal crop insurance coverage for forage crops that are raised for grazing or mechanical harvesting as hay for livestock.[55] In general, PRF crop insurance payments are only available if the producer's area experiences widespread losses.[56]

For the 2008 crop year, PRF is available in selected counties in Alabama, Colorado, Idaho, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, and Wyoming.[57]

### D. Revenue-Based Insurance for Livestock

There are two types of federal crop insurance currently available for livestock, but they are designed to insure against economic risk rather than losses from disease or adverse weather.[58]

Livestock Risk Protection (LRP) insurance provides coverage against the risk that market prices for livestock will decline.[59] If the price for the livestock at the end of the LRP contract, as determined by FCIC, is less than the coverage price, the producer will receive a payment under the policy. LRP coverage is limited to a specific number of animals per crop year, with the number varying according to animal type. For the 2008 crop year, LRP was available for swine, fed cattle, and feeder cattle in 37 states, and for lamb in 27 states.[60]

Livestock Gross Margin (LGM) insurance provides coverage over a specified period against a decrease in the producer's gross margin, that is, the difference between the livestock market price and eligible expenses, such as feed.[61] For the 2009 crop year, LGM will be available for cattle and swine in 20 states, and for dairy cattle in 32 states.[62]

## V. Disaster Assistance Programs for Livestock Producers Implemented in 2005-2007

This section gives brief descriptions of several disaster assistance programs that were available to livestock producers for losses occurring from 2005 through 2007. These programs suggest the types of assistance that might be available under the new Emergency Assistance for Livestock, Honey Bees, and Farm-Raised Fish (EALHF) Program created by the 2008 Farm Bill.

As this book went to press, the 2005-2007 Livestock Indemnity Program (LIP) and 2005-2007 Livestock Compensation Program (LCP) were still open for producers to sign up.[63] The announced deadline to apply for the 2005-2007 LIP and LCP is July 18, 2008.[64] The last date for producers to sign up for the 2005-2007 Dairy Disaster Assistance Program (DDAP) was May 5, 2008.[65]

## A. 2005-2007 Livestock Indemnity Program

The 2005-2007 Livestock Indemnity Program (LIP) provides cash payments for livestock casualties, based on the number of livestock and poultry casualties over the normal rate that were "reasonably related" to the disaster.[66] While it is impossible to know how USDA will implement LIP as authorized under the 2008 Farm Bill, it seems likely that it will be similar to the 2005-2007 LIP in at least some respects.

### 1. Eligible Disasters

The 2005-2007 LIP provides assistance to eligible livestock owners and contract growers for eligible livestock deaths that occurred in eligible counties as a direct result of an eligible disaster event.[67] Drought is not an eligible disaster event, except when eligible livestock died of anthrax, and the anthrax was a result of drought. A participant may receive benefits for livestock losses for only one of the 2005, 2006, or 2007 calendar years.[68]

### 2. Eligible Livestock, Livestock Owners, and Contract Growers

Eligible livestock owners include persons who had legal ownership of eligible livestock on the day the livestock died.[69]

Eligible livestock include dairy cattle, beef cattle, buffalo, beefalo, catfish, crawfish, equine, sheep, goats, swine, poultry, deer, or reindeer maintained for commercial use.[70] Eligible livestock contract growers include those who had a written agreement with the livestock owner and control of the livestock on the day they died.[71] Eligible livestock for contract growers include poultry and swine.[72]

### 3. 2005-2007 LIP Benefits

2005-2007 LIP participants are required to provide adequate proof that the death of the eligible livestock occurred in an eligible county as a direct result of an eligible disaster event during the applicable disaster period.[73] 2005-2007 LIP benefits are based upon 26 percent of the average market value (or average income loss for contract growers) of the livestock lost, based upon the category of the livestock.[74]

## B. 2005-2007 Livestock Compensation Program

The 2005-2007 Livestock Compensation Program (LCP) provides compensation to producers of livestock who suffer feed losses or incur additional feed costs directly resulting from natural disasters in eligible counties.[75]

In general, eligible livestock include dairy cattle, beef cattle, buffalo, beefalo, equine, poultry, elk, reindeer, sheep, goats, swine, or deer maintained for commercial use.[76]

2005-2007 LCP benefits are based upon a national payment rate for each category of livestock.[77] The national payment rate is based upon the cost of the amount of corn needed to maintain the specific livestock for 30 days. Producers are barred from receiving duplicate benefits.[78]

## C. 2005-2007 Catfish Grant Program

FSA administered a 2005-2007 Catfish Grant Program (CGP). Under CGP, FSA provided grants to participating states to provide assistance to catfish producers based upon catfish feed losses and higher costs for catfish feed caused by natural disaster in eligible counties.[79]

## D. 2005-2007 Dairy Disaster Assistance Payment Program

The 2005-2007 Dairy Disaster Assistance Payment (DDAP) program provided cash payments for dairy producers for milk production losses in disaster counties.[80]

2005-2007 DDAP benefits were based upon losses equal to the difference between a dairy producer's base annual production and the producer's actual commercially marketed production during the disaster period.[81] The base annual production was determined on the basis of the farm's established history, or upon information from three similar farms.

### E. Programs to Address Losses Due to 2005 Hurricanes

Congress and USDA funded and implemented a variety of programs to address losses caused by the 2005 Gulf Coast hurricanes. Later versions of some of these programs are described above, and some of them have not been implemented again. Livestock-related 2005 hurricane programs supported by USDA funds included the Feed Indemnity Program, Livestock Indemnity Program, and the Livestock Assistance Grant Program.[82] Additional programs funded by Congressional action included the 2005 Livestock Compensation Program, 2005 Livestock Indemnity Program II, and the 2005 Catfish Grant Program.[83]

## VI. Recommendations for Livestock Producers Affected by Disaster in 2008 and Subsequent Crop Years

This chapter has provided a general description of disaster assistance programs that have been made available to livestock producers since 2005, and of new programs created by the 2008 Farm Bill. Livestock producers should remember that the program descriptions in this chapter offer general information only. More details about the new 2008 Farm Bill programs will be available in coming months as FSA develops program policies and regulations.

The new 2008 Farm Bill programs are a step forward for livestock producers because they ensure the availability of assistance for livestock mortality and forage crop losses after every disaster, without having to wait and hope for specific programs to be created. However, as mentioned earlier, the new 2008 Farm Bill programs do not necessarily address every type of loss that livestock producers may face, such as lost milk production, loss of stored feed, or increased feed needs due to adverse weather. It is therefore possible that ad hoc programs to address unmet needs could be authorized.

Looking ahead, livestock producers who suffer disaster losses not covered by the available programs can take the following steps to maximize their opportunities for benefiting from any programs that may be offered in the future.

## A. Continue to Report Losses to FSA County Offices

Livestock producers—including contract growers—who experience feed crop losses and livestock casualties due to natural disaster in 2008 and later crop years should continue to document those losses and report them to their FSA county offices even where no assistance program has been authorized.

### 1. Support State and Local Office Requests for Program Authorization

By reporting losses to county offices, producers help provide FSA county and state offices with documentation of feed and livestock emergencies. Such documentation would likely be needed by these offices to gain local authorization to carry out assistance programs. The national office can use the information to determine when and whether to authorize assistance and in what form.

### 2. Allow for Earliest Possible Eligibility for New Program Assistance

By submitting loss documentation to FSA county offices prior to authorization of any assistance program, livestock producers may also make themselves eligible for assistance from the first day that a program is authorized. Producers who wait until a program is announced before submitting loss documentation might only be eligible for assistance from the date they file an application.

### B. Obtain Program Specifications from FSA State and Local Offices

If new programs are created, time periods for submitting an application may be very short. It is important that producers keep in contact with their FSA state and county offices and get specific program information as soon as livestock assistance programs are announced.

## VII. Appeals of Livestock Assistance Program Decisions

In general, an adverse decision in any livestock assistance program administered by FSA may be appealed.[84] An adverse decision may include, among other things, a determination that a producer is not eligible for program benefits or approval of a smaller amount of program benefits than the producer requested.[85]

USDA's National Appeals Division (NAD) handles appeals of livestock assistance program decisions made by FSA.[86] NAD regulations set out a formal appeals process with important deadlines and other requirements. For example, producers must file their appeals with NAD within 30 days after they first receive notice of the adverse decision.[87]

FLAG has written a detailed article describing the NAD appeals system. This article is available on the FLAG website or by contacting FLAG.[88] Producers may also wish to visit the NAD website for further information about the appeals process.[89]

## VIII. Discrimination Is Illegal

FSA is prohibited from subjecting any person to discrimination on the basis of race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, disability, or because all or part of an individual's income is derived from any public assistance program.[90] Prohibited discrimination may include excluding a person from participation in disaster assistance programs or denying program benefits.

## Chapter 6 Notes

1 Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), Pub. L. No. 110-234, Title XII, 122 Stat. 923 (May 22, 2008) (to be codified at 7 U.S.C. § 1531). Many of the same provisions pertaining to disaster assistance were also included in Title XV, Subtitle A (to be codified at 19 U.S.C. ch. 12).

2 FLAG can be reached by telephone at 651-223-5400; by fax at 651-223-5335; by mail at 360 North Robert Street, Suite 500, Saint Paul, MN 55101; or by electronic mail at lawyers@flaginc.org. FLAG's website is at www.flaginc.org.

3 2008 Farm Bill § 12033 (to be codified at 7 U.S.C. § 1531(c)).

4 2008 Farm Bill § 12033 (to be codified at 7 U.S.C. § 1531(c)(2)).

5 See FSA Notice DAP-283, "Announcing Supplemental Agricultural Disaster Assistance Programs," (May 29, 2008) (expires Dec. 1, 2008) (stating that no state, county, or other trigger will be used to define an eligible LIP area).

6 2008 Farm Bill § 12033 (to be codified at 7 U.S.C. § 1531(d)).

7 2008 Farm Bill § 12033 (to be codified at 7 U.S.C. § 1531(d)(1)(A)(i)(I)-(V)).

8 2008 Farm Bill § 12033 (to be codified at 7 U.S.C. § 1531(d)(1)(A)(i)(VI)).

9 2008 Farm Bill § 12033 (to be codified at 7 U.S.C. § 1531(d)(1)(A)(ii)).

10 2008 Farm Bill § 12033 (to be codified at 7 U.S.C. § 1531(d)(1)(C)(i)(II)).

11 2008 Farm Bill § 12033 (to be codified at 7 U.S.C. § 1531(d)(1)(C)(ii)).

12 2008 Farm Bill § 12033 (to be codified at 7 U.S.C. § 1531(d)(1)(C)(i)(III)-(IV)).

13 See 2008 Farm Bill § 12033 (to be codified at 7 U.S.C. § 1531(b)).

14 2008 Farm Bill § 12033 (to be codified at 7 U.S.C. § 1531(d)(1)(C)(i), (3)(A)).

15 2008 Farm Bill § 12033 (to be codified at 7 U.S.C. § 1531(d)(3)(A)(ii)).

16 2008 Farm Bill § 12033 (to be codified at 7 U.S.C. § 1531(d)(4)(A)).

17 2008 Farm Bill § 12033 (to be codified at 7 U.S.C. § 1531(d)(3)(B), (C)). The monthly feed cost will be the cost of corn needed to feed for 30 days the lesser of (1) all of the producer's eligible livestock, or (2) the normal carrying capacity of the producer's eligible grazing land. Corn prices, normal carrying capacity, and livestock feed needs will be established by USDA. Assistance will also be available for producers who sold covered livestock due to drought conditions.

18 2008 Farm Bill § 12033 (to be codified at 7 U.S.C. § 1531(d)(3)(D)(ii)).

19 2008 Farm Bill § 12033 (to be codified at 7 U.S.C. § 1531(d)(4)).

20 2008 Farm Bill § 12033 (to be codified at 7 U.S.C. § 1531(d)(6)(A)).

21 2008 Farm Bill § 12033 (to be codified at 7 U.S.C. § 1531(d)(6)(B)).

22 2008 Farm Bill § 12033(a) (to be codified at 7 U.S.C. § 1531(d)).

23 2008 Farm Bill § 12033(a) (to be codified at 7 U.S.C. § 1531(g)(3)).

24 2008 Farm Bill § 12033(a) (to be codified at 7 U.S.C. § 1531(g)(4)); FSA Notice DAP-283, "Announcing Supplemental Agricultural Disaster Assistance Programs," para. 5.A. (May 29, 2008) (expires Dec. 1, 2008).

25 2008 Farm Bill § 12033(a) (to be codified at 7 U.S.C. § 1531(g)(5)(A)).

26 2008 Farm Bill § 12033(a) (to be codified at 7 U.S.C. § 1531(g)(5)(B)).

27 2008 Farm Bill § 12033(a) (to be codified at 7 U.S.C. § 1531(e)).

28 See FSA Notice DAP-283, "Announcing Supplemental Agricultural Disaster Assistance Programs," para. 6 (May 29, 2008) (expires Dec. 1, 2008).

29 7 C.F.R. § 1410.3 (2008).

30 7 C.F.R. § 1410.20(a)(5) (2008).

31 2008 Farm Bill § 2108(a) (to be codified at 16 U.S.C. § 3832(a)(8)(A)).

32 7 C.F.R. § 1410.63(c)(1)(ii) (2008).

33 For general information about emergency haying and grazing on CRP lands, visit FSA's Emergency Haying and Grazing web page at www.fsa.usda.gov/FSA/webapp?area=home&subject=copr&topic=crp-eg.

34 The handbook, called "Agricultural Resource Conservation Program," 2-CRP (Rev. 4), is periodically updated with amendments as program policies change. As of the date this chapter was written, 15 updating amendments had been issued, the most recent one (Amendment 16) on April 28, 2008. Emergency haying and grazing is addressed in Section 2 of Part 13 of the 2-CRP Handbook.

35 2008 Farm Bill § 2108(a) (to be codified at 16 U.S.C. § 3832(a)(8)(B)).

36 Most FSA program handbooks may be downloaded from the FSA website at www.fsa.usda.gov/FSA/webapp?area=home&subject=lare&topic=hbk. Specifically, the 2-CRP Handbook itself can be found at www.fsa.usda.gov/Internet/FSA_File/2-crp.pdf.

37 2-CRP (Rev. 4) Handbook, page 13-31, para. 309.A (Nov. 16, 2007).

38 2-CRP (Rev. 4) Handbook, page 13-31, para. 309.A (Nov. 16, 2007).

39 2-CRP (Rev. 4) Handbook, page 13-32, para. 309.A (Nov. 16, 2007). In 2004, emergency grazing (but not haying) was allowed prior to the end of the primary nesting and broodrearing season. FSA Notice CRP-470, "2004 Emergency Haying and Grazing of CRP Acreage," 1.A (June 24, 2004) (expired Jan. 1, 2005).

40 2-CRP (Rev. 4) Handbook, page 13-34, para. 310.A (Oct. 23, 2003).

41 FSA Notice CRP-470, "2004 Emergency Haying and Grazing of CRP Acreage," 2.C (June 24, 2004) (expired Jan. 1, 2005). A 25 percent reduction imposed during the 2002 crop year was refunded to CRP contract holders. Agricultural Assistance Act of 2003, Pub. L. No. 108-7, Division N, Title II, § 212, 117 Stat. 545 (Feb. 20, 2003) (codified at 16 U.S.C. § 3832(a)(7)(A)(iii)).

42 2008 Farm Bill § 2108(a) (to be codified at 16 U.S.C. § 3832(b)).

43 73 Fed. Reg. 31,053 (May 30, 2008) (notice of voluntary modification of Conservation Reserve Program contract).

44 16 U.S.C. § 3835(c).

45 See 7 C.F.R. § 1437.4(c)(1) (2008). Coverage for aquacultural species, including ornamental fish, is available under NAP. 7 C.F.R. § 1437.4(c)(4)(i) (2008).

46 7 C.F.R. § 1437.4(c)(2) (2008).

47 2008 Farm Bill § 12033(a) (to be codified at 7 U.S.C. § 1531(d)).

48 "2007 Adjusted Gross Revenue (AGR)," Risk Management Agency Fact Sheet (Nov. 2006), available at www.rma.usda.gov/pubs/2003/PAN-1667-06rev2.pdf. Information about AGR is also available from the Risk Management Agency website at www.rma.usda.gov/policies/agr.html#2007.

49 Adjusted Gross Revenue Pilot Insurance Policy, "1. Definitions, 'AGR expense history,' 'AGR income history'" (Policy No. 2007-AGR), available at www.rma.usda.gov/policies/2007/agr.pdf.

50 "2007 Adjusted Gross Revenue (AGR)," Risk Management Agency Fact Sheet (Nov. 2006), available at www.rma.usda.gov/pubs/2003/PAN-1667-06rev2.pdf.

51 "2007 Adjusted Gross Revenue (AGR)," Risk Management Agency Fact Sheet (Nov. 2006), available at www.rma.usda.gov/pubs/2003/PAN-1667-06rev2.pdf.

52 General information on AGR-Lite may be found on the Risk Management Agency website at www.rma.usda.gov/policies/agr-lite.html.

53 "Adjusted Gross Revenue-Lite (AGR-Lite)," Risk Management Agency Fact Sheet (Oct. 2007), available at www.rma.usda.gov/pubs/rme/agr-lite.pdf.

54 "Adjusted Gross Revenue-Lite (AGR-Lite)," Risk Management Agency Fact Sheet (Oct. 2007), available at www.rma.usda.gov/pubs/rme/agr-lite.pdf.

55 See Risk Management Agency Fact Sheet, "Pasture, Rangeland, Forage Pilot Insurance Programs" (Oct. 2007), available at www.rma.usda.gov/pubs/rme/prffactsheet.pdf.

56 See Group Risk Plan, Pasture, Rangeland, Forage Rainfall Index Crop Provisions (cover sheet) (Policy No. 07-RI-PRF); Group Risk Plan, Pasture, Rangeland, Forage Vegetation Index Crop Provisions (cover sheet) (Policy No. 07-VI-PRF).

57 See Risk Management Agency Fact Sheet, "Pasture, Rangeland, Forage Pilot Insurance Programs" (Oct. 2007), available at www.rma.usda.gov/pubs/rme/prffactsheet.pdf.

58 A general website for Risk Management Agency information on livestock insurance may be found at www.rma.usda.gov/livestock.

59 See Risk Management Agency Fact Sheets: "Livestock Risk Protection – Fed Cattle" (July 2007), available at www.rma.usda.gov/pubs/2007/lrp-fedcattle.pdf; "Livestock Risk Protection – Feeder Cattle" (July 2007), available at www.rma.usda.gov/pubs/2007/lrp-feedercattle.pdf; "Livestock Risk Protection – Swine" (July 2007), available at www.rma.usda.gov/pubs/2007/lrp-swine.pdf; and "Livestock Risk Protection – Lamb" (July 2007), available at www.rma.usda.gov/pubs/2007/lrp-lamb.pdf.

60 See Risk Management Agency Fact Sheets: "Livestock Risk Protection – Fed Cattle" (July 2007), available at www.rma.usda.gov/pubs/2007/lrp-fedcattle.pdf; "Livestock Risk Protection – Feeder Cattle" (July 2007), available at www.rma.usda.gov/pubs/2007/lrp-feedercattle.pdf; "Livestock Risk Protection – Swine" (July 2007), available at

www.rma.usda.gov/pubs/2007/lrp-swine.pdf; and "Livestock Risk Protection – Lamb" (July 2007), available at www.rma.usda.gov/pubs/2007/lrp-lamb.pdf.

61 See Risk Management Agency's Frequently Asked Questions web pages: "Livestock Gross Margin – Cattle" (April 17, 2008) at www.rma.usda.gov/help/faq/lgmcattle.html; "Livestock Gross Margin – Dairy" (June 2, 2008) at www.rma.usda.gov/help/faq/lgmdairy.html; "Livestock Gross Margin – Swine" (April 17, 2008) at www.rma.usda.gov/help/faq/lgmswine.html.

62 See Risk Management Agency Fact Sheets: "Livestock Risk Protection – Fed Cattle" (July 2007), available at www.rma.usda.gov/pubs/2007/lrp-fedcattle.pdf; "Livestock Risk Protection – Feeder Cattle" (July 2007), available at www.rma.usda.gov/pubs/2007/lrp-feedercattle.pdf; "Livestock Risk Protection – Swine" (July 2007), available at www.rma.usda.gov/pubs/2007/lrp-swine.pdf; and "Livestock Risk Protection – Lamb" (July 2007), available at www.rma.usda.gov/pubs/2007/lrp-lamb.pdf.

63 More details on 2005-2007 LIP and LCP can be found in FSA's Livestock Programs Handbook, 4-DAP, Revision 2, which was issued on September 5, 2007. At the time this book was being written, that handbook had been amended four times, with the most recent amendment issued on May 29, 2008.

More details on the livestock assistance programs implemented to address losses caused by the 2005 Gulf Coast hurricanes may be found in FSA's Livestock Programs Handbook, 4-DAP, Revision 1, which was issued on September 5, 2007. At the time this book was being written, the Livestock Programs Handbook had been amended 24 times, with the most recent amendment issued on May 17, 2007.

64 FSA Notice DAP-282, "Signup Deadline for 2005 through 2007 Livestock Compensation Program (LCP) and Livestock Indemnity Program (LIP)," (May 27, 2008) (expires Jan. 1, 2009).

65 FSA Notice LD-595, "Dairy Disaster Assistance Payment (DDAP-III) Program Final Rule Published in FR," (March 5, 2008) (expires July 1, 2008).

66 LIP was most recently authorized under the agricultural assistance title of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq

Accountability Act of 2007. Pub. L. No. 110-28, Title IX, § 9002(b), 121 Stat. 112 (May 25, 2007). Under this Act, the period covered by LIP 2005-2007 was for disasters which occurred between January 1, 2005 and February 28, 2007. Regulations for the 2005-2007 LIP were not published until December 21, 2007. 72 Fed. Reg. 72,864 (2007). However, Congress later passed the Consolidated Appropriations Act of 2008, which amended the February 28, 2007, ending date for LIP. Under the 2008 Act, the disaster period was extended to include livestock deaths which occurred in a county named as a disaster area or contiguous area in a Presidential or Secretarial disaster declaration on or before December 31, 2007. Consolidated Appropriations Act of 2008, Pub. L. No. 110-161, Division A, Title VII, § 743(a), 121 Stat. 1844 (Dec. 26, 2007).

[67] 7 C.F.R. § 760.901 (2008).

[68] 7 C.F.R. § 760.904(a) (2008).

[69] 7 C.F.R. § 760.905(a) (2008).

[70] 7 C.F.R. § 760.906(a), (d) (2008).

[71] 7 C.F.R. § 760.905(b) (2008).

[72] 7 C.F.R. § 760.906(b) (2008).

[73] 7 C.F.R. § 760.907(d) (2008).

[74] 7 C.F.R. § 760.909 (2008).

[75] LCP was most recently authorized under the agricultural assistance title of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Act of 2007, which was enacted on May 25, 2007. Pub. L. No. 110-28, Title IX, § 9002(a), 121 Stat. 112 (May 25, 2007). Under this Act, 2005-2007 LIP was for disasters which occurred between January 1, 2005, and February 28, 2007. However, Congress later passed the Consolidated Appropriations Act of 2008 which extended the deadline to December 31, 2007. Consolidated Appropriations Act of 2008, Pub. L. No. 110-161, Division A, Title VII, § 743(a), 121 Stat. 1844 (Dec. 26, 2007).

[76] 7 C.F.R. § 760.1103(a), (c) (2008).

[77] 7 C.F.R. § 760.1106(a) (2008).

[78] 7 C.F.R. §§ 760.1003(h) and 760.1106(b) (2008).

[79] 7 C.F.R. §§ 760.1200 *et seq.* (2008).

[80] Details on implementation of 2005-2007 DDAP may be found in program regulations and in a series of FSA notices. 73 Fed. Reg. 11,519 (2008) (to be codified at 7 C.F.R. pt. 786); FSA Notice LD-593, "Dairy Disaster Assistance Payment Program (DDAP-III) Program Policy Changes" (Jan. 29, 2008) (expires Oct. 1, 2008); FSA Notice LD-595, "Dairy Disaster Assistance Payment (DDAP-III) Program Final Rule Published in FR" (March 5, 2008) (expires July 1, 2008); FSA Notice LD-599, "Additional Dairy Disaster Assistance Payment (DDAP-III) Program Clarifications and Questions and Answers (Q&A's)" (April 11, 2008) (expires Jan. 1, 2009).

DDAP was most recently authorized under the agricultural assistance title of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Act of 2007. Pub. L. No. 110-28, Title IX, § 9007, 121 Stat. 112 (May 25, 2007). Under this Act, $16 million was to remain available for DDAP until spent. FSA later designated the period between January 1, 2005, and December 31, 2007, the eligible disaster period. 73 Fed. Reg. 11,519, 11,522 (2008) (to be codified at 7 C.F.R. § 786.100(a)). FSA indicated in the rule that DDAP was extended by the Consolidated Appropriations Act of 2008, but this does not appear to be true, nor is it necessary, since funds were to remain available until expended.

[81] 73 Fed. Reg. 11,519, 11,524 (2008) (to be codified at 7 C.F.R. § 786.106).

[82] 72 Fed. Reg. 875 (2007); 7 C.F.R. pt. 760 (2008).

[83] 72 Fed. Reg. 6,435 (2007); 7 C.F.R. pt. 1416 (2008). The authorizing act was the Emergency Agricultural Disaster Assistance Act of 2006, Pub. L. No. 109-234, Title III, 120 Stat. 418 (June 15, 2006).

[84] An "adverse decision" is defined as

> an administrative decision made by an officer, employee, or committee of an agency that is adverse to a participant. The term includes a denial of equitable relief by an agency or the failure of an agency to issue a decision or otherwise act on the request or right of the participant within timeframes specified by agency program statutes or regulations or within a reasonable time if timeframes are not specified in such statutes or regulations.

7 C.F.R. § 11.1, "Adverse decision" (2008).

[85] 7 C.F.R. § 11.3 (2008).

86 7 C.F.R. pt. 11 (2008). See also 7 C.F.R. pt. 780 for FSA and CCC regulations related to NAD appeals.

87 7 C.F.R. § 11.6(b) (2008).

88 *USDA's National Appeals Division Practice and Procedures* by FLAG attorney Karen Krub, available at www.flaginc.org/topics/pubs/arts/NADarticle_NatlAgLawCtr2003.pdf, or contact FLAG by telephone at 651-223-5400; by fax at 651-223-5335; by mail at 360 North Robert Street, Suite 500, Saint Paul, MN 55101; or by electronic mail at lawyers@flaginc.org.

89 The NAD website is at www.nad.usda.gov. The website includes a searchable database of prior NAD decisions which can be helpful in understanding the NAD appeal process and how issues are likely to be addressed.

Few cases involving disaster assistance for livestock producers wind up in court, but research for this chapter did reveal two cases. *U.S. v. Alfonzo-Reyes*, 384 F. Supp. 2d 523 (D.P.R. 2005) (upholding convictions of FSA employees for criminal conspiracy, including encouraging farmers to submit fraudulent claims under the Livestock Indemnity Program); *Multi Ag Media, LLC v. Department of Agriculture,* 2006 U.S. Dist. LEXIS 55170 (D.D.C. 2006) (unpublished) (finding that USDA records pertaining to Livestock Compensation Program and Livestock Indemnity Program are not protected from disclosure under Freedom of Information Act, in part due to public interest in reviewing USDA's implementation of subsidy programs). This holding was affirmed in *Multi Ag. Media, LLC v. Department of Agriculture*, 515 F.3d 1224 (2008), though the case was reversed and remanded.

90 7 C.F.R. pt. 15d (2008).