

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1150

[DA-98-05]

#### Dairy Promotion and Research Order; Invitation to Submit Comments on Proposed Amendment to the Order

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

**ACTION:** Proposed rule.

**SUMMARY:** This document invites written comments on a proposal to amend the Dairy Promotion and Research Order (Order). A proposed amendment, requested by the National Dairy Promotion and Research Board (Board), which administers the Order, would modify the number of members from geographic regions in accordance with the provisions of the Order in order to best reflect the geographic distribution of milk production volume in the United States.

**DATES:** Comments are due no later than October 5, 1998.

**ADDRESSES:** Comments (two copies) should be filed with the USDA/AMS/ Dairy Programs, Promotion and Research Branch, 1400 Independence Avenue, SW, Stop 0233, Room 2734 South Building, Washington, DC 20250-0233. Comments, which should reference the docket number and the date and page number of the issue of the **Federal Register**, will be made available for public inspection in Room 2734 South Building during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** David R. Jamison, Chief, USDA/AMS/ Dairy Programs, Promotion and Research Branch, 1400 Independence Avenue, S.W., Stop 0233, Room 2734 South Building, Washington, DC 20250-0233, (202) 720-6909, E-Mail address: David\_Jamison@usda.gov.

**SUPPLEMENTARY INFORMATION:** The Department is issuing this proposed rule

in conformance with Executive Order 12866.

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

The Dairy and Tobacco Adjustment Act of 1983 (7 USC 4501-4513) (Act), as amended, authorizes the Order. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 118 of the Act, any person subject to the Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law and request a modification of the Order or to be exempted from the Order. A person subject to an order is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the forms and reporting and recordkeeping requirements that are included in the Order have been approved previously by the Office of Management and Budget (OMB) and were assigned OMB No. 0581-0093, except for Board members' nominee background information sheets that were assigned OMB No. 0505-0001.

#### Statement of Consideration

The Order specified in § 1150.131(c) that the Board shall review the geographic distribution of milk production volume throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of the regions and/or modification of the number of members from regions in order to best reflect the geographic distribution of milk production volume in the United States. Section 1150.131(d) of the Order specifies the formula to be used to determine the number of Board seats to

represent each of the 13 geographic regions of the country designated in the Order. Under the formula, total milk production for the 48 States for the previous calendar year is divided by 36 to determine a factor of pounds of milk represented by each Board member. The resulting factor is then divided into the pounds of milk produced in each region to determine the number of Board members for each region. The initial Board that was established in 1984 was based on 1983 milk production. The Board was last modified in 1994 based on the 1992 milk production. In 1983, each Board member represented about 3,875 million pounds of the 139,509 million pounds of milk produced in the 48 States. During 1997, total milk production increased to 156,464 million pounds which indicated that each of the Board members would represent 4,346 million pounds of milk.

Based on a review of the 1997 geographic distribution of milk production, the Board has concluded that the number of Board members for four of the 13 geographic regions should be changed. Milk production in Region 2 (California) increased to 27,628 million pounds in 1997 up from 22,084 million pounds in 1992, indicating 6.36 Board members based on 1997 production (27,628 divided by 4,346 = 6.36) compared to 5.24 Board members based on 1992 production (22,084 divided by 4,211 = 5.24). Also, milk production in Region 3 (Arizona, Colorado, Idaho, Montana, Nevada, Utah, and Wyoming) increased to 11,929 million pounds in 1997 up from 8,470 in 1992, indicating 2.74 Board members based on 1997 production (11,929 divided by 4,346 = 2.74) compared to 2.01 Board members based on 1992 production (8,470 divided by 4,211 = 2.01). Milk production in Region 6 (Wisconsin) decreased to 22,368 million pounds in 1997 from 24,103 million pounds in 1992, indicating 5.15 Board members based on 1997 production (22,368 divided by 4,346 = 5.15) compared to 5.72 Board members based on 1992 production (24,103 divided by 4,211 = 5.72). Also, milk production in Region 7 (Illinois, Iowa, Missouri, and Nebraska) decreased to 9,699 million pounds from 11,168 million pounds in 1992, indicating 2.23 Board members based on 1997 production (9,699 divided by 4,346 = 2.23) compared to 2.65 Board

members based on 1992 production (11,168 divided by 4,211 = 2.65). Thus, the Board proposed that the number of Board members from Region 2 be increased from five to six, that the number of Board members from Region 3 be increased from two to three, that the number of Board members from Region 6 be decreased from six to five, and that the number of Board members from Region 7 be decreased from three to two so that the Board will best reflect the geographic distribution of milk production volume throughout the United States.

A 14-day comment period is provided for interested persons to comment on this proposed rule. Terms of the existing Board members expire October 31, 1998. To be able to appoint new Board members based on the redistribution, the 14-day comment period is appropriate.

#### Small Business Consideration

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Small businesses in the dairy industry have been defined by the Small Business Administration as those employing less than 500 employees. There are approximately 99,413 dairy farmers subject to the provisions of the Order. Most of the parties subject to the Order are considered small entities.

Changes are proposed to a provision of the Order (7 CFR Part 1150). This change is to the number of members representing four geographic regions on the Board to reflect the volume of milk produced within the specified regions. The Order is authorized under the Act, as amended (7 USC 4501–4513).

Currently, the Order provides for a 36-member board with members representing 13 geographic regions. Section 1150.131(c) states that the Board is required at least every five years, and not more than every three years, to review the geographic distribution of milk production volume throughout the United States and if necessary recommend modification of regional representation. The last modification was made in 1994. Section 1150.131(d) of the Order specifies the formula to be used to determine the number of Board seats to represent each of the 13 geographic regions of the country designated in the Order. Under the formula, total milk production for the 48 States for the previous calendar year is divided by 36 to determine a factor of pounds of milk represented by each Board member. The resulting factor is

then divided into the pounds of milk produced in each region to determine the number of Board members for each region. The initial Board that was established in 1984 was based on 1983 milk production. The Board was last modified in 1994 based on the 1992 milk production. In 1983, each Board member represented about 3,875 million pounds of the 139,509 million pounds of milk produced in the 48 States. During 1997, total milk production increased to 156,464 million pounds which indicated that each of the Board members would represent 4,346 million pounds of milk.

Based on a review of the 1997 geographic distribution of milk production, the Board has concluded that the number of Board members for four of the 13 geographic regions should be changed. Milk production in Region 2 (California) increased to 27,628 million pounds in 1997 up from 22,084 million pounds in 1992, indicating 6.36 Board members based on 1997 production (27,628 divided by 4,346 = 6.36) compared to 5.24 Board members based on 1992 production (22,084 divided by 4,211 = 5.24). Also, milk production in Region 3 (Arizona, Colorado, Idaho, Montana, Nevada, Utah, and Wyoming) increased to 11,929 million pounds in 1997 up from 8,470 in 1992, indicating 2.74 Board members based on 1997 production (11,929 divided by 4,346 = 2.74) compared to 2.01 Board members based on 1992 production (8,470 divided by 4,211 = 2.01). Milk production in Region 6 (Wisconsin) decreased to 22,368 million pounds in 1997 from 24,103 million pounds in 1992, indicating 5.15 Board members based on 1997 production (22,368 divided by 4,346 = 5.15) compared to 5.72 Board members based on 1992 production (24,103 divided by 4,211 = 5.72). Also, milk production in Region 7 (Illinois, Iowa, Missouri, and Nebraska) decreased to 9,699 million pounds from 11,168 million pounds in 1992, indicating 2.23 Board members based on 1997 production (9,699 divided by 4,346 = 2.23) compared to 2.65 Board members based on 1992 production (11,168 divided by 4,211 = 2.65). Thus, the Board proposed that the number of Board members from Region 2 be increased from five to six, that the number of Board members from Region 3 be increased from two to three, that the number of Board members from Region 6 be decreased from six to five, and that the number of Board members from Region 7 be decreased from three to two so that the Board will best reflect

the geographic distribution of milk production volume throughout the United States.

This amendment to the Order will not add any burden to regulated parties because they relate to provisions concerning membership of the Board. The proposed change would not impose additional reporting or collecting requirements. No relevant Federal rules have been identified that duplicate, overlap, or conflict with the rule.

Accordingly, pursuant to 5 U.S.C. 605(b), the Agricultural Marketing Service has certified that this rule would not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 7 CFR Part 1150

Dairy Products, Reporting and Recordkeeping Requirements, Research.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1150 be amended as follows:

#### PART 1150—NATIONAL DAIRY PROMOTION AND RESEARCH PROGRAM

1. The authority citation for 7 CFR Part 1150 continues to read as follows:

**Authority:** 7 U.S.C. 4501–4513.

2. In § 1150.131, paragraphs (a)(2), (a)(3), (a)(6), and (a)(7) are revised to read as follows:

#### § 1150.131 Establishment and membership.

(a) \* \* \*

(2) Six members from region number two comprised of the following State: California.

(3) Three members from region number three comprised of the following States: Arizona, Colorado, Idaho, Montana, Nevada, Utah, and Wyoming.

\* \* \* \* \*

(6) Five members from region number six comprised of the following State: Wisconsin.

(7) Two members from region number seven comprised of the following States: Illinois, Iowa, Missouri, and Nebraska.

\* \* \* \* \*

Dated: September 16, 1998.

**Enrique E. Figueroa,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 98–25212 Filed 9–18–98; 8:45 am]

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