

on the basis of performance levels that are considered adequate to meet the Class I fluid needs and, by doing so, determine those that are eligible to share in the revenue that arises from the classified pricing of milk. Criteria for pooling are established without regard to the size of any dairy industry organization or entity. The established criteria are applied in an identical fashion to both large and small businesses and do not have any different economic impact on small entities as opposed to large entities. Therefore, the proposed amendments will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these proposed amendments would have no impact on reporting, recordkeeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This notice does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Interested parties are invited to submit comments on the probable regulatory and informational impact of this proposed rule on small entities. Also, parties may suggest modifications of this proposal for the purpose of tailoring their applicability to small businesses.

Prior documents in this proceeding:

Notice of Hearing: Issued February 26, 2002; published March 4, 2002 (67 FR 9622).

Correction of Notice of Hearing: Issued March 14, 2002; published March 19, 2002 (67 FR 12488).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this tentative final decision with respect to proposed amendments to the tentative marketing

agreements and the orders regulating the handling of milk in the Pacific Northwest and Western marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Room 1083–STOP 9200, 1400 Independence Avenue, SW, Washington, DC 20250–9200, by the October 17, 2003. Six (6) copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. While no evidence was received that specifically addressed these issues, some of the evidence encompassed entities of various sizes.

The proposed amendments set forth below are based on the record of a public hearing held at Salt Lake City, Utah, on April 16–19, 2002, pursuant to a notice of hearing issued February 26, 2002, and published March 4, 2002, (67 FR 9622) and a correction of notice of hearing issued March 14, 2002, and published March 19, 2002 (67 FR 12488).

The material issues on the record of the hearing relate to:

1. Simultaneous pooling of milk on a Federal and a State-operated milk order.
2. Pooling Standards of the Western Order.
 - a. Supply plant performance standards.
 - b. Cooperative supply plant performance standards.
 - c. Standards for Producer milk.
 - d. Proprietary bulk tank handler provision.
 - e. Establishing pooling standards for "State-units."
3. Marketwide Service Payments.
4. Pooling provision clarifications.
5. Determining whether emergency marketing conditions exist that would warrant the omission of a recommended decision and the opportunity to file written exceptions.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Simultaneous Pooling on a Federal and State-Operated Milk Order*

Two proposals, published in the hearing notice as Proposals 1 and 10, seeking to exclude the same milk from being simultaneously pooled on the Pacific Northwest and Western orders and any State-operated order which provides for marketwide pooling, should be adopted immediately. The practice of pooling milk on a Federal order and simultaneously pooling the same milk on a State-operated order has come to be referred to as "double dipping". The Pacific Northwest and Western orders do not currently prohibit milk to be simultaneously pooled on the order and a State-operated order that provides for marketwide pooling. Proposals 1 and 10 were offered by Northwest Dairy Association (NDA), a cooperative association that markets the milk of their dairy-farmer members in the Pacific Northwest and Western milk marketing areas.

A witness appearing on behalf of NDA, testified that double dipping not only creates disorderly conditions in California, it also results in competitive inequities in Federal milk order areas. The NDA witness explained that once minimal pool qualification standards are met, milk pooled via this manner rarely is delivered to a Federal order marketing area.

The NDA witness provided evidence indicating that in 2001, over \$4.5 million was diverted from the Western Order pool and the producer blend price was reduced by an average of 10 cents per hundredweight (cwt) through double dipping. The witness was of the opinion that milk pooled through double dipping provided no service or delivery of milk from California yet the California milk receives the benefit of the Western order's blend price.

The NDA witness testified that there was no evidence of double dipping presently occurring on the Pacific Northwest order. However, the witness was of the opinion that the Pacific Northwest order would be targeted. The witness drew this conclusion on the premise that as soon as the double dipping loophole is closed in other orders, California milk will be pooled on orders that do not yet prohibit the practice.

Two witnesses, one representing Gossner Foods, Inc. (Gossner), an ultra high temperature (UHT) fluid milk processor located in Utah, and the second, Utah Dairymen's Association (UDA), a cooperative located in Utah, also provided testimony in support of Proposal 10. The witnesses concurred that by eliminating double dipping,