

Billing Code 3410-05-P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1430

RIN 0560-AI36

Margin Protection Program for Dairy

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

ACTION: Final rule.

SUMMARY: This rule amends the regulations for the Margin Protection Program for Dairy (MPP-Dairy) to allow dairy operations to update their production history when a son, daughter, grandchild, or spouse of a child or grandchild of a current producer participating in the MPP-Dairy program joins the operation. In addition, this rule provides for a later due date for the payment of the entire premium and clarifies that dairy operations that purchase buy-up coverage on less than 90 percent of their production history will also receive catastrophic coverage on the balance, up to 90 percent of the production history. The rule also makes corrections and clarifications.

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

FOR FURTHER INFORMATION CONTACT: For MPP-Dairy: Danielle Cooke; telephone: (202) 720-1919. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600.

## SUPPLEMENTARY INFORMATION:

### Background

On August 29, 2014, the Commodity Credit Corporation (CCC) and Farm Service Agency (FSA) published a final rule titled “Margin Protection Program for Dairy and Dairy Product Donation Program” (79 FR 51453-51470). The final rule implemented MPP-Dairy and DPDP as authorized in the Agricultural Act of 2014 (the 2014 Farm Bill, Pub. L. 113-79). FSA operates both programs using CCC funds. Following the August 2014 final rule, in response to public comments on the final rule, FSA and CCC published a comment period extension on October 30, 2014, (79 FR 64503) for the final rule; comments were accepted through December 15, 2014. This rule makes regulatory changes to MPP-Dairy in response to the public comments and also makes minor corrections and clarifications. Specifically, this rule:

- Allows dairy operations to update their production history once during the term of the contract (through December 31, 2018) to accommodate intergenerational transfers where a son, daughter, grandchild, or spouse of a child or grandchild joins the dairy operation;
- Clarifies that dairy operations that purchase buy-up coverage on less than 90 percent of their production history will also receive catastrophic coverage on the balance, up to 90 percent of the production history;
- Sets a later final premium payment due date to allow greater flexibility for dairy operations in making payments; and
- Includes technical amendments that make minor corrections and clarify the effects of failure to pay administrative or premium fees.

Subtitle D, sections 1401-1410, of the 2014 Farm Bill (7 U.S.C. 9051-9060) authorizes MPP-Dairy to provide risk management coverage that will pay producers when the difference between the price of milk and the cost of feed (the margin) falls below a certain dollar amount selected by the producer. Producers are eligible for catastrophic level margin protection (based on a \$4 margin and 90 percent production history coverage) for their dairy operations by paying an administrative fee, and are also able to purchase greater coverage (up to \$8 margin on 25 to 90 percent of production history) for an additional premium.

A production history is established when a dairy operation first registers to participate in MPP-Dairy. The production history is based on the operation's production from 2011 through 2013, as specified in the 2014 Farm Bill. For entirely new operations or operations with less than a full year of production history prior to the 2014 Farm Bill, it is based on the number of cows and the national average production per cow (the "national rolling herd average data") or an extrapolation from the operation's actual production data. As specified in section 1405 of the 2014 Farm Bill, once an operation has bought MPP-Dairy coverage, FSA will only update the production amount that can be covered to reflect annual changes in the national average milk production. (For example, if national milk production increases 5 percent in a year, operations can buy MPP-Dairy coverage on up to 5 percent more production the following year, up to 90 percent of production). Section 1410 of the 2014 Farm Bill also specifically requires that the Secretary promulgate regulations that prohibit a dairy producer from reconstituting an operation for the purpose of receiving margin protection payments. The intent of these provisions is to ensure that the risk management coverage does not encourage excess

production that could drive down the price of milk, which would be counterproductive for a price-based risk management program.

In the August 29, 2014, final rule, FSA requested comments about the establishment of additional production history and any limitations for such a production increase under MPP-Dairy since that final rule only addressed additional production history for the annual adjustment based on an increase to the national average milk production. The final rule did not address the establishment of additional production history for a participating dairy operation in specific instances, such as when a descendent of the current producer joins a participating dairy operation.

The ability to transfer the dairy business from one generation to the next has become increasingly difficult in the past decade due to increased market volatility and the large capital investment required to start a dairy operation. While the August 29, 2014, regulation does allow for new covered production for entirely new operations, many new dairy farmers get started by joining their family's existing dairy operation, due to the capital costs involved. Under the August 29, 2014, rule, if an existing family-owned dairy operation with MPP-Dairy coverage added more cows to support a family member or members joining the business, they would not be able to buy MPP-Dairy coverage on that additional production.

#### Comments and Responses

In response to the August 29, 2014, final rule, FSA received 38 comments. Comments were submitted by individuals, insurance providers, industry groups

(including coalitions, associations, farm credit organizations, dairy cooperatives, and milk marketing companies), and a State Department of Agriculture.

The preamble to the August 29, 2014, final rule asked for public input on three specific questions about intergenerational transfers and family members, as well as general comments on other aspects of MPP-Dairy. All of the comments received on intergenerational transfers supported provisions to allow additional production history under certain circumstances, with various suggestions for what eligibility requirements should be. A summary of the input received on three questions, and our responses, is provided below, followed by a discussion of other general comments received.

Do the Provisions in the Rule Regarding Transfers of Production History Hinder Intergenerational Transfers of Dairy Operations? If so, How?

Comment: Yes, the provisions in the final rule hinder intergenerational transfers. Under current MPP-Dairy rules, once the production history for a dairy operation under MPP-Dairy is established, other than the annual production increase, the production history cannot not be adjusted to support the income needs of two or more families (or one extended family) in instances when a dairy farmer wants to bring on a son or daughter or spouse of a son or daughter and add more cows to the herd.

Response: We agree. The average age of dairy farmers in the United States is 62 years old; allowing intergenerational transfers of production history will facilitate the transfer of dairy operations to the next generation, which is particularly important for small family operations. Therefore, this rule will amend production history requirements to add § 1430.105(g) to specify that a dairy operation may add additional production

history for an intergenerational transfer when a lineal descendant, or spouse thereof, joins a participating dairy operation. In addition, this rule adds a definition of “intergenerational transfer” to § 1430.102. Only sons, daughters, grandchildren, and their spouses are included in the definition. Intergenerational transfers to more distant non-lineal relatives such as cousins, nieces, or nephews will not result in eligibility for additional production history, nor will transfers to siblings.

How Would You Suggest the Rule Be Amended to Accommodate Intergenerational Transfers or Adult Children Who Want to Join Their Parent's Dairy Operation and Obtain Additional Production History for the Dairy Operation?

Comment: Suggestions included:

- Allow a one-time reorganization of the ownership structure to allow for children, grandchildren, or their spouses joining the farm, but specify that the additional member(s) must meet certain requirements, such as minimum labor contribution and equity ownership standards; significant equity ownership should be at least 10 percent individually or at least 25 percent collectively, if multiple new members are joining the dairy operation at the same time;
- Require that the farm provide adequate supporting documentation of a legitimate restructure within a family operation that includes verifiable financial investments proportionate to the income needs of the new farmer and the size of the dairy operation;
- Restrict it to a lineal descendant or their spouse, not a distant relative;

- Determine additional production history using similar provisions for establishing production history for new dairy operations in § 1430.105(b) where the additional production quantity would be estimated based on the number of additional cows added to the herd multiplied by the national “rolling herd average” production data published by the Secretary; and
- To ensure all production from the additional member is protected, either allow an operation’s base to be a rolling average of the last 3 years of production or allow 50 percent of production above the base, including the adjustment for the average national increase to be included with the base calculation during times when MPP-Dairy activates.

Response: This rule amends production history requirements to allow for a one-time restructuring of currently established production history for a dairy operation when a son, daughter, grandchild, or spouse of child or grandchild of a current operation member joins an MPP-Dairy participating operation, to accommodate the transfer of a dairy from one generation to a subsequent generation. The increase to the production history will be based on how many cows are being added and the national rolling herd average data (national average annual production per cow) in effect at the time of the intergenerational transfer. The operation must certify to equity and labor contributions by the new member(s) as well, as specified in this rule. The certification must show that the new member(s) has a significant equity ownership in the participating MPP-Dairy operation; “significant equity ownership” will be at levels determined by the Deputy Administrator and announced on the FSA website ([www.fsa.usda.gov](http://www.fsa.usda.gov)). The certification must also show that each new member is working full time at the dairy, or transitioning to working

full time at the dairy. We considered an income-based standard, but that would not be consistent with the provisions in the regulation that apply to the production history for other existing and new operations, which use past production and size of herd to determine production history.

The participating dairy operation will have the option for coverage of the additional production history to begin with either the next consecutive 2-month period following notification to FSA, or January 1 following notification.

For cow purchases made by the new members between January 1, 2016, and June 30, 2016, the operation must notify FSA during the coverage year 2017 registration and annual coverage election period that begins July 1, 2016. For cow purchases made on or after July 1, 2016, notification to FSA must be made within 60 days of purchasing the additional cows.

Participating dairy operations in which an intergenerational transfer occurred in calendar year 2014 or 2015 will have an opportunity to increase the dairy operation's production history during the 2017 registration period. The 2014 and 2015 intergenerational transfers will have to meet the same requirements specified for all intergenerational transfers, except for the 60-day notification period applicable only to the purchase of additional cows made on or after July 1, 2016. The opportunity to increase production history based on an intergenerational transfer that occurred in 2014 or 2015 will only be available during the registration and annual coverage election period that begins July 1, 2016. This provision only applies to an increase in production history for 2016 and subsequent year coverage. These dairy operations will have the option for their coverage to begin on either the consecutive 2-month period following FSA

notification or January 1, 2017. There will be no retroactive payments made related to 2014 or 2015 intergenerational transfers.

Premiums for additional production coverage will be due at the same time as the premium on existing production, if the notification is made between January 1 and August 31, prior to the September 1 premium deadline, or immediately if notification is made during September 1 to December 31.

If Additions to Production History Based on Intergenerational Transfers or Adult Children Joining Family Dairies are Allowed, Should there be a Cap on the Overall Amount of Production History that Cannot be Exceeded or a Percentage or Quantity Limitation on the Amount by which the Production History Could be Increased Per Participating Dairy Operation under this Provision? If so, What Amount?

Comments: Suggestions included:

- Yes, there should be a cap on the additional production quantity resulting from the intergenerational transfer in order to discourage gaming of the system;
- A production quantity capped at 4 million pounds is consistent with other limitations of the same production quantity specified in the 2014 Farm Bill with respect to the 2-tier premium rate schedule that increases premium rates for production history in excess of 4 million pounds;
- For the production increase, use a percentage based on the farm's production history and the total number of members receiving income

from the farm, compared before and after the new generation was included;

- The production allowance increase should be proportionate to the income needs of the new farmer and not proportional to the size of the dairy;
- Up to 4 million pounds of new production history can be added to the established production history for a member joining the dairy operation with a pro-rated accommodation for growth beyond that limit.

Response: The suggested 4 million pound cap is consistent with the intent of the 2014 Farm Bill to support modest-sized family farms, as demonstrated in the 2-tier premium structure where the discounted first tier is set at 4 million pounds. Therefore, this rule caps the production history increase for an intergenerational transfer at a maximum of 4 million pounds.

#### Other Issues Raised in Public Comments

Comment: Producers who bought coverage above the minimum catastrophic level on some production should receive catastrophic level coverage on all production history up to 90 percent. In the current regulations, producers must choose either a buy-up coverage or catastrophic coverage, but not both. Providing catastrophic level coverage to all participants on 90 percent of production is a reasonable interpretation of the 2014 Farm Bill intent.

Response: After careful analysis, we agree, and are changing the regulations to allow participants who purchase buy-up level coverage on less than 90 percent of their production history to receive in addition catastrophic level coverage on the balance, up to

90 percent of their production history. The total coverage cannot exceed the statutory maximum of 90 percent of production history. We believe that MPP-Dairy will be improved by allowing operations that cover from 25 percent to 85 percent of their production history at a buy-up coverage level from \$4.50 to \$8.00 per cwt, to also be covered for the balance of their established production history at the \$4.00 catastrophic level. For example, if an operation purchased buy-up coverage at the 50 percent level, then that operation will receive catastrophic level coverage for the next 40 percent resulting in total coverage of 90 percent. This provision would not affect an operation purchasing buy-up coverage at the 90 percent level since it would already be covered at the maximum statutory percentage. This change will allow producers to better meet their risk management needs and will not discourage producers from electing buy-up coverage with greater protection. Therefore, this rule revises § 1430.108 to make the changes to how payments will be calculated. The change will provide producers with more risk management options and may increase producer participation in MPP-Dairy.

Implementation of this change will begin with the 2016 coverage year. Since MPP-Dairy's inception, margin levels have been consistently above the \$4.00 catastrophic level; so, implementing this policy will have no immediate impact on current MPP-Dairy participants.

Comment: Clarify inconsistencies in the premium payment schedule in § 1430.107(g)(2), which requires 50 percent of the total premium payment by February 1 of the coverage year and the balance by June 1; and the Fact Sheet and forms that say 25 percent by February 1 of the coverage year and the balance by the June 1. The Fact Sheet and forms for MPP Dairy are not consistent with the rule.

Premium payment options should be allowed on a monthly or bi-monthly basis rather than annually or semi-annually. A premium payment option should allow milk marketing companies to collect and send premium payments to FSA on behalf of the dairy operation by way of milk check deductions of premiums on a monthly basis by the dairy operation's milk marketing company.

Response: We agree that MPP-Dairy would be improved by providing additional premium payment options. Therefore, effective with the 2016 coverage year, rather than require the balance of the premium collection in two payment installments by June 1 of the coverage year, the rule will change § 1430.107 to require 100 percent of the payment by September 1 of the coverage year. This would allow dairy producers to make arrangements with their milk marketing companies to prorate and deduct their premium payment from their monthly milk check and to send the CCC payments to FSA on behalf of the producer. We will correct the Fact Sheet and forms as noted in the comment when this rule is published.

This rule makes conforming changes in § 1430.107(g)(2), (h), (i), and (j). For example, due to the split premiums provision in the August 29, 2014, regulation, an option had been included to deduct premium balances from MPP-Dairy payments. Now that the premium payment is due in a single payment, that option is being removed from § 1430.107(g)(2), (h), (i).

Comment: Dairy producers should be able to participate in both the Livestock Gross Margin for Dairy Producers (LGM-Dairy) Program and MPP-Dairy. They should be able to buy LGM-Dairy coverage on milk not covered under MPP-Dairy up to 100 percent of their dairy operation's total production.

Revise the rules to allow dairy operations to choose annually whether or not to participate in LGM-Dairy or MPP-Dairy and not require mandatory participation in MPP-Dairy through 2018 to allow flexibility to move back and forth from LGM-Dairy and MPP-Dairy.

Response: The 2014 Farm Bill specifies that a dairy operation may participate in either LGM-Dairy or MPP-Dairy, but not both. Therefore, we do not have statutory authority to make either of these changes to the regulations. Additionally, section 1404 of the 2014 Farm Bill specifies that the MPP-Dairy administrative fee must be paid annually by the participant; so, clearly the intent of the legislation is that participants continue participation for the duration of MPP-Dairy (because there would be no need for an “annual” payment for a policy that only lasted 1 year). Therefore, no change is being made in response to these comments.

Comments: Make an adjustment to increase the overall production history established for a dairy operation to allow for greater protection and the expansion or growth of the operation. New production rules should allow for full recognition of growth up to 4 million pounds and then a base that would allow some pro-rated accommodation for growth beyond that limit. Recognize new milk marketings for farms in transition as new operations and allow beginning farmers to adjust production history when purchasing an existing dairy operation. Allow production adjustments for disaster counties.

Response: The 2014 Farm Bill clearly limits increases in production history to annual adjustments to reflect any increase in the national average milk production per cow, with limited authority to update production history for changes in ownership

structure. The 2014 Farm Bill does not provide the authority to add production history for other reasons, including business expansions or declared disaster counties, and specifically prohibits reconstitutions for the purpose of increasing MPP-Dairy payments. The new provisions in this rule for adjustments to production history for intergenerational transfers is based on the authority of section 1401(5)(B) of the 2014 Farm Bill that allows for the Secretary to determine additional ownership structures to be covered by the definition of a dairy operation, in this case the addition of a son, daughter, grandchild, or spouse of a child or grandchild to the dairy operation. Since the 2014 Farm Bill does not authorize any other reasons for adjustments to the established production history for the dairy operation, no change is being made in response to these comments.

Comments: For the production history covered under MPP-Dairy, allow extrapolation for a full 12 months of production as is done for new operations for those producers who missed some production months in 2013 during the period between of January 2, 2013 through February 7, 2014.

Response: Producers that marketed milk from January 2, 2013, through February 7, 2014 (date of 2014 Farm Bill enactment) do not meet the legislative definition of a new dairy operation because they would have been marketing milk for more than 12 months; therefore, the date of the 2014 Farm Bill enactment was used as a benchmark to establish the 12-month period from which to determine new operations. Defining the 12-month period from any other date would exclude more dairy operations from eligibility. Therefore, no change is being made in response to this comment.

Comment: MPP-Dairy payments should be made on a monthly or bi-monthly basis rather than on a consecutive 2-month period when a payment is triggered.

Response: The 2014 Farm Bill specifies the schedule for MPP-Dairy payments. We have no authority to implement a different schedule. Therefore, no change is being made in response to this comment.

Comment: The premium discount applicable to the first 4 million pounds of production history in 2014 and 2015 should continue for the duration of MPP-Dairy. Premiums would continue to rise to the point that they are unaffordable for farmers because there is no margin trigger to reduce production because of price losses due to over-production.

Response: The annual premium rates listed in the regulation are specified in the 2014 Farm Bill. FSA has no authority to set different premium rates other than those in the 2014 Farm Bill. Therefore, no change is being made in response to these comments.

Comments: For coverage under MPP-Dairy, documented production over the national average of production per cow should be insured.

Organic farms should have more coverage because of higher overall feed costs that make their margins lower than conventional farms.

Response: The 2014 Farm Bill does not authorize additional coverage for production over the national average or different coverage for organic farmers. Therefore, no change is being made in response to these comments.

Comment: For the cost of production in relation to feed costs and milk prices, the 2014 Farm Bill should have been similar to that of the Federal Milk Marketing Improvement Act of 2011 (S. 1640, 112<sup>th</sup> Congress) to provide adequate prices to farmers. MPP-Dairy did not adequately cover the farmers cost of production and is inadequate protection on feed cost. Feed prices are higher on the west coast and prices

for specific feed ingredients used in calculating the margin have not dropped much in that region of the United States.

Response: Congress did not enact the bill titled “Federal Milk Marketing Improvement Act of 2011.” We are required to implement MPP-Dairy as specified in the 2014 Farm Bill. The 2014 Farm Bill specified that the margin is to be calculated using a national average feed cost and the national all-milk price. Therefore, no change is being made in response to these comments.

Comment: The affiliation test for what constitutes a new dairy operation is impractical. Producers that have collectively more than a 50 percent ownership in another dairy operation should be able to get coverage for a new operation, if they can demonstrate that the operation is separate and distinct from the existing dairy operation, but the new and existing dairy operation would be restricted from selling or exiting the dairy business.

Response: Section 1410 of the 2014 Farm Bill specifically states that the regulations must prohibit producers from dairy operation reconstitutions for the purposes of receiving MPP-Dairy payments. The provision in §1430.103 that a new dairy operation will be treated as an affiliated dairy operation if the producers in the new operation own 50 percent of an existing dairy operation is consistent with the farm reconstitution provisions in 7 CFR part 718, which are intended to prohibit reconstitutions for the purposes of increasing other CCC and FSA program payments. FSA believes the provisions to accommodate new dairy operations as specified in the current rule are within the 2014 Farm Bill authority, and are consistent with how reconstitutions and base acres are handled in the regulations for other CCC and FSA

programs. The provisions in this rule for intergenerational transfers are intended to address expansions of existing dairy operations to add additional family members within the same operation. Also, we have no authority to prevent any dairy operation from selling or shutting down. No change is made in response to this comment.

Comment: Are MPP-Dairy funds sufficient to reimburse farmers in the event of a shortfall? Will funds be invested within insurance companies?

Response: FSA administers MPP-Dairy using CCC funds and not through private insurance companies; therefore, FSA may use CCC borrowing authority to replenish funds as necessary. Private insurers are not involved in MPP-Dairy.

#### Corrections and Clarifications

This final rule revises § 1430.104(b)(1), to correct wording that allows a new dairy operation to elect coverage that begins the next consecutive 2-month period following the submission date of the registration and coverage election rather than the approval date of the MPP-Dairy coverage application.

This final rule also revises §§ 1430.106(c), 1430.109(a)(2), and 1430.112(b) to clarify the effects of failure to pay the administrative or premium fees. Failure to pay the administrative fee timely will result in loss of coverage for the applicable calendar year; however, coverage for the applicable calendar year may be reinstated with the next consecutive 2-month period if paid late and the appropriate CCC form is submitted to FSA. In the case of unpaid premiums, coverage will be reduced to the catastrophic level and no payment will be earned at the buy-up level for the rest of the year. This rule also amends § 1430.112(b) to correct the cross reference from § 1430.108 to § 1430.109.

This final rule also revises §§ 1430.106(a) and 1430.107(l) to correct that fees should be made payable to CCC rather than to FSA.

This rule amends §§ 1430.107 and 1430.111 to remove provisions that only applied to the 2014 and 2015 coverage years.

#### Notice and Comment

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

#### Effective Date

The Administrative Procedure Act (5 U.S.C. 553) provides generally that before rules are issued by Government agencies, the rule is required to be published in the Federal Register, and the required publication of a substantive rule is to be not less than 30 days before its effective date. One of the exceptions is when the agency finds good cause for not delaying the effective date. Subsection 1601(c)(2) of the 2014 Farm Bill makes this final rule exempt from notice and comment. Therefore, using the

administrative procedure provisions in 5 U.S.C. 553, FSA finds that there is good cause for making this rule effective less than 30 days after publication in the Federal Register. Therefore, to continue providing benefits to operations in a timely fashion, the MPP-Dairy regulations in 7 CFR part 1430, subpart A are effective when published in the Federal Register.

#### Executive Orders 12866 and 13563

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

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

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, Pub. L. 104-121), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative

Procedure Act or any other law, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because the 2014 Farm Bill exempts this rule from notice and comment rulemaking under 5 USC 553 with respect to MPP-Dairy and therefore, FSA is not required by any law to publish a proposed rule for public comment for this rulemaking.

#### Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and the FSA regulations for compliance with NEPA (7 CFR part 799). FSA has determined that the provisions identified in this final rule are administrative in nature, intended to clarify the mandatory requirements of the programs, as defined in the 2014 Farm Bill, and do not constitute a major Federal action that would significantly affect the quality of the human environment, individually or cumulatively. The discretionary feature of the rule include when operations can increase production history and what coverage they will receive. These discretionary provisions are purely administrative and would not alter any environmental impacts resulting from implementing the mandatory program. Therefore, as this rule presents administrative clarifications only, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory action.

#### Executive Order 12372

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

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The rule will have a retroactive effect that will allow a production history increase for dairy operations that had an intergenerational transfer occur in calendar year 2014 or 2015. However, there will not be any retroactive payments for the production history increase. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted.

#### Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

#### Executive Order 13175

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

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

## The Unfunded Mandates Reform Act of 1995

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

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

This rule is not a major rule under SBREFA. Therefore, FSA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Therefore, the rule is effective when published in the Federal Register, as discussed above.

## Federal Assistance Programs

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

10. 116 – Margin Protection Program-Dairy

## Paperwork Reduction Act of 1995

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

## E-Government Act Compliance

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

## List of Subjects in 7 CFR Part 1430

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

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

PART 1430 – DAIRY PRODUCTS

1. The authority citation for part 1430 continues to read as follows:

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

2. In § 1430.102, add, in alphabetical order, a definition for “intergenerational transfer” to read as follows:

§ 1430.102 Definitions.

\* \* \* \* \*

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

\* \* \* \* \*

§ 1430.104 [Amended]

3. Amend § 1430.104 as follows:

a. In paragraph (b)(1), remove the word “approval” and add the word “submission” in its place;

b. In paragraph (c)(1), remove the words “except for 2014, where the election and coverage year will be the same”,

c. In paragraph (e), introductory text, remove the word “percentages” and add the word “percentage” in its place, and

d. In paragraph (e)(2), add the words “and submits the appropriate CCC forms” at the end immediately after the word “year”.

4. Amend § 1430.105 as follows:

a. Revise paragraph (d); and

b. Add paragraph (g).

The revision and addition read as follows:

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

(1) The dairy operation must notify FSA, using the appropriate CCC form(s), of the intergenerational transfer within 60 days of the purchase of the cows, except that for purchases made for intergenerational transfers occurring between January 1, 2016, and June 30, 2016, the dairy operation must notify FSA during the registration and annual coverage election period for coverage year 2017, established by the Deputy Administrator. The operation has the option of the additional production history taking effect beginning either with the consecutive 2-month period following notification, or the following January 1. If the additional production history takes effect between January 1 and August 31, the premium is due September 1, as specified in §1430.107(a)(2). If the additional production history takes effect between September 1 and December 31, the premium is due immediately.

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

increase for the intergenerational transfer. All of the following information is subject to verification by CCC. Refusal to allow CCC or any other agency of USDA to verify any information provided will result in disapproval of the intergenerational transfer.

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

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

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

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

(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.

5. Amend § 1430.106 as follows:

a. Revise paragraph (a);

b. In paragraph (b) remove the word "unit"; and

c. In paragraph (c), add a sentence at the end.

The revision and addition read as follows:

§ 1430.106 Administrative fees.

\* \* \* \* \*

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

\* \* \* \* \*

(c) \* \* \* However, coverage for the applicable calendar year, at the catastrophic level only, may be reinstated if the administrative fee is paid late, effective the consecutive 2-month period following payment of the late-filed administrative fee plus applicable charges, if any, and submission to FSA of the appropriate CCC form.

6. Amend § 1430.107 as follows:

- a. In paragraph (a) introductory text, add “buy-up” immediately after “receiving”;
- b. In paragraph (a)(1), remove “\$4,”;
- c. Revise paragraphs (d), (g) introductory text, (g)(2), (h), (i), and (j);

d. In paragraph (l), remove the words “satisfactory in form to the Deputy Administrator and made payable to FSA” and add the words “satisfactory to FSA and made payable to CCC” in their place; and

e. Add paragraph (m).

The revisions and addition read as follows:

§ 1430.107 Buy-up coverage.

\* \* \* \* \*

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

Table to § 1430.107(d)

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

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

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

\* \* \* \* \*

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

7. Revise § 1430.108 to read as follows:

§ 1430.108 Margin protection payments.

(a) When do MPP-Dairy payments trigger? An MPP-Dairy payment will be made to a participating dairy operation for any consecutive 2-month period when the

average actual dairy production margin for the consecutive 2-month period falls below the coverage level threshold in effect for the participating dairy operation. Payments may trigger at either the elected buy-up level if purchased by the dairy operation, or the catastrophic level.

(b) How will payments be calculated? Whether payments trigger at the catastrophic level or at the buy-up level, the payments will be calculated as explained in this paragraph. If the dairy operation only has catastrophic coverage or buy-up coverage at 90 percent, there will be a single calculation. If the dairy operation purchased buy-up coverage at less than 90 percent and the catastrophic level also triggers a payment, then there will be two calculations to determine the payment – first the calculation for the buy-up coverage percentage and then the calculation for the catastrophic level percentage, which is the balance of the established production history up to 90 percent; the result of these two calculations will be added together to determine the payment amount. Each calculation multiplies the payment rate times the coverage percentage times the production history divided by 6 as follows:

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

(2) Coverage percentage. The coverage percentage; and

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

(c) Example of payment for buy-up coverage of less than 90 percent when catastrophic level also triggers a payment. If the dairy operation purchased buy-up level coverage at less than 90 percent of production history, then the dairy operation will

receive a payment calculated at the buy-up level, plus the payment at the catastrophic level, if triggered, for the balance of 90 percent of its established production history. For example, if a producer purchased buy-up coverage at the 50 percent level, then that producer will also receive catastrophic level coverage for the next 40 percent for total coverage of 90 percent.

8. Revise § 1430.109(a)(2) to read as follows:

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

\* \* \* \* \*

(a) \* \* \*

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

\* \* \* \* \*

9. Revise § 1430.111 to read as follows:

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

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

(b) Producers in dairy operations participating in MPP-Dairy must certify at the time of registration and annually during each coverage election period that they will not

have an LGM-Dairy policy in effect during the calendar year the dairy operation is requesting coverage.

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

10. Revise § 1430.112(b) to read as follows:

§ 1430.112 Multi-year contract.

\* \* \* \* \*

(b) Failure to pay administrative fees and premiums will result in the loss or reduction of coverage, as applicable, and the participating dairy operation remains obligated to pay such administrative fees and premiums as specified in § 1430.109.

\* \* \* \* \*

Val Dolcini,  
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