

APPENDIX TO FORM CCC-580, MILK INCOME LOSS CONTRACT

1 DEFINITIONS

The following definitions are applicable to the extension of the Milk Income Loss Contract (MILC) Program:

- A Administrator** means the FSA Administrator.
- B Contract application** means Form CCC-580, the Milk Income Loss Contract (MILC).
- C Contract application period** means the date established by the Deputy Administrator for producers to apply for program benefits.
- D CCC** means the Commodity Credit Corporation.
- E Class I Milk** means milk, including milk components, classified as Class I milk under a Federal milk marketing order.
- F County Committee** means the FSA county committee.
- G County Office** means the local FSA office.
- H Dairy Operation** means any person or group of persons who as a single unit as determined by CCC, produce and market milk commercially produced from cows and whose production facilities are located in the United States.
- I Dairy Feed Price Adjustment** – for the period January 1, 2008 through August 31, 2012, if the National Average Dairy Feed Ration Cost for a month during that period is greater than \$7.35 per hundredweight, the amount used to determine the payment rate shall be increased by 45 percent of the percentage by which the National Average Dairy Feed Ration Cost exceeds \$7.35 per hundredweight. For any month beginning on or after September 1, 2012, if the National Average Dairy Feed Ration Cost for a month during that period is greater than \$9.50/cwt, the payment rate will be increased by 45 percent of the percentage by which the National Average Dairy Feed Ration Cost exceeds \$9.50/cwt. The National Average Dairy Feed Ration cost will be determined in accordance with the program regulations.
- J Department or USDA** means the United States Department of Agriculture.
- K Deputy Administrator** means the Deputy Administrator for Farm Programs (DAFP), Farm Service Agency (FSA) or a designee.
- L Eligible Production** means milk that was produced by cows in the United States and marketed commercially by a producer in a participating State.
- M Farm Service Agency or FSA** means the Farm Service Agency of the Department.
- N Federal Milk Marketing Order** means an order issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937.
- O Fiscal Year** means the year beginning October 1 and ending the following September 30. For example, the 2009 fiscal year begins October 1, 2008, and ends on September 30, 2009.
- P Marketed commercially** means sold to the market to which the dairy operation normally delivers whole milk and receives a monetary amount.
- Q Milk handler** means the marketing agency to or through which the producer commercially markets whole milk.
- R MILC** means the Milk Income Loss Contract.
- S Milk Income Loss Contract or CCC-580** means the program documents including the applicable contract appendix, entered into between CCC and the participant. Such contract shall set forth the terms and conditions for participation in the MILC program and receipt of MILC payments.

- T Milk Marketing** means a marketing of milk for which there is a verifiable sales or delivery record of milk marketed for commercial use.
- U Participating State** means each of the 50 States in the United States of America, including the District of Columbia, and the Commonwealth of Puerto Rico, or any other territory or possession of the United States (7 CFR 1430.202).
- V Payment Pounds** means the pounds of milk production for which an operation is eligible to be paid up to a maximum of 2.4 million pounds per dairy operation per fiscal year for the 2008 fiscal year and 2,985,000 pounds per fiscal year for the 2009-2012 fiscal years provided further that an operation may receive payment for September 2012 marketings only if pre- September 2012 FY marketings did not exceed 2,400,000 pounds in which case new marketings that would not put the operation's 2012 FY marketings over 2,400,000 pounds will be eligible for payments otherwise permitted under the MILC regulation.
- W Producer** means any individual, group of individuals, partnership, corporation, estate, trust association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen of, or legal resident alien or aliens in the United States, and who directly or indirectly, as determined by the Secretary, shares in the risk of producing milk, and makes contributions (including land, labor, management, equipment, or capital to the dairy farming operation of the individual or entity that are at least commensurate with the share of the individual or entity of the proceeds of this operation.
- X Secretary** means the Secretary of the United States Department of Agriculture or any other officer or employee of the Department who has been delegated the authority to act in the Secretary's stead with respect to the program established in the part.
- Y United States** means the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico, and any other territory or possession of the United States. (7 CFR 1430.202).
- Z Verifiable Production Records** means evidence that is used to substantiate the amount of production reported and that can be verified by CCC through an independent source.
- AA** All other words and phrases, unless the context of subject matter otherwise requires, shall have the meanings assigned to them in the regulations governing the Milk Income Loss Contract Program which are found at 7 CFR Part 1430.

2 ELIGIBILITY REQUIREMENTS FOR MILC PROGRAM

- A** By signing the MILC, the participant certifies that such participant produced milk commercially in the United States and marketed such production anytime during the period from October 1, 2007, through September 30, 2012. The participant agrees to provide monthly milk production and evidence of such production commercially marketed by all persons in the dairy operation during the program period, to determine the total pounds of milk that will be converted to hundredweight (cwt), and subsequently used for determining payment eligibility. Such production evidence must be provided before CCC will issue a payment to the dairy operation. (7 CFR 1430.203).
- B** The dairy operation must comply with highly erodible land and wetland conservation provisions set out at 7 CFR Part 12, adjusted gross income provisions at 7 CFR Part 1400, and all other provisions prescribed in the Milk Income Loss Contract program regulations at 7 CFR Part 1430. With respect to adjusted gross income, no person or entity may receive a payment for FY 2009 or subsequent marketings if their adjusted gross nonfarm income for the relevant base period for the marketings as determined under part 1400 is, as determined under that part is over \$500,000. Further for entities an otherwise due payment will be reduced commensurately to the extent that any person with an interest in the entity; as determined under AGI regulations, had such income over that limit for the relevant period.
- C** In order to receive payment the operation must have submitted a contract during the applicable contract period for FYs 2008-2012. The operation must have for any fiscal year for which payments is sought to be paid submitted the FY 2008-2012 contract before the end of that fiscal year. Further, to be eligible for payment, the dairy must not, if it did not participate in the MILC program for fiscal years prior to FY 2008, be affiliated with any other dairy operation.

3 RESTRICTIONS ON PAYMENTS TO FOREIGN PERSONS

- A** Any producer who enters a MILC with CCC or participates in such contract at any time who is not a citizen of the United States or an alien lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101, et seq.) shall be ineligible to receive monthly payments under this contract unless such person meets the requirements of 7 CFR Part 1400 which shall be applicable to this contract.
- B** Persons succeeding to a MILC must notify CCC immediately of succession and the contract must be modified accordingly.

4 SELECTION OF STARTING MONTH PROVISIONS

- A** A dairy operation that enters into a MILC with CCC, must designate for each fiscal year covered by the contract the starting month for the CCC to consider marketings to be eligible for consideration for payment.

The starting month selected by the dairy operation must be made on or before the 14th of the month before the month for which payment is sought. (7 CFR 1430.205(a)).

Beginning with the month selected by the dairy operation, MILC payments for the fiscal year will be issued based on the selected month's production and production for each consecutive month thereafter with a payment rate in effect until the earlier of the following:

- (1) the maximum payment quantity for the fiscal year is reached; or
 - (2) the applicable fiscal year ends.
- B** Except as provided in subparagraphs F and G of this section, a dairy operation cannot select a month for payment for which the following has occurred:
- (1) The month has already begun provided further that a month must be selected by the 14th of the preceding month;
 - (2) The month has already passed; or
 - (3) No milk production was produced by the dairy operation.
- C** Dairy operations cannot change the selected starting month for the fiscal year unless the change is made with CCC on or before the 14th of the month before the month selected. Otherwise, the starting month selected by the dairy operation cannot be changed in the MILC until the next fiscal year. If the starting month selected by the dairy operation is never modified from the initial selection, the selected month will remain the same for each fiscal year throughout the duration of the contract. (7 CFR 1430.205(e)). That is, once a month is chosen for a fiscal year, the corresponding month will be the start month for subsequent fiscal years unless affirmatively changed by the operation.
- D** Payments will be made consecutively to the dairy operation on a monthly basis for the fiscal year after the starting month has been designated in the MILC until the earlier of the following:
- (1) The maximum payment quantity for the fiscal year is reached; or
 - (2) The end of the fiscal year.
- E** All producers involved in the dairy operation must agree to the month designated in the MILC that CCC will issue payments. The dairy operation assumes the risk of not reaching the maximum payment quantity based on the month selected by the dairy operation. Payments will not be issued for past months for the sole purpose of reaching the maximum payment quantity, when the starting month was erroneously or otherwise selected by the dairy operation.
- F** For FY 2009, if the contract is submitted within 30 days of the time at which CCC begins accepting contracts for the FYs 2008-2012 program, the dairy operation can select any preceding month as the FY 2009 start month or choose a start month according to the normal standards that apply.
- G** When the FYs 2008-2012 contract is submitted, the dairy operation may, in lieu of other rules that apply, pick the month in which the contract is submitted as the start month for the fiscal year in which the contract is submitted.

- H** If there is no payment rate in effect for the MILC production start month selected by the dairy operation, the dairy operations' payment will begin with the production from the next consecutive month in which there is a rate in effect following the selected MILC production start month. Production that does not generate a payment will not count against FY poundage eligibility limits.

5 DAIRY OPERATION PAYMENT QUANTITY

- A** The applicant's payment quantity of milk will be determined by CCC, based on the quantity of milk that was produced and commercially marketed by each dairy operation each month per FY.
- B** The maximum quantity of eligible production for which dairy operations are eligible for payment per fiscal year under the Milk Income Loss Contract Program regulations shall be for FYs 2009-2012 - 2,985,000 pounds or 29,850 hundredweight per separate and distinct operation provided further that an operation may receive payment for September 2012 marketings, only if pre-September 2012 FY marketings did not exceed 2,400,000 pounds in which case new marketings that would not put the operation's 2012 FY marketings over 2,400,000 pounds will be eligible for payments otherwise permitted in this rule.
- C** The Deputy Administrator shall determine what may be considered a separate and distinct operation.

6 PAYMENT RATE AND DAIRY OPERATION PAYMENT

- A** Payments under the MILC may be made to dairy operations when the Boston Class I milk price for the relevant month under the applicable Federal milk marketing order is below \$16.94 per hundredweight. No payments will be made to dairy operations during the months that the Boston Class I milk price under the applicable milk marketing order equals or exceeds \$16.94 or a rate adjusted for the National average dairy feed ration cost.
- B** A per hundredweight (cwt) payment rate will be determined for the applicable month by:
- (1) Subtracting from \$16.94 the Class I milk price per hundredweight in Boston;
 - (2) Multiplying the difference by 34 percent during the period beginning on October 1, 2007, and ending on September 30, 2008;
 - (3) Multiplying the difference by 45 percent during the period beginning on October 1, 2008, and ending on August 31, 2012.
 - (4) Multiplying the difference by 34 percent for September, 2012.
- C** The payment rate as calculated in accordance with paragraph B, will be adjusted to compensate for feed prices when the National Average Dairy Feed Ration Cost for a month is greater than the levels set forth below. Generally, the National Average Dairy Feed Ration Cost per cwt., for each month shall as determined under the program regulations be calculated using the same procedures used to calculate the feed components of the estimated price of 16 percent Mixed Dairy Feed per pound as noted in the USDA monthly Agricultural Prices publication of March, 2008. The payment rate adjustment for feed prices will be determined by increasing \$16.94 by the percentage which is 45 percent of the percentage by which the National Average Dairy Feed Ration Cost exceeds \$7.35 per cwt., (\$9.50 per cwt., for MILC marketings in September 2012).
- D** Each eligible dairy operation payment will be calculated, as determined by CCC, by:
- (1) Converting whole pounds of milk to hundredweight (cwt); and
 - (2) Multiplying the payment rate determined in paragraphs B and C of this section by the quantity of eligible production marketed by the operation during the applicable month as determined.
- E** Payments under the Milk Income Loss Contract Program regulations may be made to a dairy operation only up to the quantity of eligible production per applicable fiscal year as described in Section 5.
- F** Participants will receive payments on a monthly basis according to the MILC, not later than 60 days after the production evidence for the applicable month is received or the dairy feed adjusted rate is posted, whichever is later. However, CCC will endeavor to make the payment where possible within 60 days of the end of the month of the marketing.

7 PROOF OF PRODUCTION

- A** Dairy operations entering into a MILC with CCC must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof of the dairy operation's eligible production during the applicable months of each fiscal year designated in the contract. The dairy operation must also provide proof that the eligible production was commercially marketed during applicable months beginning October 1, 2007, and ending September 30, 2012. The documentary evidence of milk production claimed for payment shall be reported to CCC together with any supporting documentation to verify claim.
- B** CCC will issue a payment to the dairy operation no later than 60 days after the last day of the month that the production evidence is provided to the county FSA office or the date the feed rate adjustment is posted, whichever is later. However, CCC will endeavor to make the payment where possible within 60 days of the end of the month of the relevant marketings.
- C** Dairy operations must provide their final production evidence by November 1, 2012.

8 MILC AGENT PROVISIONS

- A** Milk Income Loss Contract payments may be disbursed by a cooperative marketing association that serves the Amish community or other special groups. Producers in such groups in a dairy operation may authorize an agent of a cooperative marketing association or milk handler affiliated with a cooperative marketing association to obtain and disburse MILC payments to the operation.
- B** The authorized Milk Income Loss Contract agent must on behalf of the dairy operation do the following:
 - (1) Obtain a power of attorney for the producers of the dairy operation that authorizes the agent to enter into a MILC;
 - (2) File form prescribed by CCC, for approval by CCC, to act as a MILC agent;
 - (3) Provide the dairy operation's monthly production evidence to the applicable FSA county office;
 - (4) Disburse payment to the dairy operation in the producers monthly milk check.

9 EFFECTIVE DATE AND CHANGES TO CONTRACT

- A** The MILC is effective when, as determined by CCC, it has been signed by the participants and an authorized representative of CCC. Except as otherwise determined by CCC, as permitted by regulations or other law, the MILC may not be revoked or revised unless by mutual agreement between parties. If, after the effective date of this contract, CCC determines that certified production was erroneously provided or any provision prescribed in the regulations at 7 CFR Part 1430 was violated, CCC may terminate the contract according to such regulations.
- B** Except as provided in Section 6, contracts entered into by producers in a dairy operation shall cover eligible production marketed by the producers in a dairy operation during the period beginning with the first day of the month the producers in the dairy operation enter into contract and ending on September 30, 2012.
- C** In the event that a statute is enacted during the period of this Milk Income Loss Contract which would materially change the terms and conditions of this contract, the CCC may require the participants to elect between acceptance of modifications in the contract consistent with the provisions of such statute or termination of this contract.

10 CONTRACT MODIFICATIONS

- A** Producers in dairy operations are required to notify their local FSA office immediately of any changes that potentially affect the terms, conditions, or participants under the MILC. Changes include, but are not limited to changes to the starting month to receive payment for the next fiscal year, death of producer on the contract, new member joining the operation, member exiting the operation, transfer of shares by sale or other transfer action, or reconstitutions.
- B** CCC may modify a MILC if it is determined that such modifications are desirable to carry out purposes of the program or to facilitate the program's practical administration.
- C** The contact producer as designated to FSA on or for the contract has authority to make authorized changes to applicable Milk Income Loss Contract program forms prescribed by FSA and to bind other producers on the contract to those changes.

11 NOTIFICATION OF CHANGES TO TERMS AND CONDITIONS OF THE CONTRACT

CCC agrees that, if any changes of any terms and conditions of this contract become necessary prior to the date that this contract is approved on behalf of CCC, CCC will notify the producers signing the MILC of such change and such producer will be given 10 days from the date of notification in which to agree to the revised terms and conditions or to withdraw from the offer. The participant agrees to notify the CCC of an intention to withdraw from the offer within 10 days from the date of the issuance of such notice and further agrees that failure to notify the CCC will constitute agreement to the revised terms and conditions.

12 TERMINATION OF CONTRACT

If a participant fails to carry out the terms and conditions of this contract but CCC determines that such failure does not warrant termination of this contract, CCC may require such participant to refund, with interest, payments received under this contract, or require the participant to accept such adjustments in the subsequent payment as are determined to be appropriate by CCC. Interest shall run on all refunds from the date of CCC disbursement.

13 CORRECTIONS

CCC reserves the right to correct all errors in entering data or the results of computations in the contract.

14 ERRONEOUS REPRESENTATION AND SCHEME AND DEVICE

- A** A participant who is determined to have erroneously represented any fact affecting a determination with respect to this MILC and regulations applicable to this contract, adopted any scheme or device which tends to defeat the purposes of this contract, or made any fraudulent representation with respect to this contract will not be entitled to payments or any other benefits made in accordance with this MILC and the participant must refund to CCC all payments received by such participant, plus interest with respect to the MILC.
- B** Unless CCC regulations provide otherwise, refunds determined to be due and owing to CCC in accordance with this MILC will bear interest at the rate which CCC was required to pay for its borrowing from the United States Treasury on the date of disbursement by CCC of the monies to be refunded. Interest will accrue from the date of such disbursement by CCC.
- C** The remedies provided under Section 14 of this Appendix shall be applicable in addition to any remedies under criminal and civil fraud statutes, including 18 U.S.C. 268, 287, 371, 641, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729, or any other remedy available under law.

15 REGULATIONS TO PREVAIL

The regulations in 7 CFR Part 1430 for the Milk Income Loss Contract Program are incorporated herein. In the event of a conflict between these regulations and the terms of this Appendix, the provisions of the regulations will prevail, provided further that a payment may be made only if allowed by both the contract (including this appendix) and the program regulations.

16 RECONSTITUTIONS

- A** A dairy operation entering into a MILC shall not after October 1, 2007, reorganize the dairy operation for the sole purpose of receiving more than one payment.
- B** Dairy operations that reorganize or restructure the operation for legitimate purposes after October 1, 2007, are subject to review by the applicable FSA county committee.
- C** If it is determined by the FSA County Committee that a dairy operation has reorganized for the sole purpose of receiving additional payments under the Milk Income Loss Contract Program, the operation will be considered in violation of their MILC and subject to termination according to Section 12.

- D** If during the contract period a reconstitution occurs, the modification to the MILC will not take effect until the first day of the fiscal year following the month the FSA county office received notification of the changes.

17 AGREEMENT

A The participant agrees:

- (1) That the CCC-580 and any addendum thereto shall be considered an offer to enter into the Milk Income Loss Contract Program on the terms specified on Form CCC-580 and any addendum thereto. The offer, until revoked, may be accepted by CCC provided further, that, liquidated damages may apply in the case of a revocation as specified elsewhere in this Appendix;
- (2) To provide monthly milk production commercially marketed by all producers in the dairy operation throughout the duration of the program period that payment eligibility calculation can be made;
- (3) To submit adequate evidence of production of the dairy operations eligible marketings during the months of each fiscal year designated in the contract;
- (4) To have all producers involved in the dairy operation, marketing milk during the period specified in the MILC to sign the contract and indicate shares in the operation;
- (5) To designate the start month the dairy operation wants CCC to begin issuing payments to the operation;
- (6) To comply with highly erodible land and wetland conservation provisions and complete Form AD-1026 accordingly;
- (7) Not to undertake any action which tends to defeat the purposes of this contract, as determined by CCC;
- (8) Not to reconstitute the dairy operation for the sole purpose of receiving additional Milk Income Loss Contract payments;
- (9) Notify CCC immediately of any changes that affect the organizational structure of the dairy operation.
- (10) Any payment or portion thereof due any participant will be made by CCC without regard to any question of title under State law, and without regard to any claim or lien which may be asserted by a creditor, except agencies of the U.S. Government. Offsets for debts owed to agencies of the U.S. Government shall be made prior to making any payments to participants or their assigns.
- (11) To comply with all terms and conditions contained in this Appendix and the prescribed regulations at 7 CFR Part 1430.

B CCC agrees, subject to the availability of funds, that contract (including this appendix), the regulations and changes in law, to pay to the participant, to the extent required by the applicable authorities, the agreed upon monthly payment, to be made divided based upon the shares to which the parties have agreed as set forth on Form CCC-580.

NOTE: *The primary authority for requesting and safeguarding the information described on this form is the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246 and any amendments to such act as may follow). The information requested is necessary for CCC to consider and process the offer to enter into a Milk Income Loss Contract, to assist in determining eligibility, and to determine the correct parties to the contract. Furnishing the requested information is voluntary. Failure to furnish the requested information will result in a determination of ineligibility for certain program benefits and other financial assistance administered by USDA. The information collected as a result of this form may be released to USDA employees, USDA contractors, or authorized USDA cooperators who are bound to safeguard the information under Section 1619 of the Food, Conservation and Energy Act, the Privacy Act of 1974, the E-Government Act of 2002, and related authorities. This information collection is exempted from the Paperwork Reduction Act, as it is required for administration of the Food, Conservation, and Energy Act of 2008 (see Pub. L. 110-246, Title I, Subtitle F - Administration). The provisions of criminal, civil, and privacy statutes may be applicable to the information provided.*

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.