



## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 1150**

**[Document No. AMS-DA-19-0075]**

### **National Dairy Promotion and Research Program; National Dairy Promotion and Research Board Importer Representation**

**AGENCY:** Agricultural Marketing Service, Agriculture (USDA).

**ACTION:** Direct final action.

**SUMMARY:** This document maintains the number of National Dairy Promotion and Research Board (Dairy Board) importer members at one member, as is stated in the Dairy Promotion and Research Order (Dairy Order). The Dairy Order requires that at least once every three years, after the initial appointment of importer members on the Dairy 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 three years and, on the basis of that review, if warranted, reapportion the importer representation on the Dairy Board to reflect the proportional shares of the United States market served by domestic production and imported dairy products.

**DATES:** This action is effective on [Insert date 60 days after publication in the FEDERAL REGISTER], unless significant adverse comments are received by [Insert date 30 days after publication in the FEDERAL REGISTER]. If this direct final action is withdrawn as a result of such comments, notification of the withdrawal will be published in the **Federal Register**.

**ADDRESSES:** Interested persons may comment on this direct final action. All comments should reference the document number, date, and page number of this issue of the **Federal**

**Register.** All comments submitted in response to this direct final action will be included in the rulemaking record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the internet at the address provided.

- Mail: Comments may be submitted by mail to Whitney A. Rick, Director, Promotion, Research and Planning Division, Dairy Program, AMS, USDA, 1400 Independence Ave., SW, Room 2958-S, Stop 0233, Washington, DC 20250-0233.
- Email: Comments may be emailed to [Whitney.Rick@usda.gov](mailto:Whitney.Rick@usda.gov).
- Internet: [www.regulations.gov](http://www.regulations.gov).

All comments on this direct final action submitted by the above methods will be available for viewing at: [www.regulations.gov](http://www.regulations.gov), or at USDA, AMS, Dairy Program, Promotion, Research and Planning Division, 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). AMS requests that persons wanting to view comments in Room 2958-S make an appointment in advance by calling (202) 720-6909.

**FOR FURTHER INFORMATION CONTACT:** Whitney A. Rick, Director, Promotion, Research, and Planning Division, Dairy Program, AMS, USDA, 1400 Independence Ave., SW, Room 2958-S, Stop 0233, Washington, DC 20250-0233. Phone: (202) 720-6909. Email: [Whitney.Rick@usda.gov](mailto:Whitney.Rick@usda.gov).

**SUPPLEMENTARY INFORMATION:** This direct final action is issued pursuant to the Dairy Production Stabilization Act (Dairy Act) of 1983, Pub L. 98-180 as codified in 7 U.S.C. 4501-4514, as amended.

**Executive Order 12866**

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action. This action falls within a category of regulatory actions that the OMB exempted from Executive Order 12866 review. Additionally, because this direct final action does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'", as amended on April 5, 2017.

### **Executive Order 12988**

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

The Dairy Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 118 of the Dairy Act, any person subject to the Dairy Order may file with the Secretary a petition stating that the Dairy Order, any provision of the Dairy Order, or any obligation imposed in connection with the Dairy Order is not in accordance with the law and request a modification of the Dairy Order or to be exempted from the Dairy Order (7 U.S.C. 4509). 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**

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this direct final action 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 Act 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) and carrying 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.

According to the U.S. Customs and Border Protection (CBP), in 2018, approximately 1,476 importers paid assessments under § 1150.152(b) of the Dairy Order. Although many types of businesses import dairy products, data is not available concerning the size of these firms. Based on AMS' knowledge of the dairy importers subject to the assessment and the available categories in North American Industry Classification System (NAICS), it is reasonable to assume the most common classification for dairy importers is Dairy Product Manufacturing (NAICS 3115), of which most of the businesses have fewer than 500 employees. The Small Business Administration (13 CFR 121.201) defines such entities with fewer than 500 employees as small businesses. AMS has determined this direct final action will not have a significant economic impact on small entities. Additionally, program provisions are administered without regard for business size.

The Dairy Order is administered by a 37-member Dairy Board, with 36 members representing 12 geographic regions within the United States and one member representing importers. Section 1150.131(f) of the Dairy Order provides that at least once every three years, after the initial appointment of importer members on the Dairy 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 three 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.

### **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 record keeping provisions imposed by the Dairy Order have been previously approved by OMB and assigned OMB Control No. 0581-0093. No relevant Federal rules have been identified that duplicate, overlap, or conflict with this action.

### **Background**

The Dairy Order requires that at least once every three years 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 three years and, on the basis of that review, if warranted, reapportion the importer representation on the Dairy Board to reflect the proportional shares of the United States market served by domestic production and imported dairy products.

For initial importer member representation, section 113 of the Dairy Act required the Secretary to appoint two dairy importers to the Dairy Board. 7 U.S.C. 4504(b)(6)(A). For subsequent representation, the Dairy Act requires the Secretary to review the average volume of domestic production of dairy products compared to the average volume of dairy products imported into the United States at least once every three years, and if necessary, reapportion importer representation to reflect the proportional share of the United States market by domestic production and imported dairy products. 7 U.S.C. 4504(b)(6)(B).

Section 1150.131(f) of the Dairy Order states that the basis for the comparison of domestic production of dairy products to imported products should be estimated total milk solids. The calculation of total milk solids of imported dairy products for reapportionment purposes is the same as the calculation of total milk solids of imported dairy products for assessment purposes.

Using Supply and Allocation of Milk Fat and Skim Solids by Product annual data published by USDA's Economic Research Service, the average annual U.S. milk total solids for domestic dairy products for 2016 to 2018 was 23,510 billion pounds. Based on the total milk solids number, each of the 36 domestic Dairy Board producer members would represent 653 million pounds of total milk solids (23,510 billion pounds divided by 36 producer members equals approximately 653 million pounds per producer).

Using information received from CBP, the annual average of total milk solids imported during the years 2016 to 2018 was 720 million pounds. Table 1 summarizes the total milk solids represented by the 36 domestic producer members and the total milk solids represented by the 1 importer member. Table 2 shows Dairy Board representation based on the average U.S. total solids and average imported total solids.

Table 1–Dairy Board Representation Based on U.S. Total Solids and Imported Total Solids by Pounds

<b>Year</b>	<b>U.S. Total Solids, lbs.</b>	<b>Imported Total Solids, lbs.</b>
<b>2016</b>	23,138,000,000	802,240,354
<b>2017</b>	23,574,000,000	711,719,985
<b>2018</b>	23,819,000,000	647,458,004
<b>Average</b>	23,510,000,000	720,472,781

Source: National Agricultural Statistics Service, Dairy Products Annual Survey and CBP

Table 2 –Dairy Board Representation Based on Average U.S. Total Solids and Average Imported Total Solids

	<b>Average Total Milk Solids (lbs.)</b>	<b>Current Number of Board Seats</b>	<b>Average Total Milk Solids Represented Per Board Member (lbs.)</b>
<b>Domestic Producer</b>	23,510,000,000	36	653,069,007
<b>Importer</b>	720,472,781	1	720,472,781

Based on the calculations, Dairy Board importer member representation will remain the same at one member to accurately represent the volume of imported total milk solids compared to the volume of total solids represented by each of the 36 domestic producer members.

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 Bruce Summers, Administrator,  
 Agricultural Marketing Service.

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