

Signed in Washington, DC, on October 25, 2006.

Thomas B. Hofeller,

Acting Executive Vice President, Commodity Credit Corporation.

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1430

RIN 0560-AH59

2005 Dairy Disaster Assistance Payment Program

AGENCIES: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule sets forth the regulations for the 2005 Dairy Disaster Assistance Payment Program. This program will assist dairy producers by providing payments to those who suffered dairy production and milk spoilage losses due to hurricanes or a related condition in 2005.

DATES: This rule is effective October 31, 2006.

FOR FURTHER INFORMATION CONTACT: Danielle Cooke, Price Support Division, Farm Service Agency, United States Department of Agriculture, STOP 0512, 1400 Independence Avenue, SW., Washington, DC 20250-0512. Telephone: (202) 720-1919; e-mail: Danielle.Cooke@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 3034 of the Emergency Agricultural Disaster Assistance Act of 2006 (the 2006 Act) requires that the regulations necessary to implement Title III of the 2006 Act, which includes the regulations for this program, are to be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804), relating to notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final.

Executive Order 12866

This final rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because CCC is not

required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking with respect to the subject of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. To the extent these authorities may apply, CCC has concluded that this rule is categorically excluded from further environmental review as evidenced by the completion of an environmental evaluation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12988

The rule has been reviewed in accordance with Executive Order 12988. This final rule preempts State laws to the extent such laws are inconsistent with it. This rule is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies set forth at 7 CFR parts 11 and 780 must be exhausted.

Executive Order 12612

This rule does not have Federalism implications that warrant the preparation of a Federalism Assessment. This rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject of this rule. Further, this rule contains no unfunded mandates as defined in sections 202 and 205 of UMRA.

Paperwork Reduction Act of 1995

Section 3034 of the 2006 Act provides that the promulgation of regulations and the administration of Title III of the 2006 Act shall be made without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the program authorized by these regulations are not subject to review by OMB under the Paperwork Reduction Act.

Government Paperwork Elimination Act

CCC is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general, and FSA in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required to be utilized by a person subject to this rule are not yet fully implemented in a way that would allow the public to conduct business with CCC electronically. Accordingly, at this time, all forms required to be submitted under this rule may be submitted to CCC by mail or FAX.

Background

Section 3014 of the 2006 Act requires the Secretary of Agriculture to use \$17 million to make payments to dairy producers for losses in counties affected by 2005 hurricanes. Hurricanes Katrina, Ophelia, Rita, and Wilma severely impacted dairy producers in certain areas of the Gulf region of the United States during the months of August through October of 2005. As a result, several dairy producers incurred devastating decreases in production due to cattle losses and milk that had to be dumped because of closed milk plants and damaged containment equipment. Also, the loss of electricity, the shortage of fuel, and infrastructure damage temporarily interrupted the flow of dairy products to markets.

Pursuant to the legislation, this rule addresses the situation by establishing a program similar to the 2004 Dairy Disaster Assistance Payment (DDAP-I) Program authorized by section 103 of Division B of Public Law 108-324, for dairy production and spoilage losses incurred by producers in the southeastern region of the United States, due to 2004 Hurricanes Charley, Frances, Ivan, and Jeanne. The final rule for DDAP-I was published on

September 26, 2005 (70 FR 56113). As with DDAP-I, the payments provided by this rule will offset a portion of the per-pound losses dairy producers have incurred commercially marketing milk in the United States.

Dairy producers who suffered production losses and dairy spoilage losses, as a result of Hurricanes Katrina, Ophelia, Rita, and Wilma disaster, or a condition related to those hurricanes, may apply for compensation for losses incurred during the 2005 calendar year. Benefits will be provided to eligible dairy producers in those counties declared a natural disaster by the Secretary of Agriculture or designated a major disaster or emergency by the President of the United States, who meet all program eligibility requirements, and are subsequently approved for participation in the 2005 Dairy Disaster Assistance Payment Program. This program is similar to a program operated with respect to 2004 programs (DDAP-I) and will be referred to as DDAP-II. Dairy producers in counties contiguous to a directly eligible county are also eligible for DDAP-II benefits. Eligible dairy producers will receive an immediate payment to help pay operating expenses and meet other financial obligations.

To be eligible, dairy producers must have produced milk in the United States during the 2005 calendar year as part of a dairy operation located in a county declared a natural disaster in 2005, or a contiguous county, because of Hurricane Katrina, Ophelia, Rita, or Wilma. Losses and declarations associated with Hurricane Dennis or other disasters are not covered. As a

result of the hurricanes or related condition, the producer must have suffered dairy production losses and dairy spoilage losses in the eligible months. In addition, adequate evidence of dairy production losses and dairy spoilage losses must be provided to FSA to substantiate the losses suffered and certified by each producer. Payments will be made according to a formula and will be subject to funding and other limitations. Further, payments will not be reduced as a result of payments from a milk buyer or marketing cooperative for dumped or spoiled milk.

Applicants must apply for benefits during the sign-up period announced by the Deputy Administrator for Farm Programs. At the close of the sign-up period, the total production and spoilage losses from all eligible applicants will be determined. Payment eligibilities will be separately calculated on an operation by operation basis. An individual may be involved in more than one operation. Payments to eligible producers will be calculated by multiplying the eligible pounds by the average price received for commercial milk production in the affected areas during the eligible months. If the total amount of available funding (\$17 million, less any reserve established to account for disputed claims) is insufficient to compensate eligible producers for eligible losses, then CCC will pay losses at two levels in an effort to more equitably distribute the limited funds and maximize the effectiveness of the program.

Specifically, in case of inadequate funds for all eligible losses, CCC will calculate each operation's overall

quarterly percentage reduction for the full disaster claim period that corresponds with the applicable hurricane, from the calculated base for the operation for the full quarter for the applicable hurricane. The disaster claim period applicable to: (1) Hurricane Katrina and Hurricane Rita are the months of August through December 2005; and (2) Hurricane Ophelia and Hurricane Wilma are the months of October through December 2005. If a reduced payment is needed due to funding constraints, calculated losses over the applicable disaster claim period greater than 20 percent of a producer's normal production will be paid at the maximum per-pound payment rate. A loss over 20 percent in one or two of the eligible months will not qualify for the maximum per-pound payment. Payments for eligible losses below the 20-percent threshold will be made at a rate that will exhaust the available funds that remain following payment of eligible losses at the higher level. The 20 percent threshold mirrors that of DDAP-I and some other disaster programs. An example of how the apportionment might affect producers is set out below. If funds are adequate for all eligible losses, all eligible producers will be paid at the "maximum rate" which amounts to the average price received for commercial milk production in their area during the applicable months of August through December of 2005. The apportionment example is as follows:

Example:

| | Producer A (Louisiana) | Producer B (Florida) | Producer C (Alabama) | Producer D (Texas) |
|---|---------------------------|-------------------------|-------------------------|-----------------------|
| Total Base Production | 800,000 | 2,000,000 | 1,500,000 | 600,000 |
| Actual Production | 485,000 | 1,820,000 | 1,070,000 | 490,000 |
| Pounds Dumped or Spoiled | 5,000 | 20,000 | 20,000 | 10,000 |
| Total Eligible 'Loss' | 320,000 | 200,000 | 450,000 | 120,000 |
| 20% of Base Production | 160,000 | 400,000 | 300,000 | 120,000 |
| Pounds of loss above 20% loss level | 160,000 | 0 | 150,000 | 0 |
| Payment Rate | \$0.1647/lb. | \$0.1819/lb. | \$0.1649/lb. | \$0.1419/lb. |
| DDAP for loss above 20% | \$26,352 | \$0 | \$24,735 | \$0 |
| DDAP for under 20% loss @ \$0.12/lb. (example only) | \$19,200 | \$24,000 | \$36,000 | \$14,400 |
| Total DDAP | \$45,552 | \$24,000 | \$60,735 | \$14,400 |
| Eligible Losses x average price | \$52,704 | \$36,380 | \$74,205 | \$17,028 |
| Percent production loss suffered | 40 | 10 | 30 | 20 |
| Percent financial losses recovered from DDAP | 86 | 66 | 82 | 85 |

Dairy producers who have received a payment for the loss under the Dairy Indemnity Payment Program (7 CFR part

760) shall be ineligible for payments under this rule. Gross revenue and per-person payment limits do not apply.

Payments are subject to all requirements of the regulations and program documents. Information provided on

applications and supporting documentation will be subject to verification by FSA. False certifications by producers carry strict penalties and FSA will verify applications with random spot-checks. Dairy producers determined to have made any false certifications or adopted any misrepresentation, scheme, or device that defeats the program's purpose will be required to refund any payments issued under this program with interest, and may be subject to other civil, criminal, or administrative remedies. Payments will be made according to a formula and will be subject to limitations. During the application period, dairy producers may apply in person at FSA county offices during regular business hours. Applications may also be submitted to CCC by mail or FAX. Program applications may be obtained in person, by mail, telephone, and facsimile from producers' designated FSA county office or via the Internet at www.fsa.usda.gov/dafp/psd/.

List of Subjects in 7 CFR Part 1430

Dairy, Disaster assistance, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons set out in the preamble, 7 CFR part 1430 is amended as follows:

PART 1430—DAIRY PRODUCTS

■ 1. The authority citation for part 1430 is revised to read as follows:

Authority: 7 U.S.C. 7981 and 7982; 15 U.S.C. 714b and 714c; Sec. 3014 of Pub. L. 109–234, 16 U.S.C. 3801 note, 120 Stat. 474.

■ 2. Add subpart E to read as follows:

Subpart E—2005 Dairy Disaster Assistance Payment Program (DDAP–II)

Sec.

- 1430.300 Applicability.
- 1430.301 Administration.
- 1430.302 Definitions.
- 1430.303 Time and method of application.
- 1430.304 Eligibility.
- 1430.305 Proof of production.
- 1430.306 Determination of losses incurred.
- 1430.307 Rate of payment and limitations on funding.
- 1430.308 Availability of funds.
- 1430.309 Appeals.
- 1430.310 Misrepresentation and scheme or device.
- 1430.311 Death, incompetence, or disappearance.
- 1430.312 Maintaining records.
- 1430.313 Refunds; joint and several liability.
- 1430.314 Miscellaneous provisions.

Subpart E—2005 Dairy Disaster Assistance Payment Program II (DDAP–II)

§ 1430.300 Applicability.

(a) Subject to the availability of funds, this subpart sets forth the terms and conditions applicable to DDAP–II authorized by section 3014 of Public Law 109–234. Benefits are available to eligible United States producers who have suffered in 2005 dairy production losses and dairy spoilage losses in eligible counties as a result of Hurricanes Katrina, Ophelia, Rita, and Wilma or conditions related to those hurricanes.

(b) To be eligible for this program, a producer must have been a milk producer in 2005 in a county declared a natural disaster by the Secretary of Agriculture or declared a major disaster or emergency designated by the President of the United States due to a 2005 hurricane or related condition thereof, or in a contiguous county to a county that is directly eligible by way of a natural disaster declaration. Only losses occurring in these counties are eligible for payment under this program.

(c) Subject to the availability of funds, benefits shall be provided by the Commodity Credit Corporation (CCC) to eligible dairy producers. Additional terms and conditions may be set forth in the payment application that must be executed by participants to receive a disaster assistance payment for dairy production losses and dairy spoilage losses.

(d) To be eligible for payments, producers must comply with the provisions of, and their losses must meet the conditions of, this subpart and any other conditions imposed by CCC.

§ 1430.301 Administration.

(a) DDAP–II shall be administered under the general supervision of the Executive Vice President, CCC, or a designee, and shall be carried out in the field by FSA State and county committees (State and county committees) and FSA employees.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State committee shall take any action required by the regulations of this subpart that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require the county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this subpart; and

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this subpart.

(d) No provision of delegation in this subpart to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator, Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines in cases where lateness or failure to meet such requirements do not adversely affect the operation of the 2005 Dairy Disaster Assistance Payment Program II and does not violate statutory limitations on the program.

(f) Data furnished by the applicants is used to determine eligibility for program benefits. Although participation in DDAP–II is voluntary, program benefits are not provided unless the participant furnishes all requested data.

§ 1430.302 Definitions.

The definitions in 7 CFR part 718 shall apply to this subpart except to the extent they are inconsistent with the provisions of this subpart. In addition, for the purpose of this subpart, the following definitions shall apply.

Application means DDAP–II Application.

Application period means the time period established by the Deputy Administrator for producers to apply for program benefits.

Base month means the base month for the particular 2005 hurricane assigned in § 1430.304.

CCC means the Commodity Credit Corporation of the Department.

Claim period means as assigned in this subpart the qualifying months of calendar year 2005, following the base month, in which the loss occurred.

County committee means the FSA county committee.

County office means the FSA office responsible for administering FSA programs for farms located in a specific area in a State.

Dairy operation means any person or group of persons who, as a single unit, as determined by CCC, produces and markets milk commercially from cows and whose production facilities are located in the United States.

Department or USDA means the United States Department of Agriculture.

Deputy Administrator means the Deputy Administrator for Farm Programs (DAFP), FSA, or a designee.

Farm Service Agency or FSA means the Farm Service Agency of the Department.

Hundredweight or cwt. means 100 pounds.

Hurricane-affected county means a county included in the geographic area covered by a natural disaster declaration related to Hurricane Katrina, Hurricane Ophelia, Hurricane Rita, Hurricane Wilma or conditions related to those hurricanes, and includes counties which qualify because they are contiguous to a county that qualifies by a natural disaster declaration.

Milk handler or cooperative means the marketing agency to, or through which, the producer commercially markets whole milk.

Milk marketings means a marketing of milk for which there is a verifiable sales or delivery record of milk marketed for commercial use. In counting milk toward production amounts, dumped milk will not be considered as marketed for commercial use. Such dumped milk shall be counted toward production but will be accounted for separately from milk that is marketed for normal commercial use as determined by the Deputy Administrator. All production in the months for which loss coverage is available will be counted in making determinations under this part, as determined by the Deputy Administrator, with care to avoid double counting, and with care to avoid a calculated loss that overstates the actual losses. Adjustments may be made as appropriate to accomplish these objectives.

Natural disaster declaration means a natural disaster declaration issued by the Secretary of Agriculture during calendar year 2005 under section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961 (a)), or a major disaster or emergency designation by the President of the United States during calendar year 2005 under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, including declarations and designations by both the President and Secretary made during calendar year 2006 for which a request was pending as of December 31, 2005.

Payment pounds means the pounds of milk production from a dairy operation for which the dairy producer is eligible to be paid under this subpart.

Producer means any individual, group of individuals, partnership, corporation, estate, trust association, cooperative, or other business enterprise or other legal entity who is, or whose members are, citizens of, or legal resident aliens in the United States, and who directly or indirectly, as determined by the

Secretary, share in the risk of producing milk, and make contributions (including land, labor, management, equipment, or capital) to the dairy farming operation of the individual or entity.

Reliable production records means evidence provided by the producer that is used to substantiate the amount of production reported when verifiable records are not available, including copies of receipts, ledgers of income, income statements of deposit slips, register tapes, and records to verify production costs, contemporaneous measurements, and contemporaneous diaries that are determined acceptable by the county committee.

Starting base production means actual commercial production marketed by the dairy operation during the base month applicable to the 2005 hurricane disaster, or alternative period established by the Deputy Administrator.

Verifiable production records means evidence that is used to substantiate the amount of production including any part marketed normally, dumped, or otherwise disposed of, and that can be verified by CCC through an independent source.

§ 1430.303 Time and method of application.

(a) Dairy producers may obtain an Application, in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of the Application at <http://www.sc.egov.usda.gov>.

(b) A request for benefits under this subpart must be submitted on a completed Application as defined in § 1430.302. Applications and any other supporting documentation shall be submitted to the FSA county office serving the county where the dairy operation is located but, in any case, must be received by the FSA county office by the close of business on the date established by the Deputy Administrator. The closing date shall be no sooner than November 30, 2006. Applications not received by the close of business on such date will be disapproved as not having been timely filed and the dairy producer will not be eligible for benefits under this program.

(c) All persons who share in the risk of a dairy operation's total production must certify to the information on the Application before the Application is considered complete.

(d) Each dairy producer requesting benefits under this subpart must certify to the accuracy and truthfulness of the information provided in their application and any supporting

documentation. All information provided is subject to verification by CCC. Refusal to allow CCC or any other agency of the Department of Agriculture to verify any information provided will result in a denial of eligibility. Furnishing the information is voluntary; however, without it program benefits will not be approved.

§ 1430.304 Eligibility.

(a) Producers in the United States are eligible to receive hurricane-related dairy disaster benefits under this part only if they have suffered dairy production or dairy spoilage losses in 2005 as a result of a hurricane disaster or related condition, in a hurricane-affected county. To be eligible to receive payments under this subpart, producers in a dairy operation must:

(1) Have produced and commercially marketed milk in the United States and commercially marketed the milk produced during the 2005 calendar year;

(2) Be a producer on a dairy farm operation physically located in an eligible county where dairy production and milk spoilage losses were incurred as a result of 2005 hurricanes, or a related condition, in and limiting their claims to losses occurring in those counties and contiguous counties;

(3) Provide adequate proof, to the satisfaction of the County Committee, of monthly milk production dumped and commercially marketed by all persons in the eligible dairy operation during the base month and claim period that corresponds with the applicable hurricane-related disaster during the 2005 milk marketing year, or other period as determined by CCC, to determine the total pounds of eligible losses that will be used for payment; and

(4) Apply for payments during the application period established by the Deputy Administrator.

(b) Payments may be made for losses suffered by an otherwise eligible producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer or the producer's estate signs the application for payment. Proof of authority to sign for the deceased producer's estate or a dissolved entity must be provided. If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly-authorized representatives must sign the application for payment.

(c) Producers associated with a dairy operation must submit a timely application and comply with terms and conditions of this subpart, instructions

issued by CCC and instructions contained in the Application to be eligible for benefits under this subpart.

(d) As a condition to receive benefits under this part, a producer must have been in compliance with the Highly Erodible Land Conservation and Wetland Conservation provisions of 7 CFR part 12 for the 2005 calendar year, as applicable, and must not otherwise be barred from receiving benefits under 7 CFR part 12 or any other law or regulation.

(e) Payments are limited to losses in eligible counties, in eligible months.

(f) All payments under this part are subject to the availability of funds.

(g) Eligible losses are determined from the applicable base month that corresponds to the hurricane disaster or related condition and must have occurred during the claim periods applicable to the disaster as follows:

(1) For Hurricane Katrina and Hurricane Rita the base month is July 2005 and the corresponding claim period are the 2005 calendar months of August through December; and

(2) For Hurricane Ophelia and Hurricane Wilma the base month is September 2005 and the corresponding claim period are the 2005 calendar months of October through December.

§ 1430.305 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 § 1430.306.

(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.

§ 1430.306 Determination of losses incurred.

(a) Eligible payable losses are calculated on a dairy operation by dairy operation basis and are limited to those occurring during the applicable claim period, as provided by § 1430.304(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 § 1430.305. Except as otherwise provided in these regulations, the starting base production, as defined in § 1430.302 and established in § 1430.304(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 § 1430.305.

(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 § 1430.305 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.

§ 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 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 § 1430.306, of less than or equal to 20 percent 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.

§ 1430.308 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.

§ 1430.309 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 §§ 1430.307 and 1430.308 and other limitations as may apply.

§ 1430.310 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.

§ 1430.311 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.

§ 1430.312 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.

§ 1430.313 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 Department 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.

§ 1430.314 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.

Signed at Washington, DC, on October 25, 2006.

Thomas B. Hofeller,

Acting Executive Vice President, Commodity Credit Corporation.

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SMALL BUSINESS ADMINISTRATION

13 CFR Parts 101 and 123

RIN 3245-AF42

Administration and Disaster Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Direct final rule.

SUMMARY: The purpose of this direct final rule is to amend SBA regulations to reflect the new structure of the Office of Disaster Assistance (ODA) following an office reorganization. This rule amends the regulation to name and list five disaster centers, four that serve the public (disaster assistance customer service center, disaster assistance processing and disbursement center, disaster assistance field operations center east, disaster assistance field operations center west) and one that provides personnel and administrative services to the other disaster centers and also houses the Disaster Credit Management System (DCMS) operations center, the field inspection team headquarters, and the administrative law function (disaster assistance personnel and administrative services center). This rule also amends the regulation by making conforming amendments to existing regulations on SBA's Disaster Loan Program.

DATES: This rule is effective November 30, 2006 without further action, unless adverse comment is received on or before the effective date. If adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments identified by RIN 3245-AF42 by any of the following methods (1) *Mail/Hand Delivery:* James E. Rivera, Deputy Associate Administrator for Disaster Assistance, 409 3rd Street, SW., Washington, DC 20416; (2) *Fax:* (202) 205-7728; (3) *E-mail:* James.Rivera@sba.gov; or Federal eRulemaking Portal: <http://www.regulations.gov>, following the specific instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT:

James E. Rivera, Deputy Associate Administrator for Disaster Assistance, 409 3rd Street, SW., Washington, DC 20416; (202) 205-6734; fax (202) 205-7728; or e-mail James.Rivera@sba.gov.

SUPPLEMENTARY INFORMATION:

A. Background

Prior to the office reorganization, ODA was comprised of four disaster