

William Wise at (602)541-2909 or wisew@fmma.net 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 Sheraton Airport Hotel, 1600 South 52nd Street, Tempe, AZ 85281, telephone: (480) 967-6600, beginning at 8:30 a.m., on Tuesday, September 23, 2003, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Arizona-Las Vegas and Pacific Northwest 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.

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 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 definition, terms and conditions that are used to establish and regulate producer-handlers in the Arizona-Las Vegas and Pacific Northwest orders and how producer milk is defined in the Arizona-Las Vegas order. The hearing is intended to focus on matters related to these issues only. Witnesses are asked to limit their testimony to information pertaining directly to the definition of producer-handlers in the Arizona-Las Vegas and Pacific Northwest orders, the ability to simultaneously pool the same milk on the Arizona-Las Vegas order and on a State-operated order that provides for marketwide pooling, and closely related issues.

Interested parties who wish to introduce exhibits also should provide the Presiding Officer at the hearing with four (4) copies of such exhibits for the Official Record, 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 1131

Milk marketing orders.

The authority citation for 7 CFR parts 1124 and 1131 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—[AMENDED]

Proposed by Northwest Dairy Association: Proposal No. 1

Revise the *Producer-handler* provision of the Pacific Northwest milk marketing order in its entirety to read as follows:

§ 1124.10 Producer-handler.

Producer-handler means a person who operates a dairy farm and a distributing plant from which there is route distribution within the marketing area during the month not to exceed 3 million pounds and who the market administrator has designated a producer-handler after determining that all of the requirements of this section have been met.

(a) *Requirements for designation.* Designation of any person as a producer-handler by the market administrator shall be contingent upon meeting the conditions set forth in paragraphs (a)(1) through (5) 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 the 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, ownership and management of the producer-handler and are operated as the producer-handler's own enterprise and its own 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, ownership and management of the producer-handler and is operated as the producer-handler's own enterprise and at its sole risk.

(3) The plant operation designated in paragraph (b)(2) of this section at which the producer-handler processes and packages, and from which it 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