

Farmers' Guide to Disaster Assistance

Sixth Edition

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Farmers' Legal Action Group, Inc.

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- Lawyers Trust Account Board for the State of Minnesota
- Legal Services Advisory Committee of the Minnesota Supreme Court
- The Otto Bremer Foundation

Finally, we owe our largest debt of gratitude to all the farmers and farm advocates whose determination, intelligence, and courage have guided our work for more than twenty years. May they never need to use this book. On the other hand, if the need arises, we hope it will serve them well.

Susan E. Stokes
Executive Director
June 6, 2008

Farmers' Guide to Disaster Assistance is available without charge to family farmers in Minnesota, and can be downloaded for no charge from FLAG's website at www.flaginc.org. To purchase this book or other FLAG publications, please contact FLAG by telephone at 651-223-5400; by fax at 651-223-5335; by mail at 360 North Robert Street, Suite 500, Saint Paul, MN 55101; or by electronic mail at lawyers@flaginc.org.

FARMERS' GUIDE TO DISASTER ASSISTANCE

Sixth Edition, 2008

Table of Contents

Summary of Disaster Programs

- Chapter 1: Introduction**
- Chapter 2: Federal Emergency Management Agency (FEMA) Programs**
- Chapter 3: Federal Crop Insurance**
- Chapter 4: Noninsured Crop Disaster Assistance Program (NAP)**
- Chapter 5: Emergency Conservation Program (ECP)**
- Chapter 6: Disaster Assistance for Livestock Producers**
- Chapter 7: Farm Service Agency (FSA) Emergency (EM) Loans**
- Chapter 8: Farm Service Agency (FSA) Disaster Set-Aside**
- Chapter 9: Small Business Administration (SBA) Disaster Loans**
- Chapter 10: Bankruptcy**
- Chapter 11: Federal Income Taxes**
- Appendix: Disaster Readiness and Recovery: Legal Considerations for Organic Farmers**

SUMMARY OF DISASTER PROGRAMS

Summary of Disaster Programs <i>Farmers' Guide to Disaster Assistance (Sixth Edition, 2008)</i>								
Program	What Can You Get?	Eligibility	Farm Losses Covered?	Where Available?	Deadline for Application	Appeal Rights If Denied?	Where in the Book?	Other
New disaster programs created by the 2008 Farm Bill	Cash payment for crop losses, livestock mortality losses, grazing losses, and nursery or orchard tree losses.	Each program will have specific eligibility requirements. USDA is currently working on the program details.	Yes	Program specifics are still being written.	Program specifics still being written. Must pay fee by August 20, 2008, for 2008 coverage.	Yes	Chapter 1	Program specifics still being developed by USDA. Contact local FSA offices or check FLAG website for updates.
Individuals and Households Program (IHP) (FEMA)	Up to \$28,800 to cover housing costs, personal property losses, and disaster-related expenses.	Must have necessary expenses or serious needs.	Home, personal property, and personal disaster-related expenses only.	Counties with a presidential disaster declaration.	Usually 60 days from disaster declaration.	Yes	Chapter 2	
Disaster Unemployment Assistance (DUA)	Cash payment for lost work time.	Unable to work—including farm—because of disaster. May include unable to work customary hours at customary tasks.	Farming is covered.	States with a presidential disaster declaration.	30 days after declaration of disaster—unless good cause shown.	Yes	Chapter 2	Benefit based on previous farm income. Administered by state agencies.

FARMERS' GUIDE TO DISASTER ASSISTANCE

Program	What Can You Get?	Eligibility	Farm Losses Covered?	Where Available?	Deadline for Application	Appeal Rights If Denied?	Where in the Book?	Other
Federal Crop Insurance	Cash payment for insured crop losses.	Must have had crop insurance policy in effect at time of disaster, purchased by the sales closing date for the crop.	Yes	Nationwide, but policies not available for all crops in all areas.	Report losses to insurance provider within 72 hours. Confirm in writing within 15 days.	Appeal, mediation and/or non-binding arbitration depending on the reason for denial.	Chapter 3	Benefits vary and depend on individual coverage.
Noninsured Crop Disaster Assistance Program (NAP) (USDA)	Cash payment for crop losses.	Covers crop losses for which federal crop insurance is not available. Application submitted and service fee paid by application closing date.	Yes	Nationwide	Report losses to FSA within 15 days. Request benefits by coverage application date for next crop year.	Yes	Chapter 4	
Emergency Conservation Program (ECP) (USDA)	Cash cost-share assistance to help rehabilitate land and water resources damaged by disaster.	Damage to farmland or water resources caused by disaster.	Farm damage covered.	Disaster counties where ECP has been specifically authorized.	Sign-up period of at least 30 days announced by USDA.	Yes	Chapter 5	Covers portion of out-of-pocket expenses and farmer's own labor.

SUMMARY OF DISASTER PROGRAMS

Program	What Can You Get?	Eligibility	Farm Losses Covered?	Where Available?	Deadline for Application	Appeal Rights If Denied?	Where in the Book?	Other
Disaster Assistance for Livestock Producers (USDA)	Cash payment for livestock or feed losses. Some cost-share programs.	Varies with program. Generally live-stock or feed losses caused by disaster.	Yes	Depends on individual program rules. Often only available in primary disaster counties.	Sign-up period announced by USDA.	Yes	Chapter 6	Programs available vary widely depending on needs and funding.
Emergency (EM) Loans (USDA)	Low interest loan (3.75 percent).	Family farmers who suffer physical or production losses due to disaster.	Yes	Primary and contiguous counties under a presidential or USDA disaster declaration.	Eight months from disaster declaration.	Yes	Chapter 7	
Farm Service Agency (FSA) Disaster Set Aside (USDA)	Move FSA loan payment to end of the loan.	Unable to pay expenses due to disaster. Less than 90 days past due on all FSA loans.	Yes	Primary and contiguous counties under a presidential or USDA disaster declaration.	Eight months from disaster declaration.	Yes	Chapter 8	

FARMERS' GUIDE TO DISASTER ASSISTANCE

Program	What Can You Get?	Eligibility	Farm Losses Covered?	Where Available?	Deadline for Application	Appeal Rights If Denied?	Where in the Book?	Other
Small Business Administration (SBA) Disaster Loans	Low-interest loans for home or business losses.	Losses caused by disaster.	Home and non-farm business only.	Counties under a disaster declaration from the President or the SBA Administrator.	Application period announced by SBA.	Yes	Chapter 9	Business loans for non-farm business only.
Bankruptcy	Possible relief or rescheduling of some debts.	Varies with type of bankruptcy.	Yes	Nationwide	Can generally be filed at any time.		Chapter 10	Consult an expert.
Federal Income Taxes	Disaster can affect federal income taxes in several ways.		Yes	Nationwide			Chapter 11	Consult an expert.

Chapter 1

Introduction and New Program Preview

I. Government Relief Is Available	1
II. Preview of New Programs Created by the 2008 Farm Bill	2
A. Supplemental Revenue Assistance Payment Program (SURE).....	3
B. Livestock Indemnity Program (LIP).....	3
C. Livestock Forage Disaster Program (LFP).....	4
D. Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (EALHF).....	4
E. Tree Assistance Program (TAP).....	4
III. Most of the New 2008 Farm Bill Programs Require Crop Insurance or NAP Coverage	5
Chapter 1 Notes	6

Chapter 1

Introduction and New Program Preview

I. Government Relief Is Available

Year after year, we see punishing weather in different regions of the country with devastating effects on agricultural production. As this book is being finalized, extended drought continues in the central plains, southeastern, and western states. In recent years, farms across the country have been swamped by floods and pounded by severe winter storms. Many farmers will spend this winter totaling the meager returns of what they could salvage and wondering how they will pay this year's bills and plant next year's crops with virtually no income.

A group of federal programs can provide some relief to family farmers after a disaster. Some of these programs were designed to give this relief, and other programs have been modified to offer it.

All of the programs are extremely complicated. At least 12 different programs are administered and/or affected by various agencies, including:

- Farm Service Agency (FSA).
- Small Business Administration (SBA).
- Federal Emergency Management Agency (FEMA).
- Risk Management Agency (RMA).
- Federal Crop Insurance Corporation (FCIC).

While the acronyms alone are baffling, that is just the beginning. Each of the programs administered by these agencies has its own maze of rules and regulations. Each has different application procedures, deadlines, eligibility criteria, qualifying calculations, and appeals processes. The

difficulty inherent in dealing with these programs makes it tempting to dismiss them. But we cannot, because they are all we've got.

This is the sixth edition of this book. With each edition, we have tried to describe changes in existing programs and add discussions of new programs that may provide help to farmers who have been struck by a natural disaster. In some cases, we have removed details about programs that are no longer offered. If you have a dispute dating back to a program offered in an earlier year, or are simply interested in how disaster programs have changed over the years, you may find an earlier edition of this book to be helpful. Earlier editions of this book are available for a nominal fee by contacting FLAG by telephone at 651-223-5400; by fax at 651-223-5335; by mail at 360 North Robert Street, Suite 500, Saint Paul, MN 55101; or by electronic mail at lawyers@flaginc.org.

We have tried to discuss in this book as many of the programs that may be helpful to farmers as we could. However, the short lifespans of some programs present a challenge. In general, this guide only discusses programs with broad application that were available in recent crop years and seem likely to be offered in the future. There may be others as well. Farmers should contact their local FSA offices for information on these programs and to ask whether other disaster assistance programs may be available for their losses.

This book is meant to be a tool to help farmers, their advocates, and their attorneys plow through the rough terrain of disaster assistance programs. It explains how farmers can get the maximum relief to which they are entitled under federal law. It takes statutes, regulations, policy statements, and handbooks that come from dozens of different places and pulls them together into one cohesive, user-friendly guide. We hope that it gives you the information you need.

II. Preview of New Programs Created by the 2008 Farm Bill

Shortly before the current edition of this book was finalized, Congress enacted the Food, Conservation, and Energy Act of 2008, also known as the 2008 Farm Bill.¹ Among other major federal farm policy changes, the

2008 Farm Bill creates five new disaster programs that will be available on a standing basis for losses resulting from disasters that occur before October 1, 2011.² This means that farmers suffering losses to crops and livestock as a result of a disaster anywhere in the country will be able to immediately apply for assistance, rather than having to hope that their losses would be covered by an ad hoc disaster program that might be adopted at a later date.

This chapter will give a brief summary of these new programs. The specific requirements for each program will not be known until FSA publishes program regulations. For program specifics, farmers should contact their local FSA offices or check FLAG's website for updates at www.flaginc.org.

The 2008 Farm Bill disaster programs will be available in disaster counties as declared by the President or designated by the Secretary of Agriculture, and their bordering counties, and will also be available to any individual producer who suffered more than a 50 percent reduction in normal production due to weather conditions.³

A. Supplemental Revenue Assistance Payment Program (SURE)

The Supplemental Revenue Assistance Payment Program (SURE) will provide cash payments to eligible producers who have incurred crop production losses or crop quality losses, or both.⁴ A farmer's SURE payment will be 60 percent of the difference, as determined by FSA, between the revenue amount guaranteed under the program and the farmer's actual total farm revenue.

B. Livestock Indemnity Program (LIP)

The Livestock Indemnity Program (LIP) will provide cash payments to eligible producers for livestock death losses in excess of normal mortality due to adverse weather.⁵ Eligible losses may include those determined by FSA to have been caused by hurricanes, floods, blizzards, disease, wildfires, extreme heat, and extreme cold.

LIP indemnity payments will be 75 percent of the market value of the livestock on the day before the date of death of the livestock, as determined by FSA.⁶ LIP is discussed in somewhat greater detail, to the extent details are known, in Chapter 6 of this book.

C. Livestock Forage Disaster Program (LFP)

The Livestock Forage Disaster Program (LFP) will provide cash payments to eligible producers who suffered grazing losses for eligible livestock because of drought or fire.⁷

LFP payments for drought losses will be based upon the producer's monthly feed cost, as determined by FSA, and the severity of drought in the area.⁸ LFP payments for fire losses will be based upon the producer's monthly feed cost, as determined by FSA, and the length of time the producer is excluded from rangeland due to fire.⁹ LFP is described in more detail in Chapter 6 of this book.

D. Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (EALHF)

Under the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (EALHF), FSA may spend up to \$50 million per year to provide emergency relief for losses due to feed or water shortages, disease, adverse weather, or other conditions, such as blizzards and wildfires, that are not adequately addressed by other disaster programs.¹⁰

E. Tree Assistance Program (TAP)

The Tree Assistance Program (TAP) will provide cash payments to eligible orchardists and nursery tree growers for qualifying tree losses due to natural disaster.¹¹ TAP payments will be 70 percent of replanting costs and 50 percent of salvage costs for qualifying losses.¹²

III. Most of the New 2008 Farm Bill Programs Require Crop Insurance or NAP Coverage

The 2008 Farm Bill requires that a farmer, livestock producer, or tree grower have obtained coverage under federal crop insurance or the Noninsured Crop Disaster Assistance Program (NAP) to be eligible for any of the new disaster programs other than LIP.¹³ This requirement is discussed in more detail in the crop insurance and NAP chapters of this book.

For SURE eligibility, crop insurance or NAP must be obtained for all crops for which coverage is available. For LFP eligibility, crop insurance or NAP must be obtained for crops grown on grazing land, if available. For TAP eligibility, crop insurance or NAP must be obtained for all crops growing on vines and trees, if available. The 2008 Farm Bill does not specify how this requirement will be applied for EALHF.

Farmers, livestock producers, and tree growers who meet the definition of socially disadvantaged, limited resource, or beginning farmers or ranchers may request a waiver of this requirement from FSA.¹⁴

Because the 2008 Farm Bill was enacted after the 2008 crop year was well underway, this requirement is waived across the board for 2008, so long as anyone who did not obtain crop insurance or NAP coverage pays an administrative fee to FSA by **August 20, 2008**.¹⁵ The amount of the fee that must be paid is still being determined by FSA.

Chapter 1 Notes

- ¹ Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), Pub. L. No. 110-234, Title XII, 122 Stat. 923 (May 22, 2008) (to be codified at 7 U.S.C. § 1531). Many of the same provisions pertaining to disaster assistance were also included in Title XV, Subtitle A (to be codified at 19 U.S.C. ch. 12).
- ² 2008 Farm Bill § 12033(a) (to be codified at 7 U.S.C. § 1531(g)).
- ³ 2008 Farm Bill § 12033(a) (to be codified at 7 U.S.C. § 1531(a)(5)).
- ⁴ 2008 Farm Bill § 12033(a) (to be codified at 7 U.S.C. § 1531(b)(1)).
- ⁵ 2008 Farm Bill § 12033(a) (to be codified at 7 U.S.C. § 1531(c)).
- ⁶ 2008 Farm Bill § 12033(a) (to be codified at 7 U.S.C. § 1531(c)(2)).
- ⁷ 2008 Farm Bill § 12033(a) (to be codified at 7 U.S.C. § 1531(d)).
- ⁸ 2008 Farm Bill § 12033(a) (to be codified at 7 U.S.C. § 1531(d)(3)(B), (C), (D)(ii)).
- ⁹ 2008 Farm Bill § 12033(a) (to be codified at 7 U.S.C. § 1531(d)(4)).
- ¹⁰ 2008 Farm Bill § 12033(a) (to be codified at 7 U.S.C. § 1531(e)); see FSA Notice DAP-283, "Announcing Supplemental Agricultural Disaster Assistance Programs," para. 6 (May 29, 2008) (expires Dec. 1, 2008).
- ¹¹ 2008 Farm Bill § 12033(a) (to be codified at 7 U.S.C. § 1531(f)); see FSA Notice DAP-283, "Announcing Supplemental Agricultural Disaster Assistance Programs," para. 7 (May 29, 2008) (expires Dec. 1, 2008).
- ¹² 2008 Farm Bill § 12033(a) (to be codified at 7 U.S.C. § 1531(f)(3)).
- ¹³ 2008 Farm Bill § 12033(a) (to be codified at 7 U.S.C. § 1531(d)(5), (g)).
- ¹⁴ 2008 Farm Bill § 12033(a) (to be codified at 7 U.S.C. § 1531(d)(5)(B), (g)(3)).
- ¹⁵ 2008 Farm Bill § 12033(a) (to be codified at 7 U.S.C. § 1531(d)(5)(C), (g)(4)); see FSA Notice DAP-283, "Announcing Supplemental Agricultural Disaster Assistance Programs," 3.A (May 29, 2008).