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Subpart A—Dairy Indemnity Payment Program

AUTHORITY: 7 U.S.C. 450j-1.

SOURCE: 43 FR 10535, Mar. 14, 1978, unless otherwise noted.

PROGRAM OPERATIONS**§ 760.1 Administration.**

This indemnity payment program will be carried out by FSA under the direction and supervision of the Deputy Administrator. In the field, the program will be administered by the State and county committees.

§ 760.2 Definitions.

For purposes of this subject, the following terms shall have the meanings specified:

(a) *Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the U.S. Department of Agriculture to whom he has

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delegated, or to whom he may hereafter delegate, authority to act in his stead.

(b) *FSA* means the Farm Service Agency, U.S. Department of Agriculture.

(c) *Deputy Administrator* means the Deputy Administrator for Farm Programs, FSA.

(d) *State committee* means the FSA State committee.

(e) *County committee* means the FSA county committee.

(f) *Pesticide* means an economic poison which was registered pursuant to the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135 through 135k), and approved for use by the Federal Government.

(g) *Chemicals or Toxic Substances* means any chemical substance or mixture as defined in the Toxic Substances Control Act (15 U.S.C. 2602).

(h) *Nuclear Radiation or Fallout* means contamination from nuclear radiation or fallout from any source.

(i) *Violating Substance* means one or more of the items defined in paragraphs (f), (g), and (h) of this section.

(j) *Public agency* means any Federal, State or local public regulatory agency.

(k) *Affected farmer* means a person who produces whole milk which is removed from the commercial market any time from:

(1) Pursuant to the direction of a public agency because of the detection of pesticide residues in such whole milk by tests made by a public agency or under a testing program deemed adequate for the purpose by a public agency, or

(2) Pursuant to the direction of a public agency because of the detection of other residues of chemicals or toxic substances residues, or contamination from nuclear radiation or fallout in such whole milk by tests made by a public agency or under a testing program deemed adequate for the purpose by a public agency.

(l) *Affected manufacturer* means a person who manufactures dairy products which are removed from the commercial market pursuant to the direction of a public agency because of the detection of pesticide residue in such dairy

products by tests made by a public agency or under a testing program deemed adequate for the purpose by a public agency.

(m) *Milk handler* means the marketing agency to or through which the affected dairy farmer marketed his whole milk at the time he was directed by the public agency to remove his whole milk from the commercial market.

(n) *Person* means an individual, partnership, association, corporation, trust, estate, or other legal entity.

(o) *Application period* means any period during which an affected farmer's whole milk is removed from the commercial market pursuant to direction of a public agency for a reason specified in paragraph (k) of this section and for which application for payment is made.

(p) *Pay period* means (1) in the case of an affected farmer who markets his whole milk through a milk handler, the period used by the milk handler in settling with the affected farmer for his whole milk, usually biweekly or monthly, or (2) in the case of an affected farmer whose commercial market consists of direct retail sales to consumers, a calendar month.

(q) *Whole milk* means milk as it is produced by cows.

(r) *Commercial market* means (1) the market to which the affected farmer normally delivers his whole milk and from which it was removed because of detection therein of a residue of a violating substance(s) or (2) the market to which the affected manufacturer normally delivers his dairy products and from which they were removed because of detection therein of pesticide residue.

(s) *Removed from the commercial market* means (1) produced and destroyed or fed to livestock, (2) produced and delivered to a handler who destroyed it or disposed of it as salvage (such as separating whole milk, destroying the fat, and drying the skim milk), or (3) produced and otherwise diverted to other than the commercial market.

(t) *Payment subject to refund* means a payment which is made by a milk handler to an affected farmer, and which such farmer is obligated to refund to the milk handler.

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(u) *Base period* means the calendar month or 4-week period immediately preceding removal of milk from the market.

[43 FR 10535, Mar. 14, 1978, as amended by Amdt. 1, 44 FR 36360, July 22, 1979; 52 FR 17935, May 13, 1987; 53 FR 44001, Nov. 1, 1988; 56 FR 1358, Jan. 14, 1991; 61 FR 18485, Apr. 26, 1996; 71 FR 27190, May 10, 2006]

PAYMENTS TO DAIRY FARMERS FOR MILK

§ 760.3 Indemnity payments on milk.

An indemnity payment for milk may be made to an affected farmer who is determined by the county committee to be in compliance with all the terms and conditions of this subpart in the amount of the fair market value of his normal marketings for the application period, as determined in accordance with §§ 760.4 and 760.5, less (a) any amount he received for whole milk marketed during the applications period, and (b) any payment not subject to refund which he received from a milk handler with respect to whole milk removed from the commercial market during the application period.

[43 FR 10535, Mar. 14, 1978, as amended at 47 FR 24689, June 8, 1982]

§ 760.4 Normal marketings of milk.

(a) The county committee shall determine the affected farmer's normal marketings which, for the purposes of this subpart, shall be the sum of the quantities of whole milk which such farmer would have sold in the commercial market in each of the pay periods in the application period but for the removal of his whole milk from the commercial market because of the detection of a residue of a violating substance.

(b) Normal marketings for each pay period are based on the average daily production during the base period.

(c) Normal marketings determined in paragraph (b) of this section are adjusted for any change in the daily average number of cows milked during each pay period the milk is off the market compared with the average number of cows milked daily during the base period.

(d) If only a portion of a pay period falls within the application period, normal marketings for such pay period

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shall be reduced so that they represent only that part of such pay period which is within the application period.

[43 FR 10535, Mar. 14, 1978, as amended by Amdt. 1, 44 FR 36360, July 22, 1979]

§ 760.5 Fair market value of milk.

(a) The county committee shall determine the fair market value of the affected farmer's normal marketings, which, for the purposes of this subpart, shall be the sum of the net proceeds such farmer would have received for his normal marketings in each of the pay periods in the application period.

(b) The county committee shall determine the net proceeds the affected farmer would have received in each of the pay periods in the application period (1) in the case of an affected farmer who markets his whole milk through a milk handler, by multiplying the affected farmer's normal marketings for each such pay period by the average net price per hundred-weight of whole milk paid during the pay period by such farmer's milk handler in the same area for whole milk similar in quality and butterfat test to that marketed by the affected farmer in the base period used to determine his normal marketings, or (2) in the case of an affected farmer whose commercial market consists of direct retail sales to consumers, by multiplying the affected farmer's normal marketings for each such pay period by the average net price per hundredweight of whole milk, as determined by the county committee, which other producers in the same area who marketed their whole milk through milk handlers received for whole milk similar in quality and butterfat test to that marketed by the affected farmer during the base period used to determine his normal marketings.

(c) In determining the net price for whole milk, the county committee shall deduct from the gross price therefor any transportation, administrative, and other costs of marketing which it determines are normally incurred by the affected farmer but which were not incurred because of the removal of his whole milk from the commercial market.