

Chilean Technical Barriers to Trade (TBT) inquiry point for notifications under the U.S.-Chile Free Trade Agreement, the embassies of Argentina, Brazil, Canada, Chile, Italy, Mexico, Peru, and South Africa, and known grape importers will be notified of the proposed action. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

#### List of Subjects

##### 7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

##### 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR parts 925 and 944 are proposed to be amended as follows:

#### **PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA**

1. The authority citation for 7 CFR parts 925 and 944 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. The introductory text to § 925.304 is proposed to be revised to read as follows:

##### **§ 925.304 California Desert Grape Regulation 6.**

During the period April 1 through July 10 each year, no person shall pack or repack any variety of grapes except Emperor, Almeria, Calmeria, and Ribier varieties, on any Saturday, Sunday, Memorial Day, or the observed Independence Day holiday, unless approved in accordance with paragraph

(e) of this section, nor handle any variety of grapes except Emperor, Calmeria, Almeria, and Ribier varieties, unless such grapes meet the requirements specified in this section.

\* \* \* \* \*

#### **PART 944—FRUITS; IMPORT REGULATIONS**

3. In § 944.503, paragraphs (a)(1) introductory text, (a)(1)(ii), and (a)(3) are proposed to be revised to read as follows: § 944.503 Table Grape Import Regulation 4.

(a)(1) Pursuant to section 8e of the Act and Part 944—Fruits, Import Regulations, the importation into the United States of any variety of Vinifera species table grapes, except Emperor, Calmeria, Almeria, and Ribier varieties, is prohibited unless such grapes meet the minimum grade and size requirements specified in 7 CFR 51.884 for U.S. No. 1 table, as set forth in the United States Standards for Grades of Table Grapes (European Vinifera Type, 7 CFR 51.880 through 51.914), or shall meet all the requirements of U.S. No. 1 Institutional with the exception of the tolerance for bunch size. Such tolerance shall be 33 percent instead of 4 percent as is required to meet U.S. No. 1 Institutional grade. Grapes meeting these quality requirements shall not be marked “Institutional Pack,” but may be marked “DGAC No. 1 Institutional.”

(i) \* \* \*

(ii) Grapes of the Flame Seedless variety shall meet the minimum berry size requirement of ten-sixteenths of an inch (1.5875 centimeters) and shall be considered mature if the juice meets or exceeds 16.5 percent soluble solids, or the juice contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice, in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of Title 3: California Code of Regulations (CCR).

\* \* \* \* \*

(3) All regulated varieties of grapes offered for importation shall be subject to the grape import requirements contained in this section effective April 1 through July 10.

\* \* \* \* \*

Dated: May 20, 2005.

**Kenneth C. Clayton,**  
Acting Administrator, Agricultural Marketing Service.

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**BILLING CODE 3410–02–P**

#### **DEPARTMENT OF AGRICULTURE**

#### **Commodity Credit Corporation**

#### **7 CFR Part 1430**

**RIN 0560–AH28**

#### **2004 Dairy Disaster Assistance Payment Program**

**AGENCIES:** Commodity Credit Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule invites comments on a new program, the 2004 Dairy Disaster Assistance Payment Program, as authorized by the Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act of 2005. The proposed program will provide up to \$10 million in assistance for producers in counties declared a disaster by the President in 2004 due to hurricanes. Payments would be made for losses in the three month period, August–October 2004, only. This action is designed to provide financial assistance to producers who suffered dairy production and milk spoilage losses due to hurricanes in 2004.

**DATES:** Comments on this rule must be received on or before June 24, 2005, in order to be assured consideration.

**ADDRESSES:** The agencies invite interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- E-Mail: Send comments to [Danielle\\_Cooke@wdc.usda.gov](mailto:Danielle_Cooke@wdc.usda.gov).
- Fax: Submit comments by facsimile transmission to: (202) 690–1536.
- Mail: Submit comments to Grady Bilberry, Director, Price Support Division (PSD), Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0512, Room 4095–S, 1400 Independence Avenue, SW., Washington, DC 20250–0512.
- Hand Delivery or Courier: Deliver comments to the above address.
- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Comments may be inspected in the Office of the Director, PSD, FSA, USDA, Room 4095 South Building, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this proposed rule is available on the PSD home page at <http://www.fsa.usda.gov/dafp/psd/>.

**FOR FURTHER INFORMATION CONTACT:** Danielle Cooke, phone: (202) 720–1919;

e-mail:  
Danielle\_Cooke@wdc.fsa.usda.gov.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 103 of Division B of the Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act of 2005 (Pub. L. 108-324, 118 Stat. 1220) (the 2004 Act), enacted October 13, 2004, requires the Secretary of Agriculture to use \$10 million to make payments to dairy producers for losses in a county declared a disaster by the President in 2004 due to hurricanes. Hurricanes Charley, Frances, Ivan, and Jeanne severely impacted dairy producers in certain areas of the southeastern portion of the United States during the months of August and September of 2004. As a result, many dairy producers may have incurred decreases in production due to cattle losses and milk that had to be dumped because of lack of electricity, closed milk plants, and damaged containment equipment.

Pursuant to the legislation, this rule sets out proposed regulations for the new program. As proposed, dairy producers who suffered production losses and dairy spoilage losses as a result of 2004 hurricanes may apply for compensation for losses incurred during the period of August through October of 2004 only. Benefits will be provided to eligible dairy producers in those counties declared disasters under a Presidential disaster declaration issued because of a hurricane that meet all program eligibility requirements and are subsequently approved for participation in the 2004 Dairy Disaster Assistance Payment Program. Dairy producers in counties contiguous to an approved county are not eligible.

To be eligible under the proposed program, dairy producers must have

produced milk in the United States during the 2004 calendar year in a dairy operation located in a county declared a disaster by the President due to hurricanes in 2004. As a result of the hurricanes, the operation must have suffered dairy production losses or dairy spoilage losses in the eligible months. In addition, adequate evidence of dairy production losses or spoilage losses must be provided to FSA to substantiate the losses suffered and certified by each producer. Subject to comment and further consideration, payments will not be reduced as a result of payments from a milk buyer or marketing cooperative for dumped or spoiled milk.

Applicants must apply for benefits during the sign-up period announced by the Deputy Administrator for Farm Programs. At the close of the sign-up period, the total production and spoilage losses from all eligible applicants will be determined. Payment eligibilities will be separately calculated on an operation by operation basis. An individual may be involved in more than one operation. Payments to eligible producers will be calculated by multiplying the eligible pounds by the average price received for commercial milk production in the affected areas during the eligible months. If the total amount of available funding (\$10 million, less any reserve established to account for disputed claims) is insufficient to compensate eligible producers for eligible losses, then CCC will pay losses at two levels in an effort to more equitably distribute the limited funds and maximize the effectiveness of the program. Thus, in case of inadequate funds for all eligible losses, CCC will calculate each operation's percentage overall quarterly percentage reduction for the full August–October period from the calculated base for the operation for the full quarter (August through October). Calculated losses over the

period from August to October 2004 of greater than 20 percent of their normal production would be paid at the maximum per-pound payment rate. A loss of over 20 percent in one or two of the eligible months will not qualify for the maximum per-pound payment. Payments for eligible losses below the 20-percent threshold would be made at a rate that will exhaust the available funds that remain following payment of eligible losses at the higher level. CCC decided to establish the minimum loss level at 20 percent for this purpose in order to be consistent with other FSA and CCC disaster programs. For example, the minimum loss that a producer must have suffered to be eligible for the 2003 Hurricane Assistance Program for 2002-crop sugarcane was 20 percent, for the CCC Tree Assistance Program it is 15 percent of normal production, for the Crop Disaster Program the minimum production loss is 35 percent and the required quality loss is 20 percent, for the Livestock Assistance Program losses must exceed 40 percent, for the 2002 Cattle Feed Program the minimum was 5 percent, and for the 2001/2002-crop Sugar Beet Disaster Program the minimum was a 35 percent. Different payments for differing degrees of losses will distribute the limited funds provided under this program in a manner that provides greater assistance to producers who suffered greater losses from the subject hurricanes. An example is below. If funds are adequate for all eligible losses, all eligible producers will be paid at the average price received for commercial milk production in their area during the months of August through October of 2004. CCC encourages comments on these provisions and the appropriate loss-level percentage.

Example:

	Producer A (South Carolina)	Producer B (Florida)	Producer C (Alabama)	Producer D (Georgia)
Total Base Production .....	800,000	2,000,000	1,500,000	600,000
Actual Production .....	485,000	1,820,000	1,070,000	490,000
Pounds Dumped or Spoiled .....	5,000	20,000	20,000	10,000
Total Eligible Loss .....	320,000	200,000	450,000	120,000
20% of Base Production .....	160,000	400,000	300,000	120,000
Pounds of loss above 20% loss level .....	160,000	0	150,000	0
Payment Rate .....	<sup>1</sup> \$0.1559	<sup>1</sup> \$0.1762	<sup>1</sup> \$0.1626	<sup>1</sup> \$0.1626
DDAP for loss above 20% .....	\$24,944	\$0	\$24,390	\$0
DDAP for under 20% loss @ \$0.12/lb. (example only) ..	\$19,200	\$24,000	\$36,000	\$14,400
<b>Total DDAP .....</b>	<b>\$44,144</b>	<b>\$24,000</b>	<b>\$60,390</b>	<b>\$14,400</b>
Eligible Losses x average price .....	\$49,888	\$35,240	\$73,100	\$19,512
Percent production loss suffered .....	40	10	30	20
Percent financial losses recovered from DDAP .....	88	68	83	74

<sup>1</sup> Lb.

CCC considered two additional provisions that were not included in the proposed rule, but which are discussed here to obtain public comment. First, the agency considered adding an adjustment to the producer's calculated production losses in the eligible months for cows that were added to the milking herd in order to make up for per-cow production decreases as a result of the hurricane. It was determined that basing the payments in this program on the dairy operation's production during the eligible months, less the production from cows that were added after the base production calculation month would be administratively difficult, and the additional step in the eligible production calculations would make the process less reliable. Further, the additional recordkeeping and reporting requirements imposed on producers to report the number of cows added during each eligible month, the corresponding dates of purchase, and per-cow production based on the number of days of ownership during each eligible month, was felt to be too burdensome for program participation and would likely have a negligible effect on payments. Second, the agency considered paying the dairy operation's milk marketing cooperative directly for milk that was dumped. Instead, this rule proposes that payments will be based on the reduction in the amount of production marketed, including any dumped production, that can be verified. Payments for eligible losses will be made directly by FSA to producers. To segregate payments into two payment schemes, one for producers' production losses, and one for cooperatives' losses from dumped milk, would greatly add to the administrative burden of carrying out this program. Further, the statute provides that these payments will be made " \* \* \* to dairy producers \* \* \* ". Thus, this rule provides for making payments only to producers. Nevertheless, the agency invites comments on these two variations that were considered, and specifically requests suggestions for how these options could be added to the program regulations in a simple, straightforward way.

Producers who have received a payment under the Dairy Indemnity Payment Program (7 CFR part 760) shall be ineligible for payments under this rule. Gross revenue and per-person payment limits do not apply. Information provided on applications and supporting documentation will be subject to verification by FSA. False certifications by producers carry strict

penalties and FSA will validate applications with random spot-checks. Dairy producers determined to have made any false certifications or adopted any misrepresentation, scheme, or device that defeats the program's purpose will be required to refund any payments issued under this program with interest, and may be subject to other civil, criminal, or administrative remedies. During the application period, dairy producers may apply in person at FSA county offices during regular business hours. Applications may also be submitted to CCC by mail or FAX. Program applications may be obtained in person, by mail, telephone, and facsimile from producers' designated FSA county office or via the Internet at <http://www.fsa.usda.gov/dafp/psd/>. In order to expedite the availability of funds it has been determined to be in the public interest to limit the comment period to 30 days.

#### **Executive Order 12866**

This proposed rule has been determined to be "significant" under Executive Order 12866 and was reviewed by the Office of Management and Budget (OMB). A cost-benefit assessment of this rule was completed and is available from Ms. Cooke using the contact information above.

#### **Regulatory Flexibility Act**

The Regulatory Flexibility Act does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking with respect to the subject of this rule.

#### **Environmental Assessment**

The environmental impacts of this proposed rule have been considered consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. To the extent these authorities may apply, CCC has concluded that this rule is categorically excluded from further environmental review as evidenced by the completion of an environmental evaluation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

#### **Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988. This final rule preempts State laws to the extent such laws are inconsistent with it. This rule is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies set forth at 7 CFR parts 11 and 780 must be exhausted.

#### **Executive Order 12372**

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

#### **Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject of this rule. Further, this rule contains no unfunded mandates as defined in sections 202 and 205 of UMRA.

#### **Paperwork Reduction Act of 1995**

In accordance with the Paperwork Reduction Act of 1995, FSA has submitted a request for approval to the Office of Management and Budget (OMB) of an information collection required to support this proposed rule for the 2004 Dairy Disaster Assistance Payment Program. A notice was published in the **Federal Register** on February 16, 2005, (70 FR 7923) with estimates of the information collection burden required to implement this program and requesting comments on those requirements as required by 5 CFR 1320.8(d)(1). Copies of the information collection may be obtained from Danielle Cooke, phone: (202) 720–1919; e-mail: [Danielle\\_Cooke@wdc.fsa.usda.gov](mailto:Danielle_Cooke@wdc.fsa.usda.gov).

#### **Government Paperwork Elimination Act**

CCC is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general, and FSA in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required to be utilized by a person subject to this rule are not yet fully implemented in a way that would allow the public to conduct business with CCC electronically. Accordingly, at

this time, all forms required to be submitted under this rule may be submitted to CCC by mail or FAX.

#### List of Subjects in 7 CFR Part 1430

Dairy, Disaster assistance, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 7 CFR part 1430 is proposed to be amended as follows:

#### PART 1430—DAIRY PRODUCTS

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

**Authority:** 7 U.S.C. 7981 and 7982; 15 U.S.C. 714b and 714c; Pub. L. 108-324, 118 Stat. 1220.

2. Subpart C is added to read as follows:

#### Subpart C—2004 Dairy Disaster Assistance Payment Program

Sec.

- 1430.300 Applicability.
- 1430.301 Administration.
- 1430.302 Definitions.
- 1430.303 Time and method of application.
- 1430.304 Eligibility.
- 1430.305 Proof of production.
- 1430.306 Determination of losses incurred.
- 1430.307 Rate of payment and limitations on funding.
- 1430.308 Availability of funds.
- 1430.309 Appeals.
- 1430.310 Misrepresentation and scheme or device.
- 1430.311 Death, incompetence, or disappearance.
- 1430.312 Maintaining records.
- 1430.313 Refunds; joint and several liability.
- 1430.314 Miscellaneous provisions.
- 1430.315 Termination of program.

#### Subpart C—2004 Dairy Disaster Assistance Payment Program

##### § 1430.300 Applicability.

(a) Subject to the availability of funds, this subpart sets forth the terms and conditions applicable to the 2004 Dairy Disaster Assistance Payment Program authorized by section 103 of Division B of Public Law 108-324. Benefits will be provided to eligible United States producers who have suffered dairy production losses and dairy spoilage losses in eligible counties as a result of a hurricane disaster in 2004.

(b) To be eligible for this program, a producer must have been a milk producer in 2004 in a county declared a disaster by the President of the United States due to a 2004 hurricane. Only losses occurring in those counties are eligible for payment in this program. Producers in contiguous counties that were not designated by the President as a disaster county due to a hurricane in 2004 are not eligible.

(c) Subject to the availability of funds, benefits shall be provided by the Commodity Credit Corporation (CCC) to eligible dairy producers. Additional terms and conditions may be set forth in the payment application that must be executed by participants to receive a disaster assistance payment for dairy production losses and dairy spoilage losses.

(d) To be eligible for payments, producers must comply with the provisions of, and their losses must meet the conditions of, this subpart and any other conditions imposed by CCC.

##### § 1430.301 Administration.

(a) The 2004 Dairy Disaster Assistance Payment Program shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA), or a designee, and shall be carried out in the field by FSA State and county committees (State and county committees) and FSA employees.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State committee shall take any action required by the regulations of this subpart that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require the county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this subpart; and

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this subpart.

(d) No delegation in this subpart to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines in cases where lateness or failure to meet such requirements do not adversely affect the operation of the 2004 Dairy Disaster Assistance Payment Program and does not violate statutory limitations on the program.

(f) Data furnished by the applicants will be used to determine eligibility for program benefits. Although participation in the 2004 Dairy Disaster Assistance Payment Program is voluntary, program benefits will not be

provided unless the participant furnishes all requested data.

##### § 1430.302 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the 2004 Dairy Disaster Assistance Payment Program established by this subpart.

*Application* means the 2004 Dairy Disaster Assistance Payment Program Application.

*Application period* means the time period established by the Deputy Administrator for producers to apply for program benefits.

*CCC* means the Commodity Credit Corporation of the Department.

*County committee* means the FSA county committee.

*County office* means the FSA office responsible for administering FSA programs for farms located in a specific area in a State.

*Dairy operation* means any person or group of persons who, as a single unit, as determined by CCC, produces and markets milk commercially from cows and whose production facilities are located in the United States.

*Department or USDA* means the United States Department of Agriculture.

*Deputy Administrator* means the Deputy Administrator for Farm Programs (DAFP), FSA, or a designee.

*Disaster county* means a county declared a disaster by the President of the United States due to a hurricane in 2004, and is only the county so declared, not a contiguous county.

*Farm Service Agency or FSA* means the Farm Service Agency of the Department.

*Hundredweight or cwt.* means 100 pounds.

*Milk handler or cooperative* means the marketing agency to, or through which, the producer commercially markets whole milk.

*Milk marketings* means a marketing of milk for which there is a verifiable sales or delivery record of milk marketed for commercial use.

*Payment pounds* means the pounds of milk production from a dairy operation for which the dairy producer is eligible to be paid under this subpart.

*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 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 of the proceeds of this operation.

*Starting base production* means actual commercial production marketed by the dairy operation during the month of July 2004, or alternative period established by the Deputy Administrator.

*Verifiable production records* means evidence that is used to substantiate the amount of production marketed, including any dumped production, and that can be verified by CCC through an independent source.

**§ 1430.303 Time and method of application.**

(a) Dairy producers may obtain an Application, in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of the Application at <http://www.sc.egov.usda.gov>.

(b) A request for benefits under this subpart must be submitted on a completed Application as defined in § 1430.302. Applications and any other supporting documentation shall be submitted to the FSA county office serving the county where the dairy operation is located but, in any case, must be received by the FSA county office by the close of business on the date established by the Deputy Administrator. Applications not received by the close of business on such date will be disapproved as not having been timely filed and the dairy producer will not be eligible for benefits under this program.

(c) All persons who share in the risk of a dairy operation's total production must certify to the information on the Application before the Application will be considered complete.

(d) Each dairy producer requesting benefits under this subpart must certify to the accuracy and truthfulness of the information provided in their application and any supporting documentation. All information provided is subject to verification by CCC. Refusal to allow CCC or any other agency of the Department of Agriculture to verify any information provided will result in a denial of eligibility. Furnishing the information is voluntary; however, without it program benefits will not be approved. Providing a false certification to the Government may be punishable by imprisonment, fines and other penalties or sanctions.

**§ 1430.304 Eligibility.**

(a) Producers in the United States will be eligible to receive hurricane-related dairy disaster benefits under this part

only if they have suffered dairy production or dairy spoilage losses in counties declared a disaster by the President due to any hurricane in 2004. To be eligible to receive payments under this subpart, producers in a dairy operation must:

(1) Have produced and commercially marketed milk in the United States and commercially marketed the milk produced during the 2004 calendar year;

(2) Be a producer on a dairy farm operation physically located in a disaster county where production and milk spoilage losses were incurred as a result of 2004 hurricanes, and limiting their claims to losses occurring in those counties;

(3) Provide proof of monthly milk production dumped and commercially marketed by all persons in the eligible dairy operation during the third quarter of the 2004 milk marketing year, or other period as determined by FSA, to determine the total pounds of eligible losses that will be used for payment; and

(4) Apply for payments during the application period established by the Deputy Administrator.

(b) Payments may be made for losses suffered by an otherwise eligible producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer or the producer's estate signs the application for payment. Proof of authority to sign for the deceased producer's estate or a dissolved entity must be provided. If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly-authorized representatives must sign the application for payment.

(c) Producers associated with a dairy operation must submit a timely application and comply with all other terms and conditions of this subpart and instructions issued by CCC, as well as comply with those instructions that are otherwise contained in the application to be eligible for benefits under this subpart.

(d) As a condition to receive benefits under this part, a producer must have been in compliance with the Highly Erodible Land Conservation and Wetland Conservation provisions of 7 CFR part 12 for the 2004 calendar year, as applicable, and must not otherwise be barred from receiving benefits under 7 CFR part 12 or any other law or regulation.

(e) Payments will be limited to losses in eligible counties in eligible months.

(f) All payments under this part are subject to the availability of funds.

**§ 1430.305 Proof of production.**

(a) A dairy producer must, based on the instructions issued by the Deputy Administrator, provide adequate proof of the dairy operation's commercial production, including any dumped production, for each month for July 2004 through October 2004, and must specifically identify any dumped production for August through October 2004. If a month other than July 2004 is used records for that month must be provided.

(1) A producer must certify and provide such proof as requested that losses for which compensation is claimed were hurricane-related and occurred in an eligible county in an eligible month.

(2) Additional supporting documentation may be requested by FSA as necessary to verify production or spoilage losses to the satisfaction of FSA.

(b) Adequate proof under paragraph (a) of this section must be based on milk marketing statements obtained from the dairy operation's milk handler or marketing cooperative. Supporting documents may include, but are not limited to: tank records, milk handler records, daily milk marketings, copies of any payments received from other sources for production or spoilage losses, or any other documents available to confirm the production history of the dairy operation and determine losses incurred by the dairy operation. All information provided is subject to verification, spot check, and audit by FSA. Also, FSA or another CCC representative may examine the dairy operation's production or spoilage claims.

(c) If adequate proof of commercially-marketed production and supporting documentation is not presented to the satisfaction of CCC or FSA, the request for benefits will be rejected. In the case of a new producer that had no verifiable, actual, commercial production marketed by the dairy operation during the month of July 2004, but which suffered eligible losses, an alternate period may be established by the Deputy Administrator.

(d) Evidence of production will be used to establish the commercial marketing and production history of the dairy operation so that production and spoilage losses can be computed in accordance with § 1430.306.

**§ 1430.306 Determination of losses incurred.**

(a) Eligible payable losses will be calculated on a dairy operation by dairy operation basis and will be limited to those occurring in August to October

2004. Specifically, dairy production and spoilage losses incurred by producers under this subpart will be determined on the established history of the dairy operation's actual commercial production marketed from August through October 2004, and actual production dumped or otherwise not marketed from August through October 2004, as provided by the dairy operation consistent with § 1430.305. Except as otherwise provided in these regulations, the starting base production, as defined in § 1430.302, will be adjusted downward by a percentage determined by CCC to determine the base production for the months of August through October 2004. These adjustments are made to account for the seasonal declines that can occur during those months. The base production for each of the months August through October 2004, will be calculated by reducing the starting base production (July 2004, or approved alternate month) as follows:

(1) August 2004 base production will be the starting base production reduced by 9 percent;

(2) September 2004 base production will be the starting base production reduced by 15 percent;

(3) October 2004 base production will be the starting base production reduced by 11 percent.

(b) The eligible dairy production losses for a dairy operation will, for each of the months of August through October 2004, will be:

(1) The new base production for the dairy operation calculated under paragraph (a) of this section less, (2) For each such month for each dairy operation, the total of:

(i) Actual commercially-marketed production; plus

(ii) The pounds of production dumped (whether related to the hurricane or not), or otherwise not commercially marketed (whether related to the hurricane or not). For dumping losses to be eligible, they must be hurricane related, as described under paragraphs (c) and (d) of this section.

(c) Actual production losses may be adjusted to the extent the reduction in production is not certified by the producer to be the result of the hurricane or is determined by FSA not to be hurricane-related. Actual production, as adjusted, that exceeds the adjusted base production will indicate that the dairy operation incurred no production losses for the corresponding month as a result of the hurricane disaster, and production for that month will not qualify as a production loss for the purposes of this program.

(d) Eligible dairy spoilage losses incurred by producers under this subpart for each of the months August through October 2004 will be determined based on actual milk produced and dumped on the farm as a result of the 2004 hurricanes. Proper documentation of milk dumped on the farm as a result of spoilage due to a hurricane must be provided to CCC as provided in § 1430.305.

(e) Eligible production and spoilage losses as otherwise determined under paragraphs (a) through (d) of this section will be added together to determine total eligible losses incurred by the dairy operation subject to all other eligibility requirements as may be included in this part or elsewhere.

(f) Payment on eligible dairy operation losses will be calculated using whole pounds of milk. No double counting is permitted, and only one payment will be made for each pound of milk calculated as an eligible loss after the distribution of the operation's eligible production loss among the producers of the dairy operation according to § 1430.307(b). Payments under this part will not be affected by any payments for dumped or spoiled milk that the dairy operation may have received from its milk handler, or marketing cooperative, or any other private party.

(g) If a producer is eligible to receive payments under this part and benefits under any other program administered by the Secretary for the same losses, the producer must choose whether to receive the other program benefits or payments under this part, but shall not be eligible for both. The limitation on multiple benefits prohibits a producer from being compensated more than once for the same losses. If the other USDA program benefits are not available until after an application for benefits has been filed under this part, the producer may, to avoid this restriction on such other benefits, refund the total amount of the payment to the administrative FSA office from which the payment was received.

#### **§ 1430.307 Rate of payment and limitations on funding.**

(a) Subject to the availability of funds, the payment rate for eligible production and spoilage losses determined according to § 1430.306 will be, depending on the State, the average monthly Mailbox milk price for the Florida, the Southeast, or the Appalachian States Marketing Orders as reported by the Agricultural Marketing Service during the months of August, September, and October of 2004. Maximum payment rates for eligible

losses for dairy operations located in specific states will be as follows:

(1) Florida—\$17.62 per

hundredweight (\$0.1762 per pound).

(2) Alabama, Georgia, and Louisiana—\$16.26 per hundredweight (\$0.1626 per pound).

(3) North Carolina and South Carolina—\$15.59 per hundredweight (\$0.1559 per pound).

(b) Subject to the availability of funds, each eligible dairy operation's payment will be calculated by multiplying the applicable payment rate under paragraph (a) of this section by the operation's total eligible losses. Where there are multiple producers in the dairy operation, individual producers' payments will be disbursed according to each producer's share of the dairy operation's production as specified in the Application.

(c) If the total value of losses claimed under paragraph (b) of this section exceeds the \$10 million available for the 2004 Dairy Disaster Assistance Payment Program, less any reserve that may be created under paragraph (e) of this section, total eligible losses of individual dairy operations that, as calculated as an overall percentage for the full three month period, August–October 2004 (not a monthly average for any one month), are greater than 20 percent of the total base production for those three months will be paid at the maximum rate under paragraph (a) of this section to the extent available funding allows. A loss of over 20 percent in only one or two of the eligible months will not of itself qualify for the maximum per-pound payment. Total eligible losses for a producer, as calculated under § 1430.306, of less than or equal to 20 percent during the eligibility period of August to October 2004 will be paid at a rate determined by dividing the eligible losses of less than 20 percent by the funds remaining after making payments for all eligible losses above the 20-percent threshold.

(d) In no event shall the payment exceed the value determined by multiplying the producer's total eligible loss times the average price received for commercial milk production in their area as defined in paragraph (a) of this section.

(e) A reserve may be created to handle claims that extend beyond the conclusion of the application period, but claims shall not be payable once the available funding is expended.

#### **§ 1430.308 Availability of funds.**

The total available program funds shall be \$10 million as provided by section 103 of Division B of Public Law 108–324.

**§ 1430.309 Appeals.**

Any producer who is dissatisfied with a determination made pursuant to this subpart may request reconsideration or appeal of such determination in accordance with the appeal regulations set forth at 7 CFR parts 11 and 780. Appeals of determinations of ineligibility or payment amounts are subject to the limitations in §§ 1430.307 and 1430.308.

**§ 1430.310 Misrepresentation and scheme or device.**

(a) In addition to other penalties, sanctions or remedies as may apply, a dairy producer shall be ineligible to receive assistance under this program if the producer is determined by FSA or CCC to have:

- (1) Adopted any scheme or device that tends to defeat the purpose of this program;
- (2) Made any fraudulent representation; or
- (3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, shall be refunded with interest together with such other sums as may become due. Any dairy operation or person engaged in acts prohibited by this section and any dairy operation or person receiving payment under this subpart shall be jointly and severally liable with other persons or operations involved in such claim for benefits for any refund due under this section and for related charges. The remedies provided in this subpart shall be in addition to other civil, criminal, or administrative remedies that may apply.

**§ 1430.311 Death, incompetence, or disappearance.**

In the case of death, incompetency, disappearance, or dissolution of a person that is eligible to receive benefits in accordance with this subpart, such alternate person or persons specified in 7 CFR part 707 may receive such benefits, as determined appropriate by FSA.

**§ 1430.312 Maintaining records.**

Persons applying for benefits under this program must maintain records and accounts to document all eligibility requirements specified herein. Such records and accounts must be retained for 3 years after the date of payment to the dairy operations under this program. Destruction of the records after such date shall be at the risk of the party undertaking the destruction.

**§ 1430.313 Refunds; joint and several liability.**

(a) Excess payments, payments provided as the result of erroneous information provided by any person, or payments resulting from a failure to comply with any requirement or condition for payment under the application or this subpart, must be refunded to CCC.

(b) A refund required under this section shall be due with interest determined in accordance with paragraph (d) of this section and late payment charges as provided in 7 CFR part 1403.

(c) Persons signing a dairy operation's application as having an interest in the operation shall be jointly and severally liable for any refund and related charges found to be due under this section.

(d) Interest shall be applicable to any refunds required in accordance with 7 CFR parts 792 and 1403. Such interest shall be charged at the rate that the United States Department of the Treasury charges CCC for funds, and shall accrue from the date FSA or CCC made the erroneous payment to the date of repayment.

(e) FSA may waive the accrual of interest if it determines that the cause of the erroneous determination was not due to any action of the person, or was beyond the control of the person committing the violation. Any waiver is at the discretion of FSA alone.

**§ 1430.314 Miscellaneous provisions.**

(a) *Offset.* CCC may offset or withhold any amount due CCC under this subpart in accordance with the provisions of 7 CFR part 1403.

(b) *Claims.* Claims or debts will be settled in accordance with the provisions of 7 CFR part 1403.

(c) *Other interests.* Payments or any portion thereof due under this subpart shall be made without regard to questions of title under State law and without regard to any claim or lien against the livestock, or proceeds thereof, in favor of the owner or any other creditor except agencies and instrumentalities of the U.S. Government.

(d) *Assignments.* Any producer entitled to any payment under this part may assign any payments in accordance with the provisions of 7 CFR part 1404.

**§ 1430.315 Termination of program.**

This program will be terminated after payment has been made to those applicants certified as eligible pursuant to the application period established in § 1430.304. All eligibility determinations shall be final except as

otherwise determined by the Deputy Administrator.

Signed in Washington, DC, on May 19, 2005.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

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**NUCLEAR REGULATORY COMMISSION****10 CFR Part 72****RIN 3150-AH72****List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®-24P, -52B, -61BT, -32PT, -24PHB, and -24PTH Revision**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the Transnuclear, Inc., Standardized NUHOMS® System listing within the "List of approved spent fuel storage casks" to include Amendment No. 8 to Certificate of Compliance Number (CoC No.) 1004. Amendment No. 8 to the Standardized NUHOMS® System CoC would modify the cask design by adding a new spent fuel storage and transfer system, designated the NUHOMS®-24PTH System. The NUHOMS®-24PTH System consists of new or modified components: the -24PTH dry shielded canister (DSC); a new -24PTH DSC basket design; a modified horizontal storage module (HSM), designated the HSM-H; and a modified transfer cask (TC), designated the OS 197FC TC. The NUHOMS®-24PTH System is designed to store fuel with a maximum average burnup of up to 62 gigawatts-day/metric ton of uranium; maximum average initial enrichment of 5.0 weight percent; minimum cooling time of 3.0 years; and maximum heat load of 40.8 kilowatts per DSC, under a general license.

**DATES:** Comments on the proposed rule must be received on or before June 24, 2005.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the following number (RIN 3150-AH72) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information,