

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

(d) For each eligible county, the FSA 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, as applicable, during 2003 or 2004, the carrying capacity for grazing land or pasture was reduced by 40 percent or more from the normal carrying capacity.

(e) 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 or share lessees, or contractors 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, or contractor of livestock who uses another person to provide pasture or grazing land on a rate-of-gain basis is not considered to be a 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 by the producer for at least 3 months before becoming eligible for generating a 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.

(g) Livestock sold due to disaster conditions by an eligible producer shall be considered as eligible to generate assistance and may be included in making the calculations in § 1439.107(a).

§ 1439.107 Calculation of assistance.

(a) The gross value of LAP assistance determined with respect to a livestock producer for each type and weight class of livestock owned, leased, contracted, or sold according to § 1439.106 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, (\$0.0369642 per pound for 2003, or \$0.0344642 for 2004); 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

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as certified by the producer and approved by the FSA 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:

(2) The result of paragraph (c)(1) of this section for each pasture type; by \$0.5803379 for 2003 ($\0.0369642×15.7) or \$0.5410879 for 2004 ($\0.0344642×15.7) by:

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

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

(d) The final payment shall not exceed 50 percent of the smaller amount calculated under paragraphs (b) or (c) of this section.

(e) If the livestock owner is eligible for the LAP program and the American Indian Livestock Feed Program (ALLFP) with respect to the same natural disaster, the livestock owner may elect to receive payment only for the same year for both programs, either 2003 or 2004. Payments for both programs cannot be issued for different years to the same producer.

(f) Land seeded to 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 breed horses and mules used to produce food and fiber on the owner's farm, and shall not include animals that are used for recreational purposes or other non-covered purposes are running wild or uncontrolled on land owned or leased by the owner.

[70 FR 16394, Mar. 31, 2005, as amended at 70 FR 29922, May 25, 2005]

§ 1439.108 Availability of funds.

Subject to the availability of funds, the Secretary shall use such sums as

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are necessary of funds of the Commodity Credit Corporation to make and administer payments to livestock producers for 2003 or 2004 grazing losses. Such payment shall be made after the imposition of applicable payment limitation provisions.

§ 1439.109 Additional limitations on payments.

(a) Sections 1439.10 and 1439.11 as in effect at the time of publication of this subpart shall apply to the 2003/2004 LAP and shall limit payments accordingly.

(b) Any person who received payments from section 32 of the Act of August 25, 1935, with respect to 2004 hurricane losses is not eligible for payments under this subpart.

§ 1439.110 Appeals.

Determinations made under this subpart are subject to reconsideration or appeal in accordance with parts 780 and 11 of this title.

§ 1439.111 Refunds to CCC; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment or assistance arising under this part, and if any refund of a payment to CCC shall otherwise become due in connection with this part, all payments made in regard to such matter shall be refunded to CCC, together with interest as determined in accordance with paragraph (b) of this section and late-payment charges as provided for in part 1403 of this chapter.

(b) All signatories on a LAP application with a financial interest in the operation or in an application for payment shall be jointly and severally liable for any refund including related charges that is determined to be due CCC for any reason under this part.

(c) Interest shall be applicable to refunds required of the livestock owner or other party receiving assistance or a payment if CCC determines that payments or other assistance were provided to the owner and the owner was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges CCC for funds, as of the