

Dated: November 8, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1124

[Doc. No. AO-368-A29; DA-01-06]

#### Milk in the Pacific Northwest Marketing Area; Interim Order Amending the Order

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

**ACTION:** Interim final rule.

**SUMMARY:** This order amends certain pooling provisions of the Pacific Northwest Federal milk order on an interim basis. This interim order implements amendments to the *Pool plant* provisions which establish a cooperative manufacturing plant provision and a procedure for "system pooling" by cooperative manufacturing plants. For the *Producer milk* provisions, this interim order implements amendments that establish a standard of at least 3 days' milk production for the number of days during the month that the milk of a producer needs to be delivered to a pool plant (a "touch-base" standard) in order for the rest of the milk of that producer to be eligible to be diverted to nonpool plants, provides authority to the Market Administrator to adjust the "touch-base" standard, and establishes a year-round diversion limit of 80 percent of total receipts for pool plants. More than the required number of producers in the Pacific Northwest marketing area have approved the issuance of the interim order as amended.

**EFFECTIVE DATE:** January 1, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Gino M. 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).

**SUPPLEMENTARY INFORMATION:** This administrative rule 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.

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the 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 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.

#### Small Business Consideration

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 interim 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.

*Prior documents in this proceeding:*

*Notice of Hearing:* Issued November 14, 2001; published November 19, 2001 (66 FR 57889).

*Tentative Final Decision:* Issued August 30, 2002; published September 6, 2002 (67 FR 56936).

#### Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Pacific Northwest 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.

The following findings are hereby made with respect to the Pacific Northwest order:

(a) Findings upon the basis of the hearing record. 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 governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Pacific Northwest marketing area.

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

(1) The Pacific Northwest order, as hereby amended on an interim basis, 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 marketing area, and the minimum prices specified in the order, as hereby amended on an interim basis, 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 Pacific Northwest order, as hereby amended on an interim basis, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) Additional Findings. It is necessary and in the public interest to make these interim amendments to the Pacific Northwest order effective January 1, 2003. Any delay beyond that date would tend to disrupt the orderly

marketing of milk in the aforesaid marketing area.

The interim amendments to these orders are known to handlers. The final decision containing the proposed amendments to these orders was issued on August 30, 2002.

The changes that result from these interim amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these interim order amendments effective on January 1, 2003. It would be contrary to the public interest to delay the effective date of these amendments for 30 days after their publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551-559.)

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the specified marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this interim order amending the Pacific Northwest order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended;

(3) The issuance of the interim order amending the Pacific Northwest order is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing area.

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

Milk marketing orders.

#### 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 further amended on an interim basis, as follows:

The authority citation for 7 CFR part 1124 reads as follows:

**Authority:** 7 U.S.C. 601-674.

#### PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

1. Section 1124.7 is amended by:
  - a. Removing paragraphs (c)(2) and (c)(3);
  - b. Redesignating paragraph (c)(4) as (c)(2);

c. Adding new paragraphs (d) and (f); and

d. Revising paragraph (g).

The revisions and additions read as follows:

#### § 1124.7 Pool plant.

\* \* \* \* \*

(d) A manufacturing plant located within the marketing area and operated by a cooperative association, or its wholly owned subsidiary, if, during the month, or the immediately preceding 12-month period ending with the current month, 20 percent or more of the producer milk of members of the association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) at plants specified in paragraph (a) or (b) of this section either directly from farms or by transfer from supply plants operated by the cooperative association, or its wholly owned subsidiary, and from plants of the cooperative association, or its wholly owned subsidiary, for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b), or (c) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(3) A request is filed in writing with the market administrator before the first day of the month for which it is to be effective. The request will remain in effect until a cancellation request is filed in writing with the market administrator before the first day of the month for which the cancellation is to be effective.

\* \* \* \* \*

(f) A system of two or more plants identified in § 1124.7(d) operated by one or more cooperative handlers may qualify for pooling by meeting the above shipping requirements subject to the following additional requirements:

(1) The cooperative handler(s) establishing the system submits a written request to the market administrator on or before the first day of the month for which the system is to be effective requesting that such plants qualify as a system. Such request will contain a list of the plants participating in the system in the order, beginning with the last plant, in which the plants

will be dropped from the system if the system fails to qualify. Each plant that qualifies as a pool plant within a system shall continue each month as a plant in the system until the handler(s) establishing the system submits a written request before the first day of the month to the market administrator that the plant be deleted from the system or that the system be discontinued. Any plant that has been so deleted from a system, or that has failed to qualify in any month, will not be part of any system. In the event of an ownership change or the business failure of a handler that is a participant in the system, the system may be reorganized to reflect such a change if a written request to file a new marketing agreement is submitted to the market administrator; and

(2) If a system fails to qualify under the requirement of this paragraph, the handler responsible for qualifying the system shall notify the market administrator of which plant or plants will be deleted from the system so that the remaining plants may be pooled as a system. If the handler fails to do so, the market administrator shall exclude one or more plants, beginning at the bottom of the list of plants in the system and continue up the list as necessary until the deliveries are sufficient to qualify the remaining plants in the system.

(g) The applicable shipping percentage of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired to be effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

\* \* \* \* \*

2. Section 1124.13 is amended by:
  - a. Redesignating paragraphs (e)(1) through (5) as paragraphs (e)(2) through (6);
  - b. Adding a new paragraph (e)(1); and

c. Revising redesignated paragraphs (e)(2),(e)(5), and (e)(6).

The revisions and additions read as follows:

**§ 1124.13 Producer Milk.**

\* \* \* \* \*

(e) \* \* \*

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least 3 days' production of such dairy farmer's production is physically received at a pool plant during the month.

(2) Of the quantity of producer milk received during the month (including diversions, but excluding the quantity of producer milk received from a handler described in § 1000.9(c)) the handler diverts to nonpool plants not more than 80 percent.

\* \* \* \* \*

(5) Any milk diverted in excess of the limits prescribed in paragraph (e)(2) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by such producer as producer milk during the month will not be subject to § 1124.12(b)(5).

(6) The delivery day requirement in paragraph (e)(1) of this section and the diversion percentage in paragraph (e)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure the orderly marketing and efficient handling of milk in the marketing area. Before making such finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired to be effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise the delivery day requirement or the diversion percentage must be issued in writing at least one day before the effective date.

Dated: November 8, 2002.

A. J. Yates,

*Administrator, Agricultural Marketing Service.*

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**DEPARTMENT OF AGRICULTURE**

**Rural Housing Service**

**Rural Business-Cooperative Service**

**Rural Utilities Service**

**Farm Service Agency**

**7 CFR Parts 1951 and 3550**

**Servicing and Collections**

**AGENCIES:** Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule explains the procedures used by certain Rural Development Agencies and the Farm Service Agency, Farm Loan Programs to refer accounts to the Department of the Treasury for administrative offset (TOP) and cross-servicing as required by the Debt Collection Improvement Act (DCIA), and by the Treasury Department's rules regarding the Federal Claims Collection Standards concerning administrative offset, cross-servicing procedures, and Treasury Offset of Internal Revenue Service (IRS) tax refund payments.

**EFFECTIVE DATE:** December 19, 2002.

**FOR FURTHER INFORMATION CONTACT:** Barry G. Sykes, Chief, Program Reporting Branch, Program Management Division, Rural Development, USDA, Office of the Deputy Chief Financial Officer, P.O. Box 200011, FC-351, St. Louis, Missouri 63120-0011, Telephone (314) 539-2222.

**SUPPLEMENTARY INFORMATION:**

**Classification**

This action is not subject to the provisions of Executive Order 12866 since it involves only internal Agency management. This action is not published for prior notice and comment under the Administrative Procedure Act since it involves only internal Agency management and publication for comment is unnecessary and contrary to the public interest.

**Programs Affected**

The catalog of Federal Domestic Assistance programs impacted by this action are as follows:

- 10.404—Emergency Loans
- 10.405—Farm Labor Housing Loans and Grants
- 10.406—Farm Operating Loans
- 10.407—Farm Ownership Loans
- 10.410—Very Low to Moderate Income Housing Loans
- 10.411—Rural Housing Site Loans and Self-Help Housing Land Development Loans
- 10.415—Rural Rental Housing Loans
- 10.417—Very Low-Income Housing Repair Loans and Grants
- 10.420—Rural Self-Help Housing Technical Assistance
- 10.427—Rural Rental Assistance Payments
- 10.760—Water and Waste Disposal Systems for Rural Communities
- 10.766—Community Facilities Loans and Grants
- 10.767—Intermediary Relending Program
- 10.768—Business and Industry Loans
- 10.770—Water and Waste Disposal Loans and Grants (section 306C)
- 10.854—Rural Economic Development Loans and Grants

**Civil Justice Reform**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this Executive Order: (1) Unless otherwise specifically provided, all State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division (7 CFR part 11) must be exhausted before litigation against the Department is instituted.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act (44 U.S.C. 3507), the information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575-0119. This rule does not revise or impose any new information collection requirements from those approved by OMB.

**Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may