

## 330 CMR: DEPARTMENT OF AGRICULTURAL RESOURCES

### 330 CMR 29.00: DAIRY FARMER TAX CREDIT PROGRAM

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#### 29.01: Scope and Purpose

330 CMR 29.00 implements M.G.L. c. 62, §§ 6(o)(1) through (4), and M.G.L. c. 63 § 38Z, which establishes a tax credit to dairy farmers to offset the cyclical downturns in milk prices paid to dairy farmers. The Dairy Farm Revitalization Task Force Report noted that, during some years, milk prices may fall below some measure of everyday costs of production while during other years milk prices may be above that measure of everyday costs of production. During those years when milk prices fall below the cost of production, the Dairy Farmer Tax Credit Program will pay out more than average, but in others the payout will be less than average. The Task Force reported that over time the payout would average \$2.3 million, and recommended that the actual tax credit would range between 0 and \$4.0 million.

The purpose of 330 CMR 29.00 is to provide a safety net program that supports Massachusetts Dairy Farms through its provision of revenue stability to dairy farmers when either milk prices paid to farmers fall or costs of production rise relative to one another. Based on recommendations of the Dairy Farm Revitalization Task Force, the Dairy Farmer Tax Credit is established as follows:

- (1) milk prices and costs of production are evaluated on a monthly basis to determine if the Tax Credit triggers for each month of the year, based on the formula established in 330 CMR 29.06;
- (2) The maximum annual value of the tax credit is \$4.0 million;
- (3) The formula in 330 CMR 29.06 is established with the intent to produce a long-term average tax credit of \$2.3 million per annum.

#### 29.02: Definitions

As used in 330 CMR 29.00:

Annual Milk Production means the sum of the monthly milk production reported by an Eligible Taxpayer for the calendar year pursuant to 330 CMR 29.04(3).

Butterfat Price means Butterfat Price as announced each month by the Northeast Federal Milk Marketing Order for Boston, MA.

Butterfat Test means the average Butterfat Test as announced each month by the Northeast Federal Milk Marketing Order for Boston, MA.

Certificate of Registration means the certificate of registration issued by the Commissioner pursuant to M.G.L. c. 94, § 16A.

Commissioner means the Commissioner of the Department of Agricultural Resources.

Dairy Farmer Tax Credit means an amount calculated by multiplying the Dairy Farmer Tax Credit Rate by the number of hundredweights of the Annual Milk Production of an Eligible Taxpayer as reported under 330 CMR 29.04(3).

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29.02: continued

Dairy Farmer Tax Credit Rate means a value calculated by dividing the Total Tax Credit by the number of hundredweights of milk in the Total Milk Production.

Department means the Massachusetts Department of Agricultural Resources.

Eligible Taxpayer means a person as defined by M.G.L. c. 4, § 7, paragraph 23 who holds a Certificate of Registration.

Farm Price means a price calculated according to 330 CMR 29.07 that reflects the milk price paid to farmers and based on the United States Milk Marketing Order for the Northeast.

MILC Payment means Milk Income Loss Contract Program payment as calculated according to 7 USC 8773.

Monthly Milk Costs of Production means the National Monthly Milk Costs of Production published by the USDA or as the Commissioner shall otherwise determine.

Northeast Federal Milk Marketing Order means 7 CFR 1001.

Producer Price Differential means the producer price differential announced each month by the Northeast Federal Milk Marketing Order.

Program means the Dairy Farmer Tax Credit Program.

Protein Price means the price of protein as announced monthly by the Northeast Federal Milk Marketing Order, Boston, MA.

Proteins Test means the average protein test as announced monthly by the Northeast Federal Milk Marketing Order, Boston, MA.

Solids Price means the solids price as announced monthly by the Northeast Federal Milk Marketing Order.

Solids Test means the average solids test as announced monthly by the Northeast Federal Milk Marketing Order, Boston, MA.

Total Milk Production means the sum of all the Annual Milk Production of all Eligible Taxpayers.

Total Cumulative Value of Credits means the total cumulative value of authorized credits as provided in M.G.L. c. 62, § 6(o)(3), and M.G.L. c. 63, § 38Z.

Total Tax Credit means a value obtained by multiplying the Trigger Percent by the Total Cumulative Value of Credits.

Trigger Percent means the number of months for which the Farm Price is less than or equal to the Trigger Price divided by 12.

Trigger Price means the price established by the Department for the purpose of calculating the tax credit.

USDA means the United States Department of Agriculture.

29.03: Dairy Farmer Tax Credit Program Established

The Department shall establish a Dairy Farmer Tax Credit Program under which an Eligible Taxpayer who holds a Certificate of Registration as a dairy farmer may be allowed a refundable income tax credit based on the amount of milk produced and sold. The credit shall be claimed against the taxes due pursuant to M.G.L. chs. 62 or 63. The credit shall be based on the United States Federal Milk Marketing Order for the applicable market such that if the United States Federal Milk Marketing Order price drops below a Trigger Price anytime during the taxable year such taxpayer may receive the tax credit.

29.04: Dairy Farmer Eligibility

(1) Disclosure and Authorization Statement. Any Eligible Taxpayer wishing to claim the Dairy Farmer Tax Credit shall file a disclosure and authorization statement with the Commissioner not later than January 31<sup>st</sup>. The disclosure and authorization statement shall be on a form prescribed by the Commissioner and shall include a statement disclosing taxpayer identification information, monthly milk production information as it becomes available, and authorization for third parties with relevant milk production information to release such information to the Department for verification purposes. An eligible taxpayer obtaining a Certificate of Registration after January 31<sup>st</sup> shall file a Disclosure and Authorization Statement with the Commissioner within 30 days thereafter. The Commissioner may extend the deadline for cause.

(2) Certificate of Registration and Qualification. A Certificate of Registration is required for the Program.

(3) Monthly Milk Production Reports. An Eligible Taxpayer shall submit a monthly milk production report, on a form prescribed by the Commissioner, not later than the last day of the next ensuing month except for the month of December, which shall be submitted no later than the 15<sup>th</sup> day of January.

(4) Data Release Authorization. An Eligible Taxpayer who has filed a Disclosure and Authorization Statement with the Commissioner shall be deemed to have authorized the release of production data required by the Commissioner for the administration of this Program.

29.05: Certification of Eligibility and Tax Credit

(1) The Commissioner shall certify to the Commissioner of the Department of Revenue pursuant to M.G.L. c. 62, § 6(o), or M.G.L. c. 63, § 38Z(d), that an Eligible Taxpayer claiming credits under 330 CMR 29.00 has met the eligibility requirements provided in 330 CMR 29.05 and the amount of credit to which any such Eligible Taxpayer is entitled. In making such certification, the Commissioner shall state that, to the best of the Commissioner's knowledge, the milk production reports submitted by an Eligible Taxpayer are accurate. A copy of the certification shall be sent to the Eligible Taxpayer.

(2) The Department may verify monthly milk production reports either by auditing a Person's records of milk production revenues or by acquiring records from third parties that have collected such data including records released by the Federal Milk Market Administrator's Office after due release permission has been granted, milk marketing cooperatives, or the MILC program records.

(3) Resolving Discrepancy. If the Commissioner identifies a discrepancy in production reports, the Eligible Taxpayer shall be notified, whereupon the Eligible Taxpayer shall have three days to return to the Commissioner with sufficient information to validate the production record. Upon receipt of such information, the Commissioner shall then have three days to notify the Eligible Taxpayer of its determination as to whether to amend the Eligible Taxpayer's total production.

29.06: Trigger Price

(1) Calculation. The Trigger Price shall be calculated for each month during the year and shall equal the sum of the following components of the Monthly Milk Cost of Production: 115% of total operating costs, 100% of cost of hired labor, and 31.5% opportunity cost of unpaid labor as follows:

$$\text{Trigger} = 1.15 * \text{Total Operating Costs} + \text{Hired Labor} + 0.315 * \text{Opportunity Cost of Unpaid Labor}.$$

The Commissioner shall review this formula at least every five years as circumstances permit.

(2) Alternative Calculation. In the absence of the timely publication of USDA's Monthly Milk Cost of Production, the Commissioner shall estimate the total operating costs, costs of hired labor, and the opportunity cost of unpaid labor; such estimates shall then be used to calculate the Trigger Price as in 330 CMR 29.06(1).

29.07: Farm Price

(1) Calculation. The Farm Price shall be calculated as the sum of the following values: the Butterfat Price multiplied by the Butterfat Test, the Protein Price multiplied by the Protein Test, the Solids Price multiplied by the Solids Test, the Producer Price Differential, and the MILC Payment rate for the applicable month.

(2) Alternative Calculation. In the absence of a timely publication by the Northeast Federal Milk Marketing Order of the necessary prices and component tests, the Commissioner shall estimate the required values and then use these estimates in the calculation as provided for in 330 CMR 29.07(1).

29.08: Tax Credit Calculation and Transmittal to the Department of Revenue

(1) On or before the last day of January following the applicable tax year, the Commissioner shall calculate the following values:

- (a) Trigger Percent
- (b) Total Tax Credit
- (c) Dairy Farmer Tax Credit Rate

(2) On or before the last day of January following the applicable tax year, the Commissioner shall transmit a list of Eligible Taxpayers that may claim the Dairy Farmer Tax Credit. The list shall contain the taxpayer's name, tax identification number, Annual Milk Production, and the amount of the Dairy Farmer Tax Credit to which the Eligible Taxpayer is entitled.

29.09: Application of the Tax Credit to an Eligible Taxpayer's Tax Return

(1) The amount of the Dairy Farmer Tax Credit shall be applied to the Eligible Taxpayer's income tax return as follows:

- (a) if the tax liability is greater than the Dairy Farmer Tax Credit of the Eligible Taxpayer, then the taxpayer's tax liability shall be reduced the amount of the credit.
- (b) if the tax liability is less than the Dairy Farmer Tax Credit, then the Eligible Taxpayer's tax liability shall be reduced to zero. The difference between the Dairy Farmer Tax Credit and the tax liability shall be refunded to the taxpayer.
- (c) if the tax liability of the Eligible Taxpayer is zero, then the Dairy Farmer Tax Credit shall be refunded to the taxpayer.

29.09: continued

(2) An example of the forgoing follows:

<b>Example 1.</b>	
Taxes Owed	\$2,000
Tax Credit	-\$1,000
Net Taxes Owed	\$1,000
<b>Example 2.</b>	
Tax Credit	\$3,000
Taxes Owed	-\$2,000
Refund	\$1,000
<b>Example 3.</b>	
Tax Credit	\$3,000
Taxes Owed	-\$0,000
Refund	\$3,000

29.10: Determination of Error and Recalculation of Tax Credit

(1) Petition to Determine Error. On or before October 1<sup>st</sup> of any year, a written petition may be filed with the Commissioner requesting that the Board of Food and Agriculture determine that an error has been made in calculating the trigger price, or reporting or collecting data used in the calculation of the trigger price, or in the amount of the Dairy Farmer Tax Credit, for the previous year. The petition shall specifically identify the errors believed to have been made. To be considered the petition must be signed by 25% of the Eligible Taxpayers.

(2) Calendar year 2011. For the calendar year 2011, if Eligible Taxpayers choose to submit a written petition as specified in 330 CMR 29.10(1), the written petition must be filed with the Commissioner on or before November 14<sup>th</sup>.

(3) Content of the Petition. The petition shall be signed under the pains and penalties of perjury and shall include the following: "The undersigned, under the pains and penalties of perjury, state that the forgoing statements are true, complete, and accurate to the best of my knowledge, information, and belief."

(4) Verification of Signatures. The Commissioner shall first verify the form and content of the petition and that it has been signed by the required number of Eligible Taxpayers.

(5) Transmittal of Petition to Board of Food and Agriculture. Upon verification, the Commissioner shall, within ten business days of receipt of the petition, transmit a copy of the petition along with his approval as to form to the Board of Food and Agriculture.

(6) Determination by the Board of Food and Agriculture. Within 60 days of receipt of the petition, the Board of Food and Agriculture shall determine whether an error has been made. In making such a determination the Board may, after notice, hold a public hearing regarding the specific error or errors identified in the petition. If the Board decides to hold a public hearing, the hearing must be held not less than seven days or more than 21 days from the date of notice.

(7) Recalculation. Within ten business days of such determination by the Board of Food and Agriculture that an error has been made, the Commissioner shall recalculate, with or without amendment, the Trigger Price or Dairy Farmer Tax Credit by any method which, in his opinion, is sufficient to address the error. The recalculation shall be limited to rectifying the error that the Board of Food and Agriculture identified.

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29.10: continued

(8) Notification of Department of Revenue and Taxpayers. The Commissioner shall immediately transmit to the Commissioner of the Department of Revenue a list of Eligible Taxpayers that may claim the Recalculated Dairy Farmer Tax Credit. The list shall contain the taxpayer's name, tax identification number, Annual Milk Production, and the amount of the Dairy Farmer Tax Credit to which the Eligible Taxpayer is entitled. The Commissioner shall also transmit to the Eligible Taxpayer a calculation showing any revised tax credit amount to which they are entitled.

REGULATORY AUTHORITY

330 CMR 29.00: M.G.L. c. 62, §§ 6(o)(1) through (4); c. 63, § 38Z and c. 94, § 16A.