

# Proposed Rules

Federal Register

Vol. 83, No. 25

Tuesday, February 6, 2018

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1051

[Docket No. AO-15-0071; AMS-DA-14-0095]

#### Proposed California Federal Milk Marketing Order

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

**ACTION:** Proposed rule; delay of rulemaking.

**SUMMARY:** This document announces a delay of the California Federal Milk Marketing Order (FMMO) rulemaking proceeding and the Agricultural Marketing Service's (AMS) intention to await the U.S. Supreme Court decision on a related legal matter prior to proceeding further with this rulemaking.

**DATES:** February 6, 2018.

**ADDRESSES:** Order Formulation and Enforcement Division, USDA/AMS/Dairy Program, STOP 0231, Room 2969-S, 1400 Independence Ave SW, Washington, DC 20250-0231. The docket may be viewed at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Erin Taylor, Acting Director, (202) 720-7311, email address: [erin.taylor@ams.usda.gov](mailto:erin.taylor@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** On February 5, 2015, AMS received a proposal from three dairy cooperatives to call a hearing to promulgate a FMMO in California. Subsequently, AMS received additional proposals in April 2015. After publishing a notice of hearing on August 6, 2015 and proposing to add 7 CFR part 1051 (80 FR 47210), AMS commenced a hearing on September 22, 2015, presided over by Administrative Law Judge (ALJ) Jill S. Clifton. At the conclusion of the hearing, AMS reviewed the hearing record and briefs filed subsequent to the hearing. AMS published the

Recommended Decision and Opportunity to File Written Exceptions on February 14, 2017 (82 FR 10634).

On November 29, 2017, the Solicitor General of the United States submitted a brief to the U.S. Supreme Court in *Lucia v. Securities and Exchange Commission (Lucia)*, 868 F.3d 1021 (D.C. Cir. 2017) (en banc) (per curiam), cert. granted, No. 17-130 (U.S. January 12, 2018). The Government's position is that ALJs are "inferior officers" of the United States, subject to the Appointments Clause of Article II of the Constitution. The Solicitor General urged the Court to grant a writ of certiorari and resolve a circuit split concerning the Constitutional requirements for ALJ appointments. On January 12, 2018, the Court did so.

At all times material to the hearing for the prospective promulgation of a FMMO for California, ALJ Clifton presided over the proceedings on behalf of the United States Department of Agriculture (USDA). At the time of the hearing, USDA believed ALJ Clifton to be an employee of the Department and her appointment was completed in accordance with agency procedures, however, if the Court determines that ALJs are inferior officers of the United States rather than employees, then ALJ Clifton's original appointment as an ALJ would be brought into question. The Court is expected to hear oral arguments in *Lucia* during the current term and to render its decision on or before the end of its term on June 30, 2018.

As of November 29, 2017, the United States Department of Justice will no longer argue in the federal courts that ALJs are employees rather than inferior officers unless the Supreme Court determines otherwise. Consequently, it is prudent and appropriate for AMS to delay further proceedings in this FMMO rulemaking until the Court renders its decision in *Lucia*.

Prior documents in this proceeding:  
*Notice of Hearing:* Issued July 27, 2015; published August 6, 2015 (80 FR 47210);

*Notice to Reconvene Hearing:* Issued September 25, 2015; published September 30, 2015 (80 FR 58636);

*Recommended Decision and Opportunity to File Written Exceptions:* Issued February 6, 2017; published February 14, 2017 (82 FR 10634);

*Documents for Official Notice:* Issued August 8, 2017; published August 14, 2017 (82 FR 37827); and

*Information Collection—Producer Ballots:* Issued September 27, 2017; Published October 2, 2017 (82 FR 45795).

**Authority:** 7 U.S.C. 601-674.

Dated: February 1, 2018.

**Erin Morris,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2018-02386 Filed 2-5-18; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF COMMERCE

### Office of the Secretary

#### 15 CFR Part 4

[Docket No. 160801675-7593-01]

RIN 0605-AA45

#### Public Information, Freedom of Information Act and Privacy Act Regulations

**AGENCY:** Department of Commerce.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** This rulemaking proposes revisions to the Department of Commerce's (Department) regulations under the Freedom of Information Act (FOIA) and Privacy Act. The FOIA regulations are being revised to clarify, update and streamline the language of several procedural provisions, including methods for submitting FOIA requests and appeals and the time limits for filing an administrative appeal, and to incorporate certain changes brought about by the amendments to the FOIA under the FOIA Improvement Act of 2016. Additionally, the FOIA regulations are being updated to reflect developments in the case law.

**DATES:** To be considered, written comments must be submitted on or before March 8, 2018.

**ADDRESSES:** You may submit comments, identified by Regulatory Information Number (RIN) 0605-AA45, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Dr. Michael J. Toland, Deputy Chief Freedom of Information Act Officer and Department Privacy Act Officer, Office of Privacy and Open Government, 1401 Constitution Ave.