

dairy farmers described in § 1033.12(b)) and handlers described in § 1000.9(c), as reported in § 1033.30(a), is not less than 40 percent of the milk received from dairy farmers, including milk diverted pursuant to § 1033.13, subject to the following conditions:

\* \* \* \* \*

(d) A plant located in the marketing area and operated by a cooperative association if, during the months of December through July 30 percent, during the month of August 35 percent and during the months of September through November 40 percent or more of the producer milk of members of the association is delivered to a distributing pool plant(s) or to a nonpool plant(s) and classified as Class I. Deliveries for qualification purposes may be made directly from the farm or by transfer from such association's plant, subject to the following conditions:

\* \* \* \* \*

(2) The 30 percent delivery requirement for the months of December through July may be met for the current month or it may be met on the basis of deliveries during the preceding 12-month period ending with the current month.

\* \* \* \* \*

(e) \* \* \*

(1) The aggregate monthly quantity supplied by all parties to such an agreement as a percentage of the producer milk receipts included in the unit during the months of August through November is not less than 45 percent and during the months of December through July is not less than 35 percent;

\* \* \* \* \*

■ 3. Section 1033.13 is amended by:

■ (a) Revising paragraph (d)(4).

■ (b) Adding paragraph (e).

The revisions read as follows:

**§ 1033.13 Producer milk.**

\* \* \* \* \*

(d) \* \* \*

(4) Of the total quantity of producer milk received during the month (including diversions but excluding the quantity of producer milk received from a handler described in § 1000.9(c) or which is diverted to another pool plant), the handler diverted to nonpool plants not more than 50 percent in each of the months of August through February and 60 percent in each of the months of March through July.

\* \* \* \* \*

(e) Producer milk shall not include milk of a producer that is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing plan

imposed under the authority of another government entity.

Dated: September 20, 2005.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

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## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1430

**RIN 0560-AH28**

#### 2004 Dairy Disaster Assistance Payment Program

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

**ACTION:** Final rule.

**SUMMARY:** This rule sets forth the regulations for the 2004 Dairy Disaster Assistance Payment Program. This program will assist dairy producers by providing payments to those who suffered dairy production and milk spoilage losses due to hurricanes in 2004.

**DATES:** This rule is effective on September 26, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Danielle Cooke, Price Support Division, Farm Service Agency, United States Department of Agriculture, STOP 0512, 1400 Independence Avenue, SW., Washington, DC 20250-0512.

Telephone: (202) 720-1919; e-mail: [Danielle.Cooke@wdc.usda.gov](mailto:Danielle.Cooke@wdc.usda.gov).

**SUPPLEMENTARY INFORMATION:**

#### Discussion of Final Rule

This rule finalizes the proposed rule published in the **Federal Register** May 25, 2005 (70 FR 30009). The 30-day comment period for the proposed 2004 Dairy Disaster Assistance Payment Program (DDAP) rule closed on June 24, 2005. The proposed rule provided that the DDAP program would be based on hurricane related dairy production and dairy spoilage losses suffered during the months of August through October 2004 in counties declared a disaster by the President in 2004 due to hurricane. The program will end at the conclusion of the application period and disbursement of allotted funds. The DDAP program will operate under regulations codified in 7 CFR part 1430.

Among other provisions, the proposed rule provided that in cases where the producers had been paid for qualified dumped milk the producer would still qualify for payments related to that

milk. Also, the rule did not provide for adjustments in payments based on cow herd size. Rather, the rule provided for payments to be made based on changes in milk production from a set base amount. Also, among other provisions, the rule provided that in the case the limited program funds were not sufficient to pay all claims for lost production and for dumped milk, then priority would be given in making payments to those persons whose losses over the whole period were greater than 20 percent. It was provided additionally in the proposed rule that the prices at which payments would be made would be amounts set out in the rule which were derived from a series of reported "mailbox" prices. On these aspects and all others, comment was invited.

#### Comments and Changes to Final Rule

During the 30-day comment period the Agency received public comments from two U.S. Senators, ten U.S. congressmen, one dairy cooperative, one advocacy group and two private citizens. Some responses contained multiple comments.

Of the total comments received during the public comment period, two respondents opposed the program indicating that private insurance should adequately compensate dairy producers monetarily for losses rather than the taxpayers or Government. One of those respondents also believed that the assistance being provided by the Agency was duplicative to that of Federal Emergency Management Agency (FEMA) and that it was misleading for Congress to insert a statute for agriculture in a non-related military spending bill. No changes have been made in the rule based on these comments. The agency is charged with implementing statutory provisions as written and has done so in the final rule. It is not understood to be the case that the relief in the rule duplicates that provided elsewhere, but provision is made in the rule to address that possibility.

Public comments and suggestions were sought for paying milk marketing cooperatives directly for milk that was dumped. Several public comments were received in support of direct payment of DDAP benefits to a milk handler or dairy marketing cooperative rather than directly to the producer for spoiled milk that was dumped as a result of the hurricanes for which the dairy marketing cooperative or milk handler compensated the dairy producer. Respondents indicated that marketing cooperatives have adequate records to verify dumped production and confirm payment to producers made by the dairy

marketing cooperative or milk handler. Respondents also believed that the precedent of direct payments to marketing cooperatives has been established in past USDA programs. Also, one respondent suggested that producers would be compensated twice for the same loss if payment is made directly to a producer in a dairy operation for dumped milk that was paid for by the dairy marketing cooperative or milk handler. The Agency determined that no change was warranted. The statute provides for payments to producers. The proposed rule set out a fair plan for all losses and does not prohibit private readjustments.

Several comments were received from the public regarding payment rates being based on the average monthly "mailbox" milk price as provided by the applicable State Marketing Order as reported by the USDA, Agricultural Marketing Service (AMS) during the eligible months. The "mailbox" milk price, the pricing basis incorporated into the proposed rule, is defined by AMS as: "The net pay price received by dairy farmers for milk and includes all payments received for milk sold and all costs associated with marketing the milk. Price is a weighted average for the reporting area and is reported at the average butterfat test." The respondents suggested using, instead of the mailbox milk price, the Federal Milk Marketing Order blend prices during the eligible months. Respondents suggested that the Federal Milk Marketing Order blend prices are more accurate because they adjust for location differences and recognize the regional costs of production. The payment plan proposed provides fair compensation and sufficient differentiation. No change was found to be warranted.

Many respondents requested clarification regarding the limitation on multiple benefits that prohibit a producer from being compensated more than once for the same loss. Specifically, respondents wanted to ensure that benefits received from the Emergency Conservation Program (ECP) did not preclude a DDAP program applicant from receiving DDAP benefits. The Agency does not believe that this point requires a change in the rule, but notes that ECP benefits are understood to be different from those provided for in this program.

Comments were requested on the method of payment at two levels in the event of inadequate funds for all eligible losses and the appropriate loss level percentage. No comments on this issue were received and no change in that provision was needed.

One comment received requested expeditious implementation of the program. We have endeavored to provide for such implementation with a due concern for assuring a certain and efficient administration of the program benefits.

One respondent commented on the use of plain language and consistency throughout the proposed rule and provided editorial recommendations to improve the clarity of the rule and better comply with Executive Order requirements. The respondent's suggested recommendations are editorial and do not affect the substantive requirements of the proposed rule. Recommendations have been adopted where practical and incorporated throughout. Clarifications have been made where needed.

Most of the comments received indicated that the loss calculation was not equitable to dairy operations that added cows to the milking herd to offset production losses during the eligible months following the 2004 hurricanes. These respondents were in support of an adjustment to the loss calculation that is reflective of cows added to the milking herd to compensate for loss production as a result of the hurricanes. After careful consideration of the recommendations proposed by the respondents, the Agency will provide a production credit to the dairy operation's calculated losses for the addition of cows to the milking herd as a result of the hurricanes, provided adequate proof of purchase containing the date of purchase and number of head purchased is provided to CCC to substantiate the dairy operations claim of dairy cow purchases during the eligible months. In addition, dairy operations must report any decreases to the milking herd as a result of sale or death. The production credit will be calculated using the July 2004 per-cow production average and based on dairy cow increases or decreases to the milking herd and the corresponding days of ownership during each eligible month.

#### **Executive Order 12866**

This rule has been determined to be not significant under Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

#### **Regulatory Flexibility Act**

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

#### **Environmental Assessment**

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

#### **Executive Order 12988**

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

#### **Executive Order 12372**

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

#### **Unfunded Mandates**

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

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

In accordance with the Paperwork Reduction Act of 1995, the Office of Management and Budget (OMB) has approved the information collection required to support this program and assigned it OMB control number 0560. Copies of the information collection may be obtained from Danielle Cooke, phone: (202) 720-1919; e-mail: [Danielle.Cooke@wdc.usda.gov](mailto:Danielle.Cooke@wdc.usda.gov).

## Government Paperwork Elimination Act

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

### List of Subjects in 7 CFR Part 1430

Dairy, Disaster assistance, Reporting and recordkeeping requirements.

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

### PART 1430—DAIRY PRODUCTS

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

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

■ 2. Add Subpart C to read as follows:

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

Sec.

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

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

##### § 1430.300 Applicability.

(a) Subject to the availability of funds, this subpart sets forth the terms and conditions applicable to the 2004 Dairy Disaster Assistance Payment Program authorized by section 103 of Division B of Public Law 108–324. Benefits are

available to eligible United States producers who have suffered dairy production losses and dairy spoilage losses in eligible counties as a result of a hurricane disaster in 2004.

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

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

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

##### § 1430.301 Administration.

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

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

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

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

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

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

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

(f) Data furnished by the applicants is used to determine eligibility for program benefits. Although participation in the 2004 Dairy Disaster Assistance Payment Program is voluntary, program benefits are not to be provided unless the participant furnishes all requested data.

##### § 1430.302 Definitions.

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

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

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

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

*County committee* means the FSA county committee.

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

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

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

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

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

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

*Hundredweight or cwt.* means 100 pounds.

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

*Milk marketings* means a marketing of milk for which there is a verifiable sales or delivery record of milk marketed for commercial use. In counting milk toward production amounts, dumped

milk will not be considered as marketed for commercial use. Such dumped milk shall be counted toward production but will be accounted for separately from milk that is marketed for normal commercial use as determined by the Deputy Administrator. All production in the months for which loss coverage is available will be counted in making determinations under this part, as determined by the Deputy Administrator, with care to avoid double counting, and with care to avoid a calculated loss that overstates the actual losses.

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

*Producer* means any individual, group of individuals, partnership, corporation, estate, trust association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen of, or legal resident alien in the United States, and who directly or indirectly, as determined by the Secretary, shares in the risk of producing milk, and makes contributions (including land, labor, management, equipment, or capital) to the dairy farming operation of the individual or entity of the proceeds of this operation.

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

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

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

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

(b) A request for benefits under this subpart must be submitted on a completed Application as defined in § 1430.302. Applications and any other supporting documentation shall be submitted to the FSA county office serving the county where the dairy operation is located but, in any case, must be received by the FSA county office by the close of business on the date established by the Deputy Administrator. The closing date shall be no sooner than October 11, 2005. 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 is considered complete.

(d) Each dairy producer requesting benefits under this subpart must certify to the accuracy and truthfulness of the information provided in their application and any supporting documentation. All information provided is subject to verification by CCC. Refusal to allow CCC or any other agency of the Department of Agriculture to verify any information provided will result in a denial of eligibility.

Furnishing the information is voluntary; however, without it program benefits will not be approved. Providing a false certification to the Government may be punishable by imprisonment, fines and other penalties or sanctions.

#### **§ 1430.304 Eligibility.**

(a) Producers in the United States are eligible to receive hurricane-related dairy disaster benefits under this part only if they have suffered dairy production or dairy spoilage losses in counties declared a disaster by the President due to any hurricane in 2004. To be eligible to receive payments under this subpart, producers in a dairy operation must:

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

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

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

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

(b) Payments may be made for losses suffered by an otherwise eligible producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer or the producer's estate signs the application for payment. Proof of authority to sign

for the deceased producer's estate or a dissolved entity must be provided. If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly-authorized representatives must sign the application for payment.

(c) Producers associated with a dairy operation must submit a timely application and comply with terms and conditions of this subpart, instructions issued by CCC and instructions contained in the Application to be eligible for benefits under this subpart.

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

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

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

#### **§ 1430.305 Proof of production.**

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

(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 dumped production and dairy cow purchases, for each month of the period July 2004 through October 2004, and must specifically identify any dumped production for August through October 2004. If a month other than July 2004 is used for base creation purposes records for that month must be provided.

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

(2) Additional supporting documentation may be requested by FSA as necessary to verify production or spoilage losses and dairy herd increases or decreases 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 or spoilage losses, or any other documents available to confirm the production history and losses incurred by the dairy operation.

(d) Adequate proof of dairy cow additions to the milking herd during the eligible months can include, but are not limited to sales receipts, invoices, State health certificates, or any other documents available to confirm the cow purchases.

(e) All information provided to FSA by a producer is subject to verification, spot-check and audit by FSA. Also, FSA or another CCC representative may examine the dairy operation's production or spoilage claims.

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

#### **§ 1430.306 Determination of losses incurred.**

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

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

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

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

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

(1) The new base production for the dairy operation calculated under paragraph (a) of this section less,

(2) For each such month for each dairy operation, the total of:

(i) Actual commercially-marketed production (not counting dumped production counted under paragraph (b)(1)(ii) of this section); plus

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

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

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

(e) Calculated production losses may be adjusted by FSA based on the monthly average of daily dairy cow additions or reductions to the milking herd during the period of July 1, 2004 through October 31, 2004, to account for production adjustments as a result of dairy cow purchases, sales, or death losses. Production adjustments can be calculated using the average number of dairy cows in a dairy operation's milking herd and the average production per cow during each applicable month. Per-cow production

averages during the months of August through October will be determined based on the actual per-cow production average during the month of July 2004 and reduced downward according to the seasonal decline percentages provided in paragraph (a) of this section, to determine the total production that may be credited back to the dairy operation's total production losses. To qualify for the production adjustment:

(1) Producers in eligible dairy operations must report any increases or decreases to the dairy cow milking herd during the period of July 1, 2004 through October 31, 2004.

(2) Adequate supporting documentation according to § 1430.305 must be provided to the satisfaction of the COC to verify any claims of herd increases or decreases during the eligible period.

(3) Any cows purchased during the eligible period that would increase the dairy cow milking herd must have been to offset production losses as a result of the 2004 hurricanes.

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

(g) Payment on eligible dairy operation losses is 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 § 1420.307(b). Payments under this part will not be affected by any payments for dumped or spoiled milk that the dairy operation may have received from its milk handler, or marketing cooperative, or any other private party.

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

office from which the payment was received.

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

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

(1) Florida—\$17.62 per hundredweight (\$0.1762 per pound).

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

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

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

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

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

**§ 1430.308 Availability of funds.**

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

**§ 1430.309 Appeals.**

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

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

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

(1) Adopted any scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

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

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

In the case of death, incompetency, disappearance, or dissolution of a person that is eligible to receive benefits in accordance with this subpart, such

alternate person or persons specified in 7 CFR part 707 may receive such benefits, as determined appropriate by FSA.

**§ 1430.312 Maintaining records.**

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

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

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

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

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

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

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

**§ 1430.314 Miscellaneous provisions.**

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

(b) *Claims.* Claims or debts are settled in accordance with 7 CFR part 1403.

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

instrumentalities of the U.S. Government.

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

#### **§ 1430.315 Termination of program.**

This program ends after payment has been made to those applicants certified as eligible pursuant to the application period established in § 1430.304. All eligibility determinations shall be final except as otherwise determined by the Deputy Administrator.

Signed at Washington, DC, on September 13, 2005.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 05–19127 Filed 9–23–05; 8:45 am]

BILLING CODE 3410–05–P

## **DEPARTMENT OF THE INTERIOR**

### **Minerals Management Service**

#### **30 CFR Parts 250 and 256**

RIN 1010–AD16

#### **Oil, Gas, and Sulphur Operations and Leasing in the Outer Continental Shelf (OCS)—Cost Recovery**

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** MMS is delaying until January 1, 2006, the effective date of a rule that will implement fees to offset MMS's costs of providing certain services related to its mineral programs. This delay is necessary because of damage caused in the New Orleans area by Hurricane Katrina and subsequent flooding. The delay will provide relief to the government and the oil and gas industry as they recover from this disaster.

**DATES:** The effective date of the rule amending 30 CFR Parts 250 and 256 published at 70 FR 49871, August 25, 2005 is delayed until January 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Angela Mazzullo, Offshore Minerals Management (OMM) Budget Office at (703) 787–1691.

**SUPPLEMENTARY INFORMATION:** The rule published August 25, 2005, requires MMS to develop additional procedures that MMS will provide to the oil and gas industry in the form of a Notice to Lessees. The primary office responsible for developing those procedures, the MMS Gulf of Mexico Regional Office in

New Orleans, Louisiana, has been closed since Hurricane Katrina and the flooding that followed that disaster. Moreover, many of the lessees and operators subject to the rule are similarly engaged in the restoration of normal operations following Hurricane Katrina. Lessees and operators will be making changes in their own procedures to comply with the rule. Lessees and operators whose operations have been interrupted as a result of the hurricane may not be able to make these changes until normal operations resume. Accordingly, the Department of the Interior is postponing the effective date of the final rule until January 1, 2006.

Dated: September 20, 2005.

**Rebecca W. Watson,**

*Assistant Secretary—Land and Minerals Management.*

[FR Doc. 05–19223 Filed 9–23–05; 8:45 am]

BILLING CODE 4310–MR–P

## **DEPARTMENT OF COMMERCE**

### **Patent and Trademark Office**

#### **37 CFR Parts 1, 2, 3, 5, and 10**

[Docket No.: 2005–P–053]

RIN 0651–AB85

#### **Provisions for Claiming the Benefit of a Provisional Application With a Non-English Specification and Other Miscellaneous Matters**

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (Office) is amending the rules of practice to require that: A copy of the English translation of a foreign-language provisional application be filed in the provisional application if a nonprovisional application claims the benefit of the provisional application; a copy of documentary evidence supporting a claim of ownership be recorded in the Office's assignment records when an assignee takes action in a patent matter; and separate copies of a document be submitted to the Office for recording in the Office's assignment records, each accompanied by a cover sheet, if the document to be recorded includes an interest in, or a transaction involving, both patents and trademarks.

**DATES:** Effective November 25, 2005.

**Applicability Date:** The changes apply to any paper, application or reexamination proceeding filed in the Office on or after November 25, 2005. Further, if a nonprovisional patent

application claims the benefit of the filing date of a non-English provisional application, a translation of the provisional application and a statement that the translation was accurate required by 37 CFR 1.78(a)(5)(iv) will not be required to be filed in the provisional application, if the translation and statement were filed in the nonprovisional application before November 25, 2005.

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

Karin Ferriter (571–272–7744), Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, or Robert J. Spar (571–272–7700), Director of the Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, directly by phone, or by facsimile to 571–273–7744, or by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450.

**SUPPLEMENTARY INFORMATION:** This final rule revises the rules of practice in title 37 of the Code of Federal Regulations (CFR) pertaining to records related to signature, availability of patent application files, power of attorney, provisional applications, and assignments.

#### **Discussion of Specific Rules**

**Section 1.4:** Section 1.4(d)(2) is amended to delete “with a signature in permanent dark ink or its equivalent,” because dark ink applies to handwritten signatures, not S-signatures. Section 1.4(d)(2)(ii) is amended to move the word “only” in the second sentence thereof from immediately preceding the word “be” to immediately following the word “used” and to change “registered practitioner” to “patent practitioner” (§ 1.32(a)(1)). The term “patent practitioner” is defined in § 1.32(a).

**Section 1.11:** Section 1.11(a) is amended for clarity and to reflect the policy regarding availability to the public of papers in the files of applications that have been published. For example, § 1.11(a) is amended to remove “abandoned” before “published application.” Published applications are not physically available to the public to copy and inspect if the file is maintained in a paper file wrapper. If a published application is not maintained in paper, but is instead maintained in the image file wrapper (IFW) system, the application is made available for public inspection through the Patent Application Information Retrieval (PAIR) system pursuant to § 1.14(a)(1)(iii) and 1.14(b). Since most