

made numerous times over the years to address industry operation changes and to improve program administration.

In 1994, the provisions of part 917 relating to pears were suspended indefinitely (59 FR 10054). The suspension was implemented because the California Bartlett pear industry began using a California State pear program. We believe that if a pear program were in effect under part 917, similar conclusions could be made regarding the 610 review as have been made for nectarines and peaches.

Based upon its review, AMS has determined that the nectarine and peach marketing orders should be continued, and that the pear order provisions should be continued, as suspended.

The marketing orders were established to help the California nectarine and peach industries work with USDA to solve marketing problems. The marketing order regulations on grade, size, maturity, quality, container marking and pack requirements, mandatory inspection, and reporting; and cultural research, marketing research, marketing development, and promotion continue to be beneficial to producers, handlers, and consumers. AMS will continue to work with the California nectarine and peach industries in maintaining effective marketing order programs.

Dated: February 18, 2004.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 04-3956 Filed 2-23-04; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1135

[Docket No. AO-380-A18; DA-01-08-W]

#### Milk in the Western Marketing Area; Termination of the Order

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

**ACTION:** Final rule.

**SUMMARY:** This rule terminates the Western Federal milk marketing order, effective April 1, 2004. A referendum held to determine approval by producers did not obtain the necessary two-thirds percent for adopting the amended order. In these circumstances, the continuation of the existing Western order would not be in conformity with the declared policy of the Agricultural Marketing Agreement Act (AMAA), the

statute providing for milk marketing orders.

**EFFECTIVE DATE:** April 1, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Gino M. Tosi, 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@usda.gov](mailto:gino.tosi@usda.gov).

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed action will not have a significant economic impact on a substantial number of small entities. This rule would eliminate the regulatory impact of the order on dairy farmers and regulated handlers. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. In the Western Federal milk order 550 of the 860 dairy producers (farmers), or 64 percent, whose milk was pooled under the order in June 2003 would meet the definition of small businesses. On the processing side, 15 of the 42 milk plants or 36 percent associated with the Western milk order during June 2003 would qualify as "small businesses".

This rule terminates the Western Federal milk marketing order, effective April 1, 2004. It is likely that market conditions would tend to become less orderly or stable. However, it must be assumed that the consequences of the termination of the Western order have been considered by those producers who rejected the proposed amended order, and that possibly other methods have or will be made to replace the stabilizing influence of the marketing order. Less than two-thirds percent of the voting producers in the referendum approved the issuance of the proposed amended order.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and may request a modification of an order or to be exempted from the order. After a hearing, the Secretary would rule on the petition. The Act provides that the district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of termination is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of the milk in the Western marketing area.

#### Prior Documents in This Proceeding:

*Proposed Termination of Order:* Issued January 7, 2004; published January 13, 2004 (69 FR 1957).

*Tentative Final Decision:* Issued August 8, 2003; published August 18, 2003 (68 FR 49375).

#### Statement of Consideration

This rule terminates the Western Federal milk marketing order, effective April 1, 2004.

In total, eight comments were received from interested parties. Five comments were from dairy interests regulated under the terms of the Western milk marketing order. Of these five comments, two supported termination and three expressed support for retaining the current Western order.

Three interested parties who are not regulated or pool milk on the Western order also submitted comments. Of these three comments, one comment did not either support or oppose termination and two supported retaining the current Western order.

Comments that supported retaining the current Western order expressed concern for the potential consequences to producers in other Federal milk

marketing orders if the Western order is terminated. In this regard, concerns were offered, most notably, that milk currently pooled on the Western order would seek to be pooled on other orders which may give rise to disorderly marketing conditions in other markets and lower prices received by producers who pool milk under the terms of another milk marketing order.

One comment that supported the termination of the Western order was of the opinion that the current and the proposed amended Western order harmed specific dairy interests in Utah. A second comment supporting termination of the Western order stressed the dairy-farmer orientation of the Federal milk marketing order program and that the Agricultural Marketing Agreement Act (AMAA) (the enabling legislation for milk marketing orders) requires the proper endorsement of producers before milk order regulations can be implemented. This comment stressed that the Western order lacks this needed endorsement. In this regard, the comment stressed that the lack of the required two-thirds support of producers leaves the Department with no other recourse than to terminate the Western order so as to be in conformity with the requirements of the AMAA.

Termination of the Western order will remove government enforcement of minimum prices to handlers and to producers that are established by the order. It will also remove other stabilizing features of the regulatory program such as: An impartial audit of handler records to insure payment to dairy farmers and to verify the reported uses of milk; the assurance to farmers of accurate weighing, testing, classification and accounting for milk; and the existence of marketing information to evaluate market performance. Thus, it is likely that market conditions would tend to become less orderly or stable. However, it must be assumed that the consequences of the termination of the Western order have been considered by those producers who rejected the proposed amended order, and that possibly other methods have or will be made to replace the stabilizing influence of the marketing order.

Regardless of the possible economic effects of terminating the Western order, a termination is required by the AMAA. As stated in the proposed termination, less than two-thirds percent of the voting producers in the referendum approved the issuance of the proposed amended order. In these circumstances, where it has been determined that the order should be amended to effectuate the declared policy of the AMAA, and

that the amended order was not approved by producers, it is concluded that the existing Western order should be terminated because it is not in conformity with the AMAA.

#### List of Subjects in 7 CFR Part 1135

Milk marketing orders.

#### Order

It is therefore ordered, that the terms and provisions of the order, as amended, regulating the handling of milk in the Western marketing area (7 CFR part 1135), except § 1135.1 which incorporates the General Provisions in Part 1000, are hereby terminated, effective on April 1, 2004.

■ Accordingly, 7 CFR part 1135 is amended as follows:

#### PART 1135—MILK IN THE WESTERN MARKETING AREA

■ 1. The authority citation for 7 CFR Part 1135 continues to read as follows:

**Authority:** 7 U.S.C. 601–674 and 7253.

#### §§ 1135.2 through 1135.86 [Removed]

■ 2. Sections 1135.2 through 1135.86 and the undesignated center headings in part 1135 are removed, effective on April 1, 2004.

Dated: February 18, 2004.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 04–3952 Filed 2–19–04; 3:20 pm]

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 72

[Docket No. 04–008–1]

#### Texas (Splenetic) Fever in Cattle; Incorporation by Reference

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the Texas (splenic) fever in cattle regulations by updating the incorporation by reference of the Texas Animal Health Commission's regulations that contain the description of the areas in Texas quarantined because of ticks. This action is necessary to update the incorporation by reference to reflect the Texas Animal Health Commission's changes to the organization of its regulations that describe the quarantined area.

**DATES:** This rule is effective February 24, 2004. The incorporation by reference provided for by this rule is approved by the Director of the Federal Register as of February 24, 2004.

**FOR FURTHER INFORMATION CONTACT:** Dr. Glen Garris, Assistant Associate Deputy Administrator for National Animal Health Policy and Programs, VS, APHIS, 4700 River Road Unit 33, Riverdale, MD 20737–1231; (301) 734–5875.

#### SUPPLEMENTARY INFORMATION:

#### Background

The regulations in 9 CFR part 72, Texas (Splenetic) Fever in Cattle (referred to below as the regulations), restrict the interstate movement of cattle from areas quarantined because of ticks that are vectors of bovine babesiosis. This disease is referred to in the regulations as splenic or tick fever. Splenic or tick fever is a contagious, infectious, and communicable disease of cattle that causes cattle to become weak and dehydrated and can cause death.

Section 72.3 quarantines Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. Previously, § 72.5 specifically described the area in Texas that was quarantined because of ticks. However, in a final rule published in the **Federal Register** on July 30, 1999 (64 FR 41265–41266, Docket No. 96–067–2), we replaced that description with an incorporation by reference of the Texas Animal Health Commission's (TAHC) regulations in § 41.2 of title 4, part II, Texas Administrative Code (4 TAC 41.2), that describe the quarantined area in Texas. The effective date of the TAHC regulations that we incorporated by reference was July 22, 1994.

In a rule effective on April 8, 2001, the TAHC amended the tick quarantine zone described in 4 TAC 41.2; consequently, we amended the incorporation by reference in our regulations in § 72.5 to reflect the effective date of the amended TAHC regulations (*see* 67 FR 18466–18467, Docket No. 01–110–1).

In a final rule published in the *Texas Register* on June 14, 2002, and effective June 23, 2002 (27 TexReg 5175–5176), the TAHC revised, in their entirety, its regulations concerning fever ticks. In that final rule, the TAHC reorganized its regulations to list each county containing quarantined areas in a separate section. Thus, the description of the quarantined area that had been found in 4 TAC 41.2 is now distributed across §§ 41.14 through 41.22 of title 4, part II, Texas Administrative Code. The boundaries of the quarantined areas described were not affected by this reorganization.