§ 1430.605 Proof of production.

(a) Evidence of production is required to establish the commercial marketing and production history of the dairy operation so that dairy production and spoilage losses can be computed in accordance with § 1430.606.

(b) A dairy producer must, based on the instructions issued by the Deputy Administrator, provide adequate proof of the dairy operation's commercial production, including any dumped production and dairy cow purchases, for each month of the applicable base month and claim period that corresponds with the applicable 2005 hurricane disaster or related condition, and must specifically identify any production during the applicable claim period that is dumped. If a month other than the applicable base month is used for base creation purposes, records for that month must be provided.

(1) A producer must certify and provide such proof as requested that losses for which compensation is claimed were hurricane-related and occurred in an eligible county in an eligible month.

(2) Additional supporting documentation may be requested by CCC as necessary to verify production or spoilage losses and dairy herd increases or decreases to the satisfaction of CCC.

(c) Adequate proof of production history of the dairy operation under paragraph (b) of this section must be based on milk marketing statements obtained from the dairy operation's milk handler or marketing cooperative. Supporting documents may include, but are not limited to: Tank records, milk handler records, daily milk marketings, copies of any payments received from other sources for production or spoilage losses, or any other documents available to confirm or adjust the production history and losses incurred by the dairy operation.

(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 month as a result of the hurricane disaster, and that the production level for that month does not qualify for a production loss payment under this program.

(d) Eligible dairy spoilage losses incurred 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 determined based on actual milk produced in those months that was dumped on the farm as a result of the 2005 hurricanes, or other related condition. 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 additions or reductions to the milking herd during the applicable claim period that corresponds with the hurricane-related disaster, 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 applicable claim period months will be determined based on the actual per-cow production average during the base month applicable to the hurricane-related disaster 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 credit:

(1) Producers in eligible dairy operations must report any increases to the dairy cow milking herd during the applicable base month and claim period that corresponds to the hurricane disaster condition to the eligible hurricane.

(2) Adequate supporting documentation according to §1430.605 must be provided to the satisfaction of the COC to verify any claims of herd increases 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 2005 hurricanes, or other related condition.

(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 Department of Agriculture (USDA) 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 FSA administrative office from which the payment 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 inaccuarate amendatory language, this amendment could not be incorporated.

§1430.607 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 §1430.606 is, depending on the State, the amount set forth below which is derived from the monthly Mailbox milk price for the Florida, the Southeast, Western Texas or the Appalachian States Marketing Orders as reported by the Agricultural Marketing Service. Maximum payment rates for eligible losses for dairy operations located in specific states are as follows:

(1) Florida—$18.19 per hundredweight ($0.1819 per pound), which is averaged to account for the mailbox price during the months of August 2005 and October 2005 when the hurricane disasters occurred.

(2) Louisiana—$16.47 per hundredweight ($0.1647 per pound), which is averaged to account for the mailbox price during the months of August 2005 and September 2005 when the hurricane disasters occurred.

(3) Alabama, Arkansas, Georgia and Mississippi—$16.49 per hundredweight ($0.1649 per pound).

(4) North Carolina—$15.39 per hundredweight ($0.1539 per pound).

(5) Texas—$14.19 per hundredweight ($0.1419 per pound).

(6) Tennessee—$15.38 per hundredweight ($0.1538 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 $17 million available for DDAP–II, 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 disaster claim period that corresponds with the applicable hurricane-related disaster (not a monthly average for any one month), are greater than 20 percent of the total base production for those applicable claim period 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 for a producer, as calculated under