

# Proposed Rules

Federal Register

Vol. 74, No. 95

Tuesday, May 19, 2009

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

[Docket No. DA-08-07: AMS-DA-08-0050]

#### National Dairy Promotion and Research Program; Proposed Rule and Opportunity To File Comments, Including Written Exceptions, on Proposed Amendments to the Order

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

**ACTION:** Proposed rule.

**SUMMARY:** This document invites written comments on proposed amendments to the Dairy Promotion and Research Order. This proposed action is pursuant to the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) and the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). The 2002 Farm Bill mandates that the Dairy Promotion and Research Order be amended to implement an assessment on imported dairy products to fund promotion and research. The 2008 Farm Bill specifies a mandatory assessment rate of 7.5 cents per hundredweight of milk, or equivalent thereof, on dairy products imported into the United States. This proposed rule, in accordance with the 2008 Farm Bill, amends the term "United States" in the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4501–4514, as amended) to mean all States, the District of Columbia, and the Commonwealth of Puerto Rico. Producers in these areas will be assessed 15 cents per hundredweight for all milk produced and marketed.

**DATES:** Comments must be submitted on or before June 18, 2009.

**ADDRESSES:** Comments on this proposed rule should be identified with the docket number AMS-DA-08-0050; DA-08-07. Commenters should identify the date and page number of the issue of the proposed rule. Interested persons may

comment using any of the following procedures:

- **Mail:** Comments may be submitted by mail to 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.
- **Fax:** Comments may be faxed to (202) 720–0285.
- **E-mail:** Comments may be e-mailed to [Whitney.Rick@usda.gov](mailto:Whitney.Rick@usda.gov).
- **Internet:** <http://www.regulations.gov>.

All comments submitted by the above procedures will be available for viewing at: <http://www.regulations.gov>, or at USDA, AMS, Dairy Programs, Promotion and Research Branch, Room 2958–S, 1400 Independence Ave., SW., Washington, DC, from 9 a.m. to 4 p.m., Monday through Friday, (except on official Federal holidays). Persons wanting to view comments in Room 2958–S are requested to make an appointment in advance by calling (202) 720–6909.

**FOR FURTHER INFORMATION CONTACT:** Whitney Rick, USDA, AMS, Dairy Programs, Promotion and Research Branch, Stop 0233–Room 2958–S, 1400 Independence Avenue, SW., Washington, DC 20250–0233, (202) 720–6909, [Whitney.Rick@usda.gov](mailto:Whitney.Rick@usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposed rule is pursuant to the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4501, *et seq.*), Public Law 98–180, enacted November 29, 1983, as amended May 13, 2002, by Public Law No. 107–171, and further amended June 18, 2008, by Public Law No. 110–246.

#### Executive Order 12866

This proposed rule has been determined to significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. A cost-benefit analysis for this proposed rule is available at <http://www.ams.usda.gov/dairyimportassessment>.

Assessments to dairy producers under the Order are relatively small compared to producer revenue. If dairy producers in Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico had paid assessments of \$0.15 per hundredweight of milk marketed in 2007, it is estimated that \$1.1 million would have been paid. This

is about 0.6 percent of the \$192 million total value of milk produced and marketed in these areas.

The assessments collected from importers under the Dairy Promotion and Research Program are expected to be relatively small compared to the value of dairy imports. If importers had been assessed \$0.075 per hundredweight, or equivalent thereof, for imported dairy products in 2007 as specified in this rule, it is estimated that less than \$6.1 million would have been paid. This is about 0.3 percent of the \$2.4 billion value of the dairy products imported in 2007.

Examination of import volumes for 2007 indicates that tariff rate quotas (TRQs) seem to constrain dairy imports in varying degrees for some products, but not for others. TRQs do not seem to be a significant hindrance to the volume imported for many dairy products. Significant quantities of dairy products imported are not subject to TRQs.

The Program promotes dairy ingredients through DMI's Innovation and Ingredients Program and through the Web site <http://www.innovatewithdairy.com>. Through importer representation on the Dairy Board and possible establishment of qualified programs by importers, imported products could be promoted to a greater extent than with current program.

#### Civil Rights Analysis

Consideration has been given to the potential civil rights implications of this proposed rule on affected parties 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. Although detailed information is not available on importers who would be subject to the amendments or the users of imported dairy products, broad consideration was given to the employees of such entities and those individuals who wish to use information collected under this mandatory program concerning the assessing of dairy product importers. This proposed rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Moreover, the amendments would not exclude from participation any persons or

groups, deny any persons or groups the benefits of the program, or subject any persons or groups to discrimination.

#### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have a 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 Production Stabilization Act of 1983 authorizes the National Dairy Promotion and Research Program. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 4509 of the Act, any person subject to the Dairy Promotion and Research 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 requesting 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.

#### Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The purpose of the Regulatory Flexibility Act is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The Dairy Production Stabilization Act of 1983 authorizes a national program for dairy product promotion, research and nutrition education. Congress found that it is in the public interest to authorize the establishment of an orderly procedure for financing through assessments on all milk produced in the United States for commercial use and on imported dairy products, to carry out a coordinated program of promotion designed to strengthen the dairy industry's position

in the marketplace and to maintain and expand domestic and foreign markets and uses for fluid milk and dairy products.

As directed by the 2008 Farm Bill, approximately 360 producers in Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico will become subject to the provisions of the Dairy Promotion and Research Order. The Small Business Administration [13 CFR 121.201] defines small dairy producers as those having annual receipts of \$750,000 or less annually. Most of the producers who will become subject to the proposed provisions of the Order are considered small entities.

Assessments to dairy producers under the Order are relatively small compared to producer revenue. If dairy producers in Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico had paid assessments of \$0.15 per hundredweight of milk marketed in 2007, it is estimated that \$1.1 million would have been paid. This is about 0.6 percent of the \$192 million total value of milk produced and marketed in these areas. The assessment for dairy producers in Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico will be collected by persons who pay the producers for milk produced and marketed, and the money will be remitted to the National Dairy Promotion and Research Board (Dairy Board).<sup>1</sup> These "responsible persons," usually milk handlers, incur the cost of calculating the assessment due from each dairy producer, forwarding a form monthly to the Dairy Board, and sending checks to the Dairy Board and designated Qualified Programs. Responsible persons maintain any records that are necessary to account for the collection of the 15-cent assessment. Books and records for producers and persons collecting assessments subject to the Order shall be maintained for two years beyond the fiscal period of their applicability. These books and records would be made available to employees or agents of the Dairy Board or the Department during normal business hours for inspection if necessary for verification purposes. For the purpose of the Regulatory Flexibility Act, a dairy products manufacturer is a small business if it has fewer than 500 employees. For purposes of determining a milk handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant is considered

a large business even if the local plant has fewer than 500 employees. While the number of responsible persons collecting assessments under the Order in Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico are not known, we would expect that most would be considered small businesses.

According to the U.S. Customs and Border Protection (CBP), there were 1,751 importers of dairy products listed in § 1150.152 (b) in 2007. Although data is not available concerning the sizes of these firms, it is reasonable to assume that most of them would be considered small businesses. Although many types of businesses import dairy products, the most common classification for dairy product importers is Grocery and Related Product Merchant Wholesalers (North American Industry Classification System, category 4244). The Small Business Administration [13 CFR 121.201] defines such entities with fewer than 100 employees as small businesses. According to 2005 statistical data from the U.S. Census Bureau, 95.4 percent of these types of businesses had fewer than 100 employees (<http://www.census.gov/csd/susb/susb05.htm>).

This proposed rule would impose minimal reporting and recordkeeping requirements on importers subject to the Order. Books and records for importers subject to the Order shall be maintained for two years beyond the calendar year in which the import occurs. These books and records would be made available to employees or agents of the Dairy Board or the Department during normal business hours for inspection if necessary for verification purposes. Importers must maintain books and records sufficient to verify that products have been properly classified according to the Harmonized Tariff Schedule (HTS). Importers already maintain such books and records in order to comply with tariff regulations. In some cases, importers would be required to keep books and records concerning specific milk solids content of imported products. This rule proposes two methods for importers to calculate assessments due. If the importer has sufficient documentation to determine the milk solids content of the product to be imported, the importer would use an assessment rate of \$0.01327 per kilogram (kg) of milk solids to calculate and pay the assessment. In many cases, the importer would have this documentation on hand as part of normal business practice. If the importer does not have adequate documentation concerning the milk solids content of the product to be imported, the importer would pay a rate per kg of product

<sup>1</sup> Any producer that sells milk directly to consumers shall remit the assessment directly to the Dairy Board.

volume as listed in the table displayed in § 1150.152 (b)(1)(ii). In this case, it would only be necessary for the importer to maintain books and records to verify compliance with certain HTS code assignment requirements.

Assessments to importers under the Order are relatively small compared to the value of dairy imports. If importers had been assessed \$0.075 per hundredweight of milk, or equivalent thereof, on imported dairy products in 2007 as specified in this rule, it is estimated that less than \$6.1 million would have been paid. This is about 0.3 percent of the \$2.4 billion value of the imported dairy products.

Finally, this proposed rule provides for importer organizations that conduct qualified national, regional, or state dairy product promotion, research, or nutrition education programs to receive assessment funds upon being designated by individual importers and for nominations for representation of importers to be submitted by organizations that represent importers of dairy products, as approved by the Secretary. While the number of such organizations is expected to be small, the members of such organizations reflect the same size composition as discussed above.

Interested persons are requested to comment specifically on the number and size of entities that would be regulated by this proposed rule.

#### **Paperwork Reduction Act**

Information collection requirements and recordkeeping provisions contained in 7 CFR Part 1150 have been previously approved by the Office of Management and Budget and assigned OMB Control Number 0581-0093 under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Section 1601 of the 2002 Farm Bill (Pub. L. 107-171) and section 1601 of the 2008 Farm Bill (Pub. L. 110-246) exempt this proposed rule from the Paperwork Reduction Act. Although exempted, the requirements of the Paperwork Reduction Act were considered in developing the provisions of this proposed rule. The information collection requirements are minimal but essential to carry out the intent of the Dairy Production Stabilization Act of 1983. The proposed Order provisions have been carefully reviewed and every effort has been made to minimize recordkeeping costs or requirements.

Under the Order, importers would be responsible to pay assessments. CBP will serve as the collecting agent for assessments on imported dairy products and will remit the assessments to the Dairy Board. The Department anticipates that importers would be

required to provide additional reports and records on occasions when additional information is needed as evidence of compliance, or in cases when the importer seeks a reimbursement of assessments. Such records must be retained for at least 2 years beyond the calendar year of their applicability.

Under the Order provisions, each person making payment to a producer for milk produced in the United States and marketed for commercial use (responsible person) collects an assessment for all such milk handled. Responsible persons calculate the assessments due from each dairy producer. Under the proposed order provisions, responsible persons making payments to dairy producers in Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico would be required to collect and remit assessments and file reports with the Dairy Board. The Order would impose certain recordkeeping requirements on responsible persons; however, information required under the Order could be compiled from currently maintained records. Any producer marketing milk of that producer's own production directly to consumers is a responsible person. Such records must be retained for at least 2 years beyond the calendar year of their applicability.

The forms on which producer information is to be collected require the minimum information necessary to effectively carry out the requirements of the Order. There are no training requirements for individuals filling out reports and remitting assessments to the Dairy Board. The forms are designed to be simple and easy to understand and place as small a burden as possible on the persons required to file the information.

The timing and frequency of collecting information are intended to meet the needs of the program while minimizing the amount of work necessary to fill out the required reports. In addition, the information to be included on these forms is not available from other sources because such information relates specifically to individual producers and responsible persons who are subject to the provisions of the Order. Therefore, there is no practical method for collecting the required producer information without the use of these forms.

The assessment would place a minimal burden on newly regulated producers or importers who seek to direct monies to Qualified Programs. The amount of time required to designate to a qualified program is estimated to be 15 minutes to prepare a

written request. Qualified Programs are certified by the Secretary and authorized by Federal or State law for the purpose of promoting dairy products.

The proposed Order provisions would place a minimal burden on newly regulated producers or importers who seek nomination to serve on the Dairy Board. Importers and producers would be required to complete a background information form for submission to the Secretary. The estimated time for completing the form is 30 minutes, which includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the form. Additionally, there would be minimal burden on importer organizations that voluntarily request to be approved by the Secretary to participate in the program by making nominations to the Board. The estimated time for reporting this is 30 minutes. This is similar to the information collection burden for certification of producer organizations.

Currently, a producer who operates under an approved National Organic Program (NOP) (7 CFR Part 205) certificate and thus only produces products that are eligible to be labeled as 100 percent organic under the NOP, and is not a split operation shall be exempt from the payment of assessments. This proposed rule provides that an importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation, would be exempt from the payment of assessments. The Order places a minimal burden on a producer or importer applying for such an exemption. The producer or importer must provide a request to the Dairy Board, on a form provided by the Dairy Board, at any time initially and annually thereafter. For importers, the documentation is the same as for a producer.

In addition, there are some requirements for information from importers that are occasional. For example, if an importer claims a refund from the Dairy Board for an overpayment, circumstances dictate the time that it would take for the importer to gather the information necessary to make the claim. Assembling and transmitting the necessary documentation to the Dairy Board would place a minimal burden on importers.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies, and to

provide increased opportunity for citizen access to Government information and services and for other purposes.

### Background

The Dairy Production Stabilization Act of 1983 authorizes the Order for dairy product promotion, research, and nutrition education as part of a comprehensive strategy to increase human consumption of milk and dairy products and to reduce milk surpluses. The program functions to strengthen the dairy industry's position in the marketplace by maintaining and expanding domestic and foreign consumption of fluid milk and dairy products.

Section 1505 of the 2002 Farm Bill requires that the Order be amended to implement a mandatory assessment on dairy products imported into the United States and that the assessment be submitted to CBP at the time entry documents are filed.

Section 1507 of the 2008 Farm Bill amended the term "United States" in Section 4502(1) of the Dairy Production Stabilization Act of 1983 to mean all of the States, the District of Columbia, and the Commonwealth of Puerto Rico. This amendment requires that the States of Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico be added to the existing regions of the Dairy Board and the commencement of assessing producers in these areas 15 cents per hundredweight on all milk produced and marketed commercially.

The Order is administered by a 36-member Dairy Board appointed by the Secretary representing 13 geographic regions of the United States. In order to complement the current geographical make up of the existing regions, it is proposed that the each of the four new jurisdictions be added to the region of closest geographic proximity. Therefore, Alaska would be added to Region 1, currently comprised of Oregon and Washington; Hawaii would be added to Region 2, currently California; and the District of Columbia and the Commonwealth of Puerto Rico would be added to Region 10, currently comprised of Florida, Georgia, North Carolina, South Carolina and Virginia. Each person making payment to a producer in Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico for milk produced and marketed for commercial use, would be required to collect an assessment on all milk handled for the account of the producer at the rate of 15 cents per hundredweight and would remit the assessment to the Dairy Board. Any

producer marketing milk of that producer's own production in the form of milk or dairy products to consumers, either directly or through retail or wholesale outlets, would remit to the Dairy Board an assessment on such milk at the rate of 15 cents per hundredweight. Each person responsible for the remittance of the assessment for milk marketing from producers in Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico would remit to the Dairy Board not later than the last day of the month following the month in which the milk was marketed.

Section 10607 of the 2002 Farm Bill provides for an exemption from payment of assessments by organic milk producers and importers of dairy products. Section 1150.157 of the Order currently provides the specific requirements necessary for producers to receive the exemption. (See 70 FR 2744 for a complete discussion of implementation of the provisions of section 10607 of the 2002 Farm Bill.) Section 1150.157 would be amended to provide an exemption for importers. A producer who operates under an approved National Organic Program (NOP) (7 CFR Part 205) certificate and thus only produces products that are eligible to be labeled as 100 percent organic under the NOP, and is not a split operation, would be exempt from the payment of assessments. An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205), and who is not a split operation, would be exempt from the payment of assessments. To receive the exemption, producers and importers of products labeled as 100 percent organic, and who do not produce any non-organic products, would provide a request to the Dairy Board, on a form provided by the Dairy Board, at any time initially and annually thereafter.

The 2002 Farm Bill amendments authorize importers to have representation on the Dairy Board. Initially, importers are required to be represented by at least 2 importers appointed by the Secretary. Thereafter, importer representation on the Dairy Board will be adjusted at least once every three years, if necessary, to reflect the volume of imports relative to domestic marketings of milk. The amendments also specify that the assessments may not be used for foreign market promotion and that they be implemented in a manner consistent with United States trade obligations.

The 2002 Farm Bill specifies that the assessment be 15 cents per hundredweight, or equivalent thereof,

on dairy products imported into the United States. However, this rate was changed with the 2008 Farm Bill; Section 1507 specifies that the assessment will be 7.5 cents per hundredweight of milk, or the equivalent thereof. The assessment is equivalent to one-half the payment domestic dairy farmers are required to remit.

With the 2002 Farm Bill, the policy statement in the Dairy Production Stabilization Act of 1983 has been revised to make it clear that the purpose of the program is to expand the consumption of dairy products, whether produced domestically or imported. A program that promotes the substitution of a dairy product from one source with a dairy product from another source would not be consistent with this policy. Likewise, the Dairy Board and USDA carefully will consider whether any brand advertising or promotion would have a detrimental affect on other brands of dairy products before giving approval. No program would be approved if it would negatively affect similar domestic or imported dairy products.

### Preliminary Statement

The 2002 and 2008 Farm Bills authorize the Secretary to issue regulations to implement the mandatory dairy import assessment without providing a notice and comment period. However, due to the interest of affected parties, a comment period is provided until June 18, 2009.

Comments may address any proposed provision of the regulation, but specifically, interested parties are asked to submit comments on the proposed designation of imported dairy products to be assessed under the Order and the proposed methods used to calculate assessments on such products.

This proposed rule amends certain provisions of the Order to conform to legislative changes of the enacted 2002 and 2008 Farm Bills. Section 1505 of the 2002 Farm Bill amends sections 110(b), 111, 112, 113(b), 113(e), 113(g), 113(k), and 116(b) of the Act, thereby necessitating revisions to certain provisions of the Order. Section 1507 of the 2008 Farm bill amends sections 111, 113(e), 113(g) and 130 of the Act also necessitating revisions to certain provisions of the Order.

Order provisions would be revised as follows:

1. In § 1150.106, the term *United States* would be redefined to include all of the States, the District of Columbia, and the Commonwealth of Puerto Rico.

2. Section 1150.109 would be revised to recognize national qualified programs.

3. In § 1150.111, the term *Milk* would be redefined to remove the necessity that it be produced in the United States.

4. A new section, § 1150.120, would be added to define the term *Imported Dairy Product*.

5. A new section, § 1150.121, would be added to define the term *Importer*.

6. A new section, § 1150.122, would be added to define the term *CBP*.

7. Section 1150.131 would be modified in total to incorporate the requirement that the 36-member Dairy Board be increased initially by two importer members to give representation to importers. Procedures are established to be applied at least once every three years to determine the future importer representation on the Dairy Board. Modifications also are made to the regions to include Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico.

8. Section 1150.132 would be modified to include the terms of office for importer representatives to the Board.

9. Section 1150.133 would be modified to delete obsolete references, to clarify certain terms, and to provide a process for importer nominations.

10. Section 1150.134 would be modified to include importers and to include national programs in disclosure requirements.

11. Section 1150.135 would be modified to reference the proper amended sections.

12. Section 1150.139(e) would be modified to include importers and importer organizations.

13. Section 1150.140(b) would be modified to include importers.

14. Section 1150.140(n) would be modified to remove the necessity for the Dairy Board to encourage coordination of programs designed to promote only fluid milk and dairy products produced in the United States.

15. A new paragraph, § 1150.151(c), would be added to limit the amount of funds the Dairy Board may expend in foreign market development for products manufactured in the United States.

16. Section 1150.152 would be modified to establish a procedure for collecting the assessment on imported dairy products, to establish a rate of assessment, to allow importers to receive a credit on assessments paid to a Qualified Program, and to properly reference amended sections.

17. Section 1150.153 would be modified to include importers, to recognize that national programs may

apply for certification of qualification, and to indicate that national programs fall under the same provisions as State or regional plans. Other sections that reference Qualified Programs would also be modified to include national programs.

18. Section 1150.156 would be modified to cover charges and penalties for importers.

19. Section 1150.157 would be modified to remove language concerning exemption requests from producers received on or before August 15, 2005, and to provide an assessment exemption for importers who import only 100 percent organic products.

20. Section 1150.171 would be revised to require reports from importers if necessary for compliance verification and to properly reference an amended section.

21. Section 1150.172 would be modified to add importer books and records requirements.

22. Section 1150.187 would be modified to indicate that information and record keeping requirements have been approved by OMB and assigned an OMB control number "as appropriate."

The 2002 Farm Bill requires that the Order be amended to provide an assessment on imported dairy products into the United States and provides for importer representation on the Dairy Board. The 2008 Farm Bill requires importers to pay 7.5 cents per hundredweight of milk, or the equivalent thereof, on imported dairy products, an assessment which is equivalent to one-half the amount domestic dairy producers are required to remit.

The assessments on imported dairy products would be collected by CBP from importers at the time the entry summary documents are filed. If the importer has adequate documentation concerning the milk solids content of the imported dairy product, the assessment would be based upon milk solids content of the imported dairy product. If the importer does not have adequate documentation concerning the milk solids content of the imported dairy product, a default assessment rate for each HTS code would be applied. The assessments collected would be transferred by CBP to the Dairy Board to fund the national dairy promotion and research program. The Dairy Board would establish a compliance program and procedures to verify, as necessary, that correct assessments have been paid by importers based upon total milk solids content or default assessment rates for imported dairy products.

Since the mandatory 7.5-cent assessment is per one hundred pounds

of milk, this proposed rule applies a standard rate of assessment per unit of milk solids. On average during the period January 2006 through December 2007, a hundredweight of U.S. producer milk contained 12.45 pounds of milk solids (3.68 percent butterfat and 8.77 percent nonfat milk solids).<sup>2</sup> Since the assessment rate stated in the 2008 Farm Bill is 7.5 cents per hundredweight of milk or its equivalent, this rule establishes the assessment rate per volume of imported milk solids as \$0.00602 per pound (\$0.075/12.45 pounds) or \$0.01327 per kg (1 kg = 2.204623 pounds). This rate would be applied to the estimated milk solids content for any imported products listed in the table displayed in § 1150.152(b)(1).

If the importer has sufficient documentation to determine the milk solids content of the product to be imported, the importer would use the assessment rate of \$0.01327 per kg of milk solids to calculate and pay the assessment. Milk solids of U.S. origin would not be included in the calculation. Alternatively, if the importer does not have adequate documentation concerning the milk solids content of the imported product, the importer would pay a default rate per kg of product volume as listed in the table displayed in § 1150.152(b)(1).

For most products, the default assessment rate for each HTS code would be based upon maximum milk solids content. In some cases, the maximum milk solids content is stated in the HTS; in other cases, various sources other than the HTS would be used to estimate the maximum milk solids content for the particular HTS number. In cases where maximum milk solids content is not stated in the HTS and cannot be estimated, a typical milk solids content is used, if available. Where neither a maximum nor a typical milk solids content is available, a milk solids content of a similar listed product may be used. In some cases, no information is available concerning milk solids content for an HTS number other than a minimum requirement stated in the HTS. In these cases, this minimum milk solids content stated in the HTS is used.

The various sources used to help determine default assessment rates include the HTS; CBP rulings; an April 1991 study by the Commodity Analysis Division of the Agricultural Stabilization and Conservation Service entitled *Methodology of Calculating the Milk Equivalent, Total Solids Basis, of*

<sup>2</sup> National Agricultural Statistics Service (NASS), Dairy Products 2007 Annual Summary (April 2008).

*CCC Purchases of Surplus Dairy Products and of Imports of Dairy Products; the Nutrient Database for Standard Reference*, USDA Agricultural Research Service; a handbook entitled *Dairy-Based Ingredients* by Ramesh Chandan, Egan Press, 1997; a handbook entitled *Cheese Varieties and Descriptions* by USDA Agricultural Research Service, 1969; data from the National Agricultural Statistics Service; Federal Standards of Identity as designated by the Food and Drug Administration, U.S. Department of Health and Human Services (Chapter 21, Code of Federal Regulations); a U.S. Government Accounting Office Study entitled *Dairy Products: Imports, Domestic Production, and Regulation of Ultra-filtered Milk*, March 2001; and a paper by the Food and Agricultural Organization of the United Nations entitled *The Technology of Traditional Milk Products in Developing Countries*, FAO Animal Production and Health Paper 85, 1990. A detailed table reflecting the sources above, *Default Import Assessment Rates for the National Dairy Promotion and Research Program*, is available at <http://www.ams.usda.gov/dairyimportassessment>.

The following discussion illustrates the procedure used to determine the default assessment rates and the alternative methods used to calculate the assessment. Cheddar cheese generally contains no more than 66.6 percent milk solids.<sup>3</sup> By multiplying the milk solids assessment rate of \$0.01327 by 66.6 percent, a default unit assessment rate of \$0.009 per kg of product volume (rounded to the nearest tenth of 1 cent) is determined and appears in the table listed in § 1150.152(b)(1). An importer of Cheddar cheese who does not have adequate documentation concerning the milk solids content of the cheese would pay using this assessment rate. If an importer imports Cheddar cheese with a milk solids content of 62.0 percent milk solids, and that importer has sufficient documentation as specified in § 1150.172(b) stating the milk solids content of the imported cheese, the importer would pay an assessment \$0.008 per kg of product volume (\$0.01327 times 62.0 percent, rounded to the nearest tenth of one cent).

Section 1150.152(b)(4) allows the Dairy Board to make adjustments for importers who have underpaid or

overpaid assessments. Under this Section, if an importer pays an incorrect assessment, the Dairy Board would issue a refund to importer. For example, if assessments were paid on an imported dairy product not produced from cow's milk (such as products made from goat milk or sheep milk), the importer may request a refund from the Dairy Board.

The Dairy Production Stabilization Act of 1983 defines dairy products as "products manufactured for human consumption which are derived from the processing of milk, and includes fluid milk products." The 2002 Farm Bill amended the Act to provide an assessment on imported dairy products. An imported dairy product is defined as any dairy product imported into the United States, including dairy products imported into the United States in the form of: (1) Milk, cream, and fresh and dried dairy products; (2) butter and butterfat mixtures; (3) cheese; and (4) casein and mixtures. The Act specifies that milk means any class of cow's milk.

This proposed rule designates a comprehensive list of products containing milk solids. The list includes:

- Dairy products made from cow's milk included in HTS Chapter 4, headings 0401 through 0406.
- Other dairy items whose HTS description specifies that the product contains cow's milk, butterfat, and/or milk solids.
- Certain items known to usually contain dairy ingredients.

The following types of dairy-related items are specifically excluded from the list:

- Items subject to by HTS General Note 15, which includes products imported by or for the account of any U.S. government agency and products imported for the personal use of the importer-products that will not enter the commerce of the United States.
- Items that categorically do not contain cow's milk.<sup>4</sup>
- Items categorically used as animal feed.
- Items which may or may not contain milk solids and parameters for milk solids are not stated in the HTS, such as pizza, quiche, and pudding.

<sup>4</sup> There are some HTS codes that clearly distinguish whether or not the product contains cow's milk and others that do not. For example, HTS 04064020 is for Roquefort cheese in original loaves. Roquefort cheese, by definition, is made from sheep's milk. On the other hand, HTS 04069099 is designated for cheeses that do not fit the description of any other HTS code and either do not contain cow's milk solids or are soft ripened cheeses that do contain cow's milk solids. While HTS 04064020 is excluded from the comprehensive list considered for the Import Assessment Program, HTS 04069099 is included in the list.

The promotion assessment domestically is paid by dairy farmers on all milk marketed. Thus, for any product, dairy or otherwise, that is produced using domestic milk, the assessment has been paid. The Dairy Board does not promote all dairy products. For instance, the Dairy Board does not advertise or promote ice cream even though dairy farmers pay a 15-cent per hundredweight assessment for milk used in the production of ice cream. Other examples would be food preparations, infant formula, and milk chocolate, all of which contain dairy products. Thus, the import assessment would be collected on all specified imported dairy products and imported products containing dairy solids, whether or not the Dairy Board chooses to promote such product.

The 2002 Farm Bill requires that importers be represented by at least 2 members on the Dairy Board. The Dairy Board, which is comprised of 36 members who represent 13 geographic regions, will be expanded initially to include 2 importer representatives. The importers, like domestic dairy farmers who are appointed to the Dairy Board, shall serve for terms of 3 years and will be eligible to serve 2 consecutive 3-year terms with the exception that the 2 importer members initially appointed to the Board shall serve until October 31, 2010, and October 31, 2011. Importers shall be appointed from nominations submitted by importers under such procedures as the Secretary deems necessary.

The 2002 Farm Bill specifies that the Secretary shall review once every three years the average volume of domestic production of dairy products compared to the average volume of imports of dairy products into the United States during the previous 3 years. On the basis of the review, the Secretary shall reapportion the importer representation on the Dairy Board to reflect the proportional share of U.S. market by domestic production and imported dairy products. In order to provide a basis for comparison of domestic production of dairy products to imported products, estimated total milk solids would be used. Statistics for total milk solids of domestic dairy products are published annually by USDA National Agricultural Statistics Service. The calculation of total milk solids for imported products for reapportionment purposes would be the same as the calculation of total milk solids for assessment purposes.

Like domestic producers, importers would be required to direct 5 cents per hundredweight of milk, or equivalent thereof, of their assessment to the Dairy

<sup>3</sup> According to NASS statistics, the lowest weekly average moisture content of barrel Cheddar cheese rounds to 33.4 percent for States other than Minnesota and Wisconsin for the week ending March 10, 2007. The remaining 66.6 percent would have been composed of milk solids.

Board. Importers would be permitted to direct the remainder, up to 2.5 cents per hundredweight of milk, or equivalent thereof, of their assessment to a Qualified Dairy Product Promotion, Research, and Nutrition Education Program authorized under Federal or State law, similar to domestic dairy producers.

The language in the Order would be modified to make it clear that dairy products are to be promoted regardless of national origin. The definition of “milk” would be changed to include all cow’s milk instead of only cow’s milk produced in the United States. In § 1150.140 (n) concerning duties of the Board to “\* \* \* maintain and expand domestic and foreign markets and uses for fluid milk and dairy products,” the words “produced in the United States” would be stricken. A proposed provision is included in the order to address the requirement that none of the assessments collected on imported dairy products may be used for foreign market promotion.

The 2002 Farm Bill mandates that the import assessment be implemented in a manner consistent with United States trade obligations. USDA has consulted with the United States Trade Representative who has determined that this proposed rule is consistent with the international trade obligations of the Federal Government.

Subtitle F of Title 1 of the 2002 Farm Bill at section 1601 and Subtitle F of Title 1 of the 2008 Farm Bill at section 1601 provide for the implementation timeframe and the promulgation of these regulations without regard to the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Statement of the Policy of the Secretary of Agriculture, effective July 24, 1971 (36 FR 13804, and the notice and comment provisions of section 553 of Title 5, United States Code. As indicated previously, due to the interest of affected parties, a comment period is provided through June 18, 2009.

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

Dairy Products, Milk, Promotion, Research.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1150 be 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. Section 1150.106 is revised to read as follows:

#### § 1150.106 United States.

*United States* means all of the States, the District of Columbia, and the Commonwealth of Puerto Rico.

3. Section 1150.109 is revised to read as follows:

#### § 1150.109 Qualified national, regional, or State program.

*Qualified national, regional, or State program* means any national, regional, or State dairy product promotion, research or nutrition education program which is certified as a qualified program pursuant to § 1150.153.

4. Section 1150.111 is revised to read as follows:

#### § 1150.111 Milk.

*Milk* means any class of cow’s milk.

5. Sections 1150.120 through 1150.122 are added to read as follows:

#### § 1150.120 Imported Dairy Product.

*Imported Dairy Product* means any product that is imported into the United States under any of the Harmonized Tariff Schedule (HTS) classification numbers listed in § 1150.152(b)(1).

#### § 1150.121 Importer.

*Importer* means a person that imports imported dairy products into the United States as a principal or as an agent, broker, or consignee of any person who produces or handles dairy products outside of the United States for sale in the United States, and who is listed as the importer of record for such dairy products.

#### § 1150.122 CBP.

*CBP* means the United States Customs and Border Protection of the Department of Homeland Security.

6. Section 1150.131 is revised to read as follows:

#### § 1150.131 Establishment and membership.

(a) There is hereby established a National Dairy Promotion and Research Board.

(b) Thirty-six members of the Board shall be United States producers. For purposes of nominating producers to the Board, the United States shall be divided into thirteen geographic regions and the number of Board members from each region shall be as follows:

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

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

(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.

(5) Two members from region number five comprised of the following States: Minnesota, North Dakota and South Dakota.

(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.

(8) One member from region number eight comprised of the following States: Alabama, Kentucky, Louisiana, Mississippi and Tennessee.

(9) Three members from region number nine comprised of the following States: Indiana, Michigan, Ohio and West Virginia.

(10) One member from region number ten comprised of the following States: Commonwealth of Puerto Rico, District of Columbia, Florida, Georgia, North Carolina, South Carolina, and Virginia.

(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.

(13) One member from region number thirteen comprised of the following States: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

(c) Two members of the Board shall be importers who are subject to assessments under § 1150.152(b).

(d) The Board shall be composed of milk producers and importers appointed by the Secretary either from nominations submitted pursuant to § 1150.133 or in accordance with § 1150.136. A milk producer may be nominated only to represent the region in which such producer’s milk is produced.

(e) At least every five years, and not more than every three years, 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 regions and/or a modification of the number of producer members from regions in order to best reflect the geographic distribution of milk production volume in the United States.

(f) At least once every three years, after the initial appointment of importer representatives on the Board, the Secretary shall review the average volume of domestic production of dairy products compared to the average



volume of imports of dairy products into the United States during the previous 3 years and, on the basis of that review, if warranted, reapportion the importer representation on the Board to reflect the proportional shares of the United States market served by domestic production and imported dairy products. The basis for comparison of domestic production of dairy products to imported products shall be estimated total milk solids. The calculation of total milk solids of imported dairy products for reapportionment purposes shall be the same as the calculation of total milk solids of imported dairy products for assessment purposes.

(g) In determining the volume of milk produced and total milk solids of dairy products produced in the United States, the Board and Secretary shall utilize the information received by the Board pursuant to § 1150.171(a) and data published by the Department.

7. In § 1150.132, paragraph (a) is revised to read as follows:

**§ 1150.132 Term of Office.**

(a) The members of the Board shall serve for terms of three years, except that:

(1) the members appointed to the initial Board shall serve proportionately, for terms of one, two and three years.

(2) the 2 importer members initially appointed to the Board shall serve until October 31, 2010, and October 31, 2011.

\* \* \* \* \*

8. In § 1150.133, paragraphs (a), (c), and (d) are revised, and a new paragraph (e) is added to read as follows:

**§ 1150.133 Nominations.**

\* \* \* \* \*

(a) The Secretary shall solicit nominations for producer representation on the Board from all eligible organizations. For nominations of producers, if the Secretary determines that a substantial number of producers are not members of, or their interests are not represented by, such eligible organizations, the Secretary shall also solicit nominations from such producers through general farmer organizations or by other means.

\* \* \* \* \*

(c) An eligible producer organization may submit nominations only for positions on the Board that represent regions in which such eligible organization can establish that it represents a substantial number of producers. If there is more than one Board position for any such region, the organization may submit nominations for each position.

(d) Where there is more than one eligible organization representing producers in a specific geographic region, the organizations may caucus and jointly nominate producers for each position representing that region on the Board for which a member is to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held, each eligible organization may submit to the Secretary nominations for each appointment to be made to represent that region.

(e) Nominations for representation of importers may be submitted by:

(1) Organizations that represent importers of dairy products, as approved by the Secretary. The primary considerations in determining if organizations adequately represent importers of dairy products shall be whether its membership consists primarily of importers of dairy products and whether a substantial interest of the organization is in the importation of fluid milk or dairy products and the promotion of the nutritional attributes of fluid milk or dairy products; and

(2) Individual importers of dairy products. Individual importers submitting nominations to represent importers on the Board must establish to the satisfaction of the Secretary that the persons submitting the nominations are importers of dairy products.

9. In § 1150.134, the introductory text and paragraph (b) are revised to read as follows:

**§ 1150.134 Nominee's agreement to serve.**

Any producer or importer nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

\* \* \* \* \*

(b) Disclose any relationship with any organization that operates a qualified national, regional, or State program or has a contractual relationship with the Board; and

\* \* \* \* \*

10. Section 1150.135 is revised to read as follows:

**§ 1150.135 Appointments.**

From the nominations made pursuant to § 1150.133, the Secretary shall appoint the members of the Board on the bases of representation provided for in §§ 1150.131(b) and 1150.131(c).

11. In § 1150.139, paragraph (e) is revised to read as follows:

**§ 1150.139 Powers of the Board.**

\* \* \* \* \*

(e) To disseminate information to producers, producer organizations, importers, and importer organizations

through programs or by direct contact utilizing the public postage system or other systems;

\* \* \* \* \*

12. In § 1150.140, paragraphs (b) and (n) are revised to read as follows:

**§ 1150.140 Duties of the Board.**

\* \* \* \* \*

(b) To appoint from its members an executive committee whose membership shall equally reflect each of the different geographic regions in the United States in which milk is produced and importer representation on the Board, and to delegate to the committee authority to administer the terms and provisions of this subpart under the direction of the Board and within the policies determined by the Board;

\* \* \* \* \*

(n) To encourage the coordination of programs of promotion, research and nutrition education designed to strengthen the dairy industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for fluid milk and dairy products.

13. In § 1150.151, new paragraph (c) is added to read as follows:

**§ 1150.151 Expenses.**

\* \* \* \* \*

(c) The Board is authorized to expend up to the amount of the assessments collected from United States producers to promote dairy products produced in the United States in foreign markets.

14. Section 1150.152 is revised to read as follows:

**§ 1150.152 Assessments.**

(a) *Domestic Assessments.*

(1) Each person making payment to a producer for milk produced in the United States and marketed for commercial use shall collect an assessment on all such milk handled for the account of the producer at the rate of 15 cents per hundredweight of milk for commercial use, or the equivalent thereof, and shall remit the assessment to the Board.

(2) Any producer marketing milk of that producer's own production in the form of milk or dairy products to consumers, either directly or through retail or wholesale outlets, shall remit to the Board an assessment on such milk at the rate of 15 cents per hundredweight of milk for commercial use or the equivalent thereof.

(3) In determining the assessment due from each producer pursuant to § 1150.152(a)(1) and (a)(2), a producer who is participating in a qualified national, regional, or State program(s)



shall receive a credit for contributions to such program(s), but not to exceed 10 cents per hundredweight of milk marketed.

(4) In order for a producer described in § 1150.152(a)(1) to receive the credit authorized in § 1150.152(a)(3), either the producer or a cooperative association on behalf of the producer must establish to the person responsible for remitting the assessment to the Board that the producer is contributing to a qualified national, regional, or State program. Producers who contribute to a qualified program directly (other than through a payroll deduction) must establish with the person responsible for remitting the assessment to the Board, with validation by the qualified program, that they are making such contributions.

(5) In order for a producer described in § 1150.152(a)(2) to receive the credit authorized in § 1150.152(a)(3), the producer and the applicable qualified national, regional, or State program must establish to the Board that the producer is contributing to a qualified national, regional, or State program.

(6) The collection of assessments pursuant to § 1150.152(a)(1) and (a)(2) shall begin with respect to milk marketed on and after the effective date of this section and shall continue until terminated by the Secretary. If the Board is not constituted by the date the first assessments are to be collected, the Secretary shall have the authority to receive the assessments on behalf of the Board. The Secretary shall remit such assessments to the Board when it is constituted.

(7) Each person responsible for the remittance of the assessment pursuant to § 1150.152(a)(1) and (a)(2) shall remit the assessment to the Board not later than the last day of the month following the month in which the milk was marketed.

(8) Money remitted to the Board shall be in the form of a negotiable instrument made payable to "National Dairy Promotion and Research Board." Remittances and reports specified in § 1150.171(a) shall be mailed to the location designated by the Secretary or the Board.

*(b) Importer Assessments.*

(1) Each importer of dairy products identified in the following table, except for as provided for in § 1150.157, is responsible for paying 7.5 cents per hundredweight of U.S. milk, or equivalent thereof, as determined in (i) or (ii) below.

(i) If the importer has sufficient documentation, as stated in § 1150.172(b), to determine the milk solids content of the imported dairy product, the importer shall use the

assessment rate of \$0.01327 per kilogram (kg) of milk solids to calculate and pay the assessment. Milk solids of U.S. origin shall not be included in the calculation.

(ii) If the importer does not have sufficient documentation, as stated in § 1150.172(b), to determine the milk solids content of the imported dairy product, the importer shall pay a rate per kg of product volume as listed in the following table.

**IMPORTED DAIRY PRODUCTS SUBJECT TO ASSESSMENT**

HTS No.	Unit of measure	Default rate per unit of product (in dollars)
0401.10.0000 ..	liter .....	0.001
0401.20.2000 ..	liter .....	0.002
0401.20.4000 ..	liter .....	0.002
0401.30.0500 ..	liter .....	0.007
0401.30.2500 ..	liter .....	0.007
0401.30.5000 ..	liter .....	0.009
0401.30.7500 ..	liter .....	0.009
0402.10.1000 ..	kg .....	0.013
0402.10.5000 ..	kg .....	0.013
0402.21.0500 ..	kg .....	0.013
0402.21.2500 ..	kg .....	0.013
0402.21.3000 ..	kg .....	0.013
0402.21.5000 ..	kg .....	0.013
0402.21.7500 ..	kg .....	0.013
0402.21.9000 ..	kg .....	0.013
0402.29.1000 ..	kg .....	0.012
0402.29.5000 ..	kg .....	0.012
0402.91.1000 ..	kg .....	0.005
0402.91.3000 ..	kg .....	0.005
0402.91.7000 ..	kg .....	0.005
0402.91.9000 ..	kg .....	0.005
0402.99.1000 ..	kg .....	0.004
0402.99.3000 ..	kg .....	0.004
0402.99.4500 ..	kg .....	0.004
0402.99.5500 ..	kg .....	0.004
0402.99.7000 ..	kg .....	0.009
0402.99.9000 ..	kg .....	0.009
0403.10.1000 ..	kg .....	0.013
0403.10.5000 ..	kg .....	0.013
0403.10.9000 ..	kg .....	0.002
0403.90.0400 ..	liter .....	0.004
0403.90.1600 ..	liter .....	0.004
0403.90.2000 ..	liter .....	0.006
0403.90.4110 ..	kg .....	0.013
0403.90.4190 ..	kg .....	0.013
0403.90.4500 ..	kg .....	0.013
0403.90.5100 ..	kg .....	0.013
0403.90.5500 ..	kg .....	0.013
0403.90.6100 ..	kg .....	0.013
0403.90.6500 ..	kg .....	0.013
0403.90.7400 ..	kg .....	0.013
0403.90.7800 ..	kg .....	0.013
0403.90.8500 ..	kg .....	0.002
0403.90.9000 ..	kg .....	0.009
0403.90.9500 ..	kg .....	0.009
0404.10.0500 ..	kg .....	0.013
0404.10.1100 ..	kg .....	0.013
0404.10.1500 ..	kg .....	0.013
0404.10.2000 ..	liter .....	0.008
0404.10.5010 ..	kg .....	0.013
0404.10.5090 ..	kg .....	0.013
0404.10.9000 ..	kg .....	0.013
0404.90.1000 ..	kg .....	0.013
0404.90.3000 ..	kg .....	0.013

**IMPORTED DAIRY PRODUCTS SUBJECT TO ASSESSMENT—Continued**

HTS No.	Unit of measure	Default rate per unit of product (in dollars)
0404.90.5000 ..	kg .....	0.013
0404.90.7000 ..	kg .....	0.013
0405.10.1000 ..	kg .....	0.013
0405.10.2000 ..	kg .....	0.013
0405.20.2000 ..	kg .....	0.011
0405.20.3000 ..	kg .....	0.011
0405.20.4000 ..	kg .....	0.007
0405.20.6000 ..	kg .....	0.011
0405.20.7000 ..	kg .....	0.011
0405.20.8000 ..	kg .....	0.011
0405.90.1020 ..	kg .....	0.013
0405.90.1040 ..	kg .....	0.013
0405.90.2020 ..	kg .....	0.013
0405.90.2040 ..	kg .....	0.013
0406.10.0400 ..	kg .....	0.006
0406.10.0800 ..	kg .....	0.006
0406.10.1400 ..	kg .....	0.008
0406.10.1800 ..	kg .....	0.008
0406.10.2400 ..	kg .....	0.009
0406.10.2800 ..	kg .....	0.009
0406.10.3400 ..	kg .....	0.008
0406.10.3800 ..	kg .....	0.008
0406.10.4400 ..	kg .....	0.008
0406.10.4800 ..	kg .....	0.008
0406.10.5400 ..	kg .....	0.010
0406.10.5800 ..	kg .....	0.010
0406.10.6400 ..	kg .....	0.009
0406.10.6800 ..	kg .....	0.009
0406.10.7400 ..	kg .....	0.005
0406.10.7800 ..	kg .....	0.005
0406.10.8400 ..	kg .....	0.011
0406.10.8800 ..	kg .....	0.011
0406.20.1500 ..	kg .....	0.007
0406.20.2400 ..	kg .....	0.012
0406.20.2800 ..	kg .....	0.012
0406.20.3110 ..	kg .....	0.012
0406.20.3190 ..	kg .....	0.012
0406.20.3300 ..	kg .....	0.012
0406.20.3600 ..	kg .....	0.012
0406.20.3900 ..	kg .....	0.012
0406.20.4400 ..	kg .....	0.012
0406.20.4800 ..	kg .....	0.012
0406.20.5100 ..	kg .....	0.012
0406.20.5300 ..	kg .....	0.012
0406.20.6100 ..	kg .....	0.012
0406.20.6300 ..	kg .....	0.012
0406.20.6500 ..	kg .....	0.012
0406.20.6700 ..	kg .....	0.012
0406.20.6900 ..	kg .....	0.012
0406.20.7100 ..	kg .....	0.012
0406.20.7300 ..	kg .....	0.012
0406.20.7500 ..	kg .....	0.012
0406.20.7700 ..	kg .....	0.012
0406.20.7900 ..	kg .....	0.012
0406.20.8100 ..	kg .....	0.012
0406.20.8300 ..	kg .....	0.012
0406.20.8500 ..	kg .....	0.012
0406.20.8700 ..	kg .....	0.012
0406.20.8900 ..	kg .....	0.012
0406.20.9100 ..	kg .....	0.012
0406.30.0500 ..	kg .....	0.008
0406.30.1400 ..	kg .....	0.008
0406.30.1800 ..	kg .....	0.008
0406.30.2400 ..	kg .....	0.009
0406.30.2800 ..	kg .....	0.009
0406.30.3400 ..	kg .....	0.008
0406.30.3800 ..	kg .....	0.008
0406.30.4400 ..	kg .....	0.008

IMPORTED DAIRY PRODUCTS SUBJECT  
TO ASSESSMENT—Continued

HTS No.	Unit of measure	Default rate per unit of product (in dollars)
0406.30.4800 ..	kg .....	0.008
0406.30.5100 ..	kg .....	0.009
0406.30.5300 ..	kg .....	0.009
0406.30.6100 ..	kg .....	0.008
0406.30.6300 ..	kg .....	0.008
0406.30.6500 ..	kg .....	0.011
0406.30.6700 ..	kg .....	0.011
0406.30.6900 ..	kg .....	0.008
0406.30.7100 ..	kg .....	0.008
0406.30.7300 ..	kg .....	0.011
0406.30.7500 ..	kg .....	0.011
0406.30.7700 ..	kg .....	0.010
0406.30.7900 ..	kg .....	0.010
0406.30.8100 ..	kg .....	0.009
0406.30.8300 ..	kg .....	0.009
0406.30.8500 ..	kg .....	0.005
0406.30.8700 ..	kg .....	0.005
0406.30.8900 ..	kg .....	0.011
0406.30.9100 ..	kg .....	0.011
0406.40.4400 ..	kg .....	0.008
0406.40.4800 ..	kg .....	0.008
0406.40.5400 ..	kg .....	0.008
0406.40.5800 ..	kg .....	0.008
0406.40.7000 ..	kg .....	0.008
0406.90.0810 ..	kg .....	0.009
0406.90.0890 ..	kg .....	0.009
0406.90.1200 ..	kg .....	0.009
0406.90.1600 ..	kg .....	0.008
0406.90.1800 ..	kg .....	0.008
0406.90.3100 ..	kg .....	0.009
0406.90.3200 ..	kg .....	0.009
0406.90.3300 ..	kg .....	0.009
0406.90.3600 ..	kg .....	0.008
0406.90.3700 ..	kg .....	0.008
0406.90.4100 ..	kg .....	0.010
0406.90.4200 ..	kg .....	0.010
0406.90.4600 ..	kg .....	0.009
0406.90.4800 ..	kg .....	0.009
0406.90.4900 ..	kg .....	0.007
0406.90.5200 ..	kg .....	0.008
0406.90.5400 ..	kg .....	0.008
0406.90.6600 ..	kg .....	0.010
0406.90.6800 ..	kg .....	0.010
0406.90.7200 ..	kg .....	0.008
0406.90.7400 ..	kg .....	0.008
0406.90.7600 ..	kg .....	0.009
0406.90.7800 ..	kg .....	0.009
0406.90.8200 ..	kg .....	0.008
0406.90.8400 ..	kg .....	0.008
0406.90.8600 ..	kg .....	0.008
0406.90.8800 ..	kg .....	0.008
0406.90.9000 ..	kg .....	0.009
0406.90.9200 ..	kg .....	0.009
0406.90.9300 ..	kg .....	0.005
0406.90.9400 ..	kg .....	0.005
0406.90.9500 ..	kg .....	0.011
0406.90.9700 ..	kg .....	0.011
0406.90.9900 ..	kg .....	0.007
1517.90.5000 ..	kg .....	0.002
1517.90.6000 ..	kg .....	0.002
1702.11.0000 ..	kg .....	0.013
1702.19.0000 ..	kg .....	0.013
1704.90.5400 ..	kg .....	0.006
1704.90.5800 ..	kg .....	0.006
1806.20.2090 ..	kg .....	0.004
1806.20.2400 ..	kg .....	0.004
1806.20.2600 ..	kg .....	0.003
1806.20.2800 ..	kg .....	0.004

IMPORTED DAIRY PRODUCTS SUBJECT  
TO ASSESSMENT—Continued

HTS No.	Unit of measure	Default rate per unit of product (in dollars)
1806.20.3400 ..	kg .....	0.004
1806.20.3600 ..	kg .....	0.003
1806.20.3800 ..	kg .....	0.004
1806.20.8100 ..	kg .....	0.013
1806.20.8200 ..	kg .....	0.003
1806.20.8300 ..	kg .....	0.013
1806.20.8500 ..	kg .....	0.004
1806.20.8700 ..	kg .....	0.003
1806.20.8900 ..	kg .....	0.004
1806.32.0400 ..	kg .....	0.004
1806.32.0600 ..	kg .....	0.003
1806.32.0800 ..	kg .....	0.004
1806.32.1400 ..	kg .....	0.004
1806.32.1600 ..	kg .....	0.003
1806.32.1800 ..	kg .....	0.004
1806.32.6000 ..	kg .....	0.003
1806.32.7000 ..	kg .....	0.003
1806.32.8000 ..	kg .....	0.003
1806.90.0500 ..	kg .....	0.005
1806.90.0800 ..	kg .....	0.003
1806.90.1000 ..	kg .....	0.005
1806.90.1500 ..	kg .....	0.003
1806.90.1800 ..	kg .....	0.003
1806.90.2000 ..	kg .....	0.003
1806.90.2500 ..	kg .....	0.003
1806.90.2800 ..	kg .....	0.003
1806.90.3000 ..	kg .....	0.003
1901.10.1500 ..	kg .....	0.009
1901.10.3000 ..	kg .....	0.009
1901.10.3500 ..	kg .....	0.009
1901.10.4000 ..	kg .....	0.009
1901.10.4500 ..	kg .....	0.001
1901.20.0500 ..	kg .....	0.003
1901.20.1500 ..	kg .....	0.003
1901.20.2000 ..	kg .....	0.003
1901.20.2500 ..	kg .....	0.003
1901.20.3000 ..	kg .....	0.003
1901.20.3500 ..	kg .....	0.003
1901.20.4000 ..	kg .....	0.003
1901.20.4500 ..	kg .....	0.003
1901.20.5000 ..	kg .....	0.003
1901.90.2800 ..	kg .....	0.013
1901.90.3400 ..	kg .....	0.005
1901.90.3600 ..	kg .....	0.005
1901.90.4200 ..	kg .....	0.007
1901.90.4300 ..	kg .....	0.007
1901.90.7000 ..	kg .....	0.003
1901.90.9082 ..	kg .....	0.001
2105.00.1000 ..	kg .....	0.005
2105.00.2000 ..	kg .....	0.005
2105.00.3000 ..	kg .....	0.003
2105.00.4000 ..	kg .....	0.003
2106.90.0600 ..	kg .....	0.002
2106.90.0900 ..	kg .....	0.002
2106.90.2400 ..	kg .....	0.010
2106.90.2600 ..	kg .....	0.010
2106.90.2800 ..	kg .....	0.007
2106.90.3400 ..	kg .....	0.006
2106.90.3600 ..	kg .....	0.006
2106.90.3800 ..	kg .....	0.002
2106.90.6400 ..	kg .....	0.013
2106.90.6600 ..	kg .....	0.013
2106.90.6800 ..	kg .....	0.001
2106.90.7200 ..	kg .....	0.001
2106.90.7400 ..	kg .....	0.001
2106.90.7600 ..	kg .....	0.001
2106.90.7800 ..	kg .....	0.002
2106.90.8000 ..	kg .....	0.002

IMPORTED DAIRY PRODUCTS SUBJECT  
TO ASSESSMENT—Continued

HTS No.	Unit of measure	Default rate per unit of product (in dollars)
2106.90.8200 ..	kg .....	0.003
2202.90.1000 ..	liter .....	0.001
2202.90.2400 ..	liter .....	0.001
2202.90.2800 ..	liter .....	0.001
3501.10.1000 ..	kg .....	0.013
3501.10.5000 ..	kg .....	0.012
3501.90.6000 ..	kg .....	0.013
3502.20.0000 ..	kg .....	0.013

(2) The assessment on imported dairy products shall be paid by the importer to CBP at the time of entry summary for any products identified in § 1150.152(b)(1).

(3) The assessments collected by CBP pursuant to § 1150.152(b)(2) of this section shall be transferred to the Board in compliance with an agreement between CBP and the Agricultural Marketing Service.

(4) The Board, at its discretion, shall verify the information reported by importers to CBP to determine if additional money is due the Board or an amount is due to an importer based on the quantity imported and the milk solids content per unit or the default assessment rate for the imported dairy product. In the case of money due to an importer from the Board, the Board will issue payment promptly to the importer. In the case of money due from the importer to the Board, the Board will send an invoice for payment directly to the importer. The invoice will be due upon receipt.

(5) At the designation of an importer, the Board shall remit to a qualified promotion program(s) assessments paid by the importer pursuant to § 1150.152(b)(2) not to exceed 2.5 cents per hundredweight of milk, or equivalent thereof, of the 7.5 cents per hundredweight of milk, or equivalent thereof, paid by the importer.

(6) Assessments collected on imported dairy products shall not be used for foreign market promotion of United States dairy products.

(c) The collection of assessments pursuant to § 1150.152(a) and (b) shall begin with respect to milk marketed or dairy products imported on and after the effective date of this section and shall continue until terminated by the Secretary.

(d) Each person responsible for the remittance of the assessment pursuant to § 1150.152(a) shall remit the assessment to the Board not later than the last day of the month following the month in which the milk was marketed.

(e) Money remitted to the Board shall be in the form of an electronic or negotiable instrument made payable to "National Dairy Promotion and Research Board." Remittances and reports specified in § 1150.171(a) shall be mailed or otherwise transferred to the location designated by the Secretary or the Board.

(f) Any money received by the Board pursuant to § 1150.152(b)(1) before the Secretary appoints the initial importer representatives to the Board shall not be spent by the Board but shall be held in escrow until such appointment.

15. In § 1150.153, the section heading and paragraphs (a), (b)(3), and (b)(5) are revised to read as follows:

**§ 1150.153 Qualified national, regional, or State dairy product promotion, research or nutrition education programs.**

(a) Any organization which conducts a dairy product promotion, research or nutrition education program, authorized by Federal or State law or has been active and ongoing before enactment of the Act, may apply to the Secretary for certification of qualification so that:

(1) producers may receive credit pursuant to § 1150.152(a)(3) for contributions to such program; and

(2) the Board may remit payments designated by importers pursuant to § 1150.152(b)(5).

(b) \* \* \*

(3) Be financed primarily by producers, either individually or through cooperative associations, and/or by importers;

\* \* \* \* \*

(5) Certify to the Secretary that any requests from producers or importers for refunds under the program will be honored by forwarding to either the Board or a qualified national, regional or State program designated by the producer or importer that portion of such refunds equal to the amount of credit that otherwise would be applicable to that program pursuant to § 1150.152(a)(3) or (b)(5); and

\* \* \* \* \*

16. In § 1150.153, paragraphs (c) introductory text, (c)(2), (c)(2)(i), (c)(2)(ii), and (c)(2)(iii), and (c)(2)(iv) replace the words "State or regional" with the words "national, regional, or State".

17. In § 1150.156, paragraph (a) is revised to read as follows:

**§ 1150.156 Charges and penalties.**

(a) *Late-payment charge.* Any unpaid assessments to the Board pursuant to § 1150.152 shall be increased 1.5 percent each month beginning with the day following the date such assessments were due. Any remaining amount due,

which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid.

(1) For the purpose of this section, any assessment pursuant to § 1150.152(a) that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the Board when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the Board, whichever is earlier.

(2) For the purpose of this section, any assessment paid to CBP pursuant to § 1150.152(b) subsequent to the time entry summary documents are filed by the importer is considered to be past due.

\* \* \* \* \*

18. Section 1150.157 is revised to read as follows:

**§ 1150.157 Assessment exemption.**

(a) A producer described in § 1150.152(a)(1) and (a)(2) who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; produces only products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (h) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) To apply for exemption under this section, a producer pursuant to § 1150.152(a)(1) and (a)(2) shall submit a request for exemption to the Board on a form provided by the Board at any time initially and annually thereafter on or before July 1 as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C 6502), a signed certification that the applicant meets all of the requirements specified in paragraph (a) of this section for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If a producer described in § 1150.152(a)(1) and (a)(2) complies with the requirements of this section, the Board will grant an assessment

exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer described in paragraph (c) of this section shall provide a copy of the Certificate of Exemption to each person responsible for remitting assessments to the Board on behalf of the producer pursuant to § 1150.152(a).

(f) The person responsible for remitting assessments to the Board pursuant to § 1150.152 shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board pursuant to § 1150.172(a).

(g) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from assessment on 100 percent organic dairy products—on a form provided by the Board—at any time initially and annually thereafter as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic dairy products bearing this HTS classification assigned by the Board will not be subject to assessments.

(h) The exemption will apply not later than the last day of the month following the Certificate of Exemption issuance date.

(i) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for

humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

19. Section 1150.171 is revised to read as follows:

**§ 1150.171 Reports.**

(a) Each producer marketing milk of that producer's own production directly to consumers and each person making payment to producers and responsible for the collection of the assessment under § 1150.152(a) shall be required to report at the time for remitting assessments to the Board such information as may be required by the Board or by the Secretary. Such information may include but not be limited to the following:

(1) The quantity of milk purchased, initially transferred or which, in any other manner, are subject to the collection of the assessment;

(2) The amount of assessment remitted;

(3) The basis, if necessary, to show why the remittance is less than the number of hundredweights of milk multiplied by 15 cents; and

(4) The date any assessment was paid.

(b) Importers of dairy products shall submit reports as requested by the Dairy Board or the Department as necessary to verify that provisions pursuant to § 1150.152(b) have been carried out correctly, including verification that correct amounts were paid based upon milk solids content of the imported dairy products pursuant to § 1150.152(b)(1)(i) or volume of imported dairy products per HTS code pursuant to § 1150.152(b)(1)(ii).

20. Section 1150.172 is revised to read as follows:

**§ 1150.172 Books and records.**

(a) Each producer who is subject to this subpart, and other persons subject to § 1150.171(a), shall maintain and make available for inspection by employees of the Board and the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued hereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

(b) Each importer of dairy products shall maintain and make available for inspection by employees of the Board and the Secretary such books and records to verify that provisions pursuant to § 1150.152(b) have been carried out correctly, including verification that correct amounts were

paid based upon milk solids content of the imported dairy products pursuant to § 1150.152(b)(1)(i) or volume of imported dairy products per HTS code pursuant to § 1150.152(b)(1)(ii). Such records shall be retained for at least two years beyond the calendar period of their applicability. Such information may include but not be limited to invoices, packing slips, bills of lading, and letters from the manufacturer on the manufacturer's letterhead stating the milk solids content of imported dairy products.

21. Section 1150.187 is revised to read as follows:

**§ 1150.187 Paperwork Reduction Act assigned number.**

The information collection and recordkeeping requirements contained in §§ 1150.133, 1150.152, 1150.153, 1150.171, 1150.172, 1150.202, 1150.204, 1150.205, 1150.211 and 1150.273 of these regulations (7 CFR Part 1150) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0581-0147 as appropriate.

Dated: May 12, 2009.

**Robert C. Keeney,**

*Acting Associate Administrator, Agricultural Marketing Service.*

[FR Doc. E9-11492 Filed 5-18-09; 8:45 am]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA-2008-1314; Airspace Docket No. 08-AGL-21]**

**Proposed Amendment of Class E Airspace; Monee, IL**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace at Monee, IL. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Bult Field Airport, Monee, IL. This action would also reflect the name change of the airport from Sanger Airport to Bult Field Airport and update the geographic coordinates. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at Bult Field Airport.

**DATES:** 0901 UTC. Comments must be received on or before July 6, 2009.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001. You must identify the docket number FAA-2008-1314/Airspace Docket No. 08-AGL-21, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527), is on the ground floor of the building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; *telephone:* (817) 321-7716.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2008-1314/Airspace Docket No. 08-AGL-21." The postcard will be date/time stamped and returned to the commenter.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's web page at [http://www.faa.gov/airports\\_airtraffic/](http://www.faa.gov/airports_airtraffic/)