

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 1124**

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

**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 order language contained in the final decision published in the **Federal Register** on April 9, 2004, concerning pooling provisions of the Pacific Northwest Federal milk order. More than the required number of producers in the Pacific Northwest marketing area approved the issuance of the final order amendments.

**DATES:** *Effective Date:* July 1, 2004.**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 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 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.

During June 2003, there were 897 producers pooled on, and 71 plants associated with, the Pacific Northwest order. Based on these criteria, 574 producers or 64 percent of producers and 37 plants or 52 percent of the associated plants would be considered small businesses. The adoption of the proposed pooling standards serves to revise established criteria that determine those producers, producer milk, and plants that have a reasonable association with, and are consistently serving the fluid needs of, the Pacific Northwest milk marketing. 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. 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 November 14, 2001; published November 19 2001 (66 FR 57889).

*Tentative Final Decision:* Issued August 30 2002; published September 6, 2002 (67 FR 56942).

*Interim Final Rule:* Issued November 8 2002; published November 19, 2002 (67 FR 69668).

*Final Decision:* Issued April 5, 2004; published April 9, 2004 (69 FR 18834).

**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 July 1, 2004. 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 April 5, 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 July 1, 2004. 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**. (Section 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.

Specifically, this final rule permanently adopts a "cooperative pool manufacturing plant" provision and continues system pooling for cooperative manufacturing plants.

Additionally, this final rule permanently adopts a diversion limit of 80 percent of total producer receipts for a pool plant, continues the standard for the number of days during the month that the milk of a producer would need to be delivered to a pool plant in order for the rest of the milk of that producer to be eligible to be diverted to nonpool plants, and maintains the authority granted to the market administrator to adjust the touch-base standard.

#### 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 67 FR 69668 on November 19, 2002, is adopted as a final rule without change.

Dated: June 16, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04-14061 Filed 6-22-04; 8:45 am]

BILLING CODE 3410-02-P

#### DEPARTMENT OF HOMELAND SECURITY

#### 8 CFR Part 274a

#### Seizure and Forfeiture of Conveyances

*CFR Correction*

■ In Title 8 of the Code of Federal Regulations, revised as of Jan. 1, 2004, on page 656, § 274a.12 is corrected in paragraph (c)(5) by removing text

beginning with "Ill(6)" to the end of the paragraph.

[FR Doc. 04-55513 Filed 6-22-04; 8:45 am]

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#### DEPARTMENT OF JUSTICE

#### Executive Office for Immigration Review

#### 8 CFR Part 1274a

#### Control of Employment of Aliens

*CFR Correction*

In Title 8 of the Code of Federal Regulations, revised as of Jan. 1, 2004, on page 1094, § 1274a.12 is corrected in paragraph (c)(5) by removing text beginning with "Ill(6)" to the end of the paragraph.

[FR Doc. 04-55514 Filed 6-22-04; 8:45 am]

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#### DEPARTMENT OF AGRICULTURE

#### Food Safety and Inspection Service

#### 9 CFR Part 319

[Docket No. 96-006F]

RIN 0583-AC09

#### Beef or Pork with Barbecue Sauce; Revision of Standard

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is amending its regulations by removing meat yield requirements in the standard of identity for "Beef with Barbecue Sauce" and "Pork with Barbecue Sauce." This action is in response to a petition. The petitioner states that the current food standard, promulgated in 1952, places producers of these products at a competitive disadvantage because producers of other meat and sauce products do not have a cooked meat yield requirement or a raw meat yield requirement. This action provides consistent requirements for most meat with sauce producers.

**EFFECTIVE DATE:** This rule is effective July 23, 2004.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Post, Ph.D., Director, Labeling and Consumer Protection Staff, 1400 Independence Avenue, SW., Cotton Annex, Washington, DC 20250-3700, (202) 205-0279.

**SUPPLEMENTARY INFORMATION:**