

For: FSA Offices

Loan Deficiency Payment (LDP) Policy Reminders Clarifications

Approved by: Deputy Administrator, Farm Programs



1 Overview

A Background

LDP's are payments made to producers who, although eligible to obtain a marketing assistance loan (MAL), agree to forgo the loan in return for a payment on the eligible commodity. State and County Offices have requested additional guidance on existing LDP policies and procedures. Regulations and policies for administering the MAL and LDP programs are found in 7 CFR Part 1421 and 8-LP.

B Purpose

This notice:

- informs State and County Offices of:
 - general LDP procedures
 - LDP policies regarding commodities delivered for storage to approved and unapproved facilities, including Federally licensed, State licensed and unlicensed facilities
- obsoletes Notice LP-1988.

C Contact

If there are questions or situations not addressed in this notice, State Offices shall contact Kimberly Graham at 202-720-9154 or **Kimberly.Graham@wdc.usda.gov**.

Disposal Date	Distribution
December 1, 2005	All FSA Offices; State Offices relay to County Offices

Notice LP-1990

2 General LDP Policies

A General Provisions

LDP's are payments made to producers who, although eligible to obtain MAL, agree to forgo MAL in return for a payment on the eligible commodity. These eligibility requirements include, but are not limited to:

- producer and commodity eligibility
- beneficial interest
- Debt Collection Improvement Act of 1996
- payment limitation.

LDP's must be requested in person, by FAX, or electronically through the eLDP Internet based software according to Notice PS-495. LDP requests are considered complete when the County Office receives the properly completed applicable LDP form.

Hay and silage derived from an eligible loan commodity, or unshorn pelts, are eligible for LDP's but not MAL's.

B LDP Rates

The LDP rate is the rate in effect on the day of:

- request, if beneficial interest is maintained on the date of the request
- delivery, for field direct LDP's
- harvest, if immediately fed during harvest.

For eLDP's, the LDP rate is based on the rate:

- announced and posted to the eLDP web site
- displayed on the eLDP application when submitted to the eLDP web site.

The LDP rate is determined by the amount the applicable commodity loan rate exceeds the CCC-determined value based upon the location of the commodity being stored. LDP rates are available at <http://www.fsa.usda.gov/daftp/psd/default.htm>.

Notice LP-1990

2 General LDP Policies (Continued)

C CCC-633 LDP and CCC-709 Requests

Producers can submit basic (certified/measured) CCC-633 LDP and/or CCC-709 requests. LDP requests must be received in the County Office before beneficial interest is lost. LDP requests are considered complete when the County Office receives the properly completed and signed applicable request form.

CCC-633 LDP requests are for any stored quantity the producer maintains beneficial interest in on the date of the request. CCC-633 LDP requests **cannot** be cancelled at any time.

CCC-709 is available for producers who:

- will **lose** beneficial interest in the commodity at harvest when the commodity is delivered directly from the field to a processor, buyer, warehouse, wool pool, or cooperative
- want to receive a LDP on the commodity based on the date delivered directly from the field to a processor, buyer, warehouse, wool pool, or cooperative
- immediately feed the commodity during harvest.

CCC-709 is intended to allow producers that will lose beneficial interest immediately after harvest and who may not have the opportunity to place the commodity in storage, before marketing, the ability to obtain an LDP.

The applicable LDP forms are available online. In addition to the CCC-633 LDP and CCC-709, eLDP's are available to eligible producers who have completed CCC-634-E and have level 2 authentication, according to Notice PS-495.

Note: Additional eLDP policies will be included in a future amendment to 8-LP.

Notice LP-1990

3 LDP's and Beneficial Interest

A Beneficial Interest

Producers must retain beneficial interest in the commodity on the date the LDP request is submitted to the County Office. CCC has sole discretion and authority for determining whether a producer retains beneficial interest in a commodity.

The following table provides definition of the conditions for beneficial interest.

Condition	Definition
Control of the commodity.	<p>A producer has <u>control of the commodity</u> if the producer keeps the ability to make all decisions affecting the commodity.</p> <p>Control Examples: Moving, selling, or passing title to the commodity.</p> <p>Pledging the commodity for loan or requesting LDP.</p>
Risk of loss.	<p>A producer has the <u>risk of loss</u> of the commodity if the producer is:</p> <ul style="list-style-type: none">• responsible for any loss or damage to the commodity• to receive any indemnity to be paid.
Title to the commodity.	<p>A producer <u>may</u> be considered to have <u>title to the commodity</u> if the producer has not sold or delivered the commodity, including the delivery of warehouse receipts.</p>

B LDP Quantities Delivered for Storage at Federally Licensed Warehouse with a Uniform Grain and Rice Storage Agreement (UGRSA)

Commodities delivered to a Federally licensed warehouse a USGRA for storage, including open storage, are eligible for LDP if the producer retains beneficial interest in the quantity delivered. Producers who deliver commodities to a federally licensed warehouse with a UGRSA maintain beneficial interest in the commodity until some marketing decision is made or until such time as the producer relinquishes beneficial interest in the crop as provided by the terms and conditions of the applicable written or verbal contract.

Note: Federally approved warehouses are warehouses that are licensed under the United States Warehouse Act.

Notice LP-1990

3 LDP's and Beneficial Interest

B LDP Quantities Delivered for Storage at Federally Licensed Warehouse with a UGRSA (Continued)

The term "open storage" applies to commodities delivered for storage with no warehouse receipt issued for the delivered commodity. The grain is considered held in an open storage position until the producer makes a decision to either:

- obtain a warehouse receipt (mostly for MAL purposes)
- sell the commodity.

Commodities delivered for open storage must be delivered in the producer's name and the producer must have the ability to remove the applicable commodity from the warehouse.

For quantities delivered to an approved warehouse or elevator and beneficial interest is maintained, the producer may complete a CCC-633 LDP request, **before** beneficial interest is lost.

Note: CCC-709 is available to producers who want to receive the LDP on the delivered commodity based on the delivery date. If a producer completes a CCC-709 and indicates that the LDP on the commodity is based on the date of delivery, the CCC-633 LDP request is **not** required.

C LDP Quantities Delivered for Storage to State Licensed Warehouses/Unlicensed Warehouses with a UGRSA

For commodities delivered to State licensed warehouses or unlicensed warehouses with a UGRSA, State and County Offices should refer to the State licensing or other applicable authorities for guidance on specific warehouse storage requirements for storing eligible commodities. Depending on the applicable State law, restrictions may apply when grain is delivered for open storage. These restrictions may cause the producer to lose beneficial interest in the delivered commodity upon delivery. If it is determined that the producer maintains beneficial interest, as described in subparagraph A, the producer **may** submit a CCC-633 LDP request.

For commodities delivered and stored in State licensed warehouses or unlicensed warehouses with a UGRSA and a warehouse receipt was NOT issued for the commodity delivered for storage, other forms of acceptable production evidence (load summary sheets, scale tickets, etc.) must be provided at the time of the LDP request. Additional production evidence may be required to ensure beneficial interest is maintained during the storage period.

Notice LP-1990

3 LDP's and Beneficial Interest

D LDP Quantities Delivered to an Unapproved Storage Facility

Producers who deliver to a feedlot, feedyard, dairy, processor, ethanol plant, wool pool, or any other storage facility not covered by a UGRSA will lose beneficial interest in the commodity upon delivery, unless other events cause beneficial interest to be lost before delivery according to 8-LP, subparagraph 129 L. CCC-709 **must** be filed on or before harvest to be eligible for LDP.

Delivery of commodities by a producer to a feedlot, feedyard, dairy or wool pool removes the producer's ability to make all decisions affecting the delivered commodity. Therefore, control of the commodity does not remain with the producer.

E Additional Guidance

State Committees shall:

- establish guidelines for when additional production evidence is required

Example: STC's could require County Offices to obtain copies of existing licensing laws or other State rules to determine if the seller relinquishes title, control, or risk of loss in the commodity.

- ensure County Offices are consistent when requesting additional production evidence for determining beneficial interest
- require State Price Support specialists to review existing State warehouse licensing laws before harvest and notify County Offices of any restrictions regarding commodities delivered for open storage.

If there are reasons to believe the commodity is ineligible or the facility and/or storage capacity is in question, County Offices may contact the facility operator to verify existence and delivery of the commodity and that beneficial interest remains with the producer.