



DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1430

RIN 0560-AI66

[Docket No. FSA-2024-0001]

Dairy Margin Coverage Production History Adjustment and Program Extension

AGENCY: Commodity Credit Corporation (CCC) and Farm Service Agency (FSA), Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This rule revises the regulations for Dairy Margin Coverage (DMC) as required by the Further Continuing Appropriations and Other Extensions Act, 2024, which extends provisions of the Agriculture Improvement Act of 2018 (2018 Farm Bill) and amends the Agricultural Act of 2014 (2014 Farm Bill) to allow eligible dairy operations to make a one-time adjustment to established production history and extend DMC through 2024. In addition, the rule extends eligibility of multi-year (lock-in) contracts for an additional year until December 31, 2024, and applies the discounted DMC premium rate to the newly established adjusted base production history.

DATES: *Effective:* [Insert date of publication in the *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Douglas Kilgore; telephone: (717) 887-0963; email: douglas.e.kilgore@usda.gov. Individuals with disabilities who require alternative means of communication should contact USDA TARGET Center at (202) 720-2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Background

FSA is revising the DMC regulations in 7 CFR part 1430 as required by the Further Continuing Appropriations and Other Extensions Act, 2024 (Pub. L. 118-22), which extends provisions of the 2018 Farm Bill (Pub. L. 115-334) and amends the 2014 Farm Bill (Pub. L. 113-79). This rule is necessary to implement statutory revisions to DMC to extend coverage for calendar year 2024 and update the production history for dairy operations with less than 5 million pounds according to a prescribed formula using 2019 marketings. This one-time adjustment allows for the production history for each participating dairy operation with less than 5 million pounds of production to better reflect the current production of the dairy operation. The production history for DMC was previously based on the higher of 2011, 2012, or 2013 marketings. The Consolidated Appropriations Act, 2021 (CAA; Pub. L. 116-260), separately authorized, as discussed further below, supplemental payments to certain dairy operations that had supplemental production during DMC coverage years 2021, 2022, or 2023, based on actual 2019 marketings. These payments were referred to as Supplemental DMC. Amendments to DMC made by the Further Continuing Appropriations and Other Extensions Act, 2024, authorize a base production history adjustment for certain dairies using the same formula. Therefore, for ease of administration, for 2024 DMC enrollment, dairy operations that established supplemental production history during the coverage years of 2021 through 2023 will combine their supplemental production history with established production history to create one adjusted base production history. Dairy operations that meet requirements for the adjustment but did not establish supplemental production history during the coverage years of 2021, 2022, and 2023 will have the opportunity to establish a base production history adjustment during 2024 DMC enrollment. For those dairy operations enrolled in 2023 DMC under a multi-year lock-in contract, lock-in eligibility will be extended until December 31, 2024. In addition, dairy

operations enrolled in multi-year lock-in contracts are eligible for the discounted DMC premium rate during the 2024 coverage year.

Dairy Margin Coverage

Section 1403 of Subtitle D of Title I of the 2014 Farm Bill (7 U.S.C. 9053) authorizes DMC to provide a risk management program for dairy operations that pays 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 95 percent production history coverage) for their dairy operations by paying an annual administrative fee and are also able to purchase greater coverage (up to \$9.50 margin on 5 to 95 percent of production history) for an annual premium.

Section 761 of Subtitle B of Title VII of Division N of the Consolidated Appropriations Act, 2021 (CAA; Pub. L. 116-260) authorized eligible participants in DMC, who have an approved DMC contract, the opportunity to create a supplemental production history and receive supplemental payments whenever the average actual dairy production margin for a month is less than the coverage level threshold as selected by the dairy operation. Dairy operations eligible for supplemental coverage were to have an approved DMC contract for the applicable calendar year and have an existing DMC production history of less than 5 million pounds. The supplemental production history was determined by multiplying 75 percent of the result of subtracting the dairy operation's established production history from their actual milk marketings for the 2019 calendar year as follows:

$$(2019 \text{ milk marketings} - \text{production history}) \times 75\%$$

Participating dairy operations with approved supplemental pounds had the same coverage percentage and level as on the DMC contract for the applicable calendar year and DMC and Supplemental DMC payments were issued according to the corresponding

coverage levels for both established production history and supplemental pounds, respectively.

Authority to make the supplemental production history payments under the CAA ended as of December 31, 2023. However, amendments to the 2014 Farm Bill under the Further Continuing Appropriations and Other Extensions Act, 2024, use the same supplemental production history formula authorized by the CAA to determine the new adjusted base production history for eligible dairy operations to enroll for 2024 DMC coverage. The result of the formula is added to the historic established production history resulting in a new adjusted base production history for the dairy operation. DMC payments, when triggered, will be based on the adjusted base production history and applicable coverage elections for the 2024 coverage year. The supplemental production history for participating dairy operations with established production history during the 2021, 2022, or 2023 coverage years will be combined with their historical production history resulting in one new adjusted base production history for the dairy operation. Dairy operations with historical production history over 5 million pounds and no supplemental production history are not affected. Eligible DMC dairy operations that did not previously establish supplemental history may establish an adjusted base production history according to the previous supplemental formula used to update production history.

For dairy operations enrolled in 2023 DMC under a multi-year lock-in contract, the Further Continuing Appropriations and Other Extensions Act, 2024, extends their lock-in eligibility for another year until December 31, 2024. Those dairy operations must enroll during the 2024 coverage election period to extend lock-in coverage through coverage year 2024. Dairy operations with 2023 lock-in coverage that do not enroll during the 2024 DMC Coverage Election Period will not be enrolled in 2024 DMC. Dairy operations enrolled in multi-year lock-in contracts are eligible for the discounted

DMC premium rate on all pounds of Tier 1 adjusted base production history. For dairy operations with lock-in contracts that have an adjusted base production history that exceeds the 5-million pound Tier 1 threshold, the additional Tier 2 pounds will be automatically enrolled at the Tier 2, \$4.00 Catastrophic level unless the dairy operation chooses to opt out of lock-in coverage for 2024 DMC. For 2024, dairy operations with lock-in contracts have the option to opt out of lock-in coverage and enroll in 2024 DMC through an annual contract with standard non-discounted premium rates applicable.

For 2024, DMC-enrollment participating dairy operations with annual contracts and adjusted base production history will select a coverage percentage and level on their adjusted base production history and pay the standard premium rate. Tier 1 and Tier 2 premium rates are specified in 7 CFR 1430.407. DMC enrollment for the 2024 coverage year will be effective retroactive to January 1, 2024. Eligible dairy operations that are approved for 2024 DMC enrollment will receive any applicable payments triggered after January 1, 2024.

FSA will announce by press release and external communications a 60-day or more enrollment or coverage election period for participating dairy operations to enroll in 2024 DMC.

Notice, Comment, Exemptions, and Effective Date

As specified in section 1601(c)(2) of Subtitle F of Title I of the 2014 Farm Bill (7 U.S.C. 9091(c)(2)), the regulations to implement and administer the DMC Program are:

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

In addition, section 1601(c)(3) as well as section 1246 of Subtitle E of title XII of the Food Security Act of 1985 (16 U.S.C. 3846) direct the Secretary to use the authority provided in 5 U.S.C. 808 (part of the Congressional Review Act), which provides that when an agency finds for good cause that notice and public procedure are impracticable,

unnecessary, or contrary to the public interest, the rule may take effect at such time as the agency determines.

DMC is authorized through December 31, 2024, under the recently enacted Further Continuing Appropriations and Other Extensions Act, 2024, which also extends certain provisions of the 2018 Farm Bill through September 30, 2024. 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 (5 U.S.C. 800 - 808), 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*.

In addition, because this rule is exempt from the requirements in 5 U.S.C. 553, it is also exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The requirements for the regulatory flexibility analysis in 5 U.S.C. 603 and 604 are specifically tied to the agency being required to issue a proposed rule by section 553 or any other law, further, the definition of rule in 5 U.S.C. 601 is tied to the publication of a proposed rule.

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

requirements in Executive Orders 12866 and 13573 for the analysis of costs and benefits apply to rules that are determined to be significant.

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

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), the FSA regulation for compliance with NEPA (7 CFR part 799), and, because FSA will be making the payments to producers, the USDA regulation for compliance with NEPA (7 CFR part 1b).

The intent of the DMC Program is a margin-based support program for dairy producers providing 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 aspects of DMC being revised in this rule do not have the potential to impact the human environment. As such, for DMC, the FSA categorical exclusions in 7 CFR 799.31 apply, specifically 7 CFR 799.31(b)(6)(iii) Financial assistance to supplement income, manage the supply of agricultural commodities, or influence the cost or supply of such commodities or programs of a similar nature or intent (that is, price support programs) and (vi) Safety net programs administered by FSA.

Through this review, FSA determined that the proposed changes in this rule fit within the categorical exclusions listed above. Categorical exclusions apply when no extraordinary circumstances exist (7 CFR 799.33). As such, FSA evaluated the potential for extraordinary circumstances and determined that none apply because the provisions identified in this final rule are minor and administrative in nature, are intended to clarify

the mandatory requirements of the programs, and do not constitute a major Federal action that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, an environmental assessment or environmental impact statement will not be prepared for this regulatory action; this rule serves as documentation of the programmatic environmental compliance decision for this Federal action.

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. Eligible dairy operations that are approved for 2024 DMC enrollment will receive any applicable payments that trigger after January 1, 2024. 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 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.

USDA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that required Tribal consultation under Executive Order 13175 at this time. If a Tribe requests consultation,

the USDA Office of Tribal Relations (OTR) will ensure meaningful consultation is provided where changes, additions, and modifications are not expressly mandated by law.

Unfunded Mandates Reform Act

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, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including cost benefit 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 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.

Paperwork Reduction Act (PRA)

As noted above, the regulations to implement the DMC Program are exempt from PRA as specified in 7 U.S.C. 9091.

Federal Assistance Programs

The title and number of the Federal assistance program, as found in the Assistance Listing¹ to which this rule applies is: 10.127 – Dairy Margin Coverage Program.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual

¹See <https://sam.gov/content/assistance-listings>.

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Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410; (2) fax: (202) 690–7442; or (3) email: program.intake@usda.gov.

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List of Subjects in 7 CFR Part 1430

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

For the reasons discussed above, CCC amends 7 CFR part 1430 as follows:

PART 1430 – DAIRY PRODUCTS

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

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

Subpart D – Dairy Margin Coverage Program

2. Amend 1430.402 as follows:

- a. Add the definition of “Adjusted base production history” in alphabetical order;
- b. Remove the definition of “Supplemental Dairy Margin Coverage payment”; and
- c. Revise the definition of “Supplemental production history”.

The addition and revision to read as follows:

§ 1430.402 Definitions

* * * * *

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

* * * * *

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

* * * * *

§ 1430.403 [Amended]

3. In § 1430.403, amend paragraph (f), by removing the word “supplemental” and adding “adjusted based” in its place both times it appears.

4. Amend § 1430.404 as follows:

- a. In paragraph (a), remove the word “supplemental” and add “adjusted base” in its place;
- b. Revise paragraph (b) introductory text;
- c. Remove paragraph (b)(3);

d. Revise paragraphs (c)(1) and (e)(2);

e. Revise paragraph (h);

The revisions read as follows:

§ 1430.404 Time and method of registration and annual election.

* * * * *

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

* * * * *

(c) * * *

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

* * * * *

(e) * * *

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

* * * * *

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

5. Amend § 1430.405 as follows:

a. In paragraph (a) introductory text, remove the word “years” and add “years, and will establish an adjusted base production history, if applicable”;

b. In paragraph (a)(1), remove the word “supplemental”; and add “or adjusted base production history” in its place;

c. Revise paragraph (a)(3);

d. Add paragraph (a)(4);

e. In paragraph (f), remove the words “and supplemental” wherever they appear and add “or adjusted base production” in their place; and

f. In paragraph (g), remove the word “supplemental” and add “adjusted base production” in its place;

The revision and additions read as follows:

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

* * * * *

(a) * * *

(3) A participating dairy operation may establish supplemental production history during the coverage election period preceding the coverage year, except for 2021 when a special enrollment will occur. To determine supplemental production history, the dairy operation production history established according to paragraph (a), (b), or (c) of this section must be subtracted from that dairy operation's actual pounds of 2019 milk production as indicated on the milk marketing statement, with the result multiplied by 75 percent. Supplemental production history may not be established after the 2023 coverage year.

(4) A participating dairy operation with production of less than 5 million pounds may establish adjusted base production history during the coverage election period beginning with the 2024 coverage year. To determine adjusted base production history, the dairy operation production history established according to paragraph (a), (b), or (c) of this section, and as previously adjusted under paragraph (e) of this section, if applicable, must be subtracted from that dairy operation's actual pounds of 2019 milk production as indicated on the milk marketing statement, with the result multiplied by 75 percent, and then added to the previously established production history. If the new

adjusted base production history for a lock-in contract in coverage year 2024 exceeds the maximum 5 million pounds that can be covered under Tier 1, according to § 1430.407(d), the excess pounds above 5 million pounds will be enrolled in Tier 2 at the \$4.00 Catastrophic level coverage. If the new adjusted base production history for an annual contract exceeds the maximum 5 million pounds that can be covered under Tier 1, the excess pounds above 5 million pounds will be enrolled according to the coverage elections on the annual contract.

* * * * *

§ 1430.406 [Amended]

6. In § 1430.406, amend paragraph (c) by removing “2023” and adding “2024” in its place;

7. Amend § 1430.407 as follows:

a. In paragraph (a) introductory text, remove the word “succeeding” and add “applicable” in its place;

b. In paragraph (a)(2), remove the words “and supplemental” and add “or adjusted base production” in their place; and

c. Revise paragraphs (f), (j) and (n).

The revisions read as follows:

§ 1430.407 Buy-up coverage.

* * * * *

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

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

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

* * * * *

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

* * * * *

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

§ 1430.409 [Amended]

7. Amend § 1430.409 as follows:

a. In paragraph (b), remove the words “production history” and add the words “production history or established adjusted base production history” in their place both times they appear;

a. In paragraph (b)(2), add the word “and” at the end;

b. In paragraph (b)(3), remove the words “of the” and add “or adjusted base production history of the” in their place and remove “; and” and add a period in their place;

c. Remove paragraph (b)(4); and

d. In paragraph (c), remove the word “history” and add “history or adjusted base production history” in its place both times it appears.

8. Amend § 1430.413 as follows:

a. In paragraph (b), remove the words “for each” and add “no later than September 1 of the applicable calendar year of coverage” in their place;

b. In paragraph (c), remove the date “December 31, 2023” and add “the end of the lock-in period” in its place; and

c. Add paragraphs (d) and (e).

The additions read as follows:

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

* * * * *

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

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

Zach Ducheneaux,
Administrator,
Farm Service Agency, and
Executive Vice President,
Commodity Credit Corporation.

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