

# 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 Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131**

[Docket No. AO-14-A73, et al.; DA-03-10]

#### Milk in the Northeast and Other Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	AO Nos.
1001 ...	Northeast .....	AO-14-A73
1005 ...	Appalachian .....	AO-388-A14
1006 ...	Florida .....	AO-356-A37
1007 ...	Southeast .....	AO-366-A43
1030 ...	Upper Midwest .....	AO-361-A38
1032 ...	Central .....	AO-313-A47
1033 ...	Mideast .....	AO-166-A71
1124 ...	Pacific Northwest ...	AO-368-A34
1126 ...	Southwest .....	AO-231-A67
1131 ...	Arizona Las-Vegas	AO-271-A39

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

**ACTION:** Proposed rule; Notice of public hearing on proposed rulemaking.

**SUMMARY:** A national public hearing is being held to consider proposals seeking to amend the Class I fluid milk product definition of all Federal milk marketing orders.

**DATES:** The hearing will convene at 8 a.m. on Monday, June 20, 2005.

**ADDRESSES:** The hearing will be held at Sheraton Station Square Hotel, 300 West Station Square Drive, Pittsburgh, PA 15219-1122. Telephone Number: (412) 261-2000.

**FOR FURTHER INFORMATION CONTACT:** Gino M. Tosi, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, Stop 0231-Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250-0231, (202) 690-1366, e-mail address: [gino.tosi@usda.gov](mailto:gino.tosi@usda.gov).

Persons requiring a sign language interpreter or other special accommodations should contact David Z. Walker, Market Administrator, at (330) 225-4758; email address: [dwalker@fmmaclev.com](mailto:dwalker@fmmaclev.com) before the hearing begins.

**SUPPLEMENTARY INFORMATION:** This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at Sheraton Station Square Hotel, 300 West Station Square Drive, Pittsburgh, Pennsylvania beginning at 8 a.m., on Monday, June 20, 2005, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Northeast and other marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (Department) 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. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with (6) copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

**List of Subjects in 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131**

Milk marketing orders.

**PARTS 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, AND 1131—[AMENDED]**

The authority citation for 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

The proposed amendments, as set forth below, have not received the approval of the Department.

**Proposed by Dairy Farmers of America, Inc.**

*Proposal No. 1*

This proposal seeks to amend the fluid milk product definition to include products formulated using milk or milk solids for beverage consumption by removing the 6.5 percent nonfat milk solids standard.

1. Amend § 1000.15 by revising paragraphs (a) and (b)(1), to read as follows:

**§ 1000.15 Fluid milk product.**

(a) Except as provided in paragraph (b) of this section, fluid milk product means any product containing milk or milk products in fluid or frozen form containing less than 9 percent butterfat that are intended to be used as beverages, including any beverage products that are flavored, cultured, modified with added nonfat solids, sterilized, concentrated, or reconstituted. As used in this part, the term concentrated milk means milk that contains not less than 25.5 percent, and not more than 50 percent, total milk solids.

(b) \* \* \*

(1) Plain or sweetened evaporated milk/skim milk, sweetened condensed milk/skim milk, formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers, and whey; and

\* \* \* \* \*

*Proposal No. 2*

This proposal seeks to amend the fluid milk product definition to include any dairy ingredient, including whey, when calculating the milk contained in a product on a protein-equivalent or nonfat solids equivalent basis.

**Proposed by O-AT-KA Milk Products Cooperative, Inc.**

*Proposal No. 3*

This proposal seeks to amend the fluid milk product definition by adding a true-protein standard. In determining the protein content and milk equivalent of a product, the proposal seeks to include all dairy solids—such as caseinates, milk protein concentrates and whey protein—and non-dairy sources while pricing only the milk equivalent of the dairy solids. Furthermore, this proposal seeks to add exemptions for alcoholic beverages containing dairy ingredients and formulas prepared for dietary use (meal replacements or nutritional supplements) having a true-protein content from any source greater than 6.2 percent on a protein-equivalent basis.

1. Amend § 1000.15 by revising paragraph (b)(1), redesignating paragraph (b)(2) as paragraph (b)(4), and adding new paragraphs (b)(2) and (b)(3) to read as follows:

**§ 1000.15 Fluid milk product.**

\* \* \* \* \*

(b) \* \* \*

(1) Plain or sweetened evaporated milk/skim milk and sweetened condensed milk/skim milk,

(2) The following products packaged in containers that are shelf stable at ambient temperatures:

(i) Formulas especially prepared for infant feeding;

(ii) Formulas especially prepared for meal replacement and contain at least 25 percent of the Daily Values per serving reference amounts defined by the Food and Drug Administration in 21 CFR 101.9 for calories and protein and at least 16 of the 25 listed vitamins and minerals.

(iii) Formulas especially prepared for high protein drinks and have a true protein solids content greater than 8 percent.

(iv) Beverages that contain alcohol and are licensed by the Federal Tax and Trade Bureau, U.S. Department of the Treasury, and

(v) Packaged milk products that are specifically formulated and labeled for animal use.

(3) Any product that contains by weight less than 6.5 percent nonfat milk solids and 2.24 percent true protein. Provided further that all protein sources (including non-dairy sources) will be included in establishing the true protein content of the beverage product.

\* \* \* \* \*

**Proposed by Select Milk Producers Inc. and Continental Dairy Products, Inc.**

*Proposal No. 4*

This proposal seeks to amend the fluid milk product definition by including only stand-alone beverages that are determined by a skim-equivalent standard, removing the 6.5 percent nonfat milk solids standard, and excluding other dairy products in fluid form that are not intended to be used as stand-alone beverages.

1. Amend § 1000.15 by revising paragraphs (a) and (b)(1), redesignating paragraph (b)(2) as paragraph (b)(3), and adding new paragraphs (b)(2) and (c), to read as follows:

**§ 1000.15 Fluid milk product.**

(a) Except as provided in paragraph (b) of this section, fluid milk product means any product containing milk or milk products in fluid or frozen form

that is intended to be used as a stand-alone beverage. Fluid milk product includes any beverage products that are flavored, cultured, modified with added nonfat solids, sterilized, concentrated, or reconstituted. As used in this part, the term concentrated milk means milk that contains not less than 25.5 percent and not more than 50 percent total milk solids.

(b) \* \* \*

(1) Plain or sweetened evaporated milk/skim milk, sweetened condensed milk/skim milk, formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers, and whey;

(2) Products such as half-and-half, light cream, heavy cream, and whipping creams which, although fluid in form, are not intended for use as stand-alone beverages; and

(3) \* \* \*

(c) The quantity of milk that is used in a product defined in paragraph (a) of this section shall be determined on a skim-equivalent basis.

**Proposed by H.P. Hood LLC**

*Proposal No. 5*

This proposal seeks to amend the fluid milk product definition to include any product that, based upon substantial evidence as determined by the Department, directly competes with other fluid milk products and whose classification would enhance producer revenues.

1. Amend § 1000.15 by revising paragraph (b)(2), to read as follows:

**§ 1000.15 Fluid milk product.**

\* \* \* \* \*

(b) \* \* \*

(2) The quantity of skim milk equivalent in any modified product specified in paragraph (a) of this section that is greater than an equal volume of an unmodified product of the same nature and butterfat content, provided that any product that would otherwise be excluded from the fluid milk product definition because it contains by weight less than 6.5 percent nonfat milk solids will nonetheless be deemed a fluid milk product if the Department makes a written determination, based on substantial evidence, that:

(i) The product directly competes with other fluid milk products; and

(ii) Treating the product as a fluid milk product will enhance producer revenues under the orders, taking into account both the revenues generated by the minimum class price resulting from that classification and the impact of that class price on consumer demand for the

product and the substitution of non-dairy ingredients.

Proposal No. 6

As an alternative to Proposal 5, this proposal seeks to amend the fluid milk product definition by authorizing, but not requiring, the Department to determine a product's nonfat milk solids content by applying only a skim milk equivalent standard with respect to any dried dairy ingredient.

1. Amend § 1000.15 by revising paragraph (b)(2), to read as follows:

§ 1000.15 Fluid milk product.

\* \* \* \* \*

(b) \* \* \*

(2) The quantity of skim milk equivalent in any modified product specified in paragraph (a) of this section that is greater than an equal volume of an unmodified product of the same nature and butterfat content, provided that, in determining whether a product contains by weight less than 6.5 percent nonfat milk solids, the Department shall be authorized, but not required to apply that test on a skim milk equivalent basis only with respect to any dairy ingredient utilized in dried form.

Proposed by National Milk Producers Federation

Proposal No. 7

This proposal seeks to amend the fluid milk product definition by removing the reference to the 6.5 percent nonfat milk solids standard and whey, and adopting a milk protein standard.

1. Amend § 1000.15 by revising paragraph (b)(1), to read as follows:

§ 1000.15 Fluid milk product.

\* \* \* \* \*

(b) \* \* \*

(1) Plain or sweetened evaporated milk/skim milk, sweetened condensed milk/skim milk, formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers, and any product that contains by weight less than 2.25 percent milk protein; and

\* \* \* \* \*

Proposed by The Dannon Company Inc.

Proposal No. 8

This proposal seeks to amend the fluid milk product definition by excluding yogurt-containing beverages.

1. Amend § 1000.15 by revising paragraph (b)(1), to read as follows:

§ 1000.15 Fluid milk product.

\* \* \* \* \*

(b) \* \* \*

(1) Plain or sweetened evaporated milk/skim milk, sweetened condensed milk/skim milk, formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers, yogurt-containing beverages, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

\* \* \* \* \*

Proposed by General Mills, Inc.

Proposal No. 9

This proposal seeks to amend the fluid milk product definition to exclude drinkable food products with no more than 2.2 percent skim milk protein provided the product contains at least 20 percent yogurt (nonfat yogurt, lowfat yogurt or yogurt) by weight.

Proposed by Novartis Nutrition Corporation

Proposal No. 10

This proposal seeks to amend the fluid milk product definition to exclude formulas prepared for dietary use by removing the words "(meal replacement) that are packaged in hermitically-sealed containers." The proposal removes the 6.5 percent nonfat milk solids standard.

1. Amend § 1000.15 by revising paragraph (b)(1), to read as follows:

§ 1000.15 Fluid milk product.

\* \* \* \* \*

(b) \* \* \*

(1) Plain or sweetened evaporated milk/skim milk, sweetened condensed milk/skim milk, formulas especially prepared for infant feeding or dietary use, and whey; and

\* \* \* \* \*

Proposed by Hormel Foods, LLC

Proposal No. 11

This proposal seeks to amend the fluid milk product definition and the corresponding classification of milk utilization provision to exclude health-care beverages as fluid milk products.

1. Amend § 1000.15 by revising paragraph (b)(1) to read as follows:

§ 1000.15 Fluid milk product.

\* \* \* \* \*

(b) \* \* \*

(1) Plain or sweetened evaporated milk/skim milk, sweetened condensed milk/skim milk, formulas especially prepared for infant feeding, nutrient enhanced (fortified) formulas especially prepared for the health care industry or dietary use (meal replacement) that are

packaged in hermetically-sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

\* \* \* \* \*

2. Amend § 1000.40 by revising paragraph (b)(2)(vi) to read as follows:

§ 1000.40 Classes of utilization.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(vi) Formulas especially prepared for infant feeding; nutrient enhanced (fortified) formulas especially prepared for the health care industry, or dietary use (meal replacement) that are packaged in hermetically-sealed containers;

\* \* \* \* \*

Proposed by Dairy Programs, Agricultural Marketing Service

Proposal No. 12

For all Federal Milk Marketing Orders, make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid marketing areas, or from the Hearing Clerk, United States Department of Agriculture, STOP 9200—Room 1083, 1400 Independence Avenue, SW., Washington, DC 20250—9200, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

- Office of the Secretary of Agriculture;
Office of the Administrator, Agricultural Marketing Service;
Office of the General Counsel; and
Dairy Programs, Agricultural Marketing Service (Washington office) and the Offices of all Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: April 6, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05-7271 Filed 4-11-05; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. NM305; Notice No. 25-05-04-SC]

**Special Conditions: Airbus Model A380-800 Airplane; Dynamic Braking, Interaction of Systems and Structures, Limit Pilot Forces, Side Stick Controllers, Dive Speed Definition, Electronic Flight Control System-Lateral-Directional Stability, Longitudinal Stability, and Low Energy Awareness, Electronic Flight Control System-Control Surface Awareness, Electronic Flight Control System-Flight Characteristics Compliance Via the Handling Qualities Rating Method, Flight Envelope Protection-General Limiting Requirements, Flight Envelope Protection-Normal Load Factor (G) Limiting, Flight Envelope Protection-High Speed Limiting, Flight Envelope Protection-Pitch and Roll Limiting, Flight Envelope Protection-High Incidence Protection and Alpha-Floor Systems, High Intensity Radiated Fields (HIRF) Protection, and Operation Without Normal Electrical Power**

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

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This notice proposes special conditions for the Airbus A380-800 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features include side stick controllers, a body landing gear in addition to conventional wing and nose landing gears, electronic flight control systems, and flight envelope protection. These proposed special conditions also pertain to the effects of such novel or unusual design features, such as their effects on the structural performance of the airplane. Finally, the proposed special conditions pertain to the effects of certain conditions on these novel or unusual design features, such as the effects of high intensity radiated fields (HIRF) or of operation without

normal electrical power. Additional special conditions will be issued for other novel or unusual design features of the Airbus A380-800 airplanes. A list is provided in the section of this document entitled "Discussion of Novel or Unusual Design Features."

**DATES:** Comments must be received on or before May 27, 2005.

**ADDRESSES:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM-113), Docket No. NM305, 1601 Lind Avenue SW., Renton, Washington 98055-4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM305. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Holly Thorson, FAA, International Branch, ANM-116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (425) 227-1357; facsimile (425) 227-1149.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late, if it is possible to do so without incurring expense or delay. We may change the proposed special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on

which the docket number appears. We will stamp the date on the postcard and mail it back to you.

#### **Background**

Airbus applied for FAA certification/validation of the provisionally-designated Model A3XX-100 in its letter AI/L 810.0223/98, dated August 12, 1998, to the FAA. Application for certification by the Joint Aviation Authorities (JAA) of Europe had been made on January 16, 1998, reference AI/L 810.0019/98. In its letter to the FAA, Airbus requested an extension to the 5-year period for type certification in accordance with 14 CFR 21.17(c). The request was for an extension to a 7-year period, using the date of the initial application letter to the JAA as the reference date. The reason given by Airbus for the request for extension is related to the technical challenges, complexity, and the number of new and novel features on the airplane. On November 12, 1998, the Manager, Aircraft Engineering Division, AIR-100, granted Airbus' request for the 7-year period based on the date of application to the JAA.

In its letter AI/LE-A 828.0040/99 Issue 3, dated July 20, 2001, Airbus stated that its target date for type certification of the Model A380-800 has been moved from May 2005, to January 2006, in order to match the delivery date of the first production airplane. In accordance with 14 CFR 21.17(d)(2), Airbus chose a new application date of April 20, 1999, and requested that the 7-year certification period which had already been approved be continued. The part 25 certification basis for the Model A380-800 airplane was adjusted to reflect the new application date.

The Model A380-800 airplane will be an all-new, four-engine jet transport airplane with a full double-deck, two-aisle cabin. The maximum takeoff weight will be 1.235 million pounds with a typical three-class layout of 555 passengers.

#### **Type Certification Basis**

Under the provisions of 14 CFR 21.17, Airbus must show that the Model A380-800 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25-1 through 25-98. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Airbus A380-800 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special