

applicable credits on all bills and invoices presented to the school food authority for payment; and

(v) The contractor must maintain documentation of costs and discounts, rebates, and other applicable credits, and must furnish such documentation upon request to the school food authority, the State agency, or the Department.

(2) *Prohibited expenditures.* No expenditure may be made from the nonprofit school food service account for any cost resulting from a cost reimbursable contract that fails to include the requirements of this section, nor may any expenditure be made from the nonprofit school food service account that permits or results in the contractor receiving payments in excess of the contractor's actual, net allowable costs.

4. Redesignate §§ 220.18 through 220.21 as §§ 220.19 through 220.22, respectively; and add a new § 220.18 to read as follows:

**§ 220.18 Withholding payments.**

In accordance with Departmental regulations at §§ 3016.43 and 3019.62 of this title, the State agency shall withhold Program payments, in whole or in part, to any school food authority which has failed to comply with the provisions of this part. Programs payments shall be withheld until the school food authority takes corrective action satisfactory to the State agency, or gives evidence that such corrective actions will be taken, or until the State agency terminates the grant in accordance with § 220.19. Subsequent to the State agency's acceptance of the corrective actions, payments will be released for any breakfasts served in accordance with the provisions of this part during the period the payments were withheld.

Dated: December 21, 2004.

**Roberto Salazar,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 04-28532 Filed 12-29-04; 8:45 am]

BILLING CODE 3410-30-P

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 1124**

[Docket No. AO-368-A30; DA-01-08-PNW]

**Milk in the Pacific Northwest Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order**

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

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to adopt as a final rule, order language contained in the interim final rule published in the **Federal Register** on January 12, 2004, concerning pooling provisions of the Pacific Northwest Federal milk order. This document also sets forth the final decision of the Department and is subject to approval by producers. Specifically, the final decision adopts an amendment that would continue to amend the *Producer milk* provision which will eliminate the ability to simultaneously pool the same milk on the order and on a State-operated order that provides for marketwide pooling.

**FOR FURTHER INFORMATION CONTACT:**

Gino M. Tosi, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, Room 2968, 1400 Independence Avenue, SW., STOP 0231, Washington, DC 20250-0231, (202) 690-1366, e-mail address [gino.tosi@usda.gov](mailto:gino.tosi@usda.gov).

**SUPPLEMENTARY INFORMATION:** This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12866.

These proposed amendments have been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing 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. A handler 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 handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

**Regulatory Flexibility Act and Paperwork Reduction Act**

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. 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, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the \$750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

In the Pacific Northwest Federal milk order, 805 of the 1,164 dairy producers (farmers), or about 69 percent, whose milk was pooled under the Pacific Northwest Federal milk order at the time of the hearing (April 2002), would meet the definition of small businesses. On the processing side, 9 of the 20 milk plants associated with the Pacific Northwest milk order during April 2002 would qualify as "small businesses," constituting about 45 percent of the total.

The adoption of the proposed pooling standard serves to revise established criteria that determine the producer milk that has a reasonable association with—and consistently serves the fluid needs of—the Pacific Northwest milk marketing area and is not associated with other marketwide pools concerning the same milk. Criteria for pooling are established on the basis of performance levels that are considered adequate to meet the Class I fluid needs and by doing so determine those that are eligible to share in the revenue that arises from the classified pricing of milk. Criteria for pooling are established without regard to the size of any dairy industry organization or entity. The established criteria are applied in an identical fashion to both large and small businesses and do not have any different economic impact on small

entities as opposed to large entities. Therefore, the proposed amendment will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these proposed amendments would have no impact on reporting, recordkeeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This notice does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

#### *Prior Documents in This Proceeding:*

*Notice of Hearing:* Issued February 26, 2002; published March 4, 2002 (67 FR 9622).

*Correction to Notice of Hearing:* Issued March 14, 2002; published March 19, 2002 (67 FR 12488)

*Tentative Final Decision:* Issued August 8, 2003; published August 18, 2003 (68 FR 49375).

*Interim Final Rule:* Issued January 5, 2004; published January 12, 2004 (69 FR 1654).

#### **Preliminary Statement**

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Pacific Northwest marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR part 900), at Salt Lake City, Utah, on April 16–19, 2002, pursuant to a Notice of Hearing issued February 26, 2002; published March 4, 2002 (67 FR 9622).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on August 8, 2003, issued a Tentative Final Decision

containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the Recommended Decision are hereby approved and adopted and are set forth herein. The material issue on the record of the hearing relate to:

1. Simultaneous pooling of milk on the order and on a State-operated milk order providing for marketwide pooling.

#### **Findings and Conclusions**

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

##### *1. Simultaneous Pooling on a Federal and State-Operated Milk Order*

Two proposals, published in the hearing notice as Proposals 1 and 10, seeking to exclude the same milk from being simultaneously pooled on either the Pacific Northwest or the Western orders and any State-operated order which provides for marketwide pooling, should be adopted on a permanent basis. The practice of pooling milk on a Federal order and simultaneously pooling the same milk on a State-operated order has come to be referred to as “double dipping”. The Pacific Northwest order does not currently prohibit milk to be simultaneously pooled on the order and a State-operated order that provides for marketwide pooling. Proposals 1 and 10 were offered by Northwest Dairy Association (NDA), a cooperative association that markets the milk of their dairy-farmer members in the Pacific Northwest and Western milk marketing areas. The Western order was terminated on April 1, 2004 (69 FR 1958). Accordingly, proposal 10, applicable to the Western order, is no longer considered.

A witness appearing on behalf of NDA, testified that “double dipping” not only creates disorderly conditions in California, it also results in competitive inequities in Federal milk order areas. The NDA witness explained that once minimal pool qualification standards are met, milk pooled via this manner rarely is delivered to a Federal order marketing area.

The NDA witness provided evidence indicating that in 2001, over \$4.5 million was diverted from the Western Order pool and the producer blend price was reduced by an average of 10 cents per hundredweight (cwt) through “double dipping”. The witness was of the opinion that milk pooled through “double dipping” provided no service or delivery of milk from California yet

the California milk receives the benefit of the Western order’s blend price.

The NDA witness testified that there was no evidence of “double dipping” presently occurring on the Pacific Northwest order. However, the witness was of the opinion that the Pacific Northwest order would be targeted. The witness drew this conclusion on the premise that as soon as the “double dipping” loophole is closed in other orders, California milk will be pooled on orders that do not yet prohibit the practice.

Two witnesses, one representing Gossner Foods, Inc. (Gossner), an ultra high temperature (UHT) fluid milk processor located in Utah, and the second, Utah Dairymen’s Association (UDA), a cooperative located in Utah, also provided testimony in support of eliminating “double dipping”. The witnesses concurred that by eliminating “double dipping”, producers pooled on the order would benefit financially and enhance their ability to stay in business.

A witness representing River Valley Milk Producers Inc. (River Valley), a dairy farmer cooperative located in Southwestern Idaho, testified in support of eliminating “double dipping”. The witness was of the opinion that producers from outside of the marketing area should meet pooling standards by demonstrating actual performance in supplying the Western marketing area as a condition for pooling their milk and receiving the blend price. However, the witness stressed that producer milk which already participates in a State marketwide pool should be prohibited from participating in a Federal order pool.

The Commissioner of the Utah Department of Agriculture and Food testified in support of eliminating “double dipping” on the Western milk order. The witness testified that increasing volumes of California milk are diluting the Class I utilization of the market and lowering the blend price paid to producers. The witness found this to be patently unfair and stressed that “double dipping” lowers the income of Utah dairy farmers.

Three dairy farmers from Utah testified in support of prohibiting “double dipping”. These witnesses stated that “double dipping” on the Western order has had a significant negative impact on their pay prices. They maintained that it is unfair and wrong for dairy farmers to have their milk price reduced as a result of California milk being pooled on the order. One dairy farmer witness also added that the loose pooling provisions of the Western Order have resulted in unwarranted financial gain to those who

do not supply the Class I milk market of the Western marketing area. This witness indicated that this contributed to the financial ruin of a quarter of Western Order dairy farmers over the past 4 years.

There was no direct opposition to eliminating or preventing "double dipping". However, a witness testifying on behalf of the Dairy Farmers of America (DFA), a dairy farmer cooperative that markets the milk of their members in the Pacific Northwest and in most other Federal milk orders offered their own proposals. These proposals were published in the hearing notice as Proposals 2, 3, 4, 5, 6, 7, 8, and 9, and are offered, said the witness, to address broader pooling standards and concerns rather than focusing on the single pooling issue of "double dipping".

For nearly 70 years, the Federal Government has operated the milk marketing order program. The law authorizing the use of milk marketing orders, the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended, provides authority for milk marketing orders as an instrument which dairy farmers may voluntarily opt to use to achieve objectives consistent with the AMAA and that are in the public interest. An objective of the AMAA, as it relates to milk, was the stabilization of market conditions in the dairy industry. The declaration of the AMAA is specific: "The disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure and that these conditions affect transactions in agricultural commodities with a national public interest, and burden and obstruct the normal channels of interstate commerce."

The AMAA provides authority for employing several methods to achieve more stable marketing conditions. Among these is classified pricing which entails pricing milk according to its use by charging processors differing prices on the basis of form and use. In addition, the AMAA provides for specifying when and how processors are to account for and make payments to dairy farmers. Plus, the AMAA requires that milk prices established by an order be uniform to all processors and that the price charged can be adjusted by, among other things, the location at which milk is delivered by producers (section 608c(5)).

As these features and constraints provided for in the AMAA were employed in establishing prices under

Federal milk orders, some important market stabilization goals were achieved. The most often recognized goal was the near elimination of ruinous pricing practices of handlers competing with each other on the basis of the price they paid dairy farmers for milk and in price concessions made by dairy farmers. The need for processors to compete with each other on the price they paid for milk was significantly reduced because all processors are charged the same minimum amount for milk, and processors had assurance that their competitors were paying the same value-adjusted minimum price.

The AMAA also authorizes the establishment of uniform prices to producers as a method to achieve stable marketing conditions. Marketwide pooling has been adopted in all Federal orders because of its superior features of providing equity to both processors and producers, thereby helping to prevent disorderly marketing conditions. A marketwide pool, using the mechanism of a producer settlement fund to equalize on the use-value of milk pooled on an order, meets that objective of the AMAA of ensuring uniform prices to producers supplying a market.

The California State milk order program clearly has objectives similar to those of the AMAA. Exhibits presented at the hearing indicate that the California State order program has a long history in the development and evolution of a classified pricing plan and in providing equity in pricing to handlers and producers. Important as classified pricing has been in setting minimum prices, the issue of equitable returns to producers for milk could not be satisfied by only the use of a classified pricing plan. Some California plants had higher Class I fluid milk use than did others and some plants processed little or no fluid milk products. As with the Federal order system, producers who were fortunate enough to be located nearer Class I processors had been receiving a much larger return for their milk than producers shipping to plants with lower Class I use or to plants whose main business was the manufacturing of dairy products. Over time, disparate price differences grew between producers located in the same production area of the state which, in turn, led to disorderly marketing conditions and practices. These included producers who became increasingly willing to make price concessions with handlers by accepting lower prices and in paying higher charges for services such as hauling. Contracts between producers and handlers were the norm, but the contracts were not long-term (rarely

more than a single month) and could not provide a stable marketing relationship from which the dairy farmers could plan their operations.

In 1967, the California State legislature passed and enacted the Gonsalves Milk Pooling Act. The law provided the authority for the California Agriculture Secretary to develop and implement a pooling plan, which was implemented in 1968. The California pooling plan provides for the operation of a State-wide pool for all milk that is produced in the State and delivered to California pool plants. It uses an equalization fund that equalizes prices among all handlers and sets minimum prices to be paid to all producers pooled on the State order. While the pooling plan details vary somewhat from pooling details under the Federal order program, the California pooling objectives are basically identical to those of the Federal program.

It is clear from this review of the Federal and California State programs that the orderly marketing of milk is intended in both systems. Both plans provide a stable marketing relationship between handlers and dairy farmers and both serve the public interest. It would be incorrect to conclude that the Federal and California milk order programs have differing purposes when the means, mechanisms, and goals are so nearly identical. In fact, the Federal order program has precedent in recognizing that the California State milk order program has marketwide pooling. Under milk order provisions in effect prior to milk order reform, and under § 1000.76(c), a provision currently applicable to all Federal milk marketing orders, the Department has consistently recognized California as a State government program with marketwide pooling.

Since the 1960's the Federal milk order program recognized the harm and disorder that resulted to both producers and handlers when the same milk of a producer was simultaneously pooled on more than one Federal order. When this occurs, producers do not receive uniform minimum prices, and handlers receive unfair competitive advantages. The need to prevent "double pooling" became critically important as distribution areas expanded and orders merged. The issue of California milk, already pooled under its State-operated program and able to simultaneously be pooled under a Federal order, has essentially the same undesirable outcomes that Federal orders once experienced and subsequently corrected. It is clear that the Pacific Northwest order should be amended to prevent the ability of milk to be pooled

on more than one order when both orders employ marketwide pooling.

There are other State-operated milk order programs that provide for marketwide pooling. For example, New York operates a milk order program for the western region of that State. A key feature explaining why this State-operated program has operated for years alongside the Federal milk order program is the exclusion of milk from the State pool when the same milk is already pooled under a Federal order. Because of the impossibility of the same milk being pooled simultaneously, the Federal order program has had no reason to specifically address "double dipping" or "double pooling" issues, the disorderly marketing conditions that arise from such practice, or the primacy of one regulatory program over another. The other States with marketwide pooling similarly do not double-pool Federal order milk.

The record supports that the Pacific Northwest order should be similarly amended to preclude the ability to simultaneously pool the same milk on the order if the same milk is already pooled on a State-operated order that provides for marketwide pooling.

California milk should only be eligible for pooling on the Pacific Northwest order when it is not pooled on the California State order and when it meets the Pacific Northwest order's pooling standards. It is the ability of milk from California to "double dip" that is a source of disorderly marketing conditions and should be preempted in the case of the Pacific Northwest order.

Proposal 1 offers a reasonable solution for prohibiting the same milk to draw pool funds from Federal and State marketwide pools simultaneously. It is consistent with the current prohibition against the same milk pooling simultaneously in more than one Federal order pool. Adoption of Proposal 1 will not establish any barrier to the pooling of milk from any source that actually demonstrates performance in supplying the Pacific Northwest market's Class I needs. Adoption of Proposal 1 will specifically prohibit the practice of "double dipping".

The amendatory language provided below had been modified by the Department in the interim final rule but nevertheless accomplishes the intent of Proposal 1. The amendment adopted in this final decision to prohibit "double dipping" had been made in the order's *Producer milk* definition. This change was made because milk marketing orders do not regulate producers in their capacity as producers. Additionally, the amendatory language adopted on a permanent basis is consistent with that

adopted in other milk orders where the practice of "double dipping" has been eliminated.

#### **Rulings on Proposed Findings and Conclusions**

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

#### **General Findings**

The findings and determinations hereinafter set forth supplement those that were made when the Pacific Northwest order was first issued. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, (a) marketing agreement(s) upon which a hearing has been held.

#### **Rulings on Exceptions**

No exceptions to the tentative final decision were received.

#### **Marketing Agreement and Order**

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order

regulating the handling of milk in the Pacific Northwest marketing area. An interim amended order was approved by producers and published in the **Federal Register** on January 12, 2004 (69 FR 1654), as an Interim Final Rule. Both of these documents have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

*It is hereby ordered*, that this entire decision and the two documents annexed hereto be published in the **Federal Register**.

#### **Determination of Producer Approval and Representative Period**

February 2004 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended in the Interim Rule published in the **Federal Register** on January 12, 2004 (69 FR 1654), regulating the handling of milk in the Pacific Northwest marketing area is approved or favored by producers, as defined under the terms of the order as amended and as hereby proposed to be amended on a permanent basis who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

#### **List of Subjects in 7 CFR Part 1124**

Milk marketing orders.

Dated: December 23, 2004.

**A. J. Yates,**

*Administrator, Agricultural Marketing Service.*

#### **Order Amending the Order Regulating the Handling of Milk in the Pacific Northwest Marketing Area(s)**

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

#### **Findings and Determinations**

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon the proposed amendment to the tentative marketing agreement and to the order regulating the handling of milk in the Pacific Northwest marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the

applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to Section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, (a) marketing agreement(s) upon which a hearing has been held.

#### Order Relative to Handling

*It is therefore ordered*, that on and after the effective date hereof, the handling of milk in the Pacific Northwest marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the order amending the order contained in the interim amendment of the order issued by the Administrator, Agricultural Marketing Service, on January 5, 2004, and published in the **Federal Register** on January 12, 2004 (69 FR 1654), shall be and are the terms and provisions of this order.

[This marketing agreement will not appear in the Code of Federal Regulations.]

#### Marketing Agreement Regulating the Handling of Milk in Pacific Northwest Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1124.1 to 1124.86, all inclusive, of the order regulating the handling of milk in the Pacific Northwest marketing area (7 CFR part 1124 which is annexed hereto); and

II. The following provisions: Record of milk handled and authorization to correct typographical errors.

(a) *Record of milk handled.* The undersigned certifies that he/she handled during the month of \_\_\_\_\_ 2004, \_\_\_\_\_ hundredweight of milk covered by this marketing agreement.

(b) *Authorization to correct typographical errors.* The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name)

(Title)

(Address)

(Seal)

Attest

[FR Doc. 04-28629 Filed 12-29-04; 8:45 am]

**BILLING CODE 3410-02-P**

#### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

#### 7 CFR Part 1131

[Docket No. AO-271-837; DA-03-04-A]

#### Milk in the Arizona-Las Vegas Marketing Area; Tentative Partial Decision on Proposed Amendment and Opportunity To File Written Exceptions to Tentative Marketing Agreement and to Order

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

**ACTION:** Proposed rule.

**SUMMARY:** This tentative partial decision adopts on an interim final and emergency basis, a proposal that would eliminate the ability to simultaneously pool the same milk on the Arizona-Las Vegas milk order and any State-operated milk order that has marketwide pooling. This decision requires determining if producers approve the issuance of the amended order on an interim basis.

Other proposals considered at the public hearing regarding producer-handlers will be addressed in a separate decision.

**DATES:** Comments should be submitted on or before February 28, 2005.

**ADDRESSES:** Comments (6 copies) should be filed with the Hearing Clerk, Room 1083-STOP 9200, United States Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250-9200, and you may also send your comments by the electronic process available at Federal eRulemaking portal at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Jack Rower, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, Room 2971-STOP 0231, 1400 Independence Avenue, SW., Washington, DC 20250-0231, (202) 720-2357, e-mail address: [jack.rower@usda.gov](mailto:jack.rower@usda.gov).

**SUPPLEMENTARY INFORMATION:** This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The amendment to the rules proposed herein has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. If adopted, the proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (Department) 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. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

#### Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this