

have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

#### Paperwork Reduction

The information collection requirements that appear in the sections to be amended by this action have been previously approved by OMB and assigned OMB Control Numbers under the Paperwork Reduction Act (44 U.S.C. Chapter 35) as follows: § 56.52(a)(4)—No. 0581–0128; and § 70.77(a)(4)—No. 0581–0127.

Pursuant to 5 U.S.C. 533, it is found and determined that good cause exists for not postponing the effective date until 30 days after publication in the **Federal Register**. The revised fees need to be implemented on an expedited basis in order to avoid further financial losses in the grading program. The effective date of the fee increase is March 30, 2008.

#### List of Subjects

##### 7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

##### 7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

■ For reasons set forth in the preamble, Title 7, Code of Federal Regulations, parts 56 and 70 is amended as follows:

#### PART 56—VOLUNTARY GRADING OF SHELL EGGS

■ 1. The authority citation for part 56 continues to read as follows:

**Authority:** 7 U.S.C. 1621–1627.

##### § 56.46 [Amended]

■ 2. Section 56.46 is amended by:

■ A. Removing in paragraph (b), “\$69.68” and adding “\$74.08, beginning March 30, 2008, and \$77.28 on or after January 25, 2009,” in its place.

■ B. Removing in paragraph (c), “\$80.12 per hour” and adding “\$86.68 per hour, beginning March 30, 2008, and \$93.24 per hour on or after January 25, 2009,” in its place.

■ C. Removing in paragraph (d), “\$82.16” and adding “\$87.56 beginning March 30, 2008, and \$89.20 on or after January 25, 2009,” in its place.

■ D. Removing in paragraph (e), “\$102.84 per hour” and adding

“\$112.00 per hour beginning March 30, 2008, and \$116.08 per hour on or after January 25, 2009,” in its place.

■ 3. Section 56.52 is amended by:

■ A. Removing the first sentence of paragraph (a)(1), and adding three sentences to read as set forth below; and

■ B. Removing in paragraph (a)(4), “\$0.053” and adding “\$0.055 beginning March 30, 2008, and \$0.058 on or after January 25, 2009,” in its place, and removing “\$3,075” and adding “\$3,150 beginning March 30, 2008, and \$3,225 on or after January 25, 2009,” in its place.

#### § 56.52 Charges for continuous grading performed on a resident basis.

\* \* \* \* \*

(a) \* \* \*

(1) When a signed application for service has been received, the State supervisor or the supervisor’s assistant shall complete a plant survey pursuant to § 56.30. The costs for completing the plant survey shall be borne by the applicant on a fee basis at rates set forth in § 56.46 (a) through(c), plus any travel and additional expenses. No charges will be assessed when the application is required because of a change in name or ownership. \* \* \*

\* \* \* \* \*

#### PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

■ 4. The authority citation for part 70 continues to read as follows:

**Authority:** 7 U.S.C. 1621–1627.

##### § 70.71 [Amended]

■ 5. Section 70.71 is amended by:

■ A. Removing in paragraph (b) “\$69.68” and adding “\$74.08 beginning March 30, 2008, and \$77.28 on or after January 25, 2009,” in its place.

■ B. Removing in paragraph (c) “\$80.12 per hour” and adding “\$86.68 per hour beginning March 30, 2008, and \$93.24 per hour on or after January 25, 2009,” in its place.

■ C. Removing in paragraph (d), “\$82.16” and adding “\$87.56 beginning March 30, 2008, and \$89.20 on or after January 25, 2009,” in its place.

■ D. Removing in paragraph (e), “\$102.84 per hour” and adding “\$112.00 per hour beginning March 30, 2008, and \$116.08 per hour on or after January 25, 2009,” in its place.

■ 6. Section 70.77 is amended by:

■ A. Removing the first sentence of paragraph (a)(1), and adding three sentences to read as set forth below; and

■ B. Removing in paragraph (a)(4), “\$0.00043” and adding “\$0.00045

beginning March 30, 2008, and \$0.00047 on or after January 25, 2009,” in its place, and removing “\$3,075” and adding “\$3,150 beginning March 30, 2008, and \$3,225 on or after January 25, 2009,” in its place.

#### § 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

\* \* \* \* \*

(a) \* \* \*

(1) When a signed application for service has been received, the State supervisor or the supervisor’s assistant shall complete a plant survey pursuant to § 70.34. The costs for completing the plant survey shall be borne by the applicant on a fee basis at rates set forth in § 70.71 (a) through (c), plus any travel and additional expenses. No charges will be assessed when the application is required because of a change in name or ownership. \* \* \*

\* \* \* \* \*

Dated: February 28, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 08–928 Filed 2–28–08; 11:26 am]

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#### DEPARTMENT OF AGRICULTURE

##### Farm Service Agency

##### 7 CFR Part 786

RIN 0560–AH74

#### Dairy Disaster Assistance Payment Program III

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes a new program, the Dairy Disaster Assistance Payment Program III, as authorized by the U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007. The program will provide \$16 million in assistance for producers in counties designated as a major disaster or emergency area by the President, or those declared a natural disaster area by the Secretary of Agriculture. Counties declared disasters by the President may be eligible, even though agricultural loss was not covered by the declaration, if there has been a Farm Service Agency Administrator’s Physical Loss Notice covering such losses. The natural disaster declarations by the Secretary or the President must have been issued between January 1, 2005 and December 31, 2007, that is, after January 1, 2005, and before December 31, 2007. Counties

contiguous to such counties will also be eligible. This program is designed to provide financial assistance to producers who suffered dairy production losses due to natural disasters in the eligible counties.

**DATES:** This rule is effective on March 4, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Danielle Cooke, telephone: (202) 720-1919; e-mail:

*Danielle.Cooke@wdc.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

**Background**

This rule establishes regulations based on the proposed rule published in the **Federal Register** on November 26, 2007 (72 FR 65889-65897). The 30-day comment period for the proposed rule closed on December 26, 2007; 16 comments were submitted. The issues raised in the comments and the resulting changes to the rule are discussed later in this final rule.

The proposed rule provided that the DDAP-III program would be based on disaster related dairy production losses suffered during the period of January 2, 2005, and February 27, 2007, in counties declared or designated a natural disaster by the President or Secretary of Agriculture. For timely Presidential declarations that do not cover agricultural loss, the subject counties may still be covered if the county was the subject of a Farm Service Agency (FSA) Administrator's Loss Notice. Counties contiguous to such declared counties are also eligible. The program will end at the conclusion of the application period and disbursement of allotted funds. The DDAP-III program will operate under regulations codified in 7 CFR part 786.

The proposed rule specified that dairy producers would disclose the number of cows in the operation's dairy herd for each month of the calendar year in which a disaster declaration was issued to determine the average number of cows in the dairy herd for the operation per applicable year and calculate the qualifying production loss for the operation. The proposed rule also provided that spoiled or dumped milk would be counted as production for the relevant claim period. In addition, the proposed rule provided that qualifying production losses would be calculated from a set base amount determined from data obtained from the National Agricultural Statistics Service (NASS). The proposed rule provided that if the limited program funds were not sufficient to pay all claims for lost production, then priority would be given in making payments to those

persons whose losses for each applicable disaster year were greater than 20 percent. The proposed rule also specified that the prices at which payments would be made would be amounts set out in the rule which were derived from a series of reported "mailbox" prices.

**Comments and Changes to the Final Rule**

During the 30-day comment period the Agency received public comments from a dairy cooperative, five associations, a Farm Bureau, and eight private citizens. In general, the comments supported the proposed rule, however, each of the comments raised one or more issues addressing a specific aspect of implementing DDAP-III and several comments raised the same issues. As explained below, minor changes to the regulations based on the comments will slightly modify the provisions specified in the proposed rule.

Two comments opposed the program, one indicated that assistance should only be provided to small dairy operations and the other objected to anyone other than the President making disaster declarations. One of those comments also indicated that assistance provided by this program is a misuse of taxpayer dollars and that it was misleading for Congress to insert a statute for agriculture in a non-related military spending bill. No changes have been made in the rule based on these comments. The Agency is charged with implementing the statutory provisions and has done so in this final rule.

One comment requested clarification regarding spoiled or dumped milk being counted as production during the relevant claim period. Specifically, to ensure that milk production that spoiled or was dumped for a disaster related reason would be included in the qualifying production losses for the dairy operation. The provision in the rule that requires spoiled or dumped milk being counted as production is intended to account for milk that spoiled or was dumped due to non-disaster related reasons and must be counted as production. The Agency clarified this point in the rule by revising section 786.106, paragraphs (e) and (h), which were proposed as paragraphs (c) and (f), respectively.

Comments were received on the method of payment at two levels in the event of inadequate funds for all eligible losses and the appropriate loss level percentage. Two respondents opposed the use of the 20 percent threshold because its use over a full calendar year for an initial round of disaster benefits

may not recognize the economic reality of significantly higher input costs on dairy farms and the devastating effect of short term disasters. With funding limitations, the proposed threshold percentage provides fair compensation and is consistent with other disaster programs administered by the Agency. Therefore, no change was made in response to these comments.

One comment suggested making dairy operations outside of eligible disaster counties eligible when milk was dumped as a result of the market outlet being located in a disaster affected county. The statutory provisions did not provide for counties outside of disaster declared counties to be eligible. Therefore, no change was made in response to this comment.

One comment requested clarification of the phrase "legal resident alien" and believed that holders of E12 Visas should be permitted to participate in the program. Provisions for foreign persons used for FSA programs are provided in 7 CFR part 1400, subpart F, and apply to this program. A definition for a lawful alien is also provided in 1400.3. Therefore, no change was made in response to this comment.

Most comments received disagreed with how the base production for the dairy operation was determined. Twelve respondents opposed the use of NASS State averages to determine base production because of the great disparity between operations with minor breeds or poor herd management practices that produce significantly less than the NASS average and those dairy operations with higher inputs that are more efficient and produce well above the NASS average. Additionally, one comment received opposed the use of the calendar year of the disaster to determine base production and believed a period of weeks, months or the year prior to the disaster would be more representative of base period production for comparison. Further, the comment disagreed with the use of cow averages during the year of the disaster to determine base production because cow losses would factor into a decreased base production for the dairy operation. These comments supported an alternative method of determining base production for the dairy operation that was not based on the year of the disaster and did not include the use of NASS State averages based on cow averages during the applicable disaster year.

After careful consideration of the recommendations proposed in the comments, the Agency will change the determination of base annual production for the dairy operation to use the average of the total

commercially marketed production during both calendar years 2003 and 2004 prior to the eligible period, divided by the average number of cows in the dairy herd during both calendar years 2003 and 2004 prior to the eligible period, to establish the average annual production per cow. To calculate the base annual production for the dairy operation, the average annual production per cow determined from the base year information obtained from the producer, will be multiplied by the average number of cows (not including cow losses resulting from the disaster occurrence) in the dairy herd during the applicable year of the disaster. Dairy operations without the required information from the 2003 and 2004 base years will use an alternative method to estimate the average annual production per cow that will be determined by the FSA Administrator. For example, for new dairies not in operation during 2003 and 2004, FSA may obtain information from three similar farms to estimate the base annual production for the operation. These changes were made throughout the regulations with revised definitions, sections 786.104 through 786.106.

#### Miscellaneous Changes

Payment rates for the four States of Colorado, Hawaii, Oklahoma, and Wyoming were inadvertently left out of the table in section 786.107 in the proposed rule and are incorporated in this final rule.

The Consolidated Appropriations Act of 2008 (Pub. L. 110–161), extended the eligible period for the program from February 27, 2007 to December 30, 2007. Changes are incorporated throughout to modify the date to reflect the extension.

#### Executive Order 12866

This rule has been determined to be not 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 the contact information above.

#### Summary of Economic Impacts

Program payments will provide eligible producers funds to help pay operating expenses and meet other financial obligations. Program payments are expected to total and increase both Federal outlays and aggregate farm revenue by \$16 million. This assistance will help dairy producers affected by natural disasters to recover some lost income and additional repair expenses to aid in continuing their agricultural production businesses.

The States with the highest percentages of dairies expected to make claims are: Idaho (33 percent), California (16 percent), New Mexico (13 percent), Indiana and Michigan (7–8 percent), Washington and Arizona (5 percent), and Wisconsin (3 percent). Expected claims totaled 3.1 million hundred weight (cwt).

If total eligible losses exceed available funding, losses above 20 percent will be paid at the maximum payment rates. The average payment rate for losses below 20 percent will be determined by dividing remaining funding by the total milk pounds below 20 percent eligible for payment. The resulting payment rate is projected to be \$5.15 per cwt, substantially below average mailbox prices.<sup>1</sup> The average mailbox price for all Federal Orders in the United States was \$12.87 in 2006 and \$11.28 in California, which is outside the Federal Order system. The lowest mailbox price in the Federal Order system in 2006 was \$11.13 in New Mexico.

Producers who can demonstrate a loss exceeding 20 percent of their production will receive compensation equal to the average mailbox price prevailing in their region during the period of the disaster. To the extent that payments equal to the mailbox price are made to some producers, the otherwise-average payment rate of \$5.15 will be reduced. In theory, it is possible that enough producers could claim a 20-percent-or-greater loss and receive payments equal to the mailbox price, that payments to the remaining producers with lower losses could be considerably less than \$5.15. However, FSA does not have sufficient data to estimate how many producers might have losses exceeding 20 percent of their production, or how much milk such losses might represent.

Payments are expected to increase producer income and defray repair and cattle replacement costs. Outlays will be monitored to ensure that they do not exceed the actual loss.

The \$16 million is a small share of federal farm assistance. For example, Commodity Credit Corporation (CCC) made \$15.3 billion in direct cash payments to farmers and ranchers in fiscal 2005, excluding all payments made for disasters, with the largest category of payments being \$8 billion paid under the Direct and Counter Cyclical Program. CCC direct cash payments for fiscal 2005 through

<sup>1</sup> The mailbox price is the net price producers receive for their milk, after all marketing costs, discounts, premiums are accounted for. The Agricultural Marketing Service collects and publishes monthly mailbox prices.

estimated fiscal 2007 total \$43.7 billion, averaging \$14.6 billion, annually.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because FSA 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

FSA has determined that this rule does not constitute a major State or Federal action that would significantly affect the human or natural environment consistent with the National Environmental Policy Act 40 CFR part 1502.4, Major Federal actions requiring the preparation of Environmental Impact Statements, and 7 CFR part 799: Environmental Quality and Related Environmental Concerns—Compliance with NEPA implementing the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508. Therefore no environmental assessment or environmental impact statement will be prepared.

#### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This 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

Although we published a proposed rule, Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because FSA 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

The Information Collection Packages for the amendments to 7 CFR 786 contained in this final rule have been submitted to the Office of Management and Budget (OMB) for approval as a revision to OMB Control Number 0560–

0252. A proposed rule containing an estimate of the burden impact of the rule was published in the **Federal Register** on November 26, 2007 (72 FR 65889–65897) with estimates of the information collection burden required to implement this program and a request for comments on those requirements as required by 5 CFR section 1320.8(d)(1). No comments concerning the burden estimate were received.

#### E-Government Act Compliance

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. The forms, regulations, and other information collection activities required to be utilized by a person subject to this rule are available at <http://www.fsa.usda.gov>. Applications may be submitted at the FSA county offices.

#### List of Subjects in 7 CFR Part 786

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

■ For the reasons set out in the preamble, 7 CFR part 786 is added to read as follows:

#### PART 786—DAIRY DISASTER ASSISTANCE PAYMENT PROGRAM (DDAP—III)

Sec.	
786.100	Applicability.
786.101	Administration.
786.102	Definitions.
786.103	Time and method of application.
786.104	Eligibility.
786.105	Proof of production.
786.106	Determination of losses incurred.
786.107	Rate of payment and limitations on funding.
786.108	Availability of funds.
786.109	Appeals.
786.110	Misrepresentation, scheme, or device.
786.111	Death, incompetence, or disappearance.
786.112	Maintaining records.
786.113	Refunds; joint and several liability.
786.114	Miscellaneous provisions.
786.115	Termination of program.

**Authority:** Sec. 9007, Pub. L. 110–28, 121 Stat. 112; and Sec. 743, Pub. L. 110–161.

#### PART 786—DAIRY DISASTER ASSISTANCE PAYMENT PROGRAM III (DDAP—III)

##### § 786.100 Applicability.

(a) Subject to the availability of funds, this part specifies the terms and

conditions applicable to the Dairy Disaster Assistance Payment Program (DDAP—III) authorized by section 9007 of Public Law 110–28 (extended by Pub. L. 110–161). Benefits are available to eligible United States producers who have suffered dairy production losses in eligible counties as a result of a natural disaster declared during the period between January 1, 2005, and December 31, 2007, (that is, after January 1, 2005, and before December 31, 2007).

(b) To be eligible for this program, a producer must have been a milk producer anytime during the period of January 2, 2005, through December 30, 2007, in a county declared a natural disaster by the Secretary of Agriculture, declared a major disaster or emergency designated by the President of the United States. For a county for which there was a timely Presidential declaration, but the declaration did not cover the loss, the county may still be eligible if the county is one for which an appropriate determination of a Farm Service Agency (FSA) Administrator's Physical Loss Notice applies. Counties contiguous to a county that is directly eligible by way of a natural disaster declaration are also eligible. Only losses occurring in eligible counties are eligible for payment in this program.

(c) Subject to the availability of funds, FSA will provide benefits to eligible dairy producers. Additional terms and conditions may be specified in the payment application that must be completed and submitted by producers to receive a disaster assistance payment for dairy production losses.

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

##### § 786.101 Administration.

(a) DDAP—III will be administered under the general supervision of the Administrator, FSA, or a designee, and 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 part.

(c) The State committee will take any action required by the regulations of this part that has not been taken by the county committee. The State committee will 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 part; and

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

(d) No provision of delegation in this part to a State or county committee will preclude the Administrator, FSA, 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, 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 DDAP—III and does not violate statutory limitations of the program.

(f) Data furnished by the applicants is used to determine eligibility for program benefits. Although participation in DDAP—III is voluntary, program benefits will not be provided unless the producer furnishes all requested data.

##### § 786.102 Definitions.

The definitions in 7 CFR part 718 apply to this part except to the extent they are inconsistent with the provisions of this part. In addition, for the purpose of this part, the following definitions apply.

*Administrator* means the FSA Administrator, or a designee.

*Application* means DDAP—III application.

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

*Base annual production* means the pounds of production determined by multiplying the average annual production per cow calculated from base period information times the average number of cows in the dairy herd during each applicable disaster year.

*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 FSA, 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 claim period* means the calendar year(s) applicable to the disaster declaration during the eligible period in which the production losses occurred.

*Disaster county* means a county included in the geographic area covered by a natural disaster declaration, and any county contiguous to a county that qualifies by a natural disaster declaration.

*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 sale or delivery record of milk marketed for commercial use.

*Natural disaster declaration* means a natural disaster declaration issued by the Secretary of Agriculture after January 1, 2005, but before December 31, 2007, under section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961(a)), a major disaster or emergency designation by the President of the United States in that period under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, or a determination of a Farm Service Agency Administrator's Physical Loss Notice for a county covered in an otherwise eligible Presidential declaration.

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

*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 a legal resident alien in, the United States, and who directly or indirectly, as determined by the Secretary, have a share entitlement or ownership interest in a commercial dairy's milk production and who share in the risk of producing milk, and make contributions (including land, labor, management, equipment, or capital) to the dairy farming operation of the individual or entity.

*Reliable production evidence* means records provided by the producer subject to a determination of acceptability by the county committee that are used to substantiate the amount of production reported when verifiable records are not available; the records may include copies of receipts, ledgers of income, income statements of deposit

slips, register tapes, and records to verify production costs, contemporaneous measurements, and contemporaneous diaries.

*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 FSA through an independent source.

#### **§ 786.103 Time and method of application.**

(a) Dairy producers may obtain an application, in person, by mail, by telephone, or by facsimile from any FSA county 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 part must be submitted on a completed DDAP—III application. Applications and any other supporting documentation must 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 milk production of the dairy operation and risk of the 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 part must certify to the accuracy and truthfulness of the information provided in their application and any supporting documentation. Any information entered on the application will be considered information from the applicant regardless of who entered the information on the application. All information provided is subject to verification by FSA. Refusal to allow FSA or any other agency of the Department of Agriculture to verify any information provided may 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.

#### **§ 786.104 Eligibility.**

(a) Producers in the United States will be eligible to receive dairy disaster benefits under this part only if they have suffered dairy production losses,

previously uncompensated by disaster payments including any previous dairy disaster payment program, during the claim period applicable to a natural disaster declaration in a disaster county. To be eligible to receive payments under this part, producers in a dairy operation must:

(1) Have produced and commercially marketed milk in the United States and commercially marketed the milk produced anytime during the period of January 2, 2005 through December 30, 2007;

(2) Be a producer on a dairy farm operation physically located in an eligible county where dairy production losses were incurred as a result of a disaster for which an applicable natural disaster declaration was issued between January 1, 2005 and December 31, 2007, and limit their claims to losses that occurred in those counties, specific to conditions resulting from the declared disaster as described in the natural disaster declaration;

(3) Provide adequate proof, to the satisfaction of the FSA county committee, of the average number of cows in the dairy herd and annual milk production commercially marketed by all persons in the eligible dairy operation during the years of the base period (2003 and 2004 calendar years) and applicable disaster year that corresponds with the issuance date of the applicable natural disaster declaration, 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 satisfy the terms and conditions of this part, instructions issued by FSA, and instructions contained in the application to be eligible for benefits under this part.

(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 calendar year applicable to the natural disaster declaration and loss claim period, and must not otherwise be barred from receiving benefits under 7 CFR part 12 or any other law or regulation.

(e) Payments are limited to losses in eligible counties, in eligible disaster years.

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

(g) Eligible losses are determined from the applicable base annual production, as defined in § 786.102, that corresponds to the natural disaster declaration and must have occurred during that same period as follows:

(1) For disaster declarations for disasters during a calendar year (2005, 2006, or 2007), the disaster claim period is the full calendar year and

(2) For disaster declarations issued during one calendar year that ends in another calendar year, the producer will be eligible for both disaster years.

(h) Deductions in eligibility will be made for any disaster payments previously received for the loss including any made under a previous dairy disaster assistance payment program for 2005.

#### **§ 786.105 Proof of production.**

(a) Evidence of production is required to establish the commercial marketing and production history of the dairy operation so that dairy production losses can be computed in accordance with § 786.106.

(b) 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 dairy herd inventory records available for the operation, for the years of the base period (2003 and 2004 calendar years) and disaster claim period that corresponds with the issuance date of the applicable natural disaster declaration.

(1) A producer must certify and provide such proof as requested that losses for which compensation is claimed were related to the disaster declaration issued and occurred in an eligible county during the eligible claim period.

(2) A producer must certify to the average number of cows in the dairy herd during the base period and applicable disaster claim period when there is insufficient documentation available for verification.

(3) Additional supporting documentation may be requested by

FSA as necessary to verify production losses to the satisfaction of FSA.

(c) Adequate proof of production history of the dairy operation under paragraph (b) 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 losses, or any other documents available to confirm or adjust the production history losses incurred by the dairy operation. All information provided is subject to verification, spot check, and audit by FSA.

(d) As specified in § 786.106, loss calculations will be based on comparing the expected base annual production consistent with this part and the actual production during the applicable disaster claim year. Such calculations are subject to adjustments as may be appropriate such as a correction for losses not due to the disaster. If adequate proof of normally marketed production and any other production for relevant periods is not presented to the satisfaction of FSA, the request for benefits will be rejected. Special adjustments for new producers may be made as determined necessary by the Administrator.

#### **§ 786.106 Determination of losses incurred.**

(a) Eligible payable losses are calculated on a dairy operation by dairy operation basis and are limited to those occurring during the applicable disaster claim period, as provided by § 786.104(g), that corresponds with the applicable natural disaster declaration. Specifically, dairy production losses incurred by producers under this part are determined on the established history of the dairy operation's average number of cows in the dairy herd and actual commercial production marketed during the base period and applicable disaster claim period that corresponds with the applicable natural disaster declaration, as provided by the dairy operation consistent with § 786.105. Except as otherwise provided in this part, the base annual production, as defined in § 786.102 and established in § 786.104(g) is determined for each applicable disaster year based on the average annual production per cow determined according to the following:

(1) The average of annual marketed production during the base period calendar years of 2003 and 2004, divided by;

(2) The average number of cows in the dairy operation's herd during the base period calendar years of 2003 and 2004.

(b) If relevant information to calculate the average annual production per cow for one or both of the base period calendar years of 2003 and 2004, is not available, an alternative method of determining the average annual production per cow may be established by the FSA Administrator. For example, for new dairies not in operation during 2003 and 2004, information from three similar farms may be obtained by FSA to estimate base annual production.

(c) The average annual production per cow, as determined according to paragraphs (a)(1) and (a)(2) of this section, is multiplied by the average number of cows in the dairy operation's herd during the applicable disaster year (excluding cow losses resulting from the disaster occurrence), to determine base annual production for the dairy operation for each applicable disaster claim period year.

(d) The eligible dairy production losses for a dairy operation for each of the authorized disaster claim period years will be:

(1) The relevant period's base annual production for the dairy operation calculated under paragraph (c) of this section less,

(2) For each such disaster claim period for each dairy operation the actual commercially-marketed production relevant to that period.

(e) Spoiled or dumped milk, disposed of for reasons unrelated to the disaster occurrence, must be counted as production for the relevant disaster claim period. 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 disaster identified in the natural disaster declaration or is determined by FSA not to be related to the natural disaster identified in the natural disaster declaration. FSA county committees will determine production losses that are not caused by the disaster associated with the natural disaster declaration. The calculated production loss determined in § 786.106(d) will be adjusted to account for pounds of production losses determined by the FSA county committee to not have been associated with the declared natural disaster for an eligible disaster county. The FSA county committee may convert cow numbers to actual pounds of production used in the adjustment, by multiplying the average annual production per cow determined from base period information, by the applicable number of cows determined to be ineligible to generate claims for

benefits. Other appropriate adjustments will be made on such basis as the Deputy Administrator finds to be consistent with the objectives of the program.

(f) Actual production, as adjusted, that exceeds the base annual production will mean that the dairy operation incurred no eligible production losses for the corresponding claim period as a result of the natural disaster.

(g) Eligible production losses as otherwise determined under paragraphs (a) through (f) of this section for each authorized year of the program are added together to determine total eligible losses incurred by the dairy operation under DDAP-III subject to all other eligibility requirements as may be included in this part or elsewhere, including the deduction for previous

payments including those made under a previous DDAP program.

(h) 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 dairy operation's eligible production loss among the producers of the dairy operation according to § 786.107(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, marketing cooperative, or any other private party; however, produced milk that was dumped or spoiled for reasons unrelated to the disaster occurrence will still count as production.

**§ 786.107 Rate of payment and limitations on funding.**

(a) Subject to the availability of funds, the payment rate for eligible production losses determined according to § 786.106 is, depending on the State, the annual average Mailbox milk price for the Marketing Order, applicable to the State where the eligible disaster county is located, as reported by the Agricultural Marketing Service during the relevant period. States not regulated under a Marketing Order will be assigned a payment rate based on contiguous or nearby State's Mailbox milk price. Maximum per pound payment rates for eligible losses for dairy operations located in specific states during the relevant period are as follows:

State	Mailbox price 2005	Mailbox price 2006	Mailbox price 2007*
Alabama	0.1596	0.1443	
Alaska	0.2040	0.2010	
Arizona	0.1388	0.1128	
Arkansas	0.1596	0.1443	
California	0.1388	0.1128	
Colorado	0.1403	0.1214	
Connecticut	0.1539	0.1344	
Delaware	0.1539	0.1344	
Florida	0.1758	0.1603	
Georgia	0.1596	0.1443	
Hawaii	0.2700	0.2600	
Idaho	0.1402	0.1215	
Illinois	0.1514	0.1283	
Indiana	0.1503	0.1294	
Iowa	0.1507	0.1285	
Kansas	0.1403	0.1214	
Kentucky	0.1527	0.1349	
Louisiana	0.1596	0.1443	
Maine	0.1539	0.1344	
Maryland	0.1539	0.1344	
Massachusetts	0.1539	0.1344	
Michigan	0.1478	0.1264	
Minnesota	0.1512	0.1277	
Mississippi	0.1596	0.1443	
Missouri (Northern)	0.1403	0.1214	
Missouri (Southern)	0.1467	0.1254	
Montana	0.1512	0.1277	
Nebraska	0.1403	0.1214	
Nevada	0.1388	0.1128	
New Hampshire	0.1539	0.1344	
New Jersey	0.1539	0.1344	
New Mexico	0.1323	0.1108	
New York	0.1539	0.1303	
North Carolina	0.1527	0.1349	
North Dakota	0.1512	0.1277	
Ohio	0.1506	0.1302	
Oklahoma	0.1596	0.1443	
Oregon	0.1402	0.1215	
Pennsylvania (Eastern)	0.1539	0.1340	
Pennsylvania (Western)	0.1539	0.1302	
Puerto Rico	0.2550	0.2570	
Rhode Island	0.1539	0.1344	
South Carolina	0.1527	0.1349	
South Dakota	0.1512	0.1277	
Tennessee	0.1527	0.1349	
Texas	0.1405	0.1194	
Vermont	0.1539	0.1344	
Virginia	0.1527	0.1349	

State	Mailbox price 2005	Mailbox price 2006	Mailbox price 2007*
Washington .....	0.1402	0.1215	.....
West Virginia .....	0.1506	0.1302	.....
Wisconsin .....	0.1535	0.1305	.....
Wyoming .....	0.1403	0.1214	.....

**Note:** Calculations are rounded to 7 decimal places.

\* Payment rates for 2007 are currently unavailable, but will be based on the annual average Mailbox milk price for the Marketing Order, applicable to the State where the eligible disaster county is located, as reported by the Agricultural Marketing Service, consistent with payment rates provided for 2005 and 2006.

(b) Subject to the availability of funds, each eligible dairy operation's payment is calculated by multiplying the applicable payment rate under paragraph (a) of this section by the operation's total eligible losses as adjusted pursuant to this part. Where there are multiple producers in the dairy operation, individual producers' payments are 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 nationwide under paragraph (b) of this section exceeds the \$16 million available for the DDAP-III, 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 each full disaster claim period applicable to the disaster declaration, are greater than 20 percent of the total base annual production 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 months during the applicable disaster claim period does not of itself qualify for the maximum per-pound payment. Rather, the priority level must be reached as an average over the whole disaster claim period for the relevant calendar year. Total eligible losses for a producer, as calculated under § 786.106, of less than or equal to 20 percent during the eligible claim period will then be paid at a rate, not to exceed the rate allowed in paragraph (a) of this section, 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 will the payment exceed the value determined by multiplying the producer's total eligible loss times the average price received for commercial milk production in the producer's area as defined in paragraph (a) of this section.

(e) No participant will receive disaster benefits under this part that in combination with the value of

production not lost would result in an amount that exceeds 95 percent of the value of the expected production for the relevant period as estimated by the Secretary. Unless otherwise program funds would not be fully expended, the sum of the value of the production not lost, if any; and the disaster payment received under this part, cannot exceed 95 percent of what the production's value would have been if there had been no loss. In no case, however, may the value of production and the payment exceed the value the milk would have without the loss.

(f) A reserve may be created to handle pending or disputed claims, but claims will not be payable once the available funding is expended.

**§ 786.108 Availability of funds.**

The total available program funds are \$16 million as provided by section 9007 of Title IX of Public Law 110-28.

**§ 786.109 Appeals.**

Provisions of the appeal regulations set forth at 7 CFR parts 11 and 780 apply to this part. Appeals of determinations of ineligibility or payment amounts are subject to the limitations in §§ 786.107 and 786.108 and other limitations that may apply.

**§ 786.110 Misrepresentation, scheme, or device.**

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

- (1) Adopted any scheme or device that tends to defeat the purpose of this program,
- (2) Made any fraudulent representation,
- (3) Misrepresented any fact affecting a program determination, or
- (4) Violated 7 CFR 795.17 and thus be ineligible for the year(s) of violation and the subsequent year.

(b) Any funds disbursed pursuant to this part to any person or dairy operation engaged in a misrepresentation, scheme, or device, must be refunded with interest together with such other sums as may become

due. Interest will run from the date of the disbursement to the producer or other recipient of the payment from FSA. Any person or dairy operation engaged in acts prohibited by this section and any person or dairy operation receiving payment under this part is jointly and severally liable with other persons or dairy operations involved in such claim for benefits for any refund due under this section and for related charges. The remedies provided in this part are in addition to other civil, criminal, or administrative remedies that may apply.

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

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

**§ 786.112 Maintaining records.**

Persons applying for benefits under this program must maintain records and accounts to document all eligibility requirements specified herein and must keep such records and accounts for 3 years after the date of payment to their dairy operations under this program. Destruction of the records after such date is at the risk of the party required, by this part, to keep the records.

**§ 786.113 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 meet any requirement or condition for payment under the application or this part, must be refunded to FSA.

(b) A refund required under this section is due with interest determined in accordance with paragraph (d) of this section and late payment charges as provided in 7 CFR part 792. Notwithstanding any other regulation, interest will be due from the date of the disbursement to the producer or other recipient of the funds.

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

(d) In the event FSA determines a participant owes a refund under this part, FSA will charge program interest from the date of disbursement of the erroneous payment. Such interest will accrue at the rate that the United States Department of the Treasury charges FSA for funds plus additional charges as deemed appropriate by the Administrator or provided for by regulation or statute.

(e) The debt collection provisions of part 792 of this chapter applies to this part except as is otherwise provided in this part.

#### **§ 786.114 Miscellaneous provisions.**

(a) Payments or any portion thereof due under this part must 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.

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

#### **§ 786.115 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 § 786.104. All eligibility determinations will be final except as otherwise determined by the Deputy Administrator. Any claim for payment may be denied once the allowed funds are expended, irrespective of any other provision of this part.

Signed at Washington, DC, on February 20, 2008.

**Thomas B. Hofeller,**

*Acting Administrator, Farm Service Agency.*  
[FR Doc. E8-4141 Filed 3-3-08; 8:45 am]

**BILLING CODE 3410-05-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 39**

**[Docket No. FAA-2007-0202; Directorate Identifier 2007-NM-185-AD; Amendment 39-15399; AD 2008-05-05]**

**RIN 2120-AA64**

#### **Airworthiness Directives; Boeing Model 737-600, 737-700, 737-700C, 737-800, and 737-900 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Boeing Model 737-600, 737-700, 737-700C, 737-800, and 737-900 series airplanes. This AD requires an inspection of the vertical fin lugs, skin, and skin edges for discrepancies; an inspection of the flight control cables, fittings, and pulleys in section 48 for signs of corrosion; an inspection of the horizontal stabilizer jackscrew, ball nut, and gimbal pins for signs of corrosion; and corrective actions if necessary. This AD results from reports indicating that moisture was found within the section 48 cavity. We are issuing this AD to ensure that the correct amount of sealant was applied around the vertical fin lugs, skin and the skin edges. Missing sealant could result in icing of the elevator cables, which could cause a system jam and corrosion of structural and flight control parts, resulting in reduced controllability of the airplane.

**DATES:** This AD is effective April 8, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 8, 2008.

**ADDRESSES:** For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207.

#### **Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800-647-5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140,

1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6447; fax (425) 917-6590.

#### **SUPPLEMENTARY INFORMATION:**

##### **Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 737-600, 737-700, 737-700C, 737-800, and 737-900 series airplanes. That NPRM was published in the **Federal Register** on November 19, 2007 (72 FR 64955). That NPRM proposed to require an inspection of the vertical fin lugs, skin, and skin edges for discrepancies; an inspection of the flight control cables, fittings, and pulleys in section 48 for signs of corrosion; an inspection of the horizontal stabilizer jackscrew, ball nut, and gimbal pins for signs of corrosion; and corrective actions if necessary.

##### **Comments**

We gave the public the opportunity to participate in developing this AD. We considered the comment received. Boeing, the single commenter, supports the NPRM.

##### **Conclusion**

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

##### **Costs of Compliance**

There are 829 airplanes of the affected design in the worldwide fleet. This AD affects about 372 airplanes of U.S. registry. The required actions take about 1 work hour per airplane, at an average labor rate of \$80 per work hour. Based on these figures, the estimated cost of this AD for U.S. operators is \$29,760, or \$80 per airplane.

##### **Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General Requirements." Under that