Farmers' Guide to Disaster Assistance

Volume 3: Livestock Indemnity Program (LIP)

August 2019

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Farmers' Guide to Disaster Assistance

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Volume 3: Livestock Indemnity Program (LIP)

August 2019

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This Guide to the Livestock Indemnity Program (LIP) is current through August 16, 2019.

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Livestock Indemnity Program (LIP)

I. Introduction

Through the Livestock Indemnity Program (LIP), the Farm Service Agency (FSA) provides cash payments for livestock losses—either injury or death—that were caused by eligible loss conditions. Eligible loss conditions can include adverse weather, disease, and some animal attacks.

Eligibility for LIP assistance varies depending on whether the livestock loss is a death or an injury.[1] For death losses, livestock owners and contract growers are eligible for LIP payments if there are above-normal livestock deaths that are the direct result of an eligible cause of loss. Livestock owners are also eligible for LIP if there are sales of injured livestock at a reduced price. The injury that caused the sale must also be the direct result of an eligible cause of loss. For both death losses and injuries, the livestock owners and contract growers must perform expected and normal preventative and corrective measures, and they must use acceptable animal husbandry practices, in order to qualify for LIP. As noted below, there is some uncertainty about the rules for LIP as they apply to 2019 and later year losses.

A. Recent Changes to the Livestock Indemnity Program (LIP)

A number of recent changes affect the Livestock Indemnity Program (LIP).

1. Budget Act of 2018

The Bipartisan Budget Act of 2018 (2018 Budget Act), which became law on February 9, 2018, made three important changes to LIP.[2] First, some producers with losses in 2017 are now eligible for first-time or additional LIP benefits. Second, some producers with losses in 2017 will be eligible for additional payments. Third, the eligibility rules now include injury to livestock—not just livestock deaths—as an eligible loss.

a. Changes in Eligibility for 2017 Losses

The 2018 Budget Act allows LIP payments to be made to some producers who were previously ineligible for LIP. These new eligibility rules can be confusing.

b. Some Producers Newly Eligible for 2017 Losses

Some producers who suffered 2017 livestock losses were not eligible for LIP payments in 2017, but were made eligible by the 2018 Budget Act, which reopened the 2017 LIP signup period for certain producers.[3] It is now possible for producers to apply for losses that occurred in 2017 even if the producer had previously applied for LIP and been denied or had never applied in the past. The new rules are discussed below in the section on eligibility.

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1 83 Fed. Reg. 49,459, 49,468 (Oct 2, 2018) (codified at 7 C.F.R. §. 1416.301(a)-(b) (2019)).
2 See H.R. 1892, 115th Cong. § 20101 (2018) (codified at 7 U.S.C. § 9081(b)(1)-(2)).
3 H.R. 1892, 115th Cong. § 20101 (2018) (codified at 7 U.S.C. § 9081(b)(1)-(2), (f)(2)); FSA Notice LDAP-94, 2017 and 2018 LIP Losses Because of Injured Livestock Sold at Reduced Prices, at 1 (June 1, 2018) (expired Jan. 1, 2019).

c. *Some Producers Eligible for Additional Payments for 2017 Losses*

Some producers that applied for and received LIP payments for 2017 losses will, as a result of the 2018 Budget Act, receive more funds.[4] This is true for two reasons. First, the program did not have enough funding in 2017 to cover all of the eligible losses experienced by producers. Second, LIP payment limitations for producers have changed. The new rules are discussed below.

d. *New Loss Category—Injury Losses in 2017 and Going Forward*

Before the 2018 Budget Act, LIP only made payments when livestock died. The 2018 Budget Act changes this so that now it is possible for a producer who sold an injured animal for a reduced price to be eligible for LIP.[5] This eligibility for injury losses applies for 2017 losses and losses into the future.

2. Regulation Changes in 2018

On October 2, 2018, FSA issued a number of regulation changes that affect LIP in the Federal Register.[6] These changes have recently been incorporated into the Code of Federal Regulations.[7]

3. 2018 Farm Bill

The 2018 Farm Bill—technically the Agricultural Improvement Act of 2018—became law on December 20, 2018.[8]

Three important changes to LIP were made in the 2018 Farm bill. First, the 2018 Farm Bill confirmed that Native American tribes and tribal organizations are eligible for LIP.[9]

Second, the 2018 Farm Bill changed somewhat the conditions under which a farmer can be eligible for LIP.[10]

Third, the 2018 Farm Bill expanded the circumstances under which disease can be an eligible cause of loss.[11] In the past, a loss due to disease was only eligible if the disease was directly caused by an eligible weather condition and if it resulted in the death of livestock. Now, however, disease can be its own eligible cause of loss, regardless of whether the disease was caused by an adverse weather event.

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4 H.R. 1892, 115th Cong. § 20101 (2018) (codified at 7 U.S.C. § 9081(b)(1)-(2), (f)(2)); FSA Notice LDAP-91, Issuing 2017 ELAP Payments and Additional 2017 and 2018 LIP and LFP Payments, at 2 (April 6, 2018) (expired Oct. 1, 2018).

5 H.R. 1892, 115th Cong. § 20101(a) (2018) (codified at 7 U.S.C. § 9081(b)(1)); FSA Notice LDAP-94, at 2 (June 1, 2018) (expired Jan. 1, 2019).

6 83 Fed Reg. 49,463 (Oct. 2, 2018).

7 See 7 C.F.R. § 1416.301 et seq. (2019).

8 Agriculture Improvement Act of 2018, Pub. L. No. 115-334 (Dec. 20, 2018).

9 Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(a) (2018) (to be codified at 7 U.S.C. § 9081(a)(2)(B)).

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

11 Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(b) (2018) (to be codified at 7 U.S.C. § 9081(b)).

B. Statute, Regulations, Handbooks, and Notices

The rules for LIP are found in several places. First, LIP payments are made possible by federal statute.

Second, rules found in the Code of Federal Regulations (C.F.R.) also govern LIP.[12]

Third, rules for LIP can also be found in what FSA calls Handbooks.[13] These are thick documents that are available online.[14]

Finally, FSA issues what are called Notices, which provide guidance on various topics and changes to FSA programs.[15]

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

This Guide refers to C.F.R. regulations that are still valid, as well as to Handbooks and Notices. In some instances, however, it appears that the Handbook does not been fully updated to reflect all of the recent changes to LIP. Because we do not know how FSA will incorporate those changes into its Handbook, we refer to both the C.F.R. and the Handbook even if they conflict.

C. Rules Changing Soon? Uncertain Rules for 2019 Crop Year

As noted in the section just above, some of the most important rules for LFP and other FSA programs are found in what FSA calls Handbooks. The current FSA Handbook that applies to LIP was issued on April 25, 2019.[16] According to this Handbook, it sets the rules for those that have a disaster in 2019.[17]

FSA may release a new Handbook that will set the rules for the 2019 crop year and years going forward. As of August 13, 2019, however, the April 25, 2019, Handbook continues to be found on the USDA website along with other FSA Handbooks.[18]

Farmers can check the FLAG website, or the FSA website, to find out if a new Handbook has been released by FSA.[19]

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12 LIP regulations are found at 7 C.F.R. pt. 1416 Subpts. A, D (2019).

13 The current Handbook for LIP is entitled FSA Handbook 1-LDAP (Revision 1), Livestock Disaster Assistance Programs for 2011 and Subsequent Years (April 25, 2019).

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

15 FSA Notices have a published date, as well as a disposal, or expiration, date. See, for example, FSA Notice LDAP-92, LIP Veterinarian Certification of Deaths Because of Disease (Apr. 27, 2018) (expired Dec. 1, 2018). The Notices may also be downloaded from the FSA website. To search for downloadable FSA Notices, visit https://www.fsa.usda.gov/FSA/notices.

16 The current Handbook for LIP is FSA Handbook 1-LDAP (Revision 1), Livestock Disaster Assistance Programs for 2011 and Subsequent Years (April 25, 2019).

17 The Handbook explicitly provides rules for 2019. See, for example, LDAP Handbook, page 6-76, par. 421.C (April 25, 2019).

18 FSAs Handbooks can be found here: https://www.fsa.usda.gov/FSA/webapp?area=home&subject=empl&topic=hbk.

18 See https://www.fsa.usda.gov/Internet/FSA_File/1-ldap_r01_a37.pdf (accessed on August 13, 2019).

19 FLAG is at http://www.flaginc.org/.

II. LIP Producer Eligibility

FSA rules govern eligibility for LIP. The rules differ somewhat depending on whether the producer is a livestock owner or a livestock contract grower. The eligibility discussion below is therefore divided into three sections. Discussed first are the eligibility rules that apply generally to all producers applying for LIP benefits. Discussed next are the eligibility rules that apply only to livestock owners. Finally, the eligibility rules for contract growers are discussed.

A. Producer Eligibility—General Rules for All Producers

The following rules apply to all producers who are applying for LIP assistance.

1. Must Qualify as an Eligible Producer

To receive benefits under LIP, the farmer must be what FSA calls an eligible producer.[20] An eligible producer may be an owner, operator, landlord, tenant, or sharecropper. An eligible producer must share in the risk of producing the livestock. The eligible producer must also be entitled to share in the crop or livestock available for marketing from the farm. This includes livestock that would have been produced but were not.

Under this definition, both livestock owners and contract growers can be eligible for LIP.[21] Rules that apply only to livestock owners or only to contract growers are discussed later in this Guide.

2. Legal Resident or an Eligible Entity

An eligible producer can be either an individual person or a legal entity.[22]

If an individual, the farmer must be a citizen or legal resident alien of the United States.[23]

If a legal entity, the producer can be any of the following: (1) a partnership made up of U.S. citizens;[24] (2) a corporation, limited liability corporation, or other farm organization structure organized under state law; [25] or (3) a Native American tribe or, with some limitations, Native American organization, entity, or economic enterprise.[26] The 2018 Farm Bill confirms that tribes and tribal organizations are eligible.[27]

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20 83 Fed. Reg. 49,459, 49,463 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.3(a) (2019)). In theory the risk for a crop must be shared as well. This would not be relevant for LIP, however.

21 83 Fed. Reg. 49,459, 49,463 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.3(a) (2019)).

22 83 Fed. Reg. 49,459, 49,463 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.3(a), (b) (2019)); LDAP Handbook, page 2-11, para. 23.A, "Eligible livestock contract grower," page 2-12, para. 23.A, "Eligible livestock owner," pages 2-52 and 2-53, para. 42.D-E (April 25, 2019).

23 7 C.F.R. § 1416.3(b) (2019); LDAP Handbook, page 2-12, para. 23.A, "Eligible livestock owner" (April 25, 2019). A minor child can apply for program benefits under LIP so long as the minor meets the specific eligibility requirements for minors, as well as all other LIP eligibility requirements. See 7 C.F.R. pt. 14; 7 C.F.R. § 1416.12 (2019).

24 7 C.F.R. § 1416.3(b)(3) (2019); LDAP Handbook, page 2-12, para. 23.A (April 25, 2019).

25 7 C.F.R. § 1416.3(b)(4) (2019)); LDAP Handbook, page 2-12, para. 23.A (April 25, 2019).

26 According to the FSA Handbook, tribes, as defined in the Indian Self-Determination and Education Assistance Act, are eligible, as are organizations chartered under the Indian Reorganization Act, and economic enterprises under the Indian Financing Act of 1974. See LDAP

3. Farm Operating Plan

To be eligible for LIP, the producer must submit a farm operating plan.[28]

4. Adjusted Gross Income

In general, the producer must have an average adjusted gross income of $900,000 or less in order to be eligible for LIP.[29] The gross income limitation applies to a person and a legal entity, but it does not apply to a joint venture or legal partnership.

The 2018 Farm Bill changed this requirement.[30] FSA may waive the requirement if FSA decides that environmentally sensitive land of special significance would be protected by the waiver. FSA may waive the requirement only on a case by case basis. This change does not affect the 2018 crop year.[31]

5. Conservation Compliance

The producer must be in compliance with general FSA restrictions against conversion of highly erodible land and wetlands and must not otherwise be prevented from receiving USDA payments.[32]

6. All Livestock in County Taken into Account

When determining the payment eligibility for a livestock owner or contract grower, all of the livestock owner's or contract grower's interests in livestock in a county must be taken into account.[33] To do this, FSA will look at the entire livestock unit. A livestock unit is defined by FSA to mean all eligible livestock in the county where the livestock loss occurred.[34] The livestock unit includes all animals in which a producer has a 100 percent share interest, as well as all animals when more than one producer owns a share of the livestock.

Handbook, page 2-12, para. 23.A (April 25, 2019); see also 25 U.S.C. § 5304(e); 25 U.S.C. chs. 17, 45, 51.

27 Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(a) (2018) (to be codified at 7 U.S.C. § 9081(a)(2)(B)). The 2018 Farm Bill may allow tribal organizations to participate that were previously excluded.

28 83 Fed. Reg. 49,459, 49,463 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.3(b) (2019)). See 7 C.F.R. pt. 1400 (2019).

29 7 U.S.C. § 1308-3a; 83 Fed. Reg. 49,459, 49,464 and prefatory remarks (codified at 7 C.F.R. § 1416.6(c) (2019)); LDAP Handbook, page 2-2.5, para. 21.J (April 25, 2019). For additional rules, see 7 C.F.R. pt. 1400 (2019).

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

31 Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1704(c) (2018).

32 83 Fed. Reg. 49,459, 49,464 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.14(a)); LDAP Handbook, page 2-61, para. 43.H (April 25, 2019). The regulations governing highly erodible land and wetland conservation can be found at 7 C.F.R. pt. 12 (2019).

33 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.303(c)).

34 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Livestock unit").

B. Livestock Owner Eligibility

To be eligible for LIP payments as a livestock owner, several rules apply. These rules are in addition to the general producer eligibility rules discussed above.[35]

1. Ownership Defined

A livestock owner is defined for LIP purposes by FSA.[36] If livestock die, they must have been owned by the producer on the day they died.[37] If the LIP payment is for a livestock injury, the livestock must have been owned by the producer on the day the livestock were injured and sold. Ownership means legal ownership.

2. Production and Market Risk

The livestock owner must have held the production and market risks for the eligible livestock.[38]

3. Generally Eligible for Livestock Death Losses and Injuries

In general, livestock owners are eligible for LIP benefits for both livestock death losses as well as injured animals sold at a reduced price.[39] Livestock owners are not eligible for injured animals sold at a reduced price when those animals are (1) in a contract grower's inventory, and (2) the contract grower seeks benefits for a death loss.[40] In other words, if livestock are raised on contract, LIP benefits will go to the contract producer and not the owner of the livestock if the loss is of injured livestock sold at a reduced price.[41]

C. Contract Grower Eligibility

To be eligible for LIP payments as a contract grower, the contract grower must satisfy several requirements. These rules are in addition to the general producer eligibility rules discussed above.

1. Swine or Poultry Livestock Only

35 83 Fed. Reg. 49, 459, 49,469 Oct 2, 2018) (codified at 7 C.F.R. § 1416.303).
36 83 Fed. Reg. 49,459, 49,468 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Livestock owner").
37 83 Fed. Reg. 49,459, 49,468-469 (codified at 7 C.F.R. §§ 1416.302, "Livestock owner,"1416.303(a)(1)); LDAP Handbook, page 2-12, para. 23.A, "Eligible livestock owner," page 2-48, para. 42.A (April 25, 2019).
38 LDAP Handbook, page 2-12, para. 23.A, "Eligible livestock owner," page 2-52, para. 42.D (April 25, 2019).
39 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.303(a)(1)); LDAP Handbook, page 2-12, para. 23.A, "Eligible livestock owner" (April 25, 2019).
40 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.303(d)).
41 83 Fed. Reg. 49,459, 49,469 (codified at 7 C.F.R. §§ 1416.303(a)(1)), 1416.303(d)); LDAP Handbook, page 2-12, para. 23.A, "Eligible livestock owner" (April 25, 2019). The exact language of this rule is a bit confusing. It states that livestock owners are only eligible for assistance when livestock are sold at a reduced price when a contract grower is not also seeking LIP assistance for a death loss of the same livestock. 83 Fed. Reg. 49,459, 49,469 (codified at 7 C.F.R. § 1416.303(d)).

Contract growers, for purposes of LIP, are only those growers that have an interest in livestock that are either swine or poultry.[42]

2. Eligible for Death Losses Only

Contract growers are not eligible for LIP benefits for injured animals sold at a reduced price, but instead are only eligible for livestock death losses. [43]

3. Control and Possession of Livestock

Contract growers must have had possession and control of swine or poultry on the day the livestock died.[44] These rules are used to show that the contract grower has enough of a legal interest in the livestock so as to be eligible for LIP.[45]

4. Risk of Loss

A contract grower must have the risk of loss in the livestock.[46]

5. Written Agreement

A contract grower must have had a written agreement with the owner of the swine or poultry setting out the specific terms, conditions, and obligations of the parties regarding the production of the swine or poultry.[47]

III. Livestock Eligibility

To be considered eligible livestock under LIP, certain requirements must be met. These requirements differ based on whether the producer is a livestock owner or contract grower, as well as on the type of livestock, use of the livestock, and cause of death or injury of the livestock.

The following rules outline the types of livestock that are eligible under LIP and some of the other eligibility requirements for livestock.

A. Eligible Livestock Types for Livestock Owners

Livestock owners are eligible for LIP benefits for a number of types of livestock. The following sections describes eligible livestock types for livestock owners and describes livestock that are not eligible.[48]

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42 7 C.F.R. § 1416.304(e) (2019); LDAP Handbook, page 2-53, para. 42.E, "Contract" (April 25, 2019).

43 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.303(d)); LDAP Handbook, page 2-11, para. 23.A, "Eligible livestock contract grower," page 2-53, para. 42.E (April 25, 2019).

44 7 C.F.R. §§ 1416.303(a)(2)(ii), 1416.304(b) (2019); LDAP Handbook, page 2-11, para. 23.A, "Eligible livestock contract grower," page 2-53, para. 42.E (April 25, 2019).

45 LDAP Handbook, page 2-53, para. 42.E (April 25, 2019).

46 7 C.F.R. § 1416.303(a)(2)(iii) (2019); LDAP Handbook, page 2-11, para. 23.A, "Eligible livestock contract grower," page 2-53, para. 42.E (April 25, 2019).

47 7 C.F.R. § 1416.303(a)(2)(i) (2019); LDAP Handbook, page 2-11, para. 23.A, "Eligible livestock contract grower," page 2-53, para. 42.E (April 25, 2019). Similarly, LIP defines a "contract" to be a written agreement between the owner and the grower that sets specific terms, conditions, and obligations for the production of the livestock or livestock products. 7 C.F.R. § 1416.302, "Contract" (2019); LDAP Handbook, page 2-11, para. 23.A, "Contract" (April 25, 2019).

1. Beef Cattle

Beef cattle are eligible for beef cattle owners.[49] The LIP payments for owners of beef cattle will vary depending on whether the animals are adults or non-adults and whether the adults are cows or bulls.[50] An adult beef bull is at least two years old and is primarily used for breeding beef cows.[51] An adult beef cow has delivered at least one offspring. [52] A bred beef heifer is also considered an adult cow if she was pregnant at the time she either died or was sold at a reduced price.

Payments for non-adult beef cattle may vary depending on whether the animal weighed more or less than 400 pounds at the time it died or was sold at a reduced price.[53]

2. Dairy Cattle

Dairy cattle are eligible for dairy cattle owners.[54] Dairy cattle are defined as a dairy breed of bovine used for the purpose of providing milk for human consumption.[55]

Payments for dairy cattle will vary depending on whether the animals are adults or non-adults and whether the adults are cows or bulls.[56] An adult dairy bull is at least two years old and is primarily used for breeding dairy cows.[57] A bred dairy heifer is considered an adult dairy cow if she was pregnant at the time she died or was sold at a reduced price.[58]

Payments for non-adult dairy cattle may differ depending on whether the animal weighs more or less than 400 pounds.[59]

3. Swine

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48 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(a) (2019)); LDAP Handbook, page 2-48, para. 42.A, and pages 2-50 and 2-51, para. 42.C (April 25, 2019).

49 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. §§ 1416.304(a) (2019)); LDAP Handbook, page 2-48, para. 42.A (April 25, 2019).

50 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. §§ 1416.304(d) (2019)).

51 83 Fed. Reg. 49,459, 49,468 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Adult beef bull" (2019)).

52 83 Fed. Reg. 49,459, 49,468 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Adult beef cow" (2019)).

53 83 Fed. Reg. 49,459, 49,468 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Non-adult beef cattle" (2019)).

54 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. §§ 1416.304(a) (2019)); LDAP Handbook, page 2-48, para. 42.A (April 25, 2019).

55 83 Fed. Reg. 49,459, 49,468 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Non-adult dairy cattle," "Adult dairy cow" (2019)).

56 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(d) (2019)).

57 83 Fed. Reg. 49,459, 49,468 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Adult dairy bull" (2019)).

58 83 Fed. Reg. 49,459, 49,468 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Adult dairy cow" (2019)).

59 83 Fed. Reg. 49,459, 49,468 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Non-adult dairy cattle" (2019)).

Swine are eligible for swine owners.[60] For purposes of LIP, swine include any domesticated pig, hog, or boar.[61]

LIP payments for swine will vary depending on whether the animals are: (a) feeder pigs under fifty pounds; (b) sows, boars, barrows, or guilts from fifty to 150 pounds; or (c) sows, boards, or guilts over 150 pounds.[62]

4. Poultry

Poultry are eligible for poultry owners.[63] For purposes of LIP, poultry include domesticated chickens, turkeys, ducks, or geese.[64]

Payments for poultry will vary depending on whether the animals are: (a) regular sized chicken broilers and pullets; (b) chicken chicks; (c) chicken layers; (d) small sized chickens, pullets or Cornish hens; (e) ducks; (f) ducklings; (g) geese goslings; (h) geese (goose); (i) turkey poults; (j) or turkeys that are toms, fryers, or roasters.[65]

5. Sheep

Sheep are eligible for sheep owners. [66] Sheep must be domesticated to be eligible for LIP.[67] Payments for sheep will vary depending on whether the animal is a: (a) ewe; (b) lamb;[68] or (c) ram.[69]

6. Goats

Goats are eligible for goat owners. [70] Goats must be domesticated.[71] Payments for goats will vary depending on whether the animal is a: (a) buck; (b) nannie; or (c) kid.[72]

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60 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. §§ 1416.304(a) (2019)).

61 7 C.F.R. §§ 1416.302, "Swine," 1416.304(e) (2019); LDAP Handbook, page 2-16, para. 23.A, "Swine" (April 25, 2019). Eligible swine must be omnivorous.

62 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(d) (2019)).

63 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. §§ 1416.304(a) (2019)).

64 7 C.F.R. § 1416.302, "Poultry" (2019); LDAP Handbook, page 2-15, para. 23.A, "poultry" (April 25, 2019).

65 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(d) (2019)).

66 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(a) (2019)).

67 7 C.F.R. § 1416.302, "Sheep," (2019).

68 A lamb is less than one year old. 7 C.F.R. § 1416.302, "Lamb" (2019).

69 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(d) (2019)); 7 C.F.R. § 1416.302, "Ewe," "Ram" (2019).

70 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. §§ 1416.304(a) (2019)).

71 7 C.F.R. § 1416.302, "Goats" (2019).

72 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(d) (2019)). A kid is a goat that is less than one year old. 7 C.F.R. § 1416.302, "Kid" (2019).

7. Equine Animals

Equine animals are eligible for equine owners.[73] By equine animal, FSA means a domesticated horse, mule, or donkey.[74] Payments for equine animals do not appear to vary depending on the equine type.[75]

8. Other Eligible Animals for Livestock Owners

Other types of animals are also eligible for their owners. They are limited, however, to the following.

a. Alpacas

Alpacas are eligible for LIP, and the payments do not appear to vary depending on the type of alpaca.[76]

b. Bison and Buffalo

Bison and buffalo are eligible for LIP.[77] Payments for bison and buffalo will vary depending on whether the animals are adults or non-adults and whether the adults are cows or bulls.[78]

c. Beefalo

Beefalo are eligible for LIP.[79] Payments for beefalo will vary depending on whether the animals are adults or non-adults and whether the adults are cows or bulls.[80]

d. Deer

Deer are eligible for LIP, and the payments do not appear to vary depending on the type of deer.[81]

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73 83 Fed. Reg. 49,459, 49,469, (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(a) (2019)).
74 7 C.F.R. § 1416.302, "Equine animal" (2019).
75 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(d) (2019)).
76 83 Fed. Reg. 49,459, 49,469-70 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(a), (d) (2019)).
77 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(a) (2019)).
78 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(d) (2019)). An adult bison or buffalo bull is at least two years old and used for breeding purposes. An adult bison or buffalo cow has delivered one more offspring. A bison or buffalo heifer is considered an adult if she is pregnant. See 83 Fed. Reg. 49,459, 49,468-69 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Adult bison or buffalo bull," "Adult bison or buffalo cow," "Non-adult buffalo or bison" (2019)).
79 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(a) (2019)).
80 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(d) (2019)). An adult beefalo bull is at least two years old and used for breeding purposes. An adult beefalo cow has delivered one more offspring. A beefalo heifer is considered an adult if she is pregnant. 83 Fed. Reg. 49,459, 49,468, 49469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302 "Adult beefalo bull," "Adult beefalo cow," Non-adult beefalo").
81 83 Fed. Reg. 49,459, 49,469-70 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(a), (d) (2019)).

e. Elk

Elk are eligible for LIP, and the payments do not appear to vary depending on the type of elk.[82]

f. Emus

Emus are eligible for LIP, and the payments do not appear to vary depending on the type of emu.[83]

g. Llamas

Llamas are eligible for LIP, and the payments do not appear to vary depending on the type of llama.[84]

h. Ostriches

Ostriches are eligible for LIP, and the payments do not appear to vary depending on the type of ostrich.[85]

i. Reindeer

Reindeer are eligible for LIP, and the payments do not appear to vary depending on the type of reindeer.[86]

9. Livestock Types NOT Eligible for Livestock Owners

Livestock types not mentioned in the above section are likely not eligible for LIP when the producer is a livestock owner. In addition, the FSA Handbook says that certain livestock are definitely not eligible for livestock owners.[87] These are: (1) catfish; (2); crawfish; (3) pheasants; (4) quail; and (5) yaks.

B. Eligible Livestock Types for Contract Growers

To be eligible livestock for a contract grower, the livestock must be either poultry or swine.[88] No other kinds of livestock are eligible under LIP for contract growers.

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[82] 83 Fed. Reg. 49,459, 49,469-70 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(a), (d) (2019)).
[83] 83 Fed. Reg. 49,459, 49,469-70 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(a), (d) (2019)).
[84] 83 Fed. Reg. 49,459, 49,469-70 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(a), (d) (2019)).
[85] 83 Fed. Reg. 49,459, 49,469-70 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(a), (d) (2019)). Previously, ostriches appear not to have been eligible. See LDAP Handbook, page 2-51, para. 42.C (April 25, 2019).
[86] 83 Fed. Reg. 49,459, 49,469-70 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(a), (d) (2019)).
[87] LDAP Handbook, page 2-51, para. 42.C (April 25, 2019).
[88] 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(e) (2019)).

1. Swine

Swine are eligible for contract swine growers.[89] For the purposes of LIP, swine include any domesticated pigs, hogs, or boars.[90]

Payments for contract swine growers will vary depending on their type.[91] The rules are somewhat confusing. FSA regulations say payments will vary depending on whether they are: (1) boars and sows; (b) feeder pigs; (3) or lightweight barrows and gilts.[92] FSA probably means to have a fourth category of barrows and gilts, but that is not clear from the rules.[93]

2. Poultry

Poultry are eligible for contract poultry growers.[94] For purposes of LIP, poultry include any domesticated chickens, turkeys, ducks, or geese.[95]

Payments for contract poultry growers will vary depending on whether the animals are: (1) regular sized chicken broilers and pullets; (2) chicken layers; (3) small sized chicken pullets or Cornish hens; (4) geese (goose); or (5) turkeys that are toms, fryers, or roasters.[96] Although ducks are by definition poultry under LIP rules, ducks are not listed as a payment category of eligible livestock for contract growers.[97] It is therefore unclear how FSA will handle payments for contract growers who raise ducks.

C. Commercial Agricultural Uses Only

All livestock of livestock owners or contract growers must be produced or maintained for commercial use—for either the sale of livestock or the production of livestock products—on the day the animals die or until the event that resulted in the animals' sale at a reduced price.[98] The following rules apply.

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[89] 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(b) (2019)).
[90] 7 C.F.R. §§ 1416.302, "Swine," 1416.304(e) (2019); LDAP Handbook, page 2-16, para. 23.A, "Swine" (April 25, 2019). Swine must be omnivorous.
[91] 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(e)); 7 C.F.R. §§ 1416.302, "Swine," 1416.304(e) (2019); LDAP Handbook, page 2-16, para. 23.A, "Swine" (April 25, 2019).
[92] 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(e))
[93] 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(3)). The rule provides categories that overlap.
[94] 83 Fed. Reg. 49,459, 49,469, (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(b)).
[95] 7 C.F.R. § 1416.302, "Poultry" (2019); LDAP Handbook, page 2-15, para. 23.A, "poultry" (April 25, 2019).
[96] 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(e) (2019)).
[97] See 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(e) (2019)).
[98] 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(c)(3) (2019)); LDAP Handbook, page 2-48, para. 42.A, page 2-50, para. 42.C (April 25, 2019).

1. Commercial Use Only—Not Recreational Use

The livestock must be used for commercial purposes. Commercial use is defined to mean a use in the operation of a business activity.[99] The business activity must be a means of livelihood for profit.[100]

Livestock that were produced or maintained for any reason besides commercial use are not eligible for LIP payments.[101] Eligible livestock, therefore, may not be raised for what FSA calls recreational purposes. Recreational uses of livestock include owner consumption of the livestock and using the livestock for hunting, pleasure, roping, show, or as pets.

2. Agricultural Use

The FSA Handbook explains that commercial use must be agricultural and part of a farming operation.[102] The animals must be raised for one of two purposes.[103] First, they can be raised to be sold. Second, they can be raised to produce livestock products that are then sold. Milk and eggs are examples of livestock products that are sold for a commercial use.[104]

FSA gives an example of livestock that do not meet this requirement.[105] If someone owns five horses that pull carriages for tourists in a city, they are being maintained for a for-profit commercial use, but because the business is not a part of a farming operation that sells livestock or produces them for agricultural products, the animals are not eligible for LIP.

3. No Free Roaming Livestock

Wild or free-roaming livestock are not covered by LIP.[106] This includes, for example, free roaming equine and deer.

D. Ages of Eligible Livestock

LIP covers livestock of varying ages. Some age restrictions do apply, as described below.

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99 83 Fed. Reg. 49,459, 49,468 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302," Commercial use" (2019)); LDAP Handbook, page 2-10, para. 23.A, "Commercial use" (April 25, 2019).

100 The FSA handbook says profit "by an eligible producer." Newer regulations do not limit the definition in this way. 83 Fed. Reg. 49,459, 49,468 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302," Commercial use" (2019)); LDAP Handbook, page 2-10, para. 23.A, "Commercial use" (April 25, 2019).

101 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(c)(3)-(4) (2019)); LDAP Handbook, page 2-50, para. 42.C (April 25, 2019).

102 LDAP Handbook, page 2-48, para. 42.A (March 28, 2019). Agricultural operation means a farming operation. 7 C.F.R. § 1416.302, "Agricultural operation" (2019); LDAP Handbook, page 2-10, para. 23.A, "Agricultural operation" (March 28, 2019). A farming operation is a business enterprise engaged in producing agricultural products. 7 C.F.R. § 1416.302, "Farming operation" (2019).

103 83 Fed. Reg. 49, 459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(c)(3) (2019)).

104 83 Fed. Reg. 49, 459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(c)(3)-(4) (2019)).

105 LDAP Handbook, page 2-50, para. 42.C (April 25, 2019).

106 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(c)(4) (2019)); LDAP Handbook, page 2-51, para. 42.C (April 25, 2019).

1. Both Adult and Non-Adult Livestock Can be Eligible

LIP generally covers both adult and non-adult livestock.[107]

2. Newborn Livestock Can be Eligible

A newborn animal can qualify for LIP payments.[108] Newborn livestock are defined as livestock that are within ten days of their date of birth.[109] To qualify for LIP, the newborn livestock must satisfy the following conditions.

a. Born Before or During Eligible Loss Condition

The newborn animal must have been born before or during an eligible loss condition.[110]

b. Expected to Survive Under Normal Conditions

The newborn animal must have been expected to survive under normal conditions.[111]

c. Death or Injury and Sale Within Seven Days

The death or injury and sale of the newborn animal must have occurred no later than seven calendar days from the end date of the eligible weather condition or the animal attack.[112]

d. Death Directly Caused by Eligible Loss Condition

As with all other eligible livestock deaths, the newborn animal's death must have been directly caused by an adverse weather event or an attack by animals.[113]

Livestock that are stillborn and unborn livestock are NOT covered under LIP.[114] If an animal was pregnant when it died, LIP payments will be made only for the pregnant animal. In other words, to qualify for LIP, the animal must be born alive.

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[107] LDAP Handbook, page 2-48, para. 42.A(April 25, 2019).

[108] 83 Fed. Reg. 49, 459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Newborn livestock" (2019)); LDAP Handbook, page 2-49, para. 42.B (April 25, 2019).

[109] 83 Fed. Reg. 49, 459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Newborn livestock" (2019)); LDAP Handbook, page 2-14, para. 21.A, "Newborn livestock" (April 25, 2019).

[110] LDAP Handbook, page 2-49, para. 42.B (April 25, 2019).

[111] LDAP Handbook, page 2-49, para. 42.B (April 25, 2019).

[112] 83 Fed. Reg. 49, 459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(c)(1)(ii), (c)(2)(ii) (2019)); LDAP Handbook, page 2-49, para. 42.B (April 25, 2019).

[113] 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(c)(1)-(2) (2019)); LDAP Handbook, page 2-49, para. 42.B (April 25, 2019). The Handbook does not state whether a newborn animal that suffers an eligible injury is covered under LIP, although the federal regulations allow payments for newborns.

[114] LDAP Handbook, page 2-51, para. 42.C (April 25, 2019).

IV. Eligible Livestock Losses—Death and Injury

There are two types of eligible livestock losses: (1) death losses; and (2) injury losses.[115]

For livestock owners, both the death of eligible livestock and injury to livestock that are later sold for a reduced price can qualify as losses under LIP.[116]

For contract growers, the death of eligible livestock can qualify as a loss under LIP. [117] Unlike livestock owners, contract growers who sell injured livestock at a reduced price are not eligible for LIP benefits for those animals.[118]

The rules for death losses and injury losses are described below.

A. Eligible Livestock Death Losses

Eligible livestock deaths must have occurred under the following conditions.

1. Death Directly Caused by an Eligible Loss Condition

In general, eligible livestock deaths must be directly caused by what FSA calls an eligible loss condition, including eligible adverse weather events, animal attacks, or disease.[119] Eligible loss conditions are described in detail in a later section.

2. Within Thirty Days—Seven Days for Newborns

Under current rules, the death must have occurred within thirty calendar days from the ending date of the eligible adverse weather event or the date of the animal attack. With the passing of the 2018 Farm Bill, it appears likely that eligible death losses will also include those that occur within thirty calendar days of an eligible disease, which the Farm Bill added as its own, independent eligible loss condition.[120]

According to current rules, for newborn livestock—those within ten days of their birth—the deaths must have occurred within seven days of the animal attack or ending date of the adverse weather event.[121] With the passing of the 2018 Farm Bill, it is

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115 7 U.S.C. § 9081(b)(1)-(2); LDAP Handbook, page 2-33, para. 41.A (April 25, 2019). Before the 2018 Budget Act, only livestock death losses were eligible for LIP payments.

116 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(c)(1) (2019)); LDAP Handbook, page 2-12, para. 23.A, "Eligible livestock owner," page 2-52, para. 42.D (April 25, 2019).

117 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.303(d) (2019)); LDAP Handbook, page 2-11, para. 23.A, "Eligible livestock contract grower," page 2-53, para. 42.E (April 25, 2019).

118 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.303(b) (2019)) suggests otherwise. This is probably a mistake.

119 83 Fed. Reg. 49,459, 49,469-70 (Oct. 2, 2018) (codified at 7 C.F.R. §§ 1416.304(c)(1), 1416.304(f) (2019)); LDAP Handbook, page 2-33, para. 41.A (April 25, 2019).

120 Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(b)(1) (2018) (to be codified at 7 U.S.C. § 9081(b)(1)(C)); 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(c)(1)(ii) (2019)); LDAP Handbook, page 2-48, para. 42.A (April 25, 2019). The attack must be by animals reintroduced into the wild by the federal government or protected by federal law. These rules are discussed below.

121 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. §§ 1416.302, "Newborn livestock," 1416.304(c)(1)(ii) (2019)).

unclear how FSA will handle the timing of disease for newborns, but it seems likely a ten day rule will apply for newborns as well.[122] The rules for newborn livestock are discussed above. Both adverse weather events and animal attacks are discussed below.

3. In Excess of Normal Mortality

LIP only compensates eligible producers for death losses that occur in excess of normal mortality rates.[123] For LIP purposes, normal mortality means the percentage of expected livestock deaths in the area—by specific livestock type—that normally occur for producers during a calendar year.[124]

FSA sets the normal mortality rate for each type and weight range of eligible livestock.[125] To determine these mortality rates, FSA uses local data sources, such as state livestock organizations and the state Cooperative Extension Service.[126]

4. Proof and Supporting Documentation

If a livestock owner or contract grower seeks LIP payments for livestock death losses, the owner must provide proof and supporting documentation.[127] The specific documentation requirements are discussed in a later section.

B. Eligible Livestock Injury and Sale Losses

In order for a producer to qualify for LIP payments to compensate for injures to eligible livestock that are sold at a reduced price, all of the following requirements must be met.[128]

1. Injured and Sold on January 1, 2017 or After

The injury and sale of livestock is only eligible for LIP if the injury and sale took place on or after January 1, 2017.[129]

2. Eligible Loss Conditions 2018 Farm Bill Change

In order for a livestock injury to be eligible for LIP, the animal must have been injured as a direct result of one of three things: (1) an adverse weather event; (b) an attack by animals reintroduced into the wild by the federal government or protected by federal

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122 Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(b)(1) (2018) (to be codified at 7 U.S.C. § 9081(b)(1)(C)).

123 7 U.S.C. § 9081(b)(1); 83 Fed. Reg. 49,459, 49,468 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.301(b) (2019)); LDAP Handbook, page 2-17, para. 24.A (April 25, 2019).

124 7 C.F.R. § 1416.302, "Normal mortality" (2019); LDAP Handbook, page 2-15, para. 23.A, "Normal mortality" (April 25, 2019).

125 7 C.F.R. §§ 1416.302, "Normal mortality," 1416.306(a) (2019); LDAP Handbook, page 2-17, para. 24.A (April 25, 2019).

126 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.306(a) (2019)); LDAP Handbook, page 2-17, para. 24.A (April 25, 2019).

127 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(d)-(e) (2019)); LDAP Handbook, page 2-62, para. 44.A (April 25, 2019).

128 LDAP Handbook, page 2-11, para. 23.A, "Eligible injury" (April 25, 2019). Livestock injuries are only eligible under LIP if they harm LIP-eligible livestock.

129 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(c)(2)(i) (2019)).

law; or (3) certain diseases.[130] Adverse weather events, animal attacks, and disease are discussed below.

The 2018 Farm Bill made disease that results in the sale of livestock at a reduced sale price an eligible loss.[131] Before this change, injury and sale due to disease was not eligible for LIP.[132] This change is not yet reflected in FSA regulations or Handbooks.

3. Injured and Sold as a Direct Result of an Eligible Loss Condition

In order for a livestock injury to be eligible for LIP, the animal must have been injured and sold at a reduced price as a direct result of an eligible loss condition.[133]

4. Sale at Reduced Price to Independent Party

Injured livestock must be sold for a reduced price.[134]

The livestock must also be sold through an independent third party.[135] An independent third party, according to FSA, is a sale barn, slaughter facility, or a rendering facility.

5. Injury and Sale: Within Thirty Days—Seven Days for Newborns

The injury and sale must occur within thirty calendar days from the ending date of the eligible adverse weather condition or animal attack.[136]

For newborns, the injury and sale must have occurred within seven days of the eligible adverse weather condition or animal attack.[137] Newborn livestock, for the purposes of LIP, are those livestock within ten days of the date of birth.[138] Other rules about newborn livestock are above.

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[130] 83 Fed. Reg. 49,459, 49,469, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. §§ 1416.303(c)(2), 1416.304(f)); LDAP Handbook, page 2-33, para. 41.A (April 25, 2019); LDAP Handbook, page 2-11, para. 23.A, "Eligible injury," "Eligible disease," page 2-12, para. 23.A, "Eligible loss condition," page 2-33, para. 41.A, page 2-48 par. 42.A (April 25, 2019).

[131] Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(b) (2018) (to be codified at 7 U.S.C. § 9081(b)(1)).

[132] 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(f) (2019)); LDAP Handbook, page 2-33, para. 41.A (April 25, 2019).

[133] 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(c)(2) (2019)); LDAP Handbook, page 2-33, para. 41.A (April 25, 2019).

[134] 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(c)(2) (2019)); LDAP Handbook, page 2-68, para. 44.E (April 25, 2019).

[135] LDAP Handbook, page 2-48, para. 42.A, page 2-68, para. 44.E (April 25, 2019).

[136] 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(c)(2)(ii) (2019)); LDAP Handbook, page 2-48, para. 42.A (April 25, 2019).

[137] 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(c)(2)(ii) (2019)); LDAP Handbook, page 2-48, para. 42.A (April 25, 2019).

[138] 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Newborn livestock" (2019)).

6. Livestock Owners Only—Not Contract Growers

As noted above, for livestock owners, injury to livestock can qualify as a loss under LIP.[139] Unlike livestock owners, contract growers who sell injured livestock at a reduced price are not eligible for LIP benefits for those animals.[140]

7. Proof and Supporting Documentation

If a livestock owner seeks LIP payments for livestock injury and sale, the owner must provide proof and supporting documentation.[141] The specific documentation requirements are discussed in a later section.

V. Eligible Loss Conditions

LIP payments are provided to producers who suffer livestock deaths or injuries that are a direct result of what FSA calls eligible causes of loss or eligible loss conditions.[142] Three types of eligible loss conditions are now covered under LIP: (1) adverse weather events; (2) animal attacks; and (3) disease.[143]

Previously, FSA treated eligible loss conditions for death losses and for injury losses differently.[144] For death losses, all three loss conditions—adverse weather events, animal attacks, and diseases—counted as eligible loss conditions. For injury losses, only adverse weather events and animal attacks—not diseases—qualified as eligible loss conditions. The 2018 Farm Bill, however, changed LIP to allow disease to be an eligible loss condition for both death losses and the injury and sale of livestock. [145]

Described below are the general guidelines applicable to all eligible loss conditions as well as the specific rules for each type of loss condition.

A. General Guidelines for Eligible Loss Conditions

The following guidelines apply to loss conditions that are eligible under LIP.

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139 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(c)(1).

140 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.303(d); LDAP Handbook, page 2-11, para. 23.A, "Eligible livestock contract grower," page 2-53, para. 42.E (April 25, 2019).

141 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(d)-(e) (2019)); LDAP Handbook, page 2-62, para. 44.A, page 2-68, para. 44.E (April 25, 2019).

142 83 Fed. Reg. 49,459, 49,468, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. §§ 1416.301(b), 1416.302, "Eligible loss condition," 1416,304(c) (2019)). Only eligible loss conditions can create an eligible cause of loss.

143 83 Fed. Reg. 49,459, 49,468-69 (Oct. 2, 2018) (codified at 7 C.F.R. §§ 1416.301(b), 1416.302, "Eligible loss condition," 1416.304(c)(1)-(2) (2019)); LDAP Handbook, page 2-12, para. 23A, "Eligible loss condition," page 2-33, para. 41.A. (April 25, 2019).

144 LDAP Handbook, page 2-33, para. 41.A (April 25, 2019).

145 Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(b) (2018) (to be codified at 7 U.S.C. § 9081(b)(1)).

1. Directly Result in Livestock Death or Injury

To be an eligible loss condition, FSA must be convinced that the loss condition was directly responsible for the livestock's injury or death.[146] The existence of an eligible loss condition—by itself—does not automatically mean that a producer is eligible for LIP benefits for livestock that die or are injured. Producers must still satisfy all LIP eligibility requirements in order to qualify for payments.

2. Preventive and Corrective Measures

In order for an eligible loss condition that results in the death or injury of livestock to qualify for LIP payments, the livestock owner or contract grower must have performed expected and normal preventative or corrective procedures for the livestock.[147]

3. Management Decisions

A loss that is due to a management decision is not an eligible loss condition.[148] For example, deaths or injury due to insufficient water or feed for the livestock, or insufficient or contaminated feed during a drought are considered by FSA to be management decisions. They are therefore not eligible.

Confinement operations must follow good management practices and the operating equipment in the operation must meet industry standards. [149] If poultry or hogs in confinement operations are harmed because the operation's equipment fails due to an adverse weather event they also may not be covered. In these cases, there is no eligibility if (1) good management practices are not followed; (2) the facilities do not possess the equipment that meets industry standards (such as backup generators, alarm system or fans); or (3) management decisions did not include needed measures that would have prevented the loss.

The 2018 Farm Bill added a provision that allows FSA to disregard any management practice, vaccination, or lack of vaccination by the producer in the case of the death of unweaned livestock due to adverse weather.[150] FSA regulations and Handbooks do not yet reflect this change.

4. Acceptable Animal Husbandry

To qualify as an eligible loss condition, the livestock owner or contract grower must have used acceptable animal husbandry practices.[151] For FSA, the definition of accepted animal husbandry has two parts.

First, acceptable animal husbandry means raising and caring for animals in order to produce offspring, meat, fiber, milk, eggs, or other products.[152] This includes day-to-day care and selective breeding and raising of the livestock.[153]

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[146] 83 Fed. Reg. 49,459, 49,468-69 (Oct. 2, 2018) (to be codified at 7 C.F.R. §§ 1416,301(b), 1416.304(c)(1)-(2) (2019)); LDAP Handbook, page 2-33, para. 41.A (April 25, 2019).

[147] 83 Fed. Reg. 49,459, 49,468 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.301(b) (2019)).

[148] LDAP Handbook, page 2-47, para. 41.H (April 25, 2019).

[149] LDAP Handbook, page 2-47, para. 41.H (April 25, 2019).

[150] Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(b) (2018) (to be codified at 7 U.S.C. § 9081(b)(1)).

[151] 83 Fed. Reg. 49,459, 49,468 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.301(b) (2019)).

Second, the practices used must be those that are generally recognized by the commercial livestock industry. [154]

5. Calendar Year or Program Year for Eligible Loss Conditions

A confusing aspect of the definition of an eligible loss condition concerns the year in which it took place.

FSA regulations say that an eligible loss condition means an eligible adverse weather event, eligible animal attack, or eligible disease that occurs in the same calendar year for which benefits are requested.[155] Similarly, the FSA Handbook, for its part, says the loss condition must have occurred in the calendar year for which benefits are requested.[156]

FSA regulations say, however, that for a death loss, the eligible loss condition must have occurred in the same program year for which benefits are sought.[157] This part of the regulation addresses death losses, but not injury losses.[158] There is no such language for injury losses.

The problem is that a program year is not the same as a calendar year. Calendar years, as one would expect, go from January 1 to December 31. FSA rules do not define a program year for purposes of LIP. For some other programs, FSA makes clear that a program year runs from October 1 to September 30.[159] So, the 2019 program year would be from October 1, 2018, to September 30, 2019.

The practical effect of this confusing aspect of the rules is itself not clear. FSA has strict deadlines for application for LIP that are discussed below.

B. Adverse Weather Events

An adverse weather event can be an eligible loss condition for purposes of LIP. The following rules apply.

1. Adverse Weather Event Defined

The FSA definition of an eligible adverse weather event has two parts.

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152 83 Fed. Reg. 49,459, 49,468 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Accepted animal practices" (2019)).
153 83 Fed. Reg. 49,459, 49,468 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Accepted animal practices" (2019)).
154 83 Fed. Reg. 49,459, 49,468 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Accepted animal practices" (2019)).
155 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2019) (codified at 7.C.F.R. § 1416.302, "Eligible loss condition" (2019)).
156 LDAP Handbook, page 2-12, para. 23.A, "Eligible loss condition" (April 25, 2019).
157 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2019) (codified at 7.C.F.R. § 1416.304(c)(1)(i) (2019)).
158 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2019) (codified at 7.C.F.R. § 1416.304(c)(2) (2019)).
159 LDAP Handbook, page 10-12, para. 802.A, "Program year" (April 25, 2019).

First, an adverse weather event is as an extreme and abnormal damaging weather event that was not expected to happen during the loss period in which it occurred.[160]

Second, the weather event must directly result in either the death of livestock or injury and sale of the livestock.[161] If a death occurs, the death must be in excess of normal mortality. If the livestock are injured and later sold, the sale must result in a reduced sale price.

2. Eligible Adverse Weather Events

Eligible adverse weather events include, but are not limited to, the following.[162]

Blizzards;[163]

Drought, but only when accompanied by anthrax under specific circumstances;[164]

Earthquakes;

Extreme heat and extreme cold;[165]

Floods;

Hail;

Hurricanes;

Lightning;

Straight-line winds;

Tornadoes;

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160 83 Fed. Reg. 49,459, 49,468 (Oct. 2, 2018), (codified at 7 C.F.R. § 1416.302 "Eligible adverse weather event" (2019)); LDAP Handbook, page 2-11, para. 23.A, "Eligible adverse weather event," page 2-34, para. 41.B (April 25, 2019).

161 83 Fed. Reg. 49,459, 49,468 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302 "Eligible adverse weather event" (2019)); LDAP Handbook, page 2-11, para. 23.A, "Eligible adverse weather event," page 2-34, par. 41.B (April 25, 2019).

162 83 Fed. Reg. 49,459, 49,468-69 (Oct. 2, 2018), (codified at 7 C.F.R. § 1416.302, "Eligible adverse weather event" (2019)); LDAP Handbook, page 2-34, par. 41.B and page 2-35, para. 41.C (April 25, 2019); FSA Notice LDAP-97, Delegation of Authority to Determine Eligible Weather Under LIP, at page 2 (October 1, 2019) (expired April 4, 2019).

163 A blizzard is defined as a storm which contains large amounts of snow or blowing snow with winds in excess of 35 miles per hour. Visibility must be less than one-fourth of a mile for an extended period of time. 83 Fed. Reg. 49,459, 49,468 (Oct. 2, 2018), (codified at 7 C.F.R. § 1416.302, "Blizzard" (2019)).

164 Drought is considered an eligible loss condition only when it is associated with anthrax. More specifically, the drought must cause the anthrax, which in turn must directly cause the death of eligible livestock. 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018), (codified at 7 C.F.R. § 1416.302 "Eligible adverse weather event" (2019)); LDAP Handbook, page 2-35, para. 41.C (April 25, 2019).

165 Extreme heat and extreme cold can be eligible adverse weather events if certain temperature thresholds are met for the specific type of affected livestock. FSA determines these temperature thresholds. 7 C.F.R. § 1416.302, "Eligible adverse weather event" (2019); LDAP Handbook, page 2-11, para. 23.A, "Eligible adverse weather event," page 2-34, para. 41.B (April 25, 2019).

Tropical storms;

Typhoons;

Wildfires;

Winter storms;[166] and

Vog that is directly related to a volcanic eruption.[167]

FSA has the discretion to decide whether other conditions qualify as adverse weather events under LIP.[168]

3. Ineligible Adverse Weather Events

Under FSA rules, any weather event that is not listed above is not eligible as a loss condition under LIP.[169] For example, if a drought does not cause anthrax (which in turn must cause the death of eligible livestock), drought is not an eligible adverse weather event.[170]

4. Deciding When an Adverse Weather Event Has Occurred

FSA has the authority to decide when an eligible loss condition has occurred.[171] For adverse weather events, that decision can be made by the county FSA office. The county FSA office can make this decision if three conditions are met. First, the adverse condition must be an extreme weather event. Second, it must involve abnormal weather that was not expected during the loss period. Third, the weather event must directly kill or injure livestock.

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166 An eligible winter storm must be severe enough to directly cause injury to livestock. It must last for at least three consecutive days, and it must include a combination of high wind, freezing rain or sleet, heavy snowfall, and extremely cold temperatures. The wind, precipitation, and extreme cold must take place within the three days. The wind and extreme temperatures must occur in all three days. 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Winter storm" (2019)); LDAP Handbook, page 2-16, para. 23.A, "Winter storm" (April 25, 2019).

167 Vog is air pollution that results from an erupting volcano. LDAP Handbook, page 2-16, para. 23.A, "Vog" (April 25, 2019).

168 83 Fed. Reg. 49,459, 49,468-69 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Eligible adverse weather event" (2019)); LDAP Handbook, page 2-11, para. 23.A, "Eligible adverse weather event" (April 25, 2019).

169 LDAP Handbook, page 2-35, para. 41.C (April 25, 2019). FSA may, however, add to the list. 83 Fed. Reg. 49,549, 49,468 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Eligible adverse weather event" (2019)).

170 LDAP Handbook, page 2-11, para. 23.A, "Eligible adverse weather event," page 2-35, para. 41.C (April 25, 2019). FSA will consider any livestock deaths due to insufficient or contaminated water or feed during a drought to be caused by management decisions rather than an eligible weather event. LDAP Handbook, page 2-47, para. 41.H (April 25, 2019).

171 FSA Notice LDAP-97, Delegation of Authority to Determine Eligible Weather Under LIP, at page 2 (October 1, 2019) (expired April 4, 2019).

5. Adverse Weather and Unweaned Livestock – 2018 Farm Bill

As noted above, as a general rule, any loss that is the result of a management decision is not eligible under LIP.[172] The 2018 Farm Bill added a provision that allows FSA to disregard any management practice, vaccination, or lack of vaccination by the producer in the case of the death of unweaned livestock.[173] FSA regulations and Handbook do not yet reflect this change.

FSA may think that this rule only applies when the loss of the unweaned livestock is due to cold weather.[174] The 2018 Farm Bill, however, does not appear to read that way.

6. Thirty Days for Death of Livestock—Seven for Newborn

The death from an adverse weather condition must have occurred no later than thirty calendar days from the end of the adverse weather condition. [175] It must have occurred within seven calendar days for newborn livestock. Newborn livestock are defined as within ten days of birth.[176]

C. Animal Attacks

An eligible loss condition under LIP can result from an animal attack.[177] For an animal attack to be eligible, the following requirements must be met.

1. Defining Eligible Animal Attack

To be an eligible animal attack for LIP, only two types of attacking animals can be involved.[178] First, the animal attack may be eligible if the attacking animal was reintroduced into the wild by the federal government. Second, the animal attack may be eligible if the attacking animal is protected by federal law. Animal attacks by wolves or avian predators, for example, fall within this definition.

The attack must also directly result in either the death or an injury of the livestock.[179] If death results, the death must be in excess of normal mortality. If injury results, the animal must be sold at a reduced price.

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172 LDP Handbook, page 2-47, para. 41.H (April 25, 2019).
173 Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(b) (2018) (to be codified at 7 U.S.C. § 9081(b)(1)).
174 See Farm Service Agency, What's New: FSA and the 2018 Farm Bill, available at: https://www.farmers.gov/sites/default/files/documents/FSA-FarmBill2018_WhatsNew-19.pdf.
175 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(c)(1)-(2) (2019)).
176 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Newborn livestock" (2019)); LDAP Handbook, page 2-14, para. 23.A (April 25, 2019).
177 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(c)(1)-(2) (2019)); LDAP Handbook, page 2-40, para. 41.G (April 25, 2019).
178 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Eligible attack" (2019)); LDAP Handbook, page 2-11, para. 23.A, "Eligible attack" (April 25, 2019).
179 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Eligible attack" (2019)).

2. Timing for Livestock Losses from Animal Attacks

To be eligible under LIP, a livestock death or injury loss from an animal attack must have occurred no later than thirty calendar days from the date of attack.[180] For newborn livestock, the loss must have occurred within seven days of the date of attack.[181] Newborn livestock are defined as being within ten days of birth.[182]

3. Proof and Supporting Documentation

Eligible producers must provide FSA with acceptable proof of the animal attack and the resulting injuries or deaths.[183] Acceptable proof is described in a later section discussing documentation of LIP losses.

D. Eligible Disease

Livestock disease can be an eligible loss condition under LIP.[184]

1. 2018 Farm Bill Changes

The 2018 Farm Bill made important changes to LIP that affect the eligibility of disease as a loss condition. [185] With the passing of the 2018 Farm Ball, disease is now its own category of eligible loss condition, just as adverse weather events and animal attacks are. This change is significant. Although FSA has not yet explained how it will carry out the new 2018 Farm Bill disease category, the statute sets the following basic rules.

a. No Weather Role Needed

As a result of the 2018 Farm Bill, disease can now be an eligible cause of loss even if weather had no role in the disease.[186]

Previously, disease could only be an eligible loss if the disease was exacerbated, or made worse, by an eligible adverse weather event.[187] It is unclear whether FSA

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[180] 83 Fed. Reg. 49,459, 49,461, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(c)(1)-(2) (2019)).

[181] 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. §§ 1416.302, "Newborn livestock," 1416.304(c)(1)-(2)(2019)); LDAP Handbook, page 2-14, para. 23.A (April 25, 2019).

[182] 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Newborn livestock" (2019)); LDAP Handbook, page 2-14, para. 23.A (April 25, 2019).

[183] 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(d)(7)-(8), (e) (2019)); LDAP Handbook, page 2-40, para. 41.G (April 25, 2019).

[184] Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(b) (2018) (to be codified at 7 U.S.C. § 9081(b)(1)(C)); 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Eligible disease"); LDAP Handbook, page 2-35, para. 41.D (April 25, 2019).

[185] Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(b) (2018) (to be codified at 7 U.S.C. § 9081(b)(1)(C)).

[186] Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(b) (2018) (to be codified at 7 U.S.C. § 9081(b)(1)(C)). Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(b) (2018) (to be codified at 7 U.S.C. § 9081(b)(1)(C)).

[187] For the previous rules, see 7 U.S.C. § 9081(b)(1) from 2017; 7 C.F.R. §§ 1416.302, "Eligible adverse weather event," 1416.304(f)(1) (2018); LDAP Handbook, page 2-11, para. 23.A, "Eligible disease," page 2-35, para. 41.D (April 25, 2019). Regulations changed somewhat before the Farm Bill passed. See 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 § C.F.R. 1416.302, Eligible disease" (2019)).

will continue to recognize disease that is caused by weather as a separate kind of disease eligibility. To the extent this is done, there may be special rules for unweaned livestock that are affected by disease.[188]

b. *Types of Eligible Diseases—Unknown*

FSA has the discretion to name diseases as eligible loss conditions for LIP purposes.[189] Before the passing of 2018 Farm Bill, diseases that were eligible for LIP payments included anthrax, cyanobacteria, and larkspur poisoning.[190] FSA had specific eligibility rules for each of these diseases that must have been satisfied in order for the disease to qualify as an eligible loss condition.[191] It appears that the FSA regulations and Handbook have not been fully updated to reflect the 2018 Farm Bill changes, and so it is not clear which of these rules will be kept and which may be re-written.

As a result of recent changes, disease that results in the sale of livestock at a reduced sale price is an eligible loss.[192] Before the 2018 Farm Bill, this was not the case.[193]

2. Eligible Disease Defined

To be considered an eligible loss under LIP, a disease must satisfy the following requirements.

a. *Caused or Transmitted by a Vector*

In order to qualify for LIP, the disease must be caused or transmitted by a vector.[194] This is a new provision under the 2018 Farm Bill. A vector is not defined in the statute. In general, however, a vector, for this purpose, is an organism—such as a biting insect or a tick—that transmits a disease or a parasite from one animal to another.[195]

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188 The 2018 Farm Bill changed the rules for weather related losses for unweaned animals. If a death loss is due to adverse weather FSA may disregard management practice, vaccination, or lack of vaccination by the producer. In theory, management practice and vaccination might not be needed for eligibility for unweaned animals that had disease due to weather, but might be needed for all other diseases. See Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(b) (2018) (to be codified at 7 U.S.C. § 9081(b)(1)(B)).

189 Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(b) (2018) (to be codified at 7 U.S.C. § 9081(b)(1)(C)). See also LDAP Handbook, page 2-11, para. 23.A, "Eligible disease," page 2-35, para. 41.D (April 25, 2019).

190 LDAP Handbook, page 2-11, para. 23.A, "Eligible disease," page 2-35, para. 41.D (April 25, 2019).

191 For more specific information on anthrax, cyanobacteria, and larkspur poisoning, see LDAP Handbook, pages 2-35 through 2-38, para. 41.D (April 25, 2019).

192 Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(b) (2018) (to be codified at 7 U.S.C. § 9081(b)(1)(C)).

193 For the previous rule, see 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 § C.F.R. 1416.302, "Eligible disease," "Eligible loss condition" (2018)); LDAP Handbook, page 2-11, para. 23.A, "Eligible disease," page 2-35, para. 41.D (April 25, 2019).

194 Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(b) (2018) (to be codified at 7 U.S.C. § 9081(b)(1)(C)).

195 World Health Organization, Vector-borne diseases (October 31, 2017), available at: https://www.who.int/news-room/fact-sheets/detail/vector-borne-diseases.

b. No Vaccination Control Possible

In order to qualify for LIP, there must not be a vaccination available to control the disease.[196] This is a new provision under the 2018 Farm Bill.

c. No Acceptable Management Practice Possible

In general, in order to qualify for LIP, there must not be an acceptable management practice that can control the disease.[197] This is new under the 2018 Farm Bill.[198]

A vaccination is an example of an acceptable management practice that might be available.[199] If a vaccination is available for a specific disease, that disease would not be considered an eligible loss condition under LIP.[200]

d. Result in Death or Injury

Disease that results in either death or injury to livestock may be eligible for LIP.[201] In the past, a loss due to disease was only eligible if the disease was directly caused by an eligible weather condition and if it resulted in the death of livestock. Now, however, disease can be its own eligible cause of loss regardless of whether the disease was caused by an adverse weather event.

e. Timing of Disease Losses—Not Clear

It is not clear what timelines will apply for disease losses.

As noted above, a livestock death or injury loss from an animal attack or adverse weather event must have occurred no later than thirty calendar days from the date of attack or end of the weather event, or within seven calendar days of the date of attack or end of the weather event for newborn livestock. Newborn

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[196] Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(b)(1)(C) (2018) (to be codified at 7 U.S.C. § 9081(b)(1)(C)(ii)).

[197] Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(b)(1)(C) (2018) (to be codified at 7 U.S.C. § 9081(b)(1)(C)(ii)).

[198] This rule existed before the 2018 Farm Bill, but it only applied to death losses resulting from diseases that were exacerbated by eligible adverse weather events. See 7 C.F.R. § 1416.304(f)(1) (2018). Now, however, it applies to all eligible diseases that cause the death or injury to livestock.

[199] LDAP Handbook, pages 2-39, para. 41.E (April 25, 2019). Whether or not a vaccination ultimately prevented the livestock death did not matter for purposes of LIP.

[200] For example, based on the rules in effect before the 2018 Farm Bill, blackleg was a fatal disease of young cattle that was almost entirely preventable by vaccination. As a result, blackleg was not an eligible loss condition under LIP as a disease. This is true even if a producer vaccinates cattle and those cattle later die of blackleg. LDAP Handbook, pages 2-39, para. 41.E (April 25, 2019).

[201] Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(b) (2018) (to be codified at 7 U.S.C. § 9081(b)). The 2018 Budget Act changed eligibility under LIP. See H.R. 1892, 115th Cong. § 20101(a)(1) (2018) (codified at 7 U.S.C. § 9081(b)). For the pre-2018 Budget Act rule, see LDAP Handbook, page 2-11, para. 23.A, "Eligible disease," page 2-33, para. 41.A (April 25, 2019). For rules that reflect the 2018 Budget Act but not the 2018 Farm bill, see 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302 "Eligible disease," "Eligible loss condition" (2019)).

livestock are defined as within ten days of birth.[202] No rules along these lines exist yet for losses due to eligible diseases.

f. List of Eligible Diseases

It seems likely that FSA will create a list of eligible diseases.

Before the passing of the 2018 Farm Bill, diseases that were eligible for LIP payments included anthrax, cyanobacteria, and larkspur poisoning.[203] FSA had specific eligibility rules for each of these diseases that must have been satisfied in order for the disease to qualify as an eligible loss condition.[204] It is not clear which of these rules will be kept and which re-written.

3. Veterinarian Certification for Diseases

Under LIP, FSA requires that producers provide verifiable documentation of livestock losses, and FSA rules currently in place allow veterinarian certification to serve as verifiable proof of death losses resulting from disease. As noted above, however, these rules have not been updated since the passing of the 2018 Farm Bill and the addition of eligibility for livestock injuries—not just deaths—resulting from diseases.

Some veterinarian certification rules will certainly no longer be used because they contradict the 2018 Farm Bill. FSA may, however, require veterinarian certification for new aspects of disease losses under LIP. It is likely, therefore, that some of the veterinarian certification rules will no longer be required, some will remain the same, and others will be added.

At present, producers can submit form CCC-854A, the LIP Veterinarian Certification form, which requires a signed statement from a licensed veterinarian who is in good standing and who had personal observation of the livestock and their deaths.[205] The veterinarian certification—in its current, non-updated form—requires the following information.

a. Description of Livestock and Disease

At present, the veterinarian's certification must include a description of the livestock and disease.[206] Specifically, the veterinarian must describe the following: (1) the kind, type and weight range of the livestock; (2) the dates of the adverse weather event and of the livestock death; (3) the location of the livestock at the time of death; and (4) the type of disease. These rules likely will be

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[202] Newborn livestock are defined as being within ten days of birth. 83 Fed. Reg. 49,549, 49, 462, 49,468, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. §§ 1416.202, "Newborn livestock,"1416.304(c)(1)-(2) (2019)); LDAP Handbook, page 2-14, para. 23.A (April 25, 2019).

[203] For the rules in effect before the 2018 Farm Bill, see LDAP Handbook, page 2-11, para. 23.A, "Eligible disease," page 2-35, para. 41.D (April 25, 2019).

[204] For more specific information on anthrax, cyanobacteria, and larkspur poisoning, see LDAP Handbook, pages 2-35 through 2-38, para. 41.D (April 25, 2019).

[205] LDAP Handbook, page 2-39, para. 41.F (April 25, 2019); FSA Notice LDAP-92, "LIP Veterinarian Certification of Deaths Because of Disease," at 2 (Apr. 27, 2018) (expired Dec. 1, 2018).

[206] FSA Notice LDAP-92, "LIP Veterinarian Certification of Deaths Because of Disease," at 2 (Apr. 27, 2018) (expired Dec. 1, 2018).

retained. It is possible the same information will be needed for diseases that lead to the injury and sale of livestock.

The veterinarian certification form also requires that the number of livestock that died because of a disease that was made worse by an eligible adverse weather event be certified.[207] Once the rules are updated, it is possible the same information will be needed for diseases that lead to the injury and sale of livestock, and also likely that additional information—such as evidence of sales—could also be required when livestock are injured and sold at a reduced price

b. Livestock Deaths Not Preventable or Avoidable

At present, the veterinarian must certify that the livestock deaths were not otherwise preventable or avoidable using good husbandry and management practices and protocols.[208] This rule seems likely to be retained. It is possible the same information will also be needed for diseases that lead to the injury and sale of livestock.

c. Personal Knowledge of Livestock Death and Causation

At present, the veterinarian must certify that he or she had personal knowledge of the livestock deaths and their causes. [209] More specifically, the veterinarian must certify the following: (1) that the deaths were not otherwise avoidable and preventable using good animal husbandry and management practices; and (2) that the producer followed good animal husbandry and management practices in order to try and prevent the disease and loss of livestock. This rule seems likely to be retained. It is possible the same information will be needed for diseases that lead to the injury and sale of livestock.

d. Livestock Deaths Caused by Eligible Weather Event—Likely No Longer Needed

The current rules require the veterinarian to certify that the livestock deaths from disease were caused or exacerbated by an eligible adverse weather event.[210] Because of the changes in the 2018 Farm Bill, that rule likely will no longer be required.

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[207] FSA Notice LDAP-92, "LIP Veterinarian Certification of Deaths Because of Disease," at 2 (Apr. 27, 2018) (expired Dec. 1, 2018).

[208] LDAP Handbook, page 2-39, para. 41.F (April 25, 2019); FSA Notice LDAP-92, "LIP Veterinarian Certification of Deaths Because of Disease," at 2 (Apr. 27, 2018) (expired Dec. 1, 2018).

[209] FSA Notice LDAP-92, "LIP Veterinarian Certification of Deaths Because of Disease," at 2 (Apr. 27, 2018) (expired Dec. 1, 2018).

[210] LDAP Handbook, page 2-39, para. 41.F (April 25, 2019); FSA Notice LDAP-92, "LIP Veterinarian Certification of Deaths Because of Disease," at 2 (Apr. 27, 2018) (expires Dec. 1, 2018).

e. Certification for Injuries and Sale Resulting from Disease—Likely to be Added

Current veterinarian certifications only require the certification of death losses resulting from disease, not certification of the injury and sale of livestock at a reduced price. That rule seems likely to change.

VI. Applying for LIP

The following rules govern the LIP application process.

A. 2019 Losses—and Future Years

To receive payments under LIP for losses that occur in 2019 and later years, producers must file a notice of loss and an application for payment.[211]

The notice of loss and application for payment are located in separate sections of the same form but they are treated separately by FSA and have different filing deadlines.[212]

Before signing an application for payment, the related notice of loss must be on file with FSA.[213]

1. Notice of Loss

For 2019 and future years, a notice of loss must be filed.

a. Deadline – Thirty Days from When Loss is Apparent

The deadline for filing a notice of loss is thirty calendar days from when the loss is first apparent to the livestock owner or contract grower.[214]

b. Notice of Loss Information

A notice of loss must include the following information: (1) the producer's name, address, and signature; (2) the type of eligible loss condition; and (3) the date the loss occurred or became apparent to the producer.[215]

c. By Livestock Unit

The notice of loss must be filled out for each affected livestock unit. A livestock unit is defined by FSA to mean all eligible livestock in the county where the

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211 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(b)-(c) (2019)); LDAP Handbook, page 2-32, para. 40.D (April 25, 2019).

212 It is Form CCC-852, Livestock Indemnity Program Application 2019 and Subsequent Years. See LDAP Handbook, pages 2-177 to 2-187, para. 83 (April 25, 2019); FSA Notice LDAP-94, 2017 and 2018 LIP Losses Because of Injured Livestock sold at Reduced Prices, at 2 (June 1, 2018) (expired Jan. 1, 2019). Form CCC-852 (05-17-18) for livestock losses in 2018 and subsequent years can be found here, using the search term "Livestock Indemnity Program": https://forms.sc.egov.usda.gov/eForms/searchAction.do.

213 LDAP Handbook, page 2-106, para. 71.B (April 25, 2019).

214 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(b)(1) (2019)).

215 LDAP Handbook, page 2-229, para. 91.B (April 25, 2019).

livestock loss occurred.[216] The livestock unit includes all animals in which a producer has a 100 percent share interest in the livestock and all animals when more than one producer owns a share of the livestock.

d. *Producers with a Share in Livestock*

If multiple producers have a share in the same livestock that suffer a loss, only one of the producers must file a notice of loss for that livestock.[217] Each producer with a share interest in the livestock must file a separate application for payment.

e. *Local FSA Office*

In general, the notice of loss must be submitted to the local FSA office.[218] The FSA Handbook offers other options as well.[219]

2. Completed Application for Payment

For losses in 2019 and later years, a final application for payment must be filed.

a. *Deadline*

For losses in 2019 and later years, the completed application for payment must be submitted no later than sixty calendar days after the end of the calendar year in which the loss condition occurred.[220]

So, for a loss that occurred any time in the calendar year of 2019, the deadline would be February 29, 2020. The exact date will vary due to leap years.

According to the FSA Handbook, a producer may make a written request for late-filing of the application for payment.[221] FSA has the discretion to grant or deny such a request, but it is unclear what type of explanation FSA would think of as a satisfactory reason to accept a late-filed application.

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216 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Livestock unit" (2019)).

217 LDAP Handbook, page 2-104, para. 71.B (April 25, 2019).

218 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(b)(2) (2019)). It should go to the office that services the county where the loss occurred.

219 First, the producer can file the notice of loss with the FSA service center county office responsible for the county in which the livestock loss occurred. LDAP Handbook, page 2-104, para. 71.B (April 25, 2019). For location and contact information on FSA Service Centers, visit https://offices.sc.egov.usda.gov/locator/app. If the notice of loss cannot be taken or mailed directly to the appropriate location, producers may file the notice of loss by telephone, fax, or e-mail. LDAP Handbook, page 2-106, para. 71.B (April 25, 2019). If a producer files by telephone, fax, or email, the producer is not required to sign the notice of loss. A producer may file a notice of loss at any FSA county office in the nation by using the FSA nationwide customer service software that is located at each FSA county office. LDAP Handbook, page 2-103, para. 71.B (April 25, 2019).

220 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(c)(2) (2019)).

221 LDAP Handbook, page 2-32.5, para. 40.E (April 25, 2019).

b. *By Livestock Unit*

The final application must be filled out by livestock unit. [222] A livestock unit is defined by FSA to mean all eligible livestock in the county where the livestock loss occurred.[223] The livestock unit includes all animals in which a producer has a 100 percent share interest in the livestock and all animals when more than one producer owns a share of the livestock.

B. 2017 and 2018 Losses

With the passing of the 2018 Budget Act, and new rules issued on October 3, 2018, the LIP signup period for 2017 and 2018 program year losses has changed.[224]

1. 2017 Losses—Deadlines Are Past

The 2018 Budget Act reopened LIP signup for 2017 program year losses.[225] The 2017 program year ran from October 1, 2016 through September 30, 2017. Under the reopened signup, the deadline for filing a notice of loss for the 2017 program year was December 3, 2018 for most farmers. [226] This means it is too late for a farmer to file a LIP notice of loss claim for the 2017 program year.

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[222] 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(c) (2019)).

[223] 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Livestock unit" (2019)).

[224] 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(b)-(c) (2019)).

[225] See FSA Notice LDAP-94, 2017 and 2018 LIP Losses Because of Injured Livestock Sold at Reduced Prices, at 1 (June 1, 2018) (expired Jan. 1, 2019); see also 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(b)(1), (c)(1) (2019)); LDAP Handbook, page 2-32, para. 40.D, page 2-101, para. 71.A (April 25, 2019). As provided for in the 2018 Budget Act, the LIP signup for 2017 livestock losses was reopened on June 4, 2018. This delayed deadline did not apply to producers who already applied for LIP unless they applied and were denied because the notice of loss or completed application was ruled late by FSA. 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(a) (2019)); LDAP Handbook, page 2-32, para. 40.D, page 2-101, para. 71.A (April 25, 2019).

[226] The deadline for filing 2017 livestock losses was confusing. The producer must have filed a notice of loss with the FSA, using form CCC-852 (2017), by the later of two dates. The first date was 30 calendar days after the date the loss became apparent to the producer. For anyone suffering losses in 2017, that date would have long past. The second date was 60 calendar days after when the LIP regulations, including the 2018 Budget Act rules, were published in the Federal Register. Those rules were published in the Federal Register on October 3, 2018 and therefore the deadline was December 3, 2018. 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018); FSA Notice LDAP-94, at 2 (June 1, 2018) (expires Jan. 1, 2019); LDAP Handbook, page 2-32, para. 40.D (April 25, 2019). Form CCC-852 for year 2017 livestock losses can be found here: https://forms.sc.egov.usda.gov/eForms/searchAction.do. A notice of loss for 2017 losses must have included the following information: the producer's name, address, and signature; the type of eligible loss condition; and the date the loss occurred or became apparent to the producer. LDAP Handbook, pages 2-198 and 2-199, para. 89.A (April 25, 2019). The notice of loss must be filed with FSA. LDAP Handbook, page 2-101, para. 71.A, page 2-103, para. 71.A (April 25, 2019).

It is also now too late to file a completed application for payment for LIP losses that were first apparent during the 2017 program year.[227] That deadline was also December 3, 2018 for most farmers.[228]

2. 2018 Losses—Deadlines are Past

It is now too late to file a LIP notice of loss for losses during the 2018 program year, which ran from ran from October 1, 2017 through September 30, 2018.[229]

As a result of the 2018 Budget Act, the deadline to file a notice of loss claim for the 2018 program year was December 3, 2018 for most farmers.[230]

It is also too late to file a completed application for payment for losses that were first apparent during 2018.[231] In general, applications for payment must be filed no later than sixty calendar days after the end of the calendar year in which the eligible loss occurred.[232] So, for a loss that occurred any time in the calendar year of 2018, the deadline would have been March 1, 2019. The exact date will vary due to leap years.

VII. Documentation to Support LIP Applications

In addition to filing the notice of loss and application for payment, farmers must also provide documentation of the livestock deaths or injuries in order to be eligible for LIP payments.[233]

The following sections outline the general rules that are applicable to all LIP losses, as well as specific rules that apply only to certain types of losses and loss conditions.

A. General Documentation Requirements for All LIP Losses

The following documentation rules apply to all farmers seeking LIP benefits.[234]

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227 Producers could file their applications for payment no later than 60 calendar days after when the LIP regulations, including the 2018 Budget Act provisions, were published in the Federal Register. Those rules were published in the Federal Register on October 3, 2018 and therefore the deadline was December 3, 2018. 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(c)(1) (2019)); FSA Notice LDAP-94, at 2 (June 1, 2018) (expires Jan. 1, 2019); LDAP Handbook, page 2-32, para. 40.D (April 25, 2019). A producer could make a written request for late-filing of the application for payment. LDAP Handbook, page 2-32.5, para. 40.E (April 25, 2019). FSA had the discretion to grant or deny such a request, but it is unclear what type of explanation FSA would think of as a satisfactory reason to accept a late-filed application. For further rules that applied for 2017 see LDAP Handbook, page 2-103, para. 71.A, page 2-115, para. 74.A (April 25, 2019).

228 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(c)(1)).

229 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(a)-(c)).

230 The deadline was 60 calendar days after when the LIP regulations, including the 2018 Budget Act rules, were published in the Federal Register. The rules were published in the Federal Register on October 3, 2018 and therefore the deadline was December 3, 2018. 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(b) (2019)).

231 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(c) (2019)).

232 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(c)(2) (2019)).

233 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(d) (2019)); LDAP Handbook, page 2-62, para. 44.A (April 25, 2019).

234 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(d) (2019)).

1. Timing

Supporting documents must be turned in at the same time that the completed application for payment is due.[235]

2. Evidence of Loss

Evidence of loss must be submitted.[236]

3. Location of Livestock

The current physical location of livestock in inventory must be submitted.[237]

4. Physical Location at Time of Death or Injury

The physical location of livestock at the time of their death or injury must be submitted.[238]

5. Inventory Numbers

Inventory numbers must be given to FSA.[239] This means an inventory for the livestock unit, which is defined by FSA to mean all eligible livestock in the county where the livestock loss occurred.[240] The livestock unit includes all animals in which a farmer has a 100 percent share interest, as well as all animals when more than one farmer owns a share of the livestock. For death losses, other information may be needed by FSA to establish the death of the livestock. [241]

6. Farm Operating Plan

A farm operation plan must be submitted. If a current plan is already on file at the FSA office, another one is not needed.[242]

7. Grower Contract—Contract Growers Only

In addition to the above requirements, contract growers must provide a copy of their grower contract. [243]

B. Types of Required Documentation for All LIP Losses

Under FSA rules, farmers must provide adequate proof of their livestock death and injury losses. To do this, FSA rules require the farmer to show two things. First, the farmer must show that the livestock death or injury was directly caused by an eligible loss condition.[244]

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235 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(d) (2019)).
236 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(d)(1) (2019)).
237 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(d)(2) (2019)).
238 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(d)(3) (2019)).
239 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(d)(4) (2019)).
240 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Livestock unit" (2019)).
241 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(d)(4) (2019)).
242 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(d)(5) (2019)).
243 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(d)(10) (2019)).
244 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(e) (2019)); LDAP Handbook, page 2-62, para. 44.A (April 25, 2019).

Second, the farmer must demonstrate the quantity and kind of livestock that were killed or injured by providing evidence of livestock inventory.

In order to prove the livestock losses, FSA requires that the submitted documentation fall into one of three categories: (1) verifiable proof of death or injury and reliable proof of inventory; (2) reliable records of death or injury plus verifiable proof of inventory; or (3) third-party certification plus verifiable proof of inventory.[245]

The documentation rules are confusing, and for some rules, the federal regulations and the Handbook seem to differ. For example, the federal regulations might require documentation for livestock death losses only, while the Handbook requires the same documentation for both death losses and injuries. When there are inconsistencies between the regulations and the Handbook, they are noted in the text below.

The following sections outline the various categories of documentation that FSA will accept as adequate proof of a farmer's livestock losses. These categories are listed in FSA's order of preference, meaning that—when possible—farmers should try to submit the information outlined in the first category before resorting to the second or third categories of documentation.

1. Verifiable Proof Death or Injury and Reliable Inventory Records

When possible, FSA prefers that farmers provide what it calls adequate verifiable proof of the livestock death loss or injury, as well as reliable proof of inventory.[246]

The verifiable proof must document that the death or injury was the direct result of an eligible loss condition, as well as provide evidence of the number and kind of livestock that died or were injured. The reliable inventory records must be for the farmer's beginning inventory. The following rules apply.

a. Verifiable Proof of Cause of Death or Injury, Including Livestock Quantities and Kind

Farmers must provide what FSA sees as verifiable proof that the death or injury of the eligible livestock occurred as a direct result of an eligible loss condition.[247] There can be no other possible or potential cause of the loss.

As part of this proof, farmers must provide verifiable documentation of the quantity and kind of livestock that died or were injured due to the eligible loss condition.[248] FSA says that this documentation can take the form of any of the following.

Purchase records;
Veterinarian records;
Bank or other loan papers;
Rendering-plant truck receipts;

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[245] 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(e)-(f) (2019)).
[246] 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(e) (2019)); LDAP Handbook, page 2-62, para. 44.A (April 25, 2019).
[247] 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(e) (2019)); LDAP Handbook, page 2-62, para. 44.A (April 25, 2019).
[248] 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(e) (2019)); LDAP Handbook, page 2-62, para. 44.A (April 25, 2019).

Federal Emergency Management Agency (FEMA) records;
National Guard records;
Written contracts;
Production records;
Internal Revenue Service (IRS)records
Property tax records; and
Private insurance documents.

FSA can also accept other similar documents if it decides they are verifiable.[249]

b. Reliable Proof of Beginning Inventory

If a farmer is providing verifiable proof of a death or injury loss, the farmer must also provide reliable beginning inventory records.[250] Reliable beginning inventory records include the following.[251]

Brand inspection records;
Contemporaneous producer records existing at the time of the event;
Docking records;
Ear tag records;
Shearing records; and
Trucking and/or livestock hauling records.

FSA can also accept other similar records if it decides they are reliable.[252]

When a farmer submits reliable evidence of beginning inventory for calves, lambs, goats, or pigs to support a death loss or injury, FSA will determine whether those inventory records are reasonable based on the following birthing rates: (1) 90 percent birthing rate for cows; (2) 103 to 105 percent birthing rate for sheep; (3) 150 to 180 percent birthing rate for goats; and (4) 8.5 pigs-per-litter farrowing rate.[253]

2. Reliable Records of Death or Injury and Verifiable Proof of Inventory

If verifiable proof of death or injury and reliable inventory records, as described above, are not available, the farmer may provide what FSA calls reliable records of death or injury along with verifiable proof of livestock inventories.[254] The following rules apply.

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[249] 83 Fed. Reg. 49,459, 49,470-71 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(e) (2019)).
[250] LDAP Handbook, page 2-62, para. 44.A (April 25, 2019).
[251] LDAP Handbook, page 2-66.6, para. 44.D (April 25, 2019).
[252] LDAP Handbook, page 2-66.6, para. 44.D (April 25, 2019).
[253] LDAP Handbook, page 2-68, para. 44.D (April 25, 2019).
[254] 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(f) (2019)); LDAP Handbook, page 2-63, para. 44.B (April 25, 2019).

a. Reliable Records Defined

Reliable records of death or injury include the following.[255]

Contemporaneous producer records;[256]
Dairy herd improvement records;
Brand inspection records;
Vaccination records; and
Dated pictures.

Other similar documents can also be used.[257] FSA can decide what counts as a similar record.

b. Verifiable Inventory Records

If the farmer is going to use reliable records to prove death or injury, the farmer must also be able to show verifiable inventory records.[258] The federal regulations suggest that both beginning and ending inventory records are required,[259] while the Handbook only states that beginning inventory records are required.[260]

Verifiable inventory records include the following.[261]

Balance sheets;
Bank statements;
Brand inspection records;
Canceled check documentation;
Chattel inspections;
Farm credit balance sheets;
Inventory records used for tax purposes;
Loan records;
Private insurance documents;
Property tax records;
Sales and purchase receipts; and
Veterinary records.

Other similar documents can also be used.[262] FSA can decide what counts as a similar record.

For newborn livestock, including calves and lambs, verifiable evidence of inventory includes a combination of both of the following: (1) verifiable beginning inventory for the adult livestock that are adjusted based on the livestock stocking

[255] 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(f)); LDAP Handbook, page 2-63, para. 44.B (April 25, 2019).
[256] Contemporaneous for this purpose means records existing at the time of the event.
[257] 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(f)). This would likely include, for example, docking records, ear tag records, shearing records, and trucking or livestock hauling records.
[258] 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(f) (2019)); LDAP Handbook, page 2-66.6, para. 44.D (April 25, 2019).
[259] 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(f) (2019)).
[260] LDAP Handbook, page 2-66.6, para. 44.D (April 25, 2019).
[261] LDAP Handbook, page 2-66.6, para. 44.D (April 25, 2019).
[262] LDAP Handbook, page 2-66.6, para. 44.D (April 25, 2019).

rate; and (2) results from a pregnancy check or ultrasound conducted by a third party, such as a veterinarian.[263]

3. Third Party Certification of Death or Injury Plus Verifiable Inventory Records

If a farmer is unable to provide either verifiable proof of death or injury and reliable inventory records, or reliable records of death or injury and verifiable inventory records, the farmer must provide third-party certification of the livestock death or injury.[264] In other words, third-party certification helps farmers that cannot otherwise provide evidence of the cause of death or injury.

The regulation regarding third-party certification sometimes seems to suggest that it is available for both livestock death and injury, but sometimes seems to suggest it is available only for livestock deaths. In addition, at times it seems possible that FSA limits the use of third-party certification to adverse weather events, but that is not clear either.

a. Certification by Livestock Owner or Contract Grower

The farmer—as either a livestock owner or contract grower—must certify the following things in writing.[265]

(i) No Other Verifiable or Reliable Documentation Available

The livestock owner or contract grower must certify there is no other verifiable or reliable documentation available.[266]

(ii) Number of Livestock in Inventory

The livestock owner or contract grower must certify the number of livestock in inventory at the time of the eligible loss condition.[267] The inventory numbers must break down the livestock by category of types, such as adult beef bulls, adult beef cows, and so forth. Farmers must provide verifiable evidence to support the reasonableness of the livestock numbers that they certify.[268]

Federal regulations seem to suggest that this requirement only applies when the death or injury is the result of an eligible adverse weather

[263] LDAP Handbook, page 2-67, para. 44.D (April 25, 2019).
[264] 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(h) (2019)); LDAP Handbook, page 2-64, para. 44.C (April 25, 2019).
[265] 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(h)(1) (2019)); LDAP Handbook, page 2-64, para. 44.C (April 25, 2019).
[266] 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(h)(1)(i) (2019)); LDAP Handbook, page 2-64, para. 44.C (April 25, 2019).
[267] 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(h)(1)(ii) (2019)); LDAP Handbook, page 2-64, para. 44.C (April 25, 2019).
[268] LDAP Handbook, page 2-64, para. 44.C (April 25, 2019).

event.[269] The Handbook, however, requires livestock inventory numbers for all deaths and injuries.[270]

(iii) Location of Livestock in Inventory

The livestock owner or contract grower must certify the physical location of the livestock in inventory when the death or injury occurred.[271]

The federal regulations suggest this requirement only applies to death losses,[272] but the Handbook requires the information for both death losses and injuries.[273]

(iv) Other Information Could be Required

FSA may ask the livestock owner or contract grower to provide other details in order for the certification to be accepted. [274]

b. Certification by Third Party

In addition to the farmer's certification, a third party must also provide a certification.[275] The following rules apply to the third-party certification.

(i) Must Be Independent

The third-party certifier must be an independent source.[276] This means that the third party is not affiliated with the farming operation. The third party, therefore, cannot be a hired hand and cannot be a family member.

Family member, for this purpose, means that an independent certifier cannot have any of the following relationships with a member of the farming operation: (1) lineal ancestor; (2) lineal descendant; (3) sibling; (4) and spouse.

In general, a lineal ancestor and a lineal descendent are ancestors or descendants in a direct line.[277] For example, a child, grandchild, and a great-grandchild is a lineal descendent, and a parent and grandparent is a lineal ancestor. An aunt or uncle is not lineal in this sense.

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[269] 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(h)(1)(ii) (2019)).
[270] LDAP Handbook, page 2-64, para. 44.C (April 25, 2019).
[271] 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(h)(1)(iii) (2019)); LDAP Handbook, page 2-64, para. 44.C (April 25, 2019).
[272] 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(h)(1)(iii) (2019)).
[273] LDAP Handbook, page 2-64, para. 44.C (April 25, 2019).
[274] 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(h)(1)(iv) (2019)); LDAP Handbook, page 2-64, para. 44.C (April 25, 2019).
[275] 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(h)(2) (2019)); LDAP Handbook, pages 2-64 and 2-65, para. 44.C (April 25, 2019).
[276] 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(h)(2) (2019)); LDAP Handbook, page 2-65, para. 44 (April 25, 2019).
[277] See Black's Law Dictionary, "Descent" (4th ed. 1951).

(ii) Provide Phone and Address

The third-party certifier must provide a telephone number and address.[278]

(iii) Written Statement

The third-party certifier must provide a written statement that includes specific details about the following.[279] The third party must only certify information based on the third party's own observations, and therefore information that is known to that person as factually true.[280]

a) Affiliation with the Farmer

The third-party's written statement must describe his or her affiliation with the farmer.[281] This means the third-party must certify how he or she knows the farmer.

The federal regulations state that this requirement only applies when the farmer is a livestock owner,[282] but the Handbook requires certification of the third-party's affiliation to all farmers—both contract growers and livestock owners.[283]

b) Knowledge of Livestock Death or Injury

The third party must provide detail about his or her knowledge of the livestock death or injury.[284]

The federal regulations suggest this requirement only applies to livestock death losses,[285] but the Handbook requires certification of the third-party's knowledge of deaths and injuries.[286]

c) Accuracy of Claimed Deaths and Injuries

The third-party's written statement must explain the accuracy of the deaths or injuries claimed by the livestock owner or contract

278 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(h)(2) (2019)); LDAP Handbook, page 2-65, para. 44 (April 25, 2019).
279 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(h)(2) (2019)).
280 LDAP Handbook, page 2-65, para. 44.C (April 25, 2019).
281 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(h)(2)(ii) (2019)); LDAP Handbook, page 2-65, para. 44.C (April 25, 2019).
282 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(h)(2)(ii) (2019)).
283 LDAP Handbook, page 2-65, para. 44.C (April 25, 2019).
284 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(h)(2)(i) (2019)); LDAP Handbook, page 2-64, para. 44.C (April 25, 2019).
285 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(h)(2)(i) (2019)).
286 LDAP Handbook, page 2-64, para. 44.C (April 25, 2019

grower.[287] This should include, but is not limited to, the number and kind of livestock that died or were injured.

The federal regulations suggest this requirement only applies to livestock death losses, including death losses resulting from adverse weather.[288] The Handbook, however, requires this information for both death losses and injury losses due to adverse weather.[289]

d) Other Information

FSA may require other information before accepting the certification. [290]

c. *Verifiable Inventory Records*

For third party certification to be allowed, verifiable livestock inventory records must be available.[291] The federal regulations suggest both beginning and ending inventory records are required,[292] while the Handbook only states that beginning inventory records are required.[293]

Verifiable inventory records include the following.[294]

Balance sheets;
Bank statements;
Brand inspection records;
Canceled check documentation;
Chattel inspections;
Farm credit balance sheets;
Inventory records used for tax purposes;
Loan records;
Private insurance documents;
Property tax records;
Sales and purchase receipts; and
Veterinary records.

Other similar documents can also be used as verifiable records.[295] FSA can decide what counts as a similar record.

For newborn calves and lambs on an open range, verifiable evidence of inventory includes a combination of both of the following: (1) verifiable beginning inventory

[287] 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(h)(2)(iii) (2019)); LDAP Handbook, page 2-65, para. 44.C (April 25, 2019).
[288] 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(h)(2)(iii) (2019)).
[289] LDAP Handbook, page 2-65, para. 44.C (April 25, 2019).
[290] 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(h)(2)(iv) (2019)); LDAP Handbook, page 2-64, para. 44.C (April 25, 2019).
[291] 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(h) (2019); LDAP Handbook, page 2-64, para. 44.C (April 25, 2019).
[292] 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(h) (2019)).
[293] LDAP Handbook, page 2-66.6, para. 44.D (April 25, 2019).
[294] LDAP Handbook, page 2-66.6, para. 44.D (April 25, 2019).
[295] LDAP Handbook, page 2-66.6, para. 44.D (April 25, 2019).

for the adult cows and ewes (adjusted based on the applicable livestock stocking rate); and (2) results from a pregnancy check or ultrasound conducted by a third party, such as a veterinarian.[296] If the farmer cannot produce this verifiable evidence of beginning inventory for the calves and lambs, FSA allows an alternative process of documentation, specifically for calves and lambs on the open range. That process is described in a later section.

4. Other Documentation Allowed

The livestock farmer may provide additional documentation to support the eligible loss condition. [297] FSA can decide whether this documentation will be accepted.

C. Additional Documentation Requirements for Injured and Sold Livestock

In addition to the requirements described above, farmers whose livestock were injured and sold at a reduced price must also provide the following documentation.

1. Documentation that Eligible Loss Condition Caused the Injury

When livestock are injured and sold at a reduced price, farmers must also provide documentation to prove that the livestock's injuries were due to an eligible adverse weather event or animal attack.[298] Now that the 2018 Farm Bill expanded the LIP eligibility for disease, FSA may add a similar requirement for livestock that are injured due to disease.[299]

2. Sold Through Independent Third Party

Injured livestock must be sold through what FSA describes as an independent third party.[300] By independent third party, FSA includes as examples a sale barn, slaughter facility, or rendering facility.

3. Verifiable Documentation of Gross Sale Price

For a claim based on the injury and sale of livestock, additional verifiable documentation is required to demonstrate the gross price received for the livestock that were sold.[301] The gross sale prices, in this case, is defined as the amount received for the injured livestock before any reductions are made for the sale--such as sale yard fees.

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[296] LDAP Handbook, page 2-67, para. 44.D (April 25, 2019).

[297] 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(d)(9) (2019)).

[298] 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(d)(8)(ii) (2019)).

[299] See Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(b) (2018) (to be codified at 7 U.S.C. § 9081(b)(1)). Before this change, livestock that were injured and sold because of disease were not eligible for LIP. 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(f) (2019)); LDAP Handbook, page 2-33, para. 41.A (April 25, 2019). This change is not yet reflected in FSA regulations or Handbooks.

[300] 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(j) (2019)).

[301] 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(d)(8)(i), (j) (2019)); LDAP Handbook, page 2-68, para. 44.E (April 25, 2019).

The documentation must include, at a minimum, the livestock kind, type and weight, as well as the price for which the livestock were sold.[302]

Verifiable documentation of the price received for the injured livestock includes, but is not limited to, any combination of the following.[303]

Sales receipts from a livestock auction, sale barn, or other similar livestock sales facility;

Bona-fide commercial sales receipts;

Private insurance documents; and

Processing plant receipts.

D. Additional Documentation Requirements for Each Type of Eligible Loss Condition

Some documentation rules are specific to the type of loss condition—adverse weather, disease, or animal attack—that caused the livestock deaths or injuries. These additional rules do not replace the documentation rules described immediately above, but instead should be read along with those rules.

1. Documenting Losses Due to Adverse Weather

For a loss based on adverse weather, the adverse weather event must be documented from an official weather reporting data source.[304] FSA must agree that the source is reputable and available in the public domain. This source can be but is no limited to the National Oceanic and Atmospheric Agency (NOAA). FSA needs to be able to validate that the adverse weather event occurred.

2. Documenting Losses Due to Disease

According to the FSA regulations, for death losses due to disease, certification by a licensed veterinarian can serve as verifiable proof of death, so long as reliable beginning inventory records are also available. [305]

Because the 2018 Farm Bill made disease that results in the injury and sale of livestock at a reduced sale price an eligible loss, it seems likely that FSA will extend this rule to injury losses as well.[306] This change is not yet reflected in the FSA regulations or Handbook, and so it is impossible to know in advance how FSA will implement this change. For now, farmers must satisfy the following rules in order for a veterinarian's certification of loss to qualify as verifiable proof.

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302 LDAP Handbook, page 2-68, para. 44.E (April 25, 2019).

303 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(j) (2019)); LDAP Handbook, page 2-68, para. 44.E (April 25, 2019).

304 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(d)(6) (2019)).

305 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(g) (2019)).

306 Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(b) (2018) (to be codified at 7 U.S.C. § 9081(b)(1)).

a. *Veterinarian Certification*

The veterinarian must provide a written statement regarding the death loss.[307] This statement, and the information provided on it, is completely voluntary.[308] The information provided is used by FSA to decide eligibility for LIP, and without it the LIP benefits will not be approved by FSA.

The veterinarian's written statement, if submitted, must include the following information.[309]

(i) Personal Knowledge of Livestock and Disease

The veterinarian must write that he or she made a personal observation of the animals and had knowledge of what caused the livestock deaths.[310]

Under the existing rules, the veterinarian must certify that the death was due to a disease that was caused or exacerbated by an eligible adverse weather event.[311] Changes in the 2018 Farm Bill, which allow disease to be an eligible loss condition even when there was no corresponding adverse weather event, will likely affect this rule.[312] This change is not yet reflected in the FSA regulations or the Handbook, and it is not clear how the rules for the veterinarian's certification might change.

(ii) Death Not Avoidable by Farmer's Good Husbandry and Management

The veterinarian must write that the livestock deaths were not otherwise avoidable or preventable by the farmer's use of good animal husbandry and management protocols and practices.[313]

Good animal husbandry is not defined by FSA. Acceptable animal husbandry, however, is defined.[314] The FSA definition of acceptable animal husbandry has three parts. First, acceptable animal husbandry means raising and caring for animals in order to produce offspring, meat, fiber milk, eggs, or other products. Second, day to day care and selective breeding and raising of the livestock is required. Third, the practices used must be those that are generally recognized by the commercial livestock industry.

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307 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(g) (2019)).
308 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(g)(4) (2019)).
309 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(g) (2019)).
310 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(g)(1) (2019)).
311 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(g)(1) (2019)). While not defined by FSA, exacerbated generally means made worse.
312 See Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(b) (2018) (to be codified at 7 U.S.C. § 9081(b)(1)). Previously, disease eligibility for LIP was limited by statute to diseases linked to adverse weather. See 7 U.S.C. § 9081(b)(1) from 2017.
313 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(g)(2) (2019)). Protocols are generally accepted rules or procedures used to fit a certain situation.
314 83 Fed. Reg. 49,459, 49,468 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Acceptable animal husbandry" (2019)).

(iii) Other Information Could be Required

FSA may require that the veterinarian include additional information for the certification to be acceptable.[315]

b. Reliable Inventory

The farmer must also submit reliable beginning livestock inventory numbers in order for a veterinarian's certification to be accepted as verifiable proof of the livestock loss. [316] The documentation rules for reliable inventory are discussed above.

3. Documenting Losses Due to Animal Attacks

For a loss of livestock due to an animal attack, FSA requires documentation to substantiate the attack claim.[317] In addition, the quantity and kind of livestock that died or were injured and sold at a reduced price must be substantiated.[318]

The type of documentation that is sufficient to substantiate an injury or death loss from an animal attack must fall within one of the following categories. As with the general documentation rules described above, these categories are listed in order of FSA's preference. In other words, farmers should try to provide the types of documentation listed first on this list.

a. Preferred Documentation Sources for Attacks

When possible, documentation for an animal attack should come from one of the following sources: (1) USDA's Animal Plant and Health Inspection Service (APHIS); or (2) state level Department of Natural Resources. [319] FSA can approve other sources of documentation as well.[320]

b. Verifiable Proof of Death or Injury Acceptable

If documentation from APHIS or a state Department of Natural Resources is unavailable, the farmer may satisfy the animal attack documentation requirements by providing verifiable proof of the deaths or injuries.[321] The rules for verifiable proof are described above.

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315 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(g)(3) (2019)).

316 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(g) (2019)).

317 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(d)(7), (e) (2019) (2019)).

318 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(e) (2019)). The federal regulations say the documentation must be from confirmed kills, but FSA probably means either kills or injury, as the Handbook states. See LDAP Handbook, page 2-76, para. 44.H (April 25, 2019).

319 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(e), (d)(7) (2019)); LDAP Handbook, page 2-76, para. 44.H (April 25, 2019).

320 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(e), (d)(7) (2019)); LDAP Handbook, page 2-76, para. 44.H (April 25, 2019).

321 LDAP Handbook, page 2-76, para. 44.H (April 25, 2019).

For death losses from animal attacks, the farmer must also provide proof of death for normal mortality for the livestock.[322]

c. *Reliable Loss Records, Verifiable Inventory Records, and Third-Party Certification*

If documentation from APHIS or the Department of Natural Resources is unavailable, and verifiable proof of the deaths or injuries are also unavailable, farmers must provide all of the following in order to substantiate their animal attack losses: (1) reliable death or injury records;[323] (2) verifiable beginning inventory records; and (3) third-party certification, including a veterinarian's certification.[324] Unlike losses caused by adverse weather and disease, a third party's certification, by itself, is not sufficient to prove a loss caused by an animal attack—all three requirements must be satisfied.[325]

The rules for reliable loss records, verifiable inventory records, as well as third-party certification (including a veterinarian's certification) are described above. FSA does not state whether the rules for a veterinarian's certification only apply to death losses caused by animal attacks (as is the case for losses caused by disease), or whether the certification can also be used for animal attacks that result in livestock injuries.

E. Documentation Requirements for Calves and Lambs on the Open Range: Livestock Beginning Inventory History (LBIH)

Special rules apply for proof of death of calves and lambs on the open range. Instead of providing verifiable, reliable, or third-party proof of death, as described in the above sections, FSA allows what is called a livestock beginning inventory history, or LBIH, to be used by farmers who have suffered death losses of calves and lambs on the open range.[326]

The LBIH method is not required, but for many farmers it will be easier to use.

To use the livestock beginning inventory history (LBIH) method, farmers must complete form CCC-856, "Livestock Beginning Inventory History for Open Range Livestock Operations Under the Livestock Indemnity Program."[327] This form uses four or five years' of beginning inventory numbers (for cows and ewes or calves and lambs) in order to determine what FSA calls the approved LBIH for the calves and lambs.[328] The logic of allowing the LBIH method of proving death losses is that if the beginning inventory

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322 LDAP Handbook, page 2-76, para. 44.H (April 25, 2019).

323 At one point in the Handbook it references only death loss records, but at another point it references both death and injury records. It is likely that both death loss and injury loss records are required. See LDAP Handbook, page 2-63, para. 44.B, and page 2-76, para. 44.H (April 25, 2019).

324 83 Fed. Reg. 49,459, 49,470 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(e)-(g) (2019)); LDAP Handbook, page 2-77, para. 44.H (April 25, 2019).

325 LDAP Handbook, page 2-77, para. 44.H (April 25, 2019).

326 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i) (2019)); LDAP Handbook, page 2-69, para. 44.F, and page 2-85, para. 46.A (April 25, 2019).

327 A sample of form CCC-856 can be found in the Handbook at: LDAP Handbook, pages 2-89 and 2-90, para. 46.D (example of form CCC-856) (April 25, 2019).

328 LDAP Handbook, pages 2-89 and 2-90, para. 46.D (example of form CCC-856) (April 25, 2019).

number of cows or ewes can be estimated—including the number of their offspring—those numbers can then be used to determine what the likely inventory of calves and lambs was before the death losses occurred. Then the loss for calves and lambs can be calculated.

1. General Rules for the LBIH Method

The following rules apply to any farmer who chooses to use the LBIH method for documenting death losses of calves or lambs on the open range.

a. Open Range Operation Defined

The LBIH method can only be used for operations on an open range. For the purpose of LIP, FSA defines an open range operation as one in which livestock are produced on large parcels of land.[329] Under this definition, the livestock are not gathered into pens, sheds, or other small areas, and therefore an accurate inventory of the livestock and death tallies cannot be completed without a round-up of the livestock. FSA is allowed to decide if operations meet this definition.

b. Only Calves and Lambs

The LBIH method can only be used to document death losses of calves and lambs.[330] A lamb is a sheep that is less than one year old.[331] Calves are not defined by FSA. The logic of the LBIH approach, though, seems to assume that the calves are a year old or less.[332]

c. Based on Up to Four Years of Beginning Calf and Lamb Inventory, When Available

As a general rule, the LBIH method uses up to four calendar years' of beginning inventory numbers for the calves and lambs to calculate the farmer's approved LBIH for the calves and lambs during the year of the loss.[333] These four years are the four calendar years immediately before the calendar year in which the livestock death losses occurred.[334]

For any years that acceptable beginning inventory numbers are unavailable for the calves and lambs, FSA will allow the farmer to provide beginning inventory

[329] 7 C.F.R. § 1416.302, "Open range operation" (2019); LDAP Handbook, page 2-15, para. 23.A, "Open range operation" (April 25, 2019).

[330] 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i) (2019)); LDAP Handbook, page 2-69, para. 44.F, and page 2-85, para. 46.A (April 25, 2019).

[331] LDAP Handbook, page 2-13, para. 23.A, "Lamb" (April 25, 2019).

[332] Nonadult beef cattle are defined as an animal that is not an adult. An adult beef bull is at least two years old, and an adult beef cow has either delivered a calf or was pregnant at the time of death or injury. LDAP Handbook, page 2-9, para. 23.A, "Adult beef bull," "Adult beef cow," "Nonadult beef cattle" (April 25, 2019). Because FSA calculates beginning inventories of calves and lambs for each year by using an annual birthing rate percentage for the adult cows and ewes, it seems likely that a calf, by definition, must be one year old or less.

[333] 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(4) (2019)); LDAP Handbook, page 2-69, para. 44.F, and page 2-85, para. 46.A (April 25, 2019).

[334] LDAP Handbook, page 2-85, para. 46.A (April 25, 2019).

numbers for the cows and ewes, which can then be used to calculate the estimated inventory of the calves and lambs.[335]

The inventory numbers—whether for calves and lambs or cows and ewes—are updated each year.[336]

d. Inventory Records Required

As described immediately below, the inventory records that are required when a farmer suffers a loss of calves or lambs on the open range depend upon what records the farmer has available.

(i) Must Provide Acceptable Beginning Inventory for Calves and Lambs, if Available

Although the LBIH method allows farmers without acceptable inventory records for their calves or lambs on the open range to apply for LIP benefits, if a farmer does have beginning calf and lamb inventory records the farmer must provide those records to FSA.[337]

The federal regulations require that farmers provide acceptable beginning inventory records for their calves and lambs, if available, but the regulations do not define what acceptable means.[338] Form CCC-856, however, suggests that acceptable beginning inventory records for calves and lambs are either reliable or verifiable inventory records.[339] Examples of reliable and verifiable inventory records are provided earlier in this Guide.

FSA will decide if the beginning inventory records are acceptable.[340]

(ii) If Calf and Lamb Inventory Not Available, Must Provide an Adult Cow and Ewe Inventory Report

When farmers cannot provide acceptable beginning inventory records for their calves and lambs, FSA requires that farmers fill out a portion of form CCC-856 that is called the "Adult Cow or Ewe Livestock Beginning Inventory Report."[341] This adult beginning livestock inventory report is used to calculate the estimated number of calves and lambs that the

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335 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(4) (2019)); LDAP Handbook, pages 2-85 through 2-89, para. 46.A-D (April 25, 2019).

336 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(3) (2019)); LDAP Handbook, page 2-70, para. 44.F (April 25, 2019).

337 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(4) (2019)); LDAP Handbook, page 2-71, para. 44.F, and pages 2-85 and 2-86, para. 46.A (April 25, 2019).

338 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(4) (2019)).

339 See LDAP Handbook, pages 2-85 and 2-86, para. 46.A (example of form CCC-856) (April 25, 2019).

340 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at C.F.R. § 1416.305(i)(2)(iii) (2019)); LDAP Handbook, page 2-70, para. 44.F (April 25, 2019).

341 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(1)(i) (2019)); LDAP Handbook, page 2-89, para. 46.D (example of form CCC-856) (April 25, 2019).

farmer would have had in inventory during the year of the death losses. The report must be supported by verifiable beginning inventory records.

The following rules apply.

a) Accurate Account by Type and Kind

The adult livestock inventory report must be an accurate account of open range livestock.[342] The report must count all the animals by kind and type.[343] The type of livestock, for this purpose, refers to the mother of the calves or lambs that died on the open range.[344] For example, a farmer who suffered a death loss of lambs would list the livestock kind and type as "Sheep/Ewe."

b) By Livestock Units

The adult livestock inventory report must also be filled out according to the livestock unit.[345] A livestock unit is defined by FSA to mean all eligible livestock in the county where the livestock loss occurred.[346] The livestock unit includes all animals in which a farmer has a 100 percent share interest as well as all animals when more than one farmer owns a share of the livestock. In other words, when filling out the livestock inventory report, farmers should include any and all livestock for which they have an interest in, regardless of how small that interest may be.

c) Supported by Written Verifiable Inventory Records

The adult livestock inventory report must be supported by written verifiable beginning inventory records for the farmer's cows and ewes.[347] Written verifiable records can include, but are not limited to, the following.

Docking records;
Sales receipts;
Shearing records;
Shipping records;
Bank records;
Veterinarian records; and
IRS records.

342 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(1)(i) (2019)); LDAP Handbook, pages 2-69 and 2-70, para. 44.F (April 25, 2019).

343 It should include a breakdown of beef vs. dairy cattle, and so forth. For an idea of what FSA means by the kind of livestock, see 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(a) (2019)); LDAP Handbook, pages 2-69 and 2-70, para. 44.F (April 25, 2019).

344 LDAP Handbook, page 2-85, para. 46.A (April 25, 2019).

345 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(1) (2019)).

346 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.302, "Livestock unit"); LDAP Handbook, page 2-11, para. 23.A, "Livestock unit," page 2-14, para. 23.A (April 25, 2019).

347 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(1)(i) (2019)); LDAP Handbook, page 2-69, para. 44.F (April 25, 2019).

FSA can decide if other types of records qualify as verifiable.[348] FSA may also request beginning inventory records from a farmer, and the farmer must provide them.[349] FSA will decide if the beginning inventory records are acceptable.[350]

d) Deadline and Possible Waiver

Federal regulations say the deadline for giving FSA livestock inventory reports is sixty days after the end of the calendar year of the eligible loss condition.[351] The FSA Handbook says that the deadlines that usually apply for LIP applications are also in effect for open range calves and lamb.[352] FSA probably means that the livestock inventory reports are due at the same time as the LIP application, which is sixty days after the end of the calendar year. Deadlines are discussed earlier in this Guide.

It is the responsibility of the farmer to submit completed beginning inventory records to FSA by the deadline.[353]

FSA has the power to waive the deadline for the adult livestock inventory report if the farmer has not used this method of showing death loss in the past.[354]

e) Possibly Only Weather Related

FSA regulations suggest the use of livestock inventory reports is only required when the death of calves or lambs was caused by an eligible adverse weather event.[355] The FSA Handbook, however, does not seem to limit the use of inventory reports in this way. It seems likely that livestock inventory reports are required any time

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348 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(1)(i) (2019)); LDAP Handbook, page 2-69, para. 44.F (April 25, 2019).

349 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(2)(i) (2019)).

350 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at C.F.R. § 1416.305(i)(2)(iii) (2019)); LDAP Handbook, page 2-70, para. 44.F (April 25, 2019).

351 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(1) (2019)).

352 The Handbook says the deadline is the one described for all farmers. See LDAP Handbook, page 2-70, para. 44.F (April 25, 2019).

353 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(2) (2019)); LDAP Handbook, page 2-70, para. 44.F (April 25, 2019).

354 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(1) (2019)).

355 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(1) (2019)). This appears to include death due to disease. 7 C.F.R. § 1416.305(i)(2)(ii) (2019); 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(g)). Before the 2018 Farm Bill was passed, disease could only be an eligible loss if the disease was exacerbated, or made worse, by an eligible adverse weather event. For the previous rules see 83 Fed. Reg. 49, 459, 49,469 (Oct. 2, 2018) (to be codified at 7 § C.F.R. 1416.302, Eligible disease"); 7 C.F.R. §§ 1416.302, "Eligible adverse weather event," 1416.304(f)(1) (2018); LDAP Handbook, page 2-11, para. 23.A, "Eligible disease," page 2-35, para. 41.D (April 25, 2019) and see 7 U.S.C. § 9081(b)(1) from 2017. As a result of the 2018 Farm Bill, disease can now be an eligible cause of loss even if weather had no role in the disease. Agriculture Improvement Act of 2018, Pub. L. No. 115-334, § 1501(b) (2018) (to be codified at 7 U.S.C. § 9081(b)(1)).

a farmer uses the LBIH method to document the death loss of open range calves or lambs. In either case, given the changes in the 2018 Farm Bill that expanded eligible loss conditions, this rule may change.

f) Farmer Must Certify Accuracy of Inventory Report

The operator of the open range livestock operation must certify the accuracy of the information on the adult livestock inventory report.[356]

FSA may contact third parties that could substantiate the information the farmer provides to FSA.[357] These third parties include government agencies, individual people, auction barns, contractors or processors, feed vendors, veterinarians, and rendering services, and holders of other records or evidence.

g) FSA May Adjust Beginning Inventory Numbers and Approved LBIH

FSA may adjust the adult livestock beginning inventory numbers that are used on form CCC-856 if there are ewe and cow stocking level variations over the time period covered on the form.[358]

FSA may also adjust the approved LBIH based on the time of the growing season when the loss occurred.[359] The changes should not result in numbers that are more than normal mortality.

2. Description of the Livestock Beginning Inventory History (LBIH) Method

FSA must explain to the livestock operation how the LBIH method works.[360] The objective of the LBIH method is to calculate the farmer's approved LBIH for calf and lamb death losses. Determining a farmer's approved LBIH can be confusing, however, in part because the requirements of form CCC-856 differ depending on whether the farmer has actual beginning calf and lamb inventory records for the previous four calendar years, or whether FSA must estimate the calf and lamb inventory numbers based on the farmer's beginning inventory of adult cows and ewes.[361]

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[356] 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(1)(ii) (2019)); LDAP Handbook, page 2-70, para. 44.F (April 25, 2019).

[357] LDAP Handbook, page 2-90, para. 46.D (example of form CCC-856) (April 25, 2019).

[358] 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(3) (2019)); LDAP Handbook, page 2-70, para. 44.F (April 25, 2019).

[359] 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(1)(i) (2019)); LDAP Handbook, page 2-70, para. 44.F (April 25, 2019). The time of the season for the loss is the main factor determining whether FSA will think an adjustment is needed. Sales at the end of the season, for example, may be adjusted to take into account a full year of normal mortality.

[360] 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(2)(ii) (2019)).

[361] LDAP Handbook, page 2-71, para. 44.F, and page 2-85, para. 46.A (April 25, 2019).

a. *LBIH Method When Actual Calf and Lamb Inventory Records Available for Previous Four Years*

If a farmer has verifiable or reliable inventory records for calves and lambs, FSA calls those records the farmer's actual livestock beginning inventory.[362] The operation must give beginning livestock inventory records to FSA if they are available.[363] An actual livestock beginning inventory, for FSA, means the actual livestock beginning inventory in a calendar year. It includes calves and lambs and is calculated from the verifiable or reliable records of death, birthing, docking, inventory, and sales in an open range operation.[364]

If a farmer has actual beginning inventory records for all four calendar years preceding the calendar year in which the death losses occurred, those inventory numbers are averaged to create the approved LBIH for the farmer's calves and lambs.[365]

b. *LBIH Method When Calf and Lamb Inventory Records Not Available for Previous Four Years—Transitional LBIH*

For every year that a farmer does not have actual beginning inventory records for the farmer's calves or lambs, FSA will calculate what it calls a "Calf/Lamb Transitional Livestock Beginning Inventory History." This transitional LBIH is an estimated beginning inventory history for the farmer's calves and lambs.[366] Transitional livestock beginning inventories can only be used when there are less than four consecutive calendar years of actual records available.[367]

To determine the transitional LBIH, FSA uses the information the farmer provides on the adult livestock inventory report and multiplies the beginning inventories for the farmer's cows and ewes by what FSA calls the national established birthing rate.[368] For cows, that is 90 percent. For ewes, it is 160 percent. So, if the beginning inventory showed 1000 ewes, the transitional LBIH would be 1600.[369] If the beginning inventory showed 100 cows, the transitional LBIH would be ninety. FSA can adjust the birthing rate percentages.[370]

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362 7 C.F.R. § 1416.302, "Actual livestock beginning inventory" (2019); LDAP Handbook, page 2-9, para. 23.A, "Actual livestock beginning inventory" (April 25, 2019).
363 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(4) (2019)).
364 7 C.F.R. § 1416.302, "Actual livestock beginning inventory" (2019); LDAP Handbook, page 2-9, para. 23.A, "Actual livestock beginning inventory" (April 25, 2019).
365 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(4)(v) (2019)); LDAP Handbook, page 2-71, para. 44.F (April 25, 2019).
366 See 7 C.F.R. § 1416.302, "Transitional livestock beginning inventory history" (2019); LDAP Handbook, page 2-89, para. 46.D (example of form CCC-856) (April 25, 2019).
367 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(3) (2019)); 7 C.F.R. § 1416.302, "Transitional livestock beginning inventory history" (2019); LDAP Handbook, page 2-70, para. 44.F (April 25, 2019).
368 See 7 C.F.R. § 1416.302, "Transitional livestock beginning inventory history" (2019); LDAP Handbook, page 2-89, para. 46.D (example of form CCC-856) (April 25, 2019).
369 LDAP Handbook, page 2-89, para. 46.D (example of form CCC-856) (April 25, 2019).
370 7 C.F.R. § 1416.302, "Transitional livestock beginning inventory history" (2019).

The transitional LBIH numbers are then used to calculate what becomes the farmer's approved LBIH for the year of the death losses.

3. Calculating the Approved Livestock Beginning Inventory History (LBIH)

The following sections describe the combination of actual beginning inventory records and transitional beginning inventories that can be used to calculate the farmer's approved LBIH. An approved LBIH based exclusively on actual calf and lamb beginning inventory numbers requires records from the four calendar years immediately preceding the calendar year in which the death losses occurred.[371]

If the farmer is using transitional LBIH for the four most recent calendar years, it appears that FSA allows the farmer to use actual records—if available—for the fifth most recent year.[372] In other words, if the current calendar year is 2019, and the farmer is using transitional LBIH for 2018, 2017, 2016, and 2015, FSA appears to allow the farmer to use actual records for 2014, if available. The rules on when and how to use actual records from the fifth most recent year are confusing, and FSA's examples only show farmers using four years of inventory history. For this reason, the examples below assume the farmer is using only four years' worth of inventory history.

a. If Four Years of Acceptable, Actual Records Available

If a farmer has actual beginning calf and lamb inventory records for all four calendar years immediately preceding the calendar year in which the death losses occurred, the process for calculating the farmer's approved LBIH is very simple. FSA will take a simple average of the farmer's actual beginning calf and lamb inventory numbers for the four years.[373] That average becomes the farmer's approved LBIH.[374]

For purposes of determining the farmer's approved LBIH, the farmer's records must be acceptable to FSA.[375] FSA has the discretion to decide what records it considers to be acceptable.[376]

b. If Only Three Years of Acceptable Records

If acceptable and actual beginning calf and lamb inventory records are available for only three out of the last four years, one transitional LBIH will need to be

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371 LDAP Handbook, page 2-85, para. 46.A (April 25, 2019).

372 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(4) (2019)); LDAP Handbook, page 2-86, para. 46.A (April 25, 2019).

373 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(4)(v) (2019)); LDAP Handbook, page 2-71, para. 44.F, and pages 2-85 through 2-90, para. 46.A-D (April 25, 2019).

374 7 C.F.R. § 1416.302, "Approved livestock beginning inventory" (2019); LDAP Handbook, page 2-90, para. 46.D (example of form CCC-856) (April 25, 2019).

375 LDAP Handbook, pages 2-70 and 2-71, para. 44.F (April 25, 2019).

376 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at C.F.R. § 1416.305(i)(2)(iii) (2019)); LDAP Handbook, page 2-70, para. 44.F (April 25, 2019).

calculated using information the farmer provides on the adult livestock inventory report.[377]

The approved LBIH for the farmer's operation will be the average of the three years of actual inventories plus the one year of transitional LBIH. The following steps should be followed on form CCC-856.

Step One: For the one year out of the last four for which actual calf and lamb records are unavailable, list the adult livestock's kind and type, such as "Sheep/Ewe."[378]

Step Two: For the one year without actual records, list the corresponding beginning inventory numbers for the adult cows or ewes.[379]

Step Three: For the one year without actual records, fill in the applicable national birthing rate percentage for either calves or lambs, as applicable.[380] The national birthing rate percentage for calves is 90 percent, and for ewes it is 160 percent.[381]

Step Four: For the one year without actual records, multiply the number of cows or ewes in Step Two by the corresponding birthing rate percentage in Step Three.[382] The result, rounded to the nearest whole number, will be the transitional LBIH for each year.

Step Five: Take the transitional LBIH for the calves or lambs determined in Step Four and multiply that number by 100 percent, which is the applicable "transitional percent of LBIH," as it is termed by FSA.[383] The result is the LBIH for the calves or lambs for the year.

Step Six: To determine the approved LBIH for the farmer's calves and lambs, add the result of Step Five to the beginning inventory numbers for the

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377 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(4)(iv) (2019)); LDAP Handbook, page 2-71, para. 44.F (April 25, 2019). The Handbook states that the three years of actual records can come from within the past five years—not four years—but that appears to be incorrect.

378 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(1)(i) (2019)); LDAP Handbook, pages 2-69 and 2-70, para. 44.F and page 2-89, para. 46.D (example of form CCC-856) (April 25, 2019).

379 The kind of livestock should also include a breakdown of beef vs. dairy cattle, and so forth. For an idea of what FSA means by the kind of livestock, see 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(a) (2019)).

380 LDAP Handbook, page 2-89, para. 46.D (example of form CCC-856) (April 25, 2019).

381 7 C.F.R. § 1416.302, "Transitional livestock beginning history" (2019); LDAP Handbook, page 2-16, para. 23.A (April 25, 2019).

382 LDAP Handbook, page 2-86, para. 46.A, and page 2-89, para. 46.D (example of form CCC-856) (April 25, 2019).

383 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(4)(iv) (2019)); LDAP Handbook, page 2-71, para. 44.F, page 2-86, para. 46.A, and page 2-89, para. 46.D (example of form CCC-856) (April 25, 2019).

three years for which the farmer provided acceptable and actual inventory records.[384] Divide that number by four to get the approved LBIH.

c. *If Only Two Years of Acceptable Records Available Out of Four*

If acceptable and actual livestock beginning inventory records are available for only two of the most recent four calendar years, two years of transitional LBIH need to be calculated using information the farmer provides on the adult livestock inventory report.[385]

The approved LBIH for the farmer's operation will be the average of the two years of actual inventories plus the two years of transitional LBIH. The following steps should be followed.

Step One: For the two years, out of the last four, for which actual records are unavailable, list the livestock's kind and type, such as "Sheep/Ewe."[386]

Step Two: For the two years without actual records, list the corresponding beginning inventory numbers for the cows or ewes.[387]

Step Three: For the two years without actual records, fill in the applicable national birthing rate percentage for either calves or lambs, as applicable.[388] The national birthing rate percentage for calves is 90 percent, and for ewes it is 160 percent.[389]

Step Four: For the two years without actual records, multiply the number of cows or ewes in Step Two by the corresponding birthing rate percentage in Step Three.[390] The result, rounded to the nearest whole number, will be the transitional LBIH for each year.

Step Five: Take each transitional LBIH for the calves or lambs determined in Step Four and multiply that number by 90 percent, which is the applicable "transitional percent of LBIH," as it is termed by FSA.[391] The result is the LBIH for the calves or lambs for each year.

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384 LDAP Handbook, page 2-86, para. 46.A (April 25, 2019).

385 7 C.F.R. § 1416.305(i)(4)(iii) (2019). The Handbook states that the two years of actual records can come from within the past five years—not four years—but that appears to be incorrect.

386 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(1)(i) (2019)); LDAP Handbook, pages 2-69 and 2-70, para. 44.F and page 2-89, para. 46.D (example of form CCC-856) (April 25, 2019).

387 The kind of livestock should also include a breakdown of beef vs. dairy cattle, and so forth. For an idea of what FSA means by the kind of livestock, see 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(a) (2019)).

388 LDAP Handbook, page 2-89, para. 46.D (example of form CCC-856) (April 25, 2019).

389 7 C.F.R. § 1416.302, "Transitional livestock beginning history" (2019); LDAP Handbook, page 2-16, para. 23.A (April 25, 2019).

390 LDAP Handbook, page 2-86, para. 46.A, and page 2-89, para. 46.D (example of form CCC-856) (April 25, 2019).

391 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(4)(iii) (2019)); LDAP Handbook, page 2-71, para. 44.F, page 2-86, para. 46.A, and page 2-89, para. 46.D (example of form CCC-856) (April 25, 2019).

Step Six: To determine the approved LBIH for the farmer's calves and lambs, add the results of Step Five to the beginning inventory numbers for the two years for which the farmer provided acceptable and actual inventory records.[392] Divide that number by four to get the approved LBIH.

d. *If Only One Year of Acceptable Records Available Out of Last Four*

If only one year of acceptable and actual inventory records are available out of the last four years, three years of transitional LBIH need to be calculated using information the farmer provides on the adult livestock inventory report.[393]

The approved LBIH for the farmer's operation will be the average of the one year of actual inventory plus the three years of transitional LBIH. The following steps should be followed.

Step One: For the three years, out of the last four, for which actual records are unavailable, list the livestock's kind and type, such as "Sheep/Ewe"[394]

Step Two: For the three years without actual records, list the corresponding beginning inventory numbers for the cows or ewes.[395]

Step Three: For the three years without actual records, fill in the applicable national birthing rate percentage for either calves or lambs, as applicable.[396] The national birthing rate percentage for calves is 90 percent, and for ewes it is 160 percent.[397]

Step Four: For the three years without actual records, multiply the number of cows or ewes in Step Two by the corresponding birthing rate percentage in Step Three.[398] The result, rounded to the nearest whole number, will be the transitional LBIH for each year.

Step Five: Take each transitional LBIH for the calves or lambs determined in Step Four and multiply that number by 80 percent, which is the applicable

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392 LDAP Handbook, page 2-86, para. 46.A (April 25, 2019).

393 7 C.F.R. § 1416.305(i)(4)(ii) (2019). The Handbook states that the one year of actual records can come from within the past five years—not four years—but that appears to be incorrect.

394 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(1)(i) (2019)); LDAP Handbook, pages 2-69 and 2-70, para. 44.F and page 2-89, para. 46.D (example of form CCC-856) (April 25, 2019).

395 The kind of livestock should also include a breakdown of beef vs. dairy cattle, and so forth. For an idea of what FSA means by the kind of livestock, see 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(a) (2019)).

396 LDAP Handbook, page 2-89, para. 46.D (example of form CCC-856) (April 25, 2019).

397 7 C.F.R. § 1416.302, "Transitional livestock beginning history" (2019); LDAP Handbook, page 2-16, para. 23.A (April 25, 2019).

398 LDAP Handbook, page 2-86, para. 46.A, and page 2-89, para. 46.D (example of form CCC-856) (April 25, 2019).

"transitional percent of LBIH," as it is termed by FSA.[399] The result is the LBIH for the calves or lambs for each year.

Step Six: To determine the approved LBIH for the farmer's calves and lambs, add the results of Step Five to the beginning inventory numbers for the one year for which the farmer provided acceptable and actual inventory records.[400] Divide that number by four to get the approved LBIH.

e. *If No Acceptable Records Available: Transitional Beginning Inventory*

If no acceptable livestock beginning inventory records are available for calves or lambs, a transitional LBIH is used for all four of the calendar years immediately preceding the calendar year in which the death losses occurred.[401] FSA will calculate the transitional LBIHs using information the farmer provides on the adult livestock inventory report.

The approved LBIH for the farmer's operation will be the average of the four years of transitional LBIH. The following steps should be followed.

Step One: For each of the four required years, list the livestock's kind and type, such as "Sheep/Ewe"[402]

Step Two: For each year, list the corresponding beginning inventory numbers for the cows or ewes.[403]

Step Three: For each year, fill in the applicable national birthing rate percentage for either calves or lambs, as applicable.[404] The national birthing rate percentage for calves is 90 percent, and for ewes it is 160 percent.[405]

Step Four: For each year, multiply the number of cows or ewes in Step Two by the corresponding birthing rate percentage in Step Three.[406] The result, rounded to the nearest whole number, will be the transitional LBIH for each year.

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399 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(4)(ii) (2019)); LDAP Handbook, page 2-71, para. 44.F, page 2-86, para. 46.A, and page 2-89, para. 46.D (example of form CCC-856) (April 25, 2019).

400 LDAP Handbook, page 2-86, para. 46.A (April 25, 2019).

401 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(4)(i) (2019)); LDAP Handbook, page 2-71, para. 44.F (April 25, 2019).

402 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(1)(i) (2019)); LDAP Handbook, pages 2-69 and 2-70, para. 44.F and page 2-89, para. 46.D (example of form CCC-856) (April 25, 2019).

403 The kind of livestock should also include a breakdown of beef vs. dairy cattle, and so forth. For an idea of what FSA means by the kind of livestock, see 83 Fed. Reg. 49,459, 49,469 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.304(a) (2019)).

404 LDAP Handbook, page 2-89, para. 46.D (example of form CCC-856) (April 25, 2019).

405 7 C.F.R. § 1416.302, "Transitional livestock beginning history" (2019); LDAP Handbook, page 2-16, para. 23.A (April 25, 2019).

406 LDAP Handbook, page 2-86, para. 46.A, and page 2-89, para. 46.D (example of form CCC-856) (April 25, 2019).

Step Five: Take each transitional LBIH for the calves or lambs determined in Step Four and multiply that number by 65 percent, which is the applicable "transitional percent of LBIH," as it is termed by FSA.[407] The result is the LBIH for the calves or lambs for each year.

Step Six: To determine the approved LBIH for the farmer's calves and lambs, add the results of Step Five and divide that number by four.[408]

VIII. LIP Payments

LIP payments are based on a variety of factors. These include whether the livestock loss is a death or injury and whether the eligible farmer is a livestock owner or a contract grower. LIP payments can be reduced if a farmer receives other compensation for the same or similar loss.

A. LIP Payment Calculations

The following sections outline how LIP payments are calculated. The calculations are different for livestock owners and contract growers.[409]

1. Payments for Livestock Death Losses

For livestock death losses, LIP compensates eligible livestock owners and contract growers for eligible deaths that are in excess of what FSA determines is the normal mortality of those livestock.[410] In general, that means multiplying what is known as the national payment rate for the livestock category by the number of eligible livestock that died in excess of normal mortality as a result of an eligible loss condition.[411]

a. Normal Mortality Defined

Normal mortality is set by FSA on a state-by-state basis for each livestock category.[412] FSA will use local data sources including, but not limited to, state livestock organizations and the state's Cooperative Extension Service.

b. National Payment Rate for Livestock Owners

For livestock owners, the national payment rate is 75 percent of the fair market value of the specific type of livestock.[413] Fair market values are set by FSA and are

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407 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.305(i)(4)(i) (2019)); LDAP Handbook, page 2-71, para. 44.F, page 2-86, para. 46.A, and page 2-89, para. 46.D (example of form CCC-856) (April 25, 2019).

408 LDAP Handbook, page 2-86, para. 46.A (April 25, 2019).

409 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.306(a) (2019)).

410 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.306(a) (2019)); LDAP Handbook, pages 2-17, para. 24.A (April 25, 2019). When discussing how normal mortality rates are established, the Handbook only refers to livestock owners. Contract growers can also receive LIP benefits for eligible livestock death losses. See LDAP Handbook, page 2-53, para. 42.E (April 25, 2019).

411 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.306(a) (2019)).

412 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.306(a) (2019)).

413 7 C.F.R. § 1416.306(b) (2019); LDAP Handbook, page 2-55, para. 43.A (April 25, 2019).

based on the average fair market value for the livestock using nationwide prices from the previous calendar year.[414]

c. *National Payment Rate for Contract Growers*

For contract growers, the payment rate is 75 percent of the contract grower's average income loss due to the livestock deaths.[415] FSA bases the payment rate on the type, class, and weight of the animal at the time of the eligible loss condition and death.[416]

d. *Calculating Death Loss Payments*

The LIP payment for a livestock death loss is calculated by tracing the following five steps.[417]

> **Step One:** Start with the normal mortality rate for the farmer's livestock, as set by FSA. Multiply that rate by the number of livestock of that type that were in the farmer's inventory at the time of the eligible adverse weather event or loss condition.[418] The result is the number of normal mortality deaths for that livestock type.
>
> **Step Two:** Subtract the result of Step One from the farmer's total number of livestock deaths in order to determine the number of livestock deaths that are eligible for LIP benefits.[419]
>
> **Step Three**: Multiply the payment rate for each livestock type by the result of Step Two.[420]
>
> **Step Four**: Multiply the result of Step Three by the farmer's share in the livestock.[421]
>
> **Step Five:** Reduce the result of step four by any amounts that the farmer received from other sources for the same or similar loss.[422] The applicable payment reductions for livestock owners and contract growers are described below.

The resulting amount is the farmer's LIP payment for a livestock death loss**.**

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[414] 7 C.F.R. § 1416.306(b) (2019). FSA has the authority to approve the use of a different rate.
[415] 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.306(c) (2019)); LDAP Handbook, page 2-56, para. 43.B (April 25, 2019).
[416] 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.306(c) (2019)).
[417] LDAP Handbook, page 4-103, para. 251.C (April 25, 2019).
[418] LDAP Handbook, pages 2-17, para. 24.A (April 25, 2019).
[419] LDAP Handbook, pages 2-17, para. 24.A (April 25, 2019).
[420] LDAP Handbook, page 4-103, para. 251.C (April 25, 2019).
[421] LDAP Handbook, page 4-103, para. 251.C (April 25, 2019).
[422] LDAP Handbook, page 2-57, paras. 43.C and 43.D, page 4-103, para. 251.C (April 25, 2019).

2. Payments for Livestock Injury Losses—Livestock Owners Only

LIP compensates livestock owners—not contract growers—for eligible livestock injury losses.[423] In general, payments to livestock owners for losses due to the 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 livestock sold at a reduced price as a result of an eligible loss condition. That number is then reduced by the gross amount the eligible livestock owner received for the livestock up to the applicable national payment rate.[424]

a. Calculating Livestock Injury Loss Payments

The LIP payment for a livestock injury loss is calculated by tracing the following four steps.[425]

Step One: Multiply the applicable payment rate for each livestock type by the number of livestock that were injured and later sold for a reduced price.[426]

Step Two: Multiply the result of step one by the livestock owner's share in the livestock.[427]

Step Three: Subtract the payment amount that the livestock owner received for the sale of the injured livestock from the result of step two.[428]

Step Four: Reduce the result of step three by any amounts that the livestock owner received from other sources for the same or similar loss.[429] The applicable payment reductions for livestock owners are described below.

The resulting number is the livestock owner's LIP payment for a livestock injury loss.

b. If Reduced Price of Livestock is Greater than National Payment Rate

If the livestock sell for a reduced price that is still more than the national payment rate, the national payment rate will be subtracted, and the farmer will receive no payment for that livestock.[430]

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[423] 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.306(e) (2019)); LDAP Handbook, page 2-53, para. 42.E (April 25, 2019).

[424] 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.306(e)); LDAP Handbook, page 4-103, para. 251.C (April 25, 2019).

[425] LDAP Handbook, page 4-103, para. 251.C (April 25, 2019).

[426] LDAP Handbook, pages 4-103, para. 251.C (April 25, 2019); FSA determines the livestock owner's applicable payment rate based on the type and size of the livestock. See LDAP Handbook, pages 2-55 and 2-56, para. 43.A (April 25, 2019).

[427] LDAP Handbook, pages 4-103, para. 251.C (April 25, 2019).

[428] LDAP Handbook, pages 4-103, para. 251.C (April 25, 2019).

[429] LDAP Handbook, page 2-57, para. 43.C, page 4-103, para. 251.C (April 25, 2019).

[430] 83 Fed. Reg. 49,459, 49,471 (Oct. 2, 2018) (codified at 7 C.F.R. § 1416.306(e) (2019)).

3. LIP Payment Reductions

LIP payments that a farmer is eligible for will be reduced by any amount the farmer receives from other sources for the same or similar livestock losses.[431]

If the duplicate benefit is received after the LIP payment has been issued, the livestock owner or contract grower must pay back to FSA any duplicate amount that the farmer is determined to have received.[432]

As described below, the payment reduction rules are different for livestock owners and livestock contract growers.

a. *Payment Reductions for Eligible Livestock Owners*

For an eligible livestock owner, a reduction in the LIP payment will occur if the livestock owner receives compensation from any federal or state assistance program for the same or similar livestock loss.[433]

b. *Payment Reductions for Eligible Contract Growers*

For an eligible contract grower, the LIP payment will be reduced if the contract grower receives compensation from another source for the same or similar livestock loss.[434] This means, for example, that a contract grower payment would be reduced if the grower receives payment for the loss from the party with whom the grower contracted to raise the livestock that died.[435]

c. *Example of Payment Reduction*

The following is an example of a payment reduction taken from the FSA Handbook. [436]

Suppose a farmer is an eligible contract grower of roaster chickens for an integrator during the 2019 calendar year. The farmer was also the owner of 100 adult beef cows. The farmer suffers an eligible death loss of 5,000 chickens under contract and five adult beef cows as a direct result of an eligible adverse weather event in 2019. The integrator gave the farmer 2,000 dollars for the loss of income she suffered due to death of the chickens.

The farmer's calculated LIP payment for 5,000 chickens—before any reduction—is 600 dollars. The LIP payment for the five adult beef cows that died is 650 dollars. The 2016 LIP payment for the chickens will be reduced to zero because of the 2,000 dollars received from the contractor. The 2019 LIP payment of 650 dollars for the eligible beef cows is not reduced because the farmer did not receive any payments from a state or federal assistance program for the loss of the beef cows.

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431 LDAP Handbook, page 2-57, paras. 43.C and 43.D (April 25, 2019).
432 LDAP Handbook, page 2-57, paras. 43.C and 43.D (April 25, 2019).
433 LDAP Handbook, page 2-57, para. 43.C (April 25, 2019).
434 LDAP Handbook, page 2-57, para. 43.D (April 25, 2019).
435 7 C.F.R. § 1416.306(d)(2019); LDAP Handbook, page 2-57, para. 43.D (April 25, 2019).
436 LDAP Handbook, page 2-58, para. 43.D, Example 2 (April 25, 2019).

4. Payment Limitations

Many USDA programs for farmers include what are known as payment limitations. Before the 2018 Budget Act, a person or legal entity was not eligible to receive more than 125,000 dollars in total payments for any one program year under LIP, the Livestock Forage Disaster Program (LFP), and the Emergency Assistance for Livestock, Honeybees and Farm-Raised Fish Program (ELAP) combined.[437] With the passing of the 2018 Budget Act on February 9, 2018, there is no longer a payment limitation on the benefits that a person or legal entity may receive under LIP in any one program year.[438] This change applies to eligible livestock losses in 2017 and later years.

5. Duplicate Payments Not Allowed

If a farmer—whether a livestock owner or contract grower—is eligible for benefits for the same loss under LIP and another program, the farmer must decide whether to receive payment from LIP or the other program.[439] A farmer cannot receive benefits for the same loss from LIP as well as from another program. If, as described above, a farmer does receive payment from another source for the same or similar loss, that payment amount can be deducted from the farmer's LIP payment.

Under this rule, other programs that might provide duplicative benefits to a farmer include, but are not limited to, indemnities made under the Federal Crop Insurance Act or by the Noninsured Crop Disaster Assistance Program (NAP).[440]

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437 7 C.F.R. § 1416.6(b) (2019). The $125,000 limitation remains in effect for LFP and ELAP. FSA Notice LDAP-91, Issuing 2017 ELAP Payments and Additional 2017 and 2018 LIP and LFP Payments, at 1 (April 6, 2018) (expires Oct. 1, 2018). Due to the removal of this limitation, farmers who received LIP payments in 2017 or 2018 that were capped by the previous $125,000 payment limitation may now be eligible for additional LIP funds for those losses. FSA Notice LDAP-91, Issuing 2017 ELAP Payments and Additional 2017 and 2018 LIP and LFP Payments, at 2 (April 6, 2018) (expired Oct. 1, 2018).

438 H.R. 1892, 115th Cong (2018) (codified at 7 U.S.C. § 9081(b), (f)(2)). See also FSA Notice LDAP-91, Issuing 2017 ELAP Payments and Additional 2017 and 2018 LIP and LFP Payments, at 1 (April 6, 2018) (expired Oct. 1, 2018).

439 7 C.F.R. § 1416.6(d) (2019).

440 7 C.F.R. § 1416.6(d) (2019).