

§ 1439.105

7 CFR Ch. XIV (1-1-05 Edition)

(c) In and for each eligible county, the county committee shall determine normal carrying capacities for each type of grazing or pasture during the LAP crop year. The normal carrying capacity for the LAP crop year shall be the normal carrying capacity the county committee determines could be expected from pasture and normal grazing crops for livestock for the LAP crop year if a natural disaster had not diminished the production of these grazing crops.

(d) In each eligible county, the county committee shall determine the payment period for the county. The payment period for the county shall be the period of time during the county's LAP crop year where for 3 consecutive months during 2001 or 2002, the carrying capacity for grazing land or pasture was reduced by 40 percent or more from the normal carrying capacity.

§ 1439.105 Loss criteria.

(a) Grazing land for which a livestock producer requests benefits must be within the physical boundary of a disaster county. Livestock producers in unapproved counties contiguous to an eligible county will not receive benefits under this subpart.

(b) To be eligible for benefits under this subpart, a livestock producer in an eligible county must have suffered a loss of grazing production equivalent to at least a 40-percent loss of normal carrying capacity for a minimum of 3 consecutive months.

(c) A producer shall specify each type of pasture and percentage of loss suffered by each type on the application. In establishing the percentage of grazing loss, producers shall consider the amount of available grazing production during the LAP crop year, whether more than the normal acreage of grazing land was required to support livestock during the LAP crop year, and whether supplemental feeding of livestock began earlier or later than normal.

(d) The county committee shall determine the producer's grazing loss and shall consider the amount of available grazing production during the LAP crop year, whether more than the normal acreage of grazing land was required to support livestock during the

LAP crop year, and whether supplemental feeding of livestock began earlier or later than normal. The county committee shall request the producer to provide proof of loss of grazing production if the county committee determines the producer's certified loss exceeds other similarly situated livestock producers.

(e) The percentage of loss claimed by a livestock producer shall not exceed the maximum allowable percentage of grazing loss for the county as determined by the county committee in accordance with §1439.104(a). Livestock producers will not receive benefits under this subpart for any portion of their loss that exceeds 80 percent of normal carrying capacity.

(f) Conservation Reserve Program acres released for haying or grazing and seeded small grain forage crops shall not be used to calculate losses under this subpart.

§ 1439.106 Livestock producer eligibility.

(a) Only one livestock producer will be eligible for benefits under this subpart with respect to an individual animal.

(b) Only owners, cash lessees, or share lessees of livestock who themselves provide the pasture or grazing land, including cash leased pasture or grazing land, for the livestock may be considered as livestock producers eligible to apply for benefits under this subpart.

(c) An owner, or cash or share lessee of livestock who uses another person to provide pasture or grazing land on a rate-of-gain basis is not considered to be the livestock producer eligible to apply for benefits under this subpart.

(d) An owner who pledges livestock as security for a loan shall be considered as the person eligible to apply for benefits under this subpart if all other requirements of this part are met. Livestock leased or being purchased under a contractual agreement that has been in effect at least 3 months and establishes an interest for the lessee in such livestock shall be considered as being owned by the lessee.

(e) Livestock must have been owned or leased for at least 3 months before becoming eligible for payment.

(f) The following entities are not eligible for benefits under this subpart:

- (1) State or local governments or subdivisions thereof; or
- (2) Any individual or entity who is a foreign person as determined in accordance with the provisions of §§ 1400.501 and 1400.502 of this chapter.

§ 1439.107 Calculation of assistance.

(a) The value of LAP assistance determined with respect to a livestock producer for each type and weight class of livestock owned or leased by such producer shall be the lesser of the amount calculated under paragraph (b) of this section (the total value of lost feed needs for eligible livestock) or calculated under paragraph (c) of this section (the total value of lost eligible pasture).

(b) The total value of lost feed needs shall be the amount obtained by multiplying:

- (1) The number of days in the payment period the livestock are owned or, in the case of purchased livestock, meet the 3-month ownership requirement; by
- (2) The number of pounds of corn-equivalent per day, as established by CCC, that is determined necessary to provide the energy requirements established for the weight class and type of livestock; by

(3) The 5-year national average market price for corn, as determined (\$1.92 bushel or \$0.0342857 per pound); by

(4) The number of eligible animals of each type and weight range of livestock owned or leased by the person; by

(5) The percent of the producer's grazing loss during the relevant period as certified by the producer and approved by the county committee in accordance with § 1439.105.

(c) The total value of lost eligible pasture shall be the amounts for each type of pasture calculated by:

(1) Dividing the number of acres of each pasture type by the carrying capacity established for the pasture, and multiplying the result by:

(2) The 5-year national average market price for corn, as determined (\$1.92 bushel or \$0.0342857 per pound); by

(3) The daily feed grain equivalent per animal (15.7 pounds of corn necessary for a beef cow, factored for the

weight class and type of livestock, as determined by CCC), by

(4) The applicable number of days in the LAP payment period; by

(5) The percent of the producer's grazing loss during the relevant period as certified by the producer and approved by the county committee in accordance with § 1439.105.

(d) The final payment shall be the smaller of paragraph (b) or (c) of this section and from the final payment amount shall be subtracted the sum of the amounts received by the producer under the Livestock Compensation Program, as published in the FEDERAL REGISTER on October 10, 2002 (67 FR 63070), and the 2002 Cattle Feed Program, as published on September 3, 2002 (67 FR 56260). The final payment shall not exceed 50 percent of the smaller of paragraph (b) or (c) of this section determined prior to subtracting the amounts received by the producer under the Livestock Compensation Program, as published in the FEDERAL REGISTER on October 10, 2002 (67 FR 63070), the 2002 Cattle Feed Program, as published on September 3, 2002 (67 FR 56260), and the Livestock Compensation Program II, as published on May 5, 2003 (68 FR 23688).

(e) The final payment calculated in paragraph (d) of this section shall be multiplied by the national factor if required under § 1439.108.

(f) Seeded small grain forage crops shall not be counted as grazing land under paragraph (c) of this section with respect to supporting eligible livestock.

(g) The number of equine animals that are used to calculate benefits under this subpart and in paragraph (a) of this section are limited to the number actually needed to produce food and fiber on the producer's farm or to breed horses and mules to be used to produce food and fiber on the owner's farm, and shall not include animals that are used for recreational purposes or are running wild or uncontrolled on land owned or leased by the owner.

§ 1439.108 Availability of funds.

In the event that the total amount of claims submitted under this subpart exceed \$250 million, each payment shall