

§ 1430.608

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 § 1430.606, of less than or equal to 20 per-

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cent during the eligible claim period will then be paid at a rate determined by dividing the eligible losses of less than 20 percent by the funds remaining after making payments for all eligible losses above the 20-percent threshold.

(d) In no event shall the payment exceed the value determined by multiplying the producer's total eligible loss times the average price received for commercial milk production in their area as defined in paragraph (a) of this section.

(e) A reserve may be created to handle pending or disputed claims, but claims shall not be payable once the available funding is expended.

§ 1430.608 Availability of funds.

The total available program funds shall be \$17 million as provided by section 3014 of Title III of Public Law 109-234.

§ 1430.609 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this subpart may request reconsideration or appeal of such determination in accordance with the appeal regulations set forth at 7 CFR parts 11 and 780. Appeals of determinations of ineligibility or payment amounts are subject to the limitations in §§ 1430.607 and 1430.608 and other limitations as may apply.

§ 1430.610 Misrepresentation and scheme or device.

(a) In addition to other penalties, sanctions or remedies as may apply, a dairy producer shall be ineligible to receive assistance under this program if the producer is determined by CCC to have:

(1) Adopted any scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, must be refunded with interest together with such other sums as may become due. Any dairy operation or person engaged in acts prohibited by this section and any dairy operation or

person receiving payment under this subpart shall be jointly and severally liable with other persons or operations involved in such claim for benefits for any refund due under this section and for related charges. The remedies provided in this subpart shall be in addition to other civil, criminal, or administrative remedies that may apply.

§ 1430.611 Death, incompetence, or disappearance.

In the case of death, incompetency, disappearance, or dissolution of a person that is eligible to receive benefits in accordance with this subpart, such alternate person or persons specified in 7 CFR part 707 may receive such benefits, as determined appropriate by CCC.

§ 1430.612 Maintaining records.

Persons applying for benefits under this program must maintain records and accounts to document all eligibility requirements specified herein. Such records and accounts must be retained for 3 years after the date of payment to the dairy operations under this program. Destruction of the records after such date shall be at the risk of the party imposed with the recordkeeping requirements by this subpart.

§ 1430.613 Refunds; joint and several liability.

(a) Excess payments, payments provided as the result of erroneous information provided by any person, or payments resulting from a failure to comply with any requirement or condition for payment under the application or this subpart, must be refunded to CCC.

(b) A refund required under this section shall be due with interest determined in accordance with paragraph (d) of this section and late payment charges as provided in 7 CFR part 1403.

(c) Persons signing a dairy operation's application as having an interest in the operation shall be jointly and severally liable for any refund and related charges found to be due under this section.

(d) In accord with parts 792 and 1403 of this title, interest shall be applicable to any refunds required under this subpart. Such interest shall be charged at the rate the United States Depart-

ment of the Treasury charges CCC for funds, and shall accrue from the date FSA or CCC made the erroneous payment to the date of repayment.

(e) CCC may waive the accrual of interest if it determines that the cause of the erroneous determination was not due to any action of the person, or was beyond the control of the person committing the violation. Any waiver is at the discretion of CCC alone.

§ 1430.614 Miscellaneous provisions.

(a) CCC may offset or withhold any amount due CCC under this subpart in accordance with 7 CFR part 1403.

(b) Payments or any portion thereof due under this subpart shall be made without regard to questions of title under State law and without regard to any claim or lien against the livestock or property of any kind, or proceeds thereof, in favor of the owner or any other creditor except agencies and instrumentalities of the U.S. Government.

(c) Any producer entitled to any payment under this part may assign any payments in accordance with the provisions of 7 CFR part 1404.

PART 1434—NONRECOURSE MARKETING ASSISTANCE LOAN AND LDP REGULATIONS FOR HONEY

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