

Background and Frequently Asked Questions Dairy Import Assessment Final Rule

Background

The U.S. Department of Agriculture has announced a Final Rule that amends the Dairy Promotion and Research Order (Dairy Order) and implements a dairy import assessment program as required by the Dairy Production Stabilization Act of 1983, as amended. The program implements the equivalent of 7.5 cents per hundredweight of milk assessment on imported dairy products; adds two importer members to the National Dairy Promotion and Research Board (Board); amends the term “United States” to mean all States (adding Alaska and Hawaii), the District of Columbia and the Commonwealth of Puerto Rico; and implements a mandatory 15-cent per hundredweight of milk assessment on dairy farmers in Alaska, Hawaii, and the Commonwealth of Puerto Rico.

Why are dairy importers being assessed a fee for promotion and research activities? The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) mandates that the Dairy Order be amended to implement an assessment on imported dairy products to fund promotion and research. The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) specifies a mandatory assessment rate of 7.5 cents per hundredweight of milk, or equivalent thereof, on dairy products imported into the United States.

When is the final rule effective? All provisions are effective April 1, 2011, except those provisions regarding assessment in section 1150.152(b), Importer Assessments. The effective date for importer is August 1, 2011. By the effective date of the import assessment, all activities and promotion materials of the National Dairy Promotion and Research Program (National Program) will be consistent with respect to neutrality and country of origin (e.g., Real Seal).

How do importers determine the amount of assessment they should pay? The assessment is applied per pound (or kilogram) of milk solids contained in imported product as identified by certain Harmonized Tariff Schedule (HTS) codes. The assessment rate is \$0.00602 per pound or \$0.01327 per kg of milk solids—the equivalent of 7.5-cent per hundredweight of milk. Assessments on imported dairy products will be collected by U.S. Customs and Border Protection from importers at the time of entry.

What imported products will be assessed under this new regulation? In this final rule, 265 HTS codes will be assessed. The HTS list is comprised of dairy products, dairy ingredients, and products that contain significant amounts of dairy ingredients. The codes are available online at www.ams.usda.gov/dairyimportassessment.

What were the primary issues raised in the proposed rule comments that resulted in changes in the final rule? The issues raised in the comments that resulted in the greatest changes from the proposed rule concerned the use of default assessment rates and concerns over confidentiality and business information associated with compliance, enforcement, and recordkeeping. Other provisions changed or clarified in the final rule relate to milk solids content; HTS codes; qualified programs; referendum provisions; organic exemptions; duties of

the Board; and definitions of CBP, importer, and qualified programs. An in depth discussion of all these issues are included in the Summary of Comments and Changes from the Proposed Rule.

Has USDA consulted with the United States Trade Representative in order to ensure the assessment is consistent with the United States' World Trade Obligations? USDA has consulted with the Office of the United States Trade Representative to ensure that this final rule is consistent with the international trade obligations of the Federal Government.

How do importers establish a Qualified Program? Importer organizations that conduct dairy promotion, research, or nutrition education programs can seek to become a qualified program through an application to the Secretary. The application is available online at the website www.ams.usda.gov/dairyimportassessment.

Are importers allowed to direct a portion of the assessment to a specific qualified program? Yes. As noted in the Final Rule, importers will have the opportunity to inform the Secretary to direct the Board to forward up to 2.5 cents per hundredweight to a qualified program. Importers must designate the qualified program to which they would like their funds forwarded. If the importer does not specify a qualified program, the entire 7.5 cents per hundredweight will be retained by the Board for use by the National Program.

I would like to direct a portion of my assessment to a qualified program. Which organizations can I send it to? Importers may inform the Secretary to direct the Board to forward up to 2.5 cents per hundredweight of milk, or the equivalent thereof, to any of the qualified programs listed at www.ams.usda.gov/dairy. As new importer qualified programs are certified, the list of qualified programs will be updated. Importers may inform the Secretary of such designation by sending a letter to: Whitney Rick, USDA, AMS, Dairy Programs, Promotion and Research Branch, Stop 0233-Room 2958-S, 1400 Independence Avenue, SW, Washington, DC 20250-0233, (202) 720-6909, Whitney.Rick@ams.usda.gov. USDA will compute the funds due for each qualified program designated by importers and direct the Board to forward such funds.

As an importer, I am concerned about proprietary information for my business being kept confidential and secure. Who will have access to it? As stated in the Final Rule, Customs and Border Patrol will forward all importer assessments directly to the Board. Information concerning the payments of individual importers (that may contain confidential business information) will be sent directly to USDA. USDA solely will be responsible for the maintenance and security of these records.

How will neutrality, with respect to origin, be applied to the National Dairy Promotion and Research Program (National Program)? The purpose of the National Program, as amended in the Dairy Act, is to expand the consumption of dairy products, whether produced domestically or imported. Promoting the use of domestic dairy products in place of imported dairy products, or vice versa, for consumption in the U.S. market is not consistent with the Dairy Act and will not be permitted in the National Program. The AMS Neutrality Policy can be found online at <http://www.ams.usda.gov/AMSv1.0/DairyImportAssessment>.

Does neutrality apply to qualified programs and their promotion of State brands or imported products? Are qualified programs permitted to fund private brand advertising?

Qualified programs are not subject to the neutrality requirement and may promote State brands. For example, the promotion of “Wisconsin Cheese” by the Wisconsin Milk Marketing Board is permissible. Similarly, importer qualified programs may promote imported dairy products. Qualified programs may not conduct activities or use materials that use a private brand or trade name unless approval is received from the Board and the Secretary. Those seeking approval of branded activities and materials should contact the Board.

How do importers apply for nomination to the National Dairy Board? The Secretary issued a Federal Register notice on May 10, 2011, seeking nominations for importer representatives to the Board. The Secretary will appoint two individuals from those nominated to serve as the importer members on the Board. Importer nominations may be submitted by individual importers of dairy products and by organizations representing dairy importers. Nominees must be importers of dairy products and subject to the assessment to fund the National Program. The Federal Register notice and nomination materials are available at www.ams.usda.gov/dairy.

Why are producers in Hawaii, Alaska, the District of Columbia, and Puerto Rico now required to pay these assessment? During USDA’s initial consultation with USTR in 2003, an issue was identified that required statutory changes to the Dairy Act. Specifically, the Dairy Act allowed domestic dairy assessments to be levied only in the 48 contiguous States. U.S. trading partners claimed that this limitation treats domestic industries more favorably than importers, thereby violating U.S. trade obligations. With the passage of the 2008 Farm Bill, the Dairy Act was amended to extend the domestic assessment to Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico. The amended definition of “United States” is now consistent with the definition used by USTR and our trading partners, which includes all 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

The 2002 Farm Bill indicated that the assessment should be implemented within 90 days of passage. Why has implementation taken nearly 9 years? During USDA’s initial consultation with USTR in 2003, an issue was identified that required statutory changes to the Dairy Act. Upon passage of the 2008 Farm Bill, which corrected this issue, USDA moved forward with a proposed rule for public comment. Proponents and opponents of this rule worked actively throughout the process of implementing this rule.

What outreach efforts are the USDA conducting to notify importers and the dairy industry of the Final Rule? USDA has created several resources to assist with the orderly implementation of newly assessed domestic producers and dairy importers. Visit www.ams.usda.gov/dairyimportassessment for a variety of resource materials. Additionally, USDA is sending letters to all interested parties, including newly affected producers and importers, and producer and importer associations and organizations. USDA will also attend a variety of industry meeting to provide updates on the implementation of the Final Rule.

How do I find out more information about the dairy import assessment? Visit website www.ams.usda.gov/dairyimportassessment for a variety of resource materials regarding the dairy

import assessment. Additionally, you can send questions, inquiries, and suggestions to DairyImportAssessment@ams.usda.gov.