

**Billing Code 3411-E2-P**

**DEPARTMENT OF AGRICULTURE**

**Farm Service Agency**

**7 CFR Part 760**

**[Docket ID: FSA-2022-0016]**

**RIN 0560-AI64**

**Milk Loss Program and Emergency Relief Program**

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes provisions for providing agricultural disaster assistance as authorized by the Extending Government Funding and Delivering Emergency Assistance Act of 2021 and the Disaster Relief Supplemental Appropriations Act, 2023. The assistance will be for 2020, 2021, and 2022 milk losses. The Milk Loss Program will provide payments to eligible dairy operations for milk that was dumped or removed without compensation from the commercial milk market due to disaster events including droughts, wildfires, hurricanes, floods, derechos, excessive heat, winter storms, freeze (including a polar vortex), and smoke exposure that occurred in the 2020, 2021, and 2022 calendar years. Additionally, the Disaster Relief Supplemental Appropriations Act, 2023, also authorizes assistance for eligible milk losses due to tornadoes that occurred in 2022. This rule specifies the administrative provisions, eligibility requirements, application procedures, and payment calculations for the Milk Loss Program. This rule also makes corrections to Phase 2 of the Emergency Relief Program (ERP).

**DATES:** *Effective date:* **[Insert date publication in the *FEDERAL REGISTER*].**

*Comment date:* We will consider comments on the information collection requirements under the Paperwork Reduction Act that we receive by: **[Insert date 60 days after publication in the *FEDERAL REGISTER*].**

*Milk Loss Program application deadline:* October 16, 2023.

**ADDRESSES:** We invite you to submit comments on the information collection requirements.

You may submit comments by any of the following methods:

- Federal eRulemaking Portal: Go to: [www.regulations.gov](http://www.regulations.gov) and search for docket ID FSA-2022-0016. Follow the instructions for submitting comments.
- Mail: Director, PSD, FSA, USDA, 1400 Independence Avenue SW, Stop 0512, Washington, DC 20250-0522.

Comments will be available for viewing online at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** For the Milk Loss Program: Douglas E.

Kilgore; telephone: (202) 720-9011; or e-mail: [douglas.e.kilgore@usda.gov](mailto:douglas.e.kilgore@usda.gov). For ERP: Kathy Sayers; telephone: (202) 720-7649; or email: [kathy.sayers@usda.gov](mailto:kathy.sayers@usda.gov). Persons with disabilities who require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720-2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

This rule establishes the Milk Loss Program to provide disaster assistance for certain milk losses. The Extending Government Funding and Delivering Emergency Assistance Act of 2021 (Pub. L. 117-43) provides \$10 billion for crop losses, including milk losses, that occurred in

calendar years 2020 and 2021 due to qualifying disaster events. The Disaster Relief Supplemental Appropriations Act, 2023, Division N of the Consolidated Appropriations Act, 2023 (Pub. L. 117-328) provides approximately \$3.7 billion for disaster assistance for similar crop losses that occurred in calendar year 2022. The disaster assistance outlined in both laws is for necessary expenses related to losses of crops, including milk and on-farm stored commodities, as a consequence of droughts, wildfires, hurricanes, floods, derechos, excessive heat, winter storms, freeze (including a polar vortex), and smoke exposure. In addition, the Disaster Relief Supplemental Appropriations Act, 2023 authorized assistance for losses as a consequence of tornadoes occurring in 2022.

This rule establishes the Milk Loss Program to provide assistance for qualifying milk losses.

The Milk Loss Program allows eligible dairy operations to receive payments for milk that was dumped or removed without compensation from the commercial milk market due to qualifying weather events that inhibited the delivery of milk or the storage of milk due to weather-related issues, such as power outages or impassable roads, for the 2020, 2021, and 2022 calendar years.

This rule also makes minor corrections to the ERP Phase 2 payment calculation and the producer eligibility requirements.

### **Milk Loss Program**

The Milk Loss Program will provide payments to dairy operations for milk that was dumped or removed without compensation from the commercial milk market due to qualifying disaster events.

The milk loss base period is the first full month of milk production before the dumping or removal of milk first occurred due to a qualifying disaster event. The base period milk production is used to determine the average daily milk production from the cows in the dairy operation. The average daily milk production calculation includes the number of cows, the pounds of milk marketed for the month, and the number of days in the month.

The claim period for milk loss is each calendar month that milk was dumped or removed from the commercial market due to a qualifying disaster event. Each milk loss application covers the loss in a single calendar month. Milk loss that occurs in more than one calendar month due to the same qualifying disaster event requires a separate application for each month. The days that are eligible for indemnification begin on the date the milk was removed or dumped and continue for the concurrent days milk was removed or dumped. Once the dairy operation returns to the normal marketing of milk, the dairy operation is no longer eligible for assistance for milk removed or dumped due to that qualifying disaster unless after restarting commercial marketing of milk, additional milk is removed or dumped due to the same qualifying disaster event. The dairy operation will provide the milk marketing statement for the month prior to the month milk was removed or dumped and for the month that the milk dumping occurred and will verify the days the dairy operation did not commercially market milk. For the Milk Loss Program, the duration of yearly claims is limited to 30 days per year for 2020, 2021, and 2022.

The fair market value of removed or dumped milk represents the dollar value the dairy operation would have received if it had commercially marketed such milk for that month. The dairy operation's milk marketing statement from the claim period will be used to verify the days milk was not marketed.

The Milk Loss Program payment calculation is as follows:

$$\begin{aligned} & (\text{Base period per cow average daily milk production} \\ & \quad \times \text{number of milking cows in claim period} \\ & \quad \times \text{number of days milk was removed or dumped in claim period}) \\ & \quad \div 100^1) \\ & \quad \times \text{per hundredweight pay price.} \end{aligned}$$

The per hundredweight pay price is calculated as follows:

$$\begin{aligned} & \text{Gross pay price from claim period milk marketing statement} \\ & \quad - \text{the hauling rate} - \$0.15 \text{ promotion fee} \\ & \quad = \text{per hundredweight pay price.} \end{aligned}$$

The final Milk Loss Program payment is determined by factoring the Milk Loss Program payment calculation by a:

- 90 percent payment factor for affected farmers who meet the definition of beginning farmer or rancher, limited resource farmer or rancher, socially disadvantaged farmer or rancher, or veteran farmer or rancher<sup>2</sup>; or
- 75 percent payment factor for all other affected farmers.

Dairy operations that apply for the Milk Loss Program will provide, at the time of application, the milk marketing statement for the month prior to the month that the milk was

---

<sup>1</sup>Divided by 100 to convert to hundredweight.

<sup>2</sup>FSA calculates payments based on a higher payment factor for underserved farmers and ranchers (or specific groups included in that term) in several programs, such as the Emergency Conservation Program; the Emergency Assistance for Livestock, Honeybees, and Farm-raised Fish Program; and the Tree Assistance Program. FSA has also used higher payment factors for these producers in several recently announced programs: the Food Safety Certification for Specialty Crops Program, the Organic and Transitional Education and Certification Program, the Pandemic Assistance Revenue Program, the Emergency Livestock Relief Program, and the Emergency Relief Program. In addition, the Noninsured Crop Disaster Assistance Program provides a reduced service fee and premium for underserved farmers and ranchers. This approach supports the equitable administration of FSA programs, as underserved farmers and ranchers are more likely to lack financial reserves and access to capital that would allow them to cope with losses due to unexpected events outside of their control.

removed or dumped, the milk marketing statement for the affected month and a detailed written statement of the circumstances of the milk removal, including the type and geographic scope of the weather event, what transportation limitations occurred, and any information on what was done with the removed milk production. Any other pertinent information that further describes the reason why milk was removed or dumped should be included to provide FSA the necessary information to determine eligibility for the Milk Loss Program, as well as all other information required to be furnished in the regulation. FSA county offices can assist dairy operations in completing the Milk Loss Program application.

Payments for the Milk Loss Program will be issued to eligible applicants as applications are received and approved. The deadline to apply for the Milk Loss Program will be October 16, 2023.

### **Milk Loss Program Application Process**

USDA will accept Milk Loss Program applications beginning **[Insert date publication in the *FEDERAL REGISTER*]**.

To apply for the Milk Loss Program, affected farmers must submit a complete FSA-376, Milk Loss Program Application with applicable milk marketing statements, as well as all other information required to be furnished under the regulation at time of application, in person, by mail, email, facsimile, or other method announced by FSA to any FSA county office by the application deadline.

Applicants must also submit all of the following items within 60 days of the Milk Loss Program application deadline, if not previously filed with FSA:

- (1) Form AD-2047, Customer Data Worksheet, for new customers or existing customers who need to update their customer profile;

- (2) Form CCC-860, Socially Disadvantaged, Limited Resource, Beginning and Veteran Farmer or Rancher Certification, applicable for the program year or years for which the affected farmer is applying for the Milk Loss Program, if the applicant is an underserved farmer or rancher;
- (3) Form CCC-901, Member Information for Legal Entities, if applicable;
- (4) Form CCC-902, Farm Operating Plan for an individual or legal entity as provided in 7 CFR part 1400;
- (5) Form FSA-510, Request for an Exception to the \$125,000 Payment Limitation for Certain Programs, accompanied by a certification from a certified public accountant or attorney as to that person or legal entity's certification, for a legal entity and all members of that entity, for each applicable program year, including the legal entity's members, partners, or shareholders, as provided in 7 CFR part 1400; and
- (6) Form AD-1026, Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification, for the Milk Loss Program applicant and applicable affiliates as provided in 7 CFR part 12.

If requested by FSA, the affected farmer must provide additional documentation that establishes the affected farmer's eligibility for the Milk Loss Program. If supporting documentation is requested, the documentation must be submitted to FSA within 60 calendar days from the request or the application will be disapproved by FSA.

## **ERP Phase 2**

FSA announced ERP Phase 2 in the final rule published on January 11, 2023 (88 FR 1862–1892). This document corrects an error in the ERP Phase 2 payment calculation in 7 CFR 760.1905(b)(3), which should specify that a producer's gross (not net) calculated ERP Phase 1

payments will be subtracted from the difference in a producer's benchmark year allowable gross revenue and disaster year allowable gross revenue.<sup>3</sup> The ERP Phase 2 payment uses a producer's gross ERP Phase 1 payment in order to prevent paying a producer for the same loss under both phases of the program or applying different payment limitations to the same loss (for example, a 2022 crop year loss paid under ERP Phase 1 that also resulted in a reduction in allowable gross revenue for the 2021 disaster year under ERP Phase 2). A producer who received an ERP Phase 1 payment has already been paid the maximum amount they are eligible to receive for the loss for which the gross ERP Phase 1 payment amount was calculated.

This document also corrects the ERP Phase 2 producer eligibility requirements in § 760.1902(b)(3) and (4). ERP is a single program, and FSA's intent is to apply consistent producer eligibility requirements to both phases. As indicated in the ERP Phase 1 notification of funding availability (87 FR 30164-30172), partnerships, corporations, limited liability companies, and other organizational structures organized under State law must consist solely of citizens of the United States or resident aliens to be eligible for ERP. FSA is correcting the ERP Phase 2 eligibility requirements to add that criteria, which was inadvertently omitted from the regulation.

These changes are consistent with how FSA has implemented ERP Phase 2 and do not affect any payments that have been issued; they are being corrected in this document to reflect how ERP Phase 2 has been administered.

---

<sup>3</sup>The gross ERP Phase 1 calculated payment is the calculated payment amount prior to any payment reductions for reasons including, but not limited to, sequestration and payment limitation.



## **Notice and Comment, Effective Date, and Exemptions**

The Administrative Procedure Act (5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. This rule involves a program for payments to certain agricultural commodity producers and thus falls within the exemption for rules related to benefits.

This rule is exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996.

For major rules, the Congressional Review Act requires a delay in the effective date for 60 days from the date of publication to allow for Congressional review. This rule is not a major rule under the Congressional Review Act, as defined by 5 U.S.C. 804(2). Therefore, this rule is effective upon publication in the *Federal Register*.

## **Executive Orders 12866 and 13563**

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, “Regulatory Planning and Review,” and therefore, OMB has not reviewed this rule.

### **Environmental Review**

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and the FSA regulation for compliance with NEPA (7 CFR part 799). The Milk Loss Program is mandated by Extending Government Funding and Delivering Emergency Assistance Act and the Consolidated Appropriations Act, 2023. The Milk Loss Program provides payments to eligible dairy operations for milk that was dumped or removed without compensation from the commercial milk market.

The intent of the Milk Loss Program is to compensate affected farmers who have suffered post- or pre-production market losses due to qualifying disaster events. Compensation is for actions that do not have ground disturbing impacts below the level of previous disturbance nor negative impacts to any other protected natural or cultural resource. The limited discretionary aspects of the programs (for example, determining AGI and payment limitations) were designed to be consistent with established FSA disaster programs. As such, the FSA categorical exclusions found in 7 CFR 799.31 apply, specifically 7 CFR 799.31(b)(6)(iii) and (iv). See § 799.31(b)(6)(iii) (“Financial assistance to supplement income, manage the supply of agricultural commodities, or influence the cost or supply of such commodities or programs of a similar nature or intent (that is, price support programs)”; and § 799.31(b)(6)(iv) (“Individual

farm participation in FSA programs where no ground disturbance or change in land use occurs as a result of the proposed action or participation”).

Through this review, FSA has determined that the implementation of the program and the participation in the program does not constitute major Federal actions that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this rule; this rule serves as documentation of the programmatic environmental compliance decision for this Federal action.

#### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The rule will not have retroactive effect. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

#### **Executive Order 13175**

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes.

FSA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have significant Tribal implications that require ongoing adherence to Executive Order 13175 at this time. If a Tribe requests consultation, the USDA Office of Tribal Relations will ensure meaningful consultation is provided where changes, additions, and modifications are not expressly mandated by law. Outside of Tribal consultation, USDA is working with Tribes to provide information about pandemic assistance, agricultural disaster assistance, and other issues.

### **The Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

## **Federal Assistance Programs**

The titles and numbers of the Federal assistance programs, as found in the Assistance Listing<sup>4</sup> to which this rule applies are No. 10.965 – Milk Loss Program, and 10.964 – Emergency Relief Program.

## **Paperwork Reduction Act**

In compliance with the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the information collection request has been approved by OMB under the control number of 0503–0028. FSA will collect the information from the dairy operations for milk to qualify for the payment. FSA provides one-time federal financial assistance program (or payment) to the dairy operations for milk as described in this document. Also, there are no changes to the burden hours for the ERP Phase 2 under the OMB control number of 0560-0312.

## **USDA Non-Discrimination Policy**

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

---

<sup>4</sup>See <https://sam.gov/content/assistance-listings>.

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 or (844) 433-2774 (toll-free nationwide). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or email: [OAC@usda.gov](mailto:OAC@usda.gov).

USDA is an equal opportunity provider, employer, and lender.

### **List of Subjects in 7 CFR Part 760**

Acreage allotments, Dairy products, Indemnity payments, Pesticides and pests, Reporting and recordkeeping requirements.

For the reasons discussed above FSA amends 7 CFR part 760 as follows:

### **Part 760 – INDEMNITY PAYMENT PROGRAMS**

1. The authority citation for part 760 is revised to read as follows:

**Authority:** 7 U.S.C. 4501 and 1531; 16 U.S.C. 3801, note; 19 U.S.C. 2497; Title III, Pub. L. 109-234, 120 Stat. 474; Title IX, Pub. L. 110-28, 121 Stat. 211; Sec. 748, Pub. L. 111-80, 123 Stat. 2131; Title I, Pub. L. 115-123, 132 Stat. 65; Title I, Pub. L. 116-20, 133 Stat. 871; Division B, Title VII, Pub. L. 116-94, 133 Stat. 2658; Title I, Pub. L. 117-43, 135 Stat. 356; and Division N, Title I, Pub. L. 117-328.

## **Subpart Q –Milk Loss Program**

2. Revise § 760.1700 to read as follows:

### **§ 760.1700 Applicability.**

This subpart specifies the terms and conditions for the Milk Loss Program. The Milk Loss Program will provide payments to eligible dairy operations for milk that was dumped or removed without compensation from the commercial milk market due to the results of droughts, wildfires, hurricanes, floods, derechos, excessive heat, winter storms, freeze (including polar vortex), and smoke exposure that occurred in the 2020, 2021, and 2022 calendar year. The Milk Loss Program will also provide payments to eligible dairy operations for milk that was dumped or removed without compensation from the commercial milk market due to the results of tornadoes that occurred in the 2022 calendar year.

3. Amend § 760.1702 as follows:

- a. Revise the definitions of “Affected farmer” and “Application period”;
- b. Add the definitions of “Average adjusted gross farm income” and “Average adjusted gross income” in alphabetical order;
- c. Revise the definition of “Base period”;
- d. Add the definition of “Beginning farmer or rancher” in alphabetical order;
- e. Revise the definition of “Commercial market”;
- f. Add the definitions of “Income derived from farming, ranching, and forestry operations” and “Limited resource farmer or rancher” in alphabetical order;
- g. Remove the definition of “Milk handler”;
- h. Add the definitions of “Milk marketing organization” and “Ownership interest” in alphabetical order;

i. Amend the definition of “Pay period” in paragraph (1) by removing the words “his whole” both times it appears, and removing the word “handler” and adding “marketing organization” in its place both times they appear;

j. Amend the definition of “Payment subject to a refund” by removing the word “handler” and adding “marketing organization” in its place both times it appears;

k. Revise the definition of “Qualifying disaster event”;

l. Amend the definition of “Removed from the commercial market” in paragraph (2) by removing the word “handler” and “milk marketing organization” in its place, and removing the words “(such as separating whole milk, destroying the fat, and drying the skim milk)”;

m. Add definitions of “Socially disadvantaged farmer or rancher”, “Underserved farmer or rancher”, and “Veteran farmer or rancher” in alphabetical order; and

n. Remove the definition of “Whole milk”.

The additions and revisions read as follows:

**§ 760.1702 Definitions.**

\* \* \* \* \*

*Affected farmer* means an individual person or legal entity who produces milk which is removed from the commercial market any time or who produces but was unable to deliver milk to a commercial market as a result of a qualifying event, which is limited to either a:

(1) Weather-related event preventing transportation of the milk; or

(2) Weather-related event causing a power outage or structural damage causing milk to be unmerchantable.



*Application period* means any period during calendar year 2020, 2021, and 2022 which an affected farmer's milk is dumped or removed without compensation from the commercial market due to a qualifying disaster event for which application for payment is made.

*Average adjusted gross farm income* means the average of the person or legal entity's adjusted gross income derived from farming, ranching, and forestry operations for the 3 taxable years preceding the most immediately preceding complete taxable year.

(1) If the resulting average adjusted gross farm income derived from items 1 through 12 of the definition of "income derived from farming, ranching, and forestry operations" is at least 66.66 percent of the average adjusted gross income of the person or legal entity, then the average adjusted gross farm income may also take into consideration income or benefits derived from the following:

(i) The sale of equipment to conduct farm, ranch, or forestry operations; and  
(ii) The provision of production inputs and services to farmers, ranchers, foresters, and farm operations.

(2) The relevant tax years are:

(i) For the 2020 program year, 2016, 2017, and 2018; and

(ii) For the 2021 program year, 2017, 2018, and 2019; and

(iii) For the 2022 program year, 2018, 2019, and 2020.

*Average adjusted gross income* means the average of the adjusted gross income as defined under 26 U.S.C. 62 or comparable measure of the person or legal entity. The relevant tax years are:

(1) For the 2020 program year, 2016, 2017, and 2018;

(2) For the 2021 program year, 2017, 2018, and 2019; and

(3) For the 2022 program year, 2018, 2019, and 2020.

*Base period* means the first full calendar month prior to the claim period in which no qualifying disaster event occurred. If the claim period is multiple consecutive months, the base period remains the same calendar month preceding the start of the claim period.

*Beginning farmer or rancher* means a farmer or rancher who has not operated a farm or ranch for more than 10 years and who materially and substantially participates in the operation. For a legal entity to be considered a beginning farmer or rancher, at least 50 percent of the interest must be beginning farmers or ranchers.

\* \* \* \* \*

*Commercial market* means the market to which the affected farmer normally delivers milk and from which it was removed.

\* \* \* \* \*

*Income derived from farming, ranching, and forestry operations* means income of an individual or entity derived from:

- (1) Production of crops, specialty crops, and unfinished raw forestry products;
- (2) Production of livestock, aquaculture products used for food, honeybees, and products derived from livestock;
- (3) Production of farm-based renewable energy;
- (4) Selling (including the sale of easements and development rights) of farm, ranch, and forestry land, water or hunting rights, or environmental benefits;
- (5) Rental or lease of land or equipment used for farming, ranching, or forestry operations, including water or hunting rights;

(6) Processing, packing, storing, and transportation of farm, ranch, forestry commodities including renewable energy;

(7) Feeding, rearing, or finishing of livestock;

(8) Payments of benefits, including benefits from risk management practices, crop insurance indemnities, and catastrophic risk protection plans;

(9) Sale of land that has been used for agricultural purposes;

(10) Payments and benefits authorized under any program made available and applicable to payment eligibility and payment limitation rules;

(11) Income reported on Internal Revenue Service (IRS) Schedule F or other schedule used by the person or legal entity to report income from such operations to the IRS;

(12) Wages or dividends received from a closely held corporation, and IC-DISC or legal entity comprised entirely of family members when more than 50 percent of the legal entity's gross receipts for each tax year are derived from farming, ranching, or forestry activities as defined in this subpart; and

(13) Any other activity related to farming, ranching, and forestry, as determined by the Deputy Administrator for Farm Programs.

*Limited resource farmer or rancher* means a farmer or rancher:

(1) Who is a person whose:

(i) Direct or indirect gross farm sales did not exceed:

(A) \$180,300 in each calendar year for 2017 and 2018 (the relevant years for the 2020 program year); or

(B) \$179,000 in each of the 2018 and 2019 calendar years for the 2021 program year;

(C) \$189,200 in each of the 2019 and 2020 calendar years for the 2022 program year;  
and,

(ii) Total household income was at or below the national poverty level for a family of four in each of the same two previous years referenced in paragraph (1)(i) of this definition<sup>5</sup>; or

(2) That is an entity and all members who hold an ownership interest in the entity meet the criteria in paragraph (1) of this definition.

\* \* \* \* \*

*Milk marketing organization* means the marketing agency to or through which the affected dairy farmer marketed milk at the time the milk was either dumped or unable to be delivered to the commercial market due to a qualifying weather related event.

*Ownership interest* means to have either a legal ownership interest or a beneficial ownership interest in a legal entity. For the purposes of administering this subpart, a person or legal entity that owns a share or stock in a legal entity that is a corporation, limited liability company, limited partnership, or similar type entity where members hold a legal ownership interest and shares in the profits or losses of such entity is considered to have an ownership interest in such legal entity. A person or legal entity that is a beneficiary of a trust or heir of an estate who benefits from the profits or losses of such entity is considered to have a beneficial ownership interest in such legal entity.

\* \* \* \* \*

---

<sup>5</sup>Limited resource farmer or rancher status can be determined using a Web site available through the Limited Resource Farmer and Rancher Online Self Determination Tool through Natural Resources Conservation Service at <https://lrftool.sc.egov.usda.gov>.

*Qualifying disaster event* means droughts, wildfires, hurricanes, floods, derechos, excessive heat, winter storms, freeze (including a polar vortex), and smoke exposure, occurring in the 2020, 2021, and 2022 calendar years. Qualifying disaster event also includes tornadoes occurring in the 2022 calendar year. Losses due to drought are only eligible if any area within the county in which the loss occurs was rated by the U.S. Drought Monitor as having a D2 (Severe Drought) for eight consecutive weeks or a D3 (Extreme Drought) or higher level of drought intensity during the applicable calendar years.

\* \* \* \* \*

*Socially disadvantaged farmer or rancher* means a farmer or rancher who is a member of a group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. For entities, at least 50 percent of the ownership interest must be held by individuals who are members of such a group. Socially disadvantaged groups include the following and no others unless approved in writing by the FSA Deputy Administrator for Farm Programs (Deputy Administrator):

- (1) American Indians or Alaskan Natives;
- (2) Asians or Asian-Americans;
- (3) Blacks or African Americans;
- (4) Hispanics or Hispanic Americans;
- (5) Native Hawaiians or other Pacific Islanders; and
- (6) Women.

\* \* \* \* \*

*Underserved farmer or rancher* means a beginning farmer or rancher, limited resource farmer or rancher, socially disadvantaged farmer or rancher, or veteran farmer or rancher.

*Veteran farmer or rancher* means a farmer or rancher:

(1) Who has served in the Armed Forces (as defined in 38 U.S.C. 101(10)<sup>6</sup>) and:

(i) Has not operated a farm or ranch for more than 10 years; or

(ii) Has obtained status as a veteran (as defined in 38 U.S.C. 101(2)<sup>7</sup>) during the most recent 10-year period; or

(2) That is an entity, and at least 50 percent of the ownership interest is held by members who meet the criteria in paragraph (1) of this definition.

\* \* \* \* \*

**§§ 760.1709 through 760.1718 and §§ 760.1703 through 760.1708 [Redesignated as §§ 760.1711 through 760.1720 and §§ 760.1704 through 760.1709, respectively]**

4. Redesignate §§ 760.1709 through 760.1718 as §§ 760.1711 through 760.1720, respectively and redesignate §§ 760.1703 through 760.1708 as §§ 760.1704 through 760.1709, respectively.

5. Add new § 760.1703 to read as follows.

**§ 760.1703 Eligible affected farmers.**

(a) To be eligible, an affected farmer, the farmer must be a:

(1) Citizen of the United States;

(2) Resident alien, which for purposes of this subpart means “lawful alien” as defined in 7 CFR 1400.3;

---

<sup>6</sup>The term “Armed Forces” means the United States Army, Navy, Marine Corps, Air Force, Space Force, and Coast Guard, including the reserve components.

<sup>7</sup>The term “veteran” means a person who served in the active military, naval, air, or space service, and who was discharged or released under conditions other than dishonorable.

(3) Partnership organized under state law consisting solely of citizens of the United States or resident aliens;

(4) Corporation, limited liability company, or other organizational structure organized under State law consisting solely of citizens of the United States or resident aliens; or

(5) Indian Tribe or Tribal organization, as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

(b) In addition to the requirements in paragraph (a) of this section, to be eligible, an affected farmer must comply with all provisions of this subpart and, as applicable:

(1) 7 CFR part 12—Highly Erodible Land and Wetland Conservation;

(2) 7 CFR part 707—Payments Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent;

(3) 7 CFR part 718—Provisions Applicable to Multiple Programs; and

(4) 7 CFR part 1403—Debt Settlement Policies and Procedures.

6. Revise newly redesignated § 760.1704 to read as follows:

**§ 760.1704 Payments to dairy farmers for milk.**

(a) A milk loss payment will be made to an affected farmer who is determined by the FSA county committee to be in compliance with all the terms and conditions of this subpart in the amount equal to 90 percent for affected farmers who meet the definition of underserved farmer or rancher or 75 percent for all other affected farmers of the fair market value of the farmer's normal marketings for the application period, less:

(1) Any amount the affected farmer received for milk marketed during the application period; and

(2) Any payment not subject to refund that the affected farmer received from a milk handler with respect to milk removed from the commercial market during the application period.

(b) [Reserved]

7. Amend newly redesignated § 760.1705 as follows:

a. In paragraph (a) remove “dumped milk normal marketings” and add “normal marketings of milk” and remove the word “his” and add “the affected farmer’s” in its place, and remove the word “whole” both times it appears; and

b. Add paragraph (e).

The addition reads as follows:

**§ 760.1705 Normal marketings of milk.**

\* \* \* \* \*

(e) The days eligible for indemnification begin on the date milk was removed or dumped and continue for the concurrent days milk was removed or dumped. Once the dairy operation returns to the normal marketing of milk, the dairy operation is no longer eligible for assistance for milk removed or dumped due to that qualifying disaster event unless after restarting commercial marketing of milk, additional milk is removed or dumped due to the same qualifying disaster event.

8. Amend newly redesignated § 760.1706, revise as follows:

a. In paragraph (a) remove the words “milk normal marketings” and add “milk” in its place, and remove the word “his”;

b. Revise paragraph (b); and

c. Revise paragraph (c).



The revisions read as follows:

**§ 760.1706 Fair market value of milk.**

\* \* \* \* \*

(b) The base period per cow average daily milk production is determined by dividing the full month of milk marketings by the average number of cows in milk production for that month and the number of days in that month. To determine the milk loss payment, the base period per cow average daily milk production is multiplied by the number of milking cows in production for the claim period and by the number of days milk was removed or dumped in the claim period with the result divided by 100 to determine the applicable hundredweight and then multiplied by the hundredweight pay price.

(c) To determine the hundredweight pay price for milk, the FSA county committee will deduct from the gross pay price from the claim period milk marketing statement the per hundredweight hauling rate for the applicable month and the per hundredweight \$0.15 promotion fee which it determines are normally incurred by the affected farmer but which were not incurred because of the removal of the farmer's milk from the commercial market.

9. Revise newly redesignated § 760.1707 to read as follows:

**§ 760.1707 Information to be furnished.**

(a) The affected farmer must furnish to the FSA county committee complete and accurate information sufficient to enable the FSA county committee or the Deputy Administrator to make the determinations required in this subpart. Such information must include, but is not limited to:

(1) A copy of the notice from, or other evidence of action by, the public agency which resulted in the dumping or removal of the affected farmer's milk from the commercial market.

(2) The specific weather or disaster event and its results on milk marketing for the claim period.

(3) The quantity and butterfat test of milk produced and marketed during the base period. This information must be a certified statement from the affected farmer's milk marketing organization or any other evidence the FSA county committee accepts as an accurate record of milk production and butterfat tests during the base period.

(4) The average number of dry cows, bred heifers, and cows milked during the base period and during each pay period in the application.

(5) The affected farmer will provide two milk marketing statements, one for the base period and one for the claim period.

(6) On the milk marketing statement the per hundredweight hauling rate and the per hundredweight \$0.15 promotion fee, which are normally incurred by affected farmers who market through the milk marketing organization, that the affected farmer did not incur because of the dumping or removal of the milk from the commercial market, then the average price stated by the milk marketing organization will be the average gross price paid less these costs. If the milk marketing organization does not have this information, the affected farmer will furnish a statement specifying these costs, if any.

(7) The amount of proceeds, if any, received by the affected farmer from the marketing of milk produced during the application period.

(8) The amount of any payments not subject to refund made to the affected farmer by the milk marketing organization with respect to the milk produced during the application period and removed from the commercial market.

(9) A detailed written statement from the affected farmer regarding the circumstances of the milk removal or dumping, the type and geographic scope of the weather event, what transportation limitations occurred in addition to how and where the removed or dumped milk was discarded.

(b) If requested by FSA, the affected farmer must provide additional documentation that establishes the affected farmer's eligibility for a Milk Loss Program payment.

10. Revise newly redesignated § 760.1708 to read as follows.

**§ 760.1708 Application for payments for milk loss.**

The affected farmer or the affected farmer's legal representative must sign and file an application for payment on a form which is approved for that purpose by the Deputy Administrator. The form must be filed with the county FSA office for the county where the farm headquarters are located no later than close of business of the designated deadline announced by the Secretary for 2020, 2021, and 2022 losses.

11. Revise newly redesignated § 760.1709 to read as follows.

**§ 760.1709 Payment limitation and AGI.**

(a) Per calendar year, a person or legal entity, other than a joint venture or general partnership, is eligible to receive, directly or indirectly payments of not more than \$125,000 according to the provisions in § 760.1507(b)(1); or not more than \$250,000 according to the provisions in § 760.1507(b)(2) if at least 75 percent of the person's or legal entity's average adjusted gross income is average adjusted gross farm income and the applicant provides the required certification(s) and documentation. Payments made to a joint venture or general partnership cannot exceed an amount determined by multiplying the maximum payment

limitation by the number of persons and legal entities that comprise the first-level ownership of the joint venture or general partnership.

(b) To certify the average adjusted gross farm income, a person or legal entity, including all members with an ownership interest in a legal entity, general partnership, or joint venture, must provide the following:

(1) A certification in the manner prescribed by FSA from the person or legal entity that the average adjusted gross farm income of the person or legal entity is at least 75 percent of the average adjusted gross income; and

(2) A certification in the manner prescribed by FSA from a licensed certified public accountant or attorney that the average adjusted gross farm income of the person or legal entity is at least 75 percent of the average adjusted gross income.

(c) A new legal entity will have its adjusted gross farm income averaged only for those years for which it was in business; however, a new legal entity will not be considered “new” to the extent it takes over an existing operation and has any elements of common ownership interest and land with the preceding person or legal entity, or with persons or legal entities with an interest in the “old” legal entity. When there is such commonality, income of the previous person or legal entity will be averaged with that of the “new” legal entity for the base period.

(d) For a person filing a joint federal tax return, the certification of average adjusted gross farm income will be reported as if the person had filed a separate federal tax return and the calculation is consistent with the information supporting the filed joint return.

(e) All persons and legal entities are subject to an audit by FSA of any information submitted for the purpose of increasing the program’s payment limitation. As a part of this audit, income tax returns may be requested, and if requested, must be supplied by all related persons

and legal entities. In addition to any other requirement under any Federal statute, relevant Federal income tax returns and documentation must be retained a minimum of 2 years after the end of the calendar year corresponding to the year for which payments or benefits are requested. Failure to provide necessary and accurate information to verify compliance will result in ineligibility for Milk Loss Program benefits.

(f) The direct attribution provisions in § 760.1507 apply for both payment limitation as well as in determining average adjusted gross farm income as defined and used in this subpart.

12. Add new § 760.1710 to read as follows.

**§ 760.1710 Time and method of application.**

(a) A completed FSA-376, Milk Loss Program Application, must be submitted at the time of application along with the information listed in § 760.1707 to the affected farmer's recording county office by the close of business on the Milk Loss Program application deadline. Applications may be submitted in person or by mail, email, facsimile, or other methods announced by FSA. The Deputy Administrator has the discretion and authority to waive or modify deadlines and other requirements or program provisions in cases where the Deputy Administrator determines it is equitable to do so and where the Deputy Administrator finds that the lateness or failure to meet such other requirements or program provisions do not adversely affect Milk Loss Program operation.

(b) Failure of an individual, entity, or a member of an entity to submit the following payment limitation and payment eligibility forms within 60 days from the date of the Milk Loss Program application deadline, may result in no payment or a reduced payment:

(1) Form AD-2047, Customer Data Worksheet, for new customers or existing customers who need to update their customer profile;

(2) Form CCC–860, Socially Disadvantaged, Limited Resource, Beginning and Veteran Farmer or Rancher Certification, if applicable for the program year or years for which the affected farmer is applying for the Milk Loss Program and if the affected farmer chooses to provide that certification;

(3) Form CCC–901, Member Information for Legal Entities, if applicable;

(4) Form CCC–902, Farm Operating Plan for an individual or legal entity as provided in 7 CFR part 1400;

(5) Form FSA–510, Request for an Exception to the \$125,000 Payment Limitation for Certain Programs, accompanied by a certification from a certified public accountant or attorney as to that person or legal entity's certification, for a legal entity and all members of that entity, for each applicable program year, including the legal entity's members, partners, or shareholders, as provided in 7 CFR part 1400; and

(6) Form AD–1026, Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification, for the Milk Loss Program and applicable affiliates as provided in 7 CFR part 12.

(c) If supporting documentation is requested under § 760.1707(b), the documentation must be submitted to FSA within 60 calendar days from the request or the application will be disapproved by FSA.

(d) Milk Loss Program payments are limited to 30 days per year for each of 2020, 2021, and 2022.

(e) Each Milk Loss Program application is limited to the milk loss for one calendar month due to a qualifying disaster event or multiple qualifying disaster events. Milk loss that

occurs in a subsequent month for the same qualifying disaster event will require a separate application.

**§ 760.1711 [Amended]**

13. In newly redesignated § 760.1711, amend paragraph (c) by removing the word “his”.

14. Revise newly redesignated § 760.1712 to read as follows:

**§ 760.1712 Estates and trusts; minors.**

(a) A receiver of an insolvent debtor's estate and the trustee of a trust estate will, for the purpose of this subpart, be considered to represent an insolvent affected farmer and the beneficiaries of a trust, respectively, and the production of the receiver or trustee will be considered to be the production of the represented person. Program documents executed by any such person will be accepted only if they are legally valid and such person has the authority to sign the applicable documents.

(b) An affected dairy farmer who is a minor will be eligible for milk loss payments only if at least one of the following requirements is true:

(1) The right of majority has been conferred on him by court proceedings or by law;

(2) A guardian has been appointed to manage the property and the applicable program documents are signed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the person been an adult.

**§ 760.1713 [Amended]**

15. Amend newly redesignated § 760.1713 as follows:

a. Amend paragraph (a) by removing the words “or manufacturer”; and

b. Amend paragraph (b) by removing the words “he would otherwise have” and adding “that would otherwise be available” in their place.

**§ 760.1714 [Amended]**

16. Amend newly redesignated § 760.1714 by removing the words “or manufacturer”.

**§ 760.1716 [Amended]**

17. Amend newly redesignated § 760.1716 as follows:

a. In paragraph (a), remove the words “as well as his milk handler and” and add “milk marketing organization, and” in their place.

b. In paragraph (b) remove the words “his milk handler” and add “milk marketing organization” in their place.

18. Amend newly redesignated § 760.1720 as follows:

a. In paragraph (a)(2), remove the word “whole” and;

b. In paragraph (a)(3), remove the word “handler” and add “marketing organization” and remove the word “whole”; and

c. Revise paragraph (a)(4).

The revision reads as follows:

**§ 760.1720 Calculating payments for milk losses.**

(a) \* \* \*

(4) Multiplied by a program factor of 90 percent for underserved farmers or ranchers, or 75 percent for all other farmers or ranchers.

\* \* \* \* \*



**Subpart S – Emergency Relief Program**

**§ 760.1902 [Amended]**

21. Amend § 760.1902 as follows:

a. In paragraph (b)(3), remove the word “Law” and add “law consisting solely of citizens of the United States or resident aliens”; and

b. In paragraph (b)(4), remove the word “law” and add “law consisting solely of citizens of the United States or resident aliens”.

**§ 760.1905 [Amended]**

22. In § 760.1905, in paragraph (b)(3) remove the word “net” and add “gross” in its place.

John Berge,  
Acting Administrator,  
Farm Service Agency.