

source milk allocated to Class I pursuant to § 1000.44(a)(3) and (8) and the corresponding steps of § 1000.44(b), except other source milk that is excluded from the computations pursuant to § 1007.60 (h) and (i); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to 1000.76 (a) (1) (i) and (ii)

**Proposed by the Florida Market Administrator**

*Proposal No. 6*

This proposal seeks to increase the maximum administrative assessment from the current 5 cents per cwt to a maximum of 8 cents per cwt for the Florida milk marketing order.

Revise § 1006.85 to read as follows:

**§ 1006.85 Assessment for order administration.**

On or before the payment receipt date specified under § 1006.71, each handler shall pay to the market administrator its pro rata share of the expense of administration of the order at a rate specified by the market administrator that is no more than 8 cents per hundredweight with respect to:

(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in § 1000.9 (c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1000.9 (c);

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1000.43 (d) and other source milk allocated to Class I pursuant to § 1000.44 (a) (3) and (8) and the corresponding steps of § 1000.44 (b), except other source milk that is excluded from the computations pursuant to § 1006.60 (h) and (i); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to 1000.76 (a) (1) (i) and (ii)

**Proposal by Dairy Programs, Agricultural Marketing Service**

*Proposal No. 7*

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of the aforesaid

marketing areas, or from the Hearing Clerk, United States Department of Agriculture, Room 1083—STOP 9200, 1400 Independence Avenue, SW., Washington, DC 20250-9200, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture  
Office of the Administrator, Agricultural Marketing Service  
Office of the General Counsel  
Dairy Programs, Agricultural Marketing Service (Washington office) and the Offices of all Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: May 3, 2007.

**Lloyd C. Day,**  
*Administrator, Agricultural Marketing Service.*

[FR Doc. E7-8802 Filed 5-7-07; 8:45 am]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 1210**

[Doc. No. AMS-FV-07-0038; FV-07-701]

**Watermelon Research and Promotion Plan; Assessment Increase**

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to amend the Watermelon Research and Promotion Plan (Plan) to increase the assessment rate on producers, handlers, and importers of watermelons from four cents to six cents per hundredweight. Domestic producers and handlers would pay three cents per hundredweight each and importers would pay six cents per hundredweight. The increase is provided for under the Plan which is authorized by the Watermelon Research

and Promotion Act (Act). The National Watermelon Promotion Board (Board), which administers the Plan, recommended this action to sustain and expand their promotional, research, and communications programs.

**DATES:** Comments must be received by July 9, 2007.

**ADDRESSES:** Interested persons are invited to submit written comments on the internet at: <http://www.regulations.gov> or to the Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), U.S. Department of Agriculture, Room 0634-S, Stop 0244, 1400 Independence Avenue, SW., Washington, DC 20250-0244; fax: (202) 205-2800. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours or can be viewed at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Jeanette Palmer, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 0634, Stop 0244, Washington, DC 20250-0244; telephone: (202) 720-9915; or fax: (202) 205-2800; or e-mail: [Jeanette.Palmer@usda.gov](mailto:Jeanette.Palmer@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under the Watermelon Research and Promotion Plan [7 CFR part 1210]. The Plan is authorized under the Watermelon Research and Promotion Act [7 U.S.C. 4901-4916].

**Executive Order 12866**

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is not intended to have retroactive effect and will not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

The Act allows producers, handlers, and importers subject to the Plan to file a written petition with the Secretary of Agriculture (Secretary) if they believe that the Plan, any provision of the Plan, or any obligation imposed in connection with the Plan, is not in accordance with the law. In any petition, the person may request a modification of the Plan or an exemption from the Plan. The petitioner will have the opportunity for a hearing on the petition. Afterwards, an

Administrative Law Judge (ALJ) will issue a decision. If the petitioner disagrees with the ALJ's ruling, the petitioner has 30 days to appeal to the Judicial Officer, who will issue a ruling on behalf of the Secretary. If the petitioner disagrees with the Secretary's ruling, the petitioner may file, within 20 days, an appeal in the U.S. District Court for the district where the petitioner resides or conducts business.

#### **Initial Regulatory Flexibility Act and Paperwork Reduction Act**

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agricultural Marketing Service (AMS) has considered the economic impact of this action on the small producers, handlers, and importers that would be affected by this rule. The purpose of the RFA is to fit regulatory action to scale on businesses subject to such action so that small businesses will not be disproportionately burdened.

The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms (handlers and importers) as those having annual receipts of no more than \$6.5 million. Under these definitions, the majority of the producers, handlers, and importers that would be affected by this rule would be considered small entities. Producers of less than 10 acres of watermelons are exempt from this program. Importers of less than 150,000 pounds of watermelons per year are also exempt.

According to the National Watermelon Promotion Board (Board), there are approximately 1,301 producers, 442 first handlers, and 346 importers who are subject to the provisions of the Plan.

Under the current Plan, domestic producers of 10 acres or more and handlers of watermelon each pay a mandatory assessment rate of two cents per hundredweight, and importers of more than 150,000 pounds of watermelon per year pay an assessment of four cents per hundredweight. Assessments under the program are used by the Board to finance promotion, research, and educational programs designed to increase consumer demand for watermelons in the United States and international markets. The assessments at the current four cents per hundredweight generate about \$1.5 million in annual revenues. The two cents per hundredweight assessment rate each for domestic watermelon producer and handler was established in April 1990. The four cents per hundredweight assessment rate on

imported watermelons became effective when the Plan was amended in February 1995 to authorize the collection of assessments on importers. The Plan is administered by the Board under U.S. Department of Agriculture supervision.

According to the Board, additional revenue is required in order to sustain and expand the promotional, research, and communications programs. The Board approved the proposed assessment rate increase at its February 24, 2007, meeting. This proposed increase is consistent with section 1647(f) of the Act that permits changes in the assessment rate through notice and comment procedures. Section 1210.341(b) of the Plan states that assessment rates shall be fixed by the Secretary in accordance with section 1647(f) of the Act. Section 1210.515(a) of the Plan states that an assessment of two cents per hundredweight shall be levied on all watermelons produced and on all watermelons first handled for consumption as human food. It also states that an assessment of four cents per hundredweight shall be levied on watermelons imported into the U.S. for consumption as human food. Further, not more than one assessment may be collected on any lot of watermelons.

The Board conducted an inflation analysis based on the current assessment rate of four cents per hundredweight starting from 1995. The analysis results show that, adjusted for inflation, the 1995 four cents per hundredweight total assessment is equivalent to three cents per hundredweight for the current program year. On an inflation adjusted basis, using 1995 as the base year, the watermelon industry's program to support research and promotion activities has lost 25 percent of its effective buying power. This erosion in buying power has had a significant impact on the industry's ability to compete for market share. The cost of media services, research programs, promotional opportunities, as well as general administrative costs and fees paid to USDA have continually risen. Assessments collected have not kept pace with these increasing costs. Movement and sales of watermelon continue to grow, however, that growth has not outpaced the negative effects of inflation.

With the proposed increased assessment, the financial commitment of the U.S. watermelon industry for generic research and promotion activity would increase 50 percent in current dollars. For example, if we apply the proposed assessment increase to the

2005–2006 crop year, in which collections totaled \$1,583,983 on 3,959,957,500 pounds of watermelons, the increase in assessments collected would have been approximately \$791,991. The Board plans to use the additional funds to expand promotional activities, and to increase the Board's reserve fund over a two-year period to provide for adequate cash flow. By changing the assessment rate to six cents per hundredweight, the Board stated that it would maintain its research and promotional activities, expand its programs, and sustain marketing activities in the future with rising cost expenditures.

The Board estimates the two cents per hundredweight increase in assessments would increase the cost to watermelon producers from \$16.00 per truckload of watermelons to \$24.00 per truckload of watermelons. At Freight on Board (FOB) prices of about \$0.14 per pound of watermelons, this amounts to a total assessment of 0.00429 percent of the value of a truck load of watermelons. This is based on a 40,000 pound net weight of watermelons per truck load.

The Board considered three alternatives prior to the recommendation to increase the assessment rate. First, the Board performed several cost saving measures as an alternative to increasing the assessment rate which included moving to less expensive offices, changes in the staff health insurance program, change in independent auditors, and the elimination of one professional staff position. The results of the savings were over \$120,000 which equals approximately 10 percent of the Board's domestic revenue for the 2005–2006 crop year.

The second alternative considered by the Board was a prior attempt to increase additional revenue by expanding the handler base for watermelons. A referendum was conducted by AMS between December 2001 and January 2002. The proposed amendment to the Plan requested the watermelon industry to expand the program to cover all handlers of watermelons which would have included wholesalers, persons who arrange the sale or transfer of watermelon (such as brokers) and fresh cut processors. The amendment was not approved in referendum. Therefore, the Plan continues to cover domestic producers of 10 acres or more, first handlers, and importers of 150,000 pounds of watermelon annually.

The final alternative considered by the Board was the current assessment rate proposal. The Board discussed increasing the assessment rate by one

cent per hundredweight for each producer of 10 acres or more, handler, and importer of 150,000 pounds of watermelon annually. The one cent proposed increase was rejected by the Board on the basis that an increase of this size would only return the program to the 1995 adjusted funding level. In order to sustain and expand the promotional, research, and communication programs, the Board decided to propose an increase assessment rate of two cents per hundredweight for a total assessment rate of six cents per hundredweight (three cents per hundredweight paid by producers, three cents per hundredweight paid by handlers, and six cents per hundredweight paid by importers of watermelons).

This rule does not impose additional recordkeeping requirements on first handlers, producers, or importers of watermelons. Producers of fewer than 10 acres of watermelon and importers of less than 150,000 pounds of watermelon annually are exempt.

There are no Federal rules that duplicate, overlap, or conflict with this rule.

In accordance with the Office of Management and Budget (OMB) regulation 5 CFR part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that are imposed by the Plan have been approved previously under OMB control number 0581-0093. This rule does not result in a change to the information collection and recordkeeping requirements previously approved.

We have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed amendment to the Plan on small entities, and we invite comments concerning potential effects of this amendment on small businesses.

### Background

Under the Plan, the Board administers a nationally coordinated program of research, development, advertising, and promotion designed to strengthen the position of watermelons in the marketplace, and to establish, maintain, and expand markets for watermelons. This program is financed by assessments on producers growing 10 acres or more of watermelons, handlers of watermelons, and importers of 150,000 or more pounds of watermelons per year. The Plan specifies that handlers are responsible for collecting and submitting both the producer and handler assessments to the Board,

reporting their handling of watermelons, and maintaining records necessary to verify their reporting(s). Importers are responsible for payment of assessments to the Board on watermelons imported into the United States through the U.S. Customs Service and Border Protection.

This rule proposes to increase the assessment rate by one cent per hundredweight for producers and handlers each, and by two cents per hundredweight for importers. Currently, the assessment rate is two cents per hundredweight levied on watermelons produced and two cents per hundredweight on watermelons handled within the 50 States of the United States and four cents per hundredweight on imports of watermelon. In order to sustain and expand the promotion, research, and communications programs at present levels, the Board contends that additional revenue is required. The proposed two cents per hundredweight assessment rate increase is estimated to generate \$750,000–\$800,000 in new revenue, depending upon production levels. For the 2005–2006 crop year, total production was 3,959,957,500 pounds of watermelons resulting in \$1,583,983 in assessment collections. Based on assessments collected for that crop year, about 75 percent of this production total was from domestic assessments, with the remainder from imports. The Board states that the proposed assessment rate increase, would enable it to expand media services, educational programs, research programs, and establish, maintain, and expand domestic and foreign markets for watermelons. Some of the additional revenue, the Board states, would be used to increase the reserve fund over a two-year period to provide for adequate cash flow. Also, it is estimated that the Board will receive \$2.3 million in total assessments with a six cents per hundredweight assessment rate on watermelons.

In addition, the Board, whose members represent all watermelon producing states as well as importers, voted to propose the assessment rate increase at its February 24, 2007, meeting which was open to the public like all other meetings. The vote to recommend the assessment increase was 22 in favor and 1 against of the Board members present at the meeting. In the case of the one dissenting vote, the producer member stated that he opposed the two cents per hundredweight increase; however, he would support an increase of one cent per hundredweight. The proposed assessment rate of one cent per hundredweight was rejected by the

Board on the basis that such an increase would only return the program to its 1995 inflation adjusted funding level. According to the Board, the one cent per hundredweight would not allow the program to expand its activities.

This rule would amend the rules and regulations issued under the Plan. This rule would increase the assessment rate by two cents per hundredweight. The rate would increase from four cents to six cents per hundredweight. Producers of 10 acres or more and handlers of watermelons will each pay three cents per hundredweight and importers of 150,000 pounds or more of watermelons annually will pay six cents per hundredweight. This proposed increase is consistent with section 1647(f) of the Act that permits changes in the assessment rate through notice and comment procedures. Section 1210.341(b) of the Plan states that assessment rates shall be fixed by the Secretary in accordance with section 1647(f) of the Act. Further, not more than one assessment on a producer, handler, or importer may be collected on any lot of watermelons. The Board is recommending the proposed assessment rate increase based on continued inflation and rising cost expenditures since the current assessment rate places budget constraints on promotional, research, and communications programs and would result in reducing the programs in the future. Accordingly, section 1210.515(a) of the Plan would be revised.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this rule by the date specified would be considered prior to finalizing this action.

### List of Subjects in 7 CFR Part 1210

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Reporting and recordkeeping requirements, Watermelon promotion.

For the reasons set forth in the preamble, Part 1210, Chapter XI of Title 7 is proposed to be amended as follows:

### PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

1. The authority citation for 7 CFR part 1210 continues to read as follows:

**Authority:** 7 U.S.C. 4901–4916.

2. Section 1210.515 (a) is revised to read as follows:

#### § 1210.515 Levy of assessments.

(a) An assessment of three cents per hundredweight shall be levied on all watermelons produced for ultimate

consumption as human food, and an assessment of three cents per hundredweight shall be levied on all watermelons first handled for ultimate consumption as human food. An assessment of six cents per hundredweight shall be levied on all watermelons imported into the United States for ultimate consumption as human food at the time of entry in the United States.

\* \* \* \* \*

Dated: May 2, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E7-8726 Filed 5-7-07; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-28094; Directorate Identifier 2006-NM-258-AD]

RIN 2120-AA64

#### **Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 Airplanes and Model ERJ 190 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 EMBRAER Model ERJ 170-100 LR, -100 STD, -100 SE, and -100 SU airplanes. The existing AD currently requires repetitively replacing the low-stage check valve and associated seals of the right-hand engine bleed system. This proposed AD adds new airplanes to that existing requirement. For all airplanes, this proposed AD would also require repetitively replacing the low-stage check valve and associated seals of the left-hand engine bleed system with a new check valve and new seals. This proposed AD results from a report that an engine shut down during flight due to the failure of the low-stage check valve to close. We are proposing this AD to prevent failure of the low-stage check valve, which could result in an engine shutting down during flight.

**DATES:** We must receive comments on this proposed AD by June 7, 2007.

**ADDRESSES:** Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590.

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

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this proposed AD.

#### **FOR FURTHER INFORMATION CONTACT:**

Todd Thompson, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1175; fax (425) 227-1149.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number “Docket No. FAA-2007-28094; Directorate Identifier 2006-NM-258-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://dms.dot.gov>.

#### **Examining the Docket**

You may examine the 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 DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

#### **Discussion**

On November 2, 2005, we issued AD 2005-23-14, amendment 39-14372 (70 FR 69075, November 14, 2005), for all EMBRAER Model ERJ 170-100 LR, -100 STD, -100 SE, and -100 SU airplanes. That AD requires repetitive replacement of the low-stage check valve and associated seals of the right-hand (RH) engine bleed system. That AD resulted from a report that an engine shut down during flight due to the failure of the low-stage check valve to close. We issued that AD to prevent failure of the low-stage check valve, which could result in an engine shutting down during flight.

#### **Actions Since Existing AD Was Issued**

When we issued AD 2005-23-14, we stated that the unsafe condition could occur on both the left-hand (LH) and RH engines and that we had determined that requiring repetitive replacement on only the RH engine was sufficient, at that time, for reducing the risk of a dual-engine failure to an acceptable level. Also, when we issued AD 2005-23-14, there were insufficient low-stage check valves available to replace the valves of both the LH and RH engine bleed systems. We have now determined that there are sufficient low-stage check valves to support replacing the valves of both the LH and RH engine bleed systems. We have further determined that it is necessary to require repetitive replacement of the LH low-stage check valve to further reduce the possibility for the failure of the low-stage check valve of both engine bleed systems at the same time.

For Model ERJ 170-200 LR, -200 STD, and -200 SU airplanes, the requirement to repetitively replace the RH low-stage check valve is contained in the airworthiness limitations for these airplanes. Therefore, for Model ERJ 170-200 LR, -200 STD, and -200 SU airplanes, this proposed AD would only require repetitive replacement of the low-stage check valves of the LH engine bleed system.