

# Rules and Regulations

Federal Register

Vol. 62, No. 1

Thursday, January 2, 1997

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1124

[Docket No. AO-368-A25; DA-95-01]

#### Milk in the Pacific Northwest Marketing Area; Order Amending the Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule adds two counties to the Pacific Northwest milk marketing area and modifies the component pricing provisions of the order.

**EFFECTIVE DATE:** February 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P. O. Box 96456, Washington, DC 20090-6456, (202) 720-2357, e-mail address [Connie\\_M\\_Brenner@usda.gov](mailto:Connie_M_Brenner@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 Secretary

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 Secretary 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 Secretary'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.

#### Small Business Consideration

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 \$500,000, 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 \$500,000 per year criterion was used to establish a production guideline of 326,000 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.

Interested persons were invited to present evidence on the probable regulatory and informational impact of the hearing proposals considered in this proceeding on small businesses or to suggest modifications of the proposals for the purpose of tailoring their applicability to small businesses. In addition, in order to properly assess the impact on small businesses, information relating to the impact of the amendments contained in this rule has

been obtained from the market administrator.

During August 1996, the representative month for determining producer approval of this action, 1,297 dairy farmers were producers under the Pacific Northwest order. Of these, 808 would be considered small businesses, having under 326,000 pounds of milk production for the month. Of the dairy farmers in the small business category, 219 produced under 100,000 pounds of milk, 328 produced between 100,001 and 200,000 pounds of milk, and 261 produced between 200,001 and 326,000 pounds of milk during August.

Of the 489 producers producing in excess of 326,000 pounds of milk during August 1996, 178 produced between 326,001 and 500,000 pounds of milk, 186 produced between 500,001 and 1,000,000 pounds of milk, and 125 producers produced at least 1,000,001 pounds of milk.

In terms of total dollars, the negative impact on producer returns resulting from the multiple component pricing amendments generally would be less on small producers than it would be on large producers. However, the effect of the amendments on each individual producer would depend on the relative protein, other nonfat solids, and butterfat content of the producer's milk production rather than on the volume of its production.

The effect of the multiple component pricing amendments on handlers, both large and small, would depend on how they use the milk they receive from producers. Handlers' cost of milk used in manufactured products would be reduced by approximately 10 cents per hundredweight, depending upon the component content of the milk. The cost of milk used in fluid products would be unchanged. In addition to butterfat tests, handlers would be required to report protein tests and "other solids" tests instead of nonfat solids tests of producer receipts. Because most of this testing is done using infra-red analysis equipment, there should be little additional cost connected with the testing and reporting of the protein component and the "other solids" component.

Of the 23 dairy plants pooled under the Pacific Northwest milk order during August 1996, 15 would be considered to be operated by small businesses on the basis of having fewer than 500

employees. Eight of the pool plants were operated by handlers having more than 500 employees.

Expansion of the marketing area to include the two remaining Olympic Peninsula counties would have no effect on producers and would result in the regulation of no additional handlers. Four handlers who currently distribute fluid milk products into the two counties would be benefitted by a reduction in their recordkeeping and reporting burden. Sales outside the marketing area are required to be reported separately for the purpose of determining a handler's pool status. The addition of these two counties to the marketing area will remove the requirement that these handlers keep separate records and file reports about sales in these counties. Two of the handlers affected would be considered to be small entities.

Prior documents in this proceeding: Notice of Hearing: Issued June 15, 1995; published June 21, 1995 (60 FR 32282).

Extension of Time for Filing Briefs: Issued October 12, 1995; published October 23, 1995 (60 FR 54315).

Extension of Time for Filing Briefs: Issued November 2, 1995; published November 9, 1995 (60 FR 56538).

Recommended Decision: Issued August 19, 1996; published August 23, 1996 (61 FR 43474).

Final Decision: Issued November 21, 1996; published November 29, 1996 (61 FR 60639).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Pacific Northwest 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 Pacific Northwest 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 Pacific Northwest marketing area.

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

(1) The Pacific Northwest order, as hereby amended, 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, 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 Pacific Northwest order, as hereby amended, 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) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk that 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 order amending the Pacific Northwest 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 order amending the Pacific Northwest 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 1124

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 Pacific Northwest 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, as follows:

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

1. The authority citation for 7 CFR Part 1124 reads as follows:

Authority: 7 U.S.C. 601-674.

2. Section 1124.2 is amended by revising the list of Washington counties to read as follows:

§ 1124.2 Pacific Northwest marketing area.

\* \* \* \* \*

Washington counties:

Adams, Asotin, Benton, Chelan, Clallam, Clark, Columbia, Cowlitz, Douglas, Ferry, Franklin, Garfield, Grant, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, Pierce, San Juan, Skagit, Skamania, Snohomish, Spokane, Stevens, Thurston, Wahkiakum, Walla Walla, Whatcom, Whitman and Yakima.

\* \* \* \* \*

3. Section 1124.30 is amended by revising paragraphs (a)(1) (i) and (ii), and (c) (1) through (3) to read as follows:

§ 1124.30 Reports of receipts and utilization.

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(i) Milk received directly from producers (including such handler's own production), and the pounds of protein and pounds of solids-not-fat other than protein (other solids) contained therein;

(ii) Milk received from a cooperative association pursuant to §1124.9(c), and the pounds of protein and pounds of solids-not-fat other than protein (other solids) contained therein;

\* \* \* \* \*

(c) \* \* \*

(1) The pounds of skim milk, butterfat, protein and solids-not-fat other than protein (other solids) received from producers;

(2) The utilization of skim milk, butterfat, protein and solids-not-fat other than protein (other solids) for which it is the handler pursuant to §1124.9(b); and

(3) The quantities of skim milk, butterfat, protein and solids-not-fat other than protein (other solids) delivered to each pool plant pursuant to §1124.9(c).

\* \* \* \* \*

4. Section 1124.31 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 1124.31 Payroll reports.

\* \* \* \* \*

(a) \* \* \*

(1) The total pounds of milk received from each producer, the pounds of butterfat, protein and solids-not-fat other than protein (other solids) contained in such milk, and the number

of days on which milk was delivered by the producer during the month;

\* \* \* \* \*

(b) \* \* \*

(1) The total pounds of milk received from each producer and the pounds of butterfat, protein and solids-not-fat other than protein (other solids) contained in such milk;

\* \* \* \* \*

5. Section 1124.50 is amended by revising paragraph (f) introductory text, paragraph (g), and adding a new paragraph (h) to read as follows:

**§ 1124.50 Class and component prices.**

\* \* \* \* \*

(f) The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the total of:

\* \* \* \* \*

(g) The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the average monthly price per pound for 40-pound block Cheddar cheese on the National Cheese Exchange as reported by the Department.

(h) The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the basic formula price at test less the average butterfat test of the basic formula price as reported by the Department times the butterfat price, less the average protein test of the basic formula price as reported by the Department for the month times the protein price, and dividing the resulting amount by the average other solids test of producer milk pooled under Part 1124 for the month, as determined by the Market Administrator. If the resulting price is less than zero, then the protein price will be reduced so that the other solids price equals zero.

6. Section 1124.53 is revised to read as follows:

**§ 1124.53 Announcement of class and component prices.**

On or before the 5th day of each month, the market administrator shall announce publicly the following prices:

- (a) The Class I price for the following month;
- (b) The Class II price for the following month;
- (c) The Class III price for the preceding month;
- (d) The Class III-A price for the preceding month;
- (e) The skim milk price for the preceding month;
- (f) The butterfat price for the preceding month;
- (g) The protein price for the preceding month;
- (h) The other solids price for the preceding month; and

(i) The butterfat differential for the preceding month.

7. Section 1124.60 is amended by redesignating paragraphs (f) through (m) as paragraphs (g) through (n), revising the section heading, the undesignated center heading preceding the section heading, paragraph (e), redesignated paragraphs (g) introductory text, (g)(3), the phrase "assigned to shrinkage" in paragraph (h) introductory text to "assigned to inventory", (h)(3), and (h)(6), and adding a new paragraph (f) to read as follows:

**Producer Price Differential**

**§ 1124.60 Handler's value of milk.**

\* \* \* \* \*

(e) Multiply the protein price for the month by the pounds of protein associated with the pounds of producer skim milk in Class II and Class III during the month. The pounds of protein shall be computed by multiplying the producer skim milk pounds so assigned by the percentage of protein in the handler's receipts of producer skim milk during the month for each report filed separately;

(f) Multiply the other solids price for the month by the pounds of other solids associated with the pounds of producer skim milk in Class II and Class III during the month. The pounds of other solids shall be computed by multiplying the producer skim milk pounds so assigned by the percentage of other solids in the handler's receipts of producer skim milk during the month for each report filed separately;

(g) With respect to skim milk and butterfat overages assigned pursuant to § 1124.44(a)(15), (b) and paragraph (g)(6) of this section:

\* \* \* \* \*

(3) Multiply the pounds of protein and other solids associated with the skim milk pounds assigned to Class II and III by the protein and other solids prices, respectively;

\* \* \* \* \*

(h) \* \* \*

(3) Multiply the pounds of protein and other solids associated with the skim milk pounds assigned to Class II and III by the protein and other solids prices, respectively;

\* \* \* \* \*

(6) Subtract the Class III value of the milk at the previous month's protein, other milk solids, and butterfat prices;

\* \* \* \* \*

8. Section 1124.61 is amended by revising the section heading, introductory text, and paragraphs (a), (d) and (e) to read as follows:

**§ 1124.61 Producer price differential.**

A producer price differential per hundredweight of milk for each month shall be computed by the market administrator as follows:

(a) Combine into one total for all handlers:

(1) The values computed pursuant to § 1124.60 (a) through (c) and (g) through (n) for all handlers who filed the reports prescribed by § 1124.30 for the month and who made the payments pursuant to § 1124.71 for the preceding month; and

(2) Add the values computed pursuant to § 1124.60 (d), (e) and (f); and subtract the values obtained by multiplying the handlers' total pounds of protein and total pounds of other solids contained in such milk by their respective prices;

\* \* \* \* \*

(d) Divide the resulting amount by the sum, for all handlers, of the total hundredweight of producer milk and the total hundredweight for which a value is computed pursuant to § 1124.60(k); and

(e) Subtract not less than 4 cents per hundredweight nor more than 5 cents per hundredweight. The result shall be the producer price differential.

9. Section 1124.62 is removed, and Section 1124.63 is redesignated as Section 1124.62 and revised, including the section heading to read as follows:

**§ 1124.62 Announcement of the producer price differential and a statistical uniform price.**

On or before the 14th day after the end of each month, the market administrator shall announce the following prices and information:

- (a) The producer price differential;
- (b) The protein price;
- (c) The other solids price;
- (d) The butterfat price;
- (e) The average protein and other solids content of producer milk; and
- (f) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

10. Section 1124.71 is amended by revising paragraph (a)(1), the reference "§ 1124.73(a)(2) (i), (ii), and (iii);" in paragraph (b)(1) to "§ 1124.73(a)(2) (ii) through (iv);" and paragraph (b)(3) to read as follows:

**§ 1124.71 Payments to the producer-settlement fund.**

\* \* \* \* \*

(a) \* \* \*

(1) The total handler's value of milk for such month as determined pursuant to § 1124.60; and

\* \* \* \* \*

(b) \* \* \*

(3) The value at the producer price differential adjusted for the location of the plant(s) from which received (not to be less than zero) with respect to the total hundredweight of skim milk and butterfat in other source milk for which a value was computed or such handler pursuant to §1124.60(k).

\* \* \* \* \*

11. Section 1124.73 is amended by revising paragraphs (a)(2) (ii) through (vi), (c) introductory text, (c)(1), the reference "paragraph (a)(2) (i) through (iii) of this section" in paragraphs (c)(2) and (d)(2) to "paragraph (a)(2) (i) through (iv) of this section", (f)(2), and adding paragraph (a)(2)(vii) to read as follows:

**§1124.73 Payments to producers and to cooperative associations.**

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(ii) Add the amount that results from multiplying the protein price for the month by the total pounds of protein in the milk received from the producer;

(iii) Add the amount that results from multiplying the other solids price for the month by the total pounds of other solids in the milk received from the producer;

(iv) Add the amount that results from multiplying the total hundredweight of milk received from the producer by the producer price differential for the month as adjusted pursuant to §1124.74(a);

(v) Subtract payments made to the producer pursuant to paragraph (a)(1) of this section;

(vi) Subtract proper deductions authorized in writing by the producer; and

(vii) Subtract any deduction required pursuant to § 1124.86 or by statute; and

\* \* \* \* \*

(c) Each handler shall pay to each cooperative association which operates a pool plant, or to the cooperative's duly authorized agent, for butterfat, protein and other solids received from such plant in the form of fluid milk products as follows:

(1) On or before the second day prior to the date specified in paragraph (a)(1) of this section, for butterfat, protein, and other milk solids received during the first 15 days of the month at not less than the butterfat, protein, and other milk solids prices, respectively, for the preceding month; and

\* \* \* \* \*

(f) \* \* \*

(2) The total pounds of milk delivered by the producer, the pounds of butterfat,

protein and other solids contained therein, and, unless previously provided, the pounds of milk in each delivery;

\* \* \* \* \*

**§ 1124.74 [Amended]**

12. Section 1124.74(c) is amended by revising, in two locations, the phrase "weighted average differential price" to "producer price differential".

**§ 1124.75 [Amended]**

13. Section 1124.75 is amended by adding the phrase "or statistical uniform price" after the words "estimated uniform price" in the second sentence of paragraph (a)(1)(i), and by revising the phrase "estimated uniform price" in the first sentence of paragraph (b)(4) to "statistical uniform price".

**§ 1124.85 [Amended]**

14. Section 1124.85 is amended by revising the reference "\$ 1124.60(h) and (j)" in paragraph (b) to "\$ 1124.60(i) and (k)".

Dated: December 30, 1996.  
Michael V. Dunn,  
*Assistant Secretary, Marketing and Regulatory Programs.*  
[FR Doc. 96-33390 Filed 12-31-96; 8:45 am]  
BILLING CODE 3410-02-P

**FEDERAL HOUSING FINANCE BOARD**

**12 CFR Part 932**

[No. 96-97]

**Selection and Compensation of Federal Home Loan Bank Employees**

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is amending the provisions of its regulations governing the selection and compensation of employees of the Federal Home Loan Banks (Banks) in order to streamline regulatory requirements and transfer specific functions currently performed by the Finance Board to the board of directors of each Bank. The final rule requires a Bank to obtain prior Finance Board approval of the appointment of a new President, but permits a Bank to reappoint an incumbent President without prior Finance Board approval. The final rule also gives the Banks broad authority to set Bank Presidents' salaries within established caps and authorizes the Banks to make incentive payments to their Presidents based on each Bank's performance and on fulfillment of its mission. The devolution of authority to

the Banks is consistent with the goals of the Regulatory Reinvention Initiative of the National Performance Review.

**EFFECTIVE DATE:** January 2, 1997.

**FOR FURTHER INFORMATION CONTACT:**

Barbara Fisher, Director, Office of Resource Management, (202) 408-2586; or David Guy, Associate General Counsel, (202) 408-2536, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:**

**I. Statutory and Regulatory Background**

**A. Selection of Employees**

Section 12(a) of the Federal Home Loan Bank Act (Bank Act) provides that each Bank may select, employ, and fix the compensation of Bank employees, subject to the approval of the Finance Board. See 12 U.S.C. 1432(a). Section 932.40 of the Finance Board's regulations, which governs the selection of Bank employees, provides that officers, legal counsel, and employees of a Bank shall be elected or appointed in accordance with the Bank's bylaws. See 12 CFR 932.40. Each Bank's bylaws are subject to the approval of the Finance Board. See 12 U.S.C. 1432(a). Under each Bank's bylaws, a Bank elects or appoints its President subject to Finance Board approval.

Section 932.40 also sets forth conflicts of interest prohibitions applicable to full-time officers or employees of a Bank, and to counsel retained by a Bank. See 12 CFR 932.40. These provisions generally prohibit a Bank employee from acting on behalf of a member or other institution insured by the former Federal Savings and Loan Insurance Corporation (FSLIC), except under specified circumstances and with the consent of the FSLIC. Existing § 932.40 extends this prohibition to counsel and attorneys of any Bank, whether employed on a salary, fee, retainer, or other basis, unless the Finance Board consents to such representation. See *id.*

**B. Compensation**

**1. Bank Presidents**

Under section 12(a) of the Bank Act, the compensation of all Bank employees is subject to Finance Board approval. See 12 U.S.C. 1432(a). However, under its existing regulation on Bank employee compensation, *prior* Finance Board approval is required only for compensation of a Bank's President. See 12 CFR 932.41(a). Section 932.41 of the Finance Board's existing compensation regulation requires the board of directors of each Bank annually to adopt and submit to the Finance Board for its