

submitted by the NAC and PCC and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2005–06 fiscal period began on March 1, 2005, and the marketing orders require that the assessment rates for each fiscal period apply to all nectarines and peaches handled during such fiscal period; (2) the committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis; and (3) handlers are aware of this action, which was discussed by the committees at public meetings and unanimously recommended by a mail vote, and is similar to other assessment rate actions issued in past years. Also, a 10-day comment period was provided for in the proposed rule and the comments received have been considered in reaching a final decision on this matter.

#### List of Subjects

##### 7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

##### 7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

■ 1. The authority citation for 7 CFR parts 916 and 917 continue to read as follows:

Authority: 7 U.S.C. 601–674.

#### PART 916—NECTARINES GROWN IN CALIFORNIA

■ 2. Section 916.234 is revised to read as follows:

##### § 916.234 Assessment rate.

On and after March 1, 2005, an assessment rate of \$0.20 per 25-pound container or container equivalent of nectarines is established for California nectarines.

#### PART 917—PEACHES GROWN IN CALIFORNIA

■ 3. Section 917.258 is revised to read as follows:

##### § 917.258 Assessment rate.

On and after March 1, 2005, an assessment rate of \$0.20 per 25-pound container or container equivalent of peaches is established for California peaches.

Dated: September 20, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–19085 Filed 9–23–05; 8:45 am]

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#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

##### 7 CFR Part 1033

[Docket No. AO–166–A39; DA–05–01–A]

#### Milk in the Mideast Marketing Area; Interim Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

**SUMMARY:** This order amends certain features of the pooling standards of the Mideast milk marketing order on an interim basis. More than the required number of producers in the Mideast marketing area have approved the issuance of the interim order as amended.

**DATES:** Effective October 1, 2005.

#### FOR FURTHER INFORMATION CONTACT:

Gino M. Tosi, Associate Deputy Administrator, Stop 0231, Room 2971, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–1366, e-mail address: [gino.tosi@usda.gov](mailto:gino.tosi@usda.gov).

#### SUPPLEMENTARY INFORMATION:

Specifically, this decision adopts provisions that will: (1) Prohibit the ability to simultaneously pool the same milk on the Mideast Federal milk order and on a marketwide equalization pool administered by another government entity; (2) Lower the diversion limit standards; and (3) Increase the performance standards for supply plants.

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 interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any State or local laws,

regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937 (the Act), 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 (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.

#### 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 interim 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.

During March 2005, the month during which the hearing occurred, there were 9,767 dairy producers pooled on, and 36 handlers regulated by, the Mideast order. Approximately 9,212 producers,

or 94.3 percent, were considered small businesses based on the above criteria. Of the 36 handlers regulated by the Mideast order, approximately 26 handlers, or 72.2 percent, were considered small businesses.

The adoption of the proposed pooling standards serve 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 Mideast milk marketing area. 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 producers who 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 adopted amendments will have no impact on reporting, recordkeeping, or other compliance requirements because they will remain identical to the current requirements. No new forms are proposed and no additional reporting requirements will be necessary.

This action 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.

*Prior documents in this proceeding:*  
*Amendment to Public Hearing on Proposed Rulemaking:* Issued March 1, 2005; published March 3, 2005 (70 FR 10337).

*Notice of Hearing:* Issued February 14, 2005; published February 17, 2005 (70 FR 8043).

*Tentative Partial Decision:* Issued July 21, 2005; published July 27, 2005 (70 FR 43335).

### Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Mideast order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Mideast order:

(a) *Findings upon the basis of the hearing record.* 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), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Mideast marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The Mideast order, as hereby amended on an interim basis, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the order, as hereby amended on an interim basis, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The Mideast order, as hereby amended on an interim basis, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional Findings.* It is necessary and in the public interest to make these interim amendments to the Mideast order effective October 1, 2005. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing area.

The interim amendments to this order are known to handlers. The tentative partial final decision containing the proposed amendments to this order was issued on July 21, 2005.

The changes that result from these interim amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these interim order amendments effective on October 1, 2005.

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the specified marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this interim order amending the Mideast order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended;

(3) The issuance of the interim order amending the Mideast order is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing area.

### List of Subjects in 7 CFR Part 1033

Milk marketing orders.

### Order Relative to Handling

■ *It is therefore ordered*, that on and after the effective date hereof, the handling of milk in the Mideast marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended on an interim basis, as follows:

### PART 1033—MILK IN THE MIDEAST AREA

■ 1. The authority citation for 7 CFR Part 1033 reads as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 1033.7 is amended by:

■ (a) Revising paragraph (c) introductory text.

■ (b) Revising the introductory text of paragraph (d).

■ (c) Revising paragraph (d)(2).

■ (d) Revising paragraph (e)(1).

The revisions read as follows:

#### § 1033.7 Pool plant.

\* \* \* \* \*

(c) A supply plant from which the quantity of bulk fluid milk products shipped to, received at, and physically unloaded into plants described in paragraph (a) or (b) of this section as a percent of the Grade A milk received at the plant from dairy farmers (except

dairy farmers described in § 1033.12(b)) and handlers described in § 1000.9(c), as reported in § 1033.30(a), is not less than 40 percent of the milk received from dairy farmers, including milk diverted pursuant to § 1033.13, subject to the following conditions:

\* \* \* \* \*

(d) A plant located in the marketing area and operated by a cooperative association if, during the months of December through July 30 percent, during the month of August 35 percent and during the months of September through November 40 percent or more of the producer milk of members of the association is delivered to a distributing pool plant(s) or to a nonpool plant(s) and classified as Class I. Deliveries for qualification purposes may be made directly from the farm or by transfer from such association's plant, subject to the following conditions:

\* \* \* \* \*

(2) The 30 percent delivery requirement for the months of December through July may be met for the current month or it may be met on the basis of deliveries during the preceding 12-month period ending with the current month.

\* \* \* \* \*

(e) \* \* \*

(1) The aggregate monthly quantity supplied by all parties to such an agreement as a percentage of the producer milk receipts included in the unit during the months of August through November is not less than 45 percent and during the months of December through July is not less than 35 percent;

\* \* \* \* \*

■ 3. Section 1033.13 is amended by:

■ (a) Revising paragraph (d)(4).

■ (b) Adding paragraph (e).

The revisions read as follows:

**§ 1033.13 Producer milk.**

\* \* \* \* \*

(d) \* \* \*

(4) Of the total 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) or which is diverted to another pool plant), the handler diverted to nonpool plants not more than 50 percent in each of the months of August through February and 60 percent in each of the months of March through July.

\* \* \* \* \*

(e) Producer milk shall not include milk of a producer that is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing plan

imposed under the authority of another government entity.

Dated: September 20, 2005.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 05-19086 Filed 9-23-05; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1430

**RIN 0560-AH28**

#### 2004 Dairy Disaster Assistance Payment Program

**AGENCIES:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule sets forth the regulations for the 2004 Dairy Disaster Assistance Payment Program. This program will assist dairy producers by providing payments to those who suffered dairy production and milk spoilage losses due to hurricanes in 2004.

**DATES:** This rule is effective on September 26, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Danielle Cooke, Price Support Division, Farm Service Agency, United States Department of Agriculture, STOP 0512, 1400 Independence Avenue, SW., Washington, DC 20250-0512.

Telephone: (202) 720-1919; e-mail: [Danielle.Cooke@wdc.usda.gov](mailto:Danielle.Cooke@wdc.usda.gov).

**SUPPLEMENTARY INFORMATION:**

#### Discussion of Final Rule

This rule finalizes the proposed rule published in the **Federal Register** May 25, 2005 (70 FR 30009). The 30-day comment period for the proposed 2004 Dairy Disaster Assistance Payment Program (DDAP) rule closed on June 24, 2005. The proposed rule provided that the DDAP program would be based on hurricane related dairy production and dairy spoilage losses suffered during the months of August through October 2004 in counties declared a disaster by the President in 2004 due to hurricane. The program will end at the conclusion of the application period and disbursement of allotted funds. The DDAP program will operate under regulations codified in 7 CFR part 1430.

Among other provisions, the proposed rule provided that in cases where the producers had been paid for qualified dumped milk the producer would still qualify for payments related to that

milk. Also, the rule did not provide for adjustments in payments based on cow herd size. Rather, the rule provided for payments to be made based on changes in milk production from a set base amount. Also, among other provisions, the rule provided that in the case the limited program funds were not sufficient to pay all claims for lost production and for dumped milk, then priority would be given in making payments to those persons whose losses over the whole period were greater than 20 percent. It was provided additionally in the proposed rule that the prices at which payments would be made would be amounts set out in the rule which were derived from a series of reported "mailbox" prices. On these aspects and all others, comment was invited.

#### Comments and Changes to Final Rule

During the 30-day comment period the Agency received public comments from two U.S. Senators, ten U.S. congressmen, one dairy cooperative, one advocacy group and two private citizens. Some responses contained multiple comments.

Of the total comments received during the public comment period, two respondents opposed the program indicating that private insurance should adequately compensate dairy producers monetarily for losses rather than the taxpayers or Government. One of those respondents also believed that the assistance being provided by the Agency was duplicative to that of Federal Emergency Management Agency (FEMA) and that it was misleading for Congress to insert a statute for agriculture in a non-related military spending bill. No changes have been made in the rule based on these comments. The agency is charged with implementing statutory provisions as written and has done so in the final rule. It is not understood to be the case that the relief in the rule duplicates that provided elsewhere, but provision is made in the rule to address that possibility.

Public comments and suggestions were sought for paying milk marketing cooperatives directly for milk that was dumped. Several public comments were received in support of direct payment of DDAP benefits to a milk handler or dairy marketing cooperative rather than directly to the producer for spoiled milk that was dumped as a result of the hurricanes for which the dairy marketing cooperative or milk handler compensated the dairy producer. Respondents indicated that marketing cooperatives have adequate records to verify dumped production and confirm payment to producers made by the dairy