

§ 1429.115

792 and 1403 of this title. Such interest will be charged at the rate that the U.S. Department of the Treasury charges CCC for funds, and will accrue from the date 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.

§ 1429.115 Miscellaneous provisions and appeals.

(a) *Offset.* CCC may offset or withhold any amount due CCC as specified in this part in accordance with the provisions of part 1403 of this chapter.

(b) *Claims.* Claims or debts will be settled in accordance with the provisions of part 1403 of this chapter.

(c) *Other interests.* Payments or any portion thereof due under this part will be made without regard to questions of title under State law and without regard to any claim or lien against the asparagus crop, or proceeds thereof, in favor of the owner or any other creditor except agencies and instrumentalities of the U.S. Government.

(d) *Assignments.* Any asparagus producer entitled to any payment as specified in this part may assign any payment in accordance with the provisions of part 1404 of this chapter.

(e) *Appeals.* Appeals will be handled as specified in parts 11 and 780 of this title.

PART 1430—DAIRY PRODUCTS

Subpart A—Margin Protection Program for Dairy Producers

Sec.

- 1430.100 Purpose.
- 1430.101 Administration.
- 1430.102 Definitions.
- 1430.103 Eligible dairy operations.
- 1430.104 Time and method of registration and annual election.
- 1430.105 Establishment and transfer of production history for a participating dairy operation.
- 1430.106 Administrative fees.
- 1430.107 Buy-up coverage.
- 1430.108 Margin protection payments.
- 1430.109 Effect of failure to pay administrative fees or premiums.

7 CFR Ch. XIV (1–1–25 Edition)

- 1430.110 Calculation of average feed cost and actual dairy production margins.
- 1430.111 Relation to RMA's LGM-Dairy Program.
- 1430.112 Multi-year contract.
- 1430.113 Contract modifications.
- 1430.114 Reconstitutions.
- 1430.115 Offsets and withholdings.
- 1430.116 Assignments.
- 1430.117 Appeals.
- 1430.118 Misrepresentation and scheme or device.
- 1430.119 Estates, trusts, and minors.
- 1430.120 Death, incompetency, or disappearance.
- 1430.121 Maintenance and inspection of records.
- 1430.122 Refunds; joint and several liability.
- 1430.123 Violations of highly erodible and wetland conservation provisions.
- 1430.124 Violations regarding controlled substances.

Subpart B—Milk Income Loss Contract Program

- 1430.200 Applicability.
- 1430.201 Administration.
- 1430.202 Definitions.
- 1430.203 Eligibility.
- 1430.204 Requesting benefits.
- 1430.205 Selection of starting month.
- 1430.206 [Reserved]
- 1430.207 Dairy operation payment quantity.
- 1430.208 Payment rate and dairy operation payment.
- 1430.209 Proof of market loss production.
- 1430.210 MILC agents.
- 1430.211 Duration of contracts.
- 1430.212 Contract modifications and statutory changes in program.
- 1430.213 Reconstitutions.
- 1430.214 Violations.
- 1430.215 [Reserved]
- 1430.216 Contracts not in conformity with regulations.
- 1430.217 Offsets and withholdings.
- 1430.218 Assignments.
- 1430.219 Appeals.
- 1430.220 Misrepresentation and scheme or device.
- 1430.221 Estates, trusts, and minors.
- 1430.222 Death, incompetency, or disappearance.
- 1430.223 Maintenance and inspection of records.
- 1430.224 Refunds; joint and several liability.
- 1430.225 Violations of highly erodible land and wetland conservation provisions.
- 1430.226 Violations regarding controlled substances.

Subpart C—Dairy Product Donation Program

- 1430.300 Administration, purpose, and funding.

Commodity Credit Corporation, USDA

§ 1430.102

- 1430.301 Definitions.
- 1430.302 Commencement and termination of DPDP purchases.
- 1430.303 DPDP purchases.
- 1430.304 Distribution of DPDP purchased products.

Subpart D—Dairy Margin Coverage Program

- 1430.400 Purpose.
- 1430.401 Administration.
- 1430.402 Definitions.
- 1430.403 Eligible dairy operations.
- 1430.404 Time and method of registration and annual election.
- 1430.405 Establishment and transfer of production history for a participating dairy operation.
- 1430.406 Administrative fees.
- 1430.407 Buy-up coverage.
- 1430.408 MPP-Dairy premium repayments.
- 1430.409 Dairy margin coverage payments.
- 1430.410 Effect of failure to pay administrative fees or premiums.
- 1430.411 Calculation of average feed cost and actual dairy production margin.
- 1430.412 Relation to RMA's LGM-Dairy Program.
- 1430.413 Multi-year contract for lock-in option.
- 1430.414 Contract modifications.
- 1430.415 Reconstitutions.
- 1430.416 Offsets and withholdings.
- 1430.417 Assignments.
- 1430.418 Appeals.
- 1430.419 Misrepresentation and scheme or device.
- 1430.420 Estates, trusts, and minors.
- 1430.421 Death, incompetency, or disappearance.
- 1430.422 Maintenance and inspection of records.
- 1430.423 Refunds; joint and several liability.
- 1430.424 Violations of highly erodible and wetland conservation provisions.
- 1430.425 Violations regarding controlled substances.

AUTHORITY: 7 U.S.C. 9051–9060 and 9071 and 15 U.S.C. 714b and 714c.

Subpart A—Margin Protection Program for Dairy Producers

SOURCE: 79 FR 51462, Aug. 29, 2014, unless otherwise noted.

§ 1430.100 Purpose.

The regulations in this subpart apply for the Margin Protection Program for Dairy (MPP-Dairy), which is authorized by sections 1401 through 1410 of the Agricultural Act of 2014 (Pub. L. 113–79, 7 U.S.C. 9051–9060). MPP-Dairy is in-

tended to provide eligible dairy producers risk protection against low margins resulting from a combination of low milk prices and high feed costs.

§ 1430.101 Administration.

(a) MPP-Dairy is administered under the general supervision of the Executive Vice President, CCC, or a designee, and will be carried out by Farm Service Agency (FSA) State and county committees and employees.

(b) State and county committees and their employees may not waive or modify any requirement of this subpart.

(c) The State committee will take any action required when not taken by the county committee, require correction of actions not in compliance, or require the withholding of any action that is not in compliance with this subpart.

(d) The Executive Vice President, CCC, or a designee, may determine any question arising under MPP-Dairy or reverse or modify any decision of the State or county committee.

(e) The Deputy Administrator, Farm Programs, FSA, may waive or modify MPP-Dairy requirements not statutorily required when failure to meet such requirements does not adversely affect the operation of MPP-Dairy.

(f) A representative of CCC will execute a contract for registration in MPP-Dairy and related documents under the terms and conditions determined and announced by the Deputy Administrator on behalf of CCC. Any document not under such terms and conditions, including any execution before the date authorized by CCC, will be null and void.

§ 1430.102 Definitions.

The definitions in this section are applicable for the purposes of administering MPP-Dairy established by this subpart.

Actual dairy production margin means the difference between the all-milk price and the average feed cost, as calculated under § 1430.110. If the calculation would produce a negative number the margin will be considered to be zero.

Administrative county office means the county office designated to make determinations, handle official records,

and issue payments for the producer as specified in 7 CFR part 718.

All-milk price means the national average price received, per hundredweight of milk, by dairy operations for all milk sold to dairy plants and milk dealers in the United States, as determined by the Secretary.

AMS means the Agricultural Marketing Service of the USDA.

Annual election period for MPP-Dairy means the period, each calendar year, established by the Deputy Administrator, for a dairy operation to register initially to participate in MPP-Dairy, pay associated administrative fees, and applicable premiums, or, if already registered as a participating dairy operation, to make annual coverage elections for an applicable calendar year.

Average feed cost means the national average cost of feed used by a dairy operation to produce a hundredweight of milk, as determined under §1430.110(b).

Buy up coverage means margin protection coverage for a margin protection level above \$4 per hundredweight of milk.

Catastrophic level coverage means \$4 per cwt margin protection coverage and a coverage percentage of 90 percent, with no premium assessed.

CCC means the Commodity Credit Corporation of the U.S. Department of Agriculture.

Commercially marketed means selling whole milk to either the market to which the dairy operation normally delivers and receives monetary compensation or other similar markets.

Consecutive 2-month period means a 2-month period consisting, respectively, of the months of January and February; March and April; May and June; July and August; September and October; or November and December.

Contract means the terms and conditions to register for the MPP-Dairy as executed on a form prescribed by CCC and required to be completed by the dairy operation and accepted by CCC, including any contract modifications made in an annual election period before coverage for the applicable calendar year commences.

County committee means the FSA county committee.

County office means the FSA office responsible for administering FSA pro-

grams for farms located in a specific area in a State.

Covered production history is equal to the production history of the operation multiplied by the coverage percentage selected by the participating dairy operation.

Dairy operation means a dairy operation as defined pursuant to the criteria and procedures under the Milk Income Loss Contract (MILC) Program or any dairy facility that was part of a single dairy operation that participated in the MILC Program as of February 7, 2014. Operations that are determined to be “new operations” under this subpart, will be subject to the “affiliation” test under §1430.103(e) if the operation elects to participate in MPP-Dairy separately. A single dairy operation operated by more than one dairy producer will be treated as a single dairy operation for purposes of participating in MPP-Dairy and can only submit one application. All dairy operations under this part shall commercially market milk produced from cows as a single unit located in the United States in which each dairy producer:

- (1) Has risk in the production of milk in the dairy operation; and
- (2) Makes contributions, including land, labor, management, equipment, or capital, to the dairy operation at least commensurate to the producers’ share of the operation.

Deputy Administrator means the Deputy Administrator for Farm Programs, or designee.

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

Hundredweight or cwt means 100 pounds.

Intergenerational transfer means the one-time establishment of additional production history for a participating dairy operation when a lineal descendant, who is a son, daughter, grandchild, or spouse of a child or grandchild of a current member joins a participating dairy operation.

Milk Income Loss Contract Program or MILC means the program established under section 1506 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8773) and the regulations found in subpart B of this part.

Milk marketing means a sale of milk for which there is a verifiable production record for milk commercially marketed.

NASS means the National Agricultural Statistics Service of the USDA.

New operation means a dairy operation that did not commercially market milk at least 12 full months as of February 7, 2014.

Participating dairy operation means a dairy operation that registers to participate in MPP-Dairy under this part.

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, a citizen of, or legal resident alien in the United States, and who directly or indirectly, shares in the risk of producing milk, makes contributions including land, labor, management, equipment, or capital to the dairy operation at least commensurate to the producers' share of the operation, to the dairy operation of the individual or entity, as determined by the Deputy Administrator.

Production history means the production history determined for a participating dairy operation when the participating dairy operation registers in MPP-Dairy.

RMA means the Risk Management Agency of the USDA.

Secretary means the Secretary of Agriculture.

United States means the 50 States of the United States of America, the District of Columbia, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, and any other territory or possession of the United States.

USDA means the United States Department of Agriculture.

Verifiable production records mean evidence that is used to substantiate the amount of production commercially marketed and that can be verified by CCC through an independent source.

§ 1430.103 Eligible dairy operations.

(a) The eligibility requirements for a dairy operation to register in MPP-Dairy and receive payments under this subpart, are to:

(1) Produce milk from cows in the United States that is marketed commercially at the time of each annual election in MPP-Dairy;

(2) Submit accurate and complete information as required by the this subpart;

(3) Provide proof of milk production marketed commercially by all persons in the dairy operation to establish production history;

(4) Not participate in the Livestock Gross Margin for Dairy (LGM-Dairy) Program administered by the USDA Risk Management Agency (RMA) under the Federal Crop Insurance Act (7 U.S.C. 1501-1536), except to the extent permitted by this subpart, provided that under no circumstance may the operation receive coverage for the same period in MPP-Dairy for which payments have been received or earned under LGM-Dairy; and

(5) Pay required administrative fees for participation in MPP-Dairy as specified in this subpart and any premiums, if applicable, as specified in this subpart.

(b) A person or entity covered by §1400.401 of this chapter (hereafter "foreign person") must meet the eligibility requirements contained in that section to receive payments under this part. A dairy operation with ineligible foreign persons as members will have any payment reduced by the proportional share of such members.

(c) Federal agencies and States, including all agencies and political subdivisions of a State, are not eligible for payments under this subpart.

(d) As specified in §1430.104, each dairy operation is required to submit a separate registration to be eligible for MPP-Dairy coverage and payment. A producer who owns more than one eligible dairy operation may participate separately for each dairy operation; each eligible dairy operation must be registered separately, subject to the affiliation test for new operations.

(e) A new dairy operation will be treated as an affiliated dairy operation and not be treated as a separate dairy

[79 FR 51462, Aug. 29, 2014, as amended at 81 FR 21704, Apr. 13, 2016]

operation under MPP-Dairy if producers that collectively own more than 50 percent of the new dairy operation also collectively own more than 50 percent interest in another dairy operation registered in MPP-Dairy.

§ 1430.104 Time and method of registration and annual election.

(a) A dairy operation may register to participate in MPP-Dairy by submitting a contract prescribed by CCC. Dairy operations may obtain a blank contract in person, by mail, or by facsimile from any county office. In addition, dairy operations may download a copy of the forms at <http://www.sc.egov.usda.gov>.

(b) Dairy operation shall submit completed contracts and any other supporting documentation during the annual election period established by the Deputy Administrator, to the administrative county office serving the dairy operation.

(1) A new dairy operation that has been established after the most recent election period is required to submit a contract within the first 90 calendar days from the date on of which the dairy operation first commercially markets milk and may elect coverage that begins the next consecutive 2-month period following the submission date of the registration and coverage election; or

(2) A new dairy operation that does not meet the 90 day requirement of paragraph (b)(1) of this section cannot enroll until the next annual election period for coverage for the following calendar year.

(c) Registration requests and coverage elections are to be submitted in time to be received at FSA by the close of business on the last day of the annual election period established by the Deputy Administrator.

(1) The applicable year of coverage for contracts arising from accepted registrations in the annual election period will be the following calendar year.

(2) Registration requests and coverage elections submitted after the applicable allowed time for submission will not be considered.

(3) During an annual election period, participating dairy operations may

change coverage elections for the following calendar year.

(d) To receive margin protection coverage, separate registrations are required for each separately constituted dairy operation. If a dairy producer operates more than one separate and distinct operation, the producer registers each operation for each operation to be eligible for coverage.

(e) A participating dairy operation must elect, during the applicable annual election period and by using the form prescribed by CCC, the coverage level threshold and coverage percentage for that participating dairy operation for the applicable calendar year.

(1) Once the initial completed registration is submitted and approved by CCC, it cannot be cancelled by the participating dairy operation through December 31, 2018; however, each calendar year subsequent to the initial registration of the participating dairy operation, it may elect to change the coverage level threshold and coverage percentage, on a form prescribed by CCC, during the election period for the applicable subsequent calendar year. For dairy operations that want to continue coverage levels established in the prior calendar year, the Deputy Administrator will establish a procedure to allow such coverage levels to continue that will include the requirement of a timely payment of administrative fees and any premiums, if applicable.

(2) If the operation fails to file an update of its election during the annual election period, the coverage level will be reduced to the catastrophic level coverage, but such coverage will only be provided if the participating dairy operation pays the annual administrative fee for the relevant calendar year and submits the appropriate CCC forms.

(3) All producers in the participating dairy operation must agree to the coverage level threshold and coverage percentage elected by the dairy operation.

(f) By registering to participate or receive payment under MPP-Dairy, producers in the participating dairy operation certify to the accuracy and truthfulness of the information in their applications and supporting documentation.

(1) All producers in a participating dairy operation must sign and certify all submissions made under MPP-Dairy that relate to the level of coverage.

(2) All information provided is subject to verification. FSA may require a dairy operation to provide documentation to support all verifiable records. Furnishing the information is voluntary; however, without it MPP-Dairy benefits will not be approved. Providing a false certification to the Federal Government may be punishable by imprisonment, fines, other penalties, or sanctions.

(g) At the time the completed contract is submitted to FSA for the first year in which the dairy operation is to participate in MPP-Dairy, the dairy operation must also submit a separate form, as specified by CCC, to establish the production history for the dairy operation.

[79 FR 51462, Aug. 29, 2014, as amended at 81 FR 21704, Apr. 13, 2016]

§ 1430.105 Establishment and transfer of production history for a participating dairy operation.

(a) A participating dairy operation must provide all information required by FSA to establish the production history of the participating dairy operation for purposes of participating in MPP-Dairy. Except as provided in paragraph (b) of this section relating to new dairy operations, FSA will establish the production history for a dairy operation for margin protection as the highest annual milk marketings of the participating dairy operation during any one of the 2011, 2012, or 2013 calendar years.

(1) All producers in the participating dairy operation are required to provide adequate proof of the dairy operation's quantity of milk commercially marketed, to establish the production history for the dairy operation.

(2) All information provided is subject to verification, spot check and audit by FSA. If the dairy operation does not provide to the satisfaction of FSA documentation requested to substantiate the production history of the highest annual milk marketings for the participating dairy operation, then, the registration will not be approved.

(b) A participating dairy operation that did not produce and commercially market milk at least 12 full months as of February 7, 2014, will be considered a new dairy operation. To establish the production history for such a new dairy operation the new dairy operation is required to elect one of the following methods:

(1) The volume of the actual milk marketings for the months the dairy operation has been in operation, extrapolated to a yearly amount based on a national seasonally adjusted index, as determined by the Deputy Administrator, to account for differences in milk production during the year; or

(2) An estimate of the actual milk marketings of the dairy operation based on the herd size of the dairy operation relative to the national rolling herd average data published by the Secretary.

(c) If FSA determines that the new enterprise was formed for the purpose of circumventing MPP-Dairy provisions, including, but not limited to, reconstituting a dairy operation to receive additional benefits, or establishing new production history, that enterprise will not be considered a new dairy operation for the purpose of establishing production history.

(d) Once the production history of a participating dairy operation is established as specified in paragraphs (a) or (b) of this section, the production history will be adjusted upward by FSA only to reflect any increase in the national average milk production, as determined by the Deputy Administrator, except as provided by paragraph (g) of this section.

(e) The production history may be transferred from one dairy facility to another:

(1) Producers of a dairy operation may relocate the dairy operation to another location and the production history of the original operation may be transferred to the new location and may be added to production history at the new location that has not been transferred;

(2) Producers of a dairy operation may transfer ownership of a dairy operation with its associated production history, but if the producers start a new operation such new operation may

only be eligible for new production history if the new operation is otherwise not affiliated with participants in MPP-Dairy as described in §1430.103(e); or

(3) Producers of more than one dairy operation that separately participate in MPP-Dairy may transfer the production histories of these dairy operations into a previously unregistered dairy operation.

(f) If CCC waives the obligation, under MPP-Dairy of a participating dairy operation due to death or retirement of the producer or of the permanent dissolution of the dairy operation or under other circumstances as determined by the Deputy Administrator, FSA may reestablish the production history provided that the production history has not been transferred.

(g) The established production history of a participating dairy operation may be adjusted upward once during the term of the contract for an intergenerational transfer based on the purchase of additional cows by the new family member(s). The increase in the established production history of the participating dairy operation will be determined on the basis of the national rolling herd average data for the current year in effect at the time of the intergenerational transfer and the quantity of the production history increase will be limited to an amount not more than 4 million pounds. The additional quantity of production history will receive coverage at the same elected coverage threshold and coverage percentage in effect for the participating dairy operation at the time the production history increase takes effect. Intergenerational transfers will not be allowed if the participating dairy operation's current annual production and the increase in herd size by the new member(s) is less than the operation's established production history.

(1) The dairy operation must notify FSA, using the appropriate CCC form(s), of the intergenerational transfer within 60 days of the purchase of the cows, except that for purchases made for intergenerational transfers occurring between January 1, 2016, and June 30, 2016, the dairy operation must notify FSA during the registration and

annual coverage election period for coverage year 2017, established by the Deputy Administrator. The operation has the option of the additional production history taking effect beginning either with the consecutive 2-month period following notification, or the following January 1. If the additional production history takes effect between January 1 and August 31, the premium is due September 1, as specified in §1430.107(a)(2). If the additional production history takes effect between September 1 and December 31, the premium is due immediately.

(2) All of the items specified in this paragraph must be documented in the notification to FSA and self-certified by the current and new member(s) for the intergenerational transfer to be considered eligible for additional production history, except that intergenerational transfers that occurred in 2014 and 2015 that otherwise meet the requirements of this paragraph will be considered during the registration and annual coverage election period for coverage year 2017 established by the Deputy Administrator for the purposes of adding the new member(s) to the participating dairy operation. However, there will not be any retroactive payments based on a production history increase for the intergenerational transfer. All of the following information is subject to verification by CCC. Refusal to allow CCC or any other agency of USDA to verify any information provided will result in disapproval of the intergenerational transfer.

(i) Documentation that the new member(s) joining the operation have purchased the dairy cows being added to the dairy operation;

(ii) Certification that each new member will have a share of the profits or losses from the dairy operation commensurate with such person's contributions to the dairy operation;

(iii) Certification that each new member has a significant equity ownership in the participating dairy operation at levels determined by the Deputy Administrator and announced on the FSA Web site, *www.fsa.usda.gov*;

(iv) Certification that each new member is a lineal descendant or spouse thereof of a current member of the participating dairy operation;

Commodity Credit Corporation, USDA

§ 1430.107

(v) Agreement that each new member will contribute labor in the dairy operation at a minimum of 35 hours per week or have a plan for transition to full-time, subject to FSA county committee review and approval, if only working seasonally or part-time;

(vi) Certification that the dairy operation will be the principal source of non-investment earned income for each new member; and

(vii) Documentation of the participating dairy operation's current annual marketings as of the date of the intergenerational transfer.

[79 FR 51462, Aug. 29, 2014, as amended at 81 FR 21704, Apr. 13, 2016]

§ 1430.106 Administrative fees.

(a) Dairy operations must pay an initial administrative fee to CCC in the amount of \$100 at the time of initial registration to participate in MPP-Dairy. Each approved participating dairy operation must also pay a \$100 administrative fee each year through 2018. Annual administrative fees are due and payable to CCC through the administrative county FSA office no later than the close of business on the last day of the annual election period established by the Deputy Administrator for each applicable calendar year of margin protection coverage under MPP-Dairy. The administrative fee paid is non-refundable.

(b) The required annual administrative fee is per dairy operation. Therefore, multiple dairy producers in a single participating dairy operation are required to pay only one annual administrative fee for the participating dairy operation. Conversely, in the case of a dairy producer that operates more than one dairy operation, each participating dairy operation is required to pay a separate administrative fee annually.

(c) Failure to pay the administrative fee timely will result in loss of margin protection coverage for the applicable calendar year. The payment will still be due, as provided in §1430.109. However, coverage for the applicable calendar year, at the catastrophic level only, may be reinstated if the administrative fee is paid late, effective the consecutive 2-month period following payment of the late-filed administrative fee plus applicable charges, if any,

and submission to FSA of the appropriate CCC form.

[79 FR 51462, Aug. 29, 2014, as amended at 81 FR 21705, Apr. 13, 2016]

§ 1430.107 Buy-up coverage.

(a) For purposes of receiving buy-up MPP-Dairy coverage, a participating dairy operation may annually elect during an annual election period the following for the succeeding calendar year:

(1) A coverage level threshold for margins that, per cwt, is equal to one of the following: \$4.50, \$5, \$5.50, \$6, \$6.50, \$7, \$7.50, or \$8; and

(2) A percentage of coverage for the production history from 25 percent to 90 percent, in 5-percent increments.

(b) In the absence of any such election, the applicable coverage level provided, with no premium due, is catastrophic level coverage.

(c) A participating dairy operation that elects margin protection coverage above \$4 is required to pay an annual premium based on coverage level and covered production history in addition to the administrative fee. Tier 1 applies to covered production history up to and including 4 million pounds; Tier 2 applies to covered production history above 4 million pounds.

(d) The premium per cwt of milk, based on the elected percentage of coverage of production history is specified in the following table.

TABLE TO § 1430.107(d)

Coverage level (margin)	Tier 1 premium per cwt (for the covered production history that is 4 million pounds or less)	Tier 2 premium per cwt (for the part of covered production history over 4 million pounds)
\$4.50	\$0.010	\$0.020
\$5.00	0.025	0.040
\$5.50	0.040	0.100
\$6.00	0.055	0.155
\$6.50	0.090	0.290
\$7.00	0.217	0.830
\$7.50	0.300	1.060
\$8.00	0.475	1.360

(e) The annual premium due for a participating dairy operation is calculated by multiplying:

(1) The covered production history; and

(2) The premium per cwt of milk specified in paragraph (d) of this section for the coverage level elected by the dairy operation.

(f) In the case of a new dairy operation that first registers to participate in MPP-Dairy for a calendar year after the start of the calendar year, the participating dairy operation is required to pay a pro-rated premium for that calendar year based on the portion of the calendar year for which the participating dairy operation is eligible, and for which it purchases the coverage.

(g) A participating dairy operation is required to pay the annual premium calculated as specified in paragraphs (d) and (e) of this section for the applicable calendar year, according to either of the following options:

(1) In total at time of submission of coverage election to FSA; or

(2) In total no later than September 1 of the applicable calendar year of coverage, unless otherwise specified by the Deputy Administrator.

(h) If the total premium is not paid for an applicable calendar year of coverage as specified in paragraph (g) of this section, the participating dairy operation will only be covered at catastrophic level coverage beginning with the September-October consecutive 2-month period and for the remainder of the applicable coverage year.

(i) Annual premium balances due CCC from a participating dairy operation for a calendar year of coverage must be paid in full no later than September 1 of the applicable calendar year or within a grace period determined by the Deputy Administrator, if applicable.

(j) A participating dairy operation with an unpaid premium balance for a calendar year of coverage will lose eligibility for buy-up coverage for the subsequent coverage year if the premium is not paid in full by the close of the coverage election period, and will have its current buy-up level coverage reduced to the catastrophic level, as provided in §1430.109.

(k) The Deputy Administrator may waive the obligation to pay the premium, or refund the premium paid, of a participating dairy operation for a calendar year, in cases that include, but are not limited to, as determined by

the Deputy Administrator, death, retirement, permanent dissolution of a participating dairy operation, or other circumstances determined by the Deputy Administrator.

(l) MPP-Dairy administrative fees and premiums are required to be paid by a negotiable instrument satisfactory to FSA and made payable to CCC and either mailed to or provided in person to the administrative county office or other location designated by FSA.

(m) In the case of an intergenerational transfer, the additional premium, if any, is due September 1 if the notification of the transfer is made to FSA between January 1 and September 1 of the applicable calendar year, and immediately, if the notification is made between September 2 and December 31, unless otherwise specified by the Deputy Administrator.

[79 FR 51462, Aug. 29, 2014, as amended at 81 FR 21705, Apr. 13, 2016]

§ 1430.108 Margin protection payments.

(a) *When do MPP-Dairy payments trigger?* An MPP-Dairy payment will be made to a participating dairy operation for any consecutive 2-month period when the average actual dairy production margin for the consecutive 2-month period falls below the coverage level threshold in effect for the participating dairy operation. Payments may trigger at either the elected buy-up level if purchased by the dairy operation, or the catastrophic level.

(b) *How will payments be calculated?* Whether payments trigger at the catastrophic level or at the buy-up level, the payments will be calculated as explained in this paragraph. If the dairy operation only has catastrophic coverage or buy-up coverage at 90 percent, there will be a single calculation. If the dairy operation purchased buy-up coverage at less than 90 percent and the catastrophic level also triggers a payment, then there will be two calculations to determine the payment—first the calculation for the buy-up coverage percentage and then the calculation for the catastrophic level percentage, which is the balance of the established production history up to 90 percent; the result of these two calculations will be added together to determine the

Commodity Credit Corporation, USDA

§ 1430.110

payment amount. Each calculation multiplies the payment rate times the coverage percentage times the production history divided by 6 as follows:

(1) *Payment rate.* The amount by which the coverage level exceeds the average actual dairy production margin for the 2-month period;

(2) *Coverage percentage.* The coverage percentage; and

(3) *Production history.* The production history of the dairy operation, divided by 6.

(c) *Example of payment for buy-up coverage of less than 90 percent when catastrophic level also triggers a payment.* If the dairy operation purchased buy-up level coverage at less than 90 percent of production history, then the dairy operation will receive a payment calculated at the buy-up level, plus the payment at the catastrophic level, if triggered, for the balance of 90 percent of its established production history. For example, if a producer purchased buy-up coverage at the 50 percent level, then that producer will also receive catastrophic level coverage for the next 40 percent for total coverage of 90 percent.

[81 FR 21706, Apr. 13, 2016]

§ 1430.109 Effect of failure to pay administrative fees or premiums.

(a) A participating dairy operation that fails to pay a required administrative fee or premium payment due upon application to MPP-Dairy or for a calendar year of coverage:

(1) Remains legally obligated to pay such administrative fee or premium, as applicable; and

(2) Upon such failure to pay when due after initial approved registration, loses coverage under MPP-Dairy until such administrative fee or premium is paid in full, and once paid, coverage will begin with the next consecutive 2-month period. Failure to pay the premium fee when due will reduce coverage to the catastrophic level for the September and October period and November and December period in that coverage year.

(b) CCC may take such actions as necessary to collect unpaid administrative fees and premium payments.

[79 FR 51462, Aug. 29, 2014, as amended at 81 FR 21706, Apr. 13, 2016]

§ 1430.110 Calculation of average feed cost and actual dairy production margins.

(a) Payments are made to a participating dairy operation as specified in this subpart only when, for a consecutive 2-month period, the calculated average actual dairy production margin is below the coverage level in effect for the participating dairy operation. That margin will be calculated on a national basis and is the amount by which for the relevant consecutive 2-month period, the all milk price exceeds the average feed cost for dairy producers. All calculations will be made on a per cwt basis. The average actual dairy production margin calculation applies to all participating dairy operations. The calculations are not made on an operation by operation basis or on their marketings.

(b) For calculating the national average feed cost that dairy operations use to produce a cwt of milk, the following three items will be added together:

(1) The product determined by multiplying 1.0728 by the price of corn per bushel;

(2) The product determined by multiplying 0.00735 by the price of soybean meal per ton; and

(3) The product determined by multiplying 0.0137 by the price of alfalfa hay per ton.

(c) To make those feed calculations, the Deputy Administrator on behalf of CCC will use the following full month data:

(1) For corn, the full month price received by farmers during the month in the United States as reported in the monthly Agricultural Prices report by USDA NASS;

(2) For soybean meal, the Central Illinois soybean meal price delivered by rail as reported in the USDA AMS Market News-Monthly; and

(3) For alfalfa hay, the full month price received during the month by farmers in the United States for alfalfa hay as reported in the monthly Agricultural Prices report by USDA NASS.

§ 1430.111

(d) The national average feed cost data for corn, soybean meal, and alfalfa hay used in the calculation of the national average feed cost to determine the actual dairy production margin for the relevant period, will be the data reported in the publication the following month. (For example, preliminary May prices for corn and soybean meal were reported in the May Agricultural Prices publication but full month May prices will be available in the June publication, and those will be the prices used).

(e) The actual dairy production margin for each consecutive 2-month period, will be calculated by subtracting:

(1) The average feed cost for that consecutive 2-month period, determined under paragraph (b) of this section; from

(2) The all-milk price for that consecutive 2-month period.

§ 1430.111 Relation to RMA's LGM-Dairy Program.

(a) A producer may participate in either MPP-Dairy through a dairy operation or the LGM-Dairy program operated by RMA, but not both.

(b) Producers in dairy operations participating in MPP-Dairy must certify at the time of registration and annually during each coverage election period that they will not have an LGM-Dairy policy in effect during the calendar year the dairy operation is requesting coverage.

(c) A participating dairy operation may be required to provide proof, to the satisfaction of FSA, of the cancellation or expiration of any previous LGM-Dairy policy.

[81 FR 21706, Apr. 13, 2016]

§ 1430.112 Multi-year contract.

(a) Participating dairy operations enrolled in MPP-Dairy are enrolled until December 31, 2018. As such, a participating dairy operation is obligated to pay initial and annual administrative fees and applicable premiums each succeeding calendar year following the date the contract is first entered into through December 31, 2018.

(b) Failure to pay administrative fees and premiums will result in the loss or reduction of coverage, as applicable, and the participating dairy operation

7 CFR Ch. XIV (1–1–25 Edition)

remains obligated to pay such administrative fees and premiums as specified in § 1430.109.

(c) If a participating dairy operation goes out of business as described in § 1430.107(k) before December 31, 2018, the contract will be terminated immediately, except with respect to payments accrued to the benefit of the participating dairy operation under this subpart before such termination.

[79 FR 51462, Aug. 29, 2014, as amended at 81 FR 21706, Apr. 13, 2016]

§ 1430.113 Contract modifications.

(a) Producers in a participating dairy operation must notify FSA immediately of any changes that may affect their participation in MPP-Dairy under this subpart. Changes include, but are not limited to death of a producer on the contract, producer joining the operation, producer exiting the operation, relocation of the dairy operation, transfer of shares by sale or other transfer action, or dairy operation reconstitutions as provided in § 1430.114.

(b) Payment of any outstanding premium or administrative fee for a participating dairy operation must be paid in full before a transfer of shares by sale or any other change in producers on the contract originally submitted to FSA may take effect. Otherwise, producer changes will not be recognized until the following annual election period, and only if at that time all associated premiums and administrative fees from any previous calendar year of coverage have been paid in full.

§ 1430.114 Reconstitutions.

(a) A participating dairy operation under this subpart may reorganize or restructure itself in such a way that the constitution or makeup of its operation is reconstituted in another organization framework. However, any participating dairy operation that reorganizes or restructures after enrolling is subject to a review by FSA to determine if the operation was reorganized or restructured for the sole purpose of establishing an alternative production history for a participating dairy operation or was reorganized or restructured to otherwise circumvent any

MPP-Dairy provision under this subpart (including the tier system for premiums) or otherwise to prevent the accomplishment of the purpose of the program.

(b) A participating dairy operation that FSA determines has reorganized solely to establish a new production history or to circumvent the determination of applicable fees or premiums based on an established production history determined under this subpart will be considered to have failed to meet MPP-Dairy requirements and, in addition to other sanctions or penalties that may apply, will not be eligible for MPP-Dairy payments.

(c) Under no circumstance, except as approved by the Deputy Administrator or provided for in these regulations, will the reconstitution or restructure of a participating dairy operation change the determined production history for the operation. The Deputy Administrator may, however, adjust the production history of a participating dairy operation if there is a calculation error or if erroneous information has been supplied by or on behalf of the participating dairy operation.

§ 1430.115 Offsets and withholdings.

FSA may offset or withhold any amount due FSA under this subpart under the provisions of part 1403 of this chapter or any successor regulations, or any other authorities that may allow for collection action of that sort.

§ 1430.116 Assignments.

Any producer may assign a payment to be made under this subpart in accordance with part 1404 of this chapter or successor regulations as designated by the Secretary or as allowed by the Deputy Administrator in writing.

§ 1430.117 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this subpart may request reconsideration or appeal of such determination under parts 11 or 780 of this title.

§ 1430.118 Misrepresentation and scheme or device.

(a) In addition to other penalties, sanctions or remedies as may apply, all or any part of a payment otherwise due

a person or legal entity on all participating dairy operations in which the person or legal entity has an interest may be withheld or be required to be refunded if the person or legal entity fails to comply with the provisions of this subpart or adopts or participates in adopting a scheme or device designed to evade this subpart, or that has the effect of evading this part. Such acts may include, but are not limited to:

(1) Concealing information that affects an registration or coverage election;

(2) Submitting false or erroneous information; or

(3) Creating a business arrangement using rental agreements or other arrangements to conceal the interest of a person or legal entity in a dairy operation for the purpose of obtaining MPP-Dairy payments the individual or legal entity would otherwise not be eligible to receive. Indicators of such business arrangement include, but are not limited to the following:

(i) No milk is produced and commercially marketed by a participating dairy operation;

(ii) The participating dairy operation has no appreciable assets;

(iii) The only source of capital for the dairy operation is the MPP-Dairy payments; or

(iv) The represented dairy operation exists mainly for the receipt of MPP-Dairy payments.

(b) If the Deputy Administrator determines that a person or legal entity has adopted a scheme or device to evade, or that has the purpose of evading, the provisions of this subpart, such person or legal entity will be ineligible to receive MPP-Dairy payments in the year such scheme or device was adopted and the succeeding year.

(c) A person or legal entity that perpetuates a fraud, commits fraud, or participates in equally serious actions for the benefit of the person or legal entity, or the benefit of any other person or legal entity, in violation of the requirements of this subpart will be subject to a 5-year denial of all program benefits. Such other equally serious actions may include, but are not limited to:

§ 1430.119

(1) Knowingly engaging in, or aiding in the creation of a fraudulent document or statement;

(2) Failing to disclose material information relevant to the administration of the provisions of this subpart, or

(3) Engaging in any other actions of a person or legal entity determined by the Deputy Administrator to be designed, or intended to, circumvent the provisions of this subpart.

(d) Program payments and benefits will be denied on pro-rata basis:

(1) In accordance with the interest held by the person or legal entity in any other legal entity or joint operations; and

(2) To any person or legal entity that is a cash rent tenant on land owned or under control of a person or legal entity for which a determination of this section has been made.

§ 1430.119 Estates, trusts, and minors.

(a) MPP-Dairy documents executed by producers legally authorized to represent estates or trusts will be accepted only if such producers furnish evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible for benefits under this subpart is also required to:

(1) Establish that the right of majority has been conferred on the minor by court proceedings or by law;

(2) Show that a guardian has been appointed to manage the minor's property and the applicable MPP-Dairy documents are executed by the guardian; or

(3) Furnish a bond under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1430.120 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance or dissolution of a producer that is eligible to receive benefits under this subpart, such persons as are specified in part 707 of this title may receive such benefits, as determined appropriate by FSA.

7 CFR Ch. XIV (1-1-25 Edition)

§ 1430.121 Maintenance and inspection of records.

(a) Participating dairy operations are required to maintain accurate records and accounts that will document that they meet all eligibility requirements specified in this subpart, as may be requested by CCC or FSA. Such records and accounts are required to be retained for 3 years after the date of MPP-Dairy payments to the participating dairy operation. Destruction of the records 3 years after the date of payment will be at the risk of the party undertaking the destruction.

(b) A participating dairy operation is required to allow authorized representatives of CCC, the Secretary, or the Comptroller General of the United States to have access to the premises of the dairy operation in order to inspect the herd of cattle, examine, and make copies of the books, records, and accounts, and other written data as specified in paragraph (a) of this section.

(c) Any producer or dairy operation that does not comply with the provisions of paragraphs (a) or (b) of this section, or that otherwise receives a payment for which it is not eligible, is liable for that payment and is required to repay it to FSA, with interest to run from the date of disbursement.

§ 1430.122 Refunds; joint and several liability.

(a) Any legal entity, including joint operations, joint ventures and partnerships, and any member of a legal entity determined to have knowingly participated in a scheme or device, or other such equally serious actions to evade, or that has the purpose of evading the provisions of this part, will be jointly and severally liable for any amounts determined to be payable as the result of the scheme or device, or other such equally serious actions, including amounts necessary to recover the payments.

(b) Any person or legal entity that cooperates in the enforcement of the provisions of this part may be partially or fully released from liability, as determined by the Executive Vice President, CCC.

Commodity Credit Corporation, USDA

§ 1430.202

(c) The provisions of this section will be applicable in addition to any liability that arises under a criminal or civil statute, regulation, or provision of law.

§ 1430.123 Violations of highly erodible and wetland conservation provisions.

The provisions of part 12 of this title apply to this part.

§ 1430.124 Violations regarding controlled substances.

The provisions of § 718.6 of this title apply to this part.

Subpart B—Milk Income Loss Contract Program

SOURCE: 67 FR 64476, Oct. 18, 2002, unless otherwise noted.

§ 1430.200 Applicability.

(a) This subpart governs the Milk Income Loss Contract Program. This program provides financial assistance to dairy operations in connection with milk production that is sold in the commercial market.

§ 1430.201 Administration.

(a) This program is administered under the general supervision of the Executive Vice President, CCC, or a designee, and shall be carried out by Farm Service Agency (FSA) State and county committees and employees.

(b) State and county committees, and their employees may not waive or modify any requirement of this subpart, except as provided in paragraph (e) of this section.

(c) The State committee shall take any action required when not taken by the county committee, require correction of actions not in compliance, or require the withholding of any action that is not in compliance with this subpart.

(d) The Executive Vice President, CCC, or a designee, may determine any question arising under the program or reverse or modify any decision of the State or county committee.

(e) The Deputy Administrator, Farm Programs, FSA, may waive or modify program requirements where failure to meet such requirements does not ad-

versely affect the operation of the Milk Income Loss Contract Program.

(f) A representative of CCC may execute Milk Income Loss Contracts and related documents under the terms and conditions determined and announced by CCC. Any document not under such terms and conditions, including any purported execution before the date authorized by CCC, shall be null and void.

§ 1430.202 Definitions.

The definitions in this section shall be applicable for all purposes of administering the Milk Income Loss Contract (MILC) program established by this subpart.

CCC means the Commodity Credit Corporation of the Department.

Class I Milk means milk, including milk components, classified as Class I milk under a Federal milk marketing order.

Contract application means a Milk Income Loss Contract as executed on a form prescribed by CCC.

Contract application period means the date established by the Deputy Administrator for producers to apply for program benefits.

County committee means the FSA county committee.

County office means the FSA office responsible for administering FSA programs to 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, produce and market milk commercially produced from cows, and whose production facilities are located in the United States. In administering this program, for purposes of determining what is a “dairy operation” and its eligibility under this program, those determinations will be made in the same manner as was done for the Dairy Market Loss Assistance (DMLA) contracts in the State in which the dairy is located. New MILC operations, which is to say those operations that did not participate in the MILC program for marketings prior to FY 2008, must be unaffiliated with any other DMLA or MILC operations.

Department or USDA means the United States Department of Agriculture.

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

Eligible production means milk that was produced at a time relevant to this program by cows in the United States and marketed commercially by a producer in a participating State.

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

Federal Milk Marketing Order means an order issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937.

Fiscal Year or FY means the year beginning October 1 and ending the following September 30. Fiscal years will be designated for this part by year by reference to the calendar year in which it ends. For example, FY 2009 is from October 1, 2008, through September 30, 2009 (inclusive).

Hundredweight or cwt. means 100 pounds.

Marketed commercially means sold to the market to which the dairy operation normally delivers whole milk and receives a monetary amount.

MILC means the Milk Income Loss Contract program or the form upon which CCC and the producer agree to the terms of the payment to be made under the MILC program.

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

Milk marketing means a marketing of milk for which there is a verifiable sales or delivery record of milk marketed for commercial use.

Participating State means each of the 50 States in the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico, or any other territory or possession of the United States.

Payment pounds means the pounds of milk production for which an operation 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, a citizen of, or legal resident alien in the United States, and who directly or indirectly, as determined by the Secretary, shares in the risk of producing milk, and makes contributions (including land, labor, management, equipment, or capital) to the dairy farming operation of the individual or entity that are at least commensurate with the share of the individual or entity of the proceeds of this operation.

United States means the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico, or any other territory or possession of the United States.

Verifiable production records means evidence that is used to substantiate the amount of production marketed and that can be verified by CCC through an independent source.

[67 FR 64476, Oct. 18, 2002, as amended at 71 FR 19622, Apr. 17, 2006; 73 FR 73776, Dec. 4, 2008]

§ 1430.203 Eligibility.

To be eligible to receive payments under this subpart, a dairy operation must:

(a) Have produced milk in the United States and commercially marketed the milk produced anytime during the period of October 1, 2007, through September 30, 2012;

(b) Enter into a MILC during the contract application period;

(c) Agree to all terms and conditions in the MILC and those that are otherwise contained in this subpart and comply with instructions issued by CCC;

(d) Provide proof of monthly milk production commercially marketed by all persons in the dairy operation during the contract period, to determine the total pounds of milk that will be converted to hundredweight (cwt.) used for payment;

(e) Submit timely production evidence according to § 1430.209;

(f) Be actively engaged in the business of producing and marketing agricultural products anytime during the period of October 1, 2007, through September 30, 2012;

(g) Meet all adjusted gross income eligibility requirements of part 1400 of

this chapter as regards any person or entity seeking to receive payment under this part. No person or entity may, generally, receive any payment for FY 2009 marketings and subsequent marketings if their nonfarm yearly income for the relevant base period for the relevant marketings as determined under the adjusted gross income rules (as in effect when the payment is sought) is over \$500,000 as determined under this subpart. Further, for entities an otherwise due payment will be reduced commensurately to the extent that any person with an interest in the entity, as determined under the adjusted gross income rules had such income over that limit for the relevant period;

(h) Have submitted a contract during the applicable contract period for FYs 2008 through 2012:

(1) Except for 2009, and subject to the start month provision of §1430.205, must have for any fiscal year or month for which payment is sought to be paid submitted the FY 2008 through 2012 contract before the end of that fiscal year or month or

(2) For FY 2008 payments, if payments are generated under this part for that fiscal year, must have submitted a contract for the FY 2008 through 2012 program by October 1, 2009 and for FY 2009 the contract must have been submitted by the month for which payment is first sought except to the extent that §1430.205 explicitly permits the operation to pick a start month in advance of the month in which the contract is submitted; and

(i) Must not, if it did not participate in the preceding MILC program for fiscal years prior to FY 2008, be affiliated with any other dairy operation.

[67 FR 64476, Oct. 18, 2002, as amended at 71 FR 19622, Apr. 17, 2006; 73 FR 73766, Dec. 4, 2008]

§ 1430.204 Requesting benefits.

(a) A request for benefits or contract application, under this subpart must be submitted on a form as prescribed by the Agency. Contract applications shall be submitted to the FSA office serving the county where the dairy operation is located. Contract applications must be received by FSA by the close of business on the date estab-

lished by the Deputy Administrator. Contract applications received after such date shall be disapproved.

(b) The dairy operation requesting MILC benefits must certify the accuracy and truthfulness of the information in their contract application. All information provided is subject to verification by CCC. Refusal to allow CCC or any other agency of the Department to verify any information provided will result in disapproval.

(c) Contract applications will be approved by execution by FSA and producer of a MILC. All persons who share in the risk of a dairy operation's total production must sign and certify the contract application.

§ 1430.205 Selection of starting month.

(a) A dairy operation that enters into a MILC contract with CCC must designate the starting month for each fiscal year for the calculation of payments and pound limits for the operation. Once a start month is chosen for a fiscal year the corresponding month will be the start month for each subsequent fiscal year unless changed by an affirmative request in writing on a form approved by CCC. The production start month must be selected on or before the 14th of the month before the month for which payment is sought. If such date falls on a weekend, the start month selection must be made on the last business day preceding the weekend. A dairy operation cannot select as the start month for payment a month which:

(1) Has already begun, except as provided in paragraph (c)(1) of this section;

(2) Has already passed; or

(3) During which no milk production was produced by the dairy operation.

(b) For FY 2009, if the operation signs its FY 2008 through 2012 MILC contract within 30 days of the beginning of the application period it can pick any preceding FY 2009 month as its start month for that period or can use the normal rule of paragraph (c) of this section to pick the start month.

(c) Except as provided in paragraph (b) of this section, the start month for a fiscal year may only be

§ 1430.206

(1) For the fiscal year in which the contract is submitted, the month the contract is submitted or

(2) For a fiscal year that has not yet begun, any month, provided that a month may not be selected after the 14th of the preceding month.

(d) Dairy operations may change the production start month on or before the 14th day of the month previously selected.

(e) If a change of the production starting month is not made by the dates required by paragraph (d) of this section, the MILC production starting month cannot be changed until the next fiscal year. If the selected MILC production starting month is never modified, it will remain the same throughout the duration of the contract.

(f) MILC payments will be made consecutively to the dairy operation on a monthly basis after the production starting month has been designated until the earlier of the following:

(1) Payment quantity is reached in accordance with § 1430.207; or

(2) The end of the applicable fiscal year.

(g)(1) MILC production start month selections made during the signup period designated by CCC may be made as provided in paragraph (b) of this section, otherwise MILC production start month selections must be made in accordance with paragraph (c) of this section. If a payment rate is not in effect during the production start month selected by the dairy operation, payments to the dairy operation will be issued based on the next consecutive month with a payment rate in effect following the MILC production start month selected by the dairy operation. Production in months in which the pay formula does not produce a payment will not count against the fiscal year's poundage limit for the operation.

(2) Dairy operations with MILC production start months that begin with the month a MILC contract is submitted to FSA or that begin with the first month of the fiscal year with an effective payment rate will receive payments made by CCC consecutively on a monthly basis, if otherwise provided for in this part, until the earlier of the following:

7 CFR Ch. XIV (1–1–25 Edition)

(i) The maximum payment quantity for the fiscal year or month is reached as determined in accordance with § 1430.207 or

(ii) The end of the applicable fiscal year.

(h) All producers involved in the dairy operation must agree to the month designated. The dairy operation assumes the risk of not reaching the maximum payment quantity based on the month selected by the dairy operation. Payments will not be issued for past months for the sole purpose of reaching the maximum payment quantity.

[71 FR 19622, Apr. 17, 2006, as amended at 73 FR 73766, Dec. 4, 2008]

§ 1430.206 [Reserved]

§ 1430.207 Dairy operation payment quantity.

(a) The applicant's payment quantity of milk will be determined by CCC, based on the quantity of milk that was produced and commercially marketed by each dairy operation per fiscal year.

(b) The maximum quantity of eligible production for which dairy operations, per separate and distinct operation, are eligible for payment per fiscal year under this subpart will be:

(1) 2,400,000 pounds (24,000 cwt.) for FY 2008 (October 1, 2007, through September 30, 2008);

(2) 2,985,000 pounds (29,850 cwt.) for FY 2009 (October 1, 2008 through September 30, 2009), FY 2010 (October 1, 2009, through September 30, 2010), FY 2011 (October 1, 2010, through September 30, 2011) and FY 2012 (October 1, 2011, through September 30, 2012), provided further an operation may receive payment for September, 2012, marketings only if its pre-September FY 2012 marketings did not exceed 2,400,000 pounds in which case new marketings that would not put the operation's FY 2012 marketings over 2,400,000 pounds will be eligible for payments otherwise permitted in this rule.

(c) In accordance with these regulations, the Deputy Administrator will determine what is a separate and distinct operation. That decision will be final

[67 FR 64476, Oct. 18, 2002, as amended at 73 FR 73767, Dec. 4, 2008]

§ 1430.208 Payment rate and dairy operation payment.

(a) Payments under this subpart may be made to dairy operations when the Boston Class I milk price under the applicable Federal milk marketing order is below \$16.94 per cwt. No payments will be made to dairy operations for marketings during the months that the Boston Class I milk price under the applicable milk marketing order is equal to or exceeds \$16.94.

(b) A per-hundredweight payment rate will be determined for the applicable month by:

(1) Subtracting from \$16.94 the Class I milk price per cwt. in Boston;

(2) Multiplying the difference by 34 percent for marketings during the period beginning on October 1, 2007, and ending on September 30, 2008;

(3) Multiplying the difference by 45 percent for marketings during the period beginning on October 1, 2008, and ending on August 31, 2012; and

(4) Multiplying the difference by 34 percent for marketings in September 2012.

(c) The payment rate as calculated as specified in paragraph (b) of this section, will be adjusted to compensate for feed prices when the National Average Dairy Feed Ration Cost for a month is greater than the levels set in paragraphs (c)(1) and (c)(2) of this section. The National Average Dairy Feed Ration Cost per cwt. for each month will be calculated using the same procedures used to calculate the feed components of the estimated price of 16 percent Mixed Dairy Feed per pound noted on page 33 of the USDA monthly Agricultural Prices publication (including the data and factors noted in footnote 4). The payment rate adjustment for Entire Month feed prices will be determined by increasing \$16.94 by the percentage that is 45 percent of the percentage by which the National Average Dairy Feed Ration Cost exceeds \$7.35 per cwt. (except that \$7.35 will be \$9.50 for September 2012 marketings.)

(d) Each eligible dairy operation payment will be calculated, as determined by the Secretary, by:

(1) Converting whole pounds of milk to hundredweight and

(2) Multiplying the payment rate determined in paragraphs (b) and (c) of

this section by the quantity of eligible production marketed by the operation during the applicable month as determined according to § 1430.205 and other provisions of this subpart.

(3) Payments to dairy operations will be based on calculated payment rates rounded seven places to the right of the decimal.

(e) Payments under this subpart may be made to a dairy operation only up to the maximum production limitations set in § 1430.207(b) of eligible production per applicable fiscal year.

(f) Dairy operations receiving benefits under this subpart, will receive earned payments on a monthly basis according to the MILC contract, to the extent practicable, not later than 60 days after the later of production evidence and all supporting documents for the applicable month are received by CCC or the entire month National Average Dairy Feed Ration Cost is made available by USDA, as applicable. Payments issued by CCC more than 60 days after the later of all production evidence and supporting documentation are received by CCC or the entire month National Average Dairy Feed Ration Cost is made available by USDA, whichever is later, will be subject to prompt payment interest as allowed by law. However, CCC will endeavor where possible to make payments within 60 days of the end of the marketing month.

[67 FR 64476, Oct. 18, 2002, as amended at 71 FR 19623, Apr. 17, 2006; 72 FR 48231, Aug. 23, 2007; 73 FR 73767, Dec. 4, 2008]

§ 1430.209 Proof of market loss production.

(a) A dairy operation entering into a MILC must, based on instructions issued by the Deputy Administrator, provide adequate proof of the dairy operation's eligible production during the months of each fiscal year designated in the MILC. The dairy operation must also provide proof that the eligible production was commercially marketed during the months beginning October 1, 2007, and ending September 30, 2012. Evidence of milk production claimed for payment shall be provided to CCC with supporting documentation under paragraph (b) of this section. All information provided is subject to

§ 1430.210

verification, spot check and audit by FSA. Further verification information may be obtained from the dairy operation's milk handler or marketing cooperative if deemed necessary by CCC to verify provided information. Refusal to allow a representative of CCC or any other agency of the Department of Agriculture to verify any information provided will result in a determination of ineligibility for benefits under this subpart.

(b) Eligible dairy operations marketing milk during the period specified in the MILC shall provide any available supporting documents from all producers in the dairy operation to assist CCC in verifying that the dairy operation produced and marketed milk commercially from the designated starting month and thereafter. Examples of supporting documentation include, but are not limited to: milk marketing payment stubs, tank records, milk handler records, daily milk marketings, copies of any payments received as compensation from other sources, or any other documents available to confirm the production and production history of the dairy operation. Producers may also be required to allow CCC to examine the herd of cattle as production evidence. If supporting documentation requested is not presented to CCC or FSA, the request for MILC benefits will be disapproved.

[67 FR 64476, Oct. 18, 2002, as amended at 71 FR 19623, Apr. 17, 2006; 73 FR 73767, Dec. 4, 2008]

§ 1430.210 MILC agents.

(a) MILC benefits may be disbursed by a dairy marketing cooperative that serves special groups or communities, such as an Amish or Mennonite community. Producers in such groups in a dairy operation may authorize an agent of a dairy cooperative or milk handler affiliated with such cooperative to obtain and disburse MILC benefits to the dairy operation.

(b) The authorized MILC agent must on behalf of the dairy operation do the following:

(1) Obtain an acceptable power of attorney or acceptable equivalent for the producers of the dairy operation that

7 CFR Ch. XIV (1–1–25 Edition)

authorizes the agent to enter into an MILC contract;

(2) Enter into a written agreement with CCC for approval to act as a MILC agent on a form prescribed by CCC;

(3) Provide the dairy operation's monthly production evidence to the appropriate FSA office;

(4) Disburse payment to the dairy operation in the producer's monthly milk check or in an otherwise approved manner.

§ 1430.211 Duration of contracts.

(a) Except as provided in § 1430.205, or elsewhere in this subpart, a MILC entered into by producers in a dairy operation shall cover eligible production marketed by the producers in the dairy operation during the period beginning with the first day of the month the producers in the dairy operation enter into an MILC and ending on September 30, 2012.

(b) If a dairy goes out of business during the contract period, the MILC will be terminated immediately, except as applicable to earned payments.

[67 FR 64476, Oct. 18, 2002, as amended at 71 FR 19623, Apr. 17, 2006; 73 FR 73768, Dec. 4, 2008]

§ 1430.212 Contract modifications and statutory changes in program.

(a) Producers in a dairy operation must notify FSA immediately of any changes that may affect their MILC. Changes include, but are not limited to changes to the starting month to receive payment for the next fiscal year, death of producer on the contract, new member joining the operation, member exiting the operation, transfer of shares by sale or other transfer action, or farm reconstitutions undertaken in accordance with § 1430.213.

(b) CCC may modify an MILC if such modifications are desirable to carry out purposes of the program or to facilitate the program's administration.

(c) Payments otherwise due under this subpart or the program will be adjusted or denied to the extent provided for by a statutory change in program eligibilities or requirements of any kind irrespective of whether the program contract preceded the statutory change. Operations will be given the

Commodity Credit Corporation, USDA

§ 1430.214

option of accepting the changes or terminating the contract.

[67 FR 64476, Oct. 18, 2002, as amended at 73 FR 73768, Dec. 4, 2008]

§ 1430.213 Reconstitutions.

(a) A dairy operation receiving MILC benefits may reorganize or restructure such that the constitution or makeup of its operation is reconstituted in another organizational framework. However, any operation that reorganizes or restructures after October 1, 2007, is subject to a review by FSA to determine if the operation was reorganized or restructured for the sole purpose of receiving multiple or additional MILC payments.

(b) A dairy operation that FSA determines has reorganized solely to receive additional MILC payments will be in violation of its contract and dealt in accordance with § 1430.214.

(c) If during the contract period a change in the dairy operation occurs, the modification to the MILC will not take effect until the first day of the fiscal year following the month FSA received notification of the changes. Changes include but are not limited to any producer affiliated with a dairy operation that has an approved MILC with CCC forming a new dairy operation that is not formed solely to receive additional MILC payments.

(d) Changes resulting in the following will take effect immediately upon notification to CCC, in accordance with § 1430.212:

(1) Increases or reductions of shareholders or producers and their corresponding share amounts in the dairy operation; or

(2) Purchases of a new dairy operation by a producer or producers not affiliated with an existing dairy operation that has an approved MILC with CCC.

[67 FR 64476, Oct. 18, 2002, as amended at 73 FR 73768, Dec. 4, 2008]

§ 1430.214 Violations.

(a) If producers in a dairy operation violates the MILC or the requirements of this subpart, CCC may:

(1) Terminate the MILC for the remainder of the fiscal year in which the violation occurs, and allow the pro-

ducer to retain any payments received under the contract; or

(2) Allow the MILC to remain in effect and require the producer to repay a portion of the payments received commensurate with the violation's severity, as CCC determines.

(3) If the MILC is terminated under this section, the participant shall forfeit all rights to further MILC benefits and shall refund all or part of the payments received as CCC determines appropriate.

(4) A producer or operation with a violation, as determined by CCC, shall refund all MILC funds disbursed under of this part. The remedies provided in this subpart shall be in addition to other civil, criminal, or administrative remedies which may apply.

(b) A MILC is violated by the following actions:

(1) Failure to comply with the terms and conditions of the MILC and addendum;

(2) Reconstitutions of the dairy operation for the sole purpose of receiving multiple program benefits;

(3) Failure to comply with highly erodible land conservation and wetland provisions of this 7 CFR part 12 or their successor regulations;

(4) Failure to meet the definition of a dairy operation according to § 1430.202;

(5) Any action that tends to defeat the purpose of the program, as CCC determines.

(c) The Deputy Administrator for Farm Programs (DAFP) of the Farm Service Agency may terminate any MILC by mutual agreement upon request of the participant if DAFP determines that termination is in the best interest of the public.

(d) The DAFP may determine that failure of the dairy operation to perform the MILC does not warrant termination and may require the participant to refund part of the payments received or accept adjustments in the payment as the DAFP determines to be appropriate.

§ 1430.215

§ 1430.215 [Reserved]

§ 1430.216 Contracts not in conformity with regulations.

If it is discovered that an MILC contract does not comply with this subpart as the result of a misunderstanding by someone who has signed the contract, the contract may be modified by mutual agreement. If the parties to the MILC cannot reach agreement for such modification, it shall be terminated and all payments paid or payable under the contract shall be forfeited or refunded to CCC, except as may otherwise be allowed under § 1430.214.

§ 1430.217 Offsets and withholdings.

CCC may offset or withhold any amount due CCC under this subpart under the provisions of part 1403 of this chapter or any successor regulations.

§ 1430.218 Assignments.

Any producer may assign a payment to be made under this part in accordance with part 1404 of this chapter or successor regulations as designated by the Department.

§ 1430.219 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this subpart may request reconsideration or appeal of such determination under part 11 or 780 of this title.

§ 1430.220 Misrepresentation and scheme or device.

(a) A dairy operation shall be ineligible for the MILC program if FSA determines that it knowingly:

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

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a determination under this program. CCC will take steps deemed necessary to protect the interests of the government.

(b) Any funds disbursed to a producer or operation engaged in a misrepresentation, scheme, or device, shall be refunded to CCC. The remedies provided in this subpart shall be in addition to

7 CFR Ch. XIV (1-1-25 Edition)

other civil, criminal, or administrative remedies which may apply.

§ 1430.221 Estates, trusts, and minors.

(a) Program documents executed by producers legally authorized to represent estates or trusts will be accepted only if such producers furnish evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible for assistance under this part must also:

(1) Establish that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) Show that a guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) Furnish a bond under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1430.222 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance or dissolution of a producer that is eligible to receive benefits under this part, such persons as are specified in part 707 of this title may receive such benefits, as determined appropriate by FSA.

§ 1430.223 Maintenance and inspection of records.

(a) Producers approved for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein, as may be requested by CCC or FSA. Such records and accounts must be retained for 3 years after the date of payment to the dairy operation under this program. Destruction of the records 3 years after the date of payment shall be the risk of the party undertaking the destruction.

(b) At all times during regular business hours, authorized representatives of CCC, the Department, or the Comptroller General of the United States shall have access to the premises of the dairy operation in order to inspect the herd of cattle, examine, and make copies of the books, records, and accounts,

Commodity Credit Corporation, USDA

§ 1430.301

and other written data as specified in paragraph (a) of this section.

(c) Any funds disbursed pursuant to this part to any producers or operation who does not comply with the provisions of paragraphs (a) or (b) of this section, or who otherwise receives a payment for which they are not eligible, shall be refunded with interest.

§ 1430.224 Refunds; joint and several liability.

(a) In the event of an error on a MILC application, a failure to comply with any term, requirement, or condition for payment arising under the MILC application, or this subpart, all improper payments shall be refunded to CCC together with interest from the date payment was received through the date the refund is received by CCC.

(b) All producers signing a dairy operation's application for payment as having an interest in the operation shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the contract application and addendum or this part for such operation.

§ 1430.225 Violations of highly erodible land and wetland conservation provisions.

The provisions of part 12 of this title apply to this part.

§ 1430.226 Violations regarding controlled substances.

The provisions of § 718.11 of this title apply to this part.

Subpart C—Dairy Product Donation Program

SOURCE: 79 FR 51468, Aug. 29, 2014, unless otherwise noted.

§ 1430.300 Administration, purpose, and funding.

(a) The regulations in this subpart apply for the Dairy Product Donation Program (DPDP). DPDP is authorized by section 1431 of the Agricultural Act of 2014 (Pub. L. 113-79, 7 U.S.C. 9071).

(b) DPDP is designed to address low dairy producer margins, through periodic purchases of dairy products, as specified in this subpart. Dairy prod-

ucts purchased for DPDP will be used to provide nutritional assistance to members of low-income groups.

(c) The purchase aspect of DPDP will be operated for the Secretary of Agriculture and for the Commodity Credit Corporation by the Farm Service Agency (FSA) under the direction of the FSA's Deputy Administrator for Commodity Operations. Purchases are subject to the terms and conditions in FSA's purchase announcements. The distribution of products purchased through DPDP will be operated for the Secretary under the direction of the Food and Nutrition Service.

§ 1430.301 Definitions.

For purposes of this subpart, the following terms and acronyms apply:

2014 Farm Bill means the Agricultural Act of 2014 (Pub. L. No. 113-79).

Actual dairy production margin is as defined in subpart A of this part.

AMS means the Agricultural Marketing Service of the USDA.

CCC means the Commodity Credit Corporation.

Deputy Administrator means the Farm Service Agency Deputy Administrator for Commodity Operations.

Distribution means the provision of products purchased through DPDP to low-income groups through FNS food distribution programs in accordance with those program regulations and 7 CFR part 250.

DPDP means the Dairy Product Donation Program.

FNS means the Food and Nutrition Service of the USDA.

FSA means the Farm Service Agency of the USDA.

FSA Administrator means Administrator of the Farm Service Agency, USDA.

Hundredweight or cwt means 100 pounds.

MPP-Dairy means the Margin Protection Program for Dairy provided for in subpart A of this part.

NDM means non-fat dry milk.

Recipient agencies means agencies or organizations that are eligible to receive donated product for distribution under this subpart.

USDA means the United States Department of Agriculture.

§ 1430.302

7 CFR Ch. XIV (1–1–25 Edition)

§ 1430.302 Commencement and termination of DPDP purchases.

(a) DPDP purchases commence only if approved by the FSA Administrator under the provisions of this subpart. The FSA Administrator will approve DPDP purchases only if the actual

dairy production margin has been \$4 or less per cwt for each of the preceding 2 months. The actual dairy production margin will be calculated as specified in §1430.110. The following chart shows an example of the timing for the determination of DPDP purchases.

DPDP PURCHASE DETERMINATION EXAMPLE BASED ON DAIRY PRODUCTION MARGINS AND 3-MONTH MAXIMUM FOR PURCHASES¹

2 Consecutive months	Calculate margin for 2 consecutive months ²	If both margins below \$4 per cwt in the 2 consecutive months	3-Month maximum consideration	If either margin above \$4 per cwt in the 2 consecutive months
January and February.	March	Dairy product purchases ³ begin in April.	1st month of purchases	No purchases.
February and March.	April	Dairy product purchases ³ begin in May.	2nd consecutive month of purchases.	No purchases.
March and April	May	Dairy product purchases ³ begin in June.	3rd consecutive month of purchases.	No purchases.
April and May	June ⁴	No purchases; terminated after 3 consecutive months.	3-month maximum reached (1st month off).	No purchases.
May and June	July	No purchases; terminated after 3 consecutive months.	3-month maximum reached (2nd month off).	No purchases.
June and July	August	No purchases; terminated after 3 consecutive months.	3-month maximum reached (3rd month off).	No purchases.
July and August	September	Dairy product purchases ³ begin in October.	1st month of purchases	No purchases.
August and September.	October	Dairy product purchases ³ begin in November.	2nd consecutive month of purchases.	No purchases.
September and October.	November	Dairy product purchases ³ begin in December.	3rd consecutive month of purchases.	No purchases.
October and November.	December	No purchases; terminated after 3 consecutive months.	3-month maximum reached (1st month off).	No purchases.
November and December.	January	No purchases; terminated after 3 consecutive months.	3-month maximum reached (1st month off).	No purchases.

¹ This example assumes that purchases begin in January. In reality, DPDP can—depending on prices and margin triggers—begin on September 1, 2014, which is the start of MPP-Dairy.

² The full month data for a given month is available at the end of the following month. For example, January data are not available until the end of February.

³ Purchases cannot begin unless domestic cheddar cheese or nonfat dry milk prices are at certain differentials relative to world prices.

⁴ In the example, June is the 3rd month of consecutive purchases. June would not be calculated as a potential trigger month, but it is shown on the chart to clearly show the concept of 3 months on and 3 months off for purchases. If purchases are taking place during a month, that month cannot be used as a trigger month for a future purchase period.

(b) DPDP purchases terminate and are not reinstated until the condition specified in paragraph (a) of this section is again met, whenever any one of the following occurs:

(1) If purchases were made for the preceding 3 months, even if the actual dairy production margin remains \$4 or less per cwt of milk.

(2) If the actual dairy production margin has been greater than \$4 per cwt of milk for the immediately preceding month.

(3) If the actual dairy production margin has been \$4 or less, but more than \$3, per cwt for the immediately

preceding month and during the same month —

(i) The price in the United States for cheddar cheese was more than 5 percent above the world price, or

(ii) The price in the United States for non-fat dry milk (NDM) was more than 5 percent above the world price of skim milk powder.

(4) If the actual dairy production margin has been \$3 or less per cwt of milk for the immediately preceding month and during the same month —

(i) The price in the United States for cheddar cheese was more than 7 percent above the world price; or

Commodity Credit Corporation, USDA

§ 1430.400

(ii) The price in the United States for NDM was more than 7 percent above the world price of skim milk powder.

(c) Purchases will terminate beginning with the first day of any month that does not qualify for DPDP purchases.

(d) For calculations under paragraphs (b)(3) and (4) of this section, the FSA Administrator may use data from a single or multiple locales or markets, including weighted averages, in consultation with AMS or other USDA agencies.

§ 1430.303 DPDP purchases.

(a) DPDP purchases will be made only for those months that the FSA Administrator has determined meet all the requirements specified in § 1430.302. The purchases are subject to DPDP requirements including price and quantity restrictions specified in this subpart.

(b) The Secretary has the authority to determine purchase and distribution methods for dairy product purchases and distribution. Unless otherwise determined by the Secretary, this authority is delegated to the Deputy Administrator in consultation with FNS.

(c) FSA and FNS will determine the types and quantities of products that will be purchased, in consultation with public or private nonprofit organizations and State and local agencies eligible to receive such products.

(d) The FSA Administrator will determine the quantity of purchases to be made for a qualifying month and will consider the results of any consultations in determining the quantity to be purchased. In making the determination, the FSA Administrator will also take into account a number of factors, including, but not limited to, dairy product market conditions, logistical considerations involved in the efficient and immediate distribution of the dairy products, the potential effect on markets and margins, time constraints of DPDP, and the cost effectiveness of the purchases. Approved quantities for a month will not exceed the amount of product that may be effectively distributed without waste.

(e) Purchases may be approved for a qualifying month to the extent that

the purchase by FSA can reasonably be expected to be completed in that calendar month and the products delivered to recipient agencies within 90 days.

(f) DPDP purchases cannot be stored by or for CCC, and CCC cannot incur storage costs on behalf of recipient agencies for the dairy products.

(g) The purchase price of products will be the prevailing market price for like dairy products for private buyers as determined by the Deputy Administrator. That price may be, if approved by the Deputy Administrator, the price determined by the normal procurement methods used to procure foods for FNS domestic food assistance programs, if the dairy products are obtained that way.

§ 1430.304 Distribution of DPDP purchased products.

(a) Purchased products will be distributed to private and public nonprofit organizations eligible to receive donated foods for distribution to low-income groups through FNS' food distribution programs as specified in FNS program regulations and the requirements in 7 CFR part 250.

(b) Public and private nonprofit organizations receiving donated dairy products under this section will be responsible for the proper handling and distribution of such products in accordance with FNS program regulations, 7 CFR part 250, and FNS guidance and instructions.

(c) A private or nonprofit organization agency receiving donated products under this section which improperly distributes or uses such product or causes loss of or damage to such product, will be subject to recovery of losses or other corrective action in accordance with FNS program regulations, 7 CFR part 250.

Subpart D—Dairy Margin Coverage Program

SOURCE: 84 FR 28176, June 18, 2019, unless otherwise noted.

§ 1430.400 Purpose.

The regulations in this subpart apply to the Dairy Margin Coverage (DMC)

§ 1430.401

7 CFR Ch. XIV (1–1–25 Edition)

Program that replaces the Margin Protection Program for Dairy (MPP-Dairy) in subpart A. The purpose of DMC is to provide eligible dairy producers risk protection against low margins resulting from a combination of low milk prices and high feed costs.

§ 1430.401 Administration.

(a) The DMC Program is administered by the Farm Service Agency (FSA) under the general supervision of the Executive Vice President, CCC, or a designee, and will be carried out by FSA State and county committees and employees.

(b) FSA State and county committees, and their employees may not waive or modify any requirement of this subpart, except as provided in paragraph (e) of this section.

(c) The State committee will take any action required when not taken by the county committee, require correction of actions not in compliance, or require the withholding of any action that is not in compliance with this subpart.

(d) The Executive Vice President, CCC, or a designee, may determine any question arising under the program or reverse or modify any decision of the State or county committee.

(e) The Deputy Administrator, Farm Programs, FSA, may waive or modify non-statutory program deadlines when failure to meet such deadline does not adversely affect the operation of the DMC Program.

(f) A representative of CCC may execute a contract for participation in the DMC Program and related documents under the terms and conditions determined and announced by the Deputy Administrator on behalf of CCC. Any document not under such terms and conditions, including any purported execution before the date authorized by CCC, will be null and void.

§ 1430.402 Definitions.

The definitions in this section apply for all purposes of administering the DMC Program.

Actual dairy production margin means the difference between the all-milk price and the average feed cost, as calculated under § 1430.411. If the calculation

would produce a negative number, the margin is considered to be zero.

Adjusted base production history means the production history determined under this subpart for a participating dairy operation with production of less than 5 million pounds that is adjusted according to this subpart.

Administrative county office means the county FSA office designated to make determinations, handle official records, and issue payments for the producer in accordance with 7 CFR part 718.

All-milk price means the national average price received, per hundredweight of milk, by dairy operations for all milk sold to dairy plants and milk dealers in the United States, as determined by the Secretary.

AMS means the Agricultural Marketing Service of USDA.

Annual election period for DMC means the period, each calendar year, established by the Deputy Administrator, for a dairy operation to register to participate in DMC for the following coverage year, pay associated administrative fees, and make coverage elections for an applicable calendar year.

Average feed cost means the national average cost of feed used by a dairy operation to produce a hundredweight of milk, as determined under the provisions of this subpart.

Beginning farmer or rancher means an individual or entity who has both not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years; and materially and substantially participates in the operation of the farm or ranch. For legal entities to be considered a beginning farmer or rancher, all members must be related by blood or marriage; and all the members must be beginning farmers or ranchers.

Buy up coverage means dairy margin coverage for a margin protection level above \$4 per hundredweight of milk.

Calendar year means the year beginning with January 1 and ending the following December 31.

Catastrophic level coverage means \$4 per cwt margin protection coverage and a coverage percentage of 95 percent, with no premium assessed.

CCC means the Commodity Credit Corporation of USDA.

Commodity Credit Corporation, USDA

§ 1430.402

Commercially marketed means selling whole milk to either the market to which the dairy operation normally delivers or other similar markets and receives monetary compensation.

Contract means the terms and conditions to participate in the DMC Program as executed on a form prescribed by CCC and required to be completed by the producers in the dairy operation and accepted by CCC, including any contract modifications made in an annual election period before coverage for the applicable calendar year commences.

Covered production history is equal to the production history of the operation multiplied by the coverage percentage selected by the participating dairy operation.

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 margin coverage (or DMC) means the dairy margin coverage program for dairy producers established under this subpart.

Dairy margin coverage payment (DMC payment) means a payment made to a participating dairy operation under the DMC Program under the terms of this subpart.

Dairy operation means, as determined by the Deputy Administrator, and subject to conditions that the Deputy Administrator may impose to advance the achievement of the purposes of the DMC Program, any one or more dairy producers that produce and market milk commercially produced from cows as a single unit in which each dairy producer:

- (1) Shares in the pooling of resources under a common ownership structure;
- (2) Is at risk in the production of milk in the dairy operation;
- (3) Contributes land, labor, management, equipment, or capital to the dairy operation that are at least commensurate to the producer's share in the operation; and
- (4) Has production facilities located in the United States.

Deputy Administrator means the Deputy Administrator for Farm Programs, Farm Service Agency, or designee.

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

Handler or producer handler means the initial individual or entity making payment to a dairy operation for milk produced in the United States and marketed for commercial use.

Hundredweight or *cwt* means 100 pounds.

Limited resource farmer or rancher means a farmer or rancher that is a person with both:

(1) Direct or indirect gross farm sales not more than an amount determined by FSA in each of the previous 2 years; and

(2) A total household income at or below the national poverty level for a family of four or less than 50 percent of county median household income in each of the previous 2 years.

Milk Income Loss Contract Program or *MILC* means the program established under section 1506 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8773) and the regulations in part 1430, subpart B of this part.

Milk marketing means a sale of milk for which there is a verifiable production record for milk commercially marketed.

NASS means the National Agricultural Statistics Service of USDA.

New operation means a dairy operation that:

(1) Did not establish a production history under the MPP-Dairy;

(2) Has less than 12 full months in a calendar year of commercial milk marketings produced by the dairy operation; and

(3) Started commercially marketing milk within 60 days of submitting a contract application under DMC.

Open enrollment period for DMC means the period, each calendar year, established by the Deputy Administrator, for a participating dairy operation to either register to participate in the DMC Program, pay associated administrative fees, if applicable, and applicable premiums, or to make annual coverage elections for an applicable calendar year of participation.

Participating dairy operation means a dairy operation that signs up to participate in the DMC Program under this part.

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, a citizen of, or legal resident alien in the United States, and who directly, or indirectly:

- (1) Shares in the risk of producing milk, and
 - (2) Makes contributions including land, labor, management, equipment, or capital:
- (i) To the dairy operation at least commensurate to the producer's share of the operation, or
 - (ii) To the dairy operation of the individual or entity, as determined by the Deputy Administrator.

Production history means the production history determined for a participating dairy operation under this subpart when the participating dairy operation first registers to participate in DMC or previously established under MPP-Dairy, as determined under the provisions of this subpart.

RMA means the Risk Management Agency of USDA.

Secretary means the Secretary of USDA.

Socially disadvantaged farmer or rancher means a farmer or rancher who is a member of a group whose members have been subject to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. Groups include: American Indians or Alaskan Natives, Asians or Asian Americans, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women. For legal entities requesting to be considered Socially Disadvantaged, the majority interest must be held by socially disadvantaged individuals.

Supplemental production history means the production history determined according to a formula using actual 2019 marketings, as authorized by the Consolidated Appropriations Act, 2021 (Pub. L. 116–260) for coverage years 2021, 2022, and 2023, for dairy operations enrolled in DMC with less than 5 million pounds of production.

United States means, unless the context suggests otherwise, the 50 States of the United States of America, the

District of Columbia, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, and any other territory or possession of the United States.

USDA means the U.S. Department of Agriculture.

Verifiable production records means evidence that is used to substantiate the amount of production marketed and that can be verified by CCC through an independent source.

Veteran farmer or rancher means a person who has served in the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components, and who has not operated a farm or ranch; has operated a farm or ranch but not for more than 10 years total, since becoming a veteran; or has obtained status as a veteran during the most recent 10-year period. A legal entity or joint operation will be considered a veteran farmer or rancher entity, if all members meet this definition.

[84 FR 28176, June 18, 2019, as amended at 86 FR 70707, Dec. 13, 2021; 89 FR 14375, Feb. 27, 2024]

§ 1430.403 Eligible dairy operations.

(a) In order for a dairy operation to be eligible to register for DMC and receive payments, such dairy operation must:

(1) Produce milk from cows in the United States that is marketed commercially at the time of each annual election for an applicable coverage year in DMC, except that dairy operations that have stopped producing and marketing milk in any month before or during the annual coverage election period for 2019 and 2024 are eligible for only those applicable months;

(2) Submit accurate and complete information as required by this subpart;

(3) Provide proof of milk production marketed commercially by all persons in the dairy operation to establish production history;

(4) Pay required administrative fees for participation in DMC as specified in this subpart and any premiums, if applicable, as specified in this subpart.

(b) A person or entity covered by §1400.401 of this chapter (hereafter

Commodity Credit Corporation, USDA

§ 1430.404

“foreign person”) must meet the eligibility requirements in that section to receive payments under this subpart. A dairy operation with ineligible foreign persons as members will have any payment reduced by the proportional share of such members.

(c) Federal agencies and States, including all agencies and political subdivisions of a State, are not eligible for payments under this subpart.

(d) A single dairy operation operated by more than one dairy producer will be treated as a single dairy operation for purposes of participating in DMC and can only submit one application. If a producer owns more than one eligible dairy operation in which each operation is separate and distinct from each other, such dairy producer may be eligible to participate separately for each dairy operation, however, each eligible dairy operation must be separately registered, as specified in § 1430.404.

(e) The Deputy Administrator or designee will determine additional dairy operations that operate in a manner that are separate and distinct from each other according to paragraph (d) of this section and which may, as determined by the Deputy Administrator, be considered an operation even though they may not meet the conditions otherwise imposed in this definition. Also, the Deputy Administrator may require operations to be combined and considered one operation when there is close interest by family or otherwise between two operations, to avoid schemes or devices, or otherwise. Likewise, the Deputy Administrator may consider other factors as are deemed appropriate to adjust what is considered a dairy operation to conform with the DMC Program requirements in an equitable manner, including taking into account a dairy's status under MPP-Dairy and the Milk Income Loss Contract Program formerly operated under this part.

(f) Dairy operation eligibility for adjusted based production history requires the dairy operation to be enrolled in DMC for the applicable calendar year. Dairy operations with less than 5 million pounds of DMC produc-

tion history are eligible for adjusted based production history.

[84 FR 28176, June 18, 2019, as amended at 86 FR 70707, Dec. 13, 2021; 89 FR 14375, Feb. 27, 2024; 89 FR 39540, May 9, 2024]

§ 1430.404 Time and method of registration and annual election.

(a) A dairy operation may register to participate in DMC by establishing a production history and, if eligible, adjusted base production history, according to § 1430.405 on a form prescribed by CCC and also submitting a contract prescribed by CCC. Dairy operations may obtain a contract in person, by mail, or by facsimile from any FSA county office. In addition, dairy operations may download a copy of the forms at <https://www.sc.egov.usda.gov>.

(b) A dairy operation must submit completed contracts and any other supporting documentation, during the annual election period established by the Deputy Administrator, to the administrative county FSA office serving the dairy operation. However, the production history must be established only once and approved by CCC before the contract is submitted and considered complete. Dairy operations with less than 5 million pounds of production may make a one-time adjustment to production history based on a prescribed formula using actual 2019 milk marketings according to § 1430.405(a)(3), during the 2024 annual coverage election period. Once the adjusted base production history is established, that history will be permanent, will be used in place of previously established production history, and will be subject to coverage elections made by the dairy operation under the lock-in option according to § 1430.407(j) or made by the dairy operation in subsequent annual coverage year enrollments.

(1) A new dairy operation that has been established after the most recent election period is required to submit a contract within the first 60 calendar days from the date of which the dairy operation first commercially markets milk and may elect coverage that begins the month and day the dairy operation has commercial marketings.

(2) A new dairy operation that does not meet the 60-day requirement of paragraph (b)(1) of this section cannot

enroll until the next annual election period for coverage for the following calendar year.

(c) Annual contracts with coverage elections are to be submitted in time to be received at FSA by the close of business on the last day of the annual election period, established by the Deputy Administrator.

(1) The applicable year of coverage for contracts received during an annual election period will be the following calendar year, except for 2019 and 2024, where the election and coverage year will be the same, or unless otherwise specified by the Deputy Administrator for Farm Programs. Coverage for dairy operations that register during the 2019 election period will be retroactive to January 1, 2019. Coverage for dairy operations that are approved for 2024 DMC enrollment will receive any applicable payments triggered after January 1, 2024.

(2) Annual contracts with coverage elections submitted after the applicable allowed time for submission will not be considered.

(d) If the dairy producer operates more than one separate and distinct operation, the producer must register each operation for each operation to be eligible for coverage. If the producer moves the same herd of cattle between two facilities, then the two facilities will not be regarded as separate and distinct but as one operation unless the Deputy Administrator determines otherwise. A separate operation must distinctly, as a single unit, have their own cattle, facilities, milk marketings, tanks, feed, records, State level licenses, and permits. All new dairy operations that did not participate in MPP-Dairy must meet all the requirements of this paragraph. A participating dairy operation in business prior to January 1, 2019, that participated in MPP-Dairy will automatically be determined as a “dairy operation” for DMC Program purposes in the same manner as under MPP-Dairy. In disputes regarding separate dairy operations the Deputy Administrator will determine what is a separate and distinct operation and that decision will be final. A dairy operation operated by more than one dairy producer will be treated as a single dairy operation for

purposes of participating in DMC and may only, submit one contract. Only participating dairy operations enrolling using contract forms approved by CCC will be covered by the DMC Program.

(e) A participating dairy operation must elect, during the applicable annual election period and by using the form prescribed by CCC, the coverage level threshold and coverage percentage for that participating dairy operation for the applicable calendar year:

(1) Once the registration for a calendar year of coverage is submitted and approved by CCC, coverage for subsequent years does not automatically carry forward. For each calendar year, a dairy operation that decides to participate in DMC must register for a calendar year of coverage according to this paragraph (e) during the applicable coverage election period, except as described in paragraph (e)(2) of this section;

(2) During the 2019 annual coverage election period only, participating dairy operations that make a one-time election of coverage level and percentage of coverage, according to §1430.407(j), will be locked in at the same coverage level and percentage of coverage for a 5-year period beginning January 1, 2019, and ending December 31, 2023. During the annual coverage election period, dairy operations that elected that lock-in option must choose to remain locked in at the same coverage level and percentage of coverage for an additional year, ending December 31, 2024, or opt out of lock-in coverage for coverage year 2024. Dairy operations that elect the lock-in option are required to pay the annual administrative fee and submit an annual contract during the annual contract election period for each coverage year to certify that the dairy operation is still in the business of producing and commercially marketing milk. If the operation fails to pay the applicable administrative fees or certify the status of the dairy operation, the dairy operation will remain obligated for all applicable unpaid administrative and premium fees calculated for the lock-in period.

(3) All participating producers in the participating dairy operation must

agree to the coverage level threshold and coverage percentage elected by the operation on the contract. Producers in the participating dairy operation that elect not to participate may not submit a separate contract for coverage. All producers that share in risk of the dairy operations production must be indicated on the contract with their corresponding share in the dairy operation, however, a signature from the non-participating member will not be required for CCC approval.

(4) During the 2021 special enrollment period only, for participating dairy operations that had a succession-in-interest occur from January 2, 2021, through the opening of special enrollment, for supplemental production history to be applicable to such successors, the predecessor must first establish supplemental production history. For successions-in-interest when the successor establishes supplemental production history before the predecessor, the successor's supplemental production history will be applicable for 2022.

(f) By registering to participate or receive payment under DMC, all participating producers in the dairy operation must certify to the accuracy and truthfulness of the information in their applications and supporting documentation.

(1) All participating producers who share in the risk of a dairy operation's production must sign and certify all submissions made under DMC that relate to the level of coverage and marketed production for the dairy operation.

(2) All information provided is subject to verification by FSA. FSA may require a dairy operation to provide documentation that supports all verifiable records. Furnishing the information is voluntary; however, without such information DMC Program benefits will not be approved. Providing a false certification to the Federal Government may be punishable by imprisonment, fines, and other penalties or sanctions.

(g) At the time the completed contract is submitted to FSA for the first program year in which the operation is to participate in DMC, the dairy operation must also submit a separate form, as prescribed by CCC, to estab-

lish the production history for the dairy operation. An established production history and a completed contract are both required to have a complete submission that is subject to approval by FSA. Production histories established for dairy operations under MPP-Dairy will be used in the DMC Program. A new production history will only be established for new dairy operations that did not participate in MPP-Dairy.

(h) In addition to meeting requirements in paragraph (g) of this section, the dairy operation must submit a separate form as prescribed by CCC to establish the adjusted base production history for the dairy operation, if applicable, to complete a submission.

[84 FR 28176, June 18, 2019, as amended at 86 FR 70707, Dec. 13, 2021; 89 FR 14375, Feb. 27, 2024]

§ 1430.405 Establishment and transfer of production history for a participating dairy operation.

(a) Except as provided in paragraphs (b) and (c) of this section, FSA will establish the production history for a dairy operation for DMC as the highest annual milk marketings of the participating dairy operation during any one of the 2011, 2012, or 2013 calendar years, and will establish an adjusted base production history, if applicable.

(1) Producers in the participating dairy operation are required to provide adequate proof of the dairy operation's quantity of milk commercially marketed, to establish the production history and or adjusted base production history for the dairy operation.

(2) All information provided is subject to verification, spot check, and audit by FSA. If the dairy operation does not provide, to the satisfaction of FSA, documentation requested to substantiate the production history of the highest annual milk marketings or 2019 milk marketings for the participating dairy operation, then the registration will not be approved.

(3) A participating dairy operation may establish supplemental production history during the coverage election period preceding the coverage year, except for 2021 when a special enrollment will occur. To determine supplemental production history, the dairy operation

production history established according to paragraph (a), (b), or (c) of this section must be subtracted from that dairy operation's actual pounds of 2019 milk production as indicated on the milk marketing statement, with the result multiplied by 75 percent. Supplemental production history may not be established after the 2023 coverage year.

(4) A participating dairy operation with production of less than 5 million pounds may establish adjusted base production history during the coverage election period beginning with the 2024 coverage year. To determine adjusted base production history, the dairy operation production history established according to paragraph (a), (b), or (c) of this section, and as previously adjusted under paragraph (e) of this section, if applicable, must be subtracted from that dairy operation's actual pounds of 2019 milk production as indicated on the milk marketing statement, with the result multiplied by 75 percent, and then added to the previously established production history. If the new adjusted base production history for a lock-in contract in coverage year 2024 exceeds the maximum 5 million pounds that can be covered under Tier 1, according to §1430.407(d), the excess pounds above 5 million pounds will be enrolled in Tier 2 at the \$4.00 Catastrophic level coverage. If the new adjusted base production history for an annual contract exceeds the maximum 5 million pounds that can be covered under Tier 1, the excess pounds above 5 million pounds will be enrolled according to the coverage elections on the annual contract.

(b) A participating dairy operation that was not in operation prior to January 1, 2014, that has not established a production history will elect the highest annual milk marketings during any one calendar year while in operation to determine the production history of the participating dairy operation.

(c) A participating dairy operation with less than one year of production history will be considered a new dairy operation. To establish the production history for such a new dairy operation the new dairy operation is required to elect one of the following methods:

(1) The volume of the actual milk marketings for the months the dairy operation has been in operation, extrapolated to a yearly amount based on a national seasonally adjusted index, as determined by the Deputy Administrator, to account for differences in milk production during the year; or

(2) An estimate of the actual milk marketings of the dairy operation based on the herd size of the dairy operation relative to the national rolling herd average data published by the Secretary.

(d) If FSA determines that the new enterprise was formed for the purpose of circumventing DMC provisions, including, but not limited to, reconstituting a dairy operation to receive additional benefits, or establishing new production history, that enterprise will not be considered a new dairy operation for the purpose of establishing production history.

(e) Once the production history of a participating dairy operation is established under paragraph (a), (b), or (c) of this section, the production history will be adjusted by a one-time upward adjustment by FSA to reflect any increase in the national average milk production relative to calendar year 2017, as determined by the Deputy Administrator. Dairy operations participating in DMC, that had production history previously established under MPP-Dairy but elected not to participate in MPP-Dairy are not eligible for the production history adjustment. Dairy operations with approved contracts for 2018 coverage under MPP-Dairy will maintain that same production history, as in the DMC Program and are not eligible for the production history adjustment. New dairy operations that participate in DMC, that did not previously have their production history established nor participate in MPP-Dairy, will have the same adjustment factor of 1.0186 applied to their established production history for registration in the DMC Program as 2018 MPP-Dairy participants. There will be no further adjustments in subsequent years of participation made to the established production history under the DMC Program.

(f) The production history or adjusted base production history must be

transferred from one dairy facility to another as follows:

(1) Producers of a dairy operation relocate the dairy operation to another location and the production history and or adjusted base production history, if applicable, of the original operation must be transferred to the new location and subject to the same elected coverage levels for that year; or

(2) Producers of a dairy operation transfer ownership of a dairy operation with its associated production history and or adjusted base production history, if applicable, through a succession-in-interest transfer when there is a spouse, child, heir, or common member that the dairy operation is being transferred to and there is no break in the continuity of the dairy operation. However, the successor operation must submit a separate registration according to §1430.404, to participate in DMC, but will be subject to the same elected coverage levels made by the predecessor for that coverage year or lock-in period, as applicable.

(g) If CCC waives the obligation, under DMC of a participating dairy operation due to death or retirement of the producer or of the permanent dissolution of the dairy operation or under other circumstances as determined by the Deputy Administrator, FSA may reestablish the production history and adjusted base production history, if applicable.

(h) The established production history of a participating dairy operation may be adjusted upward once during the term of the contract for an intergenerational transfer based on the purchase of additional cows by the new family member(s). The increase in the established production history of the participating dairy operation will be determined on the basis of the national rolling herd average data for the current year in effect at the time of the intergenerational transfer and the quantity of the production history increase will be limited to an amount not more than 5 million pounds. The additional quantity of production history will receive coverage at the same elected coverage threshold and coverage percentage in effect for the participating dairy operation at the time the production history increase takes ef-

fect. Intergenerational transfers will not be allowed if the participating dairy operation's current annual production and the increase in herd size by the new member(s) is less than the operation's established production history.

(1) The dairy operation must notify FSA, using the appropriate CCC form(s), of the intergenerational transfer within 60 days of the purchase of the cows, except that for purchases made for intergenerational transfers occurring in 2019 before the 2019 annual coverage election period, the dairy operation must notify FSA during the registration and annual coverage election period for coverage year 2019, established by the Deputy Administrator. The operation has the option of the additional production history taking effect beginning with the month the producer first began to commercially produce and market milk as part of the dairy operation, or the following January 1. If the additional production history takes effect between January 1 and August 31, the premium is due September 1, as specified in §1430.407(h)(2). If the additional production history takes effect between September 1 and December 31, the premium is due immediately.

(2) All of the items specified in this paragraph must be documented in the notification to FSA and self-certified by the current and new member(s) for the intergenerational transfer to be considered eligible for additional production history. All of the following information is subject to verification by CCC. Refusal to allow CCC or any other agency of USDA to verify any information provided will result in disapproval of the intergenerational transfer.

(i) Documentation that the new member(s) joining the operation has purchased the dairy cows being added to the dairy operation;

(ii) Certification that each new member will have a share of the profits or losses from the dairy operation commensurate with such person's contributions to the dairy operation;

§ 1430.406

7 CFR Ch. XIV (1–1–25 Edition)

(iii) Certification that each new member has a significant equity ownership in the participating dairy operation at levels determined by the Deputy Administrator and announced on the FSA website, *www.fsa.usda.gov*;

(iv) Certification that each new member is a lineal descendant or spouse of a current member of the participating dairy operation;

(v) Agreement that each new member will contribute labor in the dairy operation at a minimum of 35 hours per week or have a plan for transition to full-time, subject to FSA county committee review and approval, if only working seasonally or part-time;

(vi) Certification that the dairy operation will be the principal source of non-investment earned income for each new member; and

(vii) Documentation of the participating dairy operation's current annual marketings as of the date of the intergenerational transfer.

[84 FR 28176, June 18, 2019, as amended at 86 FR 70707, Dec. 13, 2021; 89 FR 14375, Feb. 27, 2024]

§ 1430.406 Administrative fees.

(a) Except as provided in paragraph (e) of this section, dairy operations must pay an administrative fee to CCC in the amount of \$100 at the time of enrollment during the annual election period for each applicable coverage year the dairy operation decides to participate in DMC. Annual administrative fees are due and payable to CCC through the administrative county FSA office no later than the close of business on the last day of the annual election period established by the Deputy Administrator for each applicable calendar year of dairy margin coverage under DMC. The administrative fee paid is non-refundable.

(b) The required annual administrative fee is per dairy operation. Therefore, multiple dairy producers in a single participating dairy operation are required to pay only one annual administrative fee for the participating dairy operation. Conversely, in the case of a dairy producer that operates more than one dairy operation, each participating dairy operation is required to pay a separate administrative fee annually.

(c) Dairy operations that lock-in coverage according to § 1430.407(j), are required to pay the administrative fee each year through 2024, except as provided in paragraph (e) in this section.

(d) Failure to pay the administrative fee timely will result in loss of dairy margin coverage for the applicable calendar year.

(e) A limited resource, beginning, veteran, or socially disadvantaged farmer or rancher, as defined in § 1430.402, will be exempt from paying the administrative fee in this section. The administrative fee waiver for the DMC Program for socially disadvantaged, beginning, and limited resource farmers and ranchers must be requested on a form specified by FSA and must accompany the contract application for coverage under this part in the administrative county FSA office.

[84 FR 28176, June 18, 2019, as amended at 89 FR 14376, Feb. 27, 2024]

§ 1430.407 Buy-up coverage.

(a) For purposes of receiving buy-up dairy margin coverage, a participating dairy operation may annually elect, except as provided by paragraph (i) of this section, during an annual election period the following for the applicable calendar year:

(1) A coverage level threshold for margins that, per cwt, is equal to one of the following: \$4.50, \$5, \$5.50, \$6, \$6.50, \$7, \$7.50, \$8, \$8.50, \$9, or \$9.50; and

(2) A percentage of coverage for the production history or adjusted base production history from 5 percent to 95 percent, in 5 percent increments.

(b) In the absence of any such election, the applicable coverage level provided, with no premium due, is catastrophic level coverage.

(c) A participating dairy operation that elects margin protection coverage above \$4 is required to pay an annual premium based on coverage level and covered production history in addition to the administrative fee. Tier 1 applies to covered production history up to and including 5 million pounds; Tier 2 applies to covered production history above 5 million pounds.

(d) A participating dairy operation may only select one coverage level threshold and only one percentage of coverage applicable to both Tier 1 and

Tier 2. However, a participating dairy operation that elects a coverage level threshold of \$8.50, \$9, or \$9.50, according to paragraph (a)(1) of this section, on the dairy operation's first 5 million pounds of production history under Tier 1, must choose a different coverage level threshold that is equal to \$4, \$4.50, \$5, \$5.50, \$6, \$6.50, \$7, \$7.50, \$8 to apply to production history in excess of 5 million pounds included in the covered production under Tier 2 elected by the participating dairy operation.

(e) The premium per cwt of milk, based on the elected percentage of coverage of production history is specified in the following table:

TABLE 1 TO § 1430.407(e)

Coverage level (margin)	Tier 1 premium per cwt (for the covered production history that is 5 million pounds or less)	Tier 2 premium per cwt (for the part of covered production history over 5 million pounds)
\$4.00	None	None
4.50	\$0.0025	\$0.0025
\$5.00	0.005	0.005
\$5.50	0.030	0.100
6.00	0.050	0.310
6.50	0.070	0.650
7.00	0.080	1.107
7.50	0.090	1.413
8.00	0.100	1.813
8.50	0.105	N/A
9.00	0.110	N/A
9.50	0.150	N/A

(f) The annual premium due for a participating dairy operation is calculated for production history or adjusted base production history, as applicable, by multiplying:

(1) The covered production history or adjusted base production history; and

(2) The premium per cwt of milk specified in paragraph (e) of this section for the coverage level elected in paragraph (d) of this section by the dairy operation.

(g) In the case of a new dairy operation that first registers to participate in DMC for a calendar year after the start of the calendar year, the participating dairy operation is required to pay a pro-rated premium for that calendar year based on the portion of the calendar year for which the participating dairy operation is eligible, and for which it purchases the coverage.

(h) A participating dairy operation is required to pay the annual premium in total as specified in paragraphs (d) and (e) of this section for the applicable calendar year, at time of submission of coverage election to FSA; but no later than September 1 of the applicable calendar year of coverage, unless otherwise specified by the Deputy Administrator.

(i) If the total premium is not paid for an applicable calendar year of coverage as specified in paragraph (g) of this section, the participating dairy operation will lose coverage until such time as the premium has been fully paid.

(j) For each calendar year 2019 through 2023, a participating dairy operation that makes a one-time election of a coverage level threshold and a percentage of coverage according to this section, for a 5-year period, will have their elected coverage level, as applicable to each tier, reduced by 25 percent. The option to lock in for the premium rate discount must be elected during the 2019 annual coverage election period announced by FSA. Except that, new dairy operations, not in existence during the 2019 annual election period, that elect to participate in DMC according to §1430.404(b), are eligible to receive the premium rate discount for locking coverage for the period beginning with the first available calendar year and ending in 2023, except that new dairy operations registering for DMC for the first time for coverage year 2023 and dairy operations that stop producing and marketing milk in 2019 that are registering for eligible months in 2019 are not eligible for the multi-year premium rate discount. All dairy operations that elect the lock-in option are subject to full participation in the DMC Program at the same elected premium coverage levels and calculated premium for the duration of DMC according to §1430.413. Participating dairy operations that received the premium rate discount during the 2023 calendar year of coverage are eligible to receive the premium rate discount for calendar year 2024, unless the dairy operation opts-out of lock-in coverage for 2024 according to §1430.404(e)(2).

(k) Annual premium balances due to CCC from a participating dairy operation for a calendar year of coverage must be paid in full no later than September 1 of the applicable calendar year or within a grace period determined by the Deputy Administrator, if applicable.

(l) The Deputy Administrator may waive the obligation to pay the premium, or refund the premium paid, of a participating dairy operation for a calendar year, for death, retirement, permanent dissolution of a participating dairy operation, or other circumstances determined by the Deputy Administrator. In these instances, the contract will be terminated immediately, except with respect to payments accrued to the benefit of the participating dairy operation under this subpart before such termination.

(m) DMC administrative fees and premiums are required to be paid by a negotiable instrument satisfactory to FSA and made payable to CCC and either mailed to or provided in person to the administrative county office or other location designated by FSA.

(n) The premium rate for adjusted base production history eligible under a lock-in contract maintains the 25 percent discounted rate according to paragraph (j) of this section.

[84 FR 28176, June 18, 2019, as amended at 86 FR 70707, Dec. 13, 2021; 89 FR 14376, Feb. 26, 2024]

§ 1430.408 MPP-Dairy premium repayments.

(a) A dairy operation that participated in MPP-Dairy during any of calendar years 2014 through 2017 may receive a repayment in an amount equal to the difference between the total amount of premiums paid by the dairy operation for each applicable calendar year of coverage and the total amount of payments made to the MPP-Dairy participating dairy operation for that applicable calendar year.

(b) FSA will determine the calculated repayment amounts for each year for each dairy operation that participated in MPP-Dairy during the years of 2014 through 2017.

(1) Coverage years in which the payments exceeded premiums paid for that

coverage year will yield a \$0 calculation for that calendar year.

(2) Dairy operations must provide adequate proof, to the satisfaction of FSA, for calculated repayment amounts in dispute.

(c) Qualifying dairy operations according to paragraph (a) of this section, must elect on a form prescribed by CCC, to receive the repayment in either an amount that is equal to the following:

(1) 75 percent of the calculated repayment as a credit that may be used by the dairy operation towards DMC premiums; or

(2) 50 percent of the calculated repayment as a direct cash repayment.

(d) Dairy operations may transfer their premium repayment election choice in paragraph (c) of this section to a dairy operation that succeeded to the dairy operation through a succession-in-interest transfer under MPP-Dairy. However, the dairy operation to which the election choice is being transferred to must be participating in the DMC Program if the credit option is elected according to paragraph (c)(1) of this section. Otherwise, their credit repayment election is not transferrable. Dairy operations that give up their right to elect a premium repayment option by designation of such on a form prescribed by CCC are not eligible to receive a cash or credit benefit, in full or partially, for premiums paid under MPP-Dairy.

(e) A dairy operation that elects the credit option can only use the credit in the DMC Program. If the entire credit is not used, for any reason, it cannot be applied as a credit to any other USDA program and will have zero cash value that cannot be redeemed for any purpose.

(f) A dairy operation that elects the cash repayment option will have the repayment issued only in the name of the dairy operation entity as it existed in MPP-Dairy.

(g) A dairy operation must choose their MPP-Dairy premium repayment option on a form prescribed by CCC during a period specified by FSA. Once the premium repayment choice of credit or cash is made by the dairy operation and approved by FSA, that choice cannot be changed.

Commodity Credit Corporation, USDA

§ 1430.411

§ 1430.409 Dairy margin coverage payments.

(a) A DMC payment will be made to a participating dairy operation for any month when the average actual dairy production margin for that month falls below the coverage level threshold in effect for the participating dairy operation.

(b) Payments trigger at the catastrophic level or at the buy-up level; the payments will be calculated according to this paragraph. If the dairy operation only has catastrophic coverage or buy-up coverage at 95 percent, there will be a single calculation. If the dairy operation purchased buy-up coverage at less than 95 percent and the catastrophic level also triggers a payment, then there will be two calculations to determine the payment—first the calculation for the buy-up coverage percentage and then the calculation for the catastrophic level percentage, which is the balance of the established production history up to 95 percent; the result of these two calculations will be added together to determine the payment amount. Each calculation multiplies the payment rate times the coverage percentage times the production history or established adjusted base production history divided by 12 as follows:

(1) *Payment rate.* The amount by which the coverage level exceeds the average actual dairy production margin for a month;

(2) *Coverage percentage.* The coverage percentage; and

(3) *Production history.* The production history or established adjusted base production history or adjusted base production history of the dairy operation, divided by 12.

(c) If the dairy operation purchased buy-up level coverage at less than 95 percent of production history or adjusted base production history, then the dairy operation will receive a payment calculated at the buy-up level, plus the payment at the catastrophic level, if triggered, for the balance of 95 percent of its established production history or adjusted base production history. For example, if a producer purchased buy-up coverage at the 50 percent level, then that producer will also receive catastrophic level coverage for

the next 45 percent for total coverage of 95 percent.

[84 FR 28176, June 18, 2019, as amended at 86 FR 70708, Dec. 13, 2021; 89 FR 14376, Feb. 27, 2024]

§ 1430.410 Effect of failure to pay administrative fees or premiums.

(a) A participating dairy operation that fails to pay a required administrative fee or premium payment due upon application to DMC or for a calendar year of coverage:

(1) Remains legally obligated to pay such administrative fee or premium, as applicable; and

(2) Upon such failure to pay when due, loses coverage under DMC until such administrative fee or premium is paid in full, and once paid, coverage will be reinstated beginning with the month coverage was lost.

(b) CCC may take such actions as necessary to collect unpaid administrative fees and premium payments.

§ 1430.411 Calculation of average feed cost and actual dairy production margins.

(a) Payments are made to a participating dairy operation as specified in this subpart only when the calculated average actual dairy production margin for a month is below the coverage level in effect for the participating dairy operation. That margin will be calculated on a national basis and is the amount by which for the relevant month, the all milk price exceeds the average feed cost for dairy producers. The average actual dairy production margin calculation applies to all participating dairy operations. The calculations are not made on an operation by operation basis or on their marketings.

(b) For calculating the national average feed cost that dairy operations use to produce a cwt of milk, the following three items will be added together:

(1) The product determined by multiplying 1.0728 by the price of corn per bushel;

(2) The product determined by multiplying 0.00735 by the price of soybean meal per ton; and

(3) The product determined by multiplying 0.0137 by the price of alfalfa hay per ton.

§ 1430.412

(c) To make those feed calculations, the Deputy Administrator on behalf of CCC will use the following full month data:

(1) For corn, the full month price received by farmers during the month in the United States as reported in the monthly Agricultural Prices report by USDA NASS;

(2) For soybean meal, the Central Illinois soybean meal price delivered by rail as reported in the USDA AMS Market News-Monthly; and

(3) For alfalfa hay, the full month price received during the month by farmers in the United States for high quality (premium and supreme) alfalfa hay as reported in the monthly Agricultural Prices report by USDA NASS will be used to calculate the hay price.

(d) The national average feed cost data for corn, soybean meal, and alfalfa hay used in the calculation of the national average feed cost to determine the actual dairy production margin for the relevant period, will be the data reported in the publication the following month. (For example, full month May prices will be available in the June publication, and those will be the prices used).

(e) The actual dairy production margin for each month, will be calculated by subtracting:

(1) The average feed cost for that month, determined under paragraph (b) of this section; from

(2) The all-milk price for that same month.

[84 FR 28176, June 18, 2019, as amended at 86 FR 70708, Dec. 13, 2021]

§ 1430.412 Relation to RMA's LGM-Dairy Program.

(a) Dairy producers that produced and commercially marketed milk in 2018 and participated in the LGM-Dairy Program operated by RMA in 2018 are eligible to receive retroactive 2018 coverage under MPP-Dairy for those months in operation. Approved participation for retroactive MPP-Dairy coverage is subject to verification of LGM-Dairy coverage in 2018 by RMA.

(b) Eligible dairy producers must apply for the retroactive 2018 MPP-Dairy coverage on a CCC-prescribed application form during a signup period

7 CFR Ch. XIV (1–1–25 Edition)

announced by the Deputy Administrator.

(c) Eligible producers that received partial year benefits under MPP-Dairy are eligible for the full year, less any payments issued for a month that triggered a payment under MPP-Dairy in 2018.

§ 1430.413 Multi-year contract for lock-in option.

(a) Participating dairy operations enrolled in DMC according to § 1430.407(j) are registered through December 31, 2023. As such, a participating dairy operation is obligated to pay applicable administrative fees and applicable premiums each succeeding calendar year following the date the contract is first entered into through December 31, 2023. Likewise, any successor to the dairy operation with lock-in coverage will be bound to the same coverage elections made by the predecessor and applicable premiums for the duration of the lock-in period.

(b) A participating dairy operation under a lock-in option that fails to pay applicable administrative fees and premiums no later than September 1 of the applicable calendar year of coverage year of the lock-in will remain obligated to pay such applicable administrative fees and premiums as specified in § 1430.410.

(c) If a participating dairy operation goes out of business as described in § 1430.407(l) before the end of the lock-in period, the contract will be terminated immediately, except with respect to payments accrued to the benefit of the participating dairy operation under this subpart before such termination.

(d) For 2024 DMC coverage, participating dairy operations with lock-in coverage in 2023 are eligible to extend lock-in coverage for coverage year 2024.

(e) During the 2024 election period, a participating dairy operation with lock-in coverage in 2023, may opt out of the lock-in contract for coverage year 2024 and enroll in 2024 DMC through an annual contract at the standard premium rate.

[[84 FR 28176, June 18, 2019, as amended at 89 FR 14376, Feb. 27, 2024]

§ 1430.414 Contract modifications.

(a) Producers in a participating dairy operation must notify FSA immediately of any changes that may affect their participation in DMC. Changes include, but are not limited to, death of a producer who is on the contract, producer joining the operation, producer exiting the operation, relocation of the dairy operation, transfer of shares by sale or other transfer action, or dairy operation reconstitutions as provided in § 1430.415.

(b) Payment of any outstanding premium or administrative fee for a participating dairy operation must be paid in full before a transfer of shares by sale or any other change in producers on the contract originally submitted to FSA may take effect. Otherwise, producer changes will not be recognized until the following annual election period, and only if at that time all associated premiums and administrative fees from any previous calendar year of coverage have been paid in full.

§ 1430.415 Reconstitutions.

(a) Any participating dairy operation that reorganizes or restructures after enrollment is subject to a review by FSA to determine if the operation was reorganized or restructured for the sole purpose of establishing an alternative production history for a participating dairy operation or was reorganized or restructured to otherwise circumvent any DMC Program provision under this subpart (including the tier system for premiums) or otherwise to prevent the accomplishment of the purpose of the DMC Program.

(b) A participating dairy operation that FSA determines has reorganized solely to establish a new production history or to circumvent the determination of applicable fees or premiums based on an established production history determined under this subpart will be considered to have failed to meet the DMC Program requirements and, in addition to other sanctions or penalties that may apply, will not be eligible for DMC payments.

(c) Under no circumstance, except as approved by the Deputy Administrator or provided for in these regulations, will the reconstitution or restructure of a participating dairy operation

change the determined production history for the operation. The Deputy Administrator may, however, adjust the production history of a participating dairy operation if there is a calculation error or if erroneous information has been supplied by or on behalf of the participating dairy operation.

§ 1430.416 Offsets and withholdings.

FSA may offset or withhold any amount due to FSA or CCC under this subpart under the provisions of part 1403 of this chapter or any successor regulations, or any other authorities that may allow for collection action of that sort.

§ 1430.417 Assignments.

Any producer may assign a payment to be made under this subpart in accordance with part 1404 of this chapter or successor regulations as designated by the Secretary or as allowed by the Deputy Administrator in writing.

§ 1430.418 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this subpart may request reconsideration or appeal of such determination under part 11 or 780 of this title.

§ 1430.419 Misrepresentation and scheme or device.

(a) In addition to other penalties, sanctions or remedies as may apply, all or any part of a payment otherwise due a person or legal entity on all participating dairy operations in which the person or legal entity has an interest may be withheld or be required to be refunded if the person or legal entity fails to comply with the provisions of this subpart or adopts or participates in adopting a scheme or device designed to evade this subpart, or that has the effect of evading this part. Such acts may include, but are not limited to:

(1) Concealing information that affects a registration or coverage election;

(2) Submitting false or erroneous information; or

(3) Creating a business arrangement using rental agreements or other arrangements to conceal the interest of a

§ 1430.420

person or legal entity in a dairy operation for the purpose of obtaining DMC payments the individual or legal entity would otherwise not be eligible to receive. Indicators of such business arrangement include, but are not limited to the following:

(i) No milk is produced and commercially marketed by a participating dairy operation;

(ii) The participating dairy operation has no appreciable assets;

(iii) The only source of capital for the dairy operation is the DMC payments; or

(iv) The represented dairy operation exists mainly for the receipt of DMC payments.

(b) If the Deputy Administrator determines that a person or legal entity has adopted a scheme or device to evade, or that has the purpose of evading, the provisions of this subpart, such person or legal entity will be ineligible to receive DMC payments in the year such scheme or device was adopted and the succeeding year.

(c) A person or legal entity that perpetuates a fraud, commits fraud, or participates in equally serious actions for the benefit of the person or legal entity, or the benefit of any other person or legal entity, in violation of the requirements of this subpart will be subject to a 5-year denial of all DMC Program benefits. Such other equally serious actions may include, but are not limited to:

(1) Knowingly engaging in, or aiding in the creation of a fraudulent document or statement;

(2) Failing to disclose material information relevant to the administration of the provisions of this subpart, or

(3) Engaging in any other actions of a person or legal entity determined by the Deputy Administrator to be designed, or intended to, circumvent the provisions of this subpart.

(d) Program payments and benefits will be denied on pro-rata basis:

(1) In accordance with the interest held by the person or legal entity in any other legal entity or joint operations; and

(2) To any person or legal entity that is a cash rent tenant on land owned or under control of a person or legal enti-

7 CFR Ch. XIV (1-1-25 Edition)

ty for which a determination of this section has been made.

§ 1430.420 Estates, trusts, and minors.

(a) DMC Program documents executed by producers legally authorized to represent estates or trusts will be accepted only if such producers furnish evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible for benefits under this subpart is also required to:

(1) Establish that the right of majority has been conferred on the minor by court proceedings or by law;

(2) Show that a guardian has been appointed to manage the minor's property and the applicable DMC Program documents are executed by the guardian; or

(3) Furnish a bond under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1430.421 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance, or dissolution of a producer that is eligible to receive benefits under this subpart, such persons as are specified in part 707 of this title may receive such benefits, as determined appropriate by FSA.

§ 1430.422 Maintenance and inspection of records.

(a) Participating dairy operations are required to maintain accurate records and accounts that will document that they meet all eligibility requirements specified in this subpart, as may be requested by CCC or FSA. Such records and accounts are required to be retained for 3 years after the date of DMC payments to the participating dairy operation. Destruction of the records 3 years after the date of payment will be at the risk of the party undertaking the destruction.

(b) A participating dairy operation is required to allow authorized representatives of CCC, the Secretary, or the Comptroller General of the United States to have access to the premises of the dairy operation in order to inspect the herd of cattle, examine, and make copies of the books, records, and

Commodity Credit Corporation, USDA

§ 1434.2

accounts, and other written data as specified in paragraph (a) of this section.

(c) Any producer or dairy operation that does not comply with the provisions of paragraph (a) or (b) of this section, or that otherwise receives a payment for which it is not eligible, is liable for that payment and is required to repay it to FSA, with interest to run from the date of disbursement.

§ 1430.423 Refunds; joint and several liability.

(a) Any legal entity, including joint operations, joint ventures and partnerships, and any member of a legal entity determined to have knowingly participated in a scheme or device, or other such equally serious actions to evade, or that has the purpose of evading the provisions of this part, will be jointly and severally liable for any amounts determined to be payable as the result of the scheme or device, or other such equally serious actions, including amounts necessary to recover the payments.

(b) Any person or legal entity that cooperates in the enforcement of the provisions of this part may be partially or fully released from liability, as determined by the Executive Vice President, CCC.

(c) The provisions of this section will be applicable in addition to any liability that arises under a criminal or civil law, regulation, or other provision of law.

§ 1430.424 Violations of highly erodible and wetland conservation provisions.

The provisions of 7 CFR part 12 apply to this part.

§ 1430.425 Violations regarding controlled substances.

The provisions of 7 CFR 718.6 apply to this part.

PART 1434—NONRECOURSE MARKETING ASSISTANCE LOANS AND LOAN DEFICIENCY PAYMENTS FOR HONEY

Sec.

1434.1 Applicability.

1434.2 Administration.

1434.3 Definitions.

1434.4 Eligible producer.

1434.5 Eligible honey.

1434.6 Beneficial interest.

1434.7 Approved storage.

1434.8 Containers and drums.

1434.9 Determination of quantity.

1434.10 Application, availability, disbursement, and maturity.

1434.11 Fees and interest.

1434.12 Liens.

1434.13 Transfer of producer's interest prohibited.

1434.14 Loss or damage.

1434.15 Personal liability..

1434.16 Release of the honey pledged as collateral for a MAL.

1434.17 Liquidation of loans.

1434.18 Loan repayments.

1434.19 Settlement.

1434.20 Foreclosure.

1434.21 Loan deficiency payments.

1434.22 Death, incompetency, or disappearance; appeals; other loan provisions.

AUTHORITY: 7 U.S.C. 7231-7237, 7931-7936, and 9031-40; and 15 U.S.C. 714b and c.

SOURCE: 66 FR 15177, Mar. 15, 2001, unless otherwise noted.

§ 1434.1 Applicability.

(a) This part specifies the terms and conditions of Commodity Credit Corporation (CCC) nonrecourse marketing assistance loan (MAL) and loan deficiency payment (LDP) Programs for honey. MAL gains and LDPs for honey are limited by the adjusted gross income provisions specified in part 1400 of this chapter.

(b) Producers must comply with all provisions of this part and part 1421 of this chapter.

[74 FR 15656, Apr. 7, 2009, as amended at 80 FR 139, Jan. 2, 2015; 86 FR 70708, Dec. 13, 2021]

§ 1434.2 Administration.

(a) The regulations of this part will be administered under the general supervision of the Executive Vice President, CCC, and are carried out in the field by Farm Service Agency (FSA) State and county committees.

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

(c) The State committee will take any action required by the regulations of this part that has not been taken by