

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 760

### Commodity Credit Corporation

#### 7 CFR Part 1430

RIN 0560-AH88

### Dairy Product Price Support Program and Dairy Indemnity Payment Program

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

**ACTION:** Final rule.

**SUMMARY:** This rule specifies regulations for the Dairy Product Price Support Program (DPPSP), which has replaced the Price Support Program for Milk, and amends regulations for the Dairy Indemnity Payment Program (DIPP).

The two programs are authorized by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) through 2012. The DPPSP supports the price of cheddar cheese, butter, and nonfat dry milk by providing a standing offer from Commodity Credit Corporation (CCC) to purchase those products at specific support prices. This rule specifies the minimum price support levels for cheddar cheese, butter, and nonfat dry milk. This rule also specifies the minimum price at which CCC may sell dairy products from inventory. DIPP indemnifies dairy farmers and manufacturers of dairy products for losses suffered due to contamination of milk and milk products. This rule extends DIPP through 2012 and amends the method through which DIPP payments will be disbursed in the event that available appropriated funds are insufficient to pay all claims. That method is changing from a pro rata method to a first-come, first-paid basis.

**DATES:** *Effective Date:* July 16, 2010.

**FOR FURTHER INFORMATION CONTACT:**

*For Dairy Product Price Support Program:* Milton Madison, Dairy and Sweeteners Analysis Group, Economic Policy and Analysis Staff, Farm Service Agency (FSA), U.S. Department of Agriculture (USDA), Mail Stop 0516, 1400 Independence Ave., SW., Washington, DC 20250-0516; *phone:* (202) 690-0050; *fax:* (202) 690-1480, or *e-mail:* [Milton.madison@wdc.usda.gov](mailto:Milton.madison@wdc.usda.gov).

*For Dairy Indemnity Payment Program:* Danielle Cooke, Special Programs Manager, Price Support Division, FSA, USDA, Mail Stop 0512, 1400 Independence Ave., SW., Washington, DC, 20250-0512; *phone:* (202) 720-1919; *fax:* (202) 690-1536; or *e-mail:* [Danielle.Cooke@wdc.usda.gov](mailto:Danielle.Cooke@wdc.usda.gov).

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

#### SUPPLEMENTARY INFORMATION:

##### Background

The 2008 Farm Bill (Pub. L. 110-246) requires amendments to the regulations for the Dairy Product Price Support Program as authorized, and DIPP as reauthorized and extended through 2012. The changes for each of the programs are explained below.

##### Dairy Product Price Support

Section 1501 of the 2008 Farm Bill (7 U.S.C. 8771) authorizes the Dairy Product Price Support Program, completely replacing the Price Support Program for Milk. The 2008 Farm Bill does not fundamentally change the basic structure or goals of the previous program, which required CCC to support milk prices through the purchase of dairy products. The 2008 Farm Bill specifies the minimum CCC purchase prices for cheddar cheese, butter, and nonfat dry milk; previously only the support price for milk was specified. The 2008 Farm Bill also includes new provisions that CCC is implementing in this rule to reduce the dairy product purchase prices if CCC purchases exceed certain threshold quantities. Those threshold quantities specified in the 2008 Farm Bill are sufficiently large that it is unlikely the minimum support prices will be impacted.

This rule in 7 CFR part 1430, subpart A, specifies rules for the DPPSP consistent with the 2008 Farm Bill and

with current purchase requirements of the agency in the wake of the new and mandatory legislation.

This rule provides a definition of “net removals” of dairy products from the market through the Dairy Product Price Support Program and the Dairy Export Incentive Program (authorized in 15 U.S.C. 713a-14). Section 1501 of the 2008 Farm Bill, which specifies how net removals are calculated, is the basis for the definition. CCC uses the amount of net removals during a 12 month period to determine whether CCC purchases have exceeded the threshold quantities for reduced support prices. The definition is consistent with the definition USDA uses in the monthly World Agricultural Supply and Demand Estimates (WASDE) report on the milk market.

The requirements for dairy products to be eligible for CCC purchase, specified in § 1430.102, “Eligible Products,” are similar to the requirements in the regulations for the previous Price Support Program for Milk. The eligibility requirements have been reorganized for clarity. A definition of “eligible offeror” is added by this rule. The term “eligible offeror” is used in the current regulations but is not defined; this rule adds a definition that clarifies the eligible types of persons or legal entities who may sell dairy products to CCC. To be eligible, the offeror must be the manufacturer of the commodity offered or a marketing cooperative for the manufacturer. The definition of “eligible offeror” is a discretionary change; all other provisions in this rule for the Dairy Product Price Support Program are required by the 2008 Farm Bill or were established for the previous Price Support Program for Milk.

This rule implements the 2008 Farm Bill dairy product purchase prices in § 1430.103, “Purchase Prices.” The prices specified in this regulation are minimum support prices; they are specified using the “not less than X cents per pound” language from the 2008 Farm Bill. The minimum purchase prices are the same as the purchase prices CCC established under the Price Support Program for Milk, so the new purchase price requirements will have little effect on the extent of dairy price support or on program administration unless the purchase prices are set above the minimums.

The 2008 Farm Bill requires the Secretary of Agriculture to pay uniform prices for dairy products across the United States. Therefore, the support price for each type of dairy product applies to all regions of the United States.

As required by the 2008 Farm Bill, this rule specifies purchase threshold quantities, which, if exceeded, would decrease the minimum allowable CCC purchase prices for dairy products. As explained below, these purchase threshold quantities are very large and are unlikely to be exceeded, so the lower support prices are unlikely to ever be permitted.

As specified in the 2008 Farm Bill and in this rule, if CCC cheddar cheese purchases over a 12 month period, less unrestricted sales by CCC, exceed 200 million pounds, but do not exceed 400 million pounds, then the purchase price may be reduced by 10 cents per pound during the immediately following month. If the cheese purchases, less unrestricted sales, exceed 400 million pounds, then the purchase price may be reduced by 20 cents per pound during the immediately following month. The largest CCC total fiscal year (FY) annual cheese purchase in the last 10 years was 42 million pounds in FY 2003. Cheese purchases by CCC have not exceeded 200 million pounds since FY 1988.

If CCC butter purchases over a 12 month period, less unrestricted sales, exceed 450 million pounds, but not more than 650 million pounds, then the purchase price may be reduced 10 cents per pound during the immediately following month. If the butter purchases, less unrestricted sales, exceed 650 million pounds, then the purchase price may be reduced by 20 cents per pound during the immediately following month. The highest CCC total fiscal year butter purchase in the last 10 years was 12 million pounds in FY 2003. Butter purchases by CCC have not exceeded the minimum purchase threshold of 450 million pounds since FY 1992.

If CCC nonfat dry milk purchases over a 12 month period, less unrestricted sales, exceed 600 million pounds, but not more than 800 million pounds, then the purchase price may be reduced 5 cents per pound during the immediately following month. If the nonfat dry milk purchases, less unrestricted sales, exceed 800 million pounds, then the purchase price may be reduced by 10 cents per pound during the immediately following month. The largest nonfat dry milk CCC purchase in the past 10 years was 656 million pounds in FY 2002, which slightly exceeded the minimum purchase threshold.

Section 1430.103(b) provides that CCC may offer to purchase cheddar cheese, butter, fortified nonfat dried milk, or fortified instant nonfat dry milk in consumer-sized ready-to-consume packages at a premium to the purchase prices for cheddar cheese, butter, and nonfat dry milk announced in accordance with § 1430.103(a). Any funds expended to buy products processed into such packages in excess of the announced price for the cheddar cheese, butter, and nonfat dry milk would not be considered a price support expense and would have to be apportioned under section 416(a) of the Agricultural Adjustment Act of 1949.

Section 1430.103(c) provides that CCC may offer to purchase block and barrel cheddar cheese with a lower moisture content than is specified in § 1430.102(c), as evidenced by the grading certificate, at a higher price than is announced in accordance with § 1430.103(a). The formula for determining the premium price for lower moisture cheddar cheese would be specified in the CCC purchase announcement. Although a similar provision did not appear in the Price Support Program for Milk regulations, the former regulation provided that CCC purchases were subject to purchase announcements and those announcements did allow for low moisture purchases and price adjustments.

Section 1430.104, "Sales from Inventories," implements the requirement in the 2008 Farm Bill that CCC may not sell its dairy product inventory for unrestricted use at less than 110 percent of CCC's purchase price. The CCC purchase price used in this calculation is the support price before the price was reduced for any purchase quantity thresholds. Section 1430.104 also specifies that CCC may sell its dairy product inventory for restricted use, which is more common than sales for unrestricted use, at an unspecified price. CCC conducts restricted use sales from time to time, such as sales for casein manufacturing or livestock feed use.

In addition to the changes discussed above, this rule reorganizes 7 CFR part 1430 for clarity, but the remaining provisions are substantially similar to those for the previous program.

#### **Dairy Indemnity Payment Program**

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.

Section 1505 of the 2008 Farm Bill amends 7 U.S.C. 4501 to extend DIPP authorization through 2012, without changing any provisions of the program. This rule amends 7 CFR part 760, subpart A, to reflect the extension by updating the authority citation using the U.S. Code citation.

This rule is changing the method by which DIPP funds will be distributed if the available appropriated funds are not sufficient to pay all claims. This is a discretionary change; it is not required by the 2008 Farm Bill. This change will allow payments to be made as claims arise by implementing a "first-come, first-paid" system. This will provide enhanced relief over the alternative of delaying all claims to the end of the year to determine whether the demand will exceed the supply of funds, requiring pro-rated partial payments. If the funds are not sufficient to pay all claims, Congress would need to determine whether to enhance the appropriation for later years. The alternative method of pro-rating claims based on available funding would likely result in no one receiving immediate payment even though in most years the funds are sufficient to cover all claims. The adoption of a first-come, first-paid basis should be in keeping with the general nature and history of the program.

Also, section 1601(c)(2) of the 2008 Farm Bill exempts this rule from Paperwork Reduction Act (44 U.S.C. Chapter 35) requirements, therefore, this rule removes § 760.34 that specified the OMB control number for the previous information collection approval.

#### **Notice and Comment**

These regulations are exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. 553), as specified in section 1601(c) of the 2008 Farm Bill, which requires that the regulations be promulgated and administered without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. Therefore, these regulations are made effective by this rule without a prior proposed rule or prior public comment.

#### **Executive Order 12866**

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866

and therefore this rule has not been reviewed by OMB.

### Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act because USDA is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for this rule.

### Environmental Review

The environmental impacts of this 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 FSA regulations for compliance with NEPA (7 CFR part 799). The changes required by the 2008 Farm Bill that are identified in this rule do not change the structure or goals of the program and can be considered administrative in nature. Therefore, FSA has determined that NEPA does not apply to this final rule and no environment assessment or environmental impact statement will be prepared.

### Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the Federal Register on June 24, 1983 (48 FR 29115).

### Executive Order 12988

This rule has been reviewed under Executive Order 12988. This rule is not retroactive and it does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

### Executive Order 13132

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. 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

The policies contained in this rule do not have tribal implications that preempt tribal law.

### Unfunded Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal government or the private sector. In addition, USDA was 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 title and number of the Federal assistance program in the Catalog of Federal Domestic Assistance to which this final rule applies is 10.053—Dairy Indemnity Payments.

### Paperwork Reduction Act

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601(c)(2) of the 2008 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

### 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, Pesticides and pests.

#### 7 CFR Part 1430

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

■ For the reasons discussed above, 7 CFR parts 760 and 1430 are amended as follows:

### PART 760—INDEMNITY PAYMENT PROGRAMS

#### Subpart A—Dairy Indemnity Payment Program

■ 1. Revise the authority citation for 7 CFR part 760, subpart A, to read as follows:

**Authority:** 7 U.S.C. 450j–1.

■ 2. Revise § 760.33 to read as follows:

#### § 760.33 Availability of funds.

(a) Payment of indemnity claims will be contingent upon the availability of FSA funds to pay such claims. Claims will be, to the extent practicable within funding limits, paid from available funds, on a first-come, first-paid basis, based on the date FSA approves the application, until funds available in that fiscal year have been expended.

(b) DIPP claims received in a fiscal year after all available funds have been expended will not receive payment for such claims.

#### § 760.34 [Removed]

■ 3. Remove § 760.34.

### PART 1430—DAIRY PRODUCTS

■ 4. Revise the authority citation for part 1430 to read as follows:

**Authority:** 7 U.S.C. 7982, 8771, and 8773; and 15 U.S.C. 714b and 714c.

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

#### Subpart A—Dairy Product Price Support Program

Sec.	
1430.100	Applicability.
1430.101	Definitions.
1430.102	Eligible products.
1430.103	Purchase prices.
1430.104	Sales from inventories.

#### Subpart A—Dairy Product Price Support Program

##### § 1430.100 Applicability.

During the period beginning on January 1, 2008, and ending December 31, 2012, the Secretary of Agriculture will support the price of cheddar cheese, butter, and nonfat dry milk by providing a standing offer to purchase those products from eligible offerors. The products must be made from cow's milk produced in the United States. Purchases are subject to the terms and conditions in CCC's purchase announcements.

##### § 1430.101 Definitions.

For purposes of this subpart, the following definitions apply:

*CCC* means the Commodity Credit Corporation, USDA.

*Eligible offeror* means the person, firm, corporation, or other legal entity obligated by the purchase agreement with CCC. The product must not have been sold before to another party and the offeror must be the manufacturer of the dairy product offered or a marketing cooperative for the manufacturer.

*Net removals* means, for a given period of time, the total dairy product

purchased by CCC through the program in this subpart plus the quantity of the product exported through the Dairy Export Incentive Program (as authorized in 15 U.S.C. 713a–14), less the quantity sold by CCC for unrestricted use.

#### § 1430.102 Eligible products.

(a) To be eligible for the program in this subpart, the products must be manufactured from dairy cow's milk produced in the United States, and must not have been previously owned by CCC. Dairy cow in this instance means an animal of the kind that produces the majority of dairy products in the United States and not, for example, cows of other species of animals such as yaks or oxen.

(b) Products will be purchased only from eligible offerors of the product, and only in carlot weights.

(c) The products purchased must be of the following grades and moisture content, as evidenced by USDA-issued inspection certificates:

(1) Block cheddar cheese must be U.S. Grade A or higher, and the moisture content must not exceed 38.5 percent;

(2) Barrel cheddar cheese must be U.S. Extra Grade, and the moisture content must not exceed 36.5 percent;

(3) Butter must be U.S. Grade A or higher;

(4) Nonfat dry milk must be U.S. Extra Grade, and the moisture content must not exceed 3.5 percent.

(d) CCC may require other terms and conditions of purchase, as specified in CCC's purchase announcement.

#### § 1430.103 Purchase prices.

(a) CCC will offer to purchase products at the following prices for all regions of the United States:

(1) Cheddar cheese in blocks for not less than \$1.13 per pound; unless

(i) Net removals of cheese for a period of 12 consecutive months exceed 200,000,000 pounds, but do not exceed 400,000,000 pounds, in which case the CCC block cheese purchase price will be not less than \$1.03 per pound, during the immediately following month, or

(ii) Net removals of cheese for a period of 12 consecutive months exceed 400,000,000 pounds, in which case the CCC block cheese purchase price will be not less than \$0.93 per pound during the immediately following month;

(2) Cheddar cheese in barrels for \$0.03 per pound less than the cheddar cheese block price;

(3) Butter for not less than \$1.05 per pound; unless

(i) Net removals of butter for a period of 12 consecutive months exceed 450,000,000 pounds, but do not exceed 650,000,000 pounds, in which case the

CCC butter purchase price will be not less than \$0.95 per pound during the immediately following month, or

(ii) Net removals of butter for a period of 12 consecutive months exceed 650,000,000 pounds, in which case the CCC butter purchase price will be not less than \$0.85 per pound during the immediately following month; and

(4) Nonfat dry milk for not less than \$0.80 per pound, unless

(i) Net removals of nonfat dry milk for a period of 12 consecutive months exceed 600,000,000 pounds, but do not exceed 800,000,000 pounds, in which case the CCC nonfat dry milk purchase price will be not less than \$0.75 per pound during the immediately following month, or,

(ii) Net removals of nonfat dry milk for a period of 12 consecutive months exceed 800,000,000 pounds, in which case the CCC nonfat dry milk purchase price will be not less than \$0.70 per pound during the immediately following month.

(b) CCC may offer to purchase cheddar cheese, butter, fortified nonfat dry milk, or fortified instant nonfat dry milk in consumer-sized ready-to-consume packages at a premium to the purchase prices for cheddar cheese, butter and nonfat dry milk specified in paragraph (a) of this section. Any such offers will be made through CCC's purchase announcements, and such offers may be limited by quantity and to a specific time period.

(c) CCC may offer to purchase cheddar cheese with a lower moisture content than is specified in § 1430.102(c) at a premium to the prices specified in paragraph (a) of this section. Any such offers will be made through CCC's purchase announcements, and such offers may be limited by quantity and to a specific time period.

#### § 1430.104 Sales from inventories.

(a) CCC may sell any dairy product purchased as specified in this subpart for unrestricted use at the market price prevailing for that product at the time of sale, except that the sale price will not be less than 110 percent of the purchase price specified in § 1430.103(a), before any price reduction for the amount of CCC net removals of the dairy products.

(b) CCC may sell or distribute dairy products purchased under this section for restricted use when such sale is determined to maximize the return to CCC on its purchases.

Signed in Washington, DC, on July 8, 2010.

**Jonathan W. Coppess,**

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

[FR Doc. 2010-17409 Filed 7-15-10; 8:45 am]

**BILLING CODE 3410-05-P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 9

[NRC-2010-0157]

RIN 3150-A187

### Public Records

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is revising its regulations to change the fees for search and review of agency records by NRC personnel. This document is necessary to inform the public of these changes.

**DATES:** *Effective Date:* August 16, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Becky Wood at 301-415-6968, e-mail [Becky.Wood@nrc.gov](mailto:Becky.Wood@nrc.gov), or in writing to the Nuclear Regulatory Commission, Office of Information Services, Mail Stop TWFN-5F09, Washington, DC 20555-0001.

**ADDRESSES:** You can access publicly available documents related to this document using the following methods:

*NRC's Public Document Room (PDR):* The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

*NRC's Agencywide Documents Access and Management System (ADAMS):*

Publicly available documents created or received at the NRC are available electronically at the NRC's electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

*Federal Rulemaking Web site:*

Supporting materials related to this final rule can be found at <http://www.regulations.gov> by searching on Docket ID NRC-2010-0157.