

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1260

[No. LS-98-005]

#### Amendment to the Beef Promotion and Research Rules and Regulations

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

**ACTION:** Final rule.

**SUMMARY:** This final rule will amend the Beef Promotion and Research Rules and Regulations (Rules and Regulations) issued under the Beef Promotion and Research Act of 1985 (Act), to clarify requirements for documenting cattle sales transactions for which no assessments are due. This amendment specifically requires the timely filing of Statement of Certification of Non-Producer Status forms to obtain exemption from assessment. Based upon comments received, this final rule reflects changes made to the amendments as proposed.

**EFFECTIVE DATE:** July 16, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Ralph L. Tapp, Chief, Marketing Programs Branch, Room 2627-S; Livestock and Seed Program; Agricultural Marketing Service, USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, DC 20250-0251. Telephone number 202/720-1115.

**SUPPLEMENTARY INFORMATION:**

#### Executive Orders 12866 and 12988; the Regulatory Flexibility Act; and the Paperwork Reduction Act

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. Section 11 of the Act (7 U.S.C. 2910) provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of this final rule on small entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened. The Agricultural Marketing Service (AMS) has determined that this final rule will not have a significant economic impact on a substantial number of small business entities.

In the January 26, 2001, issue of "Cattle," the Department of Agriculture's (Department) National Agricultural Statistics Service estimates that in 2000 there were 1.1 million cattle operations in the United States. The majority of these operations subject to the Beef Promotion and Research Order (Order), 7 U.S.C. 1260.101 *et seq.*, are considered small businesses under the criteria established by the Small Business Administration.

This final rule imposes no new burden on the industry as it merely clarifies the timing for filing of the Statement of Certification of Non-Producer Status forms when no assessment is due on cattle sales transactions. The regulations provide for certification of non-producer status for certain transactions. This action specifies the time of filing of the Statement of Certification of Non-Producer Status forms in order to obtain an exemption from paying assessments.

In compliance with the Office of Management and Budget (OMB) regulations [5 CFR Part 1320] which implements the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*], the information collection requirements contained in this final rule have been previously approved by OMB and were assigned OMB control number 0581-0093.

## Background

The Act authorizes the establishment of a national beef promotion and research program. The Order and the Rules and Regulations govern the administration of the program. The program is administered by the Cattlemen's Beef Promotion and Research Board (Board) that is composed of 110 cattle producers and importers. The program is funded by a \$1-per-head assessment on producer marketings of cattle in the United States, cattle imported into the United States, and an equivalent amount on imported beef and beef products. In 45 States, Qualified State Beef Councils (QSBC) collect the assessments remitted under the program. QSBCs retain up to half of the assessments they collect for State-directed programs and remit the remainder to the Board. The Board receives all producer assessments in five States with relatively small cattle numbers that do not have QSBCs and all assessments on imported cattle, beef, and beef products.

The domestic assessment, due each time cattle are sold by a producer, is collected by the buyer or "collecting person" for remittance to the Board or QSBC. The term "producer" is defined in the Order as follows: "Producer means any person who owns or acquires ownership of cattle; provided, however, that a person shall not be considered a producer within the meaning of this subpart if (a) the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee; or (b) the person (1) acquired ownership of cattle to facilitate the transfer of ownership of such cattle from the seller to a third party, (2) resold such cattle no later than 10 days from the date on which the person acquired ownership, and (3) certified, as required by regulations prescribed by the Board and approved by the Secretary, that the requirements of this provision have been satisfied." 7 CFR 1260.116.

When a person who is not a producer, under the above definition, sells cattle within 10 days of the date the person purchased the cattle, the collecting person is not required to collect the \$1 assessment from that person (seller), if the seller provides the collecting person with a Statement of Certification of Non-Producer Status on a form approved by the Board and the Secretary. Although,

the majority of non-producers provide collecting persons with a Statement of Certification of Non-Producer Status "at the time of sale," the Rules and Regulations do not specify when the Statement of Certification of Non-Producer Status form is due. Board audits of collecting persons' accounting records have revealed transactions in which neither the \$1 assessment, nor the Statement of Certification of Non-Producer Status required in lieu of the assessment, was obtained from the seller of the cattle by the collecting person for the transaction.

For the purpose of making it clear that the Statement of Certification of Non-Producer Status form must be filed with the collecting person in a timely manner, it was proposed that § 1260.314(b) of the Rules and Regulations be amended to read as follows: "(b) Each person seeking non-producer status pursuant to § 1260.116 of this part shall provide to the collecting person on a form approved by the Board and the Secretary a Statement of Certification of Non-Producer Status at the time the collecting person makes payment to the seller of cattle, in lieu of the assessment that would otherwise be due. If the collecting person is a brand inspector, as provided for in § 1260.311, the seller of cattle must provide to the brand inspector a Statement of Certification of Non-Producer Status at the time the physical brand inspection is completed in lieu of the assessment that would otherwise be due."

On August 28, 1998, AMS published in the **Federal Register** (63 FR 45971) for public comment a proposed rule providing for the above amendment to § 1260.314(b) of the Rules and Regulations.

The Department received two comments concerning the proposed rule. A summary of the comments and the Department's responses are set forth below.

The first commenter urged the Department to withdraw the proposed revisions to the timely filing of Statements of Certification of Non-Producer Status forms. The commenter asserted that the proposed rule lacks merit because the Department and the Board have failed to demonstrate any real need for the revisions to the filing of Statements of Certification of Non-Producer Status.

The Department does not agree with the commenter's assertion. The revisions to the Rules and Regulations are necessary to clarify that documentation of non-producer status is required in conjunction with the transactions. Board audits have revealed that some collecting persons believe the

current language permits documentation to be developed months or years after the transactions occurred. The revisions in this final rule are needed to clarify the Rules and Regulations and to ensure compliance with them.

The commenter also asserted that the revisions to the timely filing of Statements of Certification of Non-Producer Status forms could result in confusion and enforcement problems for the marketing sector. The Department believes that the revisions to § 1260.314 in this final rule will not result in any confusion and enforcement problems for the marketing sector. In fact, as discussed further below, the revisions clarify when the Statement of Certification of Non-Producer Status is to be filed.

The commenter stated that groups representing "collecting persons" were not consulted prior to development and publication of the proposed rule.

The proposed rule was promulgated in accordance with the provisions of the Administrative Procedure Act, and all members of the public were given a 60-day period to submit comments.

The commenter further stated that the Board "needs to address the real problems and issues of the beef checkoff." The commenter did not give any further explanation for what was meant by this statement.

Finally, the commenter objected to the proposed requirement that the Statement of Certification of Non-Producer Status be filed at the time payment is made to the seller. The commenter stated that in many transactions the seller is not physically present when payment is made by auction markets, dealers, order buyers, feedlots, and packers. The commenter suggested that the final rule take into account current marketing practices, including mailing delays that would prevent filing of the Statement of Certification of Non-Producer Status until several days after payment is made.

The Department believes that the commenter's suggestion has merit. Accordingly, § 1260.314 is revised in this final rule to specify that if the seller is not physically present during a cattle sales transaction in which the seller claims non-producer status, such seller shall deliver to the collecting person an original Statement of Certification of Non-Producer Status within 10 business days of the date the collecting person makes payment to the seller of the cattle.

The second commenter supported the proposed revisions to the Rules and Regulations, and suggested adding language to § 1260.314 to reflect

procedures used in several brand inspected States that do not require Statement of Certification of Non-Producer Status forms from those reselling cattle within 10 days of purchase.

The Department agrees with the commenter's suggestion. Several brand inspected States require a brand inspection certificate which shows that the assessment has been deducted less than 10 days prior to resale. Since brand inspection certificates provide documentation acceptable to the Board and the Department that the assessment has been paid less than 10 days prior to resale, it serves as proof of non-producer status under § 1260.314. Consequently, a non-producer status form is not required in these transactions. Section 1260.314 has been revised accordingly in this final rule.

#### List of Subjects in 7 CFR Part 1260

Advertising, Agricultural research, Imports, Marketing agreements, Meat and meat products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble 7 CFR part 1260 is amended as follows:

#### PART 1260—BEEF PROMOTION AND RESEARCH

1. The authority citation of part 1260 continues to read as follows:

**Authority:** 7 U.S.C. 2901 *et seq.*

2. Section 1260.314 is amended by redesignating paragraph (c) as paragraph (e), revising paragraph (b), and adding two new paragraphs (c) and (d) to read as follows:

##### § 1260.314 Certification of non-producer status for certain transactions.

\* \* \* \* \*

(b) Each person seeking non-producer status pursuant to § 1260.116 shall provide the collecting person, on a form approved by the Board and the Secretary, with a Statement of Certification of Non-Producer Status at the time the collecting person makes payment to the seller of cattle, in lieu of the assessment that would otherwise be due, except as provided for in paragraphs (c) and (d) of this section.

(c) When the seller of cattle is not physically present during a sales transaction in which the seller claims non-producer status, such seller shall deliver to the collecting person an original Statement of Certification of Non-Producer Status within 10 business days of the date the collecting person makes payment to the seller of the cattle.

(d) If the collecting person is a brand inspector, as provided for in § 1260.311, the seller of cattle claiming non-producer status shall provide to the brand inspector at the time the physical brand inspection is completed, in lieu of the assessment that would otherwise be due, either: a Statement of Certification of Non-Producer Status or a valid brand inspection certificate which shows collection of the assessment by a brand inspector in a transaction which took place not more than 10 days prior to the sale of the cattle.

\* \* \* \* \*

Dated: May 9, 2001.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 01-12141 Filed 5-14-01; 8:45 am]

BILLING CODE 3410-02-P

## FARM CREDIT ADMINISTRATION

### 12 CFR Parts 611 and 615

RIN 3052-AB91

#### **Organization; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Stock Issuances; Effective Date**

**AGENCY:** Farm Credit Administration.

**ACTION:** Notice of effective date.

**SUMMARY:** The Farm Credit Administration (FCA) published a final rule under parts 611 and 615 on March 28, 2001 (66 FR 16841). In this final rule, we amended our regulations to allow Farm Credit System (System) service corporations to sell stock to non-System entities, provide adequate disclosures to investors in service corporations, and allow System institutions to issue unlimited amounts of certain classes of equities. The purpose of our amendments is to provide System institutions additional opportunities to fulfill their borrowers' needs through service corporations and more efficient issuance of equities related to earnings distributions and transfers of capital. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 14, 2001.

**EFFECTIVE DATE:** The regulation amending 12 CFR parts 611 and 615 published on March 28, 2001 (66 FR 16841) is effective May 14, 2001.

**FOR FURTHER INFORMATION CONTACT:** Dale Aultman, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498; or Howard Rubin, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

(12 U.S.C. 2252(a)(9) and (10))

Dated: May 9, 2001.

**Jeanette C. Brinkley,**

*Acting Secretary, Farm Credit Administration Board.*

[FR Doc. 01-12152 Filed 5-14-01; 8:45 am]

BILLING CODE 6705-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2001-NM-122-AD; Amendment 39-12227; AD 2001-10-02]

RIN 2120-AA64

#### **Airworthiness Directives; Empresa Brasileira de Aeronautica, S.A. (EMBRAER) Model EMB-135 and -145 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB-135 and -145 series airplanes. This action requires applying torque to certain tubing fittings of the fire extinguishing systems of various areas of the airplane, and applying torque paint to the fittings. This action is necessary to ensure that certain tubing fittings of the fire extinguishing systems are properly torqued. Improperly torqued tubing fittings of the fire extinguishing systems of the baggage compartment, auxiliary power units (APU), and engines, if not corrected, could become loose and cause the fire extinguisher to inadvertently discharge. Inadvertent discharge of a fire extinguisher could result in reduced fire protection or the inability to extinguish a fire in the baggage compartment, APU, or engine. This action is intended to address the identified unsafe condition.

**DATES:** Effective May 30, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 30, 2001.

Comments for inclusion in the Rules Docket must be received on or before June 14, 2001.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-122-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via the Internet must contain "Docket No. 2001-NM-122-AD" in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Linda Haynes, Aerospace Engineer, Airframe and Propulsion Branch, ACE-117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703-6091; fax (770) 703-6097.

**SUPPLEMENTARY INFORMATION:** The Departamento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB-135 and -145 series airplanes. The DAC advises that it has received reports of looseness of some tubing fittings of the fire extinguishing systems of the engines located in the pylon inner area. In one event during maintenance, the fire extinguisher discharged into the pylon area. Investigation revealed the possibility that those fittings had been undertorqued during production of the airplanes. This possibility also exists for all other fittings at the fire extinguishing systems.

Improperly torqued tubing fittings of the fire extinguishing systems of the