

■ c. Adding paragraphs (d)(2), (d)(4), (d)(5) and (e).

The revision and additions read as follows:

**§ 1001.13 Producer milk.**

\* \* \* \*

(d) \* \* \*

(1) Milk of a dairy farmer shall not be eligible for diversion unless one day's milk production of such dairy farmer was physically received as producer milk and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion unless milk of the dairy farmer has been physically received as producer milk at a pool plant during the month;

(2) Of the total quantity of producer milk received during the month (including diversion but excluding the quantity of producer milk received from a handler described in § 1000.9(c) or which is diverted to another pool plant), the handler diverted to nonpool plants not more than 80 percent during each of the months of September through November and 90 percent during each of the months of January through August and December. In the event that a handler causes the milk of a producer to be over diverted, a dairy farmer will not lose producer status;

\* \* \* \*

(4) Any milk diverted in excess of the limits set forth in paragraph (d)(2) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to designate the dairy farmer deliveries which are ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(5) The delivery day requirement and the diversion percentages in paragraphs (d)(1) and (d)(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 orderly marketing and efficient handling of milk in the marketing area. Before making such a 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 an applicable percentage or delivery day requirement must be issued in writing at least one day before the effective date.

(e) Producer milk shall not include milk of a producer that is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing program imposed under the authority of another government entity.

■ 4. In § 1001.30, the introductory text is revised to read as follows:

**§ 1001.30 Reports of receipts and utilization.**

Each handler shall report monthly so that the Market Administrator's office receives the report on or before the 10th day after the end of the month, in the detail and on prescribed forms, as follows:

\* \* \* \*

■ 5. In § 1001.62, the introductory text is revised and a new paragraph (h) is added to read as follows:

The revision and addition reads as follows:

**§ 1001.62 Announcement of producer prices.**

On or before the 14th day after the end of the month, the Market Administrator shall announce the following prices and information:

\* \* \* \*

(h) If the 14th falls on a Saturday, Sunday, or national holiday, the Market Administrator may have up to two additional business days to announce the producer price differential and the statistical uniform price.

\* \* \* \*

■ 6. In § 1001.71, the introductory text is revised to read as follows:

**§ 1001.71 Payments to the producer—settlement fund.**

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the Market Administrator no later than two days after the announcement of the producer price differential and the statistical uniform price pursuant to § 1001.62 (except as provided for in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

\* \* \* \*

■ 7. Section 1001.72 is revised to read as follows:

**§ 1001.72 Payments from the producer—settlement fund.**

No later than the day after the due date required for payment to the Market Administrator pursuant to § 1001.71 (except as provided in § 1001.90), the Market Administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1001.71(b) exceeds the amount computed pursuant to § 1001.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the Market Administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

■ 8. In § 1001.73, paragraphs (a)(2) introductory text and (e) introductory text are revised to read as follows:

**§ 1001.73 Payments to producers and to cooperative associations.**

(a) \* \* \*

(2) *Final payment.* For milk received during the month, payment shall be made during the following month so it is received by each producer no later than the day after the required date of payment by the Market Administrator, pursuant to § 1001.72, in an amount computed as follows:

\* \* \* \*

(e) In making payments to producers pursuant to this section, each handler shall furnish each producer (except for a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or 9(c)), a supporting statement in such form that it may be retained by the recipient which shall show:

\* \* \* \*

Dated: April 6, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05-7273 Filed 4-11-05; 8:45 am]

BILLING CODE 3410-02-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: Order Amending the Order**

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

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule, without change, an interim

final rule concerning pooling provisions of the Pacific Northwest Federal milk order. More than the required number of producers for the Pacific Northwest marketing area approved the issuance of the final order amendments.

**DATES:** *Effective Date:* May 1, 2005.

**FOR FURTHER INFORMATION CONTACT:**

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

**SUPPLEMENTARY INFORMATION:** This document adopts as a final rule, without change, an interim final rule concerning pooling provisions of the Pacific Northwest Federal milk order. Specifically, this final rule permanently adopts a provision that eliminates the ability to simultaneously pool the same milk on the order and on a State-operated order that provides for marketwide pooling.

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 final 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 of Agriculture (USDA) 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 action on small entities and has certified that this 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 marketing 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, 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 criteria established are applied in an equal 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 amendments 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 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 action 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).

*Final Decision:* Issued December 23, 2004; published December 30, 2004 (69 FR 250).

**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, 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, 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, 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 in the public interest to make these amendments to the Pacific Northwest order effective May 1, 2005. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing area.

The amendments to these orders are known to handlers. The final decision containing the proposed amendments to these orders was issued on December 23, 2004.

The changes that result from these 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 order amendments effective May 1, 2005. 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 that 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 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 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, as follows:

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

■ The interim final rule amending 7 CFR Part 1124 which was published at 69 FR 1654 on January 12, 2004, is adopted as a final rule without change.

Dated: April 6, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05-7272 Filed 4-11-05; 8:45 am]

BILLING CODE 3410-02-P

#### FARM CREDIT ADMINISTRATION

##### 12 CFR Part 617

RIN 3052-AC24

##### Borrower Rights

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** The Farm Credit Administration (FCA or Agency) issues this final rule to allow a borrower to waive borrower rights when receiving a loan from a qualified lender as part of a loan syndication with non-Farm Credit System (System) lenders that are otherwise not required by section 4.14A(a)(6) of the Farm Credit Act of 1971, as amended (Act), to provide borrower rights. This rule will provide qualified lenders needed flexibility to meet the credit needs of borrowers seeking financing from a qualified

lender as part of certain syndicated lending arrangements.

**DATES:** *Effective Date:* This regulation will be effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

#### FOR FURTHER INFORMATION CONTACT:

Mark Johansen, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TTY (703) 883-4434; or

Howard Rubin, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4020.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On November 16, 2004, we published a proposed regulation (69 FR 67074) that would permit a borrower to waive part 617, Borrower Rights, when receiving a loan from a qualified lender as part of a loan syndication with non-System lenders that are otherwise not required by the Act to provide borrower rights.<sup>1</sup> As discussed in the preamble to the proposed rule, we have determined that the borrower in these transactions generally possess a very high level of business sophistication. As a result, these borrowers are in a reasonably equal bargaining position with the qualified lender and are able to provide a knowing, voluntary, and intelligent waiver of these rights. To ensure that the borrower understands the rights being waived and is freely and intelligently waiving those rights, we proposed, in addition to the current notice requirement in § 617.7010(c), to require that the borrower certify that he/she was advised by legal counsel at the time of the waiver.

We received 23 comments on the proposed rule: 20 from System institutions, one from the Farm Credit Council (FCC), one from the Independent Community Bankers of America (ICBA), and one from a private citizen (whose comment was not

<sup>1</sup> Title IV, part C of the Act (subchapter IV, part C of title 12 of the United States Code) requires "qualified lenders" to provide for certain "rights of borrowers." Section 4.14A(a)(6) (12 U.S.C. 2202a(a)(6)) defines "qualified lenders" to include: (1) A System institution, except a bank for cooperatives, that makes loans authorized by the Act; and (2) each bank, institution, corporation, company, credit union, and association described in section 1.7(b)(1)(B) of the Act (12 U.S.C. 2015(b)(1)(B)) (commonly referred to as an other financing institution (OFI)), but only with respect to loans discounted or pledged under section 1.7(b)(1).