

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1050

[DA-95-14]

Milk in the Central Illinois Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document suspends a portion of the producer milk definition of the Central Illinois Federal milk marketing order (Order 50) for an indefinite period commencing with date of publication in the **Federal Register**. The suspension was requested by Prairie Farms Dairy, Inc., which contends the action is necessary to prevent uneconomic and inefficient movements of milk and to ensure that producer milk historically associated with Order 50 will continue to be pooled under the order.

EFFECTIVE DATE: April 11, 1995.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 690-1932.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued March 17, 1995; published March 23, 1995 (60 FR 15262).

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. This rule lessens the regulatory impact

of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this final 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 requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

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

Notice of proposed rulemaking was published in the **Federal Register** on March 23, 1995 (60 FR 15262), concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. No comments were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for an indefinite period commencing

Federal Register

Vol. 60, No. 69

Tuesday, April 11, 1995

with the date of publication in the **Federal Register** the following provision of the order does not tend to effectuate the declared policy of the Act:

In § 1050.13(d)(2), the words "not" and "it" where they first appear.

Statement of Consideration

This rule suspends a portion of the producer milk definition under the Central Illinois order for an indefinite period of time, effective upon publication in the **Federal Register**. The suspension relaxes the diversion limits applicable to individual producers for a pool distributing plant regulated under the order. The aggregate limit of 35 percent contained in the proviso of § 1050.13(d)(2) was suspended for an indefinite period on January 1, 1995.

The Central Illinois order currently allows an operator of a distributing plant to divert to a nonpool plant up to 50 percent of a producer's milk that is physically received at the pool plant during the months of August through April. The suspension will allow a distributing plant to divert an unlimited amount of a producer's milk to a nonpool plant during each of these months, provided that at least one day's production is physically received at a pool plant.

Prairie Farms, which operates the only distributing plant regulated under Order 50, states that it represents over 90 percent of the producer milk pooled under Order 50. According to Prairie Farms, approximately 60 percent of its producer milk pooled under Order 50 was supplied to Beatrice Cheese, Inc., before Beatrice closed its cheese plant located in Preston, Iowa, effective December 1, 1994. It contends the suspension is necessary to permit it to keep its producers pooled under the order without the necessity of costly and inefficient movements of milk. It maintains that its proposal would not jeopardize the integrity of the order because at least one day's production would have to be physically received at a pool plant during each of the months of August through April to qualify the milk for diversion to a nonpool plant. Prairie Farms requests that the action be handled on an emergency basis to allow the continuous pooling of producer milk historically associated with Order 50.

The suspension request should be granted. The suspension will continue to allow the market's Class I needs to be met by requiring at least one day's

production of a producer's milk be physically received at a distributing plant each month. It will maintain orderly marketing conditions and prevent uneconomic and inefficient movements of milk.

Accordingly, it is appropriate to suspend the aforesaid provision for an indefinite period beginning with the date of **Federal Register** publication of this document.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1050

Milk marketing orders.

For the reasons set forth in the preamble, the following provision in Title 7, Part 1050, is amended as follows:

PART 1050—MILK IN THE CENTRAL ILLINOIS MARKETING AREA

1. The authority citation for 7 CFR Part 1050 continues to read as follows:

Authority: Secs. 1–19, 48 Stat 31, as amended; 7 U.S.C. 601–674.

§ 1050.13 [Suspended in part]

2. In § 1050.13(d)(2), the words "not" and "it" where they first appear are suspended for an indefinite period effective upon publication in the **Federal Register**.

Dated: April 5, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95-8852 Filed 4-10-95; 8:45 am]

BILLING CODE 3410-02-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150-AF24

NRC Size Standards; Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the NRC's size standards used to qualify an NRC licensee as a "small entity" under the Regulatory Flexibility Act. This action is necessary to establish a separate standard to be used to determine whether a licensee who is a manufacturer would qualify as a small entity, to adjust the receipts-based standard to account for the effects of inflation since 1985, and to eliminate the separate \$1 million size standard for private practice physicians and apply the revised receipts-based size standard of \$5 million to this class of licensees.

EFFECTIVE DATE: May 11, 1995.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, telephone (301) 415-7163.

SUPPLEMENTARY INFORMATION:

Background

In 1983, the NRC surveyed its materials licensees to create an economic profile sufficient to consider regulatory alternatives tailored to the size of the licensee. After analyzing the data and consulting with the Small Business Administration (SBA), the NRC developed a proposed size standard that would be appropriate to use in determining which of its licensees would qualify as small entities for the purposes of compliance with the Regulatory Flexibility Act. The NRC published its proposed size standard for notice and comment in the **Federal Register** of May 21, 1985 (50 FR 20913).

After considering the comments received, the NRC adopted its final size standards as noted in the **Federal Register** of December 9, 1985 (50 FR 50241). In the **Federal Register** of November 6, 1991 (56 FR 56671), the NRC restated the size standards to include the Regulatory Flexibility Act's definition of small governmental jurisdiction. To further improve clarity, the NRC changed the presentation of the size standards to conform to the listing

of definitions of small entities in the Regulatory Flexibility Act.

The Proposed Rule

On November 30, 1994 (59 FR 61293), the NRC published a proposed rule to amend the NRC's size standards. The NRC proposed to establish a separate standard to be used to determine whether a licensee who is a manufacturer would qualify as a small entity and to adjust the receipts-based standard to account for the effects of inflation since 1985. In addition, the NRC proposed to eliminate the separate \$1 million size standard for private practice physicians and apply the revised receipts-based size standard of \$5 million to this class of licensees. By amending the size standards through rulemaking, the NRC indicated its intent to codify NRC's size standards in 10 CFR part 2.

As discussed in the preamble to the proposed rule, these amendments were developed after several factors indicated that some adjustments to the NRC's size standards were desirable.

The NRC received a number of comments concerning its size standards and the failure of the NRC to promulgate a size standard that differentiates between manufacturing entities and service providers in response to the final rule implementing Public Law 101-508 (56 FR 31472; July 10, 1991, and subsequent years). These commenters indicated that applying a gross receipts standard to a manufacturing concern resulted in an adverse impact on a manufacturer. The SBA size standards for manufacturers are prescribed in terms of a maximum number of employees rather than in terms of gross receipts.

The NRC conducted a survey to update the economic profile of its materials licensees. The purpose of this survey was to evaluate the continued efficacy of NRC's size standards and to obtain the information needed to determine the necessity and effect of a separate standard for manufacturers within the context of the nuclear industry.

The SBA adjusted its receipts-based size standard levels to mitigate the effects of inflation from 1984 to the present in a final rule published in the **Federal Register** of April 7, 1994 (59 FR 16513).

Public Comment

The comment period on the proposed rule closed December 30, 1994. The NRC received two letters of public comment on this action.

One commenter objected to the inclusion of a size standard based on the