

# 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 1124

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

#### Milk in the Pacific Northwest 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 pooling provisions of the Pacific Northwest order. One proposal calls for eliminating certain supply plant qualification standards that currently allow cooperative associations which operate supply plants to include milk delivered direct from farms to pool distributing plants as a qualifying shipment for determining pool eligibility; prohibiting a pool plant operator from including milk diverted to pool distributing plants as a qualifying shipment for pooling; adding a provision that would provide for two or more cooperative pool manufacturing plants to operate as a system for meeting the shipment requirements for pooling; and establishing qualification standards for manufacturing plants located within the marketing area.

A second proposal would reduce the amount of milk that a pool plant may divert during the months of March through August and add a "touch base" provision that would require at least 6 days milk production of a dairy farmer be physically received at a pool plant in order to be eligible for diversion.

Proponents have requested that the proposals be handled on an emergency basis.

**DATES:** The hearing will convene at 8:30 a.m. on December 4, 2001.

**ADDRESSES:** The hearing will be held at the Doubletree Hotel Seattle Airport,

18740 Pacific Highway South, Seattle WA 98188, (206) 246-8600.

#### FOR FURTHER INFORMATION CONTACT:

Gino Tosi, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Programs, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 690-1366, e-mail address Gino.Tosi@usda.gov.

Persons requiring a sign language interpreter or other special accommodations should contact James Daugherty at (425) 487-6009; e-mail [jnmaseattle@jnmaseattle.com](mailto:jnmaseattle@jnmaseattle.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 Doubletree Hotel Seattle Airport, 18740 Pacific Highway South, Seattle, WA 98188, beginning at 8:30 a.m., on December 4, 2001, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Pacific Northwest 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.

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 Proposals No. 1 through 3.

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 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 USDA 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 USDA'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 (3) 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 1124

Milk marketing orders.

**PART 1124—[AMENDED]**

The authority citation for 7 CFR part 1124 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 USDA.

*Submitted by Northwest Milk Marketing Federation, Northwest Dairy Association, and Tillamook County Creamery Association*

**Proposal No. 1**

1. Amend § 1124.7 by removing paragraphs (c)(2) and (c)(3), redesignating paragraph (c)(4) as (c)(2), adding paragraphs (d) and (f), and revising paragraph (g) to read as follows:

**§ 1124.7 Pool Plant.**

\* \* \* \* \*

(d) A manufacturing plant located within the marketing area and operated by a cooperative association, or its wholly owned subsidiary, if, during the month, or the immediately preceding 12-month period ending with the current month, 20 percent or more of the producer milk of members of the association (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, or its wholly owned subsidiary, for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b), or (c) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(3) A request is filed in writing with the market administrator before the first day of the month for which it is to be effective. The request will remain in effect until a cancellation request is filed in writing with the market administrator before the first day of the month for which the cancellation is to be effective. \* \* \*

(f) A system of two or more plants identified in § 1124.7(d) operated by one or more handlers may qualify for pooling by meeting the above shipping

requirements subject to the following additional requirements:

(1) The handler(s) establishing the system submits a written request to the market administrator on or before the first day of the month for which the system is to be effective requesting that such plants qualify as a system. Such request will contain a list of the plants participating in the system in the order, beginning with the last plant, in which the plants will be dropped from the system if the system fails to qualify. Each plant that qualifies as a pool plant within a system shall continue each month as a plant in the system until the handler(s) establishing the system submits a written request before the first day of the month to the market administrator that the plant be deleted from the system or that the system be discontinued. Any plant that has been so deleted from a system, or that has failed to qualify in any month, will not be part of any system. In the event of an ownership change or the business failure of a handler that is a participant in a system, the system may be reorganized to reflect such change if a written request to file a new marketing agreement is submitted to the market administrator; and

(2) If a system fails to qualify under the requirements of this paragraph, the handler responsible for qualifying the system shall notify the market administrator which plant or plants will be deleted from the system so that the remaining plants may be pooled as a system. If the handler fails to do so, the market administrator shall exclude one or more plants, beginning at the bottom of the list of plants in the system and continuing up the list as necessary until the deliveries are sufficient to qualify the remaining plants in the system.

(g) The applicable shipping percentage of paragraph (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. 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 request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages 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 an applicable

shipping percentage must be issued in writing at least one day before the effective date.

\* \* \* \* \*

**Proposal No. 2**

1. Amend § 1124.13 by redesignating paragraphs (e)(1) through (5) as paragraphs (e)(2) through (6), adding a new paragraph (e)(1), and revising redesignated paragraphs (e)(2) and (e)(5) to read as follows:

**§ 1124.13 Producer Milk**

\* \* \* \* \*

(e) \* \* \*

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least 6 days' production of such dairy farmers production is physically received at a pool plant during the month.

(2) Of the 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)) the handler diverts to nonpool plants not more than 80 percent. \* \* \*

(5) Any milk diverted in excess of the limits prescribed in paragraph (e)(2) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by such producer as producer milk during the month will not be subject to § 1124.12(b)(5).

(6) The delivery day requirement in paragraph (e)(1) of this section and diversion percentage in paragraph (e)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure the orderly marketing and efficient handling of milk in the marketing area. Before making such finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise the delivery day requirement or the diversion percentage must be issued in

writing at least one day before the effective date.

*Proposed by Dairy Programs,  
Agricultural Marketing Service*

Proposal No. 3

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 order may be procured from the Market Administrator of the Pacific Northwest Milk Marketing Area, or from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, 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 for  
the Pacific Northwest Marketing Area.

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

Dated: November 14, 2001.

**A.J. Yates,**

*Administrator, Agricultural Marketing  
Service.*

[FR Doc. 01-28905 Filed 11-15-01; 12:47  
pm]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2000-CE-58-AD]

RIN 2120-AA64

#### **Airworthiness Directives; British Aerospace Models HP.137 Jetstream Mk.1, Jetstream Series 200, and Jetstream Series 3101 Airplanes**

**AGENCY:** Federal Aviation  
Administration, DOT.

**ACTION:** Supplemental notice of  
proposed rulemaking (NPRM);  
Reopening of the comment period.

**SUMMARY:** This document proposes to revise an earlier proposed airworthiness directive (AD) that applies to British Aerospace Models HP.137 Jetstream Mk.1, Jetstream Series 200, and Jetstream Series 3101 airplanes. This proposed AD would supersede Airworthiness Directive (AD) 98-13-03, which currently requires repetitive inspections of the main landing gear (MLG) hinge fittings, support angles, and attachment bolts and requires eventual installation of improved design MLG hinge fittings as terminating action for the repetitive inspections of the hinge fittings and attachment bolts. AD 98-13-03 specifies repetitive inspections of the support angles for those airplanes with the improved design MLG hinge fittings installed and exempts from the applicability those airplanes with the improved design MLG hinge fittings installed. The earlier NPRM would have retained the requirements of AD 98-13-03 and would have removed the applicability exemption of those Models HP.137 Jetstream Mk.1 and Jetstream Series 200 airplanes with the improved design MLG hinge fittings installed. British Aerospace has informed us that it will not provide the improved design MLG hinge fittings free of charge. Since the cost burden has changed from the manufacturer to the owners/operators of the affected airplanes, we are reopening the comment period to allow the public the chance to comment on this additional cost burden.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before December 21, 2001.

**ADDRESSES:** Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000-CE-58-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location

between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

You may get service information that applies to this proposed AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. You may also view this information at the Rules Docket at the address above.

#### **FOR FURTHER INFORMATION CONTACT:**

Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; facsimile: (816) 329-4090.

#### **SUPPLEMENTARY INFORMATION:**

#### **Comments Invited**

*How do I comment on this proposed AD?* The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

*Are there any specific portions of this proposed AD I should pay attention to?* We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

*How can I be sure FAA receives my comment?* If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000-CE-58-AD." We will date stamp and mail the postcard back to you.

#### **Discussion**

*Has FAA taken any action on the main landing gear (MLG) hinge fittings, support angles, and attachment bolts on British Aerospace Models HP.137 Jetstream Mk.1, Jetstream Series 200, and Jetstream Series 3101 airplanes to this point?* On June 8, 1998, FAA issued