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Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005 et al.
Milk in the Northeast and Other
Marketing Areas; Notice of Hearing on
Proposed Amendments to Tentative
Marketing Agreements and Orders;
Proposed Rule

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service**

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126 and 1131

[Doc. No. AO-14-A78, et al.; DA-09-02; AMS-09-0007]

Milk in the Northeast and Other Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: A national public hearing is being held to consider and take evidence on proposals seeking to amend or remove the producer-handler provisions and revise the exempt plant provisions applicable to all Federal milk marketing orders. Additionally, a proposal seeking to amend the orders to include provisions related to individual handler pools will be considered as an alternative to the producer-handler provisions.

DATES: The hearing will convene at 1 p.m., on Monday, May 4, 2009.

ADDRESSES: The hearing will be held at The Westin, Cincinnati, 21 East Fifth Street, Cincinnati, Ohio 45202, phone (513) 621-7700.

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

Persons requiring a sign language interpreter or other special accommodations should contact Paul Huber, Assistant Market Administrator, at (330) 225-4758; e-mail: p huber@fmmaclev.com 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 Westin, Cincinnati, Cincinnati, Ohio, beginning at 1 p.m. on Monday, May 4, 2009, with respect to proposed amendments to the marketing agreements and to the orders regulating the handling of milk in all Federal milk marketing orders.

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. 601-612) (RFA). The RFA seeks to ensure that, within the statutory authority of a program, the regulatory and information collection requirements are tailored to the size and nature of small businesses. For the purpose of the RFA, 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 (13 CFR 121.201). 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 offer 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 (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 United States 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, USDA 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, has its principal place of business, has jurisdiction in equity to review USDA'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.

Interested parties who wish to introduce exhibits should provide the Administrative Law Judge at the hearing with (4) copies of such exhibits for the official record. Additional copies should be made available for the use by other hearing participants. Any party that has submitted a proposal noticed herein, when participating as a witness, is required to make their testimony—if prepared as an exhibit—and any other exhibits, available to USDA officials prior to the start of the hearing on the day of their appearance. Individual dairy farmers are not subject to this requirement.

The hearing will continue until such time as determined to have ended by the presiding Administrative Law Judge. The schedule for the next session will be announced at the time of adjournment. Such reconvening date and time will also be posted on the AMS-Dairy Programs Web site at <http://www.ams.usda.gov/dairy>.

The proposed amendments, as set forth below, have not received the approval of USDA.

List of Subjects in 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126 and 1131

Milk marketing orders.

The authority citation for 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126 and 1131 read as follows:

Authority: 7 U.S.C. 601-674, and 7253.

Proposed by National Milk Producers Federation and International Dairy Foods Association.

Proposal No. 1

This proposal seeks to eliminate the producer-handler provisions from all orders.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

§ 1000.8 [Amended]

1. Amend § 1000.8 by:
 - (1) Removing paragraph (b); and
 - (2) Redesignating paragraphs (c), (d) and (e) as (b), (c) and (d).

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

§ 1001.10 [Removed]

2. Remove and reserve § 1001.10.

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

§ 1005.10 [Removed]

3. Remove and reserve § 1005.10.

PART 1006—MILK IN THE FLORIDA MARKETING AREA

§ 1006.10 [Removed]

4. Remove and reserve § 1006.10.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

§ 1007.10 [Removed]

5. Remove and reserve § 1007.10.

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

§ 1030.10 [Removed]

6. Remove and reserve § 1030.10.

PART 1032—MILK IN THE CENTRAL MARKETING AREA

§ 1032.10 [Removed]

7. Remove and reserve § 1032.10.

PART 1033—MILK IN THE MIDEAST MARKETING AREA

§ 1033.10 [Removed]

8. Remove and reserve § 1033.10.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

§ 1124.10 [Removed]

9. Remove and reserve § 1124.10.

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

§ 1126.10 [Removed]

10. Remove and reserve § 1126.10.

PART 1131—MILK IN THE ARIZONA MARKETING AREA

§ 1131.10 [Removed]

11. Remove and reserve § 1131.10.

Proposal No. 2

This proposal seeks to modify the exempt plant provision by: (1) Increasing the current limit on monthly route disposition and packaged sales of fluid milk products to other plants from 150,000 pounds or less during the month to 450,000 pounds or less during the month; (2) applying the 450,000 pound per month threshold to a plant's total monthly disposition; and (3) limiting exemption status to plants that produce uniquely labeled products.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

12. Amend § 1000.8 by revising paragraph (e)(4) to read as follows:

§ 1000.8 Nonpool plant.

* * * * *

(e) * * *

(4) A plant that in all markets has route disposition and packaged sales of fluid milk products to other plants of 450,000 pounds or less during the month, all of which are uniquely branded.

Proposed by Hatchland Farm, LLC.

Proposal No. 3

This proposal seeks to end the regulatory exemption of producer-handlers from the pooling and pricing provisions of the Northeast order if their Class I route disposition exceeds 3,000,000 pounds of milk per month.

PART 1001—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

13. Amend § 1001.10 by revising paragraph (a) to read as follows:

§ 1001.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition within the marketing area during the month not to exceed 3,000,000 pounds per month;

* * * * *

Proposed by Lochmead Dairy.

Proposal No. 4

This proposal seeks to revise the producer-handler provisions in all orders except the Pacific Northwest and Arizona orders. Specifically, this proposal seeks to end the regulatory exemption of producer-handlers from the pooling and pricing provisions of their respective orders if their Class I route disposition exceeds 3,000,000 pounds of milk per month.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

14. Amend § 1001.10 by revising paragraph (a) to read as follows:

§ 1001.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition within the marketing area during the month not to exceed 3,000,000 pounds per month;

* * * * *

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

15. Amend § 1005.10 by revising paragraph (a) to read as follows:

§ 1005.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition within the marketing area during the month not to exceed 3,000,000 pounds per month;

* * * * *

PART 1006—MILK IN THE FLORIDA MARKETING AREA

16. Amend § 1006.10 by revising paragraph (a) to read as follows:

§ 1006.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition within the marketing area during the month not to exceed 3,000,000 pounds per month;

* * * * *

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

17. Amend § 1007.10 paragraph (a) to read as follows:

§ 1007.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition within the marketing area during the month not to exceed 3,000,000 pounds per month;

* * * * *

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

18. Amend § 1030.10 by revising paragraph (a) to read as follows:

§ 1030.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition within the marketing area during the month not to exceed 3,000,000 pounds per month;

* * * * *

PART 1032—MILK IN THE CENTRAL MARKETING AREA

19. Amend § 1032.10 by revising paragraph (a) to read as follows:

§ 1032.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition within the marketing

area during the month not to exceed 3,000,000 pounds per month;
* * * * *

PART 1033—MILK IN THE MIDEAST MARKETING AREA

20. Amend § 1033.10 by revising paragraph (a) to read as follows:

§ 1033.10 Producer-handler.
* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition within the marketing area during the month not to exceed 3,000,000 pounds per month;
* * * * *

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

21. Amend § 1126.10 by revising paragraph (a) to read as follows:

§ 1126.10 Producer-handler.
* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition within the marketing area during the month not to exceed 3,000,000 pounds per month;
* * * * *

Proposed by Homeland Creamery and Maple View Farm Milk Co., LLC.

Proposal No. 5

This proposal seeks to end the regulatory exemption of producer-handlers from the pooling and pricing provisions of the Appalachian, Florida and Southeast milk marketing orders if their Class I route disposition and packaged sales of fluid milk products to other plants exceeds 750,000 pounds of milk per month.

PART 1005—MILK IN THE APPALACHIAN MILK MARKETING ORDER

22. Amend § 1005.10 by revising paragraph (a) to read as follows:

§ 1005.10 Producer-handler.
* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition and packaged sales of fluid milk products within the marketing area during the month not to exceed 750,000 pounds per month, all of which are uniquely branded;
* * * * *

PART 1006—MILK IN THE FLORIDA MILK MARKETING ORDER

23. Amend § 1006.10 by revising paragraph (a) to read as follows:

§ 1006.10 Producer-handler.
* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition and packaged sales of fluid milk products within the marketing area during the month not to exceed 750,000 pounds per month, all of which are uniquely branded;
* * * * *

PART 1007—MILK IN THE SOUTHEAST MILK MARKETING ORDER

24. Amend § 1007.10 by revising paragraph (a) to read as follows:

§ 1007.10 Producer-handler.
* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition and packaged sales of fluid milk products within the marketing area during the month not to exceed 750,000 pounds per month, all of which are uniquely branded;
* * * * *

Proposal No. 6

This proposal seeks to amend the exempt plant provision for the Appalachian, Florida and Southeast milk marketing orders by increasing the current limit on monthly route disposition and packaged sales of fluid milk products to other plants from 150,000 pounds or less during the month to 750,000 pounds or less during the month.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

25. Amend § 1000.8 by revising paragraph (e)(4) to read as follows:

§ 1000.8 Nonpool plant.
* * * * *

(e) * * *
(4) A plant that has route disposition and packaged sales of fluid milk products to other plants of 150,000 pounds or less during the month, except in the Appalachian, Florida and Southeast milk marketing orders.

PART 1005—MILK IN THE APPALACHIAN MILK MARKETING ORDER

26. Revise § 1005.8 to read as follows:
Nonpool plant means any milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) *A fully regulated plant regulated under another Federal order* means a plant that is fully subject to the pricing

and pooling provisions of another Federal order.

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined under any Federal order.

(c) *Partially regulated distributing plant* means a nonpool plant that is not a plant fully regulated under another Federal order, a producer-handler plant, or an exempt plant, from which there is route disposition in the marketing area during the month.

(d) *Unregulated supply plant* means a supply plant that does not qualify as a pool supply plant and is not a plant fully regulated under another Federal order, a producer-handler plant, or an exempt plant.

(e) *An exempt plant* means a plant described in this paragraph that is exempt from the pricing and pooling provisions of any order provided that the operator of the plant files reports as prescribed by the market administrator of any marketing area in which the plant distributes packaged fluid milk products to enable determination of the handler's exempt status:

(1) A plant that is operated by a governmental agency that has no route disposition in commercial channels;

(2) A plant that is operated by a duly accredited college or university disposing of fluid milk products only through operation of its own facilities with no route disposition in commercial channels;

(3) A plant from which the total route disposition is for individuals or institutions for charitable purposes without remuneration; or

(4) A plant that route disposition and packaged sales of fluid milk products to other plants of 750,000 pound or less during the month.

PART 1006—MILK IN THE FLORIDA MILK MARKETING ORDER

27. Revise § 1006.8 to read as follows:
Nonpool plant means any milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) *A fully regulated plant regulated under another Federal order* means a plant that is fully subject to the pricing and pooling provisions of another Federal order.

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined under any Federal order.

(c) *Partially regulated distributing plant* means a nonpool plant that is not a plant fully regulated under another Federal order, a producer-handler plant, or an exempt plant, from which there is route disposition in the marketing area during the month.

(d) *Unregulated supply plant* means a supply plant that does not qualify as a pool supply plant and is not a plant fully regulated under another Federal order, a producer-handler plant, or an exempt plant.

(e) *An exempt plant* means a plant described in this paragraph that is exempt from the pricing and pooling provisions of any order provided that the operator of the plant files reports as prescribed by the market administrator of any marketing area in which the plant distributes packaged fluid milk products to enable determination of the handler's exempt status:

- (1) A plant that is operated by a governmental agency that has no route disposition in commercial channels;
- (2) A plant that is operated by a duly accredited college or university disposing of fluid milk products only through operation of its own facilities with no route disposition in commercial channels;
- (3) A plant from which the total route disposition is for individuals or institutions for charitable purposes without remuneration; or
- (4) A plant that route disposition and packaged sales of fluid milk products to other plants of 750,000 pound or less during the month.

PART 1007—MILK IN THE SOUTHEAST MILK MARKETING ORDER

28. Revise § 1007.8 to read as follows:
Nonpool plant means any milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) *A fully regulated plant regulated under another Federal order* means a plant that is fully subject to the pricing and pooling provisions of another Federal order.

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined under any Federal order.

(c) *Partially regulated distributing plant* means a nonpool plant that is not a plant fully regulated under another Federal order, a producer-handler plant, or an exempt plant, from which there is route disposition in the marketing area during the month.

(d) *Unregulated supply plant* means a supply plant that does not qualify as a pool supply plant and is not a plant fully regulated under another Federal order, a producer-handler plant, or an exempt plant.

(e) *An exempt plant* means a plant described in this paragraph that is exempt from the pricing and pooling provisions of any order provided that the operator of the plant files reports as

prescribed by the market administrator of any marketing area in which the plant distributes packaged fluid milk products to enable determination of the handler's exempt status:

- (1) A plant that is operated by a governmental agency that has no route disposition in commercial channels;
- (2) A plant that is operated by a duly accredited college or university disposing of fluid milk products only through operation of its own facilities with no route disposition in commercial channels;
- (3) A plant from which the total route disposition is for individuals or institutions for charitable purposes without remuneration; or
- (4) A plant that route disposition and packaged sales of fluid milk products to other plants of 750,000 pound or less during the month.

Proposed by Dunajski Dairy.

Proposal No. 7

This proposal seeks to end the regulatory exemption of producer-handlers from the pooling and pricing provisions of the Northeast order if their Class I route disposition exceeds 3,000,000 pounds of milk per month.

PART 1001—MILK IN THE NORTHEAST MILK MARKETING ORDER

29. Amend § 1001.10 by revising paragraph (a) to read as follows:

§ 1001.10 Producer-handler.

- * * * * *
- (a) Operates a dairy farm and a distributing plant from which there is route disposition within the marketing area during the month not to exceed 3,000,000 pounds per month.
- * * * * *

Proposed by Administrator, Division of Agricultural Development, Wisconsin Department of Agriculture, Trade and Consumer Protection.

Proposal No. 8

This proposal seeks to end the regulatory exemption of producer-handlers from the pooling and pricing provisions of all orders if their Class I route disposition exceeds 2,000,000 pounds of milk per month.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

30. Amend § 1000.8 by revising paragraph (b) to read as follows:

§ 1000.8 Nonpool plant.

- * * * * *
- (b) *Producer-handler plant* means a plant operated by a producer-handler as

defined under any Federal order provided the producer-handler in all markets has route disposition and packaged fluid sales of fluid milk products of 2,000,000 million pounds or less during the month.

* * * * *

Proposal No. 9

This proposal seeks to amend the exempt plant provision for all milk orders by increasing the current limit on monthly route disposition and packaged sales of fluid milk products to other plants from 150,000 pounds or less during the month to 2,000,000 pounds or less during the month.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

31. Amend § 1000.8 by revising paragraph (e)(4) to read as follows:

§ 1000.8 Nonpool plant.

- * * * * *
- (e) * * *
- (4) A plant that in all markets has route disposition and packaged sales of fluid milk products to other plants of 2,000,000 pounds or less during the month.

Proposed by Way-Har Farms.

Proposal No. 10

This proposal seeks to amend the exempt plant provision for all milk orders by increasing the current limit on monthly route disposition and packaged sales of fluid milk products to other plants from 150,000 pounds or less during the month to 450,000 pounds or less during the month.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

32. Amend § 1000.8 by revising paragraph (e)(4) to read as follows:

§ 1000.8 Nonpool plant.

- * * * * *
- (e) * * *
- (4) A plant that has route disposition and packaged sales of fluid milk products to other plants of 450,000 pounds or less during the month.

Proposed by Shatto Farms, Inc.

Proposal No. 11

This proposal seeks to end the regulatory exemption of producer-handlers from the pooling and pricing provisions of all orders if their Class I route disposition exceeds 1,000,000 pounds of milk per month.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

33. Amend § 1000.8 by revising paragraph (b) to read as follows:

§ 1000.8 Nonpool plant.

* * * * *

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined under any Federal order provided the producer-handler has route disposition and packaged fluid sales of fluid milk products of 1,000,000 million pounds or less during the month.

* * * * *

Proposal No. 12

This proposal seeks, assuming elimination of producer-handler's exemption from pricing and pooling provisions of the orders, to amend the exempt plant provision for all milk orders by increasing the current limit on monthly route disposition and packaged sales of fluid milk products to other plants from 150,000 pounds or less during the month to 1,000,000 pounds or less during the month.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

34. Amend § 1000.8 by revising paragraph (e)(4) to read as follows:

§ 1000.8 Nonpool plant.

* * * * *

(e) * * *

(4) A plant that has route disposition and packaged sales of fluid milk products to other plants of 1,000,000 pounds or less during the month.

Proposal No. 13

Proposed by New England Producer-Handlers Association, Inc. et al.

This proposal seeks to expand the producer-handler exemption from pricing and pooling provisions, in all orders, to apply to the Class I route disposition and packaged sales of fluid milk products of handlers who operate, in common, a milk production facility and the processing and packaging facility used to process and package the raw milk from the aforementioned milk production facility, up to 3,000,000 pounds per month. Should this proposal not be adopted in all orders, then it shall apply exclusively to the Northeast and Appalachian milk marketing orders.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

35. Amend § 1000.8 by revising paragraph (b) to read as follows:

§ 1000.8 Nonpool plant.

* * * * *

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined under any Federal order provided that the producer-handler:

(1) Owns or operates, in common, the processing and packaging operations and the dairy animals and other necessary resources to produce all Class I milk handled, up to 3,000,000 pounds of route disposition and packaged fluid sales of fluid milk products during the month. All Class I route disposition and packaged sales of fluid milk products above 3,000,000 pounds per month will be subject to the pricing and pooling provisions of the order.

(b) [Reserved]

* * * * *

Proposal No. 14

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

36. Amend § 1000.8 by revising paragraph (e)(4) to read as follows:

§ 1000.8 Nonpool plant.

* * * * *

(e) * * *

(4) A plant that has route disposition and packaged sales of fluid milk products to other plants of up to 3,000,000 pounds or less during the month. All Class I route disposition and packaged sales of fluid milk products above 3,000,000 pounds per month will be subject to the pricing and pooling provisions of the order.

Proposed by Coopers' Hilltop Farm.

Proposal No. 15

This proposal seeks to end the regulatory exemption of producer-handlers from the pooling and pricing provisions of the Northeast order if their Class I route disposition exceeds 3,000,000 pounds of milk per month.

PART 1001—MILK IN THE NORTHEAST MILK MARKETING ORDER

37. Amend § 1001.10 by revising paragraph (a) to read as follows:

§ 1001.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is route disposition within the marketing

area during the month not to exceed 3,000,000 pounds per month.

* * * * *

Proposal No. 16

This proposal seeks to amend the exempt plant provision for all milk orders by increasing the current limit on monthly route disposition and packaged sales of fluid milk products to other plants from 150,000 pounds or less during the month to 450,000 pounds or less during the month.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

38. Amend § 1000.8 by revising paragraph (e)(4) to read as follows:

§ 1000.8 Nonpool plant.

* * * * *

(e) * * *

(4) A plant that has route disposition and packaged sales of fluid milk products to other plants of 450,000 pounds or less during the month.

Proposed by Mallorie's Dairy, Inc, Country Morning Farms and Nature's Dairy.

Proposal No. 17

This proposal seeks to exempt, from pricing and pooling provisions, the own-farm milk of handlers—who are either producer-handlers, exempt plants, or non-pool plants—with own-farm production during at least 3 consecutive months during the 24-month period immediately prior to the effective date of this proposal, should it be adopted. The exemption would apply to the lesser of: (1) A monthly volume based on the daily average milk production marketed from the handler's own-farm during any 3 consecutive months of production from January 2007 through February 2009; or (2) 3,000,000 pounds per month, with an additional allowance of up to 10 percent additional own-farm production for non-Class I balancing. Under this proposal any milk in excess of the defined exemption would be subject to the pricing and pooling provisions of the respective order.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

39. Add new § 1000.10 to read as follows:

§ 1000.10 Pool-exempt own-farm production of distributing plants.

Any handler operating a plant subject to regulation as a pool distributing plant, as defined in § _____.7 of any milk

marketing order, or as a partially regulated distributing plant under any milk marketing order, may make a one-time election to exempt the handler's own-farm milk production from the volume of producer milk receipts eligible to participate in the marketwide pool as "producer milk," and otherwise subject to producer-settlement fund payment obligations under §§ _____.71 and _____.72 of the milk marketing order, or § 1000.76(b) of the General Provisions. Such election and exemption shall be subject to the following conditions and limitations:

(a) Volume limitation for pool-exempt own-farm milk production. The volume of own-farm milk production that a distributing plant handler may elect to exempt under this section shall, for any month, be the lesser of:

(1) A monthly volume based on the daily average milk production marketed from the handler's own-farm(s) during any three consecutive months of production, as designated by the handler and subject to verification by the market administrator, from January 2007 through February 2009, or

(2) A daily average production of 110,000 pounds times the number of days in the month to which the exemption may apply provided that the volume of packaged fluid milk products distributed on routes from such pool-exempt production shall in no event exceed a daily average of 100,000 pounds. Own-farm production of the handler in excess of the exempt volume shall be subject to producer-settlement fund payment obligations in the same manner as milk produced by any dairy farmer.

(b) Limitations based upon prior operations of handlers eligible elect exemption for own-farm milk production. Handlers with own-farm production are not eligible to elect pool exemption for such production under this section unless the handler operated a distributing plant supplied with milk from its own-farm(s) during at least three consecutive months during the 24-month period immediately preceding the effective date of this section, and the distributing plant was either: a producer-handler plant, an exempt plant, or a non-pool plant during those months.

(c) Limitations based upon common ownership in the handler's plant and farm facilities. As used in this section, "own-farm" means any dairy farm(s) of the handler that is owned by the same person or persons who own and operate the handler plant facility, and their ownership in the farm(s) is at least 95 percent identical with their ownership in the handler. Additionally,

(1) Owners of the handler and associated producer shall not exceed 10 individual persons or owners of equitable interest in the handler or producer business entity,

(2) For purposes of this section, ownership held by members of a family shall be considered single ownership by one person. Members of a family for purposes of such single ownership include only: A spouse, a former spouse, and persons of lineal consanguinity of the first or second degree or collateral consanguinity to the fourth degree, and their spouses (or former spouses), and includes an adopted child the same as a natural child and kindred of the half blood equally with those of the whole blood of the owner(s).

(3) Property pledged or hypothecated in any manner to others shall nevertheless be considered "owned" if equitable ownership with management and control remain with the persons operating the plant and associated dairy farm(s).

(d) Date upon which, and manner in which, the one-time election must be exercised. The market administrator shall provide timely notice in writing to handlers with own-farm production who are or may be eligible to elect a pool exemption for such production under this section. The election for pool-exempt own-farm production shall be exercised by an eligible handler by giving notice of election in writing to the market administrator, which notice shall contain facts upon which the handler claims to qualify under this section, on or before:

(1) Thirty days after the effective date of this provision; or

(2) For a handler with own-farm production on the effective date of this provision, but without route disposition in any Federal milk marketing area for twelve months preceding the effective date, thirty days following first route disposition in the marketing area, or fifteen days after notice by the market administrator, whichever is later.

(e) Applicability of minimum classified prices to handlers with pool-exempt own-farm milk. Exemption from payment obligations in §§ _____.71 and _____.72 for own-farm milk under this section shall not constitute an exemption for own-farm milk from compliance with minimum classified price obligations. For payment purposes, the handler will be deemed to have paid to its own-farm a price for pool-exempt own-farm milk equal to its butterfat and skim milk (or skim components) value, as provided by calculations for "handler's value of

milk" in § _____.60 of the marketing order.

(f) Waiver or loss of eligibility for pool-exempt own-farm production. The own-farm production of any handler

(1) Who has failed to make the election provided by this section;

(2) Who, after making the election, fails to conform with any limitation or requirement for such exemption; or

(3) Who has given notice in writing to the market administrator that it no longer wishes to exempt its own-farm production from the pool, shall be regulated, pooled, and priced in the same manner as milk produced by any dairy farm not eligible for pool exemption, and the handler shall not thereafter be eligible to exercise the exemption provided herein.

40. Amend § 1000.14 by adding new paragraph (d) to read as follows:

* * * * *

(d) Receipts of fluid milk products and bulk fluid cream products from any dairy farm eligible to market pool-exempt own-farm milk pursuant to § _____.10, except with respect to such receipts by the distributing plant owned in common with the farm as described in § _____.10.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

41. Amend § 1001.60 by adding new paragraph (j) to read as follows:

§ 1001.60 Handler's value of milk.

* * * * *

(j) For purposes of calculating the producer price differential in § _____.61, or a handler's obligation to or from the producer-settlement fund in §§ _____.71, _____.72, and _____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § _____.10 shall not be included as part of the "total value" of milk, "total hundredweight" of producer milk, or "total pounds" of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ _____.61 and _____.71 through _____.76.

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

42. Amend § 1005.60 by adding new paragraph (h) to read as follows:

§ 1005.60 Handler's value of milk.

* * * * *

(h) For purposes of calculating the producer price differential in § _____.61, or a handler's obligation to or from the producer-settlement fund in §§ _____.71, _____.72, and _____.76, the value and volume of pool-exempt own-farm milk

of the handler qualified for exemption pursuant to § _____.10 shall not be included as part of the "total value" of milk, "total hundredweight" of producer milk, or "total pounds" of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ _____.61 and _____.71 through _____.76.

PART 1006—MILK IN THE FLORIDA MARKETING AREA

43. Amend § 1006.60 by adding new paragraph (h) to read as follows:

§ 1006.60 Handler's value of milk.

* * * * *

(h) For purposes of calculating the producer price differential in § _____.61, or a handler's obligation to or from the producer-settlement fund in §§ _____.71, _____.72, and _____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § _____.10 shall not be included as part of the "total value" of milk, "total hundredweight" of producer milk, or "total pounds" of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ _____.61 and _____.71 through _____.76.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

44. Amend § 1007.60. by adding new paragraph (h) to read as follows:

§ 1007.60 Handler's value of milk.

* * * * *

(h) For purposes of calculating the producer price differential in § _____.61, or a handler's obligation to or from the producer-settlement fund in §§ _____.71, _____.72, and _____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § _____.10 shall not be included as part of the "total value" of milk, "total hundredweight" of producer milk, or "total pounds" of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ _____.61 and _____.71 through _____.76.

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

45. Amend § 1030.60 by adding new paragraph (l) to read as follows:

§ 1030.60 Handler's value of milk.

* * * * *

(l) For purposes of calculating the producer price differential in § _____.61, or a handler's obligation to or from the producer-settlement fund in §§ _____.71, _____.72, and _____.76, the value and

volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § _____.10 shall not be included as part of the "total value" of milk, "total hundredweight" of producer milk, or "total pounds" of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ _____.61 and _____.71 through _____.76.

PART 1032—MILK IN THE CENTRAL MARKETING AREA

46. Amend § 1032.60 by adding new paragraph (k) to read as follows:

§ 1032.60 Handler's value of milk.

* * * * *

(k) For purposes of calculating the producer price differential in § _____.61, or a handler's obligation to or from the producer-settlement fund in §§ _____.71, _____.72, and _____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § _____.10 shall not be included as part of the "total value" of milk, "total hundredweight" of producer milk, or "total pounds" of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ _____.61 and _____.71 through _____.76.

PART 1033—MILK IN THE MIDEAST MARKETING AREA

47. Amend § 1033.60 by adding new paragraph (k) to read as follows:

§ 1033.60 Handler's value of milk.

* * * * *

(k) For purposes of calculating the producer price differential in § _____.61, or a handler's obligation to or from the producer-settlement fund in §§ _____.71, _____.72, and _____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § _____.10 shall not be included as part of the "total value" of milk, "total hundredweight" of producer milk, or "total pounds" of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ _____.61 and _____.71 through _____.76.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

48. Amend § 1124.60 by adding new paragraph (j) to read as follows:

§ 1124.60 Handler's value of milk.

* * * * *

(j) For purposes of calculating the producer price differential in § _____.61, or a handler's obligation to or from the producer-settlement fund in §§ _____.71,

_____.72, and _____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § _____.10 shall not be included as part of the "total value" of milk, "total hundredweight" of producer milk, or "total pounds" of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ _____.61 and _____.71 through _____.76.

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

49. Amend § 1126.60 by adding new paragraph (k) to read as follows:

§ 1126.60 Handler's value of milk.

* * * * *

(k) For purposes of calculating the producer price differential in § _____.61, or a handler's obligation to or from the producer-settlement fund in §§ _____.71, _____.72, and _____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § _____.10 shall not be included as part of the "total value" of milk, "total hundredweight" of producer milk, or "total pounds" of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ _____.61 and _____.71 through _____.76.

PART 1131—MILK IN THE ARIZONA MARKETING AREA

50. Amend § 1131.60 by adding new paragraph (g) to read as follows:

§ 1131.60 Handler's value of milk.

* * * * *

(g) For purposes of calculating the producer price differential in § _____.61, or a handler's obligation to or from the producer-settlement fund in §§ _____.71, _____.72, and _____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § _____.10 shall not be included as part of the "total value" of milk, "total hundredweight" of producer milk, or "total pounds" of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ _____.61 and _____.71 through _____.76.

Proposed by Hornstra Farms.

Proposal No. 18

This proposal seeks to end the regulatory exemption of producer-handlers from the pooling and pricing provisions of all orders if their production exceeds 1,500,000 pounds of milk per month.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

51. Amend § 1000.8 by revising paragraph (b) to read as follows:

§ 1000.8 Nonpool plant.

* * * * *

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined under any Federal order provided the producer-handler in all markets has milk production of 1,500,000 million pounds or less during the month.

* * * * *

Proposed Pennsylvania Association of Milk Dealers.

Proposal No. 19

This proposal seeks to amend the exempt plant provision for all milk orders by increasing the current limit on monthly route disposition and packaged sales of fluid milk products to other plants from 150,000 pounds or less during the month to 450,000 pounds or less during the month.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

52. Amend § 1000.8 by revising paragraph (e)(4) to read as follows:

§ 1000.8 Nonpool plant.

* * * * *

(e) * * *

(4) A plant that in all markets has route disposition and packaged sales of fluid milk products to other plants of 450,000 pounds or less during the month.

Proposed by Select Milk Producers, Inc. and Continental Dairy Products, Inc.

Proposal No. 20

This proposal would establish a one-time exemption from pricing and pooling provisions for certain types of handlers.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

53. Add new section § 1000.10 to read as follows:

1000.10 Pool-exempt own-farm production of distributing plants.

Any handler operating a plant subject to regulation as a pool distributing plant, as defined in § _____.7 of any milk marketing order, or as a partially regulated distributing plant under any milk marketing order, may make a one-time election to exempt the handler's

own-farm milk production from the volume of producer milk receipts otherwise subject to producer-settlement fund payment obligations under §§ _____.71 and _____.72 of the milk marketing order, or § 1000.76 of the General Provisions. Such election and exemption shall be subject to the following conditions and limitations:

(a) *Volume limitation for pool-exempt own-farm milk production.* The volume of own-farm milk production that a distributing plant handler may elect to exempt under this section shall, for any month, be the lesser of:

(1) A monthly volume based on the daily average milk production marketed from the handler's own-farm(s) during any three consecutive months of production, as designated by the handler and subject to verification by the market administrator, from January 2007 through February 2008, or,

(2) A daily average production of 100,000 pounds times the number of days in the month to which the exemption may apply. Own-farm production of the handler in excess of the exempt volume shall be subject to producer-settlement fund payment obligations in the same manner as milk produced by any dairy farmer.

(b) *Limitations based upon prior operations of handlers eligible elect exemption for own-farm milk production.* Handlers with own-farm production are not eligible to elect pool exemption for such production under this section unless:

(1) The handler operated a distributing plant supplied with milk from its own-farm(s) during at least three consecutive months from January 2007 through February 2008, and

(2) Milk produced by the own-farm(s) that supplied the handler's distributing plant was not received as producer milk at the pool plant of any other handler under any Federal milk marketing order at any time after February 2008.

(c) *Limitations based upon ownership in the handler's plant and farm facilities.* Handlers with own-farm production are not eligible to elect own-farm pool exemption under this section unless all of the ownership of the handler as plant operator and all of the ownership of the dairy farm(s) is owned by the same person or persons, and their ownership in the producer is at least 95 percent identical with their ownership in the handler. Additionally,

(1) Owners of the plant and associated producer shall not exceed 10 individual persons or owners of equitable interest in the handler or producer business entity,

(2) For purposes of this section, a "person" or "persons" includes the

spouse, or other persons of lineal consanguinity of the first or second degree or collateral consanguinity to the fourth degree, and their spouses, and includes an adopted child the same as a natural child and kindred of the half blood equally with those of the whole blood of the owner and ownerships by persons so related shall be considered single ownership by one person.

(3) For purposes of this section, property pledged or hypothecated in any manner to others shall nevertheless be considered "owned" if equitable ownership with management and control remain with the persons operating the plant and associated dairy farm(s).

(d) *Date upon which, and manner in which, the one-time election must be exercised.* The market administrator shall provide timely notice in writing to handlers with own-farm production who are or may be eligible to elect a pool exemption for such production under this section. The election for pool-exempt own-farm production shall be exercised by an eligible handler by giving notice of election in writing to the market administrator, which notice shall contain facts upon which the handler claims to qualify under this section, on or before:

(1) Thirty days after the effective date of this provision; or

(2) For a handler with own-farm production on the effective date of this provision, but without route disposition in any Federal milk marketing area for 12 months preceding the effective date, 30 days following first route disposition in the marketing area, or 15 days after notice by the market administrator, whichever is later.

(e) *Applicability of minimum classified prices to handlers with pool-exempt own-farm milk.* Exemption from payment obligations in §§ _____.71 and _____.72 for own-farm milk under this section shall not constitute an exemption for own-farm milk from compliance with minimum classified price obligations. For payment purposes, the handler will be deemed to have paid to its own-farm a price for pool-exempt own-farm milk equal to its butterfat and skim milk (or skim components) value, as provided by calculations for a handler's value of milk in § _____.60 of the marketing order.

(f) *Waiver or loss of eligibility for pool-exempt own-farm production.* The own-farm production of any handler

(1) Who has failed to make the election provided by this section;

(2) Who, after making the election, fails to conform with any limitation or requirement for such exemption for any

period in which it fails to so conform; or

(3) Who has given notice in writing to the market administrator that it no longer wishes to exempt its own-farm production from the pool shall be regulated and priced in the same manner as milk produced by any dairy farm not eligible for pool exemption, and the handler shall not thereafter be eligible to exercise the exemption provided herein.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

54. Amend § 1000.14 by adding paragraph (d) to read as follows:

* * * * *

(d) Receipts of fluid milk products and bulk fluid cream products from any dairy farm eligible to market pool-exempt own-farm milk pursuant to § ____.10, except with respect to such receipts by the distributing plant owned in common with the farm as described in § ____.10.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

55. Revise § 1001.10 to read as follows:

§ 1001.10 Producer-handler.
See § 1000.10.

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

56. Revise § 1005.10 to read as follows:

§ 1005.10 Producer-handler.
See § 1000.10.

PART 1006—MILK IN THE FLORIDA MARKETING AREA

57. Revise § 1006.10 to read as follows:

§ 1006.10 Producer-handler.
See § 1000.10.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

58. Revise § 1007.10 to read as follows:

§ 1007.10 Producer-handler.
See § 1000.10.

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

59. Revise § 1030.10 to read as follows:

§ 1030.10 Producer-handler.
See § 1000.10.

PART 1032—MILK IN THE CENTRAL MARKETING AREA

60. Revise § 1032.10 to read as follows:

§ 1032.10 Producer-handler.
See § 1000.10.

PART 1033—MILK IN THE MIDEAST MARKETING AREA

61. Revise § 1033.10 to read as follows:

§ 1033.10 Producer-handler.
See § 1000.10.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

62. Revise § 1124.10 to read as follows:

§ 1124.10 Producer-handler.
See § 1000.10.

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

63. Revise § 1126.10 to read as follows:

§ 1126.10 Producer-handler.
See § 1000.10.

PART 1131—MILK IN THE ARIZONA MARKETING AREA

64. Revise § 1131.10 to read as follows:

§ 1131.10 Producer-handler.
See § 1000.10.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

65. Amend § 1001.60 by adding paragraph (j) to read as follows:

§ 1001.60 Handler's value of milk.
* * * * *

(j) For purposes of calculating the producer price differential in § ____.61, or a handler's obligation to or from the producer-settlement fund in §§ ____.71, ____.72, and ____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § ____.10 shall not be included as part of the "total value" of milk, "total hundredweight" of producer milk, or "total pounds" of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ ____.61 and ____.71 through ____.76.

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

66. Amend § 1005.60 by adding paragraph (h) to read as follows:

§ 1005.60 Handler's value of milk.
* * * * *

(h) For purposes of calculating the producer price differential in § ____.61, or a handler's obligation to or from the producer-settlement fund in §§ ____.71, ____.72, and ____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § ____.10 shall not be included as part of the "total value" of milk, "total hundredweight" of producer milk, or "total pounds" of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ ____.61 and ____.71 through ____.76.

PART 1006—MILK IN THE FLORIDA MARKETING AREA

67. Amend § 1006.60 by adding paragraph (h) to read as follows:

§ 1006.60 Handler's value of milk.
* * * * *

(h) For purposes of calculating the producer price differential in § ____.61, or a handler's obligation to or from the producer-settlement fund in §§ ____.71, ____.72, and ____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § ____.10 shall not be included as part of the "total value" of milk, "total hundredweight" of producer milk, or "total pounds" of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ ____.61 and ____.71 through ____.76.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

68. Amend § 1007.60 by adding paragraph (h) to read as follows:

§ 1007.60 Handler's value of milk.
* * * * *

(h) For purposes of calculating the producer price differential in § ____.61, or a handler's obligation to or from the producer-settlement fund in §§ ____.71, ____.72, and ____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § ____.10 shall not be included as part of the "total value" of milk, "total hundredweight" of producer milk, or "total pounds" of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ ____.61 and ____.71 through ____.76.

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

69. Amend § 1030.60 by adding paragraph (l) to read as follows:

§ 1030.60 Handler's value of milk.

(l) For purposes of calculating the producer price differential in § _____.61, or a handler's obligation to or from the producer-settlement fund in §§ _____.71, _____.72, and _____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § _____.10 shall not be included as part of the "total value" of milk, "total hundredweight" of producer milk, or "total pounds" of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ _____.61 and _____.71 through _____.76.

PART 1032—MILK IN THE CENTRAL MARKETING AREA

70. Amend § 1032.60 by adding paragraph (k) to read as follows:

§ 1032.60 Handler's value of milk.

(k) For purposes of calculating the producer price differential in § _____.61, or a handler's obligation to or from the producer-settlement fund in §§ _____.71, _____.72, and _____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § _____.10 shall not be included as part of the "total value" of milk, "total hundredweight" of producer milk, or "total pounds" of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ _____.61 and _____.71 through _____.76.

PART 1033—MILK IN THE MIDEAST MARKETING AREA

71. Amend § 1033.60 by adding paragraph (k) to read as follows:

§ 1033.60 Handler's value of milk.

(k) For purposes of calculating the producer price differential in § _____.61, or a handler's obligation to or from the producer-settlement fund in §§ _____.71, _____.72, and _____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § _____.10 shall not be included as part of the "total value" of milk, "total hundredweight" of producer milk, or "total pounds" of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ _____.61 and _____.71 through _____.76.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

72. Amend § 1124.60 by adding paragraph (j) to read as follows:

§ 1124.60 Handler's value of milk.

(j) For purposes of calculating the producer price differential in § _____.61, or a handler's obligation to or from the producer-settlement fund in §§ _____.71, _____.72, and _____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § _____.10 shall not be included as part of the "total value" of milk, "total hundredweight" of producer milk, or "total pounds" of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ _____.61 and _____.71 through _____.76.

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

73. Amend § 1126.60 by adding paragraph (k) to read as follows:

§ 1126.60 Handler's value of milk.

(k) For purposes of calculating the producer price differential in § _____.61, or a handler's obligation to or from the producer-settlement fund in §§ _____.71, _____.72, and _____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § _____.10 shall not be included as part of the "total value" of milk, "total hundredweight" of producer milk, or "total pounds" of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ _____.61 and _____.71 through _____.76.

PART 1131—MILK IN THE ARIZONA MARKETING AREA

74. Amend § 1131.60 by adding paragraph (g) to read as follows:

§ 1131.60 Handler's value of milk.

(g) For purposes of calculating the producer price differential in § _____.61, or a handler's obligation to or from the producer-settlement fund in §§ _____.71, _____.72, and _____.76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to § _____.10 shall not be included as part of the "total value" of milk, "total hundredweight" of producer milk, or "total pounds" of milk components wherever those terms (or equivalent terms) are used in or incorporated by §§ _____.61 and _____.71 through _____.76.

Proposal No. 21

This proposal seeks to end the regulatory exemption of producer-handlers from the pricing and pooling

provisions of all orders, except the Pacific Northwest and Arizona milk marketing orders, if their route disposition exceeds 3,000,000 pounds of milk per month.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

75. Amend § 1001.10 by revising paragraph (a) to read as follows:

§ 1001.10 Producer-handler.

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area, not to exceed 3 million pounds;

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

76. Amend § 1005.10 by revising paragraph (a) to read as follows:

§ 1005.10 Producer-handler.

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area, not to exceed 3 million pounds;

PART 1006—MILK IN THE FLORIDA MARKETING AREA

77. Amend § 1006.10 by revising paragraph (a) to read as follows:

§ 1006.10 Producer-handler.

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area, not to exceed 3 million pounds;

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

78. Amend § 1007.10 by revising paragraph (a) to read as follows:

§ 1007.10 Producer-handler.

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area, not to exceed 3 million pounds;

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

79. Amend § 1030.10 by revising paragraph (a) to read as follows:

§ 1030.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area, not to exceed 3 million pounds;

* * * * *

PART 1032—MILK IN THE CENTRAL MARKETING AREA

80. Amend § 1032.10 by revising paragraph (a) to read as follows:

§ 1032.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area, not to exceed 3 million pounds;

* * * * *

PART 1033—MILK IN THE MIDEAST MARKETING AREA

81. Amend § 1033.10 by revising paragraph (a) to read as follows:

§ 1033.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area, not to exceed 3 million pounds;

* * * * *

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

82. Amend § 1126.10 by revising paragraph (a) to read as follows:

§ 1126.10 Producer-handler.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area, not to exceed 3 million pounds;

* * * * *

Proposed by Northeast Dairy Foods Association, Inc.

Proposal No. 22

This proposal seeks to eliminate the producer-handler provision of all orders.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

§ 1000.8 [Amended]

83. Amend § 1000.8 by:
 (1) Removing paragraph (b); and
 (2) Redesignating paragraphs (c), (d) and (e) as (b), (c) and (d).

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

§ 1001.10 [Removed]

84. Remove and reserve § 1001.10.

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

§ 1005.10 [Removed]

85. Remove and reserve § 1005.10.

PART 1006—MILK IN THE FLORIDA MARKETING AREA

§ 1006.10 [Removed]

86. Remove and reserve § 1006.10.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

§ 1007.10 [Removed]

87. Remove and reserve § 1007.10.

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

§ 1030.10 [Removed]

88. Remove and reserve § 1030.10.

PART 1032—MILK IN THE CENTRAL MARKETING AREA

§ 1032.10 [Removed]

89. Remove and reserve § 1032.10.

PART 1033—MILK IN THE MIDEAST MARKETING AREA

§ 1033.10 [Removed]

90. Remove and reserve § 1033.10.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

§ 1124.10 [Removed]

91. Remove and reserve § 1124.10.

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

§ 1126.10 [Removed]

92. Remove and reserve § 1126.10.

PART 1131—MILK IN THE ARIZONA MARKETING AREA

§ 1131.10 [Removed]

93. Remove and reserve § 1131.10.

Proposed by American Independent Dairy Alliance.

Proposal No. 23

This proposal would remove the producer-handler provision from all milk orders and establish a provision to exempt, from regulation, milk procured from a farm owned by a handler. Additionally, this proposal seeks to treat handlers with own-farm production as partially regulated distributing plants.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

§ 1000.8 [Amended]

94. Amend § 1000.8 by:
 (1) Removing paragraph (b); and
 (2) Redesignating paragraphs (c), (d) and (e) as (b), (c) and (d).

95. Amend § 1000.76 by adding paragraph (e) to read as follows:

§ 1000.76 Payments by a handler operating a partially regulated distributing plant.

* * * * *

(e) Any handler may elect partially regulated distributing plant status for any pool plant with respect to receipts of milk from a dairy farm owned and operated by the handler (hereinafter "own farm production"), subject to the following conditions:

(1) The handler provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce own farm milk, and the processing and packaging operations, are the plant operator's own enterprise and at its own risk;

(2) Packaged fluid milk products distributed from the plant are not sold or marketed below the handler's costs, provided:

(i) Handler's costs shall be Class I prices plus costs of manufacturing, processing, handling, marketing and delivery,

(ii) The Deputy Administrator, Dairy Programs, may issue rules and procedures for determining handler's costs, or to evaluate any complaint by any person that a handler subject to this paragraph (e) is marketing packaged fluid milk products below cost.

(3) The volume of own farm production of milk (or of milk components in own farm production) shall be deemed to be received and paid for by the handler at a price equal to the distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, and shall not be included in the volume of milk or milk components that are subject to payments to or from the producer settlement fund pursuant to §§ _____.71 or _____.72 of any order.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

96. Revise § 1001.10 to read as follows:

§ 1001.10 Exemption for own-farm production of handlers.

Any operator of a pool plant or partially regulated distributing plant:

(a) From which there is route disposition in the marketing area during the month; and

(b) That receives fluid milk from the own-farm production of a farm under the ownership and control of the operator; and

(c) Who provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce the volume of milk processed under paragraph (b) of this section and the processing and packaging operations are the operator's own enterprise and at its own risk;

(d) Shall have such the volumes of own-farm production treated as exempt volumes for the purposes of calculating any obligation of the handler under §§ _____.71 and _____.72 of the order. For handlers also purchasing producer milk for use at its plant, the market administrator shall down-allocate the volumes of own-farm produced milk to the plant's lowest value use before calculating the plant's value of milk and any obligations to the producer-settlement fund.

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

97. Revise § 1005.10 to read as follows:

§ 1005.10 Exemption for own-farm production of handlers.

Any operator of a pool plant or partially regulated distributing plant:

(a) From which there is route disposition in the marketing area during the month; and

(b) That receives fluid milk from the own-farm production of a farm under the ownership and control of the operator; and

(c) Who provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce the volume of milk processed under paragraph (b) of this section and the processing and packaging operations are the operator's own enterprise and at its own risk;

(d) Shall have such the volumes of own-farm production treated as exempt volumes for the purposes of calculating any obligation of the handler under §§ _____.71 and _____.72 of the order. For handlers also purchasing producer milk for use at its plant, the market administrator shall down-allocate the volumes of own-farm produced milk to the plant's lowest value use before calculating the plant's value of milk and any obligations to the producer-settlement fund.

PART 1006—MILK IN THE FLORIDA MARKETING AREA

98. Revise § 1006.10 to read as follows:

§ 1006.10 Exemption for own-farm production of handlers.

Any operator of a pool plant or partially regulated distributing plant:

(a) From which there is route disposition in the marketing area during the month; and

(b) That receives fluid milk from the own-farm production of a farm under the ownership and control of the operator; and

(c) Who provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce the volume of milk processed under paragraph (b) of this section and the processing and packaging operations are the operator's own enterprise and at its own risk;

(d) Shall have such the volumes of own-farm production treated as exempt volumes for the purposes of calculating any obligation of the handler under §§ _____.71 and _____.72 of the order. For handlers also purchasing producer milk for use at its plant, the market administrator shall down-allocate the volumes of own-farm produced milk to the plant's lowest value use before calculating the plant's value of milk and any obligations to the producer-settlement fund.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

99. Revise § 1007.10 to read as follows:

§ 1007.10 Exemption for own-farm production of handlers.

Any operator of a pool plant or partially regulated distributing plant:

(a) From which there is route disposition in the marketing area during the month; and

(b) That receives fluid milk from the own-farm production of a farm under the ownership and control of the operator; and

(c) Who provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce the volume of milk processed under paragraph (b) of this section and the processing and packaging operations are the operator's own enterprise and at its own risk;

(d) Shall have such the volumes of own-farm production treated as exempt volumes for the purposes of calculating any obligation of the handler under

§§ _____.71 and _____.72 of the order. For handlers also purchasing producer milk for use at its plant, the market administrator shall down-allocate the volumes of own-farm produced milk to the plant's lowest value use before calculating the plant's value of milk and any obligations to the producer-settlement fund.

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

100. Revise § 1030.10 to read as follows:

§ 1030.10 Exemption for own-farm production of handlers.

Any operator of a pool plant or partially regulated distributing plant:

(a) From which there is route disposition in the marketing area during the month; and

(b) That receives fluid milk from the own-farm production of a farm under the ownership and control of the operator; and

(c) Who provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce the volume of milk processed under paragraph (b) of this section and the processing and packaging operations are the operator's own enterprise and at its own risk;

(d) Shall have such the volumes of own-farm production treated as exempt volumes for the purposes of calculating any obligation of the handler under §§ _____.71 and _____.72 of the order. For handlers also purchasing producer milk for use at its plant, the market administrator shall down-allocate the volumes of own-farm produced milk to the plant's lowest value use before calculating the plant's value of milk and any obligations to the producer-settlement fund.

PART 1032—MILK IN THE CENTRAL MARKETING AREA

101. Revise § 1032.10 to read as follows:

§ 1032.10 Exemption for own-farm production of handlers.

Any operator of a pool plant or partially regulated distributing plant:

(a) From which there is route disposition in the marketing area during the month; and

(b) That receives fluid milk from the own-farm production of a farm under the ownership and control of the operator; and

(c) Who provides proof satisfactory to the market administrator that the care and management of the dairy animals

and other resources necessary to produce the volume of milk processed under paragraph (b) of this section and the processing and packaging operations are the operator's own enterprise and at its own risk;

(d) Shall have such the volumes of own-farm production treated as exempt volumes for the purposes of calculating any obligation of the handler under §§ ____.71 and ____.72 of the order. For handlers also purchasing producer milk for use at its plant, the market administrator shall down-allocate the volumes of own-farm produced milk to the plant's lowest value use before calculating the plant's value of milk and any obligations to the producer-settlement fund.

PART 1033—MILK IN THE MIDEAST MARKETING AREA

102. Revise § 1033.10 to read as follows:

§ 1033.10 Exemption for own-farm production of handlers.

Any operator of a pool plant or partially regulated distributing plant:

(a) From which there is route disposition in the marketing area during the month; and

(b) That receives fluid milk from the own-farm production of a farm under the ownership and control of the operator; and

(c) Who provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce the volume of milk processed under paragraph (b) of this section and the processing and packaging operations are the operator's own enterprise and at its own risk;

(d) Shall have such the volumes of own-farm production treated as exempt volumes for the purposes of calculating any obligation of the handler under §§ ____.71 and ____.72 of the order. For handlers also purchasing producer milk for use at its plant, the market administrator shall down-allocate the volumes of own-farm produced milk to the plant's lowest value use before calculating the plant's value of milk and any obligations to the producer-settlement fund.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

103. Revise § 1124.10 to read as follows:

§ 1124.10 Exemption for own-farm production of handlers.

Any operator of a pool plant or partially regulated distributing plant:

(a) From which there is route disposition in the marketing area during the month; and

(b) That receives fluid milk from the own-farm production of a farm under the ownership and control of the operator; and

(c) Who provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce the volume of milk processed under paragraph (b) of this section and the processing and packaging operations are the operator's own enterprise and at its own risk;

(d) Shall have such the volumes of own-farm production treated as exempt volumes for the purposes of calculating any obligation of the handler under §§ ____.71 and ____.72 of the order. For handlers also purchasing producer milk for use at its plant, the market administrator shall down-allocate the volumes of own-farm produced milk to the plant's lowest value use before calculating the plant's value of milk and any obligations to the producer-settlement fund.

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

104. Revise § 1126.10 to read as follows:

§ 1126.10 Exemption for own-farm production of handlers.

Any operator of a pool plant or partially regulated distributing plant:

(a) From which there is route disposition in the marketing area during the month; and

(b) That receives fluid milk from the own-farm production of a farm under the ownership and control of the operator; and

(c) Who provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce the volume of milk processed under paragraph (b) of this section and the processing and packaging operations are the operator's own enterprise and at its own risk;

(d) Shall have such the volumes of own-farm production treated as exempt volumes for the purposes of calculating any obligation of the handler under §§ ____.71 and ____.72 of the order. For handlers also purchasing producer milk for use at its plant, the market administrator shall down-allocate the volumes of own-farm produced milk to the plant's lowest value use before calculating the plant's value of milk and any obligations to the producer-settlement fund.

PART 1131—MILK IN THE ARIZONA MARKETING AREA

105. Revise § 1131.10 to read as follows:

§ 1131.10 Exemption for own-farm production of handlers.

Any operator of a pool plant or partially regulated distributing plant:

(a) From which there is route disposition in the marketing area during the month; and

(b) That receives fluid milk from the own-farm production of a farm under the ownership and control of the operator; and

(c) Who provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce the volume of milk processed under paragraph (b) of this section and the processing and packaging operations are the operator's own enterprise and at its own risk;

(d) Shall have such the volumes of own-farm production treated as exempt volumes for the purposes of calculating any obligation of the handler under §§ ____.71 and ____.72 of the order. For handlers also purchasing producer milk for use at its plant, the market administrator shall down-allocate the volumes of own-farm produced milk to the plant's lowest value use before calculating the plant's value of milk and any obligations to the producer-settlement fund.

Proposal No. 24

This proposal would exempt from regulation milk sold by producer-handlers through "handler controlled retail channels" including home-delivery and handler controlled retail outlets, regardless of volume of sales.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

106. Amend § 1001.10 by adding a new paragraph (g) to read as follows:

§ 1001.10 Producer-handler.

* * * * *

(g) Any producer-handler with route disposition through retail channels, either by sales direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler, shall have such retail sales volumes treated as exempt volumes for the purposes of calculating any obligation of the producer-handler under § 1001.71 and § 1001.72. The producer-handler shall provide proof satisfactory to the market administrator that the retail dispositions are made by the producer-handler direct

to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler.

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

107. Amend § 1005.10 by adding a new paragraph (f) to read as follows:

§ 1005.10 Producer-handler.

(f) Any producer-handler with route disposition through retail channels, either by sales direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler, shall have such retail sales volumes treated as exempt volumes for the purposes of calculating any obligation of the producer-handler under § 1005.71 and § 1005.72. The producer-handler shall provide proof satisfactory to the market administrator that the retail dispositions are made by the producer-handler direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler.

PART 1006—MILK IN THE FLORIDA MARKETING AREA

108. Amend § 1006.10 by adding a new paragraph (f) to read as follows:

§ 1006.10 Producer-handler.

(f) Any producer-handler with route disposition through retail channels, either by sales direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler, shall have such retail sales volumes treated as exempt volumes for the purposes of calculating any obligation of the producer-handler under § 1006.71 and § 1006.72. The producer-handler shall provide proof satisfactory to the market administrator that the retail dispositions are made by the producer-handler direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

109. Amend § 1007.10 by adding a new paragraph (f) to read as follows:

§ 1007.10 Producer-handler.

(f) Any producer-handler with route disposition through retail channels, either by sales direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler, shall have

such retail sales volumes treated as exempt volumes for the purposes of calculating any obligation of the producer-handler under § 1007.71 and § 1007.72. The producer-handler shall provide proof satisfactory to the market administrator that the retail dispositions are made by the producer-handler direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler.

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

110. Amend § 1030.10 by adding a new paragraph (g) to read as follows:

§ 1030.10 Producer-handler.

(g) Any producer-handler with route disposition through retail channels, either by sales direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler, shall have such retail sales volumes treated as exempt volumes for the purposes of calculating any obligation of the producer-handler under § 1030.71 and § 1030.72. The producer-handler shall provide proof satisfactory to the market administrator that the retail dispositions are made by the producer-handler direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler.

PART 1032—MILK IN THE CENTRAL MARKETING AREA

111. Amend § 1032.10 by adding a new paragraph (g) to read as follows:

§ 1032.10 Producer-handler.

(g) Any producer-handler with route disposition through retail channels, either by sales direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler, shall have such retail sales volumes treated as exempt volumes for the purposes of calculating any obligation of the producer-handler under § 1032.71 and § 1032.72. The producer-handler shall provide proof satisfactory to the market administrator that the retail dispositions are made by the producer-handler direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler.

PART 1033—MILK IN THE MIDEAST MARKETING AREA

112. Amend § 1033.10 by adding a new paragraph (g) to read as follows:

§ 1033.10 Producer-handler.

(g) Any producer-handler with route disposition through retail channels, either by sales direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler, shall have such retail sales volumes treated as exempt volumes for the purposes of calculating any obligation of the producer-handler under § 1033.71 and § 1033.72. The producer-handler shall provide proof satisfactory to the market administrator that the retail dispositions are made by the producer-handler direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

113. Amend 1124.10 by adding a new paragraph (g) to read as follows:

§ 1124.10 Producer-handler.

(g) Any producer-handler with route disposition through retail channels, either by sales direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler, shall have such retail sales volumes treated as exempt volumes for the purposes of calculating any obligation of the producer-handler under § 1124.71 and § 1124.72. The producer-handler shall provide proof satisfactory to the market administrator that the retail dispositions are made by the producer-handler direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler.

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

114. Amend § 1126.10 by adding a new paragraph (g) to read as follows:

§ 1126.10 Producer-handler.

(g) Any producer-handler with route disposition through retail channels, either by sales direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler, shall have such retail sales volumes treated as exempt volumes for the purposes of calculating any obligation of the producer-handler under § 1126.71 and § 1126.72. The producer-handler shall provide proof satisfactory to the market administrator that the retail dispositions are made by the producer-handler direct to consumers, through home delivery, or to

to distribution outlets owned or controlled by the producer-handler.

PART 1131—MILK IN THE ARIZONA MARKETING AREA

115. Amend § 1131.10 by adding a new paragraph (g) to read as follows:

§ 1131.10 Producer-handler.

* * * * *

(g) Any producer-handler with route disposition through retail channels, either by sales direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler, shall have such retail sales volumes treated as exempt volumes for the purposes of calculating any obligation of the producer-handler under § 1131.71 and § 1131.72. The producer-handler shall provide proof satisfactory to the market administrator that the retail dispositions are made by the producer-handler direct to consumers, through home delivery, or to distribution outlets owned or controlled by the producer-handler.

Proposal No. 25

This proposal would establish "individual handler" pools for all handlers across all orders.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

116. Amend § 1001.61 by revising the introductory text and paragraphs (a) and (b) to read as follows:

§ 1001.61 Computation of producer price differential.

For each month, the market administrator shall compute a producer price differential per hundredweight for each handler required to file a report prescribed by § 1001.30 and for the order in aggregate.

(a) Subject to the conditions in this paragraph, the market administrator shall compute the producer price differential for the order in aggregate in the following manner:

(1) Combine into one total the values computed pursuant to § 1001.60 for all handlers required to file reports prescribed in § 1001.30;

(2) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1001.60 by the protein price, other solids price, and the butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1001.75;

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1001.60(h); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result, rounded to the nearest cent, shall be known as the orders' producer price differential for the month and shall be calculated for purposes of statistical comparison.

(b) For each handler required to file a report prescribed by § 1001.30, the market administrator shall calculate the handler's producer price differential in the following manner:

(1) Subtract the total of the values obtained by multiplying the handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1001.60 by the protein price, other solids price, and the butterfat price, respectively;

(2) Add or subtract an amount equal to the location adjustments computed pursuant to § 1001.75;

(3) Divide the resulting amount by the handler's total hundredweight of producer milk; and

(4) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(3) of this section. The result, rounded to the nearest cent, shall be known as the handler's producer price differential for the month and shall be utilized for determining the pay prices for producers and cooperative associations shipping to that handler.

* * * * *

117. Revise § 1001.62 to read as follows:

§ 1001.62 Announcement of producer prices.

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

(a) The producer price differentials for the order in aggregate and for each handler;

(b) The protein price;
(c) The nonfat solids price;
(d) The other solids price;
(e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat

computed by combining the Class III price and the producer price differential.

(h) If the 14th falls on a Saturday, Sunday, or national holiday, the market administrator may have up to two additional business days to announce the producer price differentials and the statistical uniform price.

§§ 1001.70, 1001.71 and 1001.72 [Removed]

118. Remove and reserve §§ 1001.70, 1001.71 and 1001.72.

119. Amend § 1001.73 by:

- a. Revising paragraph (a)(2)(i);
- b. Removing paragraph (c);
- c. Redesignating paragraphs (d) and (e) as (c) and (d); and
- d. Revising newly redesignated paragraph(c).

The revisions read as follows:

§ 1001.73 Payments to producers and cooperative associations.

(a) * * *

(2) * * *

(i) Multiply the hundredweight of producer milk received by the handler's producer price differential for the month as adjusted pursuant to § 1001.75;

* * * * *

(c) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made in trust to the market administrator to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

* * * * *

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

120. Revise § 1005.61 to read as follows:

§ 1005.61 Computation of uniform prices.

On or before the 11th day of each month, the market administrator shall compute a uniform butterfat price, a uniform skim milk price, and a uniform price for producer milk receipts reported for the prior month for each handler required to file a report prescribed by § 1005.30 and for the order in aggregate.

(a) Uniform butterfat price. The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1005.60(e) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) Uniform skim milk price. The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Combine into one total the values computed pursuant to § 1005.60 for all handlers;

(2) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1005.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section by the butterfat price computed in paragraph (a) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1005.60(e); and

(6) Subtract not less than 4 cents and not more than 5 cents.

(c) Uniform price. The uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

(d) Handler's uniform butterfat price. The uniform butterfat price per pound,

rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1005.60(e) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk reported by the handler used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(e) Handler's uniform skim milk price. The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Begin with the handler's values computed pursuant to § 1005.60;

(2) Add or subtract an amount equal to location adjustments computed pursuant to § 1005.75;

(3) Subtract the value of the total pounds of butterfat for the handler. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (d)(1) and (d)(2) of this section by the butterfat price computed in paragraph (a) of this section;

(4) Divide the resulting amount by the sum of the following for the handler:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1005.60(e); and

(5) Subtract not less than 4 cents and not more than 5 cents.

(f) Handler's uniform price. The handler's uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the handler's uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the handler's uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

121. Section 1005.62 is revised to read as follows:

§ 1005.62 Announcement of uniform prices.

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

(a) The producer price differentials for the order in aggregate and for each handler;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

(h) If the 14th falls on a Saturday, Sunday, or national holiday, the market administrator may have up to two additional business days to announce the producer price differentials and the statistical uniform price.

§§ 1005.70, 1005.71 and 1005.72 [Removed]

122. Remove and reserve § 1005.70, § 1005.71 and § 1005.72.

123. Amend § 1005.73 by:

a. Revising paragraphs (a)(2)(i) and (ii);

b. Removing paragraph (c);

c. Redesignating paragraphs (d) and (e) as (c) and (d); and

d. Revising newly redesignated paragraph (c).

The revisions read as follows:

§ 1005.73 Payments to producers and cooperative associations.

(a) * * *

(2) * * *

(i) Multiply the hundredweight of producer skim milk received times the handler's uniform skim milk price for the month;

(ii) Multiply the pounds of butterfat received times the handler's uniform butterfat price for the month;

* * * * *

(c) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made in trust to the market administrator, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment to the handler or to the lawful claimant as the case may be.

* * * * *

PART 1006—MILK IN THE FLORIDA MARKETING AREA

124. Section 1006.61 is revised to read as follows:

§ 1006.61 Computation of uniform prices.

On or before the 11th day of each month, the market administrator shall compute a uniform butterfat price, a uniform skim milk price, and a uniform price for producer milk receipts reported for the prior month for each handler required to file a report prescribed by § 1005.30 and for the order in aggregate.

(a) Uniform butterfat price. The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1005.60(e) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) Uniform skim milk price. The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Combine into one total the values computed pursuant to § 1005.60 for all handlers;

(2) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1005.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section by the butterfat price computed in paragraph (a) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1005.60(e); and

(6) Subtract not less than 4 cents and not more than 5 cents.

(c) Uniform price. The uniform price per hundredweight, rounded to the

nearest cent, shall be the sum of the following:

(1) Multiply the uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

(d) Handler's uniform butterfat price. The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1005.60(e) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk reported by the handler used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(e) Handler's uniform skim milk price. The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Begin with the handler's values computed pursuant to § 1005.60;

(2) Add or subtract an amount equal to location adjustments computed pursuant to § 1005.75;

(3) Subtract the value of the total pounds of butterfat for the handler. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (d)(1) and (d)(2) of this section by the butterfat price computed in paragraph (a) of this section;

(4) Divide the resulting amount by the sum of the following for the handler:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1005.60(e); and

(5) Subtract not less than 4 cents and not more than 5 cents.

(f) Handler's uniform price. The handler's uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the handler's uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the handler's uniform skim milk price for the month pursuant to paragraph

(b) of this section times 96.5 pounds of skim milk.

125. Section 1006.62 is revised to read as follows:

§ 1006.62 Announcement of uniform prices.

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

(a) The producer price differentials for the order in aggregate and for each handler;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

(h) If the 14th falls on a Saturday, Sunday, or national holiday, the market administrator may have up to two additional business days to announce the producer price differentials and the statistical uniform price.

§§ 1006.70, 1006.71 and 1006.72 [Removed]

126. Remove and reserve §§ 1006.70, 1006.71 and 1006.72.

127. Amend § 1006.73 by:

a. Revising paragraphs (a)(2)(i) and (ii);

b. Removing paragraph (c);

c. Redesignating paragraphs (d) and (e) as (c) and (d); and

d. Revising newly redesignated paragraph (c).

The revisions read as follows:

§ 1006.73 Payments to producers and cooperative associations.

(a) * * *

(2) * * *

(i) Multiply the hundredweight of producer skim milk received times the handler's uniform skim milk price for the month;

(ii) Multiply the pounds of butterfat received times the handler's uniform butterfat price for the month;

* * * * *

(c) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made in trust to the market administrator, and in the event that the handler subsequently locates and pays the producer or a

lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment to the handler or to the lawful claimant as the case may be.

* * * * *

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

128. Revise § 1007.61 to read as follows:

§ 1007.61 Computation of uniform prices.

On or before the 11th day of each month, the market administrator shall compute a uniform butterfat price, a uniform skim milk price, and a uniform price for producer milk receipts reported for the prior month for each handler required to file a report prescribed by § 1005.30 and for the order in aggregate.

(a) Uniform butterfat price. The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1005.60(e) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) Uniform skim milk price. The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Combine into one total the values computed pursuant to § 1005.60 for all handlers;

(2) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1005.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section by the butterfat price computed in paragraph (a) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1005.60(e); and

(6) Subtract not less than 4 cents and not more than 5 cents.

(c) Uniform price. The uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

(d) Handler's uniform butterfat price. The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1005.60(e) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk reported by the handler used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(e) Handler's uniform skim milk price. The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Begin with the handler's values computed pursuant to § 1005.60;

(2) Add or subtract an amount equal to location adjustments computed pursuant to § 1005.75;

(3) Subtract the value of the total pounds of butterfat for the handler. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (d)(1) and (d)(2) of this section by the butterfat price computed in paragraph (a) of this section;

(4) Divide the resulting amount by the sum of the following for the handler:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1005.60(e); and

(5) Subtract not less than 4 cents and not more than 5 cents.

(f) Handler's uniform price. The handler's uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the handler's uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the handler's uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

129. Revise § 1007.62 to read as follows:

§ 1007.62 Announcement of uniform prices.

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

(a) The producer price differentials for the order in aggregate and for each handler;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

(h) If the 14th falls on a Saturday, Sunday, or national holiday, the market administrator may have up to two additional business days to announce the producer price differentials and the statistical uniform price.

§§ 1007.70, 1007.71 and 1007.72 [Removed]

130. Remove and reserve § 1007.70, § 1007.71 and § 1007.72.

131. Amend § 1007.73 by:

a. Revising paragraphs (a)(2)(i) and (ii);

b. Removing paragraph (c);

c. Redesignating paragraphs (d) and (e) as (c) and (d); and

d. Revising newly redesignated paragraph (c).

The revisions read as follows:

§ 1007.73 Payments to producers and cooperative associations.

(a) * * *

(2) * * *

(i) Multiply the hundredweight of producer skim milk received times the handler's uniform skim milk price for the month;

(ii) Multiply the pounds of butterfat received times the handler's uniform butterfat price for the month;

* * * * *

(c) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made in trust to the market administrator, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment to the handler or to the lawful claimant as the case may be.

* * * * *

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

132. Section 1030.61 is revised to read as follows:

§ 1030.61 Computation of producer price differential.

For each month, the market administrator shall compute a producer price differential per hundredweight for each handler required to file a report prescribed by § 1001.30 and for the order in aggregate.

(a) Subject to the conditions in this paragraph, the market administrator shall compute the producer price differential for the order in aggregate in the following manner:

(1) Combine into one total the values computed pursuant to § 1030.60 for all handlers required to file reports prescribed in § 1030.30;

(2) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1030.60 by the protein price, other solids price, and the butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1030.75;

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(a) The total hundredweight of producer milk; and

(b) The total hundredweight for which a value is computed pursuant to § 1030.60(h); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result, rounded to the

nearest cent, shall be known as the orders' producer price differential for the month and shall be calculated for purposes of statistical comparison.

(b) For each handler required to file a report prescribed by § 1030.30, the market administrator shall calculate the handler's producer price differential in the following manner:

(1) Subtract the total of the values obtained by multiplying the handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1030.60 by the protein price, other solids price, and the butterfat price, respectively;

(2) Add or subtract an amount equal to the location adjustments computed pursuant to § 1030.75;

(3) Divide the resulting amount by the handler's total hundredweight of producer milk; and

(4) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(3) of this section. The result, rounded to the nearest cent, shall be known as the handler's producer price differential for the month and shall be utilized for determining the pay prices for producers and cooperative associations shipping to that handler.

133. Section 1030.62 is revised to read as follows:

§ 1030.62 Announcement of uniform prices.

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

(a) The producer price differentials for the order in aggregate and for each handler;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

(h) If the 14th falls on a Saturday, Sunday, or national holiday, the market administrator may have up to two additional business days to announce the producer price differentials and the statistical uniform price.

§§ 1030.70, 1030.71 and 1030.72 [Removed]

134. Remove and reserve §§ 1030.70, 1030.71 and 1030.72.

135. Amend § 1030.73 by:

- a. Revising paragraph (a)(2)(i);
- b. Removing paragraph (c);
- c. Redesignating paragraphs (d) and (e) as (c) and (d); and
- d. Revising newly redesignated paragraph (c).

The revisions read as follows:

§ 1030.73 Payments to producers and cooperative associations.

(a) * * *

(2) * * *

(i) Multiply the hundredweight of producer milk received by the handler's producer price differential for the month as adjusted pursuant to § 1001.75;

* * * * *

(c) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made in trust to the market administrator to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

* * * * *

PART 1032—MILK IN THE CENTRAL MARKETING AREA

136. Amend § 1032.61 by revising the introductory text and paragraphs (a) and (b) to read as follows:

§ 1032.61 Computation of producer price differential.

For each month, the market administrator shall compute a producer price differential per hundredweight for each handler required to file a report prescribed by § 1032.30 and for the order in aggregate.

(a) Subject to the conditions in this paragraph, the market administrator shall compute the producer price differential for the order in aggregate in the following manner:

(1) Combine into one total the values computed pursuant to § 1032.60 for all handlers required to file reports prescribed in § 1032.30;

(2) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1032.60 by the protein price, other solids price, and the butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1032.75;

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1032.60(h); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result, rounded to the nearest cent, shall be known as the orders' producer price differential for the month and shall be calculated for purposes of statistical comparison.

(b) For each handler required to file a report prescribed by § 1032.30, the market administrator shall calculate the handler's producer price differential in the following manner:

(1) Subtract the total of the values obtained by multiplying the handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1032.60 by the protein price, other solids price, and the butterfat price, respectively;

(2) Add or subtract an amount equal to the location adjustments computed pursuant to § 1032.75;

(3) Divide the resulting amount by the handler's total hundredweight of producer milk; and

(4) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(3) of this section. The result, rounded to the nearest cent, shall be known as the handler's producer price differential for the month and shall be utilized for determining the pay prices for producers and cooperative associations shipping to that handler.

* * * * *

137. Section 1032.62 is revised to read as follows:

§ 1032.62 Announcement of uniform prices.

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

(a) The producer price differentials for the order in aggregate and for each handler;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

(h) If the 14th falls on a Saturday, Sunday, or national holiday, the market administrator may have up to two additional business days to announce the producer price differentials and the statistical uniform price.

§§ 1032.70, 1032.71 and 1032.72 [Removed]

138. Remove and reserve §§ 1032.70, 1032.71 and 1032.72.

139. Revise § 1032.73 by:

a. Revising paragraph (a)(2)(i);

b. Removing paragraph (c);

c. Redesignating paragraphs (d) and (e) as (c) and (d); and

d. Revising newly redesignated paragraph(c).

The revisions read as follows:

§ 1032.73 Payments to producers and cooperative associations.

(a) * * *

(2) * * *

(i) Multiply the hundredweight of producer milk received by the handler's producer price differential for the month as adjusted pursuant to § 1032.75;

* * * * *

(c) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made in trust to the market administrator to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

* * * * *

PART 1033—MILK IN THE MIDEAST MARKETING AREA

140. Amend § 1032.61 by revising the introductory text and paragraphs (a) and (b) to read as follows:

§ 1033.61 Computation of producer price differential.

For each month, the market administrator shall compute a producer

price differential per hundredweight for each handler required to file a report prescribed by § 1033.30 and for the order in aggregate.

(a) Subject to the conditions in this paragraph, the market administrator shall compute the producer price differential for the order in aggregate in the following manner:

(1) Combine into one total the values computed pursuant to § 1033.60 for all handlers required to file reports prescribed in § 1033.30;

(2) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1033.60 by the protein price, other solids price, and the butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1033.75;

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1033.60(h); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result, rounded to the nearest cent, shall be known as the orders' producer price differential for the month and shall be calculated for purposes of statistical comparison.

(b) For each handler required to file a report prescribed by § 1033.30, the market administrator shall calculate the handler's producer price differential in the following manner:

(1) Subtract the total of the values obtained by multiplying the handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1033.60 by the protein price, other solids price, and the butterfat price, respectively;

(2) Add or subtract an amount equal to the location adjustments computed pursuant to § 1033.75;

(3) Divide the resulting amount by the handler's total hundredweight of producer milk; and

(4) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(3) of this section. The result, rounded to the nearest cent, shall be known as the

handler's producer price differential for the month and shall be utilized for determining the pay prices for producers and cooperative associations shipping to that handler.

* * * * *

141. § 1033.62 is revised to read as follows:

§ 1033.62 Announcement of uniform prices.

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

(a) The producer price differentials for the order in aggregate and for each handler;

- (b) The protein price;
- (c) The nonfat solids price;
- (d) The other solids price;
- (e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

(h) If the 14th falls on a Saturday, Sunday, or national holiday, the market administrator may have up to two additional business days to announce the producer price differentials and the statistical uniform price.

§§ 1033.70, 1033.71 and 1033.72 [Removed]

142. Remove and reserve §§ 1033.70, 1033.71 and 1033.72.

143. Amend § 1033.73 by:

- a. Revising paragraph (a)(2)(i);
- b. Removing paragraph (c);
- c. Redesignating paragraphs (d) and (e) as (c) and (d); and
- d. Revising newly redesignated paragraph (c).

The revisions read as follows:

§ 1033.73 Payments to producers and cooperative associations.

(a) * * *

(2) * * *

(i) Multiply the hundredweight of producer milk received by the handler's producer price differential for the month as adjusted pursuant to § 1001.75;

* * * * *

(c) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made in trust to the market administrator to the producer-settlement fund, and in the

event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

* * * * *

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

144. Amend § 1124.61 by revising introductory text and paragraphs (a) and (b) to read as follows:

§ 1124.61 Computation of producer price differential.

For each month, the market administrator shall compute a producer price differential per hundredweight for each handler required to file a report prescribed by § 1124.30 and for the order in aggregate.

(a) Subject to the conditions in this paragraph, the market administrator shall compute the producer price differential for the order in aggregate in the following manner:

(1) Combine into one total the values computed pursuant to § 1124.60 for all handlers required to file reports prescribed in § 1124.30;

(2) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1124.60 by the protein price, other solids price, and the butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1124.75;

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

- (i) The total hundredweight of producer milk; and
- (ii) The total hundredweight for which a value is computed pursuant to § 1124.60(h); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result, rounded to the nearest cent, shall be known as the orders' producer price differential for the month and shall be calculated for purposes of statistical comparison.

(b) For each handler required to file a report prescribed by § 1124.30, the

market administrator shall calculate the handler's producer price differential in the following manner:

(1) Subtract the total of the values obtained by multiplying the handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1124.60 by the protein price, other solids price, and the butterfat price, respectively;

(2) Add or subtract an amount equal to the location adjustments computed pursuant to § 1124.75;

(3) Divide the resulting amount by the handler's total hundredweight of producer milk; and

(4) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(3) of this section. The result, rounded to the nearest cent, shall be known as the handler's producer price differential for the month and shall be utilized for determining the pay prices for producers and cooperative associations shipping to that handler.

* * * * *

145. Section 1124.62 is revised to read as follows:

§ 1124.62 Announcement of uniform prices.

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

(a) The producer price differentials for the order in aggregate and for each handler;

- (b) The protein price;
- (c) The nonfat solids price;
- (d) The other solids price;
- (e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

(h) If the 14th falls on a Saturday, Sunday, or national holiday, the market administrator may have up to two additional business days to announce the producer price differentials and the statistical uniform price.

§§ 1124.70, 1124.71 and 1124.72 [Removed]

146. Remove and reserve §§ 1124.70, 1124.71 and 1124.72.

147. Amend § 1124.73 by:

- a. Revising paragraph (a)(2)(i);
- b. Removing paragraph (c);
- c. Redesignating paragraphs (d) and (e) as (c) and (d); and
- d. Revising newly redesignated paragraph(c).

The revisions read as follows:

§ 1124.73 Payments to producers and cooperative associations.

(a) * * *

(2) * * *

(i) Multiply the hundredweight of producer milk received by the handler's producer price differential for the month as adjusted pursuant to § 1001.75;

* * * * *

(c) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made in trust to the market administrator to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

* * * * *

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

148. Amend § 1126.61 by revising the introductory text and paragraphs (a) and (b) to read as follows:

§ 1126.61 Computation of producer price differential.

For each month, the market administrator shall compute a producer price differential per hundredweight for each handler required to file a report prescribed by § 1126.30 and for the order in aggregate.

(a) Subject to the conditions in this paragraph, the market administrator shall compute the producer price differential for the order in aggregate in the following manner:

(1) Combine into one total the values computed pursuant to § 1126.60 for all handlers required to file reports prescribed in § 1126.30;

(2) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1126.60 by the protein price, other solids price, and the butterfat price, respectively;

(3) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1126.75;

(4) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1126.60(h); and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result, rounded to the nearest cent, shall be known as the orders' producer price differential for the month and shall be calculated for purposes of statistical comparison.

(b) For each handler required to file a report prescribed by § 1126.30, the market administrator shall calculate the handler's producer price differential in the following manner:

(1) Subtract the total of the values obtained by multiplying the handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1126.60 by the protein price, other solids price, and the butterfat price, respectively;

(2) Add or subtract an amount equal to the location adjustments computed pursuant to § 1126.75;

(3) Divide the resulting amount by the handler's total hundredweight of producer milk; and

(4) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(3) of this section. The result, rounded to the nearest cent, shall be known as the handler's producer price differential for the month and shall be utilized for determining the pay prices for producers and cooperative associations shipping to that handler.

* * * * *

149. Section 1126.62 is revised to read as follows:

§ 1126.62 Announcement of uniform prices.

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

(a) The producer price differentials for the order in aggregate and for each handler;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat

computed by combining the Class III price and the producer price differential.

(h) If the 14th falls on a Saturday, Sunday, or national holiday, the market administrator may have up to two additional business days to announce the producer price differentials and the statistical uniform price.

§§ 1126.70, 1126.71 and 1126.72 [Removed]

150. Remove and reserve §§ 1126.70, 1126.71 and 1126.72.

151. Amend § 1126.73 by:

- Revising paragraph (a)(2)(i);
- Removing paragraph (c);
- Redesignating paragraphs (d) and (e) as (c) and (d); and
- Revising newly redesignated paragraph (c).

The revisions read as follows:

§ 1126.73 Payments to producers and cooperative associations.

(a) * * *

(2) * * *

(i) Multiply the hundredweight of producer milk received by the handler's producer price differential for the month as adjusted pursuant to § 1001.75;

* * * * *

(c) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made in trust to the market administrator to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

* * * * *

PART 1131—MILK IN THE ARIZONA MARKETING AREA

152. Section 1131.61 is revised to read as follows:

§ 1131.61 Computation of uniform prices.

On or before the 11th day of each month, the market administrator shall compute a uniform butterfat price, a uniform skim milk price, and a uniform price for producer milk receipts reported for the prior month for each handler required to file a report prescribed by § 1005.30 and for the order in aggregate.

(a) Uniform butterfat price. The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1005.60(e) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) Uniform skim milk price. The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Combine into one total the values computed pursuant to § 1005.60 for all handlers;

(2) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1005.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section by the butterfat price computed in paragraph (a) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1005.60(e); and

(6) Subtract not less than 4 cents and not more than 5 cents.

(c) Uniform price. The uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

(d) Handler's uniform butterfat price. The uniform butterfat price per pound,

rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1005.60(e) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk reported by the handler used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(e) Handler's uniform skim milk price. The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Begin with the handler's values computed pursuant to § 1005.60;

(2) Add or subtract an amount equal to location adjustments computed pursuant to § 1005.75;

(3) Subtract the value of the total pounds of butterfat for the handler. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (d)(1) and (d)(2) of this section by the butterfat price computed in paragraph (a) of this section;

(4) Divide the resulting amount by the sum of the following for the handler:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1005.60(e); and

(5) Subtract not less than 4 cents and not more than 5 cents.

(f) Handler's uniform price. The handler's uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the handler's uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the handler's uniform skim milk price for the month pursuant to paragraph

(b) of this section times 96.5 pounds of skim milk.

153. Section 1131.62 is revised to read as follows:

§ 1131.62 Announcement of uniform prices.

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

(a) The producer price differentials for the order in aggregate and for each handler;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

(h) If the 14th falls on a Saturday, Sunday, or national holiday, the market administrator may have up to two additional business days to announce the producer price differentials and the statistical uniform price.

§§ 1131.70, 1131.71 and 1131.72 [Removed]

154. Remove and reserve §§ 1131.70, 1131.71 and 1131.72.

155. Amend § 1131.73 by:

a. Revising paragraphs (a)(2)(i) and (ii);

b. Removing paragraph (c);

c. Redesignating paragraphs (d) and (e) as (c) and (d); and

d. Revising newly redesignated paragraph (c).

The revisions read as follows:

§ 1131.73 Payments to producers and cooperative associations.

(a) * * *

(2) * * *

(i) Multiply the hundredweight of producer skim milk received times the handler's uniform skim milk price for the month;

(ii) Multiply the pounds of butterfat received times the handler's uniform butterfat price for the month;

* * * * *

(c) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made in trust to the market administrator, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment to the handler or to the lawful claimant as the case may be.

* * * * *

Proposed by National Milk Producers Federation.

Proposal No. 26

This proposal seeks to allow current qualified producer-handlers an exemption from the pricing and pooling provisions of their respective order. Specifically, producer-handlers would be exempt from pricing and pooling provisions on the first 3,000,000 pounds of total route disposition and packaged sales of fluid milk products provided that the products distributed are uniquely branded.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

156. Amend § 1000.8 by adding new paragraph (e)(5) to read as follows:

§ 1000.8 Nonpool plant.

* * * * *

(e) * * *

(5) A distributing plant that was operated during 2008 by a producer-handler in a Federal order market within the meaning of the Federal milk marketing order at that time, provided that the plant:

- (i) Has route disposition in all markets and packaged sales of fluid milk products to other plants in all markets that are uniquely branded and total 3,000,000 pounds or less during the month.
- (ii) Receives no fluid milk products, and acquires no fluid milk products for route disposition, from sources other than own-farm production;
- (iii) The plant disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own-farm production; and
- (iv) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled, and the processing and packaging operations, are the plant owner's own enterprise and are operated at the plant owner's own risk, and that the plant owner has no interest in any other distributing plant (except through membership in a Capper-Volstead cooperative association) or in any farms from which the plant does not

receive milk. The burden rests upon the handler who is designated as exempt under this paragraph (e)(5) to establish through records required pursuant to § 1000.27 that the requirements of such exemption are met.

Proposed by New Hampshire Department of Agriculture, Markets and Food and Vermont Agency of Agriculture, Food and Markets.

Proposal No. 27

This proposal seeks to end the regulatory exemption of producer-handlers from the pooling and pricing provisions of their respective orders if their Class I route disposition and sales of packaged fluid milk products exceeds 3,000,000 pounds of milk per month within the marketing area.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

157. Revise § 1000.8(b) to read as follows:

§ 1000.8 Nonpool plant.

* * * * *

(b) *Producer-handler plant* means a plant with route disposition and packaged sales of fluid milk products of 3,000,000 pounds of milk per month or less in the marketing area that is operated by a producer-handler as defined under any Federal order.

* * * * *

Proposed by Weber's Farm Store, Inc.

Proposal No. 28

This proposal seeks to end the regulatory exemption of producer-handlers from the pooling and pricing provisions of the Upper Midwest order if their Class I route disposition and sales of packaged fluid milk products exceeds 2,000,000 pounds of milk per month within the marketing area.

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

158. Amend § 1030.10 by revising paragraph (a) to read as follows:

§ 1000.8 Nonpool plant.

* * * * *

(a) Operates a dairy farm and a distributing plant from which there is

route disposition of 2,000,000 pounds of milk per month or less in the marketing area.

* * * * *

Proposed by Dairy Programs, Agricultural Marketing Service.

Proposal No. 29

For all Federal Milk Marketing Orders, make necessary changes to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid marketing areas, Online at <http://www.ams.usda.gov/dairy>, or from the Hearing Clerk, United States Department of Agriculture, STOP 9200—Room 1031, 1400 Independence Avenue, SW., Washington, DC 20250—9200, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing. Copies of the transcript are also available Online at <http://www.ams.usda.gov/dairy>.

From the time that a hearing notice is issued and until the issuance of a final decision, USDA employees are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person. For this particular proceeding, the prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, Agricultural Marketing Service; Office of the General Counsel; and Dairy Programs, Agricultural Marketing Service (Washington office) and the Offices of all Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: April 3, 2009.

David R. Shipman,
Acting Administrator.

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