

## § 760.1203

an eligible county on the beginning date of the disaster period;

(2) Maintain the catfish for commercial use as part of a farming operation;

(3) Have a risk in production of such catfish; and

(4) Have suffered one of the following types of losses relating to catfish feed as a direct result of the county's disaster event that occurred in that year:

(i) Physical loss of feed that was damaged or destroyed,

(ii) Cost to the extent allowed by FSA, associated with lost feeding days, or

(iii) Cost associated with increased feed prices.

(b) [Reserved]

### § 760.1203 Payment calculation.

(a) Producers must be paid for feed losses of higher costs only for one of the three years, 2005, 2006, or 2007, and the loss must be for eligible catfish feed losses in an eligible county, as determined pursuant to subpart K of this part. Further, the feed loss or higher costs must be caused by the disaster that caused the county to qualify as an eligible county. The loss, moreover, to qualify for payment, must have occurred during the allowable time period provided in this part, namely the period beginning on January 2, 2005 and ending February 27, 2007. The producer must pick the year of the benefits sought.

(b) Subject to all adjustments and limits provided for in this part the amount of assistance provided to each participant from the State will be equal to the smaller of:

(1) Depending on the year chosen by the producer, the value of the participant's 2005, 2006, or 2007 catfish feed and related losses as a direct result of an eligible disaster event, as determined by the State or

(2) Result of multiplying:

(i) Total tons of catfish feed purchased by the participant in depending on the year chosen by the producer 2005 (entire year), 2006 (entire year), or 2007 (through February 27, 2007, only), times,

(ii) Catfish feed payment rate for 2005, 2006, or 2007, as applicable, as set by FSA.

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(c) The catfish feed rate represents 61 percent of the normal cost of a ton of feed for a year divided by six to reflect the normal feeding price for catfish.

### Subpart N—Dairy Economic Loss Assistance Payment Program

SOURCE: 74 FR 67808, Dec. 21, 2009, unless otherwise noted.

#### § 760.1301 Administration.

(a) This subpart establishes, subject to the availability of funds, the terms and conditions under which the Dairy Economic Loss Assistance Payments (DELAP) program as authorized by section 10104 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171) will be administered with respect to funds appropriated under Section 748 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010 (2010 Agriculture Appropriations Bill, Pub. L. 111-80).

(b) The DELAP program will be administered under the general supervision of the Administrator, FSA, and the Deputy Administrator for Farm Programs, FSA (who is referred to as the "Deputy Administrator" in this part), and will be carried out by FSA's Price Support Division (PSD) and Kansas City Management Office (KCMO).

(c) FSA representatives do not have authority to modify or waive any of the provisions of the regulations of this subpart, except as provided in paragraph (d) of this section.

(d) The State committee will take any action required by the provisions of this subpart that has not been taken by the county committee. The State committee will also:

(1) Correct or require the county committee to correct any action taken by the county committee that is not in compliance with the provisions of this subpart.

(2) Require a county committee to not take an action or implement a decision that is not in compliance with the provisions of this subpart.

(e) No provision or delegation of this subpart to PSD, KCMO, a State committee, or a county committee will preclude the Administrator, FSA, or a

designee, from determining any question arising under the program or from reversing or modifying any determination made by PSD, KCMO, a State committee, or a county committee.

(f) The Deputy Administrator may waive or modify non-statutory deadlines and other program requirements of this part in cases where lateness or failure to meet other requirements does not adversely affect the operation of the program. Participants have no right to seek an exception under this provision. The Deputy Administrator's refusal to consider cases or circumstances or decision not to exercise the discretionary authority of this provision will not be considered an adverse decision and is not appealable.

#### § 760.1302 Definitions and acronyms.

The following definitions apply to this subpart. The definitions in parts 718 and 1400 of this title also apply, except where they may conflict with the definitions in this section.

*County office or FSA county office* means the FSA offices responsible for administering FSA programs in a specific area, sometimes encompassing more than one county, in a State.

*Dairy operation* means 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. In any case, however, dairy operation may be given by the agency the same meaning as the definition of dairy operation as found in part 1430 of this title for other dairy assistance programs.

*Department or USDA* means the U. S. Department of Agriculture.

*Deputy Administrator* means the Deputy Administrator for Farm programs (DAFP), FSA, or a designee.

*Eligible production* means milk from cows that was produced during February through July 2009, by a dairy producer in the United States and marketed commercially by a producer in a participating State.

*Farm Service Agency or FSA* means the Farm Service Agency of the USDA.

*Fiscal year or FY* means the year beginning October 1 and ending the following September 30. The fiscal year

will be designated for this subpart by year reference to the calendar year in which it ends. For example, FY 2009 is from October 1, 2008, through September 30, 2009 (inclusive).

*Marketed commercially* means sold to the market to which the dairy operation normally delivers whole milk and receives a monetary amount and in any case this term will be construed to allow the use of MILC records in making DELAP payments.

*Milk handler* means the marketing agency to or through which the dairy operation commercially markets whole milk.

*Milk marketing* means a marketing of milk for which there is a verifiable sales or delivery record of milk marketed for commercial use.

*Participating State* means each of the 50 States in the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico, or any other territory or possession of the United States.

*Payment quantity* means the pounds of milk production for which an operation is eligible to be paid under this subpart.

*Producer* means any individual, group of individuals, partnership, corporation, estate, trust association, cooperative, or other business enterprise or other legal entity, as defined in 7 CFR 1400.3, who is, or whose members are, a citizen of or legal resident alien in the United States, and who directly or indirectly, as determined by the Secretary, shares in the risk of producing milk, and who is entitled to a share of the commercial production available for marketing from the dairy operation. This term, and other terms in this subpart, will in any case be applied in a way that allows MILC records to be used to make DELAP payments.

*United States* means the 50 States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

*Verifiable production records* means evidence that is used to substantiate the amount of production marketed commercially by a dairy operation and its producers and that can be verified by FSA through an independent source.