

§ 1430.345

7 CFR Ch. XIV (1-1-01 Edition)

§ 1430.345 Determination of marketings for refund purposes; Related persons; Refunds for years in which the person whose proceeds were reduced leaves the dairy business.

(a) For purposes of calculating refund eligibility under this subpart, the marketings of a person for commercial use shall include all such marketings for the relevant period in which such person had an interest.

(b) As determined appropriate by DASCO to accomplish the goals of the program, the county committee may also consider marketings of milk occurring in the base period or in the reduction year of any operation with respect to which the person had an interest in the herd, the dairy animals, or in the facilities involved in the production at any time during the base period or reduction year.

(c) DASCO may consider a person to be in compliance with the requirements for the refund despite a failure to comply with conditions otherwise required by this subpart if such relief is deemed to be needed to afford fair and equitable treatment and the granting of such relief will not impair the accomplishment of the goals of the program.

(d)(1) Persons considered to be a related person with another person for purposes of calculating refund eligibility shall be as follows:

(i) The spouse and minor child of such person and/or guardian of such child;

(ii) Any corporation in which the person is a stockholder, shareholder, or owner of equal to, or greater than, a 10 percent interest in such corporation;

(iii) Any partnership, joint venture, or other enterprise in which the person has an ownership interest or financial interest; and

(iv) Any trust in which the person seeking the refund or any person listed paragraphs (d)(1) (i) through (iii) of this section is a beneficiary or has a financial interest.

(2) If the person seeking a refund is a corporation, partnership, or other entity, the related persons shall be considered to be:

(i) Any participant, owner, or stockholder in the entity except, in the case

of corporations only, persons with less than a 10 percent share in the corporation shall not be considered a related person with respect to that corporation; and

(ii) As determined under the provisions of paragraph (d)(1) of this section, any person who is a related person with respect to the persons identified as a related person to an entity under (d)(2)(i) of this section.

§ 1430.346 Transfer of milk marketing history for purposes of establishing eligibility for a refund.

(a) If a producer has acquired the complete dairy operation (i.e., all land, all equipment and all dairy cattle at all locations) of a family member, the milk marketing history of the acquiring producer may be increased by the milk marketing history of the family member. The preceding sentence shall apply only if the transferor no longer has any interest in any dairy, dairy herd, or in any dairy production. No other transfer of a milk marketing history shall be permitted.

(b) A request for a transfer of the milk marketing history must be made to the county committee of the county where the acquiring producer's dairy farm is located. A transfer may be approved only if adequate records are presented to establish eligibility for the transfer.

(c) For purposes of this section:

(1) *A family member* of the transferee of the dairy operation shall include all of the following:

(i) The parent, grandparent, or legal guardian of the transferee;

(ii) The spouse of a parent or grandparent of the transferee;

(iii) The transferee's spouse;

(iv) The son, daughter, grandson or granddaughter of the transferee, or the spouse of any such persons;

(v) Siblings of the transferee and the spouses of such siblings.

(2) *Milk marketing history* means the milk marketings by the transferor of the dairy operations in the year preceding the year of the transfer of the complete dairy operation which could have been used by the transferor to claim a refund of a reduction in producer proceeds made under this subpart.

(d) Notwithstanding any other provisions of this subpart, if a milk marketing history is transferred:

(1) The transferor shall not be eligible for a refund of a reduction in producer proceeds made in the year of the transfer.

(2) The marketing of milk in the year of the transfer which could be attributed to the transferor shall be considered solely to be marketings by the transferee for calculations relating to refunds of reductions made in the transfer year or in the following year; and

(3) The transferee, to the extent that other conditions are met, may claim refunds of reduction made in the proceeds of the transferor for the transfer year.

(e) A transfer of milk marketing history under this section shall become null and void if the transferor returns to dairying at any time prior to the payment of a refund to the transferee which took into account the transferor's marketings of milk.

§ 1430.347 Availability of records and facilities.

(a) *Records to be maintained.* Each responsible person and person seeking a refund shall maintain records in a manner that will demonstrate compliance with the provisions of this subpart and/or eligibility for a refund.

(b) *Availability of records and facilities.* Each responsible person or other persons affected by the provisions of this subpart shall make available to authorized representatives of the CCC or the Department all records and facilities pertaining to such person's operations that are necessary to determine compliance with the provisions of this subpart.

(c) *Retention of records.* All records required under this subpart shall be retained by the person required to keep such records for a period of three years beginning at the end of the calendar year to which such records pertain, or for such longer period as the Dairy Division or the CCC may require by notice to such person.

§ 1430.348 Adjustment of accounts.

Except as otherwise provided in this section, whenever the responsible per-

son or person obtaining a refund becomes aware through an audit or other means that an error in payment or refund has been made, such person must immediately notify the CCC of the error and make any payment to the CCC that is due the CCC, together with any late-payment interest and other charges as are provided for in this subpart. If the error is otherwise unknown to the person involved until notice is given by the CCC, the underpayment plus late-payment interest and other charges provided for in this subpart shall be made by the next date for remitting reductions as provided in § 1430.343 or within the time specified by the CCC if no subsequent remittances are required by this subpart from such person. Overpayments to the CCC by a responsible person shall be credited to the account of the responsible person remitting the overpayment and shall be applied against amount otherwise due to the CCC from the responsible person or refunded if no amounts are due to the CCC from such person. Nothing in this section shall reduce the liability of a person to the CCC for late-payment interest and other charges for underpayment or nonpayment to the CCC.

§ 1430.349 Charges and penalties.

(a) *Charge for dishonored negotiable instruments.* Each person who issues a negotiable instrument to the CCC in connection with this subpart that is not honored because of insufficient funds or any other reason will be charged \$25 plus such additional costs as may apply. The amount of this charge shall be in addition to any and all other authorized charges and penalties.

(b) *Late-Payment Interest.* Any unpaid obligation due the CCC under this subpart shall be increased by late-payment interest. Such interest shall be assessed in accordance with the provisions of 7 CFR part 1403 or successor regulations so designated by the Department. The timeliness of payment to the CCC shall be determined based on the applicable postmark date or the date of receipt by the CCC if no postmark date is available or legible.

(c) *Penalties.* (1) In addition to other penalties provided for in this subpart, a civil penalty payable to the CCC shall