

For: State and County Offices

Announcing the Dairy Economic Loss Assistance Payment (DELAP) Program

Approved by: Deputy Administrator, Farm Programs



1 Overview

A Background

Notice LD-617 provided State and County Offices with procedure required to prepare for DELAP implementation before the publication of final regulations. DELAP regulations:

- will be effective and on public display at the Office of the Federal Register (OFR) on December 17, 2009
- will be published in the FR on December 21, 2009
- are provided at 7 CFR Part 760.

B Purpose

This notice provides State and County Offices with the following:

- general information about the DELAP program
- eligibility requirements
- sign-up dates for new dairy operations that did not participate in the MILC program
- application and payment process
- payment authorization

C Contact

For questions or situations **not** addressed in this notice, State Offices shall contact any of the following.

Name	Telephone	e-mail	Program Area
Dani Cooke	202-720-1919	danielle.cooke@wdc.usda.gov	policy and procedure
Toni Williams	202-720-2270	toni.williams@wdc.usda.gov	
Asime Atuboyedia	202-720-8223	asime.atuboyedia@wdc.usda.gov	automation

Disposal Date	Distribution
June 1, 2010	State Offices; State Offices relay to County Offices

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2 General DELAP Program Information

A Source of Authority

The source of authority for the DELAP Program is the FY 2010 Agricultural Appropriations Act which provides \$290 million for direct payments to dairy producers using Section 10104 of the 2002 Farm Bill to cover economic losses.

B Regulations

Regulations for the DELAP Program will be:

- found at 7 CFR Part 760, Subpart N
- available after publication in the FR on the:
 - FSA Intranet
 - PSD Homepage located at <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=prsu&topic=landing>.

C Related Handbooks

Handbooks related to DELAP include the following:

Handbook	Purpose
IF the area of concern is about...	THEN see...
appeals	1-APP.
signatures, estates, trusts, minors, or powers of attorney	1-CM.
misaction, misinformation, equitable relief, scheme, device, or failure to fully comply	7-CP.
AGI and foreign person provisions	4-PL.
HELC/WC provisions	6-CP.
issuing payments	1-FI.
Offsets	58-FI.
assignments and joint payments	63-FI.
prompt payment provisions or foreign person tax withholding	61-FI.
reporting to IRS	62-FI.

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3 DELAP Program Eligibility

A Eligible Dairy Operations

An eligible dairy operation, for DELAP program purposes, is any person or group of persons who, as a single unit as determined by FSA, produce and market milk commercially produced from cows and whose production facilities are located in the United States. Each State shall determine dairy operations according to the same criteria applied to dairy operations under the MILC Program.

B Eligible Entities

An eligible dairy operation may include any of the following entities that are engaged in an operation that markets milk commercially in the U.S.

- An individual that has a beneficial interest in a dairy operation, has a financial risk in the dairy operation, and is a citizen of, or legal resident alien in, the U.S.
- A corporation, partnership, joint operation, estate, association, cooperative, other business enterprise or other legal entity whose members are a citizen of, or legal resident alien in the U.S.
- Indian tribe of the Indian Self-Determination and Education Assistance Act.
- Indian organization or entity chartered under the Indian Reorganization Act.
- Economic enterprise under the Indian Financing Act of 1974.

C Eligible Dairy Producers

An eligible producer for DELAP program purposes is any individual, group of individuals, partnership, corporation, estate, trust association, cooperative, other legal business enterprise, or other legal entity who is, or whose members:

- are a citizen of, or legal resident alien in the United States, or a foreign person legally admitted in the United States with a valid TIN and who is providing land capital, a substantial amount of active personal labor on the dairy operation, and meet the requirements of 7 CFR Part 1400 and 4-PL
- directly or indirectly share in the risk of producing milk
- make contributions (including land, labor, management, equipment, or capital) to the dairy farming operation of the individual or entity that are at least commensurate with the share of the individual or entity of the proceeds of the operation.

Note: Dairy producers must have a completed CCC-901, CCC-902E, CCC-902I, or CCC-580S on file in the County Office.

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3 DELAP Program Eligibility (Continued)

D Eligibility Requirements

To be eligible to receive DELAP program benefits, a dairy producer in the U.S. must:

- have produced milk in the U.S. and commercially marketed the milk produced any time during February 2009 through July 2009
- be a producer as provided by subparagraph 3 C
- provide FSA with proof of milk production commercially marketed by all dairy producers in the dairy operation during February 2009 through July 2009
- submit an accurate and complete request for benefits according to paragraph 5, if production data from the MILC program is not available in the FSA County Office
- certify compliance with HELC and WC provisions, according to subparagraph 3 H
- not have nonfarm average AGI that exceeds \$500,000 according to subparagraph 3 F
- not be convicted under Federal or State law of a controlled substance violation, according to 1-CM.

E Maximum Eligible Quantity

The maximum quantity of production eligible for payment under the DELAP program is 6 million lbs per dairy operation.

F AGI

Producers who certify on CCC-926 that their nonfarm average AGI exceeds \$500,000 are ineligible for DELAP benefits. The relevant period for determining nonfarm average AGI are the calendar years of 2005 through 2007.

G States, Political Subdivisions, and Agencies Thereof

States, political subdivisions, and agencies thereof, are not eligible for DELAP program benefits. These provisions include, but are not limited to State universities and prisons.

H HELC/WC Provisions

Eligible producers in dairy operations must comply with HELC/WC provisions according to 7 CFR Part 12. If not already completed and on file in the County FSA Office, producers applying for benefits must certify compliance on AD-1026 before payments are issued. See 6-CP for guidance.

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4 DELAP Program Payment Provisions

A DELAP Payment Phases

DELAP program benefits will be issued according to the following 2 phases:

Phase	DELAP Participant	When to Expect Payment
Initial Phase	Dairy operations that participated in the MILC program during FY 2009.	Soon after the filing of DELAP program regulations with the OFR.
Secondary Phase	Dairy operations that did not participate in the MILC program during FY 2009.	Soon after the end of the 30-calendar day signup period announced by FSA.

B Funding

A total of \$290 million has been made available to eligible dairy producers for payments under the DELAP program. Since the spending authority is limited to \$290 million, DELAP payments will be prorated by a National factor based on the amount of milk production eligible for payment to determine a National per-hundredweight payment rate.

C National Payment Rate

The National per-hundredweight payment rate will be calculated by dividing the available funding, less an established reserve, by the total lbs of eligible production approved for payment.

Note: Payments issued under both the initial and secondary payment phases will be issued at this same National payment rate, unless total payments due to new dairy operations, corrections, and appeals exceed the amount of funds available in reserve.

D Calculating DELAP Payments

DELAP payments will be calculated based on each qualifying dairy operation's total lbs of production commercially marketed during the months of February 2009 through July 2009, multiplied by 2, up to a production maximum of 6 million lbs per dairy operation.

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4 DELAP Program Payment Provisions (Continued)

D Calculating DELAP Payments (Continued)

Example: ABC Dairy Operation produced and commercially marketed the milk produced according to the following table.

Month	Production (lbs.)
February 2009	525,000
March 2009	515,000
April 2009	517,000
May 2009	521,000
June 2009	522,000
July 2009	527,000
TOTAL	3,127,000

Total production for the dairy operation in this example is multiplied by 2 (3,127,000 x 2 = 6,254,000), and limited to a quantity of 6,000,000 lbs of production eligible for payment.

Note: Production for a dairy operation is required for each month, February 2009 through July 2009, **except** when a dairy was not in operation during any of those months.

E Dairy Operation Payment

DELAP program benefits to each eligible producer in a dairy operation will be calculated by:

- converting whole lbs of milk to cwt
- multiplying the National payment rate provided in subparagraph C by the dairy producer's share in the dairy operations eligible production payment quantity.

F Assignments and Offsets

DELAP benefits are subject to assignment and offset.

G Direct Deposit Requirement

The Debt Collection Improvement Act of 1996 requires any recipient of Federal payments who becomes eligible for that payment after July 25, 1996, to receive the payment by electronic funds transfer. All producers receiving benefits under the DELAP program must file SF-1199A according to 1-FI, Part 3.

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4 DELAP Program Payment Provisions (Continued)

H Accounting Program Code

The accounting program code for DELAP is “10DELAP”.

I Prompt Payment Interest

Prompt payment interest will apply to program payments issued by FSA later than 30 calendar days **after** both of the following has occurred:

- payment rate has been determined by FSA
- payments are available for signing and certification in NPS.

J eFMS Allotments

DELAP program funds will be allotted to the County Office level through the eFMS. State Offices shall direct requests for additional funds over the initial allotment by e-mail to Stacy Carroll at stacy.carroll@wdc.usda.gov, with cc's to all persons listed as a contact in subparagraph 1 C.

K Issuing DELAP Payments

DELAP benefits will be issued by County Offices through NPS. A payment spreadsheet will be provided to State Offices to verify payment amounts against the reconciled spreadsheet provided by PSD. If all data in the payment spreadsheet is accurate, State Offices must:

- provide e-mail confirmation to all PSD contacts indicated in subparagraph 1 C
- forward copy of payment spreadsheet to appropriate County Offices to verify payment amounts indicated in NPS, when populated, **before** those payments are certified, signed, and disbursed.

If any inaccuracies are found in the payment spreadsheet, immediately contact PSD for further instructions.

Note: This same process will be used when disbursing payments for producers in dairy operations that fall under the secondary payment phase.

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4 DELAP Program Payment Provisions (Continued)

L Authorization to Issue DELAP Payments

County Offices are authorized to issue payments under the initial payment phase when all of the following have occurred:

- DELAP Program regulations are filed for public inspection with the OFR
- DELAP payment file has been received
- DELAP payments are populated in NPS.

Note: An additional authorization will be provided when payments are to be issued under the secondary payment phase.

5 Applying for DELAP Program Benefits

A Dairy Operations Participating in the MILC Program

Producers in dairy operations that have participated in the MILC program during FY 2009 and have production data for the months of February through July available in the County Office will automatically receive benefits and will **not** need to make a request for benefits. Notice LD-617 provided instructions to State and County Offices to validate production data maintained in the County Office through a spreadsheet disseminated by PSD and correct and obtain production data for each month, February through July, as necessary.

B Dairy Operations Not Participating in the MILC Program

New dairy operations that did not participate in the MILC program during FY 2009 **must** apply for DELAP benefits during the 30-calendar-day application period provided in subparagraph 5 D. Dairy operations that participated in the MILC program during FY 2009, but either have not received a payment under the initial payment phase, were not listed on the verification or payment spreadsheets, or had eligibility issues when applying for the MILC program that have since been resolved **must** also sign up during the application period provided in subparagraph 5 D.

Note: Payments issued to DELAP participants described in this subparagraph will be issued using funds available in an established reserve.

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5 Applying for DELAP Program Benefits (Continued)

C Application Form

There is not a specific application form required for dairy operations that did not participate in the MILC program during FY 2009 to apply for DELAP benefits. Therefore, the request for benefits may be in the form of a letter or memo that includes all of the following:

- name and location of the dairy operation
- contact information for the dairy operation, including telephone number
- name and percentage share for the entity or individual producers receiving a share of the payment
- proof of production for the qualifying months.

D Application Period

The DELAP program application period **begins on December 17, 2009**, upon the effective date of the regulations. The application period will **end on January 19, 2010**. Dairy producers may submit a request for benefits according to subparagraph 5 E, any time during the signup period, but not later than **COB on January 19, 2010**.

Requests for benefits received after the application period end date will **not** be approved. This includes FAXed applications.

E Submitting Requests for DELAP Benefits

Requests for DELAP benefits must be submitted to the National Office according to the following table.

Submission Method	Submission Information
Mail	Deputy Administrator for Farm Programs FSA-USDA-STOP 0512 1400 Independence Avenue, SW Washington, DC 20250-0512 ATTN: DELAP Program
FAX	(202) 690-1536
E-mail	danielle.cooke@wdc.usda.gov

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5 Applying for DELAP Program Benefits (Continued)

E Submitting Requests for DELAP Benefits (Continued)

Requests received by the National Office will be forwarded through the State Office to the applicable County Office to:

- manually verify that all eligibility requirements are met according to paragraph 3
- load applicant information in SCIMS
- ensure that all required forms, such as SF-1199A, AD-1026, CCC-926, etc., are filed.

State Offices shall send a confirmation e-mail to all contact persons in subparagraph 1 C, when County Offices have completed the manual process above and verified the eligibility status for each applicant submitting a request for benefits.

Note: At the conclusion of the signup period, a final payment spreadsheet for producers that fall under the secondary payment phase will be provided to County Offices through the State Office to verify payment amounts indicated in NPS before those payments are certified, signed, and disbursed.

6 Action

A State Office Action

SED's and STC's shall:

- ensure that County Offices immediately notify producers of the contents of this notice using all available sources
- provide guidance to the County Office on the contents of this notice
- forward any DELAP program questions to the National Office according to subparagraph 1 C.

B County Office Action

County Offices shall:

- inform all dairy producers of DELAP program actions through:
 - over-the-counter discussion
 - newsletters
 - other methods of communication, as applicable
- verify payment amounts indicated in NPS against data in the final payment spreadsheet before DELAP payments are certified, signed, and disbursed
- complete manual eligibility verification for new applicants during signup as requested
- forward questions about the contents of this notice through the State Office Specialist.