

**§ 1430.306**

**7 CFR Ch. XIV (1-1-10 Edition)**

verifiable, actual, commercial production marketed by the dairy operation during the month of July 2004, but which suffered eligible losses, an alternate base period may be established by the Deputy Administrator.

**§ 1430.306 Determination of losses incurred.**

(a) Eligible payable losses are calculated on a dairy operation by dairy operation basis and are limited to those occurring in August through October 2004. Specifically, dairy production and spoilage losses incurred by producers under this subpart are determined on the established history of the dairy operation's actual commercial production marketed from August through October 2004, and actual production dumped or otherwise not marketed from August through October 2004, as provided by the dairy operation consistent with § 1430.305. Except as otherwise provided in these regulations, the starting base production, as defined in § 1430.302, is adjusted downward by a percentage determined by CCC to determine the base production for the months of August through October 2004. These adjustments are made to account for the seasonal declines that can occur during those months. The base production for each of the months August through October 2004 is calculated by reducing the starting base production (July 2004, or alternate month approved by the Deputy Administrator for new producers) as follows:

(1) August 2004 base production is the starting base production reduced by 9 percent;

(2) September 2004 base production is the starting base production reduced by 15 percent;

(3) October 2004 base production is the starting base production reduced by 11 percent.

(b) The eligible dairy production losses for a dairy operation for each of the months of August through October 2004 will be:

(1) The new base production for the dairy operation calculated under paragraph (a) of this section less,

(2) For each such month for each dairy operation, the total of:

(i) Actual commercially-marketed production (not counting dumped pro-

duction counted under paragraph (b)(1)(ii) of this section); plus

(ii) The pounds of milk production dumped (whether related to the hurricane or not), or otherwise not commercially marketed (whether related to the hurricane or not). For dumping losses to be eligible, they must, as with other program losses, be hurricane related, as described under paragraphs (c) and (d) of this section.

(c) Actual production losses may be adjusted to the extent the reduction in production is not certified by the producer to be the result of the hurricane or is determined by FSA not to be hurricane-related. Actual production, as adjusted, that exceeds the adjusted base production will mean that the dairy operation incurred no eligible production losses for the corresponding month as a result of the hurricane disaster, and that the production level for that month does not qualify for a payment under this program.

(d) Eligible dairy spoilage losses incurred by producers under this subpart for each of the months August through October 2004 will be determined based on actual milk produced in those months that was dumped on the farm as a result of the 2004 hurricanes. Proper documentation of milk dumped on the farm as a result of spoilage due to a hurricane must be provided to CCC as provided in § 1430.305.

(e) Calculated production losses may be adjusted by FSA based on the monthly average of daily dairy cow additions or reductions to the milking herd during the period of July 1, 2004 through October 31, 2004, to account for production adjustments as a result of dairy cow purchases, sales, or death losses. Production adjustments can be calculated using the average number of dairy cows in a dairy operation's milking herd and the average production per cow during each applicable month. Per-cow production averages during the months of August through October will be determined based on the actual per-cow production average during the month of July 2004 and reduced downward according to the seasonal decline percentages provided in paragraph (a) of this section, to determine the total production that may be credited back

to the dairy operation's total production losses. To qualify for the production adjustment:

(1) Producers in eligible dairy operations must report any increases or decreases to the dairy cow milking herd during the period of July 1, 2004 through October 31, 2004.

(2) Adequate supporting documentation according to §1430.305 must be provided to the satisfaction of the COC to verify any claims of herd increases or decreases during the eligible period.

(3) Any cows purchased during the eligible period that would increase the dairy cow milking herd must have been to offset production losses as a result of the 2004 hurricanes.

(f) Eligible production and spoilage losses as otherwise determined under paragraphs (a) through (e) of this section are added together to determine total eligible losses incurred by the dairy operation subject to all other eligibility requirements as may be included in this part or elsewhere.

(g) Payment on eligible dairy operation losses is calculated using whole pounds of milk. No double counting is permitted, and only one payment will be made for each pound of milk calculated as an eligible loss after the distribution of the operation's eligible production loss among the producers of the dairy operation according to §1420.307(b). Payments under this part will not be affected by any payments for dumped or spoiled milk that the dairy operation may have received from its milk handler, or marketing cooperative, or any other private party.

(h) If a producer is eligible to receive payments under this part and benefits under any other program administered by the Secretary for the same losses, the producer must choose whether to receive the other program benefits or payments under this part, but shall not be eligible for both. The limitation on multiple benefits prohibits a producer from being compensated more than once for the same losses. If the other USDA program benefits are not available until after an application for benefits has been filed under this part, the producer may, to avoid this restriction on such other benefits, refund the total amount of the payment to the adminis-

trative FSA office from which the payment was received.

**§ 1430.307 Rate of payment and limitations on funding.**

(a) Subject to the availability of funds, the payment rate for eligible production and spoilage losses determined according to §1430.306 is, depending on the State, the average monthly Mailbox milk price for the Florida, the Southeast, or the Appalachian States Marketing Orders as reported by the Agricultural Marketing Service during the months of August, September, and October of 2004. Maximum payment rates for eligible losses for dairy operations located in specific states are as follows:

(1) Florida—\$17.62 per hundredweight (\$0.1762 per pound).

(2) Alabama, Georgia, Louisiana, and Mississippi—\$16.26 per hundredweight (\$0.1626 per pound).

(3) North Carolina and South Carolina—\$15.59 per hundredweight (\$0.1559 per pound).

(b) Subject to the availability of funds, each eligible dairy operation's payment is calculated by multiplying the applicable payment rate under paragraph (a) of this section by the operation's total eligible losses. Where there are multiple producers in the dairy operation, individual producers' payments are disbursed according to each producer's share of the dairy operation's production as specified in the Application.

(c) If the total value of losses claimed under paragraph (b) of this section exceeds the \$10 million available for the 2004 Dairy Disaster Assistance Payment Program, less any reserve that may be created under paragraph (e) of this section, total eligible losses of individual dairy operations that, as calculated as an overall percentage for the full three month period, August–October 2004 (not a monthly average for any one month), are greater than 20 percent of the total base production for those three months will be paid at the maximum rate under paragraph (a) of this section to the extent available funding allows. A loss of over 20 percent in only one or two of the eligible months does not itself qualify for the maximum per-pound payment. Total eligible losses