LIVESTOCK INDEMNITY PROGRAM

UNITED STATES DEPARTMENT of AGRICULTURE

<u>CAUTION</u>: *This article is intended for educational purposes, only. It does not constitute legal advice. Nor is it a substitute for legal advice. Federal laws, regulations and rules may change with some frequency. It is important to consult with an attorney who is knowledgeable in this area of the law.*

The Livestock Indemnity Program ("LIP") provides assistance for livestock death losses (in excess of normal mortality) that are caused by adverse weather. (Under LIP, adverse weather does *not* include drought.[1]) LIP also covers losses for livestock killed by certain wild animals (including birds that kill), if those wild animals have either been reintroduced into the wild or are protected by federal law. Finally, LIP can cover death losses from blue-green algae bloom (cyanobacteria) and larkspur poisoning, which toxins are often triggered by weather events.

Normal mortality rates are established by the administrator of the program, Farm Service Agency, for each type of covered livestock, on a state-by-state basis. Payments are equal to 75% of the fair market value of the eligible animals, on the day before the death.

THE BASICS

Let's start with the basics. The details of coverage and eligibility for LIP, which can be intricate, are discussed in the next section of this article. You may wish simply to review the basics and then contact your local FSA office for more details and assistance, or to refer to FSA's useful online resources.[2]

What does LIP do? In general, it compensates for livestock death losses. It pays compensation at a rate of 75% of the fair market value of the lost animal. Death loss of livestock is not compensated unless the death losses for the year are greater than normal mortality rates.

When does LIP kick in? When livestock have died due to an eligible adverse weather event or eligible wild animal attack. The livestock had to have died no later than 60 days after the end of the adverse weather event or animal attack, as a direct result of the event or attack, and in the calendar year for which benefits are being requested. (Newborn livestock must have died within seven days of the event or attack.)

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[1] The only circumstance in which LIP might apply to death losses caused by drought is where there is an outbreak of anthrax.

[2] Available at: http://www.fsa.usda.gov/programs-and-services/disaster-assistance-program/index

Where does it apply? In locations for which the USDA has determined that a qualifying adverse weather event has occurred. This is usually determined according to county. FSA determines if an adverse weather event has occurred. In general such adverse weather events include lightening, earthquake, tornado, winter storms (if accompanied by high winds, freezing rain or sleet, heavy snowfall and extreme cold), blizzards, floods, hurricanes, volcanoes, wildfires, extreme heat, extreme cold, tropical storms and typhoons. Drought is not included, because feed may be purchased in times of drought to prevent death. The only time drought is included is when anthrax, which can be exacerbated by drought, causes the death. Beginning in 2015, larkspur poisoning and cyanobacteria are included as eligible causes of death loss.

Who benefits from this disaster assistance? Livestock owners or contract growers, both of whom have to meet specific eligibility criteria. The general term for eligible persons under the program is *livestock producer*.

What kind of livestock are covered by LIP? For livestock owners: alpacas, beef cattle, dairy cattle, sheep, goats, swine, poultry, buffalo, beefalo, elk, emus, deer or reindeer. For contract growers only poultry and swine are covered. All animals had to have been kept for commercial purposes, and not have been wild, free roaming animals. Livestock that have died from disease are not covered, as mentioned, unless the disease was exacerbated by an adverse weather event and could not reasonably have been treated or prevented by vaccination or acceptable management practices.

What is the assistance? Money.

Does the money have any strings attached to it? No, it can be used as seen fit. It is taxable.

How much is paid? 75% of the fair market value of the animal that died on the day before its death.[3] Only death losses in excess of normal mortality for the year are covered. Normal mortality rates are determined by FSA on a state-by-state basis.

How do I apply? Through your local Farm Service Agency. There are deadlines to meet and documents that are required, both application documents and records to support an application. These details are discussed below. The most important source of information for understanding deadlines and documents is your local FSA office. The deadline for filing a *notice of loss* is the earlier of 30 days after the loss becomes apparent or 30 calendar days after the calendar year in which the loss occurs. The deadline for an *application* is 30 calendar days after the calendar year in which the loss occurs. There are **no** provisions for allowance of late filled applications.

[3] Fair market value for categories of covered animals can be found as an attachment to the LIP Factsheet at: https://www.fsa.usda.gov/programs-and-services/disaster-assistance-program/livestock-indemnity/index

What records will I need? In addition to the appropriate application form, supporting documentation is required to show the quantity and kind of livestock that died and to prove that the deaths resulted from adverse weather or wild animal attack. The detailed kinds of records that may be used to verify and document losses are discussed below.

Where do I get additional information? For more detailed information, read on, contact your local FSA office, or review FSA's on-line resources.

DETAILS

LIP became a "standing" or permanent program under the Agriculture Act of 2014 (2014 Farm Bill), like the Livestock Forage Disaster Program ("LFP") and the Emergency Assistance for Livestock, Honeybees and Farm-Raised Fish Program ('ELAP"). As such, the source of funding for LIP shifted to the Commodity Credit Corporation, from the Agriculture Disaster relief Trust Fund.

The regulations which govern LIP are found in the Code of Federal Regulations at 7 C.F.R. Part 1416, Subparts A and D. LIP is administered by the Farm Service Agency (FSA). Subpart A of 7 C.F.R. Part 1416 contains the *general* eligibility requirements for participation in all three livestock disaster programs (LIP, ELAP and LFP). Subpart D contains the *specific* requirements for participation in LIP. It is useful to note that LIP is not necessarily a simple program to understand or to deal with. Most producers interested in utilizing this program will rely on FSA staff expertise to guide them through the application process. The purpose of this article is to give the reader a general overview of the program, its benefits and its requirements, with direction as to where additional detail might be obtained.

Let's start with the general eligibility provisions.

General Eligibility Requirements: Subpart A

The requirements that apply to most of the USDA programs, namely that a producer be a US citizen or resident (lawful) alien, or a partnership or other qualifying entity (e.g. limited liability company, corporation), also apply to LIP. The following are additional general eligibility requirements.

Eligible Producer

To be eligible, a producer must "assume the production and market risks associated with the agricultural production of crops or livestock on a farm either as the owner of the farm, where there is no contract grower, or [as] a contract grower of the livestock when there is a contract grower." (§1416.3) That's a tongue twister. It also seems ambiguous in that it appears to limit eligibility to someone who either owns a farm or is a contract grower of livestock. However, under the specific requirements for the livestock disaster programs, an owner of livestock who rents land may also be eligible. The important point to note for now (for LIP purposes) is the requirement that a producer to be eligible must bear risk in the livestock enterprise, either as owner of the livestock or as a contract grower.

Payment eligibility

To be eligible, the producer's average adjusted gross income (AGI) for the applicable benefit year cannot exceed $900,000. This limit applies to individuals and legal entities. The applicable benefit year is the year for which benefits (or compensation for losses) are sought. The term "average adjusted gross income" refers to the average AGI over the three taxable years that precede the most immediately preceding complete taxable year. For example, if a producer is applying for benefits for losses that occur in 2016, the three taxable years that count toward determination of average adjusted gross income are 2012-2014.

Payment Limits

The total amount of payments received through LIP, LFP and ELAP together cannot exceed $125,000. This is a cap on *combined* payments received in any year under any of these three programs. This is one of a series of payment limitations imposed by the 2014 Farm Bill. As a general matter, spouses of eligible producers can receive a separate limitation amount, thereby, in effect, doubling the limitation amounts for married couples. There are more complex rules for determining payment limits where an entity, such as a limited liability company or corporation, is involved.[4]

Farm Operating Plan

Participants in the program (which technically means those people who have simply filed an application for benefits) must either already have on file, or provide to FSA, a farm operating plan.[5] This form is used by FSA to assist in determining payment limitations and payment eligibility.

Insurance No Longer Required

To be eligible, a producer need *not* carry insurance either through Risk Management Agency or the Noninsured Crop Disaster Assistance Program (NAP). This is a change in requirements made by the 2014 Farm Bill.

Specific Eligibility Requirements for LIP: Subpart D

[4] For information on the entity rules, see 7 CFR §§ 1400.105 and 1400.106, as well as the following: http://www.fsa.usda.gov/programs-and-services/payment-eligibility/index

[5] There are two versions of this form, both a longer and a shorter form, both of which can be viewed at http://www.fsa.usda.gov/programs-and-services/payment-eligibility/actively_engaged/index.

There are basic eligibility requirements for LIP, which are: eligible adverse weather or wild animal attack, eligible livestock, and an eligible owner or contract grower.

Eligible Adverse Weather

The first thing to note is that eligible adverse weather events are determined by FSA. The event is defined by its "extreme or abnormal damaging nature." Such events may include lightening, earthquake, tornado, winter storms (if accompanied by high winds, freezing rain or sleet, heavy snowfall and extremely cold temperatures), blizzards, floods, hurricanes, volcanoes, vog[6], wildfires, extreme heat, extreme cold, tropical storms and typhoons. In addition, certain diseases which are triggered or exacerbated by adverse weather may be included as covered causes of death. For example, the FSA Handbook states that heavy rain followed by prolonged heat will not be considered an eligible adverse weather event except where such conditions trigger blue-green algae bloom, or cyanobacteria, which can cause livestock death. Simlarly, an unusual period of cold and wet conditions is not in itself an eligible adverse event except where it leads to death loss attributable to larkspur poisoning. A determination has been made that livestock death losses from these diseases, as triggered by the adverse weather, *may* not be susceptible to vaccination or good management practices and are therefore eligible under LIP for compensation. State FSA offices are responsible for specifying the exact eligibility criteria for either of these weather-related disease losses.

As mentioned, drought is not an eligible adverse weather event under LIP, except where the drought leads to death loss from anthrax poisoning.

Eligible Animal Attack

Eligible animals may include those animals reintroduced into the wild by the federal government or protected by federal law. The Handbook mentions by name wolves and avian predators, i.e. birds that kill. (Avian predators may include but are not limited to condors, bald eagles, osprey and black or turkey vultures.) The producer must provide adequate proof that the death was caused by such an attack. Documentation of such deaths preferably is obtained from the Animal and Plant Health Inspection Service Wildlife Services (APHIS) or from the Department of Natural Resources. In the absence of such documentation, the producer may provide records that can be independently verified, such as veterinarian records, or dated photographs, or third party certifications. See below for further information on documentation.

Eligible Livestock for Owners

[6] Vog is a visible toxic air pollution, in aerosol form, that can occur in the context of a volcanic eruption.

The livestock need to have been owned by an eligible owner on the day of death. They have to have been kept for commercial purposes as part of a farming operation.[7] The death must have occurred no later than 60 days after the end of the adverse weather event or the attack by wild animal or avian predator, and as a direct result of such event or attack. (Newborn livestock to be eligible losses must have died within seven days of the adverse weather event or attack.) The deaths must have happened in the calendar year for which benefits are being requested.

Eligible livestock includes the following: beef cattle, dairy cattle, buffalo, beefalo, sheep, goats, swine, poultry, elk, alpaca, emus, equine, llamas, deer or reindeer. (In utero creatures are not included.) Payment rates for livestock can be found at: http://www.fsa.usda.gov/programs-and-services/disaster-assistance-program/livestock-indemnity/index

Eligible Livestock for Contract Growers

The livestock must have been in the possession of the eligible contract grower at the time of death. The death must have occurred no later than 60 days after the end of the adverse weather event or the attack by wild animal or avian predator, and as a direct result of the event or attack. (Newborn livestock must have died within seven days of the adverse weather event or attack.) The deaths must have happened in the calendar year for which benefits are being requested. Eligible livestock includes only poultry (including kept for egg production) or swine.

Eligible Owner

In addition to the general eligibility requirements, the owner had to have owned the livestock on date of death. It must be the case that no contract grower is eligible for these same animals. In other words, if a contract grower is eligible the owner of the animals is not. This reflects the definition of a contract grower as the one who is in possession of the animals and at risk for the death loss.

Eligible Contract Grower

To be eligible, a contract grower must meet the following: a) have a written agreement with the owner of the livestock which states the terms, conditions and obligations of the parties with respect to the livestock, b) be in control of the animals on the date of death, and c) be at risk for the loss of the animals. The grower must have suffered a loss of income in the death loss of the animal.

Normal Mortality

FSA determines normal mortality rates. Normal mortality is defined according to category of livestock and calendar year, i.e. what is normal death loss in a calendar year for various

[7] In some livestock losses, a question may arise as to what constitutes a *farming operation*, which is generally defined as a "business enterprise engaged in producing agricultural products." It may be relevant, for example, to know whether or not the producer files taxes as a farming operation.

categories of livestock. Normal mortality is determined by state unless there are compelling reason to make a determination by regions within a state. Normal mortality rates for states are based on national mortality rates.[8]

Deadlines and Documents

The following brief discussion of deadlines and documentation under LIP is general. It is critically important to contact your local FSA office for guidance on reporting losses and applying for assistance.

Deadlines

In seeking benefits under LIP, a producer submits both a *notice of loss* and an *application*. A notice of loss is a necessary part of a complete application. The deadline for submitting the notice of loss is the earlier of the following: a) within thirty days of the loss of livestock becoming apparent to the producer, or b) thirty days (January 30) after the end of the calendar year in which the loss occurred. The deadline for a complete application to be submitted is the same as (b), that is January 30 after the calendar year in which the loss occurred. Multiple notices of loss may be submitted for a single calendar, according to how and when the death losses occur, and these notice may be submitted by telephone, facsimile or email. An application, and not just a notice loss, may be filed for each occasion of death loss, without waiting until the end of the calendar year, and is encouraged. Bear in mind, however, that the last date to file an application for death losses is, as stated, within 30 days of year's end.

Contact your local FSA office to obtain the necessary forms and detailed information on submitting a notice of loss and application for benefits.

Documentation

It is important to maintain as complete a record as possible of losses in order to gain eligibility for the program. The applicant must show evidence of the loss. The following is a general listing of documentation that the Agency looks for in considering applications, eligibility and payment calculations. Under each loss category, note that FSA can accept either *verifiable* or *reliable* documentation. There is a difference between these two kinds of documentation. Verifiable documentation is such that can be verified by an independent source and is the strongest supporting documentation. Reliable documentation is such that may not be independently verifiable but which may nonetheless stand in FSA's estimate as sufficient. The 2014 Farm Bill made it possible for the Agency, in the absence of either verifiable or reliable documentation of losses, to consider *certification* of loss by the producer, provided, however,

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[8] National mortality rates can be viewed in the appendices to the FSA Handbook for Livestock Disaster Assistance Programs for 2011 and Subsequent Years, 1-LDAP (Rev. 1), which can be downloaded at: http://www.fsa.usda.gov/FSA/webapp?area=home&subject=empl&topic=hbk

that similar producers suffered comparable losses. Thus, there are three levels of possible demonstration of loss to meet eligibility, in descending order of strength: verifiable documentation, reliable documentation and producer certification.

The producer must be able to document the death losses for which assistance is sought. The following documents may serve as verifiable documentation:

- rendering truck receipts or certificates
- FEMA records
- National Guard records
- veterinary records
- records assembled for tax purposes
- private insurance documents
- written contracts
- bank or other loan documents
- purchase records
- productions records
- property tax records.

In the absence of adequate verifiable proof of death, a producer may provide reliable records, together with verifiable beginning and ending inventory records. Reliable records may include:

- contemporaneous producer records in existence at the time of the event
- photographs (with dates)
- brand inspection records
- dairy herd improvement records or
- other similar reliable documents

Verifiable inventory records may include

- veterinary records
- canceled check documentation
- balance sheets
- inventory records used for tax purposes
- loan records
- bank statements
- farm credit balance sheets
- property tax records
- brand inspection records

- sales and purchase receipts
- private insurance documents
- chattel inspections.

There are also provisions in the rules for the producer to provide independent third party verifications, where needed, of the death losses.

Legal Aid of Nebraska

- *For additional information, contact your local FSA office.*
- *Information may also be available through the Nebraska Rural Response Hotline (1-800-464-0258).*
- *This is a document prepared by Legal Aid of Nebraska. It is not a USDA document.*