

## **APPENDIX TO FORM CCC-580X, MILK INCOME LOSS CONTRACT EXTENSION**

**NOTE:** The authority for collecting the following information is Pub. L. 107-171. This authority allows for the collection of information without prior OMB approval mandated by the Paperwork Reduction Act of 1995.

### **1 DEFINITIONS**

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

- A Administrator** means the FSA Administrator.
- B Contract application** means Form CCC-580X, the Milk Income Loss Contract Extension (MILCX).
- 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 Department or USDA** means the United States Department of Agriculture.
- J Deputy Administrator** means the Deputy Administrator for Farm Programs (**DAFP**), **Farm Service Agency (FSA)** or a designee.
- K Eligible Production** means milk that was produced by cows in the United States and marketed commercially anytime during the period of October 1, 2005, through September 30, 2007, up to a maximum of 2,400,000 pounds per dairy operation per fiscal year.
- L Farm Service Agency or FSA** means the Farm Service Agency of the Department.
- M 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.
- N Fiscal Year** means the year beginning October 1 and ending the following September 30th. For example, the 2006 fiscal year begins October 1, 2005, and ends on September 30, 2006.
- O Marketed commercially** means sold to the market to which the dairy operation normally delivers whole milk and receives a monetary amount.
- P Milk handler** means the marketing agency to or through which the producer commercially markets whole milk.
- Q MILCX** means the Milk Income Loss Contract Extension.
- R Milk Income Loss Contract Extension or CCC-580X** 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.
- S Milk Marketing** means a marketing of milk for which there is a verifiable sales or delivery record of milk marketed for commercial use.

- T 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*).
- U 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.
- V 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.
- W 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.
- X 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*).
- Y 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.
- Z** 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 MILCX PROGRAM

- A** By signing the MILCX, the participant certifies that such participant produced milk commercially in the United States and marketed such production anytime during the period from October 1, 2005, through September 30, 2007. 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 payment. 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 provided at 7 CFR Part 12 and all other provisions prescribed in the Milk Income Loss Contract Program regulations at 7 CFR Part 1430.

## 3 RESTRICTIONS ON PAYMENTS TO FOREIGN PERSONS

- A** Any producer who enters a MILCX 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, or unless such foreign person has a working visa or other valid taxpayer identification number.
- B** Persons succeeding to a MILCX must notify CCC immediately of succession and modify the contract accordingly.

## 4 SELECTION OF STARTING MONTH PROVISIONS

- A** A dairy operation that enters into a MILCX with CCC, must designate in the contract the month that CCC shall begin making payments to the dairy operation for the selected months commercial milk marketings.

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, MILCX payments 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 of 2.4 million pounds is reached;
- (2) the applicable fiscal year ends.

**B** Except as provided in subparagraph 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;
- (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 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 MILCX 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)*).

**D** Payments will be made consecutively to the dairy operation on a monthly basis after the starting month has been designated in the MILCX until the earlier of the following:

- (1) Payment quantity is reached;
- (2) End of the fiscal year.

**E** All producers involved in the dairy operation must agree to the month designated in the MILCX 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** During fiscal year 2006 only, during the initial signup period beginning March 13, 2006, and ending May 17, 2006, a dairy operation can select from either of the following options:

- (1) any month beginning December 2005 through May 2006, in which there was a payment rate in effect; or
- (2) any month beginning June 2006 through September 2006, for which the payment rate is not known and in accordance with subparagraph B of this section.

**G** Dairy operations that submit a MILCX after the initial signup period ending May 17, 2006, but before September 30, 2007, can select as the MILC production start month for the dairy operation either: (1) the months remaining in the fiscal year in which the MILCX is submitted for which the payment rate is not known in accordance with subparagraphs A and B of this section; or (2) the month in which the MILCX is submitted.

**H** If there is no payment rate in effect for the MILCX 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 MILCX production start month.

## **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 fiscal year.

- 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 2,400,000 pounds or 24,000 hundredweight per separate and distinct operation. The Deputy Administrator shall determine what may be considered a separate and distinct operation and that decision shall be final.

## **6 PAYMENT RATE AND DAIRY OPERATION PAYMENT**

- A** Payments under the MILCX may be made to dairy operations when the Boston Class I milk price 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.
- 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, 2005, and ending on August 31, 2007;
  - (3) Multiplying the difference by 0 percent during the period beginning on September 1, 2007, and ending on September 30, 2007.
- C** Each eligible dairy operation payment will be calculated, as determined by the Secretary, by:
- (1) Converting whole pounds of milk to hundredweight (cwt); and
  - (2) Multiplying the payment rate determined in paragraph B of this section by the quantity of eligible production marketed by the operation during the applicable month as determined.
- D** Payments under the Milk Income Loss Contract Program regulations may be made to a dairy operation only up to the first 2,400,000 pounds of eligible production per applicable fiscal year.
- E** Participants will receive payments on a monthly basis according to the MILCX, not later than 60 days after the production evidence for the applicable month is received by the FSA county office.

## **7 PROOF OF PRODUCTION**

- A** Dairy operations entering into a MILCX 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, 2005, and ending September 30, 2007. 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.
- C** Dairy operations must provide their final production evidence by November 1, 2007.

## **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 Extension 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 MILCX;
- (2) File form prescribed by CCC, for approval by CCC, to act as a MILCX 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 MILCX 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 MILCX 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, 2007.
- C** In the event that a statute is enacted during the period of this Milk Income Loss Contract Extension 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 Milk Income Loss Contract Extension. 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 MILCX if it is determined that such modifications are desirable to carry out purposes of the program or to facilitate the program's practical administration.

## **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 MILCX 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.

## **13 CORRECTIONS**

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

**14 LIQUIDATED DAMAGES**

It is mutually agreed that in the event the MILCX is breached by the participant, the CCC will suffer substantial damages which may not be possible to quantify with certainty. Therefore, in addition to the refund of payments received plus interest due, for breach of contract prescribed in this contract, the participant agrees to pay an amount equal to the product obtained by multiplying: (1) 25 percent of the payment rate per pound on CCC-580X by (2) the number of pounds that are the subject of the Milk Income Loss Contract. Such amount shall be due as liquidated damages in addition to such other damages or amounts as may be due, and not as a penalty.

**15 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 MILCX 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 MILCX and the participant must refund to CCC all payments received by such participant, plus interest and liquidated damages thereon, with respect to the MILCX. Such liquidated damages will be determined in accordance with Section 14 of this Appendix.
- B Unless CCC regulations provide otherwise, refunds determined to be due and owing to CCC in accordance with this MILCX 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.

**16 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.

**17 RECONSTITUTIONS**

- A A dairy operation entering into a MILCX shall not after December 1, 2001, 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 December 1, 2001, 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 MILCX and subject to termination according to Section 12.
- D If during the contract period a reconstitution occurs, the modification to the MILCX will not take effect until the first day of the fiscal year following the month the FSA county office received notification of the changes.

**AGREEMENT**

- A The participant agrees:
  - (1) That the applicable CCC-580X and any addendum thereto shall be considered an offer to enter into the Milk Income Loss Contract Program Extension on the terms specified on Form CCC-580X 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, to determine the total pounds of milk that will be converted to hundredweight (cwt) used for payment;
- (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 MILCX 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, to pay to the participant, to the extent required by the applicable CCC regulations, the agreed upon monthly payment, based upon the shares to which the parties have agreed as set forth on Form CCC-580X for a period of years not in excess of the contract period.

**NOTE:** *The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a). The authority for requesting the following information is the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171) and 7 CFR Part 1430. The information requested is necessary for CCC to consider and process the offer to enter into an Extension of 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. This information may be provided to other agencies, IRS, Department of Justice, or other State and Federal Law enforcement agencies, and in response to a court magistrate or administrative tribunal. The provisions of criminal and civil fraud statutes, including 18 USC 286, 287, 371, 641, 651, 1001; 15 USC 714m; and 31 USC 3729, may be applicable to the information provided.*

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