

(c) *Willingness to glean.* Participants should commit to supporting the USDA food gleaning/food recovery initiative. This commitment requires farmers and vendors to donate surplus food and food products at the end of each market day to a local nonprofit organization identified by USDA. Questions about tax deductions for gleaning should be referred to the Internal Revenue Service or a tax advisor. Receipts for donated foods may be obtained from the receiving nonprofit organization.

(d) *Commitment to market.* Participants must commit to the entire market season and be willing to participate on a regular basis.

(e) *Grandfather provision.* Market Management reserves the right to select several farmers or vendors based on previous participation in the program, consistency in providing quality products, and compliance with operating guidelines.

#### **§ 170.13 What are the operating guidelines for the USDA Farmers Market?**

(a) *Market operation.* The Market will be held in parking court #9 of the USDA Headquarters Complex located on the corner of 12th Street and Independence Avenue, SW., Washington, DC. Selling will not begin before 10 a.m. and will end promptly at 2 p.m. each market day. All participants must be in place, setup and ready to sell by 10 a.m. Due to space restrictions at the site, late arrivals will be located at Market Management's discretion. All vehicles must vacate the market site no later than 3:00 p.m.

(b) *Notification of attendance.* Each participant must call USDA within 48 hours of a market day if they cannot attend. Failure to provide proper and timely notification may result in termination of the participation in the market.

(c) *Participant space.* One vehicle is permitted per space; all other vehicles must be removed from the immediate market premises. One space is 16w x 17d feet, and all trucks must fit within that area. There is only room for 15 spaces.

(d) *Signage.* Participants must clearly display the name of their farm/business and post prices for all items being sold.

(e) *Clean-up.* Participants are responsible for cleaning all trash and waste within and around their allotted space. Garbage bins are provided on the market site for this purpose.

(f) *Cooperative marketing.* Participants are permitted to share space with another participant or sell another's products if the arrangement is deemed by Market Management as beneficial to the market. A co-op must be pre-approved by Market Management

and will not be accepted if similar products are already sold by existing farmers or vendors.

(g) *Farm/business visits.* Market Management may visit farm/business locations to verify compliance with market criteria and guidelines. Participants should submit a map and directions to their farm/businesses with their market applications.

(h) *Conduct on Federal property.* Participants must comply with Subpart 20.3 of the Federal Property Management Regulations, "Conduct on Federal Property," 41 CFR 20.3.

#### **§ 170.14 What circumstances will prevent participation in the USDA Farmers Market?**

(a) Efforts will be made to accommodate all who apply to participate in the market. However, Market Management may deny participation in the market because of insufficient space or excess supply of the products to sell, failure to meet the stated criteria, or the participant's noncompliance with the operating guidelines or regulations.

(b) Participants who sell before the 10 a.m. opening time will be restricted from participating in the market following their second violation. A written warning will be given to the participant for the first violation of this guideline. After the second violation occurs, a letter of reprimand will be given to the participant restricting their participation for the next immediate market day.

(c) Participants who arrive after the 10 a.m. opening time may be restricted from participating in the market following their second violation. A written warning may be given to the participant for the first violation of this guideline. After the second violation occurs, a letter of reprimand may be given to the participant restricting their participation for the next immediate market day.

Dated: February 14, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05-3072 Filed 2-16-05; 8:45 am]

**BILLING CODE 3410-02-P**

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 1033**

[Docket No. AO-166-A72; DA-05-01]

#### **Milk in the Mideast Marketing Area; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order**

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

**ACTION:** Proposed rule; Notice of public hearing on proposed rulemaking.

**SUMMARY:** A public hearing is being held to consider proposals that would amend certain provisions of the Mideast Federal milk marketing order. Proposals under consideration address: Eliminating the ability of the same milk to be simultaneously pooled on the Mideast order and on a State operated order with marketwide pooling; Changing the supply plant performance standards and diversion limits; Increasing the number of days a dairy farmer's milk production must be delivered to a pool plant for the milk of the dairy farmer to be eligible for diversion; Limiting the pooling of producer milk that was not pooled in a prior month(s); Establishing a "dairy farmer for other markets" provision; Establishing a transportation credit for milk; and Changing the producer-handler definition.

**DATES:** The hearing will convene at 8:30 a.m. on Monday, March 7, 2005.

**ADDRESSES:** The hearing will be held at the Shisler Conference Center, Ohio Agricultural Research and Development Center, 1625 Wilson Road, Wooster, Ohio 44691, (330) 287-1424. Hotel accommodations can be made at the Hilton Garden Inn Wooster, 959 Dover Road, Wooster, Ohio 44691, (330) 202-7701.

**FOR FURTHER INFORMATION CONTACT:** Gino 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).

Persons requiring a sign language interpreter or other special accommodations should contact Paul Huber at 330-225-4758 or via e-mail at [pheber@fmnaclev.com](mailto:pheber@fmnaclev.com) before the hearing begins.

**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.

Notice is hereby given of a public hearing to be held at the Shisler Conference Center, Ohio Agricultural Research and Development Center, 1625 Wilson Road, Wooster, Ohio 44691, (330) 287-1424, beginning at 8:30 a.m., on Monday, March 7, 2005, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Mideast milk marketing area.

The hearing is called 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).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions that relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is 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. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments 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 provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(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.

This public hearing is being conducted to collect evidence for the record concerning the inequities among producers arising from order provisions that allow reserve milk, which is used in cheese or butter and nonfat dry milk production, to share in the benefits of pooling, but does not require such milk to pool when there is a cost (when the Class III price or Class IV price is above the blend price). Evidence will also be collected to consider amending the order's supply plant performance standards and diversion limitations to better identify the milk of producers that should be eligible to receive the order's blend price, increasing the number of days that a dairy farmer's milk production would need to be delivered to a pool plant before such milk would be eligible for diversion to nonpool plants but have such diverted milk pooled on the order, establishing a transportation credit to partially reimburse handlers for the cost of transporting milk intended for use in Class I products, eliminating the ability to simultaneously pool the same milk on the Mideast Federal order and on a State operated order with marketwide pooling, and changing the producer-handler definition for the order.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with (4) copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

#### List of Subjects in 7 CFR Part 1033

Milk marketing orders.

The authority citation for 7 CFR Part 1033 continues to read as follows:

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

The proposed amendments, as set forth below, have not received the approval of the Department.

#### Proposed by Dairy Farmers of America, Inc., and Michigan Milk Producers Association

##### Proposal No. 1

This proposal seeks to eliminate the ability of the same milk to be pooled on the Mideast order and on a State operated order with marketwide pooling.

1. Amend § 1033.13 by adding a new paragraph (e), to read as follows:

#### § 1033.13 Producer milk.

\* \* \* \* \*

(e) Producer milk shall not include milk of a producer that is subject to a marketwide equalization pool under a milk classification and pricing plan under the authority of a State government.

#### Proposed by Dairy Farmers of America, Inc., and Michigan Milk Producers Association

##### Proposal No. 2

This proposal seeks to amend the order's pooling provisions by changing the supply plant and the cooperative association operated plant performance standards and diversion limit standards to better identify the milk of producers who are providing consistent service to the Class I needs of the Mideast milk marketing order.

1. Amend § 1033.7 by revising paragraphs (c), (d) introductory text, (d)(2) and (e)(1), to read as follows:

#### § 1033.7 Pool Plant.

\* \* \* \* \*

(c) A supply plant from which the quantity of bulk fluid milk products shipped to, received at, and physically unloaded into plants described in paragraph (a) or (b) of this section as a percent of the Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1033.12(b)) and handlers described in § 1000.9(c), as reported in § 1033.30(a), is not less than 40 percent of the milk received from dairy farmers, including milk diverted pursuant to § 1033.13, subject to the following conditions:

\* \* \* \* \*

(d) A plant operated by a cooperative association if, during the months of August through November 40 percent and during the months of December through July 30 percent or more of the producer milk of members of the association is delivered to a distributing pool plant(s) or to a nonpool plant(s), and classification other than Class I is not requested. Deliveries for qualification purposes may be made directly from the farm or by transfer

from such association's plant, subject to the following conditions:

(1) \* \* \*

(2) The 30 percent delivery requirement for December through July may be met for the current month or it may be met on the basis of deliveries during the preceding twelve (12) month period ending with the current month.

\* \* \* \* \*

(e) \* \* \*

(1) The aggregate monthly quantity supplied by all parties to such an agreement as a percentage of the producer milk receipts included in the unit during the months of August through November is not less than 45 percent and during the months of December through July is not less than 35 percent; and

\* \* \* \* \*

2. Amend § 1033.13 by revising paragraph (d)(4), to read as follows:

**§ 1033.13 Producer milk.**

\* \* \* \* \*

(d) \* \* \*

(4) Of the total 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) or which is diverted to another pool plant), the handler diverted to nonpool plants not more than 50 percent in each of the months of August through February and 60 percent in each of the months of March through July.

\* \* \* \* \*

**Proposed by Dean Foods Company**

*Proposal No. 3*

This proposal seeks to amend the "touch-base" standard and provide an exact definition for temporary loss of Grade A approval.

1. Amend § 1033.13 by revising paragraphs (d)(1) through (d)(3), to read as follows:

**§ 1033.13 Producer milk.**

\* \* \* \* \*

(d) \* \* \*

(1) Milk of a dairy farmer shall not be eligible for diversion until milk of such dairy farmer has been physically received as producer milk at a pool plant 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 loss of Grade A approval not to exceed 21 days in a calendar year, unless it is determined by the market administrator to be unavoidable circumstances beyond the control of the dairy farmer such as a natural disaster (ice storm, wind storm,

flood)) the dairy farmer's milk shall not be eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant;

(2) The equivalent of at least four days milk production in each of the months of August through November and two days milk production in each of the months of December through January is caused by the handler to be physically received at the pool plant;

(3) The equivalent of at least two days milk production is caused by the handler to be physically received at a pool plant in each of the months of February through July if the requirement of paragraph (d)(2) of this section (§ 1033.13) in each of the prior months of August through January are not met, except in the case of a dairy farmer who marketed no Grade A milk during each of the prior months of August through January.

\* \* \* \* \*

**Proposed by Ohio Dairy Producers and the Ohio Farmers Union**

*Proposal No. 4*

This proposal seeks to establish a *dairy farmer for other markets* provision that would encourage a year-round pooling commitment and specify conditions for milk that was depooled to be repooled.

1. Amend § 1033.12 by adding a new paragraph (b)(5), to read as follows:

**§ 1033.12 Producer.**

\* \* \* \* \*

(b) \* \* \*

(5) For any month, any dairy farmer whose milk is received at a pool plant or by a cooperative association handler described in § 1000.9(c) if the pool plant operator or the cooperative association caused milk from the same farm to be delivered to any plant as other than producer milk, as defined in the order in this part or any other Federal milk order, during the same month or any of the preceding 11 months, unless the equivalent of at least ten days milk production has been physically received otherwise as producer milk at a distributing plant during the month.

**Proposed by Continental Dairy Products, Inc.**

*Proposal No. 5*

This proposal seeks to limit the ability to pool the milk of a producer on the order during the month if such milk had not been pooled for at least twelve consecutive prior months.

1. Amend § 1033.13 by revising the introductory paragraph and adding a new paragraph (e), to read as follows:

**§ 1033.13 Producer milk.**

Except as provided in paragraph (e) of this section, producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

\* \* \* \* \*

(e) Producer milk shall not include any milk which comes from a dairy farm whose milk was not producer milk under the provisions of this part during the previous twelve (12) months or § \_\_\_\_\_.13 of any other Federal milk marketing order. This exception shall not apply if

(1) Milk was not marketed from that farm during the previous 12 months in which case all milk that it did market for what ever part of the preceding 12 months must have been producer milk.

(2) Milk was not marketed from that farm because the Grade A milk producers permit was suspended during some of the period and the producer did not market milk under any other grade of milk permit.

(3) Milk from the farm has not been producer milk for at least 12 consecutive months.

**Proposed by Ohio Dairy Producers and the Ohio Farmers Union**

*Proposal No. 6*

This proposal seeks to establish a *dairy farmer for other markets* provision that would establish a maximum pooling limit of 115 percent of a prior month's pooled milk volume that could be pooled in any subsequent month.

1. Amend § 1033.13 by adding a new paragraph (e), to read as follows:

**§ 1033.13 Producer milk.**

\* \* \* \* \*

(e) The quantity of milk reported by a handler pursuant to § 1033.30(a)(1) and/or § 1033.30(c)(1) may not exceed 115 percent of the producer milk receipts pooled by the handler during the prior month. Milk diverted to nonpool plants reported in excess of this limit shall be removed from the pool by the market administrator. Milk received at pool plants, other than pool distributing plants, shall be classified pursuant to § 1000.44(a)(3)(v) and § 1000.44(b)(3)(v). The handler must designate, by producer pick-up, which milk is to be removed from the pool. If the handler fails to provide this information, the market administrator will make the determination. The following provisions will apply:

(1) Milk shipped to and physically received at pool distributing plants shall not be subject to the 115 percent limitation;

(2) Producer milk qualified pursuant to § \_\_\_\_\_.13 of any other Federal order and continuously pooled in any Federal order for the previous six months shall not be included in the computation of the 115 percent limitation;

(3) The market administrator may waive the 115 percent limitation utilizing;

(i) For a new handler on the order, subject to the provision of § 1033.13(e)(3), or

(ii) For an existing handler with significantly changed milk supply conditions due to unusual circumstances;

(4) The market administrator may increase or decrease the applicable limitation for a month consistent with the procedures in § 1033.7(g); and

(5) A bloc of milk may be considered ineligible for pooling if the market administrator determines that handlers altered the reporting of such milk for the purpose of evading the provisions of this paragraph.

**Proposed by Dairy Farmers of America, Inc., and Michigan Milk Producers Association**

*Proposal No. 7*

This proposal, like Proposal 6, seeks to establish a *dairy farmer for other markets* provision that would establish a maximum pooling limit of 115 percent of a prior month's pooled milk volume that could be pooled in a subsequent month. It has minor order language differences from Proposal 6.

1. Amend § 1033.13 by adding a new paragraph (e), to read as follows:

**§ 1033.13 Producer milk.**

\* \* \* \* \*

(e) The quantity of milk reported by a handler pursuant to § 1033.30(a)(1) and/or § 1033.30(c)(1) for the current month may not exceed 115 percent of the producer milk receipts pooled by the handler during the prior month. Milk diverted to nonpool plants reported in excess of this limit shall not be producer milk. Milk received at pool plants in excess of the 115 percent limit, other than pool distributing plants, shall be classified pursuant to § 1000.44(a)(3)(v). The handler must designate, by producer pick-up, which milk shall not be producer milk. If the handler fails to provide this information the provisions of § 1033.13(d)(6) shall apply. The following provisions apply:

(1) Milk shipped to and physically received at pool distributing plants and allocated to Class I use in excess of the prior month's volume allocated to Class I use shall not be subject to the 115 percent limitation;

(2) Producer milk qualified pursuant to § \_\_\_\_\_.13 of any other Federal order in the previous month shall not be included in the computation of the 115 percent limitation, provided that the producers comprising the milk supply have been continuously pooled on any Federal order for the entirety of the most recent three consecutive months.

(3) The market administrator may waive the 115 percent limitation:

(i) For a new handler on the order, subject to the provisions of § 1033.13(e)(4), or

(ii) For an existing handler with significantly changed milk supply conditions due to unusual circumstances;

(4) Milk may be considered ineligible for pooling if the market administrator determines that handlers altered the reporting of such milk for the purpose of evading the provisions of this paragraph.

**Proposed by Dean Foods Company**

*Proposal No. 8*

This proposal seeks to establish a *dairy farmer for other markets* provision that would specify a 2-month to 7-month exclusion from the pool if milk is depooled.

1. Amend § 1033.12 by adding new paragraphs (b)(5) and (b)(6), to read as follows:

**§ 1033.12 Producer.**

\* \* \* \* \*

(b) \* \* \*

(5) For any month of February through June, any dairy farmer whose milk is received at a pool plant or by a cooperative association handler described in § 1000.9(c) if the pool plant operator or the cooperative association caused milk from the same farm to be delivered to any plant as other than producer milk, as defined under the order in this part or any other Federal milk order, during the month, any of the 3 preceding months, or during any of the preceding months of July through January, unless the equivalent of at least ten days' milk production has been physically received otherwise as producer milk at a pool distributing plant during the month; and

(6) For any month of July through January, any dairy farmer whose milk is received at a pool plant or by a cooperative association handler described in § 1000.9(c) if the pool plant operator or the cooperative association caused milk from the same farm to be delivered to any plant as other than producer milk, as defined under the order in this part or any other Federal milk order, during the month or the

preceding month unless the equivalent of at least ten days' milk production has been physically received otherwise as producer milk at a pool distributing plant during the month.

**Proposed by Dairy Farmers of America, Inc.**

*Proposal No. 9*

This proposal seeks to establish a transportation credit provision on milk delivered from farms to pool distributing plants. The initial 75 miles and that portion of the milk movement beyond 400 miles would not be eligible for the credit.

1. Add a new § 1033.55, to read as follows:

**§ 1033.55 Transportation credits.**

(a) Each handler operating a pool distributing plant described in § 1033.7(a) or (b) that receives milk from dairy farmers, and each handler described in § 1033.9(c) that delivers milk to a pool distributing plant described in § 1033.7(a) or (b) shall receive a transportation credit on the portion of such milk eligible for the credit pursuant to paragraph (b) of this section.

(1) Transportation credits paid pursuant to paragraph (a)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77.

(2) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1033.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) Transportation credits shall apply to the pounds of bulk milk received directly from the farms of producers at pool distributing plants determined as follows:

(1) Determine the total pounds of producer milk physically received at the pool distributing plant;

(2) Subtract from the pounds of milk described in paragraph (b)(1) of this section the pounds of bulk milk transferred or diverted from the pool plant receiving the milk if milk was transferred or diverted to a nonpool plant on the same calendar day that the milk was received. For this purpose, the transferred or diverted milk shall be subtracted from the most distant load of milk received, and then in sequence

with the next most distant load until all of the transfers have been offset; and

(3) Multiply the pounds determined in (b)(2) by the Class I utilization of all producer milk at the pool plant operator as described in § 1000.44. The resulting pounds are the pounds upon which transportation credits, as determined in paragraph (c) of this section, shall be applicable.

(c) Transportation credits shall be computed as follows:

(1) Determine an origination point for each load of milk by locating the county seat of the closest producer's farm from which milk was picked up for delivery to the receiving pool plant;

(2) Determine the shortest hard-surface highway distance between the receiving pool plant and the origination point;

(3) Subtract 75 miles from the lesser of the mileage so determined in paragraph (c)(2) or 400 miles;

(5) Multiply the remaining miles so computed by 0.4 cent (\$0.004);

(6) Subtract the Class I differential specified in § 1000.52 applicable for the county in which the origination point is located from the Class I differential applicable at the receiving pool plant's location;

(7) Subtract any positive difference computed in paragraph (c)(6) of this section from the amount computed in paragraph (c)(5) of this section; and

(8) Multiply any positive remainder computed in paragraph (c)(7) by the hundredweight of milk described in paragraph (b)(3) of this section.

(d) The rate and mileage limits of paragraphs (c)(4) and (5) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to better reflect actual conditions present in the marketplace. 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 investigation shows that an adjustment 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 either figure must be issued in writing at least one day before the effective date.

(e) For purposes of this section, the distances to be computed shall be determined by the market administrator using the shortest available state and/or Federal highway mileage. Mileage determinations are subject to redetermination at all times. In the event a handler requests a

redetermination of the mileage pertaining to any plant, the market administrator shall notify the handler of such redetermination within 30 days after the receipt of such request. Any financial obligation resulting from a change in mileage shall not be retroactive for any periods prior to the redetermination by the market administrator.

2. Amend § 1033.60 by revising the introductory paragraph and adding a new paragraph (k), to read as follows:

**§ 1033.60 Handler's value of milk.**

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (i) of this section and subtracting from that total amount the value computed in paragraphs (j) and (k) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

\* \* \* \* \*

(k) Compute the amount of credits applicable pursuant to § 1033.55.

**Proposed by Dairy Farmers of America, Inc., and Michigan Milk Producers Association**

*Proposal No. 10*

This proposal seeks to amend the current producer-handler definition.

1. Revise § 1033.10, to read as follows:

**§ 1033.10 Producer-handler.**

*Producer-handler* means a person who operates a dairy farm(s) and a distributing plant(s) from which there is route disposition in the marketing area and the total route disposition and transfers in the form of packaged fluid milk products to other distributing plants during the month does not exceed 3 million pounds (or such lesser maximum volume that the record may

so establish) and who provides proof satisfactory to the market administrator that it meets all the requirements of this section for designation.

(a) *Requirements for designation.*

Designation of any person as a producer-handler by the market administrator shall be contingent upon meeting all the conditions set forth in paragraphs (a)(1) through (6) of this section. Following the cancellation of a previous producer-handler designation, a person seeking to have their producer-handler designation reinstated must demonstrate that these conditions have been met for the preceding month.

(1) The care and management of the dairy animals and other resources and facilities designated in paragraph (b)(1) of this section necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) are under the complete and exclusive control, and management of the producer-handler and are operated as the producer-handler's own enterprise and its sole risk.

(2) The plant operation designated in paragraph (b)(2) of this section at which the producer-handler processes and packages, and from which it distributes, its own milk production is under the complete and exclusive control, and management of the producer-handler and is operated as the producer-handler's own enterprise and at its sole risk.

(3) The producer-handler neither receives at its designated milk production resources and facilities, nor receives, handles, processes, or distributes at or through any of its designated milk handling, processing, or distributing resources and facilities other source milk products for reconstitution into fluid milk products or fluid milk derived from any source other than:

(i) Its designated milk production resources and facilities (own farm production);

(ii) Pool handlers and plants regulated under any Federal order within the limitation specified in paragraph (c)(2) of this section; or

(iii) Nonfat milk solids which are used to fortify fluid milk products.

(4) The producer-handler is neither directly nor indirectly associated with the business control or management of, nor has a financial interest in, another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(5) No milk produced by the herd(s) or on the farm(s) that supply milk to the producer-handler's plant operation is:

(i) Subject to inclusion and participation in a marketwide

equalization pool under a milk classification and pricing program under the authority of a State government maintaining marketwide pooling of returns, or

(ii) Marketed in any part to a nonpool distributing plant.

(6) The producer-handler does not distribute fluid milk products to a wholesale customer who is served by a plant described in § 1033.7(a) and (b) or a handler described in § 1000.8(c) that supplied the same product in the same-sized package with a similar label to a wholesale customer during the month.

(b) *Designation of resources and facilities.* Designation of a person as a producer-handler shall include the determination of what shall constitute the person's milk production, handling, processing, and distribution resources and facilities, all of which shall be considered an integrated operation.

(1) Milk production resources and facilities shall include all resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk which the producer-handler has designated as a source of milk supply for the producer-handler's plant operation.

(2) Milk handling, processing, and distribution resources and facilities shall include all resources and facilities (including store outlets) used for handling, processing, and distributing fluid milk products which are solely or partially owned by, and directly or indirectly operated or controlled by the producer-handler or in which the producer-handler in any way has an interest, including any contractual arrangement, or over which the producer-handler directly or indirectly exercises any degree of management or control.

(3) All designations shall remain in effect until canceled pursuant to paragraph (c) of this section.

(c) *Cancellation.* The designation as a producer-handler shall be canceled upon determination by the market administrator that any of the requirements of paragraph (a)(1) through (6) of this section are not met, or under any of the conditions described in paragraph (c)(1), (2) or (3) of this section. Cancellation of a producer-handler's status pursuant to this paragraph shall be effective on the first day of the month in which the conditions were not met.

(1) Milk from the milk production resources and facilities of the producer-handler, designated in paragraph (b)(1) of this section, is delivered in the name of another person as producer milk to another handler.

(2) The producer-handler handles fluid milk products derived from sources other than the milk production facilities and resources designation in paragraph (b)(1) of this section, except that it may receive at its plant, or acquire for route disposition, fluid milk products from fully regulated plants and handlers under any Federal order if such receipts do not exceed 150,000 pounds monthly. This limitation shall not apply if the producer-handler's own-farm production is less than 150,000 pounds during the month.

(3) Milk from the milk production resources and facilities of the producer-handler is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing plan operating under the authority of a State government.

(d) *Loss of producer-handler status.* Notwithstanding paragraph (a) of this section, loss of producer-handler status for exceeding the limits in (c)(2) or for having more than three million pounds (or such lesser maximum volume that the record may so establish) of total route disposition and transfers in the form of packaged fluid milk products to other distributing plants during the month shall only be effective in the months where the limits are exceeded.

(e) *Public announcement.* The market administrator shall publicly announce:

(1) The name, plant location(s), and farm locations(s) of persons designated as producer-handlers;

(2) The names of those persons whose designations have been cancelled; and

(3) The effective dates of producer-handler status or loss of producer-handler status for each.

(f) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who is designated as a producer-handler to establish by proof satisfactory to the market administrator through records required pursuant to § 1000.27 that the requirements set forth in paragraph (a) of this section have been met, and that the conditions set forth in paragraph (c) of this section for cancellation of the designation do not exist.

**Proposed by Dairy Programs,  
Agricultural Marketing Service**

*Proposal No. 11*

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of the aforesaid

marketing area, or from the Hearing Clerk, United States Department of Agriculture, Room 1083-STOP 9200, 1400 Independence Avenue, SW., Washington, DC 20250-9200, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture;  
Office of the Administrator,  
Agricultural Marketing Service;  
Office of the General Counsel;  
Dairy Programs, Agricultural  
Marketing Service (Washington Office)  
and the Office of the Market  
Administrator of the Mideast Milk  
Marketing Area.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: February 14, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

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**BILLING CODE 3410-02-P**

**NATIONAL CRIME PREVENTION AND  
PRIVACY COMPACT COUNCIL**

**28 CFR Part 904**

[NCPPC 108]

**Criminal History Record Screening for  
Authorized Noncriminal Justice  
Purposes**

**AGENCY:** National Crime Prevention and Privacy Compact Council.

**ACTION:** Proposed rule, with request for comments.

**SUMMARY:** The Compact Council, established pursuant to the National Crime Prevention and Privacy Compact (Compact), is publishing a rule proposing to establish criminal history record screening standards for criminal history record information received from the Interstate Identification Index (III) for authorized noncriminal justice purposes.