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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1150

[Docket No. AMS DA-08-0035; DA-08-02]

#### National Dairy Promotion and Research Program; Final Rule on Amendments to the Dairy Promotion and Research Order

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Dairy Promotion and Research Order (Order). The amendment modifies the composition of the National Dairy Promotion and Research Board (Dairy Board) by changing the number of members in six of the 13 geographic regions. The Dairy Board, which administers the Order, requested the amendment in order to better reflect the geographic distribution of milk production in the contiguous 48 States.

**DATES:** *Effective Date:* September 30, 2008.

#### FOR FURTHER INFORMATION CONTACT:

Whitney A. Rick, Chief, Promotion and Research Branch, Dairy Programs, AMS, USDA, 1400 Independence Ave., SW., Room 2958-S, Stop 0233, Washington, DC 20250-0233. Phone: (202) 720-6909. E-mail: [Whitney.Rick@usda.gov](mailto:Whitney.Rick@usda.gov).

**SUPPLEMENTARY INFORMATION:** This final rule is issued pursuant to the Dairy Production Stabilization Act (Act) of 1983, as amended [7 U.S.C. 4501-4514].

#### Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

#### Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil

Justice Reform. This final 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.

The Dairy Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 4509 of the Dairy 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. Such person is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Dairy 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.

#### Regulatory Flexibility Act

The Agricultural Marketing Service (AMS) has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612).

For the purpose of the Regulatory Flexibility Act, small businesses in the dairy industry have been defined as those employing less than 500 employees. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than \$750,000. In the 48 contiguous States, there are approximately 70,000 dairy farms subject to the provisions of this Order. Most of the parties subject to the Order are considered small entities.

The Order is administered by a 36-member Board representing 13 geographic regions within the contiguous 48 States. The Order provides that the Dairy Board shall review the geographic distribution of milk production 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 better reflect the geographic distribution of milk

production volume in the 48 contiguous States.

Based on a review of the 2007 geographic distribution of milk production, it has been determined that the number of Dairy Board members for six of the 13 geographic regions should be changed. The Dairy Board was last modified in 2003 based on 2002 milk production.

The amendment will not have a significant economic impact on persons subject to the Order. The proposed changes merely allow representation of the Dairy Board to better reflect geographic milk production in the contiguous 48 States. Finally, no relevant Federal rules have been identified that duplicate, overlap, or conflict with this rule.

#### Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. chapter 35], the information collection requirements and recordkeeping provisions imposed by the Order have been previously approved by OMB and assigned OMB Control No. 0581-0093.

#### Prior Documents in This Proceeding

*Proposed Rule:* Issued July 24, 2008; published July 30, 2008 (73 FR 44176).

#### Statement of Consideration

The Order is administered by a 36-member Dairy Board. This final rule amends the Order by modifying the number of members on the Board in six of the 13 geographic regions. The amendment modifies the composition of the Board to better reflect current milk production within each of the 13 geographic regions of the contiguous 48 States.

The Order provides in section 1150.131 that the Dairy Board shall review the geographic distribution of milk production volume throughout the contiguous 48 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 in the contiguous 48 States. The Dairy Board is required to conduct the review at least every five years and not more than every three years. The

Dairy Board was last modified in 2003 based on 2002 milk production.

In determining the number of Dairy Board seats for each of the 13 geographic regions designated in the Order, the total milk production for the contiguous 48 states for the previous calendar year is divided by 36 to

determine a factor of pounds of milk represented by each Dairy Board member. The resulting factor is then divided into the pounds of milk produced in each region to determine the number of Dairy Board members for each region. Accordingly, the following

table summarizes by region the volume of milk production distribution for 2007, the percentage of total milk production, the current number of Dairy Board seats per region, and the adopted number of Dairy Board seats for each region.

Region and states	Milk production (mil lbs)	Percentage of total milk production	Current number of board seats	Proposed number of board seats
1: Oregon, Washington .....	7,764	4.2	2	1
2: California .....	40,683	21.9	7	8
3: Arizona, Colorado, Idaho, Montana, Nevada, Utah, Wyoming .....	21,212	11.4	3	4
4: Arkansas, Kansas, New Mexico, Oklahoma, Texas .....	18,200	9.8	3	4
5: Minnesota, North Dakota, South Dakota .....	10,741	5.8	2	2
6: Wisconsin .....	24,080	13.0	5	5
7: Illinois, Iowa, Missouri, Nebraska .....	8,948	4.8	2	2
8: Alabama, Kentucky, Louisiana, Mississippi, Tennessee .....	3,119	1.7	1	1
9: Indiana, Michigan, Ohio, West Virginia .....	16,148	8.7	3	3
10: Florida, Georgia, North Carolina, South Carolina, Virginia .....	6,506	3.5	1	1
11: Delaware, Maryland, New Jersey, Pennsylvania .....	12,008	6.5	3	2
12: New York .....	12,103	6.5	3	2
13: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont .....	4,046	2.2	1	1
<b>Total: 48 Contiguous States .....</b>	<b>185,558</b>	<b>100</b>	<b>36</b>	<b>36</b>

\* Based upon preliminary 2007 NASS milk production data, February 2008.

Upon the basis of its review of geographic milk production volume, the Dairy Board proposed that the number of members in six of the 13 geographic regions be changed. The current review conducted by the Dairy Board is based on 2007 data. In 2007, total milk production was 185,558 million pounds, which indicates that each of the Dairy Board members would represent 5,154 million pounds of milk. For 2002, total milk production was 169,643 million pounds of milk and each of the Board members represented 4,712 million pounds of milk.

Based on the 2007 milk production data, the Dairy Board proposed that member representation in Region 2 (California), Region 3 (Arizona, Colorado, Idaho, Montana, Nevada, Utah, and Wyoming), and Region 4 (Arkansas, Kansas, New Mexico, Oklahoma, and Texas) each be increased by one member, and member representation in Region 1 (Oregon and Washington), Region 11 (Delaware, Maryland, New Jersey, and Pennsylvania), and Region 12 (New York) each be decreased by one member.

Milk production in Region 2 increased to 40,683 million pounds in 2007, up from 34,884 million pounds in 2002, indicating eight Dairy Board members (40,683 divided by 5,154 = 8) compared to seven Dairy Board members based on 2002 milk production data. Milk production in

Region 3 increased to 21,212 million pounds in 2007, up from 16,291 million pounds in 2002, indicating four Dairy Board members (21,212 divided by 5,154 = 4) compared to three Dairy Board members based on 2002 milk production data. Milk production in Region 4 increased to 18,200 million pounds in 2007, up from 15,313 million pounds in 2002, indicating four Dairy Board members (18,200 divided by 5,154 = 4) compared to three Dairy Board members based on 2002 milk production data.

Milk production in Region 1 increased to 7,764 million pounds in 2007, up from 7,713 million pounds in 2002. The Dairy Board determined that Region 1 milk production data does not continue to support 2 seats. Based on the data, the Dairy Board recommended that one seat from Region 1 be assigned to another region, thereby reducing Region 1 Dairy Board members from two members to one member. In Region 11, milk production decreased to 12,008 million pounds in 2007 down from 12,492 million pounds in 2002, indicating two Dairy Board members for the region (12,008 divided by 5,154 = 2) compared to three members based on 2002 data. Also, in Region 12, milk production decreased to 12,103 million pounds in 2007 down from 12,217 million pounds in 2002, indicating two Dairy Board members for the region (12,103 divided by 5,154 = 2) compared to three members based on 2002 data.

Interested parties were provided an opportunity to file comments on the proposed rule. No comments were received were received by the Department.

This final rule adopts the Dairy Board's proposal that member representation in Region 2 be increased from seven members to eight members, and Region 3 and Region 4 representation each be increased from three members to four members; Region 1 representation be decreased from two members to one member and Region 11 and Region 12 representation each be decreased from three members to two members.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because this rule should be in effect as soon as possible to appoint Board members for the 2008–2011 term.

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

Dairy products, Milk, Promotion, Research.

■ For the reasons set forth in the preamble, 7 CFR part 1150 is amended as follows:

**PART 1150—DAIRY PROMOTION PROGRAM**

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

**Authority:** 7 U.S.C. 4501–4514 and 7 U.S.C. 7401.

■ 2. In § 1150.131, paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(11), and (a)(12) are revised as follows:

**§ 1150.131 Establishment and membership.**

(a) \* \* \*

(1) One member from region number one comprised of the following States: Washington and Oregon.

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

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

(4) Four members from region number four comprised of the following States: Arkansas, Kansas, New Mexico, Oklahoma and Texas.

\* \* \* \* \*

(11) Two members from region number eleven comprised of the following States: Delaware, Maryland, New Jersey and Pennsylvania.

(12) Two members from region number twelve comprised of the following State: New York.

\* \* \* \* \*

Dated: September 23, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8–22739 Filed 9–26–08; 8:45 am]

BILLING CODE 3410–02–P

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 140

RIN 3150–AI44

[NRC–2008–0512]

### Inflation Adjustment to the Price-Anderson Act Financial Protection Regulations

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Atomic Energy Act of 1954, as amended, (AEA) requires the NRC to adjust the maximum total and annual standard deferred premiums specified in the Price-Anderson Act for inflation at least once during each 5-year period following August 20, 2003. The NRC is amending its regulations to satisfy this requirement.

**DATES:** This rule is effective on October 29, 2008.

**FOR FURTHER INFORMATION CONTACT:** Maxwell C. Smith, Office of the General

Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1246, e-mail: [maxwell.smith@nrc.gov](mailto:maxwell.smith@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

I. Background

II. Discussion of Final Rule

III. Voluntary Consensus Standard

IV. Environmental Impact: Categorical Exclusion

V. Paperwork Reduction Act Statement

VI. Regulatory Analysis

VII. Regulatory Flexibility Certification

VIII. Backfit Analysis

IX. Congressional Review Act

### I. Background

Section 604 of the Energy Policy Act of 2005, Public Law 109–58, amended section 170 of the AEA (“Price-Anderson Act”) to require the NRC to adjust the maximum total and annual standard deferred premiums not less than once during each 5-year period following August 20, 2003 in accordance with the aggregate percentage change in the Consumer Price Index. The NRC made the initial changes to the Price-Anderson Act amounts required by section 604 of the Energy Policy Act on October 27, 2005 (70 FR 61885). This final rule makes the required inflation adjustments to the maximum total and annual standard deferred premiums.

This rule simply incorporates mandatory statutory requirements. Accordingly, good cause exists under 5 U.S.C. section 553(d)(3) to publish this final rule without soliciting public comment because the Commission has no discretion in these matters and public comment would serve no useful purpose. The NRC is required only to perform ministerial computations. The revisions are being published as a final rule that will become effective 30 days from the date of publication in the **Federal Register**.

### II. Discussion of the Final Rule

Section 170t. “Inflation Adjustment” of the AEA requires the NRC to “adjust the amount of the maximum total and annual standard deferred premium under subsection b.(1) not less than once during each 5-year period following August 20, 2003 in accordance with the aggregate percentage change in the Consumer Price Index.” The NRC’s implementing regulations for the Price-Anderson Act are found in 10 CFR part 140. Accordingly, the Commission is amending 10 CFR 140.11, “Amounts of financial protection for certain reactors”, to adjust for the increase in inflation since August 20, 2003. Specifically, as set forth in section 170t.

of the AEA, the Commission is adjusting the amount of the maximum total and annual standard deferred premium.

The current maximum total deferred premium in 10 CFR 140.11(a)(4) is \$95,800,000 and the maximum annual deferred premium is \$15,000,000. The Consumer Price Index in August 2003 was 183.9. The most recent Consumer Price Index, April 2008, is 214.823. This represents an increase of approximately 16.82%. When this increase is applied to the maximum total and annual standard deferred premium and rounded, the new maximum total deferred premium is \$111,900,000, and the maximum annual deferred premium is \$17,500,000. Section 140.11(a)(4) is being changed accordingly.

### III. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this rule, the NRC is revising its regulations to reflect statutory mandates contained in the Energy Policy Act of 2005. This action does not constitute the establishment of a standard that contains generally applicable requirements.

### IV. Environmental Impact: Categorical Exclusion

The Commission has determined that this final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

### V. Paperwork Reduction Statement

This final rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

### VI. Regulatory Analysis

A regulatory analysis has not been prepared for this regulation. This rule amends NRC regulations to be consistent with provisions of the