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(d) Adequate proof of dairy cow additions to the milking herd during the eligible months can include, but is not limited to sales receipts, invoices, State health certificates, or any other documents available to confirm the cow purchases.

(e) If adequate proof of normally marketed production, dumped production, and any other production for relevant periods is not presented to the satisfaction of CCC, the request for benefits will be rejected. In the case of a new producer that had no verifiable, actual, commercial production marketed by the dairy operation during the applicable base month, but which suffered eligible losses, an alternate base period may be established by the Deputy Administrator.

§ 1430.606 Determination of losses incurred.

(a) Eligible payable losses are calculated on a dairy operation by dairy operation basis and are limited to those occurring during the applicable claim period, as provided by §1430.604(g), that corresponds with the hurricane-related disaster. 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 during the applicable claim period that corresponds with the hurricane-related disaster, and actual production dumped or otherwise not marketed during that same claim period, as provided by the dairy operation consistent with §1430.605. Except as otherwise provided in these regulations, the starting base production, as defined in §1430.602 and established in §1430.604(g), is adjusted downward by a percentage determined by CCC to determine the base production for the applicable claim period that corresponds to the hurricane-related disaster. These adjustments are made to account for the seasonal declines that can occur during the months within the claim period. The base production for each of the applicable claim period months is calculated by reducing the starting base production of the applicable base month, or alternate month approved by the Deputy Administrator for new producers, as follows:

1. August 2005 base production is the starting base production reduced by 8 percent;
2. September 2005 base production is the starting base production reduced by 17 percent;
3. October 2005 base production is the starting base production reduced by 11 percent. However, if losses occurred only as a result of Hurricanes Ophelia and Wilma, for October 2005, base production is not reduced.
4. November 2005 base production is the starting base production reduced by 6 percent, unless eligible losses occurred only as a result of Hurricanes Ophelia and Wilma, in which case, for November 2005, base production is not reduced.
5. December 2005 base production is not reduced by a downward adjustment percentage.

(b) The eligible dairy production losses for a dairy operation for each of the claim period months of August through December 2005, as applicable, 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 production 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 for payment, however, 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 CCC 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
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month as a result of the hurricane dis-
aster, and that the production level for
that month does not qualify for a pro-
duction loss payment under this pro-
gram.

(d) Eligible dairy spoilage losses in-
curred by producers under this subpart
for each of the months August through
December 2005, as applicable to the
claim period that corresponds with the
hurricane-related disaster, will be de-
termined based on actual milk pro-
duced in those months that was
dumped on the farm as a result of the
2005 hurricanes, or other related condi-
tion. 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
§1430.605.

(e) Calculated production losses may
be adjusted by CCC based on the
monthly average of daily dairy cow ad-
ditions or reductions to the milking
herd during the applicable claim period
that corresponds with the hurricane-re-
lated disaster, to account for produc-
tion adjustments as a result of dairy
cow purchases, sales, or death losses.
Production adjustments can be cal-
culated using the average number of
dairy cows in a dairy operation’s milk-
ing herd and the average production
per cow during each applicable month.
Per-cow production averages during
the applicable claim period months
will be determined based on the actual
per-cow production average during the
base month applicable to the hurri-
cane-related disaster and reduced
downward according to the seasonal de-
cline percentages provided in para-
graph (a) of this section, to determine
the total production that may be cred-
tited back to the dairy operation’s total
production losses. To qualify for the
production adjustment credit:

(1) Producers in eligible dairy oper-
ations must report any increases to the
dairy cow milking herd during the ap-
licable base month and claim period
that corresponds to the hurricane dis-
aster condition to the eligible hurri-
cane.

(2) Adequate supporting documenta-
tion according to §1430.605 must be pro-
vided to the satisfaction of the COC to
verify any claims of herd increases dur-
ing the eligible period.

(3) Any cows purchased during the eli-
gible period that would increase the
dairy cow milking herd must have been
to offset production losses as a result
of the 2005 hurricanes, or other related
condition.

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

(g) Payment on eligible dairy oper-
ation 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 cal-
culated as an eligible loss after the dis-
tribution 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 Department of Agriculture
(USDA) for the same losses, the pro-
cducer must choose whether to receive
the other program benefits or pay-
ments 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 avail-
able until after an application for bene-
fits 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 FSA ad-
mnistrative office from which the pay-
ment was received.

EDITORIAL NOTE: At 71 FR 65711, Nov. 9,
2006, §1430.606(g) was amended by revising
the reference to “§1420.305” to read
“§1430.605”. However, because of inaccurate
amendatory language, this amendment could
not be incorporated.