

# 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 Parts 1124 and 1135

[Docket No. AO-368-A30, AO-380-A18; DA-01-08]

#### Milk in the Pacific Northwest and Western Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	AO Nos.
1124 .....	Pacific North-west.	AO-368-A30
1135 .....	Western .....	AO-380-A18

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

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

**SUMMARY:** The hearing is being held to consider proposals that would amend certain pooling and related provisions of the Pacific Northwest and Western Federal milk orders. Proposals pertaining to the Pacific Northwest order include redefining the pool plant and producer milk definitions to organize distant milk supplies into state units for meeting pool performance standards and eliminating the ability of handlers to pool the same milk under more than one marketwide pool. Proposals to amend the Western order would provide for net shipments for pool supply plant qualification, increase the cooperative pool plant delivery performance standard, eliminate the proprietary bulk tank unit provision, reduce the diversion allowance for producer milk and calculate diversions on a net basis, and establish transportation and assembly credit provisions. Other proposed amendments to the Western order would redefine the pool plant and producer milk definitions to organize distant milk supplies into state units for meeting pool performance standards, eliminate the ability of handlers to pool

the same milk under more than one marketwide pool, and clarify the proprietary bulk tank handler, producer, and producer milk definitions. Testimony will be taken to determine if any of the proposals should be handled on an emergency basis.

**DATES:** The hearing will convene at 8:30 a.m. on Tuesday April 2, 2002.

**ADDRESSES:** The hearing will be held at the Hilton Hotel, Salt Lake City Airport, 5151 Wiley Post Way, Salt Lake City, UT 84116-2891, (801) 539-1515 (voice), (801) 539-1113 (fax).

**FOR FURTHER INFORMATION CONTACT:**

Gino Tosi, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Programs, Room 2968, 1400 Independence Avenue, SW STOP 0231, Washington, DC 20250-0231, (202)690-1366, e-mail address: Gino.Tosi@usda.gov.

Persons requiring a sign language interpreter or other special accommodations should contact Joanne Walter at email [jwalter@fmmaseattle.com](mailto:jwalter@fmmaseattle.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 Hilton Hotel, Salt Lake City Airport, 5151 Wiley Post Way, Salt Lake City, UT 84116-2891, (801) 539-1515 (voice), (801) 539-1113 (fax), beginning at 8:30 a.m., on Tuesday, April 2, 2002, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Pacific Northwest and Western marketing areas.

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 which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to the proposals.

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 or produces less than 500,000 pounds of milk per month, 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 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.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with three 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 Parts 1124 and 1135

Milk marketing orders.

The authority citation for 7 CFR Parts 1124 and 1135 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 of Agriculture.

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

*Proposals No. 1 and 2 Pertain only to the Pacific Northwest Order.*

*Proposed by: Northwest Dairy Association*

##### Proposal No. 1

Amend the Producer definition in “1124.12 to prevent the pooling of the same milk under the Pacific Northwest Federal order and a State marketwide order at the same time by adding a new paragraph (b)(6) to read as follows:

##### § 1124.12 Producer.

\* \* \* \* \*

(b) \* \* \*

(6) A dairy farmer whose milk is pooled on a state order with a marketwide pool.

*Proposed by Dairy Farmers of America*

##### Proposal No. 2

Amend the pool supply plant and producer milk definitions to require that milk from “distant” locations be reported by individual state units, each of which would be subject to the performance standards applicable to supply plants and producer milk by adding a new paragraph (c)(5) in § 1124.7 and redesignating “ 1124.13 paragraph (e)(5) as (e)(6) and adding a new paragraph (e)(5) to read as follows:

##### § 1124.7 Pool Plant.

\* \* \* \* \*

(c) \* \* \*

(5) If milk is delivered to a plant physically located outside the State of

Washington or the Oregon counties of Benton, Clackamas, Clatsop, Columbia, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Wasco, Washington, Wheeler, and Yamhill or the Idaho counties of Benewah, Bonner, Boundary, Kootenai, Latah, and Shoshone by producers also located outside the area specified in this paragraph, producer receipts at such plant shall be organized by individual state units and each unit shall be subject to the following requirements:

(i) Each unit shall be reported separately pursuant to § 1124.30.

(ii) At least the required minimum percentage and delivery requirements specified in § 1124.7(c) and (c)(1) of the producer milk of each unit of the handler shall be delivered to plants described in § 1124.7(a) or (b), and such deliveries shall not be used by the handler in meeting the minimum shipping percentages required pursuant to § 1124.7(c)(1); and

(iii) The percentages of § 1124.7(c)(3)(ii) are subject to any adjustments that may be made pursuant to § 1124.7(g).

\* \* \* \* \*

##### § 1124.13 Producer Milk.

\* \* \* \* \*

(e) \* \* \*

(5) Milk receipts from producers whose farms that are physically located outside the State of Washington or the Oregon counties of Benton, Clackamas, Clatsop, Columbia, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Wasco, Washington, Wheeler, and Yamhill or the Idaho counties of Benewah, Bonner, Boundary, Kootenai, Latah, and Shoshone. Such producers shall be organized by individual state units and each unit shall be subject to the following requirements:

(i) Each unit shall be reported separately pursuant to § 1124.30.

(ii) For pooling purposes, each reporting unit must satisfy the shipping standards specified for a supply plant pursuant to § 1124.7(c) and (c)(1), and such deliveries shall not be used by the handler in meeting the minimum shipping percentages required pursuant to § 1124.13(c); and

(iii) The percentages of § 1124.13(e)(5) are subject to any adjustments that may be made pursuant to § 1124.13(e)(6).

\* \* \* \* \*

#### PART 1135—MILK IN THE WESTERN MARKETING AREA

*Proposals 3 through 16 pertain only to the Western Order.*

*Proposals 3 Through 9 Proposed by Dairy Farmers of America*

##### Proposal No. 3

Establish a “net shipment” provision applicable to deliveries to pool distributing plants as well as pool supply plants by adding a new paragraph (c)(5) in “ 1135.7 to read as follows:

##### § 1135.7 Pool plant.

\* \* \* \* \*

(c) \* \* \*

(5) Shipments used in determining qualifying percentages shall be milk transferred or diverted to and physically received by distributing pool plants, less any transfers of bulk fluid milk products from such distributing pool plants.

\* \* \* \* \*

##### Proposal No. 4

Increase the cooperative pool plant provision delivery performance standard from 35% to 50% by revising “ 1135.7 paragraph (d) to read as follows:

##### § 1135.7 Pool plant.

\* \* \* \* \*

(d) A milk manufacturing plant located within the marketing area that is operated by a cooperative association if, during the month or the immediately preceding 12-month period ending with the current month, 50 percent or more of such cooperative's member producer milk (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) at plants specified in paragraph (a) or (b) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph, subject to the following conditions:

\* \* \* \* \*

##### Proposal No. 5

Eliminate the bulk tank handler provision in the Western order by removing “ 1135.11.

**Proposal No. 6**

Reduce the amount of producer milk eligible for diversion to nonpool plants from 90 percent to 70 percent by revising “ 1135.13 paragraph (d)(2) to read as follows:

**§ 1135.13 Producer milk.**

\* \* \* \* \*

(d) \* \* \*

(2) Of the quantity of producer milk received during the month (including diversions) the handler diverts to nonpool plants not more than 70 percent;

\* \* \* \* \*

**Proposal No. 7**

Amend diversion percentages in “ 1135.13 be calculated on a net basis and to be applicable to both pool supply plants and nonpool plants, by redesignating paragraphs (d)(3) through (d)(6) as paragraphs (d)(4) through (d)(7), and adding a new paragraph (d)(3) to “ 1135.13 to read as follows:

**§ 1135.13 Producer milk.**

\* \* \* \* \*

(d) \* \* \*

(3) Receipts used in determining qualifying percentages shall be milk transferred to, diverted to, or delivered from farms of producers pursuant to § 1000.9(c) and physically received by plants described in § 1135.7(a) or (b), less any transfers or diversions of bulk fluid milk products from such pool distributing plants.

\* \* \* \* \*

**Proposal No. 8**

Establish a partially offset intra-order transportation credit provision that will allow shipments traveling distances in excess of a number of miles representing a “typical” base hauling distance for the area to receive credit from the marketwide pool for supplying the Class I needs of the market. Credit would be limited to producers physically located within the marketing area. Payment would be made to the milk supplier. An assembly credit would be applied to milk delivered to distributing plants. The reporting requirements of the order, in §§ 1135.30 and 1135.32, would be amended to accommodate the transportation and assembly credit provisions. This would be accomplished by adding new paragraphs (a)(5) and (c)(3) in § 1135.30, redesignating the introductory text in § 1135.32 as paragraph (a) and republishing it and adding a paragraph (b) and adding a new § 1135.55 to read as follows:

**§ 1135.30 Reports of receipts and utilization.**

\* \* \* \* \*

(a) \* \* \*

(5) Receipts of producer milk described in § 1135.55 (d), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to that paragraph and the date that such milk was received;

\* \* \* \* \*

(c) \* \* \*

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1135.55, all of the information required in paragraph (a)(5) of this section.

**§ 1135.32 Other Reports.**

(a) In addition to the reports required pursuant to §§ 1135.30 and 1135.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

(b) On or before the 21st day after the end of each month, each handler described in § 1000.9(a) and (c) shall report to the market administrator any adjustments to transportation credit requests as reported pursuant to § 1135.30(a)(5).

**§ 1135.55 Transportation credits and assembly credits.**

(a) Payments for the transportation of and assembly of milk supplies for pool distributing plants to cooperative associations and handlers that request them shall be made as follows:

(1) On or before the 14th day (except as provided in § 1000.90) after the end of each month, the market administrator shall pay to each handler that received and reported pursuant to § 1135.30(a)(5) milk directly from producers' farms, a preliminary amount determined pursuant to paragraph (b) and/or (c) of this section;

(2) The market administrator shall accept adjusted requests for transportation credits on or before the 21st day of the month following the month for which such credits were requested pursuant to § 1135.32(a). After such date, a preliminary audit will be conducted by the market administrator. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments will be made on or before the next payment date for the following month;

(3) 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. Adjusted payments will remain subject to the final computation established pursuant to paragraph (a)(2) of this section; and

(4) 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 § 1135.30(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) Each handler operating a pool distributing plant described in § 1135.7(a) or (b) that receives bulk milk directly from farms of producers described in § 1135.12 that are located within the marketing area, shall receive a transportation credit for such milk computed as follows:

(1) Determine the hundredweight of milk eligible for the credit by completing the steps in paragraph (d) of this section;

(2) Multiply the hundredweight of milk eligible for the credit by .38 cents times the number of miles between the receiving plant and the farm less 80 miles;

(3) Subtract from the effective Class I price at the receiving plant the effective Class I price of the county that the farm is located in;

(4) Multiply any positive amount resulting from the subtraction in paragraph (b)(3) of this section by the hundredweight of milk eligible for the credit; and

(5) Subtract the amount computed in paragraph (b)(4) of this section from the amount computed in paragraph (b)(2) of this section. If the amount computed in paragraph (b)(4) of this section exceeds the amount computed in paragraph (b)(2) of this section, the transportation credit shall be zero.

(c) Each handler operating a pool distributing plant described in § 1135.7(a) or (b) that receives milk from dairy farmers, each handler that transfers or diverts bulk milk from a pool plant to a pool distributing plant, and each handler described in § 1000.9(c) that delivers producer milk to a pool distributing plant shall receive an assembly credit on the portion of such milk eligible for the credit pursuant to paragraph (d) of this section. The credit shall be computed by multiplying the hundredweight of milk eligible for the credit by 5 cents.

(d) The following procedure shall be used to determine the amount of milk

eligible for transportation and assembly credits pursuant to paragraphs (b) and (c) of this section:

(1) At each pool distributing plant, determine the aggregate quantity of Class I milk, excluding beginning inventory of packaged fluid milk products;

(2) Subtract the quantity of packaged fluid milk products received at the pool distributing plant from other pool plants and from nonpool plants if such receipts are assigned to Class I;

(3) Subtract the quantity of bulk milk shipped from the pool distributing plant to other plants to the extent that such milk is classified as Class I milk;

(4) Subtract the quantity of bulk other source milk received at the pool distributing plant that is assigned to Class I pursuant to § 1000.43(d) and 1000.44; and

(5) Assign the remaining quantity pro rata to bulk physical receipts during the month from:

(i) Producers;

(ii) Handlers described in § 1000.9(c);

(iii) Handlers described in § 1135.11; and

(iv) Other pool plants.

(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 obligations resulting from a change in mileage shall not be retroactive for any periods prior to the redetermination by the market administrator.

(f) In the case of a direct ship farm load the distance shall be measured from the farm on the route that results in the fewest miles. It shall be the responsibility of the reporting handler to designate such farm and for the purpose of computing mileages, the city closest to that farm.

#### Proposal No. 9

Amend §§ 1135.7 and 1135.13 to establish state unit standards for milk from "distant" supply locations. Add a new paragraph (c)(3) to the pool supply plant definition in § 1135.7, redesignate § 1135.13 paragraph (d)(6) as paragraph (d)(7) and add a new paragraph (d)(6) to the producer milk definition to read as follows:

#### § 1135.7 Pool plant.

\* \* \* \* \*

(c) \* \* \*

(3) If milk is delivered to a plant physically located outside the Idaho counties of Ada, Adams, Bannock, Bear Lake, Bingham, Blaine, Boise, Bonneville, Camas, Canyon, Caribou, Cassia, Elmore, Franklin, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Oneida, Owyhee, Payette, Power, Twin Falls, Valley and Washington or the Nevada Counties of Elko, Lincoln and White Pine or the Oregon counties of Baker, Grant, Harney, Malheur, and Union or the state of Utah or the Wyoming counties of Lincoln or Uinta by producers also located outside the area specified in this paragraph, producer receipts at such plant shall be organized by individual state units and each unit shall be subject to the following requirements:

(i) Each unit shall be reported separately pursuant to § 1135.30.

(ii) At least the required minimum percentage and delivery requirements specified in section § 1135.7(c) and (c)(1) of the producer milk of each unit of the handler shall be delivered to plants described in § 1135.7(a) or (b), and such deliveries shall not be used by the handler in meeting the minimum shipping percentages required pursuant to § 1135.7(c); and

(iii) The percentages of § 1135.7(c)(3)(ii) are subject to any adjustments that may be made pursuant to § 1135.7(g).

\* \* \* \* \*

#### § 1135.13 Producer milk.

\* \* \* \* \*

(d) \* \* \*

(6) Milk receipts from producers whose farms that are physically located outside the Idaho counties of Ada, Adams, Bannock, Bear Lake, Bingham, Blaine, Boise, Bonneville, Camas, Canyon, Caribou, Cassia, Elmore, Franklin, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Oneida, Owyhee, Payette, Power, Twin Falls, Valley and Washington or the Nevada Counties of Elko, Lincoln and White Pine or the Oregon counties of Baker, Grant, Harney, Malheur, and Union or the state of Utah or the Wyoming counties of Lincoln or Uinta. Such producers shall be organized by individual state units and each unit shall be subject to the following requirements:

(i) Each unit shall be reported separately pursuant to § 1135.30.

(ii) For pooling purposes, each reporting unit must satisfy the shipping standards specified for a supply plant pursuant to § 1135.7(c) and (c)(1), and such deliveries shall not be used by the handler in meeting the minimum

shipping percentages required pursuant to § 1135.13(c); and

(iii) The percentages of § 1135.13(d)(6) are subject to any adjustments that may be made pursuant to § 1135.13(d)(7).

\* \* \* \* \*

*Submitted by Northwest Dairy Association*

#### Proposal No. 10

Prevent producers who share in the proceeds of a state marketwide pool from simultaneously sharing in the proceeds of a federal marketwide pool on the same milk in the same month by amending the Producer provision in § 1135.12 by adding a new paragraph (b)(6) to read as follows:

#### § 1135.12 Producer.

\* \* \* \* \*

(b) \* \* \*

(6) A dairy farmer whose milk is pooled on a state order with a market widepool.

*Proposals 11 through 13, submitted by Meadow Gold Dairies, are to be considered as alternatives.*

Assure that Class I handlers make uniform payments for their raw milk purchases by amending the proprietary bulk tank handler provision or by amending the provision regarding payments to producers and to cooperative associations.

#### Proposal No. 11

Amend § 1135.11 by adding paragraph (c) to read as follows:

#### § 1135.11 Proprietary bulk tank handler.

\* \* \* \* \*

(c) Milk defined as producer milk pursuant to § 1135.13(a) shall be reported and considered as producer milk at the pool plant where received.

#### Proposal No. 12

Amend § 1135.73 by revising paragraphs (b), introductory text, and (b)(1) and adding a new paragraph (b)(5) to read as follows:

#### § 1135.73 Payments to producers and cooperative associations.

\* \* \* \* \*

(b) One day prior to the dates on which partial and final payments are due pursuant to paragraph (a) of this section, each handler shall pay a cooperative association or a proprietary bulk tank handler for milk received as follows:

(1) *Partial payment to a cooperative association or a proprietary bulk tank handler for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of a cooperative

association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, and for bulk milk received directly from producers' farms and delivered during the first 15 days of the month for the account of proprietary bulk tank handler pursuant to § 1135.11, the payment to the cooperative association or proprietary bulk tank handler shall be an amount not less than 1.2 times the lowest class price for the proceeding month multiplied by the hundredweight of milk.

\* \* \* \* \*

(5) *Final payment to a proprietary bulk tank handler for bulk milk received directly from producers' farms.* For the total quantity of bulk milk received directly from producers' farms and delivered during the month for the account of a proprietary bulk tank handler pursuant to § 1135.11, the final payment to the proprietary bulk tank handler for such milk shall be at not less than the total value of such milk as determined by multiplying the respective quantities assigned to each class under § 1000.44, as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of class I butterfat times the Class I butterfat price for the month. The Class I prices to be used shall be the prices effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the respective butterfat prices for the month;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price; and

(viii) Add together the amounts computed in paragraphs (b)(5)(i) through (vii) of this section and from that sum deduct any payment made pursuant to paragraph (b)(1) of this section.

\* \* \* \* \*

#### Proposal No. 13

Amend § 1135.73 by revising paragraph (a) to read as follows:

#### § 1135.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer, including each producer from whom milk moved direct from the farm in a truck under the control of a handler defined under § 1135.11, from whom milk is received during the month as follows:

\* \* \* \* \*

*Proposals 14—16 submitted by the Market Administrator.*

#### Proposal No. 14

Clarify the Proprietary bulk tank handler definition by revising the introductory text of § 1135.11 to read as follows:

#### § 1135.11 Proprietary bulk tank handler.

Any person, except a cooperative association, with respect to milk that it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such person and which is delivered during the month for the account of such person to a pool plant described in § 1135.7(a) or § 1135.7(b) of another handler or diverted pursuant to § 1135.13, subject to the following conditions:

\* \* \* \* \*

#### Proposal No. 15

Clarify the Producer definition by revising § 1135.12 paragraph (b)(5) to read as follows:

#### § 1135.12 Producer.

\* \* \* \* \*

(b) \* \* \*

(5) A dairy farmer whose milk was received at a nonpool plant during the month from the same farm (except a nonpool plant that has no utilization of milk products in any class other than Class II, Class III, or Class IV) as other than producer milk under the order in this part or any other Federal order. Such a dairy farmer shall be known as *a dairy farmer for other markets*.

#### Proposal No. 16

Clarify the Producer milk definition by revising § 1135.13 paragraph (d)(1) to read as follows:

#### § 1135.13 Producer milk.

\* \* \* \* \*

(d) \* \* \*

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's milk production 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 a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion unless one day's milk production has been physically received as producer milk at a pool plant during the month;

\* \* \* \* \*

*Proposed by Dairy Programs, Agricultural Marketing Service.*

#### Proposal No. 17

For both the Pacific Northwest and the Western orders, make such changes as may be necessary to make the entire marketing agreements and the orders 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 each of the aforesaid marketing areas, or from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there. Copies may also be obtained at the USDA-AMS website at <http://www.ams.usda.gov/dairy/>

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 Pacific Northwest and Western Marketing Areas

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

Dated: February 26, 2002.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 02-5073 Filed 3-1-02; 8:45 am]

BILLING CODE 3410-02-P