

members in four of the thirteen geographic regions. The Dairy Board, which administers the Order, requested the amendment in order to better reflect the geographic distribution of milk production in the contiguous 48 States.

EFFECTIVE DATE: September 4, 2003.

FOR FURTHER INFORMATION CONTACT:

David R. Jamison, USDA, AMS, Dairy Programs, Promotion and Research Branch, Stop 0233—Room 2958—S, 1400 Independence Avenue, SW., Washington, DC 20250–0233, (202) 720–6961, *David.Jamison2@usda.gov*.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Proposed Rule and Invitation for Comments on Proposed Amendment to the Order: Issued June 27, 2003; published July 3, 2003 (68 FR 39861).

This final rule is issued pursuant to the Dairy Production Stabilization Act of 1983 (Act) (7 U.S.C. 4501, *et seq.*), Public Law 98–108, enacted November 29, 1983.

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

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

The Act authorizes the National Dairy Promotion and Research Program. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 4509 of the Act, any person subject to the Dairy Promotion and Research Order may file with the Secretary 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 and requesting a modification of the Order or to be exempted from the Order. A person subject to an Order is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) is required to examine the impact of this final rule on small entities. The purpose of the Regulatory Flexibility Act is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. For the purpose of the Regulatory Flexibility Act, small businesses in the dairy industry have been defined as those employing less than 500 employees. 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. There are approximately 70,000 dairy farms subject to the provisions of this Order. Most of the parties subject to the Order are considered small entities. This final rule amends the Dairy Promotion and Research Order by modifying the number of members on the National Dairy Promotion and Research Board in four of the 13 geographic regions. The amendment is being made to better reflect the geographic distribution of milk produced within each of the 13 regions of the contiguous 48 States.

The Order currently is administered by the 36-member Board representing 13 geographic regions within the contiguous 48 States. The Order provides that the Dairy Board shall review the geographic distribution of milk production throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of the regions and/or modification of the number of members from regions in order to best reflect the geographic distribution of milk production volume in the United States.

Based on a review of the 2002 geographic distribution of milk production, it has been determined that the number of Dairy Board members for four of the 13 geographical regions should be changed.

Since the changes only redistribute the representation on the Dairy Board to better reflect geographic milk production in the contiguous 48 States, this amendment will not have a significant economic impact on persons subject to the Order.

Paperwork Reduction Act

This amendment to the Order will not add any burden to persons subject to the Order because it relates to provisions concerning membership of the Dairy

Board. The adopted changes do not impose additional reporting or collecting requirements. No relevant Federal rules have been identified that duplicate, overlap, or conflict with this final rule. In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the forms and reporting and recordkeeping requirements that are included in the Order have been approved previously by the Office of Management and Budget (OMB).

Statement of Consideration

This final rule amends the Dairy Promotion and Research Order by modifying the number of members on the National Dairy Promotion and Research Board in four of the 13 geographic regions. The amendment modifies the composition of the Board to better reflect current milk production within each of the 13 geographic regions of the contiguous 48 States.

The Order is administered by the 36-member Board representing 13 geographic regions within the contiguous 48 States. The Order provides in § 1150.131 that the Dairy 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 the regions and/or modification of the number of members from regions in order to best reflect the geographic distribution of milk production in the United States. The Dairy Board is required to conduct the review at least every five years and not more than every three years.

The Order specifies the formula to be used to determine the number of Dairy Board members in each of the 13 geographic regions designated in the Order. Under the formula, total milk production for the contiguous 48 States for the previous calendar year is divided by 36—the total number of Dairy Board members—to determine a factor of pounds of milk represented by each Dairy Board member. The resulting factor is then divided into the pounds of milk produced in each region to determine the number of Board members for each region. Accordingly, the following table summarizes by region the volume of milk production distribution for 2002, the percentage of total milk production, the current number of Dairy Board members per region, and the adopted number of Dairy Board members for each region.