

individual kernel or of the lot. (For tolerances, see § 51.2557, Table I.)

(1) *Immature kernels* are excessively thin kernels and can have black, brown or gray surface with a dark interior color and the immaturity has adversely affected the flavor of the kernel.

(2) *Kernel spotting* refers to dark brown or dark gray spots aggregating more than one-eighth of the surface of the kernel.

(g) *Serious damage* means any specific defect described in paragraph (g) (1) through (5) of this section, or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance or the edible or marketing quality of the individual kernel or of the lot. (For tolerances see § 51.2557 Table I.)

(1) *Mold* which is readily visible on the kernel.

(2) *Minor insect or vertebrate injury* means the kernel shows conspicuous evidence of feeding.

(3) *Insect damage* is an insect, insect fragment, web or frass attached to the kernel. No live insects shall be permitted.

(4) *Rancidity* means the kernel is distinctly rancid to taste. Staleness of flavor shall not be classed as rancidity.

(5) *Decay* means one-sixteenth or more of the kernel is decomposed.

■ 17. Section 51.2562 is added to read as follows:

#### § 51.2562 Metric Conversion Table.

Use the following table for metric conversion:

Inches	Millimeters
$\frac{5}{64}$	1.98
$\frac{1}{8}$	3.18
$\frac{1}{4}$	6.35
$\frac{3}{8}$	9.53
$\frac{1}{2}$	12.7
$\frac{3}{4}$	19.05
$\frac{1}{1}$	25.4
Ounces	Grams
1	28.35
2	56.7

Dated: August 19, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1030

[Docket No. DA-01-03; AO-361-A35]

#### Milk in the Upper Midwest Marketing Area: Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

**SUMMARY:** This document adopts as a final rule, without change an interim final rule concerning pooling provisions of the Upper Midwest Federal milk order. Specifically, this final rule continues to prohibit the ability to simultaneously pool the same milk on the Upper Midwest Federal milk order and a State-operated milk order that has market-wide pooling. Additionally, the final rule limits the amount of milk that can be diverted to nonpool plants from pool distributing plants regulated under the order. More than the required number of producers in the Upper Midwest marketing area have approved the issuance of the final order amendments.

**EFFECTIVE DATE:** September 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Gino Tosi, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, Stop 0231-Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250-0231, (202) 690-1366, e-mail: [gino.tosi@usda.gov](mailto:gino.tosi@usda.gov).

**SUPPLEMENTARY INFORMATION:** This administrative rule 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.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(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 (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 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.

#### Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered 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.

For the purposes of determining which dairy farms are "small businesses," the \$750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

In June 2001, there were 12,748 producers pooled on, and 57 handlers regulated by, the Upper Midwest order. Based on these criteria, the vast majority of the producers and handlers would be considered as small businesses. The adoption of the proposed pooling standards serves to revise established criteria that determine those producers, producer milk, and plants that have a reasonable association with, and are consistently serving the fluid needs of, the Upper Midwest milk marketing area and are not associated with other market-wide pools concerning the same milk. Criteria for pooling are established 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