Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 760

Dairy Indemnity Payment Programs

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend the Dairy Indemnity Payment Program Regulations to extend the time period for conducting the program through September 30, 1982, as authorized by section 105 of the Agriculture and Food Act of 1981.

EFFECTIVE DATE: June 8, 1982.

ADDRESSES: Emergency Operations and Livestock Programs Division, ASCS, USDA, Room 4095 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Gerald Schiermeyer (ASCS), telephone 202-447-7674. A Final Regulatory Impact Statement is available from the above-named individual.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum 1512-1 and has been classified as "not major." This rule has been classified as "not major" since it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this rule applies are: Title—Dairy Indemnity Payments, Number—10.053 as found in the catalog of Federal Domestic Assistance Programs.

This action will not have a significant impact, specifically on area and community development. Therefore, review as established by OMB Circular A-95 was not used to assure that units of local government are informed of this action.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation is not required to publish a notice of proposed rulemaking pursuant to 5 U.S.C. 553 or any other provision of law with respect to the subject matter of this rule.

The Food and Agriculture Act of 1981 (Pub. L. 97-98, 95 Stat. 1220, approved December 22, 1981) made no substantive changes with respect to the dairy indemnity program but merely extends the time period for conducting the program. The purpose of this rule is to make conforming changes in the regulations which are found at 7 CFR Part 760 to authorize the program to be conducted through September 30, 1982, and to make minor technical changes in the wording. In addition, section 760.32, Instructions and Forms, is being amended to indicate that certain indemnity payment forms previously listed in the regulations have been consolidated into one form.

Since this regulation makes only technical, conforming changes in the regulations, it has been determined that no further public rulemaking is required. Therefore, this regulation shall become effective upon date of publication in the **Federal Register.**

List of Subjects in 7 CFR Part 760

Bees, Dairy products, Honey, Indemnity payments, Pesticides and pests.

PART 760—INDEMNITY PAYMENT PROGRAMS

Final Rule

Accordingly, the regulations at 7 CFR Part 760 are amended as follows:

§ 760.2 [Amended]

1. In § 760.2, paragraphs (k) (1) and (2), (l), and (o) are amended by striking out "1981" and inserting in lieu thereof "1982".

§§ 760.3, 760.7, 760.20, 760.23 [Amended]

2. Sections 760.3 and 760.20 and the introductory paragraphs of §§ 760.7 and 760.23 are being amended by striking out the word "will" and inserting in lieu thereof the word "may".

§ 760.8 [Amended]

3. Section 760.8 is amended by striking out "1981" and inserting in lieu thereof "1982".

§ 760.29 [Amended]

4. Section 760.29 is amended by striking out in the first sentence the words "is entitled to" and inserting in lieu thereof the words "would otherwise receive".

§ 760.32 [Amended]

5. Section 760.32 is amended by striking out the last sentence thereof and inserting in lieu thereof the following sentence: "Form ASCS-373—Application for Indemnity Payment, is available at the county ASC office."

Note.—The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

(Secs. 1, 2, 3, Pub. L. 90-484, 82 Stat. 750, as amended (7 U.S.C. 450 j, k, l))

Signed at Washington, DC., on June 2, 1982.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 82-15448 Filed 6-7-82; 8:45 am]
BILLING CODE 3410-05-M

CIVIL AERONAUTICS BOARD

14 CFR Part 250

Oversales; Temporary Waiver of Rule

AGENCY: Civil Aeronautics Board.

ACTION: Temporary waiver of rule.

SUMMARY: The CAB is extending the waiver granted to all air carriers from complying with certain requirements of its denied boarding compensation rules to September 1, 1982. Air carriers are relieved of the duty to pay double compensation to passengers with

confirmed reservations that are denied boarding involuntarily and who cannot be accommodated on alternative transportation within 2 hours for domestic air travel, or within 4 hours for foreign air travel. This action is taken because of the continuing disruptions resulting from the air controller situation. This waiver was initially granted in August, 1981, and has been extended several times.

DATE: Adopted: May 28, 1982.

EFFECTIVE DATE: Waiver extended through September 1, 1982.

FOR FURTHER INFORMATION CONTACT: Ava Kleinman, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW, Washington, D.C. 20428, 202-673-5345; or Joanne Petrie, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW, Washington, D.C. 20428, 202-673-5442.

SUPPLEMENTARY INFORMATION:

Emergency Air Transportation Requirements; Docket 39722

Order Extending Exemption Authority

By Order 82-3-4, March 1, 1982, we extended our award of exemption authority to all U.S. and foreign air carriers from the provisions of Part 250 of our Economic Regulations to the extent that they would require more than 100 percent compensation if the airline cannot arrange "alternate transportation" as defined in that Part. Our award of this (and other) authority was intended to relieve carriers of certain regulatory requirements during the period of service cutbacks resulting from the job action by the Professional Air Traffic Controllers Organization (PATCO).[1] We extended our exemption from the denied boarding rules because of our concern "that capacity is still significantly curtailed and that neither the airlines nor the public respond as they would in an environment of complete scheduling freedom."[2] By the terms of Order 82-3-4, this exemption remains in effect through June 1, 1982.

On April 30, 1982, the Air Transport Association (ATA) filed an application for an extension of the denied boarding compensation exemption for the duration of the Federal Aviation Administration's Interim Operations Plan.[3] In support of its request, the ATA states that its member airlines continue to experience problems caused by the reduction in the number of airline movements and the limits on aircraft operations during peak periods which render historic no-show data less useful. In addition, the ATA claims that efforts to operate more efficiently, such as slot exchanges, inhibit their ability to predict no-shows. The ATA urges us not to reimpose what it regards as a punitive aspect of the double compensation rule. Finally, the ATA states that the poor financial condition of the airline industry justifies a further extension of the exemption.

On May 12, 1982, Aviation Consumer Action Project (ACAP), filed an answer in opposition to the ATA's request.[4] ACAP states that the ATA failed to support its position with evidence, and that we should require the submission of such evidence before considering the request. In addition, ACAP disputes the ATA's classification of the double-compensation aspect of the rule as a punitive element, but rather regards it as the Board's estimation of a fair level of compensation. Therefore, according to ACAP, the 200 percent compensation level should be restored to permit passengers to be fairly compensated for their inconvenience.

ACAP asks us not to consider the financial condition of the airlines as a reason for extending the denied boarding compensation exemption, since such reasoning would "place a greater value on airline profits than on the rights of passengers."

ACAP also objects to the use of our exemption authority rather than rulemaking procedures to remedy a situation which is no longer an emergency.

Finally, ACAP urges us to limit any extension of exemption authority to those routes where the airlines can prove that the accuracy of predicting no-shows has decreased since the PATCO walkout.

We received a reply to ACAP's answer from the ATA. It objects to ACAP's motion for leave to file late because there is no showing of excusable neglect. In addition, the ATA criticizes ACAP's response as "unfocused and unconvincing" and asserts its position that the relief it requests is consistent with the public interest.

The ATA also states that the proper procedure to grant the requested relief is through our exemption powers and not through rulemaking, and cites our pending rulemaking[5] on the future of the overbooking rule as the proper forum to consider long-term policy.

The ATA further argues that the suspension of operations of Braniff International and the FAA's permission to freely transfer slots "further erodes the data bases and analyses upon which [carriers] make their overbooking decisions."

Finally, the ATA urges us to reach a decision as soon as possible.

We have carefully considered the ATA's request and the subsequent pleadings, and have decided to extend our award of exemption authority for all U.S. and foreign carriers until September 1, 1982.[6] Although the air traffic control system is increasing its capacity, we remain convinced that flight reductions and limits on peak-hour operations continue to prevent the carriers from adequately assessing and controlling the problems of overbooking and no-shows. Therefore, we find that it is in the public interest to continue the limited exemption.

We do not agree with the ATA, however, that the availability of Braniff's slots, slot exchanges and other efforts to operate more efficiently should cause us to extend our exemption award. In an environment of complete scheduling flexibility, carriers must rely on their own resources to predict the no-show rate in newly-entered or expanded markets. We are not sympathetic to the ATA's plea of ignorance of market behavior here where the carriers are afforded limited flexibility to rearrange their flight schedules.[7]

We agree with ACAP that the airlines should begin to predict with some degree of certainty the number of no-shows for each flight. We expect the ATA, in any future extension request, to support its request with evidence indicating the carriers' inability to perform an analysis of the no-show rate.

Finally, we have chosen to deal with the ATA's requests for relief from the problems created by the PATCO job action by exemption rather than by rulemaking because the situation precipitating our action is a short- rather

[1] *See also* Order 81-11-57, November 10, 1981; 81-9-168, September 30, 1981; 81-9-20, September 3, 1981; 81-8-86, August 13, 1981; 81-8-22, August 6, 1981; 81-7-158, July 30, 1981; and 81-6-148, June 19, 1981.

[2] Order 82-3-4 at 2.

[3] 47 FR 7816 (February 18, 1982).

[4] ACAP's answer was accompanied by a motion for leave to file late.

[5] EDR-436, 46 FR 62285, December 31, 1981.

[6] We will grant ACAP's motion for leave to file late.

[7] We also disagree with the ATA's premise that we should continue the exemption authority because of the poor financial condition of the airline industry. Our award of exemption authority is based solely on the carriers' inability to predict no-shows during a period of reduced capacity. It was not intended to relieve carriers from any financial burdens, but rather to permit them to operate more efficiently. Nor was it intended to focus on or remove the "punitive" aspect of the overbooking rules.

than long-term problem. We normally do not grant emergency relief through rulemaking procedures. As the ATA points out, we have a rulemaking proceeding in progress which addresses the future of the overbooking rules,[8] and will consider the long-term solutions to the overbooking problem in the context of that proceeding.

List of Subjects in 14 CFR Part 250

Air carriers, Consumer protection, Denied boarding compensation, Reporting and recordkeeping requirements.

PART 250—OVERSALES

Accordingly,

1. We grant the request of the ATA in Docket 39722;

2. We extend our exemption award in ordering paragraph 2 of Order 81-11-57 which exempts all U.S. and foreign air carriers from the provisions of Part 250 of our Economic Regulations to the extent that they would require more than 100 percent compensation if the airline cannot arrange "alternate transportation" as defined in that Part; this authority shall remain in effect through September 1, 1982;

3. We grant the request of ACAP to file late in Docket 39722; and

4. We will serve a copy of this order on all U.S. certificated and foreign carriers, the Department of Justice, the Department of Transportation, the Federal Emergency Management Agency, the Federal Aviation Administration, the Postmaster General, the Department of Defense, Aviation Consumer Action Project, and the Air Transport Association of America.

We will publish a copy of this order in the **Federal Register.**

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-15457 Filed 6-7-82; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 1, 3 and 375

[Docket No. RM81-40-000; Order No. 233]

Fees Relating to Freedom of Information Act Requests

Correction

In FR Doc. 82-14377 appearing at page 23148 in the issue for Thursday, May 27, 1982, please make the following correction:

On page 23149, in the middle column, under the heading "III. Effective Date", in the first line, the date "June 25, 1982" should have been "June 28, 1982".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 80

[Docket No. 81N-0355]

Color Additive Certification

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations by increasing the fees for certification services. The increases are needed to maintain an adequate color certification program, as required by the Federal Food, Drug, and Cosmetic Act (the act).

DATES: Effective August 9, 1982; comments by July 8, 1982.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Dave Petak, Accounting Branch (HFA-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1768.

SUPPLEMENTARY INFORMATION: FDA is increasing the fees for certifying color additives now provided for in the regulations. These increases are necessary because of a general increase in all costs of operating the certification program.

The current fee schedule (§ 80.10 (21 CFR 80.10)) was adopted in 1963. Because of the steady growth of the color additive market and corresponding increases in the number of batches certified, adequate revenue was generated through 1979. Throughout these years, increases in the amounts of colors certified were handled without increasing staff by utilizing improved testing methods and by a growing reliance on instrumentation for analysis. However, the volume of batches certified has leveled off, while costs have continued to increase. Although an earned surplus covered losses of $130,000 in 1980 and $165,000 in 1981, the loss projected for fiscal year 1982 will deplete the remaining surplus.

Section 706(e) of the act (21 U.S.C. 376(e)) requires that the agency establish such fees for certifying color additives as may be necessary to provide, maintain, and equip an adequate color additive certification program. As is evidenced by the deficit incurred during fiscal years 1980 and 1981, the current fee schedule is not adequate to provide, maintain, and equip an adequate certification service. Therefore, an immediate increase is necessary.

The current fee schedule for color additive certification is designed to cover all costs involved in the certification program. These costs include both the cost of specific tests required by the regulations and the general costs associated with the certification program, such as costs of accounting, reviewing data, issuing certificates, carrying out research, and conducting establishment inspections. A copy of the agency study that documents the need for increased fees and sets forth the basis on which the agency has established the new fee schedule is available for review in the Dockets Management Branch at the address and hours given at the end of this document.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742), that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required. Because this provision is issued as a final rule without being preceded by general notice of proposed rulemaking, a final regulatory analysis under section 604 of the Regulatory Flexibility Act (94 Stat. 1167) is not required. In any event, the rule will not have a significant economic impact on a substantial number of small entities. Only a small number of large companies will be affected; and the costs involved are minuscule in relation to the revenues affected. Accordingly, we certify that a regulatory flexibility analysis is not required. In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this rule, and the agency has determined that it is not a major rule as defined by that Order.

List of Subjects in 21 CFR Part 80

Color additive certification procedures; Color additives; Cosmetics; Drugs.

[8] EDR-436, 46 FR 62285, December 31, 1981.