

# Proposed Rules

Federal Register

Vol. 72, No. 226

Monday, November 26, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## 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: Proposed rule.

**SUMMARY:** This document proposes 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 proposed program would 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 February 28, 2007, that is, after January 1, 2005, and before February 28, 2007. Counties contiguous to such counties will also be eligible. This proposed program is designed to provide financial assistance to producers who suffered dairy production losses due to natural disasters in the eligible counties.

**DATES:** We will consider comments that we receive by December 26, 2007.

**ADDRESSES:** We invite you to submit comments on this proposed rule. In your comment, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- E-Mail:

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

- Fax: (202) 690-1536.
- Mail: 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 through the FSA home page at <http://www.fsa.usda.gov/>.

#### FOR FURTHER INFORMATION CONTACT:

Danielle Cooke, telephone: (202) 720-1919; e-mail: *Danielle.Cooke@wdc.usda.gov*.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 9007 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110-28), enacted May 25, 2007, provides the Secretary of Agriculture with \$16 million to make payments to dairy producers for losses in counties declared or designated a natural disaster during the period of January 2, 2005 through February 27, 2007, 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. Each of these counties is referred to as a disaster county in this document. The period from January 2, 2005 through February 27, 2007, is referred to as the eligible period.

Since 2005 dairy production in many counties throughout the United States has been severely impacted by widespread and significant destruction caused by various natural disasters such as hurricanes, wildfires, ice storms, heavy rainfalls, floods, and severe blizzard conditions. 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 closed milk plants and damaged containment equipment caused by the widespread destruction by the natural disasters. Also, the loss of electricity, the shortage of fuel, and infrastructure damage temporarily interrupted the flow of dairy products to markets.

The proposed regulations for the new program would allow dairy producers who suffered production losses, for which relief has not been previously provided, that are the result of natural disasters declared during the eligible period to apply for compensation for losses incurred during that period. This rule would offset a portion of the per-pound losses dairy producers have incurred commercially marketing milk in the United States.

Benefits would be provided to eligible dairy producers in those disaster counties who meet all program eligibility requirements, and are subsequently approved for participation in the Dairy Disaster Assistance Payment Program III (DDAP-III). This program is similar to previous programs: The 2004 program (DDAP-I) and 2005 program (DDAP-II). Dairy producers in counties contiguous to a directly eligible county are also eligible for DDAP-III benefits. Eligible dairy producers would receive payments to help pay operating expenses and meet other financial obligations.

To be eligible under the proposed program, dairy producers must have produced milk in the United States any time during the eligible period as part of a dairy operation located in an eligible disaster county. Production losses suffered by the dairy operation must have occurred during the specified eligibility period and must have been as a result of the disaster declaration specific to the county in which the dairy operation is located. FSA may, as appropriate, make adjustments to calculated production losses not resulting from the applicable disaster specified in the declaration for an eligible disaster county. Production losses incurred in each authorized program year, during the eligible period specified, are eligible for benefits, if a disaster declaration was issued for a county for such program year and no

previous disaster payment has been made.

A dairy producer must provide 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. In addition, adequate evidence of dairy production losses must be provided to FSA to substantiate the losses suffered and certified by each producer. Payments would be made according to a formula, which would estimate expected production based on herd size, and would be subject to funding and other limitations. Subject to comment and further consideration, payments would 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. FSA expects to announce the sign-up period following the publication of this proposed rule. At the close of the sign-up period, the total production losses from all eligible applicants would be determined. Payment eligibilities would be separately calculated on an operation by operation basis. An individual may be involved in more than one operation.

Payments to eligible producers would be calculated by multiplying the eligible pounds by the average price received for commercial milk production in the affected areas during the calendar year specific to the disaster for 2005 and 2006, and for the months of January and

February during calendar year 2007 for 2007 claims. A producer may have a claim for more than one year; however, a deduction would be made for payments made under DDAP-II or other disaster programs.

If the total amount of available funding (\$16 million, less any reserve established to account for disputed claims) is insufficient to compensate eligible producers for eligible losses, then FSA would, under this proposal, pay losses at two levels in an effort to more equitably distribute the limited funds and maximize the effectiveness of the program.

Specifically, in the case of inadequate funds for all eligible losses, FSA would calculate each operation's overall annual percentage reduction for each full disaster claim period that corresponds with the applicable declared disaster from the calculated base year production for the operation for the calendar year of the declared disaster, or first two months of 2007 for disasters in 2007. The disaster claim period applicable to: (1) Disaster declarations for calendar year 2005 are all months contained in the 2005 calendar year; (2) disaster declarations for calendar year 2006, are all months contained in the 2006 calendar year, and (3) disaster declarations for 2007, the first two months of the year only. Again, losses would only be covered for operations in counties with timely disaster declarations as set out in the proposed regulation and above.

Annual base year production for each dairy operation would be computed based on annual data obtained from the National Agricultural Statistics Service

of milk production per cow for each applicable State in which the disaster county is located.

If a reduced payment is needed due to funding constraints, calculated losses over the applicable disaster claim period greater than 20-percent of a producer's normal production would be paid at the maximum per-pound payment rate. Payments for eligible losses below the 20-percent threshold would be made at a rate not to exceed the maximum rate for other losses that would exhaust the available funds that remain following payment of eligible losses at the higher level.

FSA proposes to establish the minimum loss level for the priority at 20 percent for DDAP-III in order to be consistent with other disaster programs. For example, the 20-percent threshold mirrors that of DDAP-I and DDAP-II.

Different payments for differing degrees of losses would distribute the limited funds provided under this program in a manner that provides greater assistance to producers who suffered greater losses from the subject disasters. An example of how the apportionment might affect producers is set out in the following table. If funds are adequate for all eligible losses, all eligible producers would be paid at the "maximum rate," which amounts to the average price, as determined under the proposed regulation, received for commercial milk production in their area during the disaster claim period applicable to the declared disaster. FSA encourages comments on these provisions and the appropriate loss-level percentage.

Apportionment example:

|                                                               | Producer A<br>(Louisiana<br>2005 losses) | Producer B<br>(California<br>2005 losses) | Producer C<br>(Kansas 2006<br>losses) | Producer D<br>(Georgia<br>2006 losses) |
|---------------------------------------------------------------|------------------------------------------|-------------------------------------------|---------------------------------------|----------------------------------------|
| Total Estimated Base Production .....                         | 620,000                                  | 11,339,500                                | 1,046,000                             | 1,367,550                              |
| Actual Production .....                                       | 485,000                                  | 10,000,000                                | 600,000                               | 1,100,000                              |
| Total Eligible Loss .....                                     | 135,000                                  | 1,339,500                                 | 446,000                               | 267,550                                |
| 20% of Base Production .....                                  | 124,000                                  | 2,267,900                                 | 209,000                               | 273,510                                |
| Pounds of loss above 20% loss level .....                     | 11,000                                   | 0                                         | 237,000                               | 0                                      |
| Payment Rate .....                                            | \$0.1596/lb.                             | \$0.1388/lb.                              | \$0.1214/lb.                          | \$0.1443/lb.                           |
| DDAP-III for loss above 20% .....                             | \$1,756                                  | \$0                                       | \$28,772                              | \$0                                    |
| DDAP-III for under 20% loss @ \$0.05/lb. (example only) ..... | \$6,200                                  | \$113,395                                 | \$10,450                              | \$13,676                               |
| Total DDAP-III .....                                          | \$7,956                                  | \$113,395                                 | \$39,222                              | \$13,676                               |
| Eligible Losses × average price .....                         | \$21,546                                 | \$185,923                                 | \$54,144                              | \$38,608                               |
| Percent production loss suffered .....                        | 22                                       | 12                                        | 43                                    | 20                                     |
| Percent financial losses recovered from DDAP-III .....        | 37                                       | 61                                        | 72                                    | 35                                     |

Gross revenue and per-person payment limits do not apply. However, consistent with other FSA disaster programs, the total assistance provided to a participant for a disaster year under

DDAP-III, plus the value of the production that was not lost, may not exceed 95 percent of the value of the production in the absence of a loss, as estimated by the Secretary.

Information provided on applications and supporting documentation will, under the proposal, 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 FSA 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>.

#### **Differences Between DDAP-II and DDAP-III**

DDAP-III would provide payments related to dairy production losses, as required by the legislation. DDAP-II was required to provide payments related to both dairy production losses and spoilage losses. As proposed, DDAP-III would basically follow regulations for DDAP-II, but it was determined that only production losses would be covered. Spoilage losses, in accordance with the legislation, will not be covered by DDAP-III.

DDAP-III applies to dairy producers who suffered dairy production losses in disaster counties during natural disasters declarations issued during the eligible period. DDAP-II applied to producers who suffered dairy losses in hurricane affected counties during 2005, which included a county included in the geographic area covered by a natural disaster declaration related to Hurricane Katrina, Hurricane Ophelia, Hurricane Rita, Hurricane Wilma, or a related condition. The new program has a greater coverage in time and in counties. Provisions would, however, avoid double payment under DDAP-II and DDAP-III. Both DDAP-II and DDAP-III include contiguous counties.

The regulations describe DDAP-III, addressing applications, eligibility, verification of information, payment information, appeals, conditions causing ineligibility, recordkeeping requirements, and refund requirements. In addition the DDAP-III regulations include a section on the termination of the program.

#### **Notice and Comment**

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.

#### **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 largest expected 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).

The average payment rate will be determined by dividing the \$16 million available funding by the total milk pounds 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, 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 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 proposed 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 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 would preempt State laws to the extent such laws are inconsistent with it. This rule would not be 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).

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

## Unfunded Mandates

Although we are publishing this as 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

In accordance with the Paperwork Reduction Act of 1995, FSA is submitting a request for approval to the Office of Management and Budget (OMB) of an information collection required to support this proposed rule for the DDAP-III. A notice was published in the **Federal Register** on August 23, 2007 (72 FR 48254) 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 1320.8(d)(1). No comments were received. The notice referred to the program as the 2005–2006 Dairy Disaster Assistance Payment program. The program was subsequently renamed DDAP-III. The information Collection is described below:

*Title:* 2005–2006 Dairy Disaster Assistance Payment Program.

*OMB Control Number:* 0560–0252.

*Type of Request:* Revision of a currently approved collection.

*Abstract:* Dairy operations are eligible to receive direct payments provided they make certifications that attest to their eligibility to receive such payments. As appropriate, these operations must certify and identify:

(1) That the dairy operation is physically located in a county declared a natural disaster after January 1, 2005 and before February 28, 2007 (that is the period of January 2, 2005 through February 27, 2007);

(2) The identity of actual persons associated with that operation during that period;

(3) The pounds of dairy production losses incurred as a result of the declared natural disaster;

(4) The number of cows in the dairy operation during the calendar year applicable to the disaster declaration;

(5) That they understand the dairy operation must provide adequate proof of annual milk production commercially marketed by all persons in the dairy operation during the period specified by the FSA to determine the total pounds of eligible losses incurred by the operation.

The information collection is used by FSA to determine the program eligibility

of the dairy operations. FSA considers the information collected essential to prudent eligibility determinations and payment calculations. The revision on the information collection covers only the dairy production losses this time, and the number of respondents increases in this information collection. Additionally, without accurate information on dairy operations, the national payment rate would be inaccurate, resulting in payments being made to ineligible recipients, and the integrity and accuracy of the program could be compromised.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 15 minutes (0.25 hour) per response. The average travel time, which is included in the total annual burden, is estimated to be 1 hour per respondent. Approximately 37 percent of respondents (14,750) are expected to choose to submit the form on-line. Therefore, the burden estimate includes travel time for 25,250 respondents.

*Respondents:* Dairy Operations.

*Estimated Number of Respondents:* 40,000.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 35,250 hours.

## 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 proposed to be added to read as follows:

## PART 786—DAIRY DISASTER ASSISTANCE PAYMENT PROGRAM III (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:** Pub. L. 110–28, 121 Stat. 112.

## 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. 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 February 28, 2007, (that is, after January 1, 2005, and before February 28, 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 February 27, 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 year production* means the applicable National Agriculture Statistics Service (NASS) average of milk produced per cow for a dairy

operation in the applicable State of the eligible disaster county during the period assigned in § 786.104(g), or other measure approved by the Administrator if a suitable NASS average is not available.

*Claim period* means, as assigned in this part, the qualifying months during the period of January 2, 2005 through February 27, 2007, following the base month, during which the loss occurred.

*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 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 February 28, 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, 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.

*Reliable production evidence* means satisfactory records provided by the producer 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 that are determined acceptable by the county committee.

*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 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 part 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

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 February 27, 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 February 28, 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 monthly milk production commercially marketed by all persons in the eligible dairy operation during the applicable milk marketing calendar year and claim period 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 months.

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

(g) Eligible losses are determined from the applicable base year production (see definition 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 calendar year 2005, the base period and the corresponding claim period are the 2005 calendar year months of January through December;

(2) For disaster declarations issued for disasters during calendar year 2006, the base period and corresponding claim period are the 2006 calendar year months of January through December; and

(3) For disaster declarations issued for disasters in January and February of 2007, the base period and corresponding claim period are the 2007 calendar year months of January and February.

(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 for the operation, for

each month of the applicable base period and 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) 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 production using herd figures and NASS yield data consistent with this part and the actual production. 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 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 actual commercial production marketed during the applicable 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 year production, as defined in § 786.102 and established in § 786.104(g) is determined based on the number of cows in a dairy operation's herd during the relevant period and data obtained from NASS for milk production per cow during the relevant period for the State in which the eligible disaster county is geographically located.

(b) The eligible dairy production losses for a dairy operation for each of the authorized claim periods will be:

(1) The relevant periods' base year production for the dairy operation calculated under paragraph (a) of this section less,

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

(c) Spoiled or dumped milk must be counted as production for the relevant 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(b) will be adjusted to account for production losses determined by the county committee to not have been associated

with the declared natural disaster for an eligible disaster county. The production adjustment may be calculated on a monthly basis according to the number of cows in the dairy operation's dairy herd during the applicable month or months determined to be ineligible to generate claims for benefits, multiplied by the milk produced per cow for the month as determined from monthly data obtained from NASS, as available. If monthly NASS data is unavailable for the State in which the eligible disaster county is located, an alternative method of determining the expected milk produced per cow for that State may be established by the Deputy Administrator. Other appropriate adjustments will be made on such basis as the Deputy Administrator finds to be consistent with the objectives of the program.

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

(e) Eligible production losses as otherwise determined under paragraphs (a) through (d) 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.

(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 § 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 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 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<br>2005 | Mailbox price<br>2006 | Mailbox price<br>Jan–Feb 2007 |
|---------------------------|-----------------------|-----------------------|-------------------------------|
| Alabama .....             | 0.1596                | 0.1443                | 0.1615                        |
| Alaska .....              | 0.2040                | 0.2010                | 0.0000                        |
| Arizona .....             | 0.1388                | 0.1128                | 0.1282                        |
| Arkansas .....            | 0.1596                | 0.1443                | 0.1615                        |
| California .....          | 0.1388                | 0.1128                | 0.1282                        |
| Connecticut .....         | 0.1539                | 0.1344                | 0.1538                        |
| Delaware .....            | 0.1539                | 0.1344                | 0.1538                        |
| Florida .....             | 0.1758                | 0.1603                | 0.1739                        |
| Georgia .....             | 0.1596                | 0.1443                | 0.1615                        |
| Idaho .....               | 0.1402                | 0.1215                | 0.1388                        |
| Illinois .....            | 0.1514                | 0.1283                | 0.1476                        |
| Indiana .....             | 0.1503                | 0.1294                | 0.1460                        |
| Iowa .....                | 0.1507                | 0.1285                | 0.1479                        |
| Kansas .....              | 0.1403                | 0.1214                | 0.1407                        |
| Kentucky .....            | 0.1527                | 0.1349                | 0.1545                        |
| Louisiana .....           | 0.1596                | 0.1443                | 0.1615                        |
| Maine .....               | 0.1539                | 0.1344                | 0.1538                        |
| Maryland .....            | 0.1539                | 0.1344                | 0.1538                        |
| Massachusetts .....       | 0.1539                | 0.1344                | 0.1538                        |
| Michigan .....            | 0.1478                | 0.1264                | 0.1438                        |
| Minnesota .....           | 0.1512                | 0.1277                | 0.1502                        |
| Mississippi .....         | 0.1596                | 0.1443                | 0.1615                        |
| Missouri (Northern) ..... | 0.1403                | 0.1214                | 0.1407                        |
| Missouri (Southern) ..... | 0.1467                | 0.1254                | 0.1445                        |
| Montana .....             | 0.1512                | 0.1277                | 0.1502                        |
| Nebraska .....            | 0.1403                | 0.1214                | 0.1407                        |
| Nevada .....              | 0.1388                | 0.1128                | 0.1282                        |
| New Hampshire .....       | 0.1539                | 0.1344                | 0.1538                        |

| State                        | Mailbox price<br>2005 | Mailbox price<br>2006 | Mailbox price<br>Jan–Feb 2007 |
|------------------------------|-----------------------|-----------------------|-------------------------------|
| New Jersey .....             | 0.1539                | 0.1344                | 0.1538                        |
| New Mexico .....             | 0.1323                | 0.1108                | 0.1324                        |
| New York .....               | 0.1539                | 0.1303                | 0.1489                        |
| North Carolina .....         | 0.1527                | 0.1349                | 0.1545                        |
| North Dakota .....           | 0.1512                | 0.1277                | 0.1502                        |
| Ohio .....                   | 0.1506                | 0.1302                | 0.1496                        |
| Oregon .....                 | 0.1402                | 0.1215                | 0.1388                        |
| Pennsylvania (Eastern) ..... | 0.1539                | 0.1340                | 0.1538                        |
| Pennsylvania (Western) ..... | 0.1539                | 0.1302                | 0.1487                        |
| Puerto Rico .....            | 0.2550                | 0.2570                | 0.0000                        |
| Rhode Island .....           | 0.1539                | 0.1344                | 0.1538                        |
| South Carolina .....         | 0.1527                | 0.1349                | 0.1545                        |
| South Dakota .....           | 0.1512                | 0.1277                | 0.1502                        |
| Tennessee .....              | 0.1527                | 0.1349                | 0.1545                        |
| Texas .....                  | 0.1405                | 0.1194                | 0.1398                        |
| Vermont .....                | 0.1539                | 0.1344                | 0.1538                        |
| Virginia .....               | 0.1527                | 0.1349                | 0.1545                        |
| Washington .....             | 0.1402                | 0.1215                | 0.1388                        |
| West Virginia .....          | 0.1506                | 0.1302                | 0.1496                        |
| Wisconsin .....              | 0.1535                | 0.1305                | 0.1505                        |

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

(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 claim period applicable to the disaster declaration, are greater than 20 percent of the total base year 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 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 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. 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.

(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 November 19, 2007.

Glen L. Keppy,

Acting Administrator, Farm Service Agency.

[FR Doc. E7-22904 Filed 11-23-07; 8:45 am]

BILLING CODE 3410-05-P

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2007-0229; Directorate Identifier 2007-NM-042-AD]

RIN 2120-AA64

**Airworthiness Directives; Airbus Model A330-200, A330-300, A340-200, and A340-300 Series Airplanes**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Airbus Model A330-200, A330-300, A340-200, and A340-300 series airplanes. The existing AD currently requires a revision of the airplane flight manual to include procedures for a pre-flight elevator check before each flight, repetitive inspections for cracks of the attachment lugs of the mode selector valve position transducers on the elevator servo controls, and corrective actions if necessary. This proposed AD would retain the existing requirements, reduce the applicability of the existing AD, and add terminating actions. For certain airplanes, this proposed AD would require upgrading the flight control primary computers. This proposed AD results from cracks of the transducer body at its attachment lugs. We are proposing this AD to ensure proper functioning of the elevator surfaces, and to prevent cracking of the attachment lugs, which could result in partial loss of elevator function and consequent reduced controllability of the airplane.

**DATES:** We must receive comments on this proposed AD by December 26, 2007.

**ADDRESSES:** You may send comments by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Fax:** 202-493-2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- **Hand Delivery:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

**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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2797; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2007-0229; Directorate Identifier 2007-NM-042-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each