

DAIRY PROMOTION AND RESEARCH ORDER

REVISED: May 22, 2012

**UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE**

7 CFR PART 1150 - DAIRY PROMOTION PROGRAM

Subpart – Dairy Promotion and Research Order

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PART 1150 – DAIRY PROMOTION PROGRAM
Subpart – Dairy Promotion and Research Order

DEFINITIONS

§1150.101 Act.

Act means Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, Pub. L. 98-180, 97 Stat. 1128, as approved November 29, 1983, and any amendments thereto.

§1150.102 Department.

Department means the United States Department of Agriculture.

§1150.103 Secretary.

Secretary means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§1150.104 Board.

Board means the National Dairy Promotion and Research Board established pursuant to §1150.131.

§1150.105 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative or other entity.

§1150.106 United States.

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

§1150.107 Fiscal period.

Fiscal period means the calendar year or such other annual period as the Board may determine.

§1150.108 Eligible organization.

Eligible organization means any organization which has been certified by the Secretary pursuant to §§1150.270 through 1150.278 of this part.

§1150.109 Qualified program.

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

§1150.110 Producer.

Producer means any person engaged in the production of milk for commercial use.

§1150.111 Milk.

Milk means any class of cow's milk.

§1150.112 Dairy products.

Dairy Products means products manufactured for human consumption which are derived from the processing of milk, and includes fluid milk products.

§1150.113 **Fluid milk products.**

Fluid milk products means those milk products normally consumed in liquid form as a beverage.

§1150.114 **Promotion.**

Promotion means actions such as paid advertising, sales promotion, and publicity to advance the image and sales of, and demand for, dairy products generally.

§1150.115 **Research.**

Research means studies testing the effectiveness of market development and promotion efforts, studies relating to the nutritional value of milk and dairy products, and other related efforts to expand demand for dairy products.

§1150.116 **Nutrition education.**

Nutrition education means those activities intended to broaden the understanding of sound nutritional principles, including the role of milk and dairy products in a balanced diet.

§1150.117 **Plans and projects.**

Plans and projects means promotion, research and nutrition education plans, studies or projects pursuant to §§1150.139, 1150.140 and 1150.161.

§1150.118 **Marketing.**

Marketing means the sale or other disposition in commerce of dairy products.

§1150.119 **Cooperative association.**

Cooperative association means any cooperative marketing association of producers which is organized under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act."

§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.

NATIONAL DAIRY PROMOTION AND RESEARCH BOARD

§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 twelve geographic regions and the number of Board members from each region shall be as follows:
 - (1) Two members from region number one comprised of the following States: Alaska, Oregon and Washington.
 - (2) Seven members from region number two comprised of the following States: California and Hawaii.

- (3) Two members from region number three comprised of the following States: Arizona, Colorado, 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) Two members from region number eight comprised of the following State: Idaho.
- (9) Three members from region number nine comprised of the following States: Indiana, Michigan, Ohio and West Virginia.
- (10) Two members from region number ten comprised of the following States: Alabama, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Commonwealth of Puerto Rico, South Carolina, Tennessee, and Virginia.
- (11) Two members from region number eleven comprised of the following States: Delaware, Maryland, New Jersey and Pennsylvania.
- (12) Three members from region number twelve comprised of the following States: Connecticut, Maine, Massachusetts, New Hampshire, New York, 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 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. 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.

§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 the Board shall serve until October 31, 2013, and October 31, 2014.
- (b) Each member of the Board shall serve until October 31 of the year in which his/her term expires, except that a retiring member may serve until a successor is appointed.
- (c) No member shall serve more than two consecutive terms.

§1150.133 Nominations.

Nominations for members of the Board shall be made in the following manner:

- (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.
- (b) After the appointment of the initial Board, the Secretary shall announce at least 120 days in advance when a Board member's term is expiring and shall solicit nominations for that position in the manner described in §1150.133(a). Nominations for such positions should be submitted to the Secretary not less than 60 days prior to the expiration of such term.
- (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 dairy products and the promotion of the nutritional attributes of 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.

§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:

- (a) Serve on the Board if appointed;
- (b) Disclose any relationship with any organization that operates a qualified program or has a contractual relationship with the Board; and
- (c) Withdraw from participation in deliberations, decision-making, or voting on matters where paragraph (b) applies.

§1150.135 Appointments.

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

§1150.136 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor from the most recent list of nominations for the position or from nominations made by the Board.

§1150.137 Procedures.

- (a) A majority of the members shall constitute a quorum at a properly convened meeting of the Board. Any action of the Board shall require the concurring votes of at least a majority of those present and voting. The Board shall establish rules concerning timely notice of meetings.
- (b) The Board may take action upon the concurring votes of a majority of its members by mail, telephone, or telegraph when in the opinion of the chairman of the Board such action must be taken before a meeting can be called. Action taken by this emergency procedure is valid only if all members are notified and provided with the opportunity to vote and any telephone vote is confirmed promptly in writing. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board.

§1150.138 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for necessary and reasonable expenses, including a per diem allowance as recommended by the Board and approved by the Secretary, incurred by them in the performance of their duties under this subpart.

§1150.139 Powers of the Board.

The Board shall have the following powers:

- (a) To receive and evaluate, or on its own initiative develop, and budget for plans or projects to promote the use of fluid milk and dairy products as well as projects for research and nutrition education and to make recommendation to the Secretary regarding such proposals;
- (b) To administer the provisions of this subpart in accordance with its terms and provisions;
- (c) To make rules and regulations to effectuate the terms and provisions of this subpart;
- (d) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;
- (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;
- (f) To select committees and subcommittees of Board members, and to adopt such rules for the conduct of the business as it may deem advisable;
- (g) To establish advisory committees of persons other than Board members and pay the necessary and reasonable expenses and fees of the members of such committees;
- (h) To recommend to the Secretary amendments to this subpart; and
- (i) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under §1150.152 in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

§1150.140 Duties of the Board.

The Board shall have the following duties:

- (a) To meet not less than annually, and to organize and select from among its members a chairman and such other officers as may be necessary;
- (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;
- (c) To appoint or employ such persons as it may deem necessary and define the duties and determine the compensation of each;

- (d) To review all programs that promote milk and dairy products on a brand or trade name basis that have requested certification pursuant to §1150.153, and to recommend to the Secretary whether such request should be granted;
- (e) To develop and submit to the Secretary for approval, promotion, research, and nutrition education plans or projects resulting from research or studies conducted either by the Board or others;
- (f) To solicit, among other proposals, research proposals that would increase the use of fluid milk and dairy products by the military and by persons in developing nations, and that would demonstrate the feasibility of converting surplus nonfat dry milk to casein for domestic and export use;
- (g) To prepare and submit to the Secretary for approval, budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including probable costs of promotion, research and nutrition education plans or projects, and also including a general description of the proposed promotion, research and nutrition education programs contemplated therein;
- (h) To maintain such books and records, which shall be available to the Secretary for inspections and audit, and prepare and submit such reports from time to time to the Secretary as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;
- (i) With the approval of the Secretary, to enter into contracts or agreements with national, regional or State dairy promotion and research organizations or other organizations or entities for the development and conduct of activities authorized under §§1150.139 and 1150.161, and for the payment of the cost thereof with funds collected through assessments pursuant to §1150.152. Any such contract or agreement shall provide that:
 - (1) The contractors shall develop and submit to the Board a plan or project together with a budget or budgets which shall show the estimated cost to be incurred for such plan or project;
 - (2) Any such plan or project shall become effective upon approval of the Secretary; and
 - (3) The contracting party shall keep accurate records of all of its transactions and make periodic reports to the Board of activities conducted and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board may audit periodically the records of the contracting party;
- (j) To prepare and make public, at least annually, a report of its activities carried out and an accounting for funds received and expended;
- (k) To have an audit of its financial statements conducted by a certified public accountant in accordance with generally accepted auditing standards, at least once each fiscal period and at such other times as the Secretary may request, and to submit a copy of each such audit report to the Secretary;
- (l) To give the Secretary the same notice of meetings of the Board, committees of the Board and advisory committees as is given to such Board or committee members in order that the Secretary, or a representative of the Secretary, may attend such meetings;
- (m) To submit to the Secretary such information pursuant to this subpart as may be requested; and
- (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:
 - (1) domestic markets and domestic uses for fluid milk and dairy products produced in the United States or imported into the United States; and
 - (2) foreign markets and foreign uses for fluid milk and dairy products produced in the United States.

EXPENSES AND ASSESSMENTS

§1150.151 **Expenses.**

- (a) The Board is authorized to incur such expenses (including provision for a reasonable reserve) as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. However, after the first full year of operation of the order, administrative expenses incurred by the Board shall not exceed 5 percent of the projected revenue of that fiscal year. Such expenses shall be paid from assessments collected pursuant to §1150.152.
- (b) The Board shall reimburse the Secretary, from assessments collected pursuant to §1150.152, for administrative costs incurred by the Department after May 1, 1984.
- (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.

§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 program(s) under §1150.153 shall receive a credit for contributions to such program(s), but not 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 program under §1150.153. 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 program must establish to the Board that the producer is contributing to the qualified 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.
- (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 the "National Dairy Promotion and Research Board." Remittances and reports specified in §1150.171(a) shall be mailed to the location designated by the Secretary.

(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 an assessment of 7.5 cents per hundredweight of U.S. milk, or equivalent thereof. The importer shall use the assessment rate of \$0.01327 per kilogram (kg) of milk solids to calculate and pay the assessment.

HTS Numbers for Dairy Import Assessment

0401.10.0000
0401.20.2000
0401.20.4000
0401.30.0500
0401.30.2500
0401.30.5000
0401.30.7500
0402.10.1000
0402.10.5000
0402.21.0500
0402.21.2500
0402.21.3000
0402.21.5000
0402.21.7500
0402.21.9000
0402.29.1000
0402.29.5000
0402.91.1000
0402.91.3000
0402.91.7000
0402.91.9000
0402.99.1000
0402.99.3000
0402.99.4500
0402.99.5500
0402.99.7000
0402.99.9000
0403.10.1000
0403.10.5000
0403.10.9000
0403.90.0400
0403.90.1600
0403.90.2000
0403.90.4110
0403.90.4190
0403.90.4500
0403.90.5100
0403.90.5500
0403.90.6100
0403.90.6500
0403.90.7400
0403.90.7800
0403.90.8500
0403.90.9000

0403.90.9500
0404.10.0500
0404.10.1100
0404.10.1500
0404.10.2000
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1806.32.1400
1806.32.1600
1806.32.1800
1806.32.6000
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2106.90.2400
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2106.90.2800
2106.90.3400
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2106.90.3800
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2106.90.7600
2106.90.7800
2106.90.8000
2106.90.8200
2202.90.1000
2202.90.2400
2202.90.2800
3501.10.1000
3501.10.5000
3501.90.6000
3502.20.0000

- (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 Secretary.
- (4) The Secretary, at his or her 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. 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 Secretary will send an invoice for payment directly to the importer. The remittance will be due to the Secretary upon receipt of the invoice. The Secretary will promptly forward such payments received to the Board.

- (5) If an importer elects to have funds remitted to a qualified program(s), the importer shall inform the Secretary of such designation by sending a letter to an address provided by the Secretary. Importer remittances for qualified program(s) shall not 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 pursuant to §1150.152(b)(1). The Secretary shall compute the funds due for each qualified program designated by importers and direct the Board to forward such funds to each qualified program.
- (6) Assessments collected on imported dairy products shall not be used for foreign market promotion of United States dairy products.
- (7) 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.
- (8) The collection of assessments pursuant to 1150.152(a) and (b) shall continue until terminated by the Secretary.

§1150.153 Qualified dairy product promotion, research or nutrition education programs.

- (a) Any producer organization that conducts a State or regional dairy product promotion, research or nutrition education program, authorized by Federal or State law; or has been an active and ongoing producer program before enactment of the Act; or is an importer organization that conducts a promotion, research, or nutrition education program 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) In order to be certified by the Secretary as a qualified program, the program must:
 - (1) Conduct activities as defined in §§1150.114, 1150.115, and 1150.116 that are intended to increase consumption of milk and dairy products generally;
 - (2) Except for producer programs operated under the laws of the United States or any State, and except for importer programs, have been active and ongoing before enactment of the Act;
 - (3) For producer organizations, be financed primarily by producers, either individually or through cooperative associations, or for importer organizations, be financed primarily by importers;
 - (4) Not use a private brand or trade name in its advertising and promotion of dairy products unless the Board recommends and the Secretary concurs that such preclusion should not apply;
 - (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 program designated by the producer or importer that portion of such refunds equal to the amount that otherwise would be applicable to that program pursuant to §1150.152(a)(3) or (b)(5); and
 - (6) Not use program funds for the purpose of influencing governmental policy or action.
- (c) An application for certification of qualifications of any dairy product promotion, research or nutrition education program which does not satisfy the requirement specified in paragraph (b) of this section shall be denied. The certification of any qualified program which fails to satisfy the requirements specified in paragraph (b) of this section after certification shall be subject to suspension or termination.
 - (1) Prior to the denial of an application for certification of qualification, or the suspension or termination of an existing certification, the Director of the Dairy Division shall afford the applicant or the holder of an existing certification an opportunity to achieve

compliance with the requirements for certification within a reasonable time, as determined by the Director.

- (2) Any dairy product promotion, research or nutrition education program whose application for certification of qualification is to be denied, or whose certification of qualification is to be suspended or terminated shall be given written notice of such pending action and shall be afforded an opportunity to petition the Secretary for a review of the action. The petition shall be in writing and shall state the facts relevant to the matter for which the review is sought, and whether petitioner desires an informal hearing. If an informal hearing is not requested, the Director of the Dairy Division shall issue a final decision setting forth the action to be taken and the basis for such action. If petitioner requests a hearing, the Director of the Dairy Division, or a person designated by the Director, shall hold an informal hearing in the following manner:
- (i) Notice of a hearing shall be given in writing and shall be mailed to the last known address of the petitioner or of the program, or to an officer thereof, at least 20 days before the date set for the hearing. Such notice shall contain the time and place of the hearing and may contain a statement of the reason for calling the hearing and the nature of the questions upon which evidence is desired or upon which argument may be presented. The hearing place shall be as convenient to the program as can reasonably be arranged.
 - (ii) Hearings are not to be public and are to be attended only by representatives of the petitioner or the program and of the U.S. Government, and such other parties as either the program or the U.S. Government desires to have appear for purposes of submitting information or as counsel.
 - (iii) The Director of the Dairy Division, or a person designated by the Director, shall be the presiding officer at the hearing. The hearing shall be conducted in such manner as will be most conducive to the proper disposition of the matter. Written statements or briefs may be filed by the petitioner or the program, or other participating parties, within the time specified by the presiding officer.
 - (iv) The presiding officer shall prepare preliminary findings setting forth a recommendation as to what action should be taken and the basis for such action. A copy of such findings shall be served upon the petitioner or the program by mail or in person. Written exceptions to the findings may be filed within 10 days after service thereof.
 - (v) After due consideration of all the facts and the exceptions, if any, the Director of the Dairy Division shall issue a final decision setting forth the action to be taken and the basis for such action.

§1150.154 Influencing government action.

No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action, except to recommend to the Secretary amendments to this subpart.

§1150.155 Adjustment of Accounts.

- (a) Whenever the Board or the Department determines through an audit of a person's reports, records, books or accounts or through some other means that additional money is due the Board or that money is due such person from the Board in accordance with §1150.152(a), such person shall be notified of the amount due. The person shall then remit any amount due the Board by the next date for remitting assessments as provided in §1150.152(a). Overpayments shall be credited to the account of the person remitting the overpayment and shall be applied against amounts due in succeeding months.
- (b) Any importer of dairy products against whose imports an assessment has been collected under §1150.152(b) who believes that such assessment or any portion of such assessment was made on milk solids of U.S. origin or milk solids other than cow's milk may apply to the Secretary for a reimbursement. The importer would be required to submit satisfactory proof

to the Secretary that the importer paid the assessment for milk solids from milk produced from the U.S. or milk solids other than cow's milk solids. The Secretary will instruct the Board to send such reimbursement to the importer.

§1150.156 Charges and penalties.

- (a) *Late-payment charge* Any unpaid assessments due 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 not collected by CBP at the time entry summary documents are filed by the importer is considered to be past due. If CBP does not collect an assessment from an importer, the importer shall be responsible for paying the assessment and any late charges to the Secretary in the form of a negotiable instrument made payable to "USDA." The payment shall be mailed to a location designated by the Secretary or sent in an electronic form approved by the Secretary.
- (b) *Penalties* Any person who willfully violates any provision of this subpart shall be assessed a civil penalty by the Secretary of not more than \$1,100 for each violation and, in the case of a willful failure to pay, collect, or remit the assessment as required by this subpart, in addition to the amount due, a penalty equal to the amount of the assessment on the quantity of milk as to which the failure applies. The amount of any such penalty shall accrue to the United States and may be recovered in a civil suit brought by the United States. The remedies provided in this section shall be in addition to, and not exclusive of, other remedies that may be available by law or in equity.

§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(a) 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 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.
- (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.
- (j) Importers who are exempt from assessment in paragraph (g) of this section shall be eligible for reimbursement of assessments collected by the CBP and may apply to the Secretary for a reimbursement. The importer would be required to submit satisfactory proof to the Secretary that the importer paid the assessment on exempt organic products.

PROMOTION, RESEARCH, AND NUTRITION EDUCATION

§1150.161 Promotion, research and nutrition education.

- (a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any plans or projects authorized in §§1150.139, 1150.140 and this section. Such plans or projects shall provide for:
 - (1) The establishment, issuance, effectuation, and administration of appropriate plans or projects for promotion, research and nutrition education with respect to milk and dairy products; and
 - (2) The establishment and conduct of research and studies with respect to the sale, distribution, marketing and utilization of milk and dairy products and the creation of new products thereof, to the end that marketing and utilization of milk and dairy products may be encouraged, expanded, improved or made more acceptable. Included shall be research and studies of proposals intended to increase the use of fluid milk and dairy products by the military and by persons in developing nations and proposals intended to demonstrate the feasibility of converting nonfat dry milk to casein for domestic and export use.
- (b) Each plan or project authorized under §1150.161(a) shall be periodically reviewed or evaluated by the Board to insure that the plan or project contributes to an effective program of promotion, research and nutrition education. If it is found by the Board that any such plan

or project does not further the purposes of the act, the Board shall terminate such plan or project.

- (c) No plan or project authorized under §1150.161(a) shall make use of unfair or deceptive acts or practices with respect to the quality, value or use of any competing product.

REPORTS, BOOKS AND RECORDS

§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 Secretary 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).

§1150.172 Books and records.

(a) Each person 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 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. Such records shall be retained for at least two years beyond the calendar period of the applicability. Such information may include but not be limited to invoices, packing slips, bills of lading, laboratory test results, and letters from the manufacturer on the manufacturer's letterhead stating the milk solids content of imported dairy products.

§1150.173 Confidential treatment.

All information obtained from such books, records or reports under the Act and this subpart shall be kept confidential by all persons, including employees and former employees of the Board, all officers and employees and all former officers and employees of the Department, and by all officers and employees and all former officers and employees of contracting agencies having access to such information, and shall not be available to Board members. Only those persons having a specific need for such information in order to effectively administer the provisions of this subpart shall have access to such information. In addition, only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the discretion, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

- (a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and
- (b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of the subpart violated by such person.

MISCELLANEOUS

§1150.181 Proceedings after termination.

- (a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation of the Secretary, shall become trustees of all the funds and property owned, in the possession of, or under the control of the Board, including unpaid claims or property not delivered or any other claim existing at the time of such termination.
- (b) The said trustees shall:
 - (1) Continue in such capacity until discharged by the Secretary;
 - (2) Carry out the obligations of the Board under any contract or agreements entered into by it pursuant to §1150.140(i);
 - (3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and
 - (4) Upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.
- (c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligation imposed upon the Board and upon the trustees.
- (d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research or nutrition education plans or projects authorized pursuant to this subpart.

§1150.182 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant hereto, or the issuance of any amendment to either thereof, shall not:

- (a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;
- (b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or
- (c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any person, with respect to any such violation.

§1150.183 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly, in any way whatsoever to any person for errors in judgement, mistakes, or other acts of either commission or omission of such member or employee, except for acts of dishonesty or willful misconduct.

§1150.184 Patents, copyrights, inventions and publications.

Any patents, copyrights, trademarks, inventions or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the U.S. Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, inure to the benefit of the Board. Upon termination of this subpart, §1150.181 shall apply to determine disposition of all such property.

§1150.185 Amendments.

The Secretary may from time to time amend provisions of this part. Any interested person or organization affected by the provisions of the Act may propose such amendments to the Secretary.

§1150.186 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

§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, 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 0581-0093 as appropriate.

Subpart - Procedure for Certification of Milk Producer Organizations

§1150.270 General.

Organizations must be certified by the Secretary that they are eligible to represent milk producers and to participate in the making of nominations of milk producers to serve as members of the National Dairy Promotion and Research Board as provided in the Dairy and Tobacco Adjustment Act of 1983. Certifications of eligibility required of the Secretary shall be conducted in accordance with this subpart.

§1150.271 Definitions.

As used in this subpart:

- (a) *Act* means Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, Pub. L. 98-180, 97 Stat. 1128, as approved November 29, 1983, and any amendments thereto;
- (b) *Department* means the United States Department of Agriculture;
- (c) *Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act in the Secretary's stead;
- (d) *Dairy Division* means the Dairy Division of the Department's Agricultural Marketing Service;
- (e) *Producer* means any person engaged in the production of milk for commercial use;
- (f) *Dairy products* means products manufactured for human consumption which are derived from the processing of milk, and includes fluid milk products; and
- (g) *Fluid milk products* means those milk products normally consumed in liquid form as a beverage.

§1150.272 Responsibility for administration of regulations.

The Dairy Division shall have the responsibility for administering the provision of this subpart.

§1150.273 Application for certification.

Any organization whose membership consist primarily of milk producers may apply for certification. Applicant organizations should supply information for certification using as a guide "Application for Certification of Organizations," Form DA-26. Form DA-26 may be obtained from the Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250.

§1150.274 Certification standards.

- (a) Certification of eligible organizations shall be based, in addition to other available information, on a factual report submitted by the organization, which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including the following:
 - (1) Geographic territory covered by the organization's active membership;
 - (2) Nature and size of the organization's active membership including the total number of active milk producers represented by the organization;
 - (3) Evidence of stability and permanency of the organization;
 - (4) Sources from which the organization's operating funds are derived;
 - (5) Functions of the organization; and
 - (6) The organization's ability and willingness to further the aims and objectives of the Act.
- (b) The primary considerations in determining the eligibility of an organization shall be whether its membership consists primarily of milk producers who produce a substantial volume of milk, and whether the primary or overriding interest of the organization is in the production or processing of fluid milk and dairy products and promotion of the nutritional attributes of fluid milk and dairy products.
- (c) The Secretary shall certify any organization which he finds meets the criteria under this section and his determination as to eligibility shall be final.

§1150.275 Inspection and investigation.

The Secretary shall have the right, at any time after application is received from an organization, to examine such books, documents, papers, records, files, and facilities of an organization as he deems necessary to verify the information submitted and to procure such other information as may be required to determine whether the organization is eligible for certification.

§1150.276 Review of certification.

Certifications issued pursuant to this subpart are subject to termination or suspension if the organization does not currently meet the certifications standards. A certified organization may be requested at any time to supply the Dairy Division with such information as may be required to show that the organization continues to be eligible for certification. Any information submitted to satisfied a request pursuant to this section shall be subject to inspection and investigation as provided in §1150.275.

§1150.277 Listing of certified organizations.

A copy of each certification shall be furnished by the Dairy Division to the respective organization. Copies also shall be filed in the Dairy Division where they will be available for public inspection.

§1150.278 Confidential treatment.

All documents and other information submitted by applicant organizations and otherwise obtained by the Department by investigation or examination of books, documents, papers, records, files, or facilities shall kept confidential by employees of the Department. Only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in the issuance of general statements based upon the application of a number of persons, which do not identify the information furnished by any one person.

Subpart - Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted From Research, Promotion and Education Programs

§1200.50 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§1200.51 Definitions.

As used in this subpart, the terms as defined in the acts shall apply with equal force and effect. In addition, unless the context otherwise requires:

- (a) *Act* means..... Title I, Subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, U.S.C. 4501-4573.
- (b) *Department* means the United States Department of Agriculture.
- (c) *Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.
- (d) *Judge* means any administrative law judge appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved.
- (e) *Administrator* means the Administrator of the Department's Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated, or may hereafter be delegated, to act in the Administrator's stead.
- (f) *Order* means any order or any amendment thereto which may be issued pursuant to the Act. The term *order* shall include plans issued under the Acts listed in paragraph (a) of this section.
- (g) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity subject to an order or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under an order.
- (h) *Proceeding* means a proceeding before the Secretary arising under section 1957 of the Act.
- (i) *Hearing* means that part of the proceedings which involves the submission of evidence.
- (j) *Party* includes the U.S. Department of Agriculture.
- (k) *Hearing clerk* means the hearing clerk, U. S. Department of Agriculture, Washington, D.C.
- (l) *Decision* Means the judges initial decision and includes the judges:
 - (1) Findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis thereof;
 - (2) Order; and
 - (3) Rulings on findings, conclusions and orders submitted by the parties; and
- (m) *Petition* includes an amended petition.

§1200.52 Institution of proceeding.

- (a) *Filing and service of petitions.* Any person subject to an order desiring to complain that such order or any provision of such order or any obligation imposed in connection with an order is not in accordance with law, shall file with the hearing clerk, in quintuplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the petition in writing the hearing clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.
- (b) *Contents of petitions.* A petition shall contain:
 - (1) The correct name, address, and principal place of business of the petitioner. If the petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers and directors; if an unincorporated association, the names and address of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

- (2) Reference to the specific terms or provisions of the order, or the interpretation or application of such terms or provisions, which are complained of;
 - (3) A full statement of the facts, avoiding a mere repetition of detailed evidence, upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioners' business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which complained of;
 - (4) A statement of the grounds on which the terms or provisions of the order or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law;
 - (5) Requests for the specific relief which the petitioner desires the Secretary to grant; and
 - (6) An affidavit by the petitioner, or, if the petitioner is not an individual, by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition and stating that it is filed in good faith and not for purposes of delay.
- (c) *A motion to dismiss a petition: filing, contents, and responses to a petition.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the Act or with the requirements of paragraph (b) of this section, the Administrator may, within 30 days after the filing of the petition, file with the hearing clerk a motion to dismiss the petition, or any portion of the petition, on one or more of the grounds stated in this paragraph. Such motion shall specify the grounds for objection to the petition and if based, in whole or in part, on allegations of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The motion may be accompanied by a memorandum of law. Upon receipt of such motion, the hearing clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition of such motion, including any memorandum of law, must be filed by the petitioner with the hearing clerk not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the hearing clerk shall transmit all papers which have been filed in connection with the motion to the judge for the judge's consideration.
- (d) *Further proceedings.* Further proceedings on petitions to modify or to be exempted from the Order shall be governed by §§900.52(c)(2) through 900.71 of the Rules of Practice Governing Proceedings on Petitions To Modify or to Be Exempted From Marketing Orders. However, each reference to *marketing order* in the title shall mean *order*.