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Washington, DC 20548

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February 6, 2007

The Honorable Tom Harkin
Chairman
The Honorable Saxby Chambliss
Ranking Minority Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate

The Honorable Collin Peterson
Chairman
The Honorable Robert Goodlatte
Ranking Minority Member
Committee on Agriculture
House of Representatives

Subject: *Department of Agriculture, Agricultural Marketing Service: Milk in the Northeast and Other Marketing Areas; Interim Order Amending the Orders*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Agriculture (USDA), Agricultural Marketing Service, entitled “Milk in the Northeast and Other Marketing Areas; Interim Order Amending the Orders” (Docket No. AO-14-A74, et al.; DA-06-01). We received the rule on January 24, 2007. It was published in the Federal Register as an interim final rule on December 29, 2006. 71 Fed. Reg. 78333.

The interim final rule amends the manufacturing allowances in the Class III and Class IV product price formulas applicable to all federal milk marketing orders. Specifically, the rule sets the allowances for cheese, butter, nonfat dry milk, and dry whey.

Enclosed is our assessment of the USDA’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that USDA complied with the applicable requirements.

If you have any questions about this report, please contact, Michael R. Volpe, Assistant General Counsel, at (202) 512-8236. The official responsible for GAO

evaluation work relating to the subject matter of the rule is Robert Robinson, Managing Director, Natural Resources and Environment. Mr. Robinson can be reached at (202) 512-3841.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Lloyd C. Day
Administrator
Agricultural Marketing Service
Department of Agriculture

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF AGRICULTURE,
AGRICULTURAL MARKETING SERVICE
ENTITLED
“MILK IN THE NORTHEAST AND OTHER MARKETING AREAS;
INTERIM ORDER AMENDING THE ORDERS”
(DOCKET NO. AO-14-A74, et al.; DA-06-01)

(i) Cost-benefit analysis

The Agricultural Marketing Service performed an economic analysis on the changes to the pricing formulas for Class III and Class IV milk pooled under federal marketing orders and the effects those changes would have on prices of Class I and Class II milk pooled under federal marketing orders. The economic analysis summarizes the impacts of the changes to the Class III and Class IV formulas using an annual and 9-year 2007-2015 average change from the model baseline. For producers, over the 9-year period, the change reduces average revenue by \$125 million annually. While prices paid for milk are lower, prices received for dairy products are higher due to the tighter milk supply. Over the 9-year projection period, wholesale dairy product prices increase as follows: \$0.0119 per pound for cheddar cheese, \$0.0305 for butter, \$0.0012 for nonfat dry milk, and \$0.0015 for dry whey.

For consumers, the expected \$0.16 per cwt decrease in the Class I price results in an average \$0.0137 per gallon reduction in the price of fluid milk. Consumers also reduce consumption of manufactured dairy products due to higher prices. Government outlays in 2007 will increase by \$25 million (12.94 percent) above the baseline of \$190 million because of lower milk prices.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Agricultural Marketing Services considered the economic impact of this action on small entities and certified that the interim final rule will not have a significant impact on a substantial number of small entities. For the purpose of this analysis, a dairy farm was considered small if it had an annual gross revenue of less than \$750,000 and a dairy products manufacturer was considered small if it had fewer than 500 employees.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The interim final rule does not impose either an intergovernmental or private sector mandate of over \$100 million a year, as defined in the Unfunded Mandates Act of 1995.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The interim final rule was issued after a hearing and final decision pursuant to 5 U.S.C. §§ 556 and 557. Hearings on this rule were held on January 24, 2006, 71 Fed. Reg. 545 (Jan. 5, 2006), and on September 14, 2006, 71 Fed. Reg. 52502 (Sept. 6, 2006).

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The interim final rule does not require any information collections that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Statutory authorization for the rule

The interim final rule was promulgated under the authority of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. §§ 601-674).

Executive Order No. 12866

The interim final rule is excluded from the requirements of Executive Order 12866 because it is governed by 5 U.S.C. §§ 556 and 557 of the Administrative Procedure Act.

Executive Order No. 12988 (Civil Justice Reform)

The interim final rule was reviewed under the Order. This rule is not intended to have a retroactive effect and will not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.