

Rules and Regulations

Federal Register

Vol. 60, No. 210

Tuesday, October 31, 1995

This section of the **FEDERAL REGISTER** contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first **FEDERAL REGISTER** issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1004

[Docket No. AO-160-A71; DA-93-30]

Milk in the Middle Atlantic Marketing Area; Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements changes in some provisions of the Middle Atlantic milk marketing order based on industry proposals considered at a public hearing. The changes reduce the standards for regulating distributing plants and cooperative reserve processing plants and increase the amount of producer milk that can be diverted to nonpool plants. Additionally, the market administrator will be authorized to adjust pool plant qualification standards and producer milk diversion limits to reflect changes in marketing conditions. Also, this final rule provides that a pool distributing plant that meets the pooling standards of more than one Federal order will continue to be regulated under this order for two consecutive months before regulation can shift to the other order. This amended order was approved by producers who were eligible to have their milk pooled during the representative month. Approval was determined by a poll of cooperative associations in the marketing area.

EFFECTIVE DATE: December 1, 1995.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 690-1366.

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.

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. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

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 provision 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.

A suspension (DA-95-24) of certain parts of §§ 1004.7 and 1004.12 issued on August 17, 1995, which alleviated the market's pooling problems until this rulemaking proceeding could be completed, will end when this amended order takes effect on December 1, 1995.

Prior documents in this proceeding:
Notice of Hearing: Issued February 25, 1994; published March 4, 1994 (59 FR 10326).

Recommended Decision: Issued July 10, 1995; published July 14, 1995 (60 FR 36239).

Suspension of Rule: Issued August 17, 1995; published August 24, 1995 (60 FR 43953).

Final Decision: Issued September 13, 1995; published September 21, 1995 (60 FR 48924).

Findings and Determinations

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

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Middle Atlantic marketing area.

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

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

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

(3) The said order, as hereby amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified, in a marketing agreement upon which a hearing has been held.

(b) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of

more than 50 percent of the milk which is marketed within the Middle Atlantic marketing area to sign a proposed marketing agreement tends to prevent the effectuation of the declared policy of the Act;

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

(3) The issuance of the order amending the order is favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the Middle Atlantic marketing area.

List of Subjects in 7 CFR Part 1004

Milk marketing orders.

Order Relative to Handling

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

1. The authority citation for 7 CFR Part 1004 continues to read as follows:

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

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

2. Section 1004.7 is amended by revising paragraphs (a)(1) and (a)(4); revising paragraph (d)(1) and by adding a new paragraph (g) to read as follows:

§ 1004.7 Pool Plant.

* * * *

(a) * * *

(1) Milk received at such plant directly from dairy farmers (excluding milk diverted as producer milk pursuant to § 1004.12, by either the plant operator or by a cooperative association, and also excluding the milk of dairy farmers for other markets) and from a cooperative in its capacity as a handler pursuant to § 1004.9(c); or

* * * *

(4) A plant's status as an other order plant pursuant to paragraph (f) of this section will become effective beginning the third consecutive month in which a plant is subject to the classification and pricing provisions of another order.

* * * *

(d) * * *

(1) A reserve processing plant operated by a cooperative association at which milk from dairy farmers is received if the total of fluid milk

products (except filled milk) transferred from such cooperative association plant(s) to, and the milk of member producers physically received at, pool plants pursuant to § 1004.7(a) is not less than 25 percent of the total milk of member producers during the month.

* * * * *

(g) The applicable shipping percentage of paragraphs (a) and (b) or (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested parties. If the investigation shows that a revision of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views and arguments. Any request for revision of shipping percentages shall be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired effective.

3. Section 1004.12 is amended by revising paragraphs (d)(2)(i) and (d)(2)(ii) and by adding a new paragraph (g) to read as follows:

§ 1004.12 Producer.

* * * * *

(d) * * *

(2) * * *

(i) All of the diversions of milk of members of a cooperative association or a federation of cooperative associations to nonpool plants are for the account of such cooperative association or federation, and the amount of member milk so diverted does not exceed 55 percent of the volume of milk of all members of such cooperative association or federation delivered to or diverted from pool plants during the month.

(ii) All of the diversions of milk of dairy farmers who are not members of a cooperative association diverting milk for its own account during the month are diversions by a handler in his capacity as the operator of a pool plant from which the quantity of such nonmember milk so diverted does not exceed 45 percent of the total of such nonmember milk for which the pool plant operator is the handler during the month.

* * * * *

(g) The applicable percentages in paragraphs (d)(2)(i) and (d)(2)(ii) of this

section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for revision either on the market administrator's own initiative or at the request of interested parties. If the investigation shows that a revision of the diversion limit percentages might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and invite data, views and arguments. Any request for revision of the diversion limit percentages shall be filed with the market administrator no later than the 15th day of the month prior to the month for which the requested revision is desired effective.

Dated: October 25, 1995.

Shirley R. Watkins,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95-26918 Filed 10-30-95; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1301

[DEA No. 131N]

Clarification of Coincident Activities for Researchers

AGENCY: Drug Enforcement Administration, DOJ.

ACTION: Policy Statement.

SUMMARY: The Drug Enforcement Administration (DEA) is issuing a policy statement to clarify policy regarding the manufacturing of controlled substances under a researcher registration. DEA regulations allow a person registered with DEA or authorized to conduct research with controlled substances listed in Schedules II through V to manufacture such substances if and to the extent that the manufacture of such substances is set forth in a statement filed with the application for registration. In addition, a registered researcher may distribute a substance specifically manufactured for research purposes to such other persons who are registered or authorized to conduct chemical analysis, instructional activities or research with that substance. This document clarifies the types of manufacturing activities that may not be carried out as a coincident activity under a researcher registration.