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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1430

RIN 0560-AI23

Margin Protection Program for Dairy and Dairy Product Donation Program

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule implements regulations for the Margin Protection Program for Dairy (MPP-Dairy) and the Dairy Product Donation Program (DPDP) as authorized in subtitle D of the Agricultural Act of 2014 (the 2014 Farm Bill). MPP-Dairy provides dairy producers with risk management coverage that will pay producers when the difference between the price of milk and the cost of feed (the margin) falls below a certain level. MPP-Dairy provides basic catastrophic level coverage for an administrative fee, and greater coverage for a premium in addition to the administrative fee. Amounts of coverage and premiums vary based on producer selections. This rule specifies the eligibility requirements and payment formulas for MPP-Dairy. Under the related DPDP, which is a complimentary program designed to support producer margins by increasing the price of milk, the U.S. Department of Agriculture (USDA) will buy dairy products when the margin falls below a certain level, and will distribute those products to individuals in low-income groups through public and private non-profit organizations. The Farm Service Agency (FSA) will operate both programs using funds of the

Commodity Credit Corporation (CCC). The USDA Food and Nutrition Service (FNS) will assist in the distribution of the dairy products under DPDP.

DATES: Effective Date: This rule is effective **[Insert date of publication in the FEDERAL REGISTER]**.

Comment Date: We will consider comments we receive by **[insert date 60 days after publication in the FEDERAL REGISTER]**.

ADDRESSES: We invite you to submit comments specifically to address the questions related to intergenerational transfers in this document. In your comment, please specify RIN 0560-AI18 and include the volume, date, and page number of this issue of the Federal Register. You may submit comments by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments; or
- Mail, Hand Delivery, or Courier Danielle Cooke, Special Programs Manager, Price Support Division, FSA, USDA, STOP 0512, 1400 Independence Ave. SW, Washington, DC, 20250-0512.

All written comments will be available for inspection online at [www.regulations.gov](http://www.regulations.gov) and at the mail address above during business hours from 8 a.m. to 5 p.m., Monday through Friday, except holidays. A copy of this rule is available through the FSA home page at <http://www.fsa.usda.gov/>.

FOR FURTHER INFORMATION CONTACT: For MPP-Dairy: Danielle Cooke; telephone: (202) 720-1919. For DPDP purchases: Christine Gouger, telephone: (816) 926-3379. For DPDP donations: Anne Fiala, telephone: (703) 305-2662. Persons with

disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600.

#### SUPPLEMENTARY INFORMATION:

##### MPP-Dairy– Overview

This final rule establishes the regulations for the new MPP-Dairy as specified in sections 1401-1410 of the 2014 Farm Bill (7 U.S.C. 9051-9060, Pub. L. 113-79). MPP-Dairy provides a risk management program for dairy operations and is authorized through December 31, 2018.

MPP-Dairy is a voluntary risk management program that provides payments when the margin between the national average milk price and a national average feed cost falls below a specified “trigger” level. Eligible producers may purchase coverage for their dairy operations by paying an administrative fee, and a premium as applicable. The coverage is for a dairy operation; all producers in an operation must agree to register the operation for the program in order for that operation to be eligible for MPP-Dairy coverage. MPP-Dairy pays dairy operations when the national margin falls below the operation’s selected margin trigger for one of the specified 2-month periods in this rule. As part of the initial registration process, dairy operations must agree to carry MPP-Dairy coverage through calendar year 2018, but they can select a different level of coverage during each annual enrollment period. At the time of registration and annually thereafter, the dairy operation must make coverage level elections. For example, if margins are consistently above the trigger point or the dairy operations decide they want only limited coverage, the operation may switch during the annual enrollment from a coverage level with a higher premium to the catastrophic coverage level with a lower or no premium, but

they cannot drop coverage altogether, except in cases where a producer is retiring, dies, or the operation goes out of business.

#### Eligible Operations for MPP-Dairy

Any dairy operation that produces and commercially markets milk in the United States may register for MPP-Dairy. As required by the 2014 Farm Bill, to be an eligible dairy operation for MPP-Dairy, each of the producers in an eligible dairy operation must share in the risk of production, and must make contributions (including capital, land, labor, equipment, or management) to the operation commensurate with such producer's share of the proceeds. Participating dairy operations can be operated by more than one producer. A single producer may be member of more than one operation and each operation may separately participate in MPP-Dairy.

#### Definition of a Dairy Operation

This rule specifies that any dairy facility that was part of a single dairy operation that was eligible for and participated in the Milk Income Loss Contract (MILC) Program administered by FSA as of February 7, 2014 (date of enactment of the Agricultural Act of 2014) is a "dairy operation" for the purposes of MPP-Dairy. All other operations must meet the requirements specified in this rule to be a dairy operation for the purposes of MPP-Dairy these include the criteria and procedures established under the MILC Program. Operations that are determined to be "new operations" under this rule, will be subject to the "affiliation" test if the operation elects to participate in MPP-Dairy separately.

For the purposes of this rule, a “new” operation is one that did not produce and commercially market milk at least 12 full months as of February 7, 2014. Under certain circumstances new operations may participate in MPP-Dairy and existing operations can restructure and still be eligible for MPP-Dairy. A dairy operation can be sold or transferred and keep MPP-Dairy eligibility. The main restriction on eligibility for a new operation is that an existing operation that restructures or reconstitutes cannot result in an increase in production history as a whole.

#### Production History for MPP-Dairy

MPP-Dairy payments for a given dairy operation are based on a coverage level and percentage of coverage annually elected by a participating dairy operation for the operation’s production history. Such production history for existing operations with at least a year of production history as of February 7, 2014, will be the highest of the operation’s annual milk marketings in any one of 2011, 2012, or 2013 calendar years, subject to an annual upward adjustment in subsequent years to reflect any increase in the national average milk production as specified in this rule.

Eligible production history for new operations will be determined by one of two methods, at the election of the dairy operation. The first option is to extrapolate from actual production data for the first calendar year with at least one full month of production history, adjusted using a national seasonality index to calculate a yearly amount of production. The national seasonality index was created by FSA using monthly milk production data for 2009 through 2013. Since milk production naturally fluctuates in some regions during different seasons of the year, the index is needed to extrapolate a

full year production amount from partial year production data. To develop the index, the total milk production for the 5 years for each individual month was divided by the total annual milk production for those years to determine the share of annual milk production produced in each month. The resulting figure is the seasonality index that is set for the duration of MPP-Dairy. Alternatively, new operations may choose a second option to determine production history. Under this option, annual production would be estimated based on the herd size of the dairy operation relative to the national “rolling herd average” production data published by the Secretary.

As required by the 2014 Farm Bill, the production history amount established for an operation will never be reduced because of changes in national milk production, but may only be increased. Once a dairy operation has enrolled in MPP-Dairy and the production history is established for that operation, USDA in subsequent years will update the production amount to reflect annual changes in the national average milk production. That adjustment factor will be announced each year.

The production history is established for a participating dairy operation, and it is assigned to that operation, not to an individual producer. If a participating dairy operation, with an established production history, sells or changes ownership of the operation, the established production history will stay with that operation, and be assigned to the new owner. For participating dairy operations, with an established production history, that relocate or otherwise move their operation to another location, the production history will move to the new location. If the new location has existing production history, the production history may be reconstituted that combines the

production history of the relocated operation and the new location to the new location and become available for the next calendar year of coverage.

Section 1410 of the 2014 Farm Bill specifies that USDA is required to establish regulations that “prohibit a dairy producer from reconstituting a dairy operation for the purpose of the dairy producer receiving margin protection payments.” This rule therefore prohibits an increase in production history as a result of most restructurings and reconstitutions. Only in cases where a dairy producer purchases a dairy operation with no established production history can a new history be established, subject to the affiliation rule. For example, if a father and son jointly operate a dairy and the son decides to leave and purchase a dairy operation that is already participating in MPP-Dairy with an established production history, the son would get the production history already established by the participating dairy operation and would not be considered a new dairy operation for the purposes of MPP-Dairy. (No new production history would be created; it would only be transferred.) However, if the son purchased a dairy operation that lacked any production history, then the son may be considered a new dairy operation for MPP-Dairy purposes and could establish a new production history for that operation, subject to the affiliation rule.

#### Other Eligibility Requirements and Limits

MPP-Dairy benefits are not subject to payment limitations or average adjusted gross income (AGI) limitations that apply to most FSA and CCC programs. However, these benefits are subject to the conversation compliance requirements provided for in 7 CFR part 12. Further, there is no set program maximum number of pounds any dairy

operation can cover under the program. MPP-Dairy's coverage limitation for a specific dairy operation is 90 percent of the operation's production history.

In general, all U.S. dairy producers are eligible to participate in MPP-Dairy through their eligible dairy operation; however, producers cannot participate in both MPP-Dairy and the Livestock Gross Margin for Dairy (LGM-Dairy) insurance program administered by the USDA Risk Management Agency (RMA). For 2014 and 2015, producers already enrolled in LGM-Dairy may register for MPP-Dairy, but in no case will they receive benefits from both programs. If an operation with LGM-Dairy coverage registers for MPP-Dairy, coverage under MPP-Dairy will not become effective until after the target month of marketings under LGM-Dairy has ended or the dairy operation provides proof that the LGM-Dairy policy has been cancelled.

#### MPP-Dairy Coverage Levels

As part of the annual coverage election process for MPP-Dairy, the dairy operation is required to select the level of coverage and pay an administrative fee and, if applicable, a premium based on the level of coverage elected. In addition, once a participating dairy operation registers for MPP-Dairy, regardless if it fails to make a coverage election, it must annually pay the administrative fee through December 31, 2018. The level of coverage chosen by a participating dairy operation requires two selections. One is the margin trigger (between \$4 and \$8 per hundredweight (cwt), in 50 cent increments); the other is the percentage of production history that will be covered (from 25 percent to 90 percent, in 5 percent increments). The operation can only select one margin trigger level and one percentage of production history; the operation



cannot “split” the operation’s coverage and, for example, purchase \$4 margin coverage on 25 percent of production history and \$8 coverage on 50 percent of production history. (At the catastrophic level coverage of \$4, the producer will be paid when the margin, the difference between the price of milk and the cost of feed, falls below \$4.)

As specified in the 2014 Farm Bill, operations may elect a \$4 per cwt margin trigger for the administrative fee of \$100 with no premium owed. This rule defines this to be catastrophic level coverage, in that it provides the lowest level of margin protection offered under MPP-Dairy. If \$4 margin coverage is selected, 90 percent of production history will be covered, the maximum amount of production coverage allowed by the 2014 Farm Bill. Alternatively, participating dairy operations may elect a higher margin trigger, up to \$8 per cwt of milk (in 50 cent increments), for 25 percent to 90 percent of production (in 5 percent increments). Margin triggers higher than \$4 require payment of a premium. At each margin trigger level, corresponding rates are different with respect to the first 4 million pounds (40,000 cwt) of covered production history and covered production history above 4 million pounds. As specified in the 2014 Farm Bill, the premiums for the first 4 million pounds of eligible covered production history will be reduced by 25 percent for each of calendar years 2014 and 2015.

The annual premium rates listed in this regulation are specified in the 2014 Farm Bill. USDA has no discretion to set different premium rates other than those in the 2014 Farm Bill. The premium will be determined based on the producer’s election of each of the margin trigger and percentage of coverage. The schedule of premiums below refers to these levels as Tier 1 (first 4 million pounds of production history covered by the program) and Tier 2 (covered production in excess of 4 million pounds).

For example, a dairy operation with a production history of 6 million pounds that elects a coverage level of \$6 and a 50 percent coverage percentage will pay a premium based on the premium rate for covered production history for up to 4 million pounds because as a function of the dairy operation election to cover at the 50 percent rate, only 3 million pounds of production history is being covered by the program. (Note that production history is in pounds, while the premium schedule below is per cwt, so we divide covered production by 100 to calculate the premium). Therefore, in this example, the dairy operation pays a premium for a calendar year of coverage during 2016, in the amount of \$1,650 based on 6 million pounds covered at a 50 percent coverage level, yielding 3 million pounds of covered production history. The 3 million pounds of production history multiplied by \$0.055, the premium at the \$6 margin level for covered production up to 4 million pounds (50 percent of 6 million is 3 million; 3 million divided by 100 is 30,000 cwt; 30,000 cwt x \$0.055 per cwt = \$1,650). The premium schedule is as follows; the 2014 Farm Bill specifies the amounts:

Coverage Level (margin)	Tier 1 Premium per cwt in 2014 and 2015 (for the covered <sup>1</sup> production history that is 4 million pounds or less) <sup>2</sup>	Tier 2 Premium per cwt, all years (for the part of covered <sup>1</sup> production history over 4 million pounds)
\$4.00.....	None	None
\$4.50.....	\$0.008	\$0.020
\$5.00.....	\$0.019	\$0.040
\$5.50.....	\$0.030	\$0.100
\$6.00.....	\$0.041	\$0.155
\$6.50.....	\$0.068	\$0.290
\$7.00.....	\$0.163	\$0.830
\$7.50.....	\$0.225	\$1.060
\$8.00.....	\$0.475	\$1.360

<sup>1</sup>The “covered production history” is the amount elected for MPP-Dairy coverage by the dairy operation; this will be 25 percent to 90 percent. The catastrophic coverage level provided at the \$4 margin is 90 percent.

Coverage Level (margin)	Tier 1 Premium per cwt in 2016, 2017, and 2018 (for the covered <sup>1</sup> production history that is 4 million pounds or less)	Tier 2 Premium per cwt, all years (for the part of covered <sup>1</sup> production history over 4 million pounds)
\$4.00.....	None	None
\$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

<sup>1</sup>The “covered production history” is the amount elected for MPP-Dairy coverage by the dairy operation; this will be 25 percent to 90 percent. The catastrophic coverage level provided at the \$4 margin is 90 percent.

The following is an example with higher coverage levels and both tiers of premium: If a dairy operation with an established production history of 10 million pounds elects a coverage level of \$8 and a 75 percent coverage percentage, 7.5 million pounds would be considered covered production history (10,000,000 x 0.75), and of that 7.5 million pounds, 4 million pounds would be assessed at \$0.475 rate from the lower (Tier 1) premium schedule for production at 4 million pounds or less (4,000,000 x \$0.475/100=\$19,000), and the remaining 3.5 million pounds of covered production history would be assessed at the \$1.360 rate from the higher premium schedule for production in excess of 4 million pounds (3,500,000 x \$1.360/100=\$47,600). The dairy operation would pay a total premium for a calendar year of coverage in the amount of \$66,600 (\$19,000 + \$47,600) based on 7.5 million pounds of covered production history that falls under each premium schedule at the \$8 coverage level.

For calendar years 2014 and 2015, the premium per cwt for covered production that falls under the first 4 million pound premium schedule will be reduced by 25 percent, except at the \$8 coverage level, from the table shown above. The premium reduction is

required by the 2014 Farm Bill. FSA will provide premium calculators on the FSA website, so that producers can evaluate the costs of different coverage options easily.

### Registration Process

Registration of a dairy operation under MPP-Dairy results in a multi-year contract between CCC and the dairy operation. As discussed above, dairy operations agree to pay an administrative fee to register and annually thereafter through December 31, 2018. In addition, a participating dairy operation is obligated to pay the premium, if any, associated with its annual coverage elections, through calendar year 2018.

The \$4 per cwt margin level coverage is available for a \$100 administrative fee, without premium; higher levels of coverage are available for a premium plus the administrative fee. Operations must pay at least half the premium for the year (if applicable), plus the \$100 administrative fee, at the time of the election of coverage. Once the election period has ended, a dairy operation's election of coverage is final and it can be changed only for the next calendar year of coverage during the next election period.

The 2014 Farm Bill requires that USDA offer more than one method by which a participating dairy operation may pay the required premium in any manner that maximizes participating dairy operation payment flexibility and program integrity. Unless otherwise determined by the Deputy Administrator, at the time of coverage election, operations must pay either:

- 1) The full premium plus the administrative fee; or

2) A minimum of 50 percent of the total premium (if applicable) plus the administrative fee, with the remaining balance due no later than June 1 of the applicable calendar year of coverage.

However, a premium calculated for calendar year 2014 only (which provides coverage through December of 2014) must be paid in full at the time of coverage election. The coverage election period for 2014 partial year coverage and 2015 full year coverage will both be during the fall of 2014. New operations registered during a calendar year starting in 2015 will be allowed to pay a prorated premium for the first year of participation.

If an operation fails to pay either the required annual administrative fee or premium owed on time, it remains obligated for payment of such administrative fee and entire premium, but will lose coverage until the premium is paid. If an operation does not make an annual coverage level election, it will still be liable for the administrative fee for the following year. It will automatically receive coverage at the \$4 coverage level at 90 percent, but only if the administrative fee is paid. 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.

#### How Margins are Calculated to Determine Payments

The 2014 Farm Bill specifies what prices for milk and feed USDA is required to use to calculate the “actual dairy production margin.” The margin, based on published USDA national data for milk and feed prices, is used to trigger payments under MPP-

Dairy and the authority to make purchases under DPDP. The 2014 Farm Bill requires the margin to be based on the average price received, per cwt of milk, by dairy operations for all milk sold to plants and dealers in the United States. It also requires calculation of a national average feed cost, based on specific sources for the monthly price of corn, soybean meal, and alfalfa hay. Therefore, MPP-Dairy uses USDA-reported monthly national average price data for all classes of milk (the all-milk price) and the cost of the three specified feeds, which represent the bulk of purchased feeds in dairy rations (corn, soybean meal, and alfalfa hay) to calculate the “actual dairy production margin” by subtracting from the price for a cwt of milk produced the cost of an average feed ration used to produce a cwt of milk. The 2014 Farm Bill prescribes that USDA calculate the actual dairy production margin in consecutive 2-month periods.

If the actual dairy production margin falls below the selected margin coverage level of an operation for any such consecutive 2-month period, that operation will be eligible for a payment under MPP-Dairy. For example, if, for a particular consecutive 2-month period, the actual dairy production margin is \$6, and the operation has chosen \$4 coverage level, there will be no payment, but if the operation had chosen the \$7.50 coverage level on 50 percent of production, it would have been paid \$1.50 times 50 percent of its covered production history. A recalculation would occur in each subsequent 2-month period. MPP-Dairy pays only on the basis of such 2-month periods; in no case does the program pay for a period of low margins shorter than such 2-month periods.

USDA will calculate the actual dairy production margin using the national “all-milk price” minus the national “average feed cost,” as those terms are specified in the

2014 Farm Bill. If the actual dairy production margin calculation produces a negative number, then the margin will be considered zero. For example, if the cost of feed is higher than the price of milk by \$1 per cwt, the margin will be considered to be zero. The term “all-milk price” is defined in the 2014 Farm Bill to mean the average price received, per cwt of milk, by dairy operations for all milk sold to plants and dealers in the United States, as determined by USDA. The term “average feed cost” is defined to mean the average cost of feed used by a dairy operation to produce a cwt of milk using the sum of:

- 1.0728 times the price of corn per bushel;
- 0.00735 times the price of soybean meal per ton; and
- 0.0137 times the price of alfalfa hay per ton.

The 2014 Farm Bill specifies which USDA-published price series FSA is required to use for such prices; FSA has no discretion in what prices to use.

The 2014 Farm Bill requires the margin to be calculated using specific consecutive 2-month pairs – January and February, March and April, May and June, July and August, September and October, and November and December.

If a dairy operation has a premium due at the time it becomes eligible for a payment under MPP-Dairy, the premium will be automatically deducted from the payment. If the premium is overdue (past June 1 of the coverage year) however, an operation will not be eligible for a payment, because it will have lost coverage. In the case of an operation with an overdue premium, the operation will regain coverage only

after any overdue premium is paid, in which case it would be eligible for the next consecutive 2-month period after such payment of premium.

#### DPDP - Overview

In addition, this rule provides regulations for DPDP, authorized by section 1431 of the 2014 Farm Bill (7 U.S.C. 9071). DPDP shares certain goals of MPP-Dairy, in that it is intended to support dairy producer margins by triggering the obligation to purchase dairy products when the dairy production margin fall below a certain level. Under DPDP, USDA will purchase dairy products to support dairy producer margins and to provide such products to individuals in low-income groups through public and private non-profit organizations. The 2014 Farm Bill specifies that such purchases will be made whenever the “actual dairy production margin”, calculated using a formula prescribed in the 2014 Farm Bill, is determined to be \$4 or less per cwt for 2 consecutive months.

The 2014 Farm Bill specifies that the same margin calculation is used for both MPP-Dairy and DPDP. The “actual dairy production margin” is, as it is under MPP-Dairy, the difference between the “all-milk price” (the average U.S. price for producer milk sold to plants and dealers as specified in section 1401 of the 2014 Farm Bill (7 U.S.C. 9051)) and the average feed cost determined using the formula specified in sections 1401 and 1402 (7 U.S.C. 9052) of the 2014 Farm Bill. The feed cost formula is the same as specified for MPP-Dairy, and was discussed above in the MPP-Dairy section of this document. Once triggered, DPDP purchases end when—

- DPDP purchases have occurred for 3 consecutive months (regardless of the actual dairy production margin at the end of those 3 months),



- The actual dairy production margin for the previous month goes above \$4 per cwt, or
- The U.S. price for cheddar cheese or nonfat dry milk (NDM) exceeds the world price by certain levels (5 percent if the actual dairy production margin is at or below \$4 but above \$3 or 7 percent, if such margin is \$3 or less).

DPDP is intended to time its purchases to support dairy producers in times of low margins, reinforcing and supporting the dairy producer support provided by MPP-Dairy. Reflecting that relationship, the 2014 Farm Bill specifies that DPDP is required to be established no later than 120 days after the Secretary certifies that MPP-Dairy is operational. USDA has chosen to make the two programs effective at the same time. The Secretary determined that additional time was not required to implement DPDP as FSA and FNS will be able to use existing expertise with purchasing and distributing similar products to the same recipients.

As specified in section 1431 of the 2014 Farm Bill, DPDP purchases will be distributed for domestic consumption by individuals in low-income groups through public and private non-profit organizations. Further, the DPDP purchases cannot be stored by CCC. DPDP purchases will be made in package sizes suitable for immediate household use, to facilitate direct distribution to individuals through participating public and private nonprofit organizations. The 2014 Farm Bill specifically prohibits re-sales of DPDP-purchased products into the commercial market.

The 2014 Farm Bill requires USDA consultation with public and private nonprofit organizations that feed low-income groups, in order to determine the types and quantities

of dairy products to be purchased and distributed under DPDP. This will be achieved through existing FNS food program consultations.

#### Administration of DPDP

This rule implements DPDP as specified in the 2014 Farm Bill. DPDP purchases will be made using CCC funds. The 2014 Farm Bill authorizes DPDP through December 31, 2018. As specified in this rule, FSA will operate DPDP for CCC with assistance from FNS.

Distribution of DPDP purchases will be made to public and private non-profit organizations eligible to participate in FNS' food distribution programs for low-income individuals.

Purchase quantities may be limited to meet the 2014 Farm Bill's immediate distribution requirement, taking into account impacts on present demand in order to limit potential short- and long-term market disruptions.

#### When Will FSA Make DPDP Purchases?

The 2014 Farm Bill specifies that the DPDP purchases are required to start after any consecutive 2 month period when margins are below \$4, with a maximum of 3 consecutive months of purchases. If prices rise above the \$4 margin level during a month of purchases, DPDP purchases will terminate at the end of that month, so in that case it might operate for only 1 or 2 months. As specified in the 2014 Farm Bill, after 3 consecutive months of purchases, the DPDP purchases are required to cease (terminate) until there have been at least 2 more consecutive months of margins of \$4 or less.

Because full data for a given month is not available until the following month (see example below) and the 2014 Farm Bill requires that program activity be on a monthly basis, this effectively means that no purchases may be made for 3 months following the end of a purchase period, even if margins remain below the trigger level. This rolling “up to 3 months on, 3 months off” procedure for DPDP purchases is consistent with the 2014 Farm Bill goal of having a long-term intermittent tool for addressing low margins and providing nutrition assistance. DPDP is intended to time its purchases to support dairy producer margins by reducing the supply of dairy products. Given relatively inelastic (constant) demand, such purchases should drive the market price of dairy products up, hopefully also driving margins above the trigger level. In some cases, prices and margins will rise sufficiently to engender only a 1 or 2-month purchase period. In that case, the 3 month “off” requirement still applies, as required by the 2014 Farm Bill.

Data for calculating the domestic versus world price differential will not be available immediately at the end of a month, so DPDP purchases will not commence or terminate until the full month after all data for a month becomes available. For example, and as shown in the chart below if actual dairy production margins in May and June fall below the “trigger” level, the data for June would be available in July, but not in time to start making DPDP purchases immediately on July 1. Therefore, the DPDP purchases would start in August based on May and June data. If July data, which would be available in August, showed that margins were still below the trigger, DPDP purchases would continue in September. If margins rise above the trigger level in July, the DPDP purchases would terminate at the end of August, and the next eligible month for calculations would be September. If margins in September and October were below the

trigger level, with October data available in November, the DPDP purchases would start up again in December. But if margins remained consistently below the trigger level for the entire period in this example, the DPDP purchases would continue in September and October, based on May, June, July, and August data, and could not start up again until February, based on November data and December data, which would become available in January. 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 Purchases <sup>1</sup>				
2 Consecutive Months	Calculate Margin for 2 Consecutive Months <sup>2</sup>	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 <sup>3</sup> begin in April	1 <sup>st</sup> month of purchases	No purchases
February and March .....	April	Dairy product purchases <sup>3</sup> begin in May	2 <sup>nd</sup> consecutive month of purchases	No purchases
March and April .....	May	Dairy product purchases <sup>3</sup> begin in June	3 <sup>rd</sup> consecutive month of purchases	No purchases
April and May .....	June <sup>4</sup>	No purchases; terminated after 3 consecutive months	3-month maximum reached (1 <sup>st</sup> month off)	No purchases
May and June .....	July	No purchases; terminated after 3 consecutive months	3-month maximum reached (2 <sup>nd</sup> month off)	No purchases
June and July .....	August	No purchases; terminated after 3 consecutive months	3-month maximum reached (3 <sup>rd</sup> month off)	No purchases
July and August.....	September	Dairy product purchases <sup>3</sup> begin in October	1 <sup>st</sup> month of purchases	No purchases
August and September .....	October	Dairy product purchases <sup>3</sup> begin in November	2 <sup>nd</sup> consecutive month of purchases	No purchases
September and October .....	November	Dairy product purchases <sup>3</sup> begin in December	3 <sup>rd</sup> consecutive month of purchases	No purchases
October and November .....	December	No purchases; terminated after 3 consecutive months	3-month maximum reached (1 <sup>st</sup> month off)	No purchases
November and December .....	January	No purchases; terminated after 3 consecutive months	3-month maximum reached (1 <sup>st</sup> month off)	No purchases

<sup>1</sup>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.

<sup>2</sup>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.

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

<sup>4</sup>In the example, June is the 3<sup>rd</sup> 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.

The trigger level is a \$4 margin per cwt of milk, with an additional requirement from the 2014 Farm Bill that USDA's authority for purchases will end if the U.S. price and world price differential for cheddar cheese or nonfat dry milk exceeds certain percentage levels, even when margins remain at \$4 or less. In other words, FSA will stop making DPDP purchases, even if the margins are at \$4 or less, if the U.S. price for certain dairy products is significantly above world prices. As required by the 2014 Farm Bill, FSA will stop making DPDP purchases if the margin is \$4 or less but above \$3 and the U.S. price is more than 5 percent above the world price or if the margin is at or below \$3, DPDP will not make purchases if the price differential is more than 7 percent.

If DPDP purchases were suspended due to domestic prices being sufficiently above world prices, margins would be tracked for the next 2 months, and purchases could begin after 3 months. For example, at the end of July, it would be known if May and June margins were at or below \$4 per cwt. If margins for both May and June were at \$4 or less per cwt, and the relation between domestic and world prices did not preclude it, the DPDP purchasing process would start August 1. At the end of August, the July margin could be calculated and if at \$4 or less per cwt, DPDP purchases would continue in September (the second consecutive month "on"). If the July margin were above \$4 per cwt, DPDP purchase activity would cease August 31, and DPDP purchases could next be made in December (after the required 3 months "off"), if September and October margins were at \$4 or less per cwt. If July and August margins were both at \$4 or less per cwt, DPDP purchases would continue in September and October and end due to the 3-month maximum of purchases. If November and December margins were at \$4 or less per cwt,

DPDP purchase activities could begin again in February (after the required 3 months “off”).

DPDP will not stop or start making purchases in the middle of a month even if the margin or the world price data has hit one of the “trigger” numbers mid-month.

#### U.S. Price Versus World Market Price Differential Trigger

The calculations for the price differential determination (which require a comparison of U.S. prices and world prices) as specified in this rule allow FSA to consult with other agencies of USDA that collect foreign and domestic price data, such as the Agricultural Marketing Service (AMS). The 2014 Farm Bill specifies that USDA is required to calculate the differential between U.S. prices and world prices for cheddar cheese and nonfat dry milk; it does not specify what data FSA should use for U.S. prices or world prices. For world prices FSA expects (although not specified in the regulations) to use the AMS Oceania price series because of the quantity of sales in that series. Alternatively, FSA could use a multi-region weighted average or some other method to make the determinations, if those other methods are more appropriate for calculating a relevant world price. FSA expects to base U.S. prices on the AMS monthly prices for cheddar cheese and nonfat dry milk, although FSA may use a different data set, as needed.

FSA intends to post the price calculation method and results, and purchase determinations, on the FSA website. If another method proves to be more appropriate for providing information to the public, it will replace the planned on-line posting.

## Product Determinations

The 2014 Farm Bill requires USDA consultation with public and private nonprofit organizations to determine the types and quantities of products to purchase through DPDP. This requirement will be met by FNS's existing food program consultations with groups involved in the distribution of food to low-income people, including food banks, State and local agencies, and advocacy organizations. DPDP purchases are expected to be made in package sizes suitable for immediate household use, to best accommodate the immediate distribution requirement of the 2014 Farm Bill, in a manner that is cost effective to the U.S. taxpayer.

## Comments Requested on Cost Effective Purchases

FSA is requesting comments on how to best administer the dairy product purchases for DPDP to ensure that dairy prices are increased in the most cost effective way. In your comments, please suggest options and provide data to show the cost effectiveness of the suggestion as it relates to the goals of DPDP.

## Distribution and Use of DPDP Purchases

The 2014 Farm Bill requires that products purchased under DPDP will:

- Be distributed in a manner that encourages their domestic consumption by individuals in low-income groups;
- Be distributed using the services of public and private nonprofit organizations; and



- Not be resold back into commercial markets by any organization that receives them.

It is expected that all these requirements will be addressed as specified in the regulations for the existing FNS programs through which the products will be distributed. Public or private nonprofit organizations that receive DPDP products may transfer those products to other nonprofits only if the transferee will likewise distribute to domestic low-income recipients without cost or waste, consistent with existing FNS regulations. FNS regulations in 7 CFR 250.13(d)(1) provide that donated foods “be distributed only to recipient agencies and individual recipients eligible to receive them” under applicable program regulations. FNS regulations in 7 CFR 250.13(a)(1)(ii) provide that donated foods “not be sold, exchanged or otherwise disposed of without the approval of the Department.” Any losses of donated foods resulting from improper distribution or use will be subject to the requirements of 7 CFR part 250 and the instruction and guidance provided in FNS Instruction 410-1, Rev 2 “Claims for Losses of Donated Foods and Related Administrative Losses—Procedures for the State Distributing Agency,” and in FNS Instruction 420-1, “Managing Agency Debts.”

#### Start of DPDP

This rule specifies that DPDP is effective the day this rule is published, in the sense that it provides the regulations and purchase authority necessary to operate DPDP, but FSA will not make DPDP purchases unless other price and margin requirements are met.

Because MPP-Dairy and DPDP use the same definition of actual dairy production margin, which is defined in the 2014 Farm Bill using existing USDA reported data, FSA will have data on actual dairy production margins the day this rule is effective. Therefore, if margins have been at \$4 or less for the 2 months before the effective date of this rule, and all other requirements are met for eligible purchase months, including the world price differential, DPDP can begin making purchases the first full month that DPDP is effective.

In preparation of starting to make DPDP purchased, FSA will closely monitor the margins and related information to analyze the potential need for starting DPDP purchases. If the analysis shows that DPDP would be expected to trigger, FSA will consult with FNS, then 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. When the list of products and other details, such as size of the packaged products is identified, FSA will analyze various factors, including the expected result on the dairy market of the various purchasing options to determine the best combination and quantity of dairy products to purchase to meet the dual goals of the program: 1) To support dairy producer margins and 2) to provide dairy products to individuals in low-income groups through public and private non-profit organizations. The process of determining the exact combination of dairy products to be purchased and the quantity to purchase will continue through the bid solicitation process to ensure the dual goals of DPDP are achieved at the least cost to taxpayers. FSA will purchase the types and quantities of products determined through this process.

## Structure of this Rule

This rule specifies the regulations for MPP-Dairy in 7 CFR part 1430, subpart A, replacing the regulations for the Dairy Product Price Support Program, which is no longer authorized. It specifies the regulations for DPDP in subpart C, replacing the regulations for the 2004 Dairy Disaster Assistance Payments Program, which is also no longer authorized. As part of FSA's ongoing retrospective review efforts, this rule also removes the regulations in subpart D for the Market Loss Assistance Program and subpart E for the 2005 Dairy Disaster Assistance Payment Program, both of which are also no longer authorized.

## Notice and Comment

In general, the Administrative Procedure Act (5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the Federal Register and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. Regulations to implement the provisions of Title I of the 2014 Farm Bill and the administration of Title I are exempt from the notice and comment provisions of 5 U.S.C. 553 and the Paperwork Reduction Act (44 U.S.C. chapter 35), as specified in section 1601(c)(2) of the 2014 Farm Bill.

## Comments Requested on Intergenerational Transfers and Family Members Joining an Operation

The 2014 Farm Bill exempts CCC from notice and comment rulemaking under 5 U.S.C. 553 with respect to MPP-Dairy and DPDP; however, FSA would like to invite comments with respect to the establishment of additional production history under MPP-Dairy.

Section 1401(9) of the 2014 Farm Bill and this rule define the term “production history” as the production history determined for a dairy operation when a participating dairy operation first registers to participate in MPP-Dairy. Section 1405(a) provides, except as provided in section 1405(b), the production history of the dairy operation is equal to the highest annual milk marketings of the dairy operation during any one of the 2011, 2012, or 2013 calendar years, with an adjustment in subsequent years to reflect any increase in national average milk production. Section 1405(b) provides that in the case of a participating dairy operation that has been in operation for less than a year, the dairy operation elect one of two methods for the Department to determine the production history of the dairy operation:

- The volume of the actual milk marketings extrapolated to a yearly amount,  
or
- An estimate of actual milk marketings based on the herd size relative to the national rolling average data.

The provisions in this regulation are consistent with the 2014 Farm Bill.

The 2014 Farm Bill provisions regarding MPP-Dairy and the rule do not address the establishment of additional production history for a participating dairy operation in specific instances, such as an inter-generational transfer or when a family member joins a participating dairy operation. Other statutory provisions of MPP-Dairy do suggest that Congress intended to benefit smaller dairy operations, which tend to be family owned and operated. These provisions include the establishment of lower premium rates for insured annual production of less than 4,000,000 pounds. This rule does not take into account the size and structure of the dairy operation in determining whether the operation can adjust its production history to assist small, family dairy operations, especially with intergenerational transfers of the operation. FSA invites interested parties to address whether the regulation should be amended to authorize the establishment of additional production history, and if so, whether limitations should be imposed on any increases. Specifically, FSA requests comments on the following questions; please include any data that supports your comments:

1. Does the provision in the rule regarding transfers of production history hinder intergenerational transfers of dairy operations? If so, how?
2. How would you suggest the rule be amended to accommodate intergenerational transfers or adult children who want to join their parent's dairy operation and obtain additional production history for the dairy operation?
3. If additions to production history based on intergenerational transfers or adult children joining family dairies are allowed, should there be a cap on the overall amount of production history that cannot be exceeded or a

percentage or quantity limitation on the amount by which the production history could be increased per participating dairy operation under this provision? If so, what amount?

#### Effective Date

The Administrative Procedure Act (5 U.S.C. 553) provides generally that before rules are issued by Government agencies, the rule is required to be published in the Federal Register, and the required publication of a substantive rule is to be not less than 30 days before its effective date. One of the exceptions is when the agency finds good cause for not delaying the effective date. Subsection 1601(c)(2) of the 2014 Farm Bill makes this final rule exempt from notice and comment. Therefore, using the administrative procedure provisions in 5 U.S.C. 553, FSA finds that there is good cause for making this rule effective less than 30 days after publication in the Federal Register. This rule allows FSA to provide adequate notice to dairy operations about the new MPP-Dairy so they will be ready to begin enrollment no later than September 1, 2014, as required by section 1403 of the 2014 Farm Bill. Therefore, to begin providing benefits to operations in a timely fashion, the MPP-Dairy regulations in 7 CFR part 1430, subpart A are effective when published in the Federal Register.

Section 1431 of the 2014 Farm Bill requires that DPDP be operational no later than 120 days after MPP-Dairy, but as discussed above, USDA decided to make DPDP effective at the same time as MPP-Dairy, so as not to delay needed assistance to dairy operations and low income groups. A 30 day delay in the effective date would

unnecessarily delay needed assistance to dairy operations and individuals in low income groups.

#### Executive Orders 12866 and 13563

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

Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as economically significant under Executive Order 12866, “Regulatory Planning and Review,” and therefore, OMB has reviewed this rule. This regulatory action is being taken to implement two programs required by the 2014 Farm Bill. A summary of the cost-benefit analysis of this rule is provided below and the full cost benefit analysis is available on [regulations.gov](http://regulations.gov).

#### Cost Benefit Analysis Summary

The current actual dairy production margin is about \$12, so neither DPDP nor MPP-Dairy would have any cost in the first month. If current milk prices and cattle feed prices continue through the end of 2018, the payments to dairy producers from the government via MPP-Dairy and DPDP will be zero. Any program payments would be

more than offset by MPP-Dairy premiums and fees. However, in the event of prolonged low margins, programs outlays could exceed \$100 million per year.

If actual margins vary significantly from mean projections used for the 2015 President's Budget Midsession Review, DPDP is expected to trigger twice during the 2015 to 2018 period and total cost is expected to be about \$400 million over the 4-year period, for an average cost of \$100 million per year. That is a net cost to the government for both MPP-Dairy and DPDP, meaning the projected total payments to producers and the cost of the dairy products purchased minus the MPP-Dairy fees and premiums paid to CCC. Nearly all of the impacts estimated in this analysis are transfers between entities within society. For example, DPDP results in an average annual cost to the government of about \$30 million for dairy product purchases (cost side of the transfer), which would be balanced by low income individuals receiving \$30 million worth of free dairy products (benefit side of the transfer).

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act or any other law, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because the 2014 Farm Bill exempts CCC from notice and comment



rulemaking under 5 USC 553 with respect to these programs and therefore, CCC is not required by any law to publish a proposed rule for public comment for this rulemaking.

#### Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and the FSA regulations for compliance with NEPA (7 CFR part 799). FSA has determined that the provisions identified in this final rule are administrative in nature, intended to clarify the mandatory requirements of the programs, as defined in the 2014 Farm Bill, and do not constitute a major Federal action that would significantly affect the quality of the human environment, individually or cumulatively. The few discretionary features of the rules include establishing deadlines, determinations of eligibility and prices, and purchase procedures, and have been selected largely based on pre-existing USDA programs. While these dairy programs are new, their creation is mandated by the 2014 Farm Bill, and are therefore not subject to review under NEPA. The few discretionary provisions left for FSA to determine were all purely administrative and would not alter any environmental impacts resulting from implementing the mandatory programs. Therefore, as this rule presents administrative clarifications only, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory action.

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons specified in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

#### Executive Order 12988

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

#### Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by

law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

#### Executive Order 13175

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

FSA has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, FSA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by the 2014 Farm Bill.

#### The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, or the private sector. Agencies generally need to prepare a

written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

#### Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

This rule is a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996, (Pub. L. 104-121, SBREFA). SBREFA normally requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. Section 808 of SBREFA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. Section 1601(c)(3) of the 2014 Farm Bill provides that the authority in section 808 of SBREFA be used in implementing the changes required by Title I of the 2014 Farm Bill, such as for the changes being made by this rule. Consistent with section 1601(c)(3) of the 2014 Farm Bill, FSA therefore finds that it would be contrary to the public interest to delay the effective date of this rule, because it would delay implementation MPP-Dairy as required in the 2014 Farm Bill. The regulation needs to be effective to provide adequate time for producers to be ready to begin the sign-up process in a timely fashion to allow

coverage to begin by September 1, 2014. Therefore, the rule is effective when published in the Federal Register.

#### Federal Assistance Programs

The title and number of the Federal Domestic Assistance Program found in the Catalog of Federal Domestic Assistance to which this rule applies are:

10. 116 – Margin Protection Program-Dairy

10.115 – Dairy Product Donation Program

#### Paperwork Reduction Act of 1995

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in subsection 1601(c)(2)(B) of the 2014 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

#### E-Government Act Compliance

FSA and CCC are committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

#### List of Subjects in 7 CFR Part 1430

Dairy products, Fraud, Penalties, Price support programs, Reporting and recordkeeping requirements.

For the reasons discussed above, the regulations at 7 CFR part 1430 are amended as follows:

#### PART 1430 – DAIRY PRODUCTS

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

Authority: 7 U.S.C. 8773, 9051-9060, and 9071 and 15 U.S.C. 714b and 714c.

2. Revise 7 CFR part 1430, subpart A to read as follows:

##### 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.

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1430.109 Effect of failure to pay administrative fees or premiums.

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

1430.111 Relation to RMA's LGM-Dairy Program.

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1430.113 Contract modifications.

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1430.118 Misrepresentation and scheme or device.

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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 A — Margin Protection Program for Dairy Producers

### § 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 intended 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 programs 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.

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 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 which the dairy operation first commercially markets milk and may elect coverage that

begins the next consecutive 2-month period following the approval 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, except for 2014, where the election and coverage year will be the same.

(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 percentages 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.

(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.

§ 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 under 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.

(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.

§ 1430.106 Administrative fees.

(a) Dairy operations must pay an initial administrative fee to FSA in the amount of \$100 to participate in MPP-Dairy at the time of initial registration to participate. Each approved participating dairy operation must also pay a \$100 administrative fee each year through December 31, 2018. Annual administrative fees are due and payable to FSA 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 unit 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.

§ 1430.107 Buy-up coverage.

(a) For purposes of receiving 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, \$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 tables.

Table 1 to § 1430.107(d)

Coverage Level (margin)	Tier 1 Premium per cwt in 2014 and 2015 (for the covered <sup>1</sup> production history that is 4 million pounds or less) <sup>2</sup>	Tier 2 Premium per cwt, all years (for the part of covered <sup>1</sup> production history over 4 million pounds)
\$4.00.....	None	None
\$4.50.....	\$0.008	\$0.020
\$5.00.....	\$0.019	\$0.040
\$5.50.....	\$0.030	\$0.100
\$6.00.....	\$0.041	\$0.155
\$6.50.....	\$0.068	\$0.290
\$7.00.....	\$0.163	\$0.830
\$7.50.....	\$0.225	\$1.060
\$8.00.....	\$0.475	\$1.360

<sup>1</sup>The catastrophic coverage level provided at the \$4 margin is 90 percent.

Table 2 to § 1430.107(d)

Coverage Level (margin)	Tier 1 Premium per cwt after 2015 (for the covered <sup>1</sup> production history that is 4 million pounds or less)	Tier 2 Premium per cwt, all years (for the part of covered <sup>1</sup> production history over 4 million pounds)
\$4.00.....	None	None
\$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

<sup>1</sup>The catastrophic coverage level provided at the \$4 margin is 90 percent.

(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) The total annual premium for a participating dairy operation calculated as provided in paragraphs (d) and (e) of this section for calendar year 2014, is due in full at the time the contract is submitted to FSA during the open election period applicable for calendar year 2014, as determined by the Deputy Administrator. For subsequent calendar years, 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, unless otherwise determined by the Deputy Administrator, according to either of the following options:

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

(2) In installments, with a minimum of 50 percent at the time of submission of coverage election to FSA and the remaining balance due no later than June 1 of the applicable calendar year of coverage.

(h) If a minimum of 50 percent of the premium is not paid by the end of an open election period for an applicable calendar year of coverage, the participating dairy operation will only be covered at catastrophic level coverage, except that the participating dairy operation will have no coverage whatsoever if the administrative fee for the applicable calendar year of coverage has not been timely paid.

(i) Annual premium balances due to FSA from a participating dairy operation for a calendar year of coverage must be paid in full no later than June 1 of the applicable calendar year. Premium balances due, but not in arrears, prior to June 1 will be deducted from any MPP-Dairy payment(s) made to the participating dairy operation during the applicable calendar year of coverage.

(j) A participating dairy operation with an unpaid premium balance after June 1 for a calendar year of coverage will lose eligibility for coverage 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 in form to the Deputy Administrator and made payable to FSA and either mailed to or provided in person to the administrative county office or other location designated by FSA.

§ 1430.108 Margin protection payments.

(a) 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.

(b) The MPP-Dairy payment to an eligible participating dairy operation relative to the qualifying 2-month period will equal the product obtained by multiplying:

(1) The amount by which the coverage level in effect for the participating dairy operation exceeds the average actual dairy production margin for the applicable 2-month period;

(2) The coverage percentage in effect for the participating dairy operation; and

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

(c) For any coverage period, a participating dairy operation can for all of its production select only one coverage level threshold between \$4 and \$8 (in 50 cent increments) per hundredweight under § 1430.107(a)(1); and only one percentage for its production history between 25 percent and 90 percent (in 5 percent increments) under § 1430.107(a)(2).

§ 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, 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.

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

§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.

(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) In general, a producer may participate in either MPP-Dairy through a dairy operation or the LGM-Dairy program operated by RMA, but not both. However, since MPP-Dairy is first being made available after potential applicants may have already applied for 2014 or 2015 coverage under LGM-Dairy, for the annual election period for MPP-Dairy established for the 2014 and 2015 calendar year coverage only, a producer with coverage under LGM-Dairy that wishes to participate through their dairy operation in MPP-Dairy, is required to:

(1) Register the dairy operation to participate in MPP-Dairy during the annual election period established for calendar year 2014 and 2015, as established by the Deputy Administrator;

(2) Agree not to extend or obtain new LGM-Dairy coverage;

(3) Acknowledge in writing at the time of registration that no MPP-Dairy payment will be made to the dairy operation for any month included in any period for which any producer in the dairy operation has LGM-Dairy coverage; and

(4) Pay applicable administrative fees in the same manner as other participating dairy operations by paying fees and premiums that may be prorated by the Deputy Administrator to reflect the limited period of coverage.

(b) Margin protection coverage under MPP-Dairy will not become effective until after the target month of marketings under LGM-Dairy has ended by natural expiration of the LGM-Dairy agreement or by an RMA-allowed cancellation. Any applicable premium for the participating dairy operation will be prorated based on the remaining months of the applicable calendar year of coverage following the month the LGM-Dairy target month has ended.

(c) MPP-Dairy payment may only trigger after the target month of marketings under LGM-Dairy has ended.

(d) A participating dairy operation will be required to provide proof, to the satisfaction of FSA, of the cancellation or expiration of the LGM-Dairy policy based on the final month of target marketings under the LGM-Dairy policy.

§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 of coverage, and the participating dairy operation remains obligated to pay such administrative fees and premiums as provided in § 1430.108.

(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.

§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:

(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.

§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.

(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.

3. Revise 7 CFR part 1430, subpart C to read as follows:

Subpart C — Dairy Product Donation Program

Sec.

1430.300 Administration, purpose, and funding.

1430.301 Definitions.

1430.302 Commencement and termination of DPDP purchases.

1430.303 DPDP purchases.

1430.304 Distribution of DPDP purchased products.

Subpart C – Dairy Product Donation Program

§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 products 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 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 Purchases <sup>1</sup>				
2 Consecutive Months	Calculate Margin for 2 Consecutive Months <sup>2</sup>	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 <sup>3</sup> begin in April	1 <sup>st</sup> month of purchases	No purchases
February and March .....	April	Dairy product purchases <sup>3</sup> begin in May	2 <sup>nd</sup> consecutive month of purchases	No purchases
March and April .....	May	Dairy product purchases <sup>3</sup> begin in June	3 <sup>rd</sup> consecutive month of purchases	No purchases
April and May .....	June <sup>4</sup>	No purchases; terminated after 3 consecutive months	3-month maximum reached (1 <sup>st</sup> month off)	No purchases
May and June .....	July	No purchases; terminated after 3 consecutive months	3-month maximum reached (2 <sup>nd</sup> month off)	No purchases
June and July .....	August	No purchases; terminated after 3 consecutive months	3-month maximum reached (3 <sup>rd</sup> month off)	No purchases
July and August.....	September	Dairy product purchases <sup>3</sup> begin in October	1 <sup>st</sup> month of purchases	No purchases
August and September .....	October	Dairy product purchases <sup>3</sup> begin in November	2 <sup>nd</sup> consecutive month of purchases	No purchases
September and October .....	November	Dairy product purchases <sup>3</sup> begin in December	3 <sup>rd</sup> consecutive month of purchases	No purchases
October and November .....	December	No purchases; terminated after 3 consecutive months	3-month maximum reached (1 <sup>st</sup> month off)	No purchases
November and December .....	January	No purchases; terminated after 3 consecutive months	3-month maximum reached (1 <sup>st</sup> month off)	No purchases

<sup>1</sup>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.

<sup>2</sup>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.

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

<sup>4</sup>In the example, June is the 3<sup>rd</sup> 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

(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.

Subparts D and E – [Removed]

4. Remove subparts D and E.

Signed on August 20, 2014.

Juan M. Garcia,  
Administrator,  
Farm Service Agency, and  
Executive Vice President,  
Commodity Credit Corporation.

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