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 1131

[Docket No. AO–271–A37; DA–03–04–A]

Milk in the Arizona-Las Vegas Marketing Area; Partial 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 March 1, 2005, concerning pooling provisions of the Arizona-Las Vegas 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 Arizona-Las Vegas milk order and any State-operated milk order that has marketwide pooling. Other proposals considered at the hearing regarding producer-handlers were addressed in a separate partial recommended decision issued on April 7, 2005.

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*.

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 proposed 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 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 milk 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.

During September 2003, the month in which the hearing began, the milk of 106 dairy producers was pooled on, and 22 handlers were regulated by, the Arizona-Las Vegas order. Approximately 18 producers, or 17 percent, were small businesses based on the above criteria. On the handler side, 7 handlers, or 32 percent were ''small businesses''.

The adoption of the proposed producer milk provision, a part of the order's pooling standards, serves to revise established criteria that determine the producer milk that has a reasonable association with the Arizona-Las Vegas milk marketing area and is not associated with other marketwide pools concerning the same milk. Criteria for pooling milk are also established on the basis of performance standards that are considered adequate to meet the Class I fluid needs of the market and determine those that are eligible to share in the revenue arising 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 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 the proposed amendment would have no impact on reporting, record keeping, 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 from all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Prior documents in this proceeding:

Notice of Hearing: Issued July 31, 2003; published August 6, 2003 (68 FR 46505).

Correction to Notice of Hearing: August 20, 2003; published August 26, 2003 (68 FR 51202).

Notice of Reconvened Hearing: Issued October 27, 2003; published October 31, 2003 (68 FR 62027).

Notice of Reconvened Hearing: Issued December 18, 2003; published December 29, 2003 (68 FR 74874).

Tentative Final Decision: Issued December 23, 2004; published December 30, 2004 (69 FR 78355).

Interim Final Rule: Issued February 23, 2005; published March 1, 2005 (70 FR 9846).

Partial Recommended Decision: Issued April 7, 2005; published April 13, 2005 (70 FR 19636).

Preliminary Statement

The proposed amendment set forth below is based on the record of a public hearing held at Tempe, Arizona, on September 23–25, 2003, pursuant to a notice of hearing issued July 31, 2003, and published August 6, 2003, (68 FR 46505); reconvened at Seattle, Washington, on November 17–21, 2003, pursuant to a notice of reconvened hearing issued October 27, 2003 and published October 31, 2003 (68 FR 62027); and reconvened at Alexandria, Virginia, on January 20–22, 2004, pursuant to a notice of reconvened hearing issued December 18, 2003, and published December 29, 2003 (68 FR 74874).

Upon the basis of the evidence introduced at the hearing and the recorded thereof, the Administrator, on December 23, 2004, issued a Tentative Final Decision containing notice of the opportunity to file written exceptions thereto.

The material issues on the record of the hearing relate to:

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

2. Determination as to whether emergency marketing conditions exist that would warrant the omission of a recommended decision and the opportunity to file written exceptions.

Finding 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

A proposal, published in the hearing notice as Proposal 4, seeking to exclude the same milk from being simultaneously pooled on the Arizona-Las Vegas order and any State-operated order which provides for marketwide pooling, should be adopted immediately. 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 Arizona-Las Vegas order does not currently prohibit milk from being simultaneously pooled on the order and a State-operated order that provides for marketwide pooling. Proposal 4 was offered by United Dairymen of Arizona, a cooperative association that markets the milk of their members in the Arizona-Las Vegas marketing area.

A witness appearing on behalf of the Alliance of Western Milk Producers, testified in support of Proposal 4. The witness testified that double-dipping creates a competitive advantage in both procuring milk and competing for markets for milk.

A witness appearing on behalf of Northwest Dairy Association (NDA), testified in support of Proposal 4, saying 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 in this manner rarely is delivered to a Federal order marketing area. The witness noted that the implementation of similar provisions in Orders 30, 32, and 124, which effectively prevents the simultaneous pooling of milk in the California Statewide pool and in the Federal order, should also be adopted for the Arizona-Las Vegas order.

A witness testifying on behalf of Dairy Farmers of America (DFA), a dairy farmer cooperative that markets the milk of their members in Arizona-Las Vegas and in most of the other Federal milk orders, supported adoption of Proposal 4. The witness indicated that the regulatory language for this proposal is identical to what has been adopted for Orders 30, 32, 33, and 124. A witness representing Sarah Farms, a producer-handler located in Arizona, testified in opposition to adopting Proposal 4. The witness was of the opinion that the adoption of Proposal 4 would be a trade restriction and that Sarah Farms preferred freer trade rather than more restricted trade. The witness concluded by hypothesizing that Proposal 4 was proposed to hurt Sarah Farms.

A witness representing Edaleen Dairy, a producer-handler located in Lynden, Washington, also testified in opposition to adopting Proposal 4. The witness indicated that since Sarah Farms was opposed to Proposal 4, they would also be opposed to it.

The witness explained that California operates a quota and overbase payment system. Under this system, all producers receive a uniform blend price in the form of the overbase. Other producers are entitled to an additional payment of $1.70 per hundredweight for their ''quota'' milk. The witness noted that producers who have moved California milk into the Arizona market have lost their quota and if they were to participate in California again they would only be entitled to the overbase price. The witness indicated that the California Department of Food and Agriculture had issued a decision that required a producer participating in the state order to do so for a period of twelve months at a time, preventing participation in the Federal order program because California does not permit dual participation. As a result, the witness noted that benefits can not be obtained by double-dipping.

In post hearing briefs, Edaleen Dairy, Mallorie's Dairy, Smith Brothers Farm, and Sarah Farms concurred that a producer located in California, pooling milk in Arizona, would not be considered 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 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 it provides 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 the use-value of milk pooled on an order, meets that objective of the AMAA, ensuring uniform prices to producers supplying a market.

As discussed in the tentative partial decision, since the 1960's, the Federal milk order program has recognized the harm and disorder that resulted to both producers and handlers when the same milk of a producer is 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. Milk already pooled under a 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.

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 allow double-pooling of Federal order milk.

The record supports that the Arizona-Las Vegas order should be permanently 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.

The tentative partial decision and this final decision finds that proposal 4 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 allowing the same milk to participate simultaneously in more than one Federal order pool. Adoption of Proposal 4 will not establish any barrier to the pooling of milk from any source that actually demonstrates performance in supplying the Arizona-Las Vegas market's Class I needs.

2. Determination of Emergency Marketing Conditions

Evidence presented at the hearing establishes that California milk that can be pooled simultaneously on a State-operated order and a Federal order, a practice commonly referred to as double-dipping, would render the Arizona-Las Vegas milk order unable to establish prices that are uniform to producers and to handlers. This shortcoming of the pooling provisions could allow milk not providing a reasonable or consistent service to meeting the needs of the Class I market to be pooled on the Arizona-Las Vegas order.

In view of these findings, an interim final rule amending the order was issued. The amended order was approved by dairy producers and implemented on an interim basis. Consequently, it is determined that emergency marketing conditions exist and the issuance of a recommended decision was therefore omitted. The record clearly establishes a basis as noted above for amending the order on a permanent basis.

Rulings on Proposed Findings and Conclusions

Briefs, 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 Arizona-Las Vegas 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) 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 with respect to 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, the marketing agreement upon which a hearing has been held.

Ruling on Exceptions

No exceptions to the tentative final decision were received.

Marketing Agreement and Interim Order Amending the Order

Annexed hereto and made a part hereof is a Marketing Agreement regulating the handling of milk. The Order amending the order regulating the handling of milk in the Arizona-Las Vegas marketing area was approved by producers and published in the **Federal Register** on March 1, 2005 (70 FR 9846), 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 partial final decision and the Marketing Agreement annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

The month of July 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 Final Rule published in the **Federal Register** on March 1, 2005 (70 FR 9846), regulating the handling of milk in the Arizona-Las Vegas 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), 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 1131

Milk Marketing order.

Dated: June 20, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Milk in the Arizona-Las Vegas Marketing Area

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 certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Arizona-Las Vegas 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 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 Arizona-Las Vegas 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 provision of the order amending the orders contained in the interim amendment of the orders issued by the Administrator, Agricultural Marketing Service, on April 19, 2004, and published in the **Federal Register** on April 23, 2004 (69 FR 21950), are adopted without change and, shall be 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 Certain Marketing Areas

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 §§ 1131.1 to 1131.86 all inclusive, of the order regulating the handling of milk in the Arizona-Las Vegas marketing area (7 CFR Part 1131) 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 __ 2005, 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 Department 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. 05–12618 Filed 6–24–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–163–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.