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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 760

Commodity Credit Corporation

7 CFR Part 1430

[Docket No. CCC–2019–0004]

RIN 0560–A137

Dairy Margin Coverage Program and Dairy Indemnity Payment Program

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

ACTION: Final rule.

SUMMARY: This final rule implements the requirements of the dairy programs administered by the Farm Service Agency (FSA) on behalf of the Commodity Credit Corporation (CCC). The Dairy Margin Coverage (DMC) Program, as authorized by the Agriculture Improvement Act of 2018 (2018 Farm Bill), replaces the Margin Protection Program (MPP-Dairy) for dairy producers and retains much of the structure of MPP-Dairy. DMC is a margin-based support program for dairy producers that provides risk management coverage that will pay producers when the difference between the national price of milk and the national estimated cost of feed (the margin) falls below a certain level. The rule also extends the Dairy Indemnity Payment Program (DIPP) through 2023 and amends the regulations to incorporate a specific period of time for which claims for the same loss will be eligible for indemnification under DIPP.

DATES: Effective June 18, 2019.

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USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

The 2018 Farm Bill (Pub. L. 115–334) reauthorized DIPP and requires establishment of regulations for the DMC Program. The changes for each of the programs are explained below.

DIPP

Section 1402 of the 2018 Farm Bill amends 7 U.S.C. 4553 to reauthorize DIPP through 2023, and does not make any other changes to DIPP.

The purpose of DIPP is to indemnify dairy farmers and manufacturers of dairy products who, through no fault of their own, suffer income losses with respect to milk or milk products that were removed from commercial markets because such milk or milk products contained certain harmful pesticide residues, chemicals, or toxic substances, or were contaminated by nuclear radiation or fallout.

This rule is adding a specific timeframe that will limit the period of time that a dairy claimant under DIPP is eligible to receive indemnification. This is a discretionary change. Current DIPP rules indemnify losses until such time as the dairy is reinstated to the commercial market by a State regulatory agency. The large majority of claims for indemnification to affected farmers under DIPP typically range from 2 to 10 days for which their milk has been removed from the commercial market before such milk has been reinstated by a State regulatory agency. However, some claims submitted for indemnification could span the course of several months. In these circumstances, FSA will limit indemnification for the same loss to a period not to exceed 18 months. The current regulation does not have a limit on the time period for which an eligible dairy can receive DIPP payments for the same contaminating event. Accordingly, discretionary changes are being made to DIPP to limit indemnification to not extend past the time period that the impacted dairy cows in the dairy herd are no longer lactating or impacted dairy cows in gestation have delivered a calf and are no longer lactating from its most immediately preceding birth after the contaminating event, not to exceed 18 months. Claims for milk from the

affected farmer not reinstated to the commercial markets after the impacted dairy cows in the herd are dry and no longer producing milk from its most immediately preceding birth after the contaminating event, or have exceeded the 18-month period will not be eligible for indemnification for their milk any further, in order to prevent continued indemnification to an affected farmer for the removal of milk based upon the same contaminating event, however long that contaminating event or activity lasts. The 18-month period is based on a 10-month lactation period after the calf is born, overlapping breeding period, and a remaining 6-month pregnancy term. The 18-month period also accounts for approximately 2 months of the 18-month period the cow may not be producing milk during the dry period between lactations. At any time when the impacted dairy cows are dry from lactating from its most immediately preceding birth after the contaminating event the occurrence will no longer be eligible for indemnification. Limiting indemnification of a contaminating event to the maximum 18-month period, during which such dairy cow could be affected, was determined a fair and reasonable time frame to limit claims. Otherwise, any indemnification payment beyond this specified time period would be for milk from cows that have already completed the gestation period prior to the contaminating event and lactation period following birth, or from cows that were conceived after the initial contaminating event that caused the milk to be removed from the market. Once the dairy is required to remove their milk from the commercial market, such dairy producer knows or has reason to know the presence of contamination and it is reasonable that such dairy should take such actions as to not allow their cows to be further exposed to such contamination. Claimants will be required to provide inventory of dairy cows bred and lactating as of the contamination event to determine eligible livestock producing milk during the contamination period for which DIPP assistance is provided. Further, once the contaminating event has occurred and the dairy has been directed to remove their milk from the commercial market, any subsequently purchased or bred animals are not eligible for assistance

under DIPP. The limitation will prevent a claimant from receiving indemnification in perpetuity for the same contaminating event. Therefore, this rule specifies a timeframe for which dairies are eligible to be indemnified for the same contaminating event or activity under DIPP. Dairy producers that have exceeded the specified timeframe established by FSA before June 18, 2019 will be allowed to submit one additional claim after June 18, 2019, since this new provision is being implemented as of June 18, 2019 and some producers may have already exceeded the specified timeframe.

DMC Program and MPP-Dairy

This rule establishes a new subpart in the regulations in 7 CFR part 1430 to establish the new DMC Program for dairy producers as authorized by Subtitle D of Title I of the 2018 Farm Bill. The DMC Program regulation is in effect from June 18, 2019, through December 31, 2023; however, the DMC Program is retroactive back to January 1, 2019, as specified in the 2018 Farm Bill.

DMC replaces MPP-Dairy (7 CFR part 1430 subpart A). The 2018 Farm Bill authorizes retroactive provisions that open eligibility for certain producers previously determined ineligible under MPP-Dairy and for MPP-Dairy participants when the total premiums paid exceeded the total payments received during each of the applicable years of MPP-Dairy. This rule amends the MPP-Dairy regulations to make these changes. MPP-Dairy will only remain in effect until retroactive provisions have been administered and concluded.

The DMC Program is based on a similar framework to MPP-Dairy, with some changes. The purpose of DMC is to provide eligible dairy producers risk protection against low margins resulting from a combination of low milk prices and high feed costs. DMC and MPP-Dairy both provide for payments to dairy operations that are calculated based on producer elected margins when the difference between the national "all-milk" price of milk and the national average cost of feed falls below that producer elected margin. However, revisions were made, including changes to premium rates, additional coverage levels, and a premium discount option for locking in coverage levels for a 5-year period. FSA will announce the date on which the DMC Program registration will begin. Under the 2018 Farm Bill, the DMC Program ends December 31, 2023.

The 2018 Farm Bill expands on the modifications made to MPP-Dairy by the Bipartisan Budget Act of 2018. DMC is a voluntary program for producers

involving fees and coverage-based premiums at most levels that provides payments when the calculated national margin for a month falls below the producer's selected margin trigger. The "margin" is the difference between the average national price of one hundred pounds (cwt) of milk and the national average price of the feed components (corn, soymeal, and hay) needed to produce that milk. For example, if the average price of milk is \$20.00 a cwt and the average cost of soybean meal, corn, and hay needed to produce that milk is \$12.00 a cwt, the margin is \$8.00 a cwt. A factored hay price determined by FSA by averaging the prices of "premium and supreme" alfalfa hay and conventional alfalfa hay will be used in the feed cost calculations for DMC. Section 1401(c) of the 2018 Farm Bill required the National Agricultural Statistics Service to revise monthly price survey reports to include prices for high-quality (premium and supreme) alfalfa hay in the top 5 milk producing states and to publish that data no later than 120 days after passage of the 2018 Farm Bill. There is no mandate for USDA to use that data in the DMC feed cost calculation. However, there are indications that this higher quality alfalfa hay price would better reflect the quality of hay purchased by dairy operations. Since not all dairy producers feed high quality hay, a factored price, which assumes that 50 percent of alfalfa hay that is fed to dairy cows is "premium and supreme," will more closely reflect the prices paid by dairy producers.

As authorized by the 2018 Farm Bill, DMC is available for participating dairy operations. A dairy operation can have one or more producers and each of the producers on the operation must share in the risk of production, and must contribute capital, land, labor, equipment, or management to the operation commensurate with their share of the proceeds. However, all producers do not have to participate. Producer payments and premiums will be reduced according to the non-participating producer's percentage share in the dairy operation. However, all participating producers in the dairy operation must unanimously agree to the elected coverage levels and any non-participating producers from that same dairy operation cannot independently or separately apply for DMC.

The production history for each dairy operation will be established in the same manner as MPP-Dairy, using the highest of the operation's annual milk marketings in any one of 2011, 2012, or 2013 calendar years. Under DMC, dairy operations that were not in operation

prior to January 1, 2014, and have more than 1 year of production history but have not previously established a production history under MPP-Dairy, will establish production history from annual milk marketings during any 1 calendar year, as specified in this rule. However, dairy operations with less than a full calendar year of production history will establish production history using the same options established in MPP-Dairy, based on either an extrapolation from actual production data for the first calendar year with at least 1 full month of production history, adjusted for a seasonality index, or by estimating annual production based on the herd size of the dairy operation relative to the national rolling herd average production data.

For DMC, the production history, once established for an operation, does not change, even for changes in the herd size of the dairy operation. MPP-Dairy previously allowed for an annual upward adjustment to established production history that was based on the national annual increase in milk production. However, under DMC, production history will be adjusted only for 2019 for certain dairies to reflect any increase in the national average milk production relative to calendar year 2017. FSA determined the national average milk production relative to calendar year 2017 based on the milk production history increase from April 2016 through March 2017 and applied that adjustment at a factor of 1.0186 to participating dairy operations under MPP-Dairy for coverage year 2018. Dairy operations participating in DMC that had production history previously established under MPP-Dairy but elected not to participate in MPP-Dairy are not eligible for the production history adjustment. Additionally, dairy operations that first participated in MPP-Dairy in 2018, are not eligible for a production history adjustment and will maintain that same production history. However, dairy operations that did not previously establish their production history for the purpose of MPP-Dairy and, consequently did not participate in MPP-Dairy, will have the same adjustment factor of 1.0186 applied to their established production history upon registration in the DMC Program. However, unlike in MPP-Dairy, no additional production history adjustments will be made to the established production history in subsequent years of participation in DMC, per changes made by the 2018 Farm Bill.

Provisions regarding production history remain largely unchanged from MPP-Dairy to DMC. The production

history is established for the participating dairy operation, and is assigned to that operation, not to an individual producer or to the facility location.

The 2018 Farm Bill does not permit a producer to adjust the proportion of their share of the dairy operation for the production history that is covered by the premium rate schedule in Tier I and Tier II, from what is covered for the dairy operation. For example, a participating dairy operation with two equal partners, each with a 50 percent ownership share in a 20 million pound production history that elects 60 percent coverage ($20,000,000 \times 60\% = 12,000,000$) under DMC, must cover the full 12,000,000 pounds, as applicable in the premium rate schedules. If one partner in that operation decides not to participate, the participating partner is not allowed to only cover their 50 percent share of the production history, 10 million pounds in this example, at the 60 percent election.

In some instances for MPP-Dairy, production history was tied to the facility location if the dairy operation was under a lease agreement. As such, transfers of production history to a different location and successions-in-interest of production history to another owner were not allowed. Similarly, when transfers were allowed for a relocation of the dairy operation from another facility location of a dairy operation that previously had MPP-Dairy established production history, the relocating dairy operation was allowed to merge the two histories together.

Under new DMC provisions, that in effect untie the production history from the facility location, the dairy operation, regardless of who established the production history, will be allowed to transfer the production history to another dairy operation, as specified by FSA, when there is no relative break in the continuity in the operation of the dairy being transferred. FSA has determined that based on its experience in administering MPP-Dairy that production history of a dairy operation should remain with the operation rather than with the facility because production is naturally tied to the animals that produce the dairy, not the facility; therefore, production should move with the dairy operation that established the production history. Although not a provision required by the 2018 Farm Bill, the provisions for transferring production histories will be implemented using FSA's discretionary authority to untie production history from the facility location in all cases as specified in this rule.

The DMC Program eligibility requirements remain the same as MPP-Dairy, except that producers that participate in the Livestock Gross Margin for Dairy (LGM-Dairy) insurance program administered by the USDA Risk Management Agency (RMA) on behalf of the Federal Crop Insurance Corporation, who under MPP-Dairy could only participate in either LGM-Dairy or MPP-Dairy, are now eligible to receive benefits from both LGM-Dairy and the DMC Program, as specified by the 2018 Farm Bill.

The 2018 Farm Bill also authorizes those producers with LGM-Dairy coverage in 2018, who were previously ineligible to enroll for MPP-Dairy coverage, the ability to retroactively enroll in MPP-Dairy for 2018. FSA has announced a period for eligible LGM-Dairy producers to make application and retroactive 2018 coverage elections to qualify for the payments that triggered in 2018 during the months of February through August and also December (no other months resulted in MPP-Dairy payments). The retroactive 2018 MPP-Dairy signup is only for dairy producers with 2018 LGM-Dairy coverage who produced and commercially marketed milk in 2018 but did not obtain full year MPP-Dairy coverage. FSA will notify eligible producers of the retroactive application signup period.

The 2018 Farm Bill makes significant changes from MPP-Dairy to DMC in the area of coverage levels. Both the previous MPP-Dairy and the new DMC Program require the dairy operation to select a margin trigger and a percentage of production history that will be covered. Coverage level thresholds under MPP-Dairy ranged from \$4 per cwt for basic catastrophic (CAT) level coverage to an \$8 per cwt maximum, in 50 cent increments. A dairy operation could elect coverage on anywhere from 25 percent to 90 percent of the operation's established production history. Under DMC, CAT level coverage remains at \$4, however, higher levels of coverage at the \$8.50, \$9.00, and \$9.50 threshold levels have been added under Tier I. Tier II coverage level thresholds under DMC remain the same as those under MPP-Dairy ranging from \$4 to \$8 and at the same \$0.50 increments. However, the percentage of production history that can be covered also changed. Under MPP-Dairy, coverage was available from 25 percent to 90 percent, in 5 percent increments, whereas under DMC, coverage is available from 5 percent up to 95 percent, in 5 percent increments.

MPP-Dairy required producers to select one margin trigger level and one

percentage of production history for both Tier I and Tier II, however, the new DMC Program allows for a second election of a coverage level threshold in Tier II that can be different than what the dairy operation elects under Tier I, but only if the DMC participating dairy operation elects a Tier I coverage level threshold of \$8.50, \$9.00, or \$9.50. For example, a dairy operation with a 12 million pound production history elects to cover 50 percent of the operations' production history, which is 6 million pounds in this example. The dairy operation can cover 5 million pounds at \$9.00, then can elect to cover 1 million pounds under Tier II at the \$5 margin trigger, or any other level in Tier II, from \$4 to \$8. This option was not previously available under MPP-Dairy and only allows for a second election of a coverage level threshold, not a different coverage percentage, as specified in this rule.

As part of the annual coverage election process, the dairy operation is required to select the levels of coverage and pay an administrative fee, unless waived for a qualifying exemption, and if applicable, pay a premium based on the level of coverage (margin trigger) elected. Premium rates have changed from MPP-Dairy to DMC. The annual premium rates are specified in the 2018 Farm Bill. The premium for each participating dairy operation will be determined based on the dairy operation's election of each of the margin trigger and percentage of coverage. The method to calculate the premium due for participating dairy operations selecting coverage above CAT level, are the same in MPP-Dairy and the new DMC Program, and must be paid by a date determined by FSA, as specified in this rule.

For DMC, just as in MPP-Dairy, the coverage level threshold and coverage percentage must be elected by the dairy operation during the annual coverage election period announced by FSA for the applicable coverage year. MPP-Dairy required producers to make annual coverage elections and participate in the program for the duration of the 2014 Farm Bill. However, under DMC, annual participation is not mandatory. A dairy operation can decide annually during the coverage election period for the applicable year of coverage if they would like to participate.

To be eligible for DMC, a dairy operation must be in the business of producing and commercially marketing milk at the time of application during each annual coverage election period. Because section 1401(m) of the 2018 Farm Bill requires that the DMC Program take effect on January 1, 2019,

for the 2019 coverage year only, those dairy operations that have stopped producing and commercially marketing milk before the coverage election signup period for 2019 begins, may apply for 2019 coverage and applicable payments for only the months the operation was still producing and commercially marketing milk in 2019. These dairy operations are not eligible for the premium rate discount, however, premiums will be prorated based on the months such dairy was in operation for 2019, as such the last marketing statement for the dairy operation, or other documentation deemed appropriate by FSA will be required at the time of application.

Payment of a \$100 administrative fee is still required under DMC for each year of participation, unless the dairy operation qualifies for a waiver exemption based on the dairy operations qualifying status for socially disadvantaged, limited resource, beginning farmer or rancher, and veteran farmer or rancher.

DMC also provides an option during the 2019 coverage election period to make a 1-time election of coverage level and percentage of coverage, "locking-in" those elections for a 5-year period beginning January 2019 and ending December 2023. After the 2019 coverage election period, the lock-in option is not available to dairy operations participating in DMC, except as specified for dairy operations that have not established a production history. All dairy operations that elect the lock-in option are required to participate in the DMC Program at the same elected premium coverage levels for a 5-year period beginning in January 2019. DMC participating dairy operations locking in elections for the 5-year period will receive a premium discount of 25 percent off the premium rate per cwt in each applicable Tier table. For example, a dairy operation elects to lock-in coverage levels at \$7 and 70 percent (5.6 million pounds) of the operation's 8 million pound production history. The applicable premium rate for a \$7 margin trigger is \$0.08 per cwt, discounted by 25 percent of the applicable premium rate will be \$0.06, for the first 5 million pounds covered under Tier I (50,000 cwt \times \$0.06 = \$3,000 premium). Likewise, in Tier II, the applicable premium rate for a \$7 margin trigger is \$1.107, discounted by 25 percent, the applicable premium rate of \$0.83025 per cwt will be applied to the remainder of the covered pounds (5,600,000 - 5,000,000 = 600,000) above 5 million pounds that fall under Tier II (6,000 cwt \times \$0.83025 = \$4,981.50). Therefore, in this example, the dairy

operation will pay the same premium for each coverage year 2019 through 2023, in the amount of \$7,981.50 (Tier I \$3,000 + Tier II \$4,981.50).

New dairy operations will be eligible for the premium rate discount for locking in coverage for the period beginning with the first available calendar year and ending in December 2023. Operations that are determined to be "new dairy operations" under this rule are dairy operations that have never established a production history under MPP-Dairy, and have begun producing and commercially marketing milk within 60 calendar days prior to registering to participate in DMC.

If there are producers in an operation that want to be considered new and are also part of another dairy operation participating in DMC, FSA must determine that the dairy operation is separate and distinct from the other DMC participating dairy operation. Under MPP-Dairy, separate participation by a new dairy operation that was purchased or acquired was subject to an affiliation test, however, under DMC, the affiliation test will no longer apply. The 2018 Farm Bill specifies that the Secretary may not make DMC payments to a dairy operation that is determined by FSA to have reorganized the structure of such operation for the sole purpose of qualifying as a new dairy operation.

Section 1407(f) of the 2014 Farm Bill, as amended by Section 1401(i) of the 2018 Farm Bill, specifies that dairy operations that participated in MPP-Dairy during any of calendar years 2014 through 2017 that submit an application on an approved form may receive a repayment in an amount equal to the difference between the total amount of premiums paid by the dairy operation for each applicable calendar year of coverage and the total amount of payments made to the MPP-Dairy participating dairy operation for that applicable calendar year. Coverage years that result in payments that exceeded premiums paid for that coverage year will yield a \$0 calculation for that calendar year. The 2018 Farm Bill further specifies that a dairy operation that is eligible to receive the calculated repayment must elect to receive the repayment in either an amount that is equal to:

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

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

FSA will determine the calculated repayment amounts for each year for each dairy operation that participated in

MPP-Dairy. Adequate proof must be provided by the dairy operation, to the satisfaction of FSA, for any repayment amounts calculated by FSA under dispute. FSA will specify the time and manner to make a MPP-Dairy repayment request.

Once the choice of cash or credit is made by the dairy operation and approved by FSA, that choice cannot be changed. Dairy operations that elect the credit option can only use that credit in the DMC Program. If the entire credit is not used, for any reason, it cannot be applied as credit to any other USDA program and will have zero cash value and cannot be redeemed for any purpose.

Both cash and credit elections may be transferred to a dairy operation that succeeded to the dairy operation through a succession-in-interest transfer under MPP-Dairy and the successor is currently participating in DMC. Otherwise, the repayment election is not transferrable.

Dairy operations that give up their right to elect a premium repayment option or do not timely make application on a form specified by FSA are not eligible to receive a cash or credit benefit for premiums paid under MPP-Dairy.

Dairy operations eligible for the MPP-Dairy premium that elect the cash repayment option will have cash repayments issued in the same name as the entity that participated in the MPP-Dairy.

This rule includes provisions for MPP-Dairy in 7 CFR part 1430, subpart D, specifically to allow eligibility for LGM-Dairy producers for 2018 and allow for the MPP-Dairy premium repayments. These two provisions are the final actions for MPP-Dairy.

Effective Date, Notice and Comment, and Paperwork Reduction Act

As specified in 7 U.S.C. 9091, the regulations to implement the provisions of Title I and the administration of Title I of the 2018 Farm Bill are exempt from:

- The Paperwork Reduction Act (44 U.S.C. chapter 35), and
- The notice and comment provisions of 5 U.S.C. 553.

In addition, 7 U.S.C. 9091(c)(3) directs the Secretary to use the authority provided in 5 U.S.C. 808, which provides that when an agency finds for good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, that the rule may take effect at such time as the agency determines. Due to the nature of the rule, the mandatory requirements of the 2018 Farm Bill, and the need to implement the dairy

regulations expeditiously to provide assistance to dairy producers, FSA and CCC find that notice and public procedure are contrary to the public interest. Therefore, even though this rule is a major rule for purposes of the Congressional Review Act of 1996, FSA and CCC are not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Therefore, this rule is effective on the date of publication in the **Federal Register**.

Executive Orders 12866, 13563, 13771 and 13777

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. Executive Order 13777, "Enforcing the Regulatory Reform Agenda," established a federal policy to alleviate unnecessary regulatory burdens on the American people.

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. The costs and benefits of this rule are summarized below. The full cost benefit analysis is available on regulations.gov.

As a transfer rule, per OMB guidance, this rule is not covered by Executive Order 13371, "Reducing Regulation and Controlling Regulatory Costs."

Summary of Economic Impacts

DMC provides a greater subsidized margin protection to producers compared to the expired MPP-Dairy, which is expected to lead to greater participation. DMC expands options for dairy operations to buy higher coverage for margins up to \$9.50 per cwt, at incremental premium increases of \$0.50 per cwt. The coverage limit under MPP-Dairy was \$8.00 per cwt. In addition, the premium structure of the DMC Program favors high coverage levels for Tier I production history. Further, dairy operations are now able to cover as little as 5 percent of their production history compared to 25 percent minimum for MPP-Dairy. Dairy operations are

allowed to participate concurrently in DMC and Livestock Gross Margin Insurance for Dairy (LGM-Dairy), which also has the potential to increase DMC participation. Finally, operations that were excluded from participating in MPP-Dairy during 2018 because they were participating in LGM-Dairy can sign up for 2018 MPP-Dairy coverage retroactively.

As a result of these changes, payments to producers from DMC are expected to be greater than for MPP-Dairy. USDA projections as of early 2019 indicate that, over the 10-year baseline period, DMC payments will be triggered frequently. With national feed costs expected to average about \$9.14 over the life of the DMC Program, margins are expected to average \$8.50 per cwt through 2023, even as milk prices recover from 2018 lows. DMC payments are less likely to trigger in the second half of the baseline period, 2024–2029, assuming lower feed prices and higher milk prices bring annual average margins near \$10.29 per cwt.

Stochastic modelling results indicate that DMC would trigger significant outlays under current baseline projections. Allowing variation around the means for milk prices and feed ingredient costs in a stochastic model generates annual gross estimates averaging to \$1.3 billion per year and collection of \$89 million per year in fees and premiums paid by dairy program participants. For the 5-year life of the DMC Program, net expenditures through 2023 are projected to average \$1.2 billion annually.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by Small Business Regulatory Enforcement Fairness Act, generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever an agency is required by the Administrative Procedure Act or any other law to publish a proposed rule, 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 FSA and CCC are not required by any law to publish a proposed rule for this rulemaking initiative.

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 2018 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 have been selected largely based on pre-existing USDA programs and continuation with clarification of duration of existing indemnification payments. Accordingly, these discretionary aspects are covered by the Categorical Exclusion, in § 799.31(b)(6)(iii), that applies to price support programs, and no Extraordinary Circumstances (§ 799.33) exist. Therefore, as this rule presents only administrative clarifications of mandatory requirements, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory action; this rule serves as documentation of the programmatic environmental compliance decision for this federal action.

Executive Order 12372

Executive Order 12372, "Intergovernmental Review of Federal Programs," requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. 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 in this rule are excluded from the scope of Executive Order 12372.

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. This rule has retroactive effect for MPP-Dairy for calendar year 2018. Also, coverage for dairy operations that register during the 2019 re-enrollment period will be retroactive to January 1, 2019. Before any judicial actions 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.

The USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian Tribes and determined that this rule has Tribal implications that required Tribal consultation under Executive Order 13175. Tribal consultation for this rule was included in the 2018 Farm Bill Tribal consultation held on May 1, 2019, at the National Museum of the American Indian, in Washington, DC. The portion of the Tribal consultation relative to this rule was conducted by Bill Northey, USDA Under Secretary for the Farm Production and Conservation mission area, as part of the Title I session. There were no specific comments from Tribes on the dairy rule during the Tribal consultation. If a Tribe requests additional consultation, FSA will work with OTR to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by legislation.

Unfunded Mandates

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 of State, local, or Tribal governments or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no federal mandates as defined by Title II of UMRA for State, local, or Tribal governments, or the private sector. In addition, CCC is not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Programs

The titles and numbers of the Federal assistance programs in the Catalog of Federal Domestic Assistance to which this rule applies are:

- 10.053—Dairy Indemnity Program
- 10.116—Margin Protection Program-Dairy
- 10.127—Dairy Margin Coverage Program

E-Government Act Compliance

CCC and FSA 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

7 CFR Part 760

Dairy products, Indemnity payments, Reporting and recordkeeping requirements.

7 CFR Part 1430

Dairy products, Fraud, Penalties, Reporting and recordkeeping requirements.

For the reasons discussed above, FSA and CCC amend the regulations in 7 CFR parts 760 and 1430 as follows:

PART 760—INDEMNITY PAYMENT PROGRAMS

Subpart A—Dairy Indemnity Payment Program

- 1. Revise the authority citation for part 760 to read as follows:

Authority: 7 U.S.C. 4551—4553.

- 2. Amend § 760.2 as follows:

- a. Remove the alphabetical paragraph designations, and arrange the definitions in alphabetical order; and
- b. Add a definition for "Same loss" in alphabetical order;

The addition reads as follows:

§ 760.2 Definitions.

* * * * *

Same loss means the event or trigger that caused the milk to be removed from the commercial market. For example, if milk is contaminated, the original cause of the contamination was the trigger and any loss related to that contamination would be considered the same loss.

* * * * *

- 3. In § 760.9, add paragraph (c) to read as follows:

§ 760.9 Other legal recourse.

* * * * *

(c) The period eligible for DIPP benefits for the same loss may not extend past the time period that the impacted dairy cows in the dairy herd are no longer lactating or impacted dairy cows in gestation have delivered a calf and are no longer lactating from its most immediately preceding birth after the contaminating event, not to exceed 18 months. Claims for milk from the affected farmer not reinstated to the commercial markets after the impacted dairy cows in the herd are dry and no longer producing milk from its most immediately preceding birth after the contaminating event, or have exceeded the 18-month period will not be compensated any further. Dairy producers that have exceeded the specified period established by FSA before June 18, 2018 will be allowed to submit one additional claim. Dairy cows purchased or bred after the occurrence of the contaminating event may not be included in the claim for benefits.

PART 1430—DAIRY PRODUCTS

- 4. The authority citation for part 1430 is revised to read as follows:

Authority: 7 U.S.C. 9051–9060, and 15 U.S.C. 714B and 714c.

- 5. Add subpart D, consisting of §§ 1430.400 through 1430.425, to read as follows:

Subpart D—Dairy Margin Coverage Program

Sec.

- 1430.400 Purpose.
- 1430.401 Administration.
- 1430.402 Definitions.
- 1430.403 Eligible dairy operations.
- 1430.404 Time and method of registration and annual election.
- 1430.405 Establishment and transfer of production history for a participating dairy operation.

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

§ 1430.400 Purpose.

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

§ 1430.401 Administration.

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

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

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

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

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

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

§ 1430.402 Definitions.

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

Actual dairy production margin means the difference between the all-milk price and the average feed cost, as calculated under § 1430.411. If the calculation would produce a negative number, the margin is considered to be zero.

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

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

AMS means the Agricultural Marketing Service of USDA.

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

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

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

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

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

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

CCC means the Commodity Credit Corporation of USDA.

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

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

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

County committee means the FSA county committee.

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

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

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

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

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

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

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

Handler or producer handler means the initial individual or entity making

payment to a dairy operation for milk produced in the United States and marketed for commercial use.

Hundredweight or cwt means 100 pounds.

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

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

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

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

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

NASS means the National Agricultural Statistics Service of USDA.

New operation means a dairy operation that:

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

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

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

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

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

Producer means any individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen of, or legal resident alien in the United States, and who directly, or indirectly:

(1) Shares in the risk of producing milk, and

(2) Makes contributions including land, labor, management, equipment, or capital:

(i) To the dairy operation at least commensurate to the producer's share of the operation, or

(ii) To the dairy operation of the individual or entity, as determined by the Deputy Administrator.

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

RMA means the Risk Management Agency of USDA.

Secretary means the Secretary of USDA.

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

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

USDA means the U.S. Department of Agriculture.

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

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

§ 1430.403 Eligible dairy operations.

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

(1) Produce milk from cows in the United States that is marketed

commercially at the time of each annual election for an applicable coverage year in DMC, except that dairy operations that have stopped producing and marketing milk in any month before or during the annual coverage election period for 2019 are eligible for only those applicable months;

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

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

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

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

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

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

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

Milk Income Loss Contract Program formerly operated under this part.

§ 1430.404 Time and method of registration and annual election.

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

(b) A dairy operation must submit completed contracts and any other supporting documentation, during the annual election period established by the Deputy Administrator, to the administrative county FSA office serving the dairy operation. However, the production history must be established only once and approved by CCC before the contract is submitted and considered complete.

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

(2) A new dairy operation that does not meet the 60-day requirement of paragraph (b)(1) of this section cannot enroll until the next annual election period for coverage for the following calendar year.

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

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

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

(d) If the dairy producer operates more than one separate and distinct operation, the producer must register each operation for each operation to be eligible for coverage. If the producer moves the same herd of cattle between

two facilities, then the two facilities will not be regarded as separate and distinct but as one operation unless the Deputy Administrator determines otherwise. A separate operation must distinctly, as a single unit, have their own cattle, facilities, milk marketings, tanks, feed, records, State level licenses, and permits. All new dairy operations that did not participate in MPP-Dairy must meet all the requirements of this paragraph. A participating dairy operation in business prior to January 1, 2019, that participated in MPP-Dairy will automatically be determined as a "dairy operation" for DMC Program purposes in the same manner as under MPP-Dairy. In disputes regarding separate dairy operations the Deputy Administrator will determine what is a separate and distinct operation and that decision will be final. A dairy operation operated by more than one dairy producer will be treated as a single dairy operation for purposes of participating in DMC and may only, submit one contract. Only participating dairy operations enrolling using contract forms approved by CCC will be covered by the DMC Program.

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

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

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

operation will remain obligated for all applicable unpaid administrative and premium fees calculated for that 5-year period.

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

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

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

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

(g) At the time the completed contract is submitted to FSA for the first program year in which the operation is to participate in DMC, the dairy operation must also submit a separate form, as prescribed by CCC, to establish the production history for the dairy operation. An established production history and a completed contract are both required to have a complete submission that is subject to approval by FSA. Production histories established for dairy operations under MPP-Dairy will be used in the DMC Program. A new production history will only be established for new dairy operations that did not participate in MPP-Dairy.

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

(a) Except as provided in paragraphs (b) and (c) of this section, FSA will

establish the production history for a dairy operation for DMC as the highest annual milk marketings of the participating dairy operation during any one of the 2011, 2012, or 2013 calendar years.

(1) Producers in the participating dairy operation are required to provide adequate proof of the dairy operation's quantity of milk commercially marketed, to establish the production history 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 was not in operation prior to January 1, 2014, that has not established a production history will elect the highest annual milk marketings during any one calendar year while in operation to determine the production history of the participating dairy operation.

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

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

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

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

(e) Once the production history of a participating dairy operation is established under paragraph (a), (b), or (c) of this section, the production history will be adjusted by a one-time upward adjustment by FSA to reflect any increase in the national average milk production relative to calendar

year 2017, as determined by the Deputy Administrator. Dairy operations participating in DMC, that had production history previously established under MPP-Dairy but elected not to participate in MPP-Dairy are not eligible for the production history adjustment. Dairy operations with approved contracts for 2018 coverage under MPP-Dairy will maintain that same production history, as in the DMC Program and are not eligible for the production history adjustment. New dairy operations that participate in DMC, that did not previously have their production history established nor participate in MPP-Dairy, will have the same adjustment factor of 1.0186 applied to their established production history for registration in the DMC Program as 2018 MPP-Dairy participants. There will be no further adjustments in subsequent years of participation made to the established production history under the DMC Program.

(f) The production history must be transferred from one dairy facility to another as follows:

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

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

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

(h) The established production history of a participating dairy operation may be adjusted upward once during the term of the contract for an intergenerational transfer based on the purchase of additional cows by the new family member(s). The increase in the established production history of the

participating dairy operation will be determined on the basis of the national rolling herd average data for the current year in effect at the time of the intergenerational transfer and the quantity of the production history increase will be limited to an amount not more than 5 million pounds. The additional quantity of production history will receive coverage at the same elected coverage threshold and coverage percentage in effect for the participating dairy operation at the time the production history increase takes effect. Intergenerational transfers will not be allowed if the participating dairy operation's current annual production and the increase in herd size by the new member(s) is less than the operation's established production history.

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

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

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

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

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

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

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

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

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

§ 1430.406 Administrative fees.

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

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

(c) Dairy operations that lock-in coverage according to § 1430.407(j), are required to pay the administrative fee each year through 2023, except as provided in paragraph (e) in this section.

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

(e) A limited resource, beginning, veteran, or socially disadvantaged

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

§ 1430.407 Buy-up coverage.

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

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

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

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

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

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

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

TABLE 1 TO § 1430.407(e)

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

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

(1) The covered production history; and

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

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

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

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

(j) For each calendar year 2019 through 2023, a participating dairy operation that makes a one time election of a coverage level threshold and a percentage of coverage according to this section, for a 5-year period, will have their elected coverage level, as applicable to each tier, reduced by 25 percent. The option to lock in for the premium rate discount must be elected

during the 2019 annual coverage election period announced by FSA. Except that, new dairy operations, not in existence during the 2019 annual election period, that elect to participate in DMC according to § 1430.404(b), are eligible to receive the premium rate discount for locking coverage for the period beginning with the first available calendar year and ending in 2023, except that new dairy operations registering for DMC for the first time for coverage year 2023 and dairy operations that stop producing and marketing milk in 2019 that are registering for eligible months in 2019 are not eligible for the multi-year premium discount. All dairy operations that elect the lock-in option are subject to full participation in the DMC Program at the same elected premium coverage levels and calculated premium for the duration of DMC according to § 1430.413.

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

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

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

§ 1430.408 MPP-Dairy premium repayments.

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

(b) FSA will determine the calculated repayment amounts for each year for each dairy operation that participated in

MPP-Dairy during the years of 2014 through 2017.

(1) Coverage years in which the payments exceeded premiums paid for that coverage year will yield a \$0 calculation for that calendar year.

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

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

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

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

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

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

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

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

§ 1430.409 Dairy margin coverage payments.

(a) A DMC payment will be made to a participating dairy operation for any month when the average actual dairy

production margin for that month falls below the coverage level threshold in effect for the participating dairy operation.

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

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

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

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

(c) If the dairy operation purchased buy-up level coverage at less than 95 percent of production history, then the dairy operation will receive a payment calculated at the buy-up level, plus the payment at the catastrophic level, if triggered, for the balance of 95 percent of its established production history. For example, if a producer purchased buy-up coverage at the 50 percent level, then that producer will also receive catastrophic level coverage for the next 45 percent for total coverage of 95 percent.

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

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

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

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

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

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

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

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

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

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

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

(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 average of the full month price received during the month by farmers in the United States for high-quality (premium and supreme) alfalfa hay and the alfalfa hay price (which was used to calculate the MPP hay price) for the same month as reported in the monthly Agricultural Prices report by USDA NASS will be used to calculate the hay price.

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

available in the June publication, and those will be the prices used).

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

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

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

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

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

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

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

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

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

(b) A participating dairy operation under a lock-in option that fails to pay applicable administrative fees and premiums for each year of the lock-in will remain obligated to pay such applicable administrative fees and premiums as specified in § 1430.410.

(c) If a participating dairy operation goes out of business as described in § 1430.407(l) before December 31, 2023, 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.

§ 1430.414 Contract modifications.

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

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

§ 1430.415 Reconstitutions.

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

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

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

§ 1430.416 Offsets and withholdings.

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

§ 1430.417 Assignments.

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

§ 1430.418 Appeals.

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

§ 1430.419 Misrepresentation and scheme or device.

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

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

(2) Submitting false or erroneous information; or

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

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

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

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

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

(b) If the Deputy Administrator determines that a person or legal entity has adopted a scheme or device to evade, or that has the purpose of

evading, the provisions of this subpart, such person or legal entity will be ineligible to receive DMC payments in the year such scheme or device was adopted and the succeeding year.

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

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

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

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

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

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

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

§ 1430.420 Estates, trusts, and minors.

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

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

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

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

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

§ 1430.421 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance, or dissolution of a producer that is eligible to receive benefits under this subpart, such

persons as are specified in part 707 of this title may receive such benefits, as determined appropriate by FSA.

§ 1430.422 Maintenance and inspection of records.

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

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

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

§ 1430.423 Refunds; joint and several liability.

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

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

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

§ 1430.424 Violations of highly erodible and wetland conservation provisions.

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

§ 1430.425 Violations regarding controlled substances.

The provisions of 7 CFR 718.6 apply to this part.

Richard Fordyce,

Administrator, Farm Service Agency.

Robert Stephenson,

Executive Vice President, Commodity Credit Corporation.

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DEPARTMENT OF AGRICULTURE**Commodity Credit Corporation****7 CFR Part 1493**

RIN 0551-AA99

Export Credit Guarantee (GSM-102) Program and Facility Guarantee Program (FGP) Certifications

AGENCY: Foreign Agricultural Service and Commodity Credit Corporation (CCC), USDA.

ACTION: Final rule.

SUMMARY: This final rule modifies the certifications required to qualify to participate in the Export Credit Guarantee (GSM-102) Program and the Facility Guarantee Program (FGP) to make them consistent with Government-wide debarment and suspension guidelines and U.S. Department of Agriculture requirements. Specifically, CCC is eliminating the requirement for participants to make certain certifications with respect to affiliates.

DATES: This rule is effective June 18, 2019.

ADDRESSES: U.S. Department of Agriculture, Foreign Agricultural Service, Credit Programs Division, 1400 Independence Ave. SW, Stop 1025, Room 5509, Washington, DC 20250-1025.

FOR FURTHER INFORMATION CONTACT: Amy Slusher, Deputy Director, Credit Programs Division, 202-720-6211, Amy.Slusher@fas.usda.gov.

SUPPLEMENTARY INFORMATION:**Background**

On November 18, 2014, CCC published a Final Rule in the **Federal Register** (79 FR 68589) revising and amending the regulations that administer the Export Credit Guarantee (GSM-102) Program. On September 22, 2016, CCC published a Final Rule in the **Federal Register** (81 FR 65510) revising and amending the regulations that administer the Facility Guarantee Program (FGP). Both of these final rules

incorporated certifications required of U.S. exporters, U.S. sellers, U.S. financial institutions and foreign financial institutions applying to participate in these programs. The certifications for the GSM-102 program are found at 7 CFR 1493.60, and those for the FGP at 7 CFR 1493.250. The certifications are, in part, based on Government-wide requirements related to suspension and debarment found at 2 CFR part 180 and prohibitions barring delinquent debtors from obtaining Federal loans, insurance and guarantees (31 CFR part 285). Certain certifications (at 7 CFR 1493.60(a)(1) through (4) and 7 CFR 1493.250(a)(1) through (4)) require the applicant to certify with respect to the applicant itself, as well as its “principals” and “affiliates” (as defined in 2 CFR part 180).

FAS is eliminating the requirement for applicants to make these certifications with respect to “affiliates,” for several reasons. First, there is no Government-wide or Department of Agriculture requirement to make these certifications with respect to “affiliates.” Neither the government-wide suspension and debarment regulations at 2 CFR part 180 nor the Department of Agriculture’s form AD-1047 (“Certification Regarding Debarment, Suspension, and Other Responsibility Matters”) include affiliates. Second, FAS has determined that the affiliates of program participants generally do not have a relationship to the applicant’s participation in CCC export credit guarantee programs. Third, the “affiliate” certification is burdensome on U.S. exporters, sellers, and U.S. and foreign financial institution participants that are large, and often diverse, organizations with many affiliates. This change will therefore reduce the burden on program applicants and participants.

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, except when the rule involves a matter relating to public property, loan, grants, benefits or contracts. The Administrative Procedure Act also states notice of proposed rulemaking is not required “when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” Because this rule involves two loan guarantee programs, the regulations

for this program are exempt from the notice and comment provisions of 5 U.S.C. 553. Additionally, the agency has determined that because this amendment will make the existing rules at 7 CFR part 1493 consistent with U.S. Government and Departmental certification requirements and will reduce burden on participants, notice of proposed rulemaking is unnecessary. It is in the public interest to implement these changes as soon as possible; therefore, this final rule is effective when published in the **Federal Register**.

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 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 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Executive Order 13175

This rule has been reviewed for compliance with 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, 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. FAS has assessed the impact of this rule on Indian tribes and determined that this rule does not, to the knowledge of FAS, have tribal implications that required tribal consultation under Executive Order 13175. If a tribe requests consultation, FAS will work with USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.