

# Proposed Rules

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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 170

[Docket No. TM-04-09]

#### USDA Farmers Market Operating Procedures

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

**ACTION:** Proposed rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) is seeking comments on procedures to administer the USDA Farmers Market at 12th Street & Independence Avenue, SW., Washington, DC. These procedures would allow AMS the means to demonstrate and experiment with direct marketing techniques (operate a farmers market), while at the same time educate consumers on the significance of small farms, the nutritional benefits of fresh fruits and vegetables, and the merits of food recovery. Included in this proposed rule is the establishment of vendor criteria, selection procedures, and guidelines for governing the operation of the USDA Farmers Market. Information collection requirements are also included to establish a one-time yearly submission on a required application form.

**DATES:** Comments on this proposed rule must be received by April 18, 2005. Comments on the information collection requirements of this proposed rule must be received by April 18, 2005 to be considered.

**ADDRESSES:** Interested persons are invited to submit written comments concerning the proposed regulations and information collection requirements. All comments should be sent to Errol R. Bragg, Associate Deputy Administrator, Marketing Services Branch, Transportation and Marketing Programs, Agricultural Marketing Service (AMS), USDA, Room 2646-South, 1400 Independence Avenue, SW., Washington, DC, 20250. Comments

may also be sent by e-mail to [USDAFMComments@usda.gov](mailto:USDAFMComments@usda.gov) or by fax to 202/690-0031. State that your comments refer to Docket No. TM-04-09 or Internet: <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Errol R. Bragg, Associate Deputy Administrator, Marketing Services Branch on 202/720-8317, fax 202/690-0031, or by e-mail [USDAFMComments@usda.gov](mailto:USDAFMComments@usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposed rule is authorized under the Agricultural Marketing Act of 1946. The Act directs and authorizes the Secretary of Agriculture to conduct, assist, and foster research, investigation, and experimentation to determine the best methods of processing, preparation for market packaging, handling, transporting, distributing, and marketing agricultural products, 7 U.S.C. 1622(a). Moreover, 7 U.S.C. 1622(f) directs and authorizes the Secretary to conduct and cooperate in consumer education for more effective utilization and greater consumption of agricultural products. In addition, 7 U.S.C. 1622(n) authorizes the Secretary to conduct services and to perform activities that will facilitate the marketing and utilization of agricultural products through commercial channels. Pursuant to 7 CFR 2.79, the Under Secretary for Marketing and Regulatory Programs has re-delegated these authorities to the Administrator of AMS.

#### Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the office of Management and Budget.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this proposed rule also announces that AMS is seeking approval from the Office of Management and Budget (OMB) for a new information collection request.

**Title:** USDA Farmers Market Operating Procedures.

**OMB Number:** 0581-New.

**Expiration Date of Approval:** 3 years from date of approval.

**Type of Request:** New information collection.

**Abstract:** AMS is seeking to establish procedures to administer the USDA Farmers Market at 12th & Independence Avenue, SW., Washington, DC, under the authority of the Agricultural Marketing Act of 1946 (Act). These procedures would allow AMS the means to demonstrate and experiment with direct marketing techniques (operate a farmers market), while at the same time educate consumers on the significance of small farms, the nutritional benefits of fresh fruits and vegetables, and the merits of food recovery. Included in this proposed rule would be the establishment of vendor criteria, selection procedures, and guidelines for governing the operation of the USDA Farmers Market.

In this proposed rule, information collection requirements include a one-time yearly submission of the required information on the application form which is included in an Appendix at the end of this action.

**Estimate of Burden:** Public reporting burden for this collection of information is estimated to average 0.08 hours per response.

**Respondents:** Farmers and/or vendors completing the application to participate in the USDA Farmers Market.

**Number of Responses per respondent:** 1.

**Number of Respondents:** 20.

**Estimated Total Annual Burden on Respondents:** 1.66 hours.

**Comments are invited on:** (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference the Docket Number TM-04-

09, together with the date and page number of this issue of the **Federal Register**. Comments on this proposed collection of information may be sent to Errol R. Bragg at the address listed above or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, OMB, Washington, DC 20503. Comments must be received by April 18, 2005. All comments received by AMS will be available for public inspection during regular business hours, 8 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, at the same address.

#### **Executive Order 13132**

AMS has analyzed this rule under Executive Order 13132, Federalism, and have determined that it does not have Federalism implications to warrant the preparation of a Federalism assessment under that order.

#### **Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their regulatory actions not specifically required by law on state, local and tribal governments. This proposed rule contains no Federal mandates that would result in the expenditure of \$100 million or more for these groups or for the private section. Therefore, no written statement or cost-benefit analysis is required under this act.

#### **Regulatory Flexibility Act**

AMS has reviewed this proposed rule under the Regulatory Flexibility Act, 5 U.S.C. 601–612, and determined that it will not have a significant economic impact on a substantial number of small entities. This program does not impose requirements on small entities that are not eligible to participate in the program, and imposes on small entities applying for and participating in the program only minimum requirements necessary for proper administration and oversight of this program. Therefore, a regulatory flexibility analysis is not required and was not performed.

#### **Background**

Farmers markets are more than just a place to buy fruits and vegetables; they are intermediate social structures linking the urban and rural sectors of the economy. They provide consumers with locally-grown, good-value farm products at a convenient location and provide farmers with a profitable, well-organized and operated retail marketplace. Farmers markets not only give members of the public direct contact with producers, but also provide alternatives to the uniform and

standardized mass produced, mass marketed products that dominate the U.S. economy. Farmers markets are usually located within or near urban centers and may be owned and maintained by community development groups, farmers cooperative associations or by local, state or the federal governments. Generally open for a specific time period seasonally or throughout the year, farmers markets may range from an open outdoor lot where farmers park their vehicles and display products, to enclosed buildings with display counters, lights, heat, and refrigeration. The number of farmers markets operating in the United States has seen a steady growth in recent years, increasing from 1,755 in 1994 to over 3,600 operating in 2004.

AMS developed a Farmer Direct Marketing Action Plan to identify USDA's role in supporting marketing opportunities for small farmers and to enhance farmers' ability to thrive in their businesses by facilitating the marketing of agricultural products. Farmer direct marketing, or growers selling their products directly to consumers, has become increasingly popular in recent years with farmers markets being one of the leading methods for this type of marketing. Farmers markets also play a vital role in accomplishing USDA's mission of ensuring that all Americans have access to reasonably priced, high-quality, and nutritious foods.

To further this mission, USDA began its own farmers market in August of 1996, which has continued to operate and grow progressively since that time. The USDA Farmers Market is a producers-only market which offers a wide range of farm products such as fruits, vegetables, herbs, honey, maple products, baked goods, cut flowers, meats and fresh fish. With spiraling interest among consumers and a steady supply of farmers products, the market's season increased from four market days in 1996 to five months in 2003. In addition to local farmers from Maryland, Virginia, and Pennsylvania selling at the market, outreach was expanded to include regional farmers from a wider geographical area, including the states of West Virginia, Delaware, and North Carolina.

This rule applies only to the USDA Farmers Market at headquarters on the corner of 12th Street and Independence Avenue, SW, Washington, DC. When the farmers market program began in 1996, and for several years thereafter, USDA co-sponsored several farmers markets at neighboring Federal agencies in the DC metropolitan area, including the Departments of Transportation

(DOT), Labor, Energy, State, and the USDA Carver Center. Since that time three markets have closed. The DOT and USDA Carver Center markets continue to operate, having acquired substantial startup and technical assistance from USDA and are now self-sustaining.

In an effort to further educate market customers about the nutritional benefits of fresh fruits and vegetables, and the merits of food recovery, an informational booth displaying various literature and educational materials is set up on the market each week. Materials displayed in the informational booth include "How-To-Buy" produce guides, food pyramids, brochures about the Women, Infants, and Children (WIC) program and Food Stamp program and other program-related publications. This dissemination of information is joined by several USDA agencies, including the Food and Nutrition Service (FNS). One successful educational activity is the cooking demonstrations organized by FNS. During a cooking demonstration, chefs purchase fresh produce from the market and teach how to prepare the foods for a healthy meal. In addition, the USDA Employee Services and Recreation Association sponsors special activities and events at the market.

The USDA Farmers Market contributes to other USDA-sponsored programs, such as the Food Recovery and Gleaning Initiative, the Women, Infants, and Children Farmers Market Nutrition Program, as well as other programs of FNS and the Food Safety and Inspection Service.

#### **List of Subjects in 7 CFR Part 170**

Agricultural commodities, Farmers.

For the reasons set forth in the preamble, it is proposed that title 7, chapter 1 of the Code of Federal Regulations be amended as follows:

1. A new subchapter G, consisting of part 170 is added to read as follows:

#### **SUBCHAPTER G—MISCELLANEOUS MARKETING PRACTICES UNDER THE AGRICULTURAL MARKETING ACT OF 1946**

#### **PART 170—USDA FARMERS MARKET**

Sec.

170.1 To which farmers market does this rule apply?

170.2 Is the USDA Farmers Market a producer-only market?

170.3 What products may be sold at the USDA Farmers Market?

170.4 Who may participate in the USDA Farmers Market?

170.5 Is there a fee to participate in the USDA Farmers Market?

170.6 How are potential market participants identified for the USDA Farmers Market?

170.7 Can I apply if I am not recruited?

170.8 What are the application procedures?

170.9 What type of information does the application require?

170.10 Must a participant in the market have insurance?

170.11 How are farmers and vendors selected for participation in the USDA Farmers Market?

170.12 What are the selection criteria for participation in the USDA Farmers Market?

170.13 What are the operating guidelines for the USDA Farmers Market?

170.14 What circumstances will prevent participation in the USDA Farmers Market?

Authority: 5 U.S.C. 301; 7 U.S.C. 1621–1627.

## PART 170—USDA FARMERS MARKET

### § 170.1 To which farmers markets does this rule apply?

This rule applies only to the USDA Farmers Market at headquarters on the corner of 12th Street & Independence Avenue, SW., Washington, DC.

### § 170.2 Is the USDA Farmers Market a producer-only market?

Yes. A producer-only market is one that does not offer agricultural products that are commercially made, created, or produced, and only allows agricultural products that are grown by a principal farmer. A producer-only market offers raw agricultural products such as fruits, vegetables, flowers, bedding plants, and potted plants. The USDA Farmers Market is a producer-only market since only farmers who may sell products that they grow or produce will be selected for participation. It also allows the sale of value-added products and other specialized nonproduce items.

### § 170.3 What products may be sold at the USDA Farmers Market?

Products that may be sold at the market include, but are not limited to, fresh, high-quality fruits, vegetables, herbs, honey, jams and jellies, cheese, vinegars, cider, maple syrup, fish, flowers, bedding plants, and potted plants. USDA inspected meats and poultry items also may be sold.

### § 170.4 Who may participate in the USDA Farmers Market?

Members of three groups may participate in the USDA Farmers Markets:

(a) *Principal farmers or producers who sell their own agricultural products.* The principal farmer must be in full control and supervision of the individual steps of production of crops including tilling, planting, cultivating, fertilizer and pesticide applications (if applicable), harvesting and post-harvest handling on its own farm with its own machinery and labor.

(b) *Principal farmer or producers who sell their own value-added agricultural products.* Value-added products may include agricultural products that have been enhanced through a modification of the product, such as braiding, weaving, hulling, extracting, handcrafting, and the like. It also may result from growing the product in a way that is acknowledged as safer. Farmers and vendors selling these types of products must prepare them predominately with material they have grown or gathered.

(c) *Nonproduce vendors.* A limited number of nonproduce vendors may be selected by the Market Management to sell specialized products that enhance the market atmosphere and historically attract customers to a farmers market. These specialized vendors, such as bakers, may be exempted from the reselling restrictions that apply to the farmers and vendors described in paragraphs (a) and (b) of this section.

### § 170.5 Is there a fee to participate in the USDA Farmers Market?

No, there are no fees charged to participate in the market.

### § 170.6 How are potential market participants identified for the USDA Farmers Market?

Potential market participants are recruited by the AMS Market Management through local farm organizations in the Washington D.C. metropolitan area and regional state departments of agriculture including, Virginia, West Virginia, Maryland, Delaware, and Pennsylvania. Upon receiving a list of potential farmers and vendors from the organizations and the state departments of agriculture, an information packet, which includes an application and this rule, will be mailed to each potential participant identified by the contacts.

### § 170.7 Can I apply if I am not recruited?

Yes. Interested persons may call or write USDA to request an information packet even if they are not recruited. Those interested may write USDA/AMS/TM/MSB, Room 2646-South Building, 1400 Independence Avenue, SW., Washington, DC, 20250, or call (202) 720–8317. They may also call the USDA Farmers Market Hotline at 1–800–384–8704 to leave a message to have a packet mailed or faxed. They may also visit the Web site at <http://www.ams.usda.gov/farmersmarkets/> to review the selection criteria, the operating rules, and to receive an application electronically.

### § 170.8 What are the application procedures?

In January of each year, prospective and returning participants must submit to USDA a completed application for participation in the upcoming market season. Each application will include a copy of this rule, which includes the selection criteria and operating guidelines. Each applicant also will certify that each is the owner or representative of the farm or business submitting the application.

### § 170.9 What type of information does the application require?

The application for participation in the USDA Farmers Market will provide Market Management with information on contacts, farm location, type of farming operation, types of products grown, and business practices, including insurance coverage.

### § 170.10 Must a participant in the market have insurance?

There is no requirement for a participant to have insurance; however, USDA asks that participants with insurance provide insurance information for our records.

### § 170.11 How are farmers and vendors selected for participation in the USDA Farmers Market?

USDA reviews all applications and selects participants based primarily on the type of farmer or vendor (*i.e.* fruit, vegetable, herb, baker) and secondly, on the specific types of products to be sold. The selection of the participants is conducted by the Market Management to ensure a balanced product mix of fruits, vegetables, herbs, value-added products, and baked goods.

### § 170.12 What are the selection criteria for participation in the USDA Farmers Market?

The selection criteria are designed to ensure a consistently high level of quality and diverse products, while operating in the constraints of space available at the market site. The criteria are:

(a) *Member of one of the three participant groups specified in § 170.4 of this part.* The participant must be a producer-only farmer or producer, seller of value-added products, or specialized nonproduce vendor.

(b) *Participant offers a product that adds to a product mix.* Market Management will ensure that a balanced mix of fresh fruits and vegetables will be maintained throughout the season. Final selection of fruit and vegetable producers will be made based on their ability to ensure a wide range of fresh farm products throughout the season.

(c) *Willingness to glean.* Participants should commit to supporting the USDA food gleaning/food recovery initiative. This commitment requires farmers and vendors to donate surplus food and food products at the end of each market day to a local nonprofit organization identified by USDA. Questions about tax deductions for gleaning should be referred to the Internal Revenue Service or a tax advisor. Receipts for donated foods may be obtained from the receiving nonprofit organization.

(d) *Commitment to market.* Participants must commit to the entire market season and be willing to participate on a regular basis.

(e) *Grandfather provision.* Market Management reserves the right to select several farmers or vendors based on previous participation in the program, consistency in providing quality products, and compliance with operating guidelines.

#### **§ 170.13 What are the operating guidelines for the USDA Farmers Market?**

(a) *Market operation.* The Market will be held in parking court #9 of the USDA Headquarters Complex located on the corner of 12th Street and Independence Avenue, SW., Washington, DC. Selling will not begin before 10 a.m. and will end promptly at 2 p.m. each market day. All participants must be in place, setup and ready to sell by 10 a.m. Due to space restrictions at the site, late arrivals will be located at Market Management's discretion. All vehicles must vacate the market site no later than 3:00 p.m.

(b) *Notification of attendance.* Each participant must call USDA within 48 hours of a market day if they cannot attend. Failure to provide proper and timely notification may result in termination of the participation in the market.

(c) *Participant space.* One vehicle is permitted per space; all other vehicles must be removed from the immediate market premises. One space is 16w x 17d feet, and all trucks must fit within that area. There is only room for 15 spaces.

(d) *Signage.* Participants must clearly display the name of their farm/business and post prices for all items being sold.

(e) *Clean-up.* Participants are responsible for cleaning all trash and waste within and around their allotted space. Garbage bins are provided on the market site for this purpose.

(f) *Cooperative marketing.* Participants are permitted to share space with another participant or sell another's products if the arrangement is deemed by Market Management as beneficial to the market. A co-op must be pre-approved by Market Management

and will not be accepted if similar products are already sold by existing farmers or vendors.

(g) *Farm/business visits.* Market Management may visit farm/business locations to verify compliance with market criteria and guidelines. Participants should submit a map and directions to their farm/businesses with their market applications.

(h) *Conduct on Federal property.* Participants must comply with Subpart 20.3 of the Federal Property Management Regulations, "Conduct on Federal Property," 41 CFR 20.3.

#### **§ 170.14 What circumstances will prevent participation in the USDA Farmers Market?**

(a) Efforts will be made to accommodate all who apply to participate in the market. However, Market Management may deny participation in the market because of insufficient space or excess supply of the products to sell, failure to meet the stated criteria, or the participant's noncompliance with the operating guidelines or regulations.

(b) Participants who sell before the 10 a.m. opening time will be restricted from participating in the market following their second violation. A written warning will be given to the participant for the first violation of this guideline. After the second violation occurs, a letter of reprimand will be given to the participant restricting their participation for the next immediate market day.

(c) Participants who arrive after the 10 a.m. opening time may be restricted from participating in the market following their second violation. A written warning may be given to the participant for the first violation of this guideline. After the second violation occurs, a letter of reprimand may be given to the participant restricting their participation for the next immediate market day.

Dated: February 14, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05-3072 Filed 2-16-05; 8:45 am]

**BILLING CODE 3410-02-P**

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 1033**

[Docket No. AO-166-A72; DA-05-01]

#### **Milk in the Mideast Marketing Area; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order**

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

**ACTION:** Proposed rule; Notice of public hearing on proposed rulemaking.

**SUMMARY:** A public hearing is being held to consider proposals that would amend certain provisions of the Mideast Federal milk marketing order. Proposals under consideration address: Eliminating the ability of the same milk to be simultaneously pooled on the Mideast order and on a State operated order with marketwide pooling; Changing the supply plant performance standards and diversion limits; Increasing the number of days a dairy farmer's milk production must be delivered to a pool plant for the milk of the dairy farmer to be eligible for diversion; Limiting the pooling of producer milk that was not pooled in a prior month(s); Establishing a "dairy farmer for other markets" provision; Establishing a transportation credit for milk; and Changing the producer-handler definition.

**DATES:** The hearing will convene at 8:30 a.m. on Monday, March 7, 2005.

**ADDRESSES:** The hearing will be held at the Shisler Conference Center, Ohio Agricultural Research and Development Center, 1625 Wilson Road, Wooster, Ohio 44691, (330) 287-1424. Hotel accommodations can be made at the Hilton Garden Inn Wooster, 959 Dover Road, Wooster, Ohio 44691, (330) 202-7701.

**FOR FURTHER INFORMATION CONTACT:** Gino Tosi, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, Stop 0231—Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250-0231, (202) 690-1366, e-mail address: [gino.tosi@usda.gov](mailto:gino.tosi@usda.gov).

Persons requiring a sign language interpreter or other special accommodations should contact Paul Huber at 330-225-4758 or via e-mail at [pheber@fmmaclev.com](mailto:pheber@fmmaclev.com) before the hearing begins.

**SUPPLEMENTARY INFORMATION:** This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and,