

by dividing the total recommended budget by the quantity of assessable onions, estimated at 5,775,000 fifty-pound equivalents for the 2007–08 fiscal period. The assessment rate should generate \$173,250 in income. Considering income from interest and assessments, total income should be approximately \$24,065 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2007–08 fiscal period could range between \$10.00 and \$28.00 per 50-pound equivalent of onions. Therefore, the estimated assessment revenue for the 2007–08 fiscal period as a percentage of total grower revenue could range between .11 and .30 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the South Texas onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 16, 2007, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large South Texas onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may

be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2007–08 fiscal period began on August 1, 2007, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

#### List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is proposed to be amended as follows:

#### PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 959.237 is revised to read as follows:

##### **§ 959.237 Assessment rate.**

On and after August 1, 2007, an assessment rate of \$0.03 per 50-pound equivalent is established for South Texas onions.

Dated: February 26, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 08–898 Filed 2–26–08; 3:31 pm]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 1005, 1006 and 1007

[AMS–DA–07–0059; AO–388–A22, AO–356–A43 and AO–366–A51; Docket No. DA–07–03–B]

#### Milk in the Appalachian, Florida and Southeast Marketing Areas; Partial Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	AO No.
1005 .....	Appalachian ..	AO–388–A22
1006 .....	Florida .....	AO–356–A43
1007 .....	Southeast .....	AO–366–A51

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

**ACTION:** Proposed rule, Partial recommended decision.

**SUMMARY:** This decision recommends adoption of proposals that would increase the maximum administrative assessment rate in the Appalachian, Florida and Southeast Federal milk marketing orders.

**DATES:** Comments must be submitted on or before April 29, 2008.

**ADDRESSES:** Comments (six copies) should be filed with the Hearing Clerk, United States Department of Agriculture, STOP 9200–Room 1031, 1400 Independence Avenue, SW., Washington, DC 20250–1031. You may send your comments by the electronic process available at the Federal eRulemaking portal: <http://www.regulations.gov> or by submitting comments to [amsdairycomments@usda.gov](mailto:amsdairycomments@usda.gov). Reference should be made to the title of the action and docket number.

**FOR FURTHER INFORMATION CONTACT:** Gino M. Tosi, Associate Deputy Administrator, Order formulation and Enforcement Branch, USDA/AMS/Dairy Programs, STOP 0231–Room 2971, 1400 Independence Ave., SW., Washington, DC 20250–0231, (202) 690–1366, e-mail address: [gino.tosi@usda.gov](mailto:gino.tosi@usda.gov).

**SUPPLEMENTARY INFORMATION:** This decision recommends adoption of amendments that would allow the market administrator in the Appalachian, Florida and Southeast marketing areas to increase the maximum administrative assessment rate up to 8 cents per cwt on all pooled milk, if necessary, to maintain the mandated reserve fund level.

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

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (the Act), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

#### **Regulatory Flexibility Act and Paperwork Reduction Act**

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) 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.

For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a “small business” if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a “small business” if it has fewer than 500 employees. For the purposes of determining which dairy farms are “small businesses,” the \$750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most “small” dairy farmers. For purposes of

determining a handler’s size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During May 2007, the time of the hearing, there were 2,744 dairy farmers pooled on the Appalachian order. In the Southeast order, 2,924 dairy farmers were pooled and 283 dairy farmers were pooled on the Florida order. Of these, 2,612 dairy farmers in the Appalachian order (or 95.2 percent), 2,739 dairy farmers in the Southeast order (or 94 percent) and 153 dairy farmers in the Florida order (or 54 percent) were considered small businesses.

During May 2007, there were a total of 36 plants associated with the Appalachian order (22 fully regulated plants, 10 partially regulated plants, 2 producer-handlers and 2 exempt plants). A total of 55 plants were associated with the Southeast order (33 fully regulated plants, 9 partially regulated plants, 2 producer-handlers and 11 exempt plants). A total of 25 were plants associated with the Florida order (13 fully regulated plants, 9 partially regulated plants, 1 producer-handler and 2 exempt plants). The number of plants meeting the small business criteria under the Appalachian, Southeast and Florida orders were 8 (or 22.2 percent), 18 (or 32.7 percent) and 11 (or 44 percent), respectively.

Administrative assessments are charged without regard to the size of any dairy industry or entity. Therefore the proposed amendments will not have a significant economic impact on a substantial number of small entities.

The Agricultural Marketing Service (AMS) is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these proposed amendments would have no impact on reporting, recordkeeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This recommended decision does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved

information collection. The primary sources of data used to complete the approved forms are routinely used in most business transactions. The forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

No other burdens are expected to fall on the dairy industry as a result of overlapping Federal rules.

Interested parties were invited to submit comments on the probable regulatory and informational impact of this proposed rule on small entities.

#### **Prior Documents in This Proceeding**

*Notice of Hearing:* Issued May 3, 2007; published May 8, 2007 (72 FR 25986).

#### **Preliminary Statement**

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Appalachian, Southeast and Florida marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, STOP 9200–Room 1031, 1400 Independence Ave., SW., Washington DC 20250–9200, by April 29, 2008. Six copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)). The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. Some evidence was received that specifically addressed these issues and some of the evidence encompassed entities of various sizes.

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Appalachian, Southeast and Florida marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing

Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The proposed amendments set forth below are based on the record of a public hearing held in Tampa, Florida, on May 21–23, 2007, pursuant to a notice of hearing issued May 3, 2007.

The material issues on the record of hearing relate to:

1. Administrative Assessment Rate Increases

**Findings and Conclusions**

Three proposals published in the hearing notice as Proposals 4, 5 and 6 seeking to increase the maximum administrative assessment rates of the Appalachian, Southeast and Florida orders should be adopted. Specifically, the maximum administrative assessment rates collected on pooled producer milk in the Appalachian, Southeast and Florida orders should be increased from the current maximum administrative assessment rate of 5 cents per cwt to 8 cents per cwt. Proposal 4 was submitted by the Appalachian Market Administrator and Proposals 5 and 6 were submitted by the Market Administrator for the Southeast and Florida orders.

According to the Assistant Market Administrator for the Appalachian order, Proposal 4 was offered to ensure that sufficient funds are available for administering the Appalachian order. The witness added that Proposal 4 would amend Section 1005.85 (7 CFR 1005.85) to provide for all of the administrative assessment language pertinent to the Appalachian provisions and would discontinue the reference to Section 1000.85 (7 CFR 1000.85). The witness explained that administration and operating costs include administrative, accounting human resources, economic, pooling and audit staff expenses.

The Assistant Market Administrator for the Appalachian order stated that the Market Administrator is required to maintain a specific level of operating reserves. The reserve level, the witness said, must be maintained in the event that an order is terminated and would fund the necessary costs for closing out an order; completing pools and audits and paying severance and leases. The reserve level is detailed in the MA Instruction 207 that is issued by the Deputy Administrator of Dairy Programs, said the witness.

The Assistant Market Administrator for the Appalachian order said that the

majority of the administrative assessment revenue comes from pooled producer milk. Additionally, the witness said, assessments are also collected on other source receipts assigned to Class I and certain route disposition in the marketing area by partially regulated distributing plants. The witness stated that although the maximum administrative assessment rate allowable on pooled producer milk is 5 cents per cwt, the rate currently collected each month is 4 cents per cwt, which has remained unchanged since January 2000.

The Assistant Market Administrator for the Appalachian order said that during 2000–2002, producer milk pooled on the Appalachian order averaged 547 million pounds per month. According to the witness, the 4 cent per cwt assessment rate at this volume of milk created enough revenue to fund Appalachian order operations and maintain the mandated operating reserve. The witness stated that from 2003–2005, producer milk pooled on the order averaged 525 million pounds per month and in 2006, producer milk pooled on the order averaged 520 million pounds per month. The witness also compared the first 4 months of 2007 to the first 4 months of 2006 and stated that producer milk pooled on the order was down 3.45 percent.

The Assistant Market Administrator for the Appalachian order explained that about \$215,000 is needed each month to cover basic operating expenses. By keeping the assessment rate of 4 cents per cwt, the witness said 538 million pounds of producer milk would be needed each month to cover monthly order expenses. The witness further explained that the Appalachian order was in an operating deficit in 2003, 2004 and 2006 and had a balanced budget in 2005. During 2003–2006, the witness said, the volumes of pooled producer milk did not generate sufficient revenue to fund order operations and lowered the mandated operating reserves.

According to the Assistant Market Administrator for the Appalachian order, a decision effective December 1, 2006 (71 FR 62377), established a zero diversion limit on Class I milk receiving transportation credits. The decision, the witness said, reduced the amount of milk that could be pooled on the order and reduced the amount of assessment revenue collected during the period of July through December, when those volumes of milk would be pooled. In addition, the witness said that Proposal 1, if adopted, would add January and February as additional transportation credit payout months, further reducing

the amount of milk that could be pooled on the Appalachian order. The witness stressed that tightening pooling provisions of the order impacts the amount of producer milk pooled on the order. The witness expressed concern that less milk pooled on the order would reduce administrative assessment revenue and the ability to fund order operations while maintaining the mandated reserve level.

The Assistant Market Administrator for the Appalachian order said that efforts are made by the Market Administrator to control costs of carrying out order operations. According to the witness, cost control efforts include a reduction of office staff by 29 percent through attrition since January 2003, contracting with outside computer services, negotiating a telecommunications contract, consolidating a field office and reducing travel and mail expenses. The witness stressed that regardless of the Market Administrator's efforts to control costs and efficiently administer the order, gains in efficiency cannot make up for revenue lost due to a reduction in milk volumes.

The Assistant Market Administrator for the Appalachian order concluded by emphasizing that increasing the maximum administrative assessment rate to 8 cents per cwt would only be the maximum rate allowable and not necessarily the rate assessed. The witness said the actual rate assessed would only be as high as determined by the Market Administrator with approval by the Dairy Programs Deputy Administrator.

According to the Market Administrator for the Southeast and Florida orders, Proposals 5 and 6 were offered to ensure that there are sufficient funds to carry out administration of the orders. The witness said the proposals would amend sections 1006.85 (7 CFR 1006.85) and 1007.85 (7 CFR 1007.85) to provide for all of the administrative assessment language pertinent to the Southeast and Florida orders, and would discontinue the reference to section 1000.85 (7 CFR 1000.85). The witness explained that administration and operating expenses of the order include pooling, auditing and providing market information.

The Market Administrator explained that the order is required to maintain a specified level of operating reserves. The reserve level, the witness said, is detailed in the MA Instruction 207, that is issued by the Deputy Administrator of Dairy Programs. The witness said the reserve level is kept to cover necessary costs of closing out an order, such as

completing pools, audits and paying severance and lease payments.

The Market Administrator for the Southeast and Florida orders explained that the majority of the monthly administrative assessment is collected from pooled producer milk. The witness added that additional assessments are also collected from other source receipts associated with Class I and certain route disposition in the marketing area by partially regulated distributing plants. The witness stated that the market administrator is largely dependent on the administrative assessment revenue to fund the operations of the orders. The witness noted that since 2000, the administrative assessment for both orders has contributed over 80 percent of the total income of the market administrator office.

According to the Market Administrator for the Southeast and Florida orders, the combined monthly average of pooled producer milk for the two orders in 2000 was 862.8 million pounds. In 2001, the witness said, the combined monthly average of producer milk pooled in both orders was 878.4 million pounds and in 2002, the combined monthly average was 885.0 million pounds. The witness said that during 2000–2002, the assessment rates charged in the Southeast and Florida orders of 3.5 and 3 cents per cwt, respectively, along with the volume of producer milk, were sufficient to fund order operations and maintain the mandated reserve funds.

The Market Administrator for the Southeast and Florida orders said that in 2003, although producer milk in the Florida order increased by 5 percent, producer milk in the Southeast order decreased 11 percent, resulting in a considerable decrease in assessment collections. According to the witness, during 2003, funds were drawn from the operating reserves, reducing the reserve level near the mandated minimum. The witness said that as a result, effective with January 2004 milk deliveries, the administrative assessment rates increased by 1 cent to 4.5 and 4 cents per cwt for the Southeast and Florida orders, respectively.

The Market Administrator for the Southeast and Florida orders stated that in 2004, the monthly average pounds of producer milk pooled increased over 2003 by 1 percent and 5 percent in the Southeast and Florida orders, respectively. The witness added that in 2005, producer milk increased over 2004 by 5 percent and 8.8 percent in the Southeast and Florida orders respectively, and in 2006, producer milk increased over 2005 by 6.8 percent and

stayed the same in the Southeast and Florida orders, respectively.

According to the Market Administrator for the Southeast and Florida orders, the administrative assessments implemented in 2004, with the increase in producer milk during 2004–2006 and efforts to control costs, have been sufficient to cover operating expenses and build an adequate reserve level. The witness added that the Market Administrator continues to take measures to control costs. The witness said that from 2000–2006, cost control measures included a 15 percent reduction in staff through attrition, increased use of technology to hold meetings and conduct audits, a reduction in travel expenses and a decrease in communication costs.

The Market Administrator for the Southeast and Florida orders explained that Proposal 2 seeks to limit an average of 12.3 percent of allowable diversions in the Southeast order, which would reduce the amount of milk pooled on the order, as well as the value of administrative assessments used to fund order operations. The witness also noted a decision effective December 1, 2006 (71 FR 62337), that reduced allowable diversions by the volume of transportation credit claims. The witness also expressed concern that the downward trend in southeast milk production and marketing decisions made by handlers provides an increased potential for variability in the revenue available for order operations.

The Market Administrator for the Southeast and Florida orders concluded that while the proposals seek to increase the maximum assessment rate from 5 cents per cwt to 8 cents per cwt, the 8 cents per cwt would not necessarily be the rate charged. The witness stressed that the assessed rate would only be high enough to cover operating expenses and maintain the mandated reserve level as approved by the Deputy Administrator for Dairy Programs.

A post-hearing brief submitted on behalf of Dairy Cooperative Marketing Association (DCMA) expressed support for the market administrator assessment increase for the Appalachian, Southeast and Florida milk orders in Proposals 4, 5 and 6, respectively.

The hearing record reveals that fluctuations in the volumes of milk pooled on the Appalachian, Southeast and Florida orders can be attributed to a combination of declining milk supply and the tightening of diversion limits in all three marketing areas. This combination can reduce Market Administrator revenues to a level too low for the proper administration of the orders while maintaining the mandated

reserve level. The recommended adoption of Proposals 4, 5 and 6 will create a more stable revenue stream for the administration of the three southeast orders.

It is reasonable to increase the maximum administrative assessment rate to 8 cents per cwt in the Appalachian, Southeast and Florida orders to ensure that the Market Administrators have the proper funds to carry out all of the services provided by the three marketing areas. While the maximum administrative assessment rate should be increased to 8 cents per cwt in the Appalachian, Southeast and Florida orders, the actual rate charged should only be as high as necessary to properly administer the orders and provide necessary services to market participants.

### **Rulings on Proposed Findings and Conclusions**

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

### **General Findings**

The findings and determinations hereinafter set forth supplement those that were made when the Appalachian, Southeast and Florida orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for the milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreement upon which a hearing has been held.

#### **Recommended Marketing Agreements and Order Amending the Orders**

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Appalachian, Southeast and Florida marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions by be carried out.

#### **List of Subjects in 7 CFR Part 1005, 1006 and 1007**

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Parts 1005, 1006 and 1007, are proposed to be amended as follows:

#### **PARTS 1005, 1006 AND 1007—MILK IN THE APPALACHIAN, SOUTHEAST AND FLORIDA MARKETING AREAS**

1. The authority citation for 7 CFR part 1005 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 1005.85 is revised, to read as follows:

##### **§ 1005.85 Assessment for order administration.**

On or before the payment receipt date specified under § 1005.71, each handler shall pay to the market administrator its pro rata share of the expense of administration to the order at a rate specified by the market administrator that is no more than 8 cents per cwt with respect to:

(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in § 1000.9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1000.9(c);

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1000.43(d) and other source milk allocated to Class I pursuant to § 1000.43(a)(3) and (8) and the

corresponding steps of § 1000.44(b), except other source milk that is excluded from the computations pursuant to § 1005.60(h) and (i); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1000.76(a)(1)(i) and (ii).

3. Section 1006.85 is revised to read as follows:

##### **§ 1006.85 Assessment for order administration.**

On or before the payment receipt date specified under § 1006.71, each handler shall pay to the market administrator its pro rata share of the expense of administration of the order at a rate specified by the market administrator that is no more than 8 cents per hundredweight with respect to:

(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in § 1000.9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1000.9(c);

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1000.43(d) and other source milk allocated to Class I pursuant to § 1000.44(a)(3) and (8) and the corresponding steps of § 1000.44(b), except other source milk that is excluded from the computations pursuant to § 1007.60(h) and (i); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1000.76(a)(1)(i) and (ii).

4. Section 1007.85 is revised, to read as follows:

##### **§ 1007.85 Assessment for order administration.**

On or before the payment receipt date specified under § 1007.71, each handler shall pay to the market administrator its pro rata share of the expense of administration of the order at a rate specified by the market administrator that is no more than 8 cents per hundredweight with respect to:

(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in § 1000.9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1000.9(c);

(c) Receipts of concentrated fluid milk products from unregulated supply

plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1000.43(d) and other source milk allocated to Class I pursuant to § 1000.44(a)(3) and (8) and the corresponding steps of § 1000.44(b), except other source milk that is excluded from the computations pursuant to § 1007.60(h) and (i); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1000.76(a)(1)(i) and (ii).

Dated: February 25, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8–3846 Filed 2–28–08; 8:45 am]

**BILLING CODE 3410–02–P**

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## **DEPARTMENT OF ENERGY**

### **10 CFR Part 216**

### **48 CFR Parts 911 and 952**

**RIN 1991–AB69**

### **Defense Priorities and Allocations System**

**AGENCY:** Department of Energy.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice of proposed rulemaking (NOPR) amends Department of Energy (DOE) regulations at 10 CFR part 216 which implement DOE's delegated authority under section 101(c) of the Defense Production Act of 1950 (DPA). Section 101(c) of the DPA provides authority to the President of the United States (President) to require the allocation of, or priority performance under contracts or orders relating to, materials and equipment, services, or facilities, in order to maximize domestic energy supplies, if the President makes certain findings. The President's authority under section 101(c) was delegated to the Secretary of Commerce and the Secretary of Energy. The rulemaking would make a number of changes to part 216 to reflect a 1991 amendment of the DPA which broadens the scope of authority in section 101(c). Because DOE does not expect to receive any significant adverse comments, this regulatory action is also being issued as a direct final rule in today's issue of the **Federal Register**.

**DATES:** Public comments on the amendment proposed herein will be accepted until March 31, 2008.

**ADDRESSES:** This notice of proposed rulemaking is available and comments may be submitted online at <http://>