

# Rules and Regulations

Federal Register

Vol. 72, No. 127

Tuesday, July 3, 2007

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1170

RIN 0581-AC66

[Doc. # AMS-07-0047; DA-06-07]

#### Dairy Product Mandatory Reporting

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

**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule establishes a Dairy Product Mandatory Reporting Program as required by law, on an interim final basis. The Dairy Market Enhancement Act of 2000, and certain provisions of the Farm Security and Rural Investment Act of 2002, amended the Agricultural Marketing Act of 1946 to provide for timely, accurate, and reliable market information to facilitate more informed marketing decisions and promote competition in the dairy product manufacturing industry. The Department will issue a final rule once public comments have been received.

**DATES:** *Effective Date:* August 2, 2007. The provisions of this rule will expire 12 months from the date of publication unless further regulatory action is taken. Comments must be submitted on or before September 4, 2007.

**ADDRESSES:** Comments (four copies) should be submitted to John R. Mengel, Chief Economist, USDA/AMS/Dairy Programs, Office of the Chief Economist, STOP 0229-Room 2753, 1400 Independence Ave., SW., Washington, DC 20250-0229 or faxed to (202) 690-0552. Comments may also be submitted at the Federal eRulemaking portal: <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments can be viewed in the Office

of the Chief Economist during regular business hours, or at: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** John R. Mengel, Chief Economist, USDA/AMS/Dairy Programs, Office of the Chief Economist, STOP 0229-Room 2753, 1400 Independence Ave., SW., Washington, DC 20250-0229, (202) 720-7091.

**SUPPLEMENTARY INFORMATION:** This interim final rule is a statutory requirement pursuant to the Agricultural Marketing Act of 1946 [7 U.S.C. 1621 *et seq.*], hereinafter referred to as the "Act", as amended November 22, 2000, by Pub. L. No. 106-532, 114 Stat. 2541, and further amended May 13, 2002, by Pub. L. No. 107-171, 116 Stat. 207.

*Background:* The Act provides for and accordingly, this interim final rule establishes, a Dairy Product Mandatory Reporting Program that will: (1) Require persons engaged in manufacturing dairy products to provide to the Department of Agriculture (Department) certain information including the price, quantity, and moisture content, where applicable, of dairy products sold by the manufacturer; and (2) Require manufacturers and other persons storing dairy products to report to the Department information on the quantity of dairy products stored. Under the interim final rule, the National Agricultural Statistics Service (NASS) will collect such information. Any manufacturer that processes and markets less than 1 million pounds of dairy products per calendar year would be exempt from these reporting requirements.

Under this authority, NASS initiated a program to collect the information for Dairy Product Prices. Dairy Products Prices began with the collection of cheese data in 1997. Information on cheddar cheese, butter, dry whey, and nonfat dry milk is now collected and published on a weekly basis. Stocks of butter and cheese have been collected on a voluntary basis since 1916 under the Cold Storage Program. Information on specific cheeses, butter, anhydrous milkfat, butter oil, unsalted butter, nonfat dry milk and dry whey is now collected and published on a monthly basis.

The Act as amended provides the Department with the authority needed to make the reporting of dairy product

information mandatory. No new commodities are included under this rule. The Act also provides that the Secretary shall take such actions as the Secretary considers necessary to verify the accuracy of the information submitted or reported. With more complete and accurate information, the Department and the dairy industry can be confident that reported dairy product prices and inventories are more precise indicators of supply and demand conditions.

The Agricultural Marketing Service (AMS) will implement a plan to verify the price information submitted by various dairy product manufacturing plants to NASS per the mandatory dairy product price reporting program using the reports received from NASS. During the first year of verification, AMS will visit all of the entities eligible to file reports at least once. In subsequent years, AMS will visit large entities that account for 80 percent of the yearly reported product volume of each specified dairy product at least once and one-half of the entities that account for the remaining 20 percent of the yearly reported product volume. Entities in the latter category will be visited at least once every two years. During each visit, AMS will review applicable sales transaction records for a sample of reporting periods during the year. AMS will verify that eligible sales transactions agree with information reported to NASS and will check for eligible sales transactions that were not reported to NASS. AMS will report to the Secretary any reporting violations. AMS requests comments on all aspects of this audit program.

#### Executive Order 12866: Regulatory Planning and Review

This interim final rule has been determined "significant" for purposes of Executive Order 12866 and therefore has been reviewed by the Office of Management and Budget. A cost benefit analysis (CBA) was conducted and can be viewed on the internet at <http://www.ams.usda.gov/dairy>. The largest possible response to the survey by processors will provide more reliable dairy product prices for use in establishing minimum prices for Class III and Class IV milk under the Federal milk marketing order program. In addition, the use of reliable market prices for dairy products will help

assure that milk producers are paid an equitable price for their milk and that milk processors are paying a competitive price for their milk supply.

Erroneous price information can be costly. For example, during the month of May 2005, the CBA indicates that a 1 cent per pound error in the cheese price announced by NASS would cause a 9.65 cent per hundredweight error in the Class III price and 3.76 cents per hundredweight error in the price paid to producers. Multiplying the price error (3.76 cents) times the quantity of milk marketed in Federal milk marketing order system indicates that either producers would have received \$4 million less for their milk in the month of May 2005, than they actually did, or that manufacturers would have paid \$4 million more for milk in May 2005 than they actually did. Also, some or all of this error could have affected Class I prices in June 2005.

The CBA estimated the incremental cost of the mandatory reporting program in the first year would be approximately \$24,000 for manufacturers who were not already reporting to NASS to comply with this rule. As stated in the CBA, there are a total of 110 cold storage facilities and 98 manufacturing plants that are required to report under the mandatory program. The cost to cold storage facilities completing reports is \$132 per facility for a total annual cost of \$14,520. The cost to manufacturers reporting product prices is estimated at \$381.26 per plant for a total annual cost of \$37,363.48. Thus, the total annual cost for submitting information under the mandatory program is \$51,883.48. The cost to the Federal Government for implementation of the verification program will be approximately \$102,000 the first year and approximately \$70,000 in subsequent years.

#### **Executive Order 12988 Civil Justice Reform**

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

#### **Civil Rights Review**

AMS has considered the potential civil rights implications of this rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin,

gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status or protected genetic information. This review included persons that are employees of the entities that are subject to this regulation. This rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this rule would not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

#### **Regulatory Flexibility Act**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this interim final rule on small entities and has determined that this rule will not have a significant economic impact on a substantial number of small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Small businesses in the dairy product manufacturing<sup>1</sup> industry have been defined by the Small Business Administration (SBA) as those processors employing not more than 500 employees. For purposes of determining a processor's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees. There are approximately 98 dairy product manufacturers and 110 manufacturers and other persons storing dairy products that would be subject to the provisions of this rule. According to U.S. Census Bureau Statistics of U.S. Businesses, there were 1,110 dairy manufacturing firms in the United States in 2004. Of these concerns, 1,017 firms had fewer than 500 employees and 93 firms had greater than 500 employees.

Therefore, few of the manufacturers and persons affected by this interim final rule are small businesses under the criteria established by the SBA. Those manufacturers with less than 1 million pounds of annual production are exempted by the Act and most of the entities that would be subject to mandatory reporting already report this information to NASS. The annual cost to manufacturers reporting product prices is estimated at \$381.26 per plant. As discussed in the Paperwork

Reduction Act section below, AMS believes the records that would be required to be maintained under this interim final rule are already being maintained for at least two years as part of the normal course of business. Thus, there would be no additional burden or cost associated with the maintenance of these records. Therefore, the interim final rule will not have a significant economic impact on a substantial number of small entities.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the forms and reporting and recordkeeping requirements that are included that are utilized to collect the information required by the Act have been previously approved by the Office of Management and Budget (OMB) and were assigned OMB control number 0535–0020 for the Dairy Product Prices Survey and OMB control number 0535–0001 for the Monthly Cold Storage Report.

The primary function of NASS is to prepare and issue current official state and national estimates of crop and livestock production. Estimates of milk production and manufactured dairy products are an integral part of this program. Milk and dairy statistics are used by the Department to help administer the Federal milk marketing order program and are used by the dairy industry in planning, pricing, and projecting supplies of milk and milk products.

The interim final rule does not change the current method and frequency of data collection utilized by NASS. Data collection of Dairy Product Prices is conducted weekly to collect sales transactions data for the previous week. Manufacturers are provided a supply of report forms for the products they are to report. The dairy product manufacturer completes the form with information, including the manufacturer's name, address, plant location, quantities sold, and dollars received or prices of Cheddar cheese, butter, dry whey, and nonfat dry milk. Manufacturers report to NASS by facsimile or by electronic data reporting.

The Monthly Cold Storage Report is mailed each month to manufacturers and other entities storing dairy products. Manufacturers and other entities report to NASS the name, address, and stocks on hand at the end of the month. Reports are returned to NASS.

This interim final rule implements recordkeeping requirements authorized by the Act. Under this regulation, each person required to report information to

<sup>1</sup> North American Industry Classification System (NAICS) code 3115.

the Department shall maintain, and make available to the Department, on request, original contracts, agreements, receipts, and other records associated with the sale or storage of any dairy products during the two-year period beginning on the date of the creation of the records. AMS has consulted with several of those entities that are required to maintain records under this interim final rule and believes the necessary records are already being maintained for at least two years as part of the normal course of business. Therefore, there would be no additional burden or cost associated with the maintenance of these records. AMS invites comment on whether all entities subject to this regulation already maintain the necessary records for at least two years.

Comments should be sent to the USDA in care of John R. Mengel, Chief Economist, USDA/AMS/Dairy Programs, Office of the Chief Economist, STOP 0229—Room 2753, 1400 Independence Ave., SW., Washington, DC 20250–0229 or faxed to (202) 690–0552. All comments received will be available for public inspection during regular business hours at the same address or at <http://www.regulations.gov>.

The reliability of prices announced by NASS is dependent on the accuracy of the reports submitted by manufacturers. To verify that the information submitted to NASS is accurate, all manufacturers required to submit reports will be subject to audits conducted by AMS. Failure on the part of manufacturers or other entities to comply with the data collection and recordkeeping requirements could lead to enforcement action, including the levying of civil penalties provided under section 273 of the Act, as amended [7 U.S.C. 1637b], against the violating person or entity.

Except as otherwise directed by the Secretary or the Attorney General for enforcement purposes, no officer, employee, or agent of the United States shall make available to the public information, statistics, or documents obtained from or submitted by any person under the Acts other than in a manner that ensures that confidentiality is preserved regarding the identity of persons, including parties to a contract, and proprietary business information. All report forms include a statement that individual reports are kept confidential.

With respect to the application of the Privacy Act of 1974 (5 U.S.C. 552a) (“Privacy Act”) to the maintenance of records required by the Act, the Dairy Products Prices survey population consists of Agribusinesses. Data collected by this survey relates to

Agribusinesses’ dealings and not those of individuals. Records maintained at business sites for verification of information reported to NASS include contracts, agreements, receipts and other material related to sales of specific dairy products. No records about individuals are maintained by NASS for this survey and AMS believes that none would be part of these maintained business papers.

AMS is aware that inaccurate reporting of nonfat dry milk price information to NASS in 2007 resulted in a reduction in prices paid to producers. AMS is aware of the existence of forward pricing sales such as those associated with the inaccurate reporting of nonfat dry milk price information. AMS specifically invites comment on the prevalence of the use of forward contracts and whether they need to be addressed in some way under the mandatory program. As discussed earlier, even relatively small errors in price information can result in significant differences in overall revenues. An audit-based program of dairy price reporting would substantially reduce the likelihood of such errors in reporting. For this reason, and because the required audit-based program is virtually identical to the program which has been operating for a number of years, there is good cause to issue this rule as an interim final rule.

#### List of Subjects in 7 CFR Part 1170

Butter, Cheese, Dairy products, Nonfat dry milk, Reporting and recordkeeping requirements, Whey.

■ For the reasons set forth in the preamble, Title 7, subtitle B, chapter X is amended by adding part 1170, to read as follows:

#### PART 1170—DAIRY PRODUCT MANDATORY REPORTING

Sec.

- 1170.1 Secretary.
- 1170.2 Act.
- 1170.3 Person.
- 1170.4 Dairy products.
- 1170.5 Manufacturer.
- 1170.6 Store.

#### Dairy Product Reporting Program

- 1170.7 Reporting requirements.
- 1170.8 Price reporting specifications.
- 1170.9 Storage reporting specifications.
- 1170.10 Records.
- 1170.11 Confidential information.

#### Verification and Enforcement

- 1170.12 Verification of reports.
- 1170.13 Noncompliance procedures.
- 1170.14 Appeals.
- 1170.15 Enforcement.

#### Exemptions

- 1170.16 Exemptions.

**Authority:** 7 U.S.C. 1637–1637b, as amended by Pub. L. 106–532, 114 Stat. 2541 and Pub. L. 107–171, 116 Stat. 207.

#### PART 1170—DAIRY PRODUCT MANDATORY REPORTING

##### § 1170.1 Secretary.

*Secretary* means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom authority has been delegated.

##### § 1170.2 Act.

*Act* means the Agricultural Marketing Act of 1946, 7 U.S.C. 1621 *et seq.*, as amended by the Dairy Market Enhancement Act of 2000, Pub. L. No. 106–532, 114 Stat. 2541, and the Farm Security and Rural Investment Act of 2002, Pub. L. No. 107–171, 116 Stat. 207.

##### § 1170.3 Person.

*Person* means an individual, partnership, corporation, association, or any other business unit.

##### § 1170.4 Dairy products.

*Dairy Products* means—

(a) Manufactured dairy products that are used by the Secretary to establish minimum prices for Class III and Class IV milk under a Federal milk marketing order issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937; and

(b) Substantially identical products designated by the Secretary in this Part.

##### § 1170.5 Manufacturer.

*Manufacturer* means any person engaged in the business of buying milk in commerce for the purpose of manufacturing dairy products in one or more locations.

##### § 1170.6 Store.

(a) *Store* means to place cheese or butter in a warehouse or facility which is artificially cooled to a temperature of 50 degrees Fahrenheit or lower and hold these dairy products for 30 days or more; or

(b) *Store* means to place nonfat dry milk or dry whey in a manufacturing plant, packaging plant, distribution point, or shipment in transit.

#### Dairy Product Reporting Program

##### § 1170.7 Reporting requirements.

(a) Manufacturers of dairy products shall report on a weekly basis all sales transactions for the previous week, on the appropriate forms supplied by the National Agricultural Statistics Service. The report shall indicate the name,

address, plant location, quantities sold, and dollars received or the prices of dairy products as defined in § 1170.4.

(b) Manufacturers or other persons storing dairy products shall report on a monthly basis stocks of dairy products (as defined in § 1170.4) on hand, on the appropriate forms supplied by the National Agricultural Statistics Service. The report shall indicate the name, address, and stocks on hand at the end of the month for each storage location.

#### **§ 1170.8 Price reporting specifications.**

The following are the reporting specifications for each dairy product.

(a) Specifications for Cheddar Cheese Prices:

(1) Sale: When a transaction is completed (for example: cheese is "shipped out" and title transfer occurs.)

(2) Variety: Cheddar Cheese.

(3) Style: 40-pound blocks or 500-pound barrels.

(4) Moisture Content: 40-pound blocks, exclude cheese that will be aged. Barrels Report—moisture content of cheese sold, not to exceed 37.7 percent.

(5) Age: Not less than 4 days or more than 30 days on date of sale.

(6) Grade: Barrels—Wisconsin State Brand or USDA Extra Grade or better.

40-pound blocks—Wisconsin State Brand or USDA Grade A or better.

(7) Color: Barrels—White, 40-pound blocks—colored between 6–8 on the National Cheese Institute color chart.

(8) Packaging: 40-pound blocks—Price should reflect cheese wrapped in a sealed, airtight package in corrugated or solid fiberboard containers with a reinforcing inner liner or sleeve. Exclude all other packaging costs from the reported price. Barrels—Exclude all packaging costs from the reported price.

(9) Price: Price should be reported as price per pound or total dollars received. Price is f.o.b. processing plant/storage center.

(10) Include: CCC purchases under the Dairy Price Support and related programs, and CME sales by initial manufacturer.

(11) Exclude: Block cheese that will be aged, transportation and clearing charges from price, intra-company sales, resales of purchased cheese and forward pricing sales (sales in which the selling prices was set (not adjusted) 30 or more days before the transaction was completed).

(b) Specifications for Butter Prices:

(1) Sale: When a transaction is completed (for example: Butter is "shipped out" and title transfer occurs.) Report sales of butter that meets USDA Grade AA standards, 80 percent butterfat, salted—fresh or storage.

(2) Price: Price is f.o.b. processing plant/storage center. Prices and

quantities are for all 25 kilogram and 68 pound box sales.

(3) Include: CCC purchases under the Dairy Price Support and related programs, and CME sales by initial manufacturer.

(4) Exclude: Unsalted and Grade A butter, transportation and clearing charges from price, intra-company sales, resales of purchased butter and forward pricing sales (sales in which the selling prices was set (not adjusted) 30 or more days before the transaction was completed). This exclusion does not include sales through the Dairy Export Incentive Program (DEIP).

(c) Specifications for Dry Whey Prices:

(1) Sale: When a transaction is completed (for example: dry whey is "shipped out" and title transfer occurs.) Sales are for USDA Extra Grade edible nonhygroscopic dry whey.

(2) Price: Prices is f.o.b. processing plant/storage center. Prices and quantities are for all 25 kilogram bag, 50 pound bag, tote and tanker sales.

(3) Exclude: Sales of Grade A dry whey, sales of dry whey more than 180 days old, transportation charges from price, intra-company sales, resales of purchased dry whey and forward pricing sales (sales in which the selling prices was set (not adjusted) 30 or more days before the transaction was completed.)

(d) Specifications for the Nonfat Dry Milk Prices:

(1) Sale: When a transaction is completed (for example: nonfat dry milk is "shipped out" and title transfer occurs.) Sales are for USDA Extra Grade and USPH Grade A, non-fortified, nonfat dry milk.

(2) Price: Price is f.o.b. processing plant/storage center. Prices and quantities are for all 25 kilogram bag, 50 pound bag, tote and tanker sales.

(3) Include: Nonfat dry milk manufactured using low or medium heat process, CCC purchases under the Dairy Price Support and related programs, and CME sales by initial manufacturer.

(4) Exclude: Sales of nonfat dry milk more than 180 days old, nonfat dry milk manufactured using high heat process, sales of instant nonfat dry milk, sales of dry buttermilk products, transportation and clearing charges, intra-company sales, resales of purchased nonfat dry milk and forward pricing sales (sales in which the selling prices was set (not adjusted) 30 or more days before the transaction was completed). This exclusion does not include sales through the Dairy Export Incentive Program (DEIP).

#### **§ 1170.9 Storage reporting specifications.**

(a) Reporting universe: (1) Cold Storage Report: All warehouses or facilities, except those described in § 1170.16, artificially cooled to a temperature of 50 degrees Fahrenheit or lower where dairy products generally are placed and held for 30 days or more. Excluded are stocks in refrigerated space maintained by wholesalers, jobbers, distributors, and chain stores; locker plants containing individual lockers; and frozen food processors whose inventories are turned over more than once a month.

(2) Dairy Products Report: All manufacturing plants, packaging plants, distribution points or shipments in transit.

(b) Products required: (1) Natural cheese, domestic and foreign made, including barrel and cheese to be processed; American type cheeses, (cheddar, monterey, colby, etc.), including government owned stocks; Swiss; other natural cheese types (brick, mozzarella, muenster, parmesan, etc.). Exclude processed cheese;

(2) Butter, anhydrous milkfat (AMF), butter oil, and unsalted butter, including government owned stocks;

(3) Nonfat dry milk; and

(4) Dry whey.

#### **§ 1170.10 Records.**

Each person required to report information to the Secretary shall maintain, and make available to the Secretary, on request, original contracts, agreements, receipts, and other records associated with the sale or storage of any dairy products during the two-year period beginning on the date of the creation of the records.

#### **§ 1170.11 Confidential information.**

Except as otherwise directed by the Secretary or the Attorney General for enforcement purposes, no officer, employee, or agent of the United States shall make available to the public information, statistics, or documents obtained from or submitted by any person in compliance with the Dairy Product Mandatory Reporting program other than in a manner that ensures that confidentiality is preserved regarding the identity of person, including parties to a contract, and proprietary business information.

#### **Verification and Enforcement**

##### **§ 1170.12 Verification of reports.**

For the purpose of assuring compliance and auditing records and reports required to be filed by manufacturers or other persons, the Agricultural Marketing Service, through its duly authorized agents, shall have

access to any premises where applicable records are maintained, where dairy products are produced or stored, and at any time during reasonable business hours shall be permitted to inspect such manufacturer or person, and any original contracts, agreements, receipts, and other records associated with the sale or storage of any dairy products.

#### **§ 1170.13 Noncompliance procedures.**

(a) When the Secretary becomes aware that a manufacturer or person may have willfully delayed reporting of, or failed or refused to provide, accurate information pursuant to this part, the Secretary may issue a cease and desist order.

(b) Prior to the issuance of a cease and desist order, the Secretary shall provide notice and an opportunity for an informal hearing regarding the matter to the manufacturer or person involved.

(c) The notice shall contain the following information:

(1) That the issuance of a cease and desist order is being considered;

(2) The reasons for the proposed cease and desist order in terms sufficient to put the person on notice of the conduct or lack thereof upon which the notice is based;

(3) That within 30 days after receipt of the notice, the manufacturer or person may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed cease and desist order; and

(4) That if no response to the notice is received within the 30 days after receipt of the notice, that a cease and desist order may be issued immediately.

(d) If a manufacturer or person submits information or requests a hearing, the hearing should be held at a location and time that is convenient to the parties concerned, if possible. The hearing will be held before the Deputy Administrator, Dairy Programs, Agricultural Marketing Service, or a designee. The manufacturer or person may be represented. Witnesses may be called by either party.

(e) The Deputy Administrator, Dairy Programs, Agricultural Marketing Service, or a designee will make a decision on the basis of all the information in the administrative record, including any submission made by the manufacturer or person. The decision of whether a cease and desist order should be issued shall be made within 30 days after receipt of any information and argument submitted by the manufacturer or person. The cease and desist order shall be final unless the affected manufacturer or person requests a reconsideration of the order

to the Administrator, Agricultural Marketing Service, within 30 days after the date of the issuance of the order.

#### **§ 1170.14 Appeals.**

If the cease and desist order is confirmed by the Administrator, Agricultural Marketing Service, the manufacturer or person may appeal the order in the appropriate United States District Court not later than 30 days after the date of the confirmation of the order.

#### **§ 1170.15 Enforcement.**

(a) If a person subject to the Dairy Product Mandatory Reporting program fails to obey a cease and desist order after the order has become final and unappealable, or after the appropriate United States district court has entered a final judgment in favor of the Administrator, Agricultural Marketing Service, the United States may apply to the appropriate United States district court for enforcement of the order.

(b) If the court determines that the cease and desist order was lawfully made and duly served and that the manufacturer or person violated the order, the court shall enforce the order.

(c) If the court finds that the manufacturer or person violated the cease and desist order, the manufacturer or person shall be subject to a civil penalty of not more than \$10,000 for each offense.

#### **Exemptions**

##### **§ 1170.16 Exemptions.**

Any manufacturer that processes and markets less than 1 million pounds of dairy products per calendar year is exempt from these regulations.

Dated: June 28, 2007.

**Robert C. Keeney,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 07-3235 Filed 6-28-07; 3:15 pm]

**BILLING CODE 3410-02-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 71**

[Docket No. FAA 2007-28010, Airspace  
Docket No. 07-ANE-91]

#### **Establishment of Class E Airspace; Dean Memorial Airport, NH**

**AGENCY:** Federal Aviation  
Administration (FAA), DOT.

**ACTION:** Direct final rule; confirmation  
of effective date.

**SUMMARY:** This action confirms the effective date of a direct final rule that establishes a Class E airspace area at Dean Memorial Airport, Haverhill, NH (K5B9) to provide for adequate controlled airspace for those aircraft using the new Area Navigation (RNAV) Instrument Approach Procedure to the Airport.

**DATES:** Effective 0901 UTC, July 5, 2007. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

Mark D. Ward, Manager, System Support, AJO2-E2, FAA Eastern Service Center, 1701 Columbia Ave., College Park, GA 30337; telephone (404) 305-5570; fax (404) 305-5099.

#### **SUPPLEMENTARY INFORMATION:**

##### **Confirmation of Effective Date**

The FAA published this direct final rule with a request for comments in the **Federal Register** on May 8, 2007 (72 FR 25964). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 5, 2007. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in College Park, GA on June 7, 2007.

**Mark D. Ward,**

*Group Manager, System Support Group,  
AJO2-E2 Eastern Service Center.*

[FR Doc. 07-3202 Filed 07-2-07; 8:45 am]

**BILLING CODE 4910-13-M**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Part 71**

[Docket No. FAA 2007-27512, Airspace  
Docket No. 07-AEA-01]

#### **Establishment of Class E Airspace; Front Royal-Warren County, VA**

**AGENCY:** Federal Aviation  
Administration (FAA), DOT.