

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 1005 and 1007

[Docket No. AO-388-A17 and AO-366-A46; DA-05-6]

#### Milk in the Appalachian and Southeast Marketing Areas; Interim Order Amending the Orders

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule.

**SUMMARY:** This order amends certain features of the transportation credit provisions of the Appalachian and Southeast marketing orders on an interim basis. More than the required number of producers in the Appalachian and Southeast marketing areas have approved the issuance of the interim order as amended.

**DATES:** *Effective Date:* December 1, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Gino M. Tosi, Associate Deputy Administrator, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, STOP 0231—Room 2971, 1400 Independence Ave., SW., Washington, DC 20250-0231, (202) 690-1366, e-mail address: [gino.tosi@usda.gov](mailto:gino.tosi@usda.gov).

**SUPPLEMENTARY INFORMATION:**

Specifically, this decision adopts provisions that will: (1) Establish a transportation credit mileage rate factor by using a fuel cost adjuster; (2) Increase the Appalachian order's maximum transportation credit assessment rate to \$0.15 per hundredweight, and the Southeast order's maximum transportation credit assessment rate to \$0.20 per hundredweight; and (3) Establish a zero diversion limit standard on loads of milk requesting transportation credits.

This administrative rule is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937 (the Act), as amended (7 U.S.C. 601-674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(a) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (Department) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

#### Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this interim rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees.

For the purposes of determining which dairy farms are "small businesses," the \$750,000 per year criterion was used to establish a marketing guideline of 500,000 pounds per month. Although this guideline does

not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During January 2006, the time of hearing, there were 3,055 dairy farmers pooled on the Appalachian order (Order 5). For the Southeast order (Order 7), 3,367 dairy farmers were pooled on the order. Of these, 2,889 dairy farmers in Order 5 (or 95) percent and 3,218 dairy farmers in Order 7 (or 96 percent) were considered small businesses.

During January 2006, there were a total of 37 plants associated with the Appalachian order (22 fully regulated plants, 11 partially regulated plants, 2 producer-handler plants and 2 exempt plants). A total of 51 plants were associated with the Southeast order (31 fully regulated plants, 9 partially regulated plants and 12 exempt plants). The number of plants meeting the small business criteria under the Appalachian and Southeast orders were 9 (or 24 percent) and 18 (or 35 percent), respectively.

The adoption of the proposed amendments will establish a mileage rate factor using a fuel cost adjuster for the transportation credit balancing funds for the Appalachian and Southeast orders. The proposed mileage rate factor will be calculated monthly and adjusted monthly based on current diesel fuel prices as reported by the Department of Energy. Currently, the transportation credit provisions of the Appalachian and Southeast marketing orders provide a mileage rate factor of 0.35 cents per hundredweight (cwt) per mile.

The adoption of the proposed amendments will increase the maximum rates of the transportation credit assessments for the Appalachian and Southeast orders. Specifically, the maximum transportation credit assessment rate for the Appalachian order will be increased by 5.5 cents per cwt, from the current 9.5 cents per cwt to 15 cents per cwt. The maximum transportation credit assessment rate for the Southeast order will be increased by

10 cents per cwt, from the current 10 cents per cwt to 20 cents per cwt.

The increase in the maximum transportation credit assessment rates is intended to minimize the proration and depletion of each order's transportation credit balancing fund when supplemental milk is needed to service the fluid needs of both marketing areas. The increases in the maximum rates of assessment for the Appalachian and Southeast orders adopted in this rule are necessary because of escalating fuel costs coupled with the continued decline in milk production in the southeastern region of the United States.

This Interim Final Rule also adopts the elimination of the ability for diversions on loads of milk requesting transportation credit payments.

Adoption of the proposed amendments will be applied to all Appalachian and Southeast orders' participants (producers and handlers), which consist of both large and small businesses. Since the proposed amendments will be subject to all the orders' producers and handlers regardless of their size the proposed amendments will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these adopted amendments will have no impact on reporting, recordkeeping, or other compliance requirements because they will remain identical to the current requirements. No new forms are proposed and no additional reporting requirements will be necessary.

This action does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

#### *Prior Documents in This Proceeding*

*Notice of Hearing:* Issued December 22, 2005; published December 28, 2005 (70 FR 76718).

*Tentative Partial Decision:* Issued September 1, 2006; published September 13, 2006 (71 FR 54118).

#### **Findings and Determinations**

The findings and determinations hereinafter set forth supplement those that were made when the Appalachian and Southeast marketing orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Appalachian and Southeast marketing orders:

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the orders regulating the handling of milk in the Appalachian and Southeast orders.

Upon the basis of the evidence introduced at such hearing and the record thereof it found that:

(1) The Appalachian and Southeast orders, as hereby amended on an interim basis, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to Section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the order, as hereby amended on an interim basis, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The Appalachian and Southeast orders, as hereby amended on an interim basis, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional Findings.* It is necessary and in the public interest to make these interim amendments to the Appalachian and Southeast orders effective December 1, 2006. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing areas.

The interim amendments to this order are known to handlers. The tentative partial decision containing the proposed

amendments to this order was issued on September 1, 2006.

The changes that result from these interim amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these interim order amendments effective on December 1, 2006.

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the specified marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this interim order amending the Appalachian and Southeast orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the orders as hereby amended;

(3) The issuance of the interim orders amending the Appalachian and Southeast orders is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the respective marketing areas.

#### **List of Subjects in 7 CFR Parts 1005 and 1007**

Milk marketing orders.

#### **Orders Relative to Handling**

■ *It is therefore ordered*, that on and after the effective date hereof, the handling of milk in the Appalachian and Southeast marketing areas shall be in conformity and in compliance with the terms and conditions of the orders, as amended, and as hereby further amended on an interim basis, as follows:

■ 1. The authority citation for 7 CFR parts 1005 and 1007 read as follows:

**Authority:** 7 U.S.C. 601–674, and 7253.

#### **PART 1005—MILK IN THE APPALACHIAN MARKETING AREA**

■ 1A. Section 1005.13 is amended by revising paragraphs (d)(3) and (d)(4) to read as follows:

##### **§ 1005.13 Producer milk.**

\* \* \* \* \*

(d) \* \* \*

(3) The total quantity of milk diverted during the month by a cooperative association shall not exceed 25 percent during the months of July through November, January, and February, and

40 percent during the months of December and March through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month, excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1005.82(c)(2)(ii) and (iii), and for which a transportation credit is requested;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 25 percent during the months of July through November, January, and February, and 40 percent during the months of December and March through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1005.7(d)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c) and excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1005.82(c)(2)(ii) and (iii), and for which a transportation credit is requested.

\* \* \* \* \*

■ 2. Section 1005.81 is revised to read as follows:

**§ 1005.81 Payments to the transportation credit balancing fund.**

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.44 by \$0.15 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June–January period, after adjusting the transportation credits disbursed during the prior June–January period to reflect any changes in the current mileage rate versus the mileage rate(s) in effect during the prior June–January period. In the event that during any month of the June–January period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would

have been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90) the assessment pursuant to paragraph (a) of this section for the following month.

■ 3. Section 1005.82 is amended by revising paragraphs (d)(2)(ii) and (d)(3)(iv) to read as follows:

**§ 1005.82 Payments from the transportation credit balancing fund.**

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ii) Multiply the number of miles so determined by the mileage rate for the month computed pursuant to § 1005.83(a)(6).

\* \* \* \* \*

(3) \* \* \*

(iv) Multiply the remaining miles so computed by the mileage rate for the month computed pursuant to § 1005.83(a)(6).

\* \* \* \* \*

■ 4. Add a new § 1005.83 to read as follows:

**§ 1005.83 Mileage rate for the transportation credit balancing fund.**

(a) The market administrator shall compute a mileage rate each month as follows:

(1) Compute the simple average rounded down to three decimal places for the most recent 4 four weeks of the Diesel Price per Gallon as reported by the Energy Information Administration of the United States Department of Energy for the Lower Atlantic and Gulf Coast Districts combined.

(2) From the result in paragraph (a)(1) in this section subtract \$1.42 per gallon;

(3) Divide the result in paragraph (a)(2) of this section by 5.5, and round down to three decimal places to compute the fuel cost adjustment factor;

(4) Add the result in paragraph (a)(3) of this section to \$1.91;

(5) Divide the result in paragraph (a)(4) of this section by 480;

(6) Round the result in paragraph (a)(5) of this section down to five decimal places to compute the mileage rate.

(b) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90) the mileage rate pursuant to paragraph (a) of this section for the following month.

**PART 1007—MILK IN THE SOUTHEAST MARKETING AREA**

■ 5. Section 1007.13 is amended by revising paragraphs (d)(3) and (d)(4) to read as follows:

**§ 1007.13 Producer milk.**

\* \* \* \* \*

(d) \* \* \*

(3) The total quantity of milk diverted during the month by a cooperative association shall not exceed 33 percent during the months of July through December, and 50 percent during the months of January through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month; excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1007.82(c)(2)(ii) and (iii), and for which a transportation credit is requested;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 33 percent during the months of July through December, or 50 percent during the months of January through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1007.7(e)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c) and excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1007.82(c)(2)(ii) and (iii), and for which a transportation credit is requested.

\* \* \* \* \*

■ 6. Section 1007.81 is revised to read as follows:

**§ 1007.81 Payments to the transportation credit balancing fund.**

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1007.44 by \$0.20 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits

disbursed during the prior June–January period, after adjusting the transportation credits disbursed during the prior June–January period to reflect any changes in the current mileage rate versus the mileage rate(s) in effect during the prior June–January period. In the event that during any month of the June–January period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90) the mileage rate pursuant to paragraph (a) of this section for the following month.

■ 7. Section 1007.82 is amended by revising paragraphs (d)(2)(ii) and (d)(3)(iv) to read as follows:

**§ 1007.82 Payments from the transportation credit balancing fund.**

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ii) Multiply the number of miles so determined by the mileage rate for the month computed pursuant to § 1007.83(a)(6).

\* \* \* \* \*

(3) \* \* \*

(iv) Multiply the remaining miles so computed by the mileage rate for the month computed pursuant to § 1007.83(a)(6).

\* \* \* \* \*

■ 8. Add a new § 1007.83 to read as follows:

**§ 1007.83 Mileage rate for the transportation credit balancing fund.**

(a) The market administrator shall compute the mileage rate each month as follows:

(1) Compute the simple average rounded down to three decimal places for the most recent 4 weeks of the Diesel Price per Gallon as reported by the Energy Information Administration of the United States Department of Energy for the Lower Atlantic and Gulf Coast Districts combined.

(2) From the result in paragraph (a)(1) in this section subtract \$1.42 per gallon;

(3) Divide the result in paragraph (a)(2) of this section by 5.5, and round down to three decimal places to compute the fuel cost adjustment factor;

(4) Add the result in paragraph (a)(3) of this section to \$1.91;

(5) Divide the result in paragraph (a)(4) of this section by 480;

(6) Round the result in paragraph (a)(5) of this section down to five decimal places to compute the MRF.

(b) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90) the mileage rate pursuant to paragraph (a) of this section for the following month.

Dated: October 19, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E6–17819 Filed 10–24–06; 8:45 am]

**BILLING CODE 3410–02–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2005–21779; Directorate Identifier 2002–NM–349–AD; Amendment 39–14790; AD 2006–21–06]**

**RIN 2120–AA64**

**Airworthiness Directives; McDonnell Douglas Model DC–9–10 Series Airplanes; DC–9–20 Series Airplanes; DC–9–30 Series Airplanes; DC–9–40 Series Airplanes; and DC–9–50 Series Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding an existing airworthiness directive (AD), which applies to certain McDonnell Douglas transport category airplanes. That AD currently requires, among other things, revision of an existing program of structural inspections. This new AD requires implementation of a program of structural inspections of baseline structure to detect and correct fatigue cracking in order to ensure the continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. This AD results from a significant number of these airplanes approaching or exceeding the design service goal on which the initial type certification approval was predicated. We are issuing this AD to detect and correct fatigue cracking that could compromise the structural integrity of these airplanes.

**DATES:** This AD becomes effective November 29, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 29, 2006.

The incorporation of a certain other publication, as listed in the regulations, was approved previously by the Director

of the Federal Register as of July 24, 1996 (61 FR 31009, June 19, 1996).

**ADDRESSES:** You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for service information identified in this AD.

**FOR FURTHER INFORMATION CONTACT:**

Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

**Examining the Docket**

You may examine the airworthiness directive (AD) docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

**Discussion**

The FAA issued a notice of supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 96–13–03, amendment 39–9671 (61 FR 31009, June 19, 1996). The existing AD applies to all McDonnell Douglas Model DC–9–10, –20, –30, –40, –50, and C–9 (military) series airplanes. (Since the issuance of that AD, the FAA has revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.) That supplemental NPRM was published in the **Federal Register** on March 7, 2006 (71 FR 11328). That supplemental NPRM proposed to require implementation of a program of structural inspections of baseline structure to detect and correct fatigue cracking in order to ensure the continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal.