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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1002

[DA-95-23A]

#### Milk in the New York-New Jersey Marketing Area; Removal of Certain Regulations Under the Order

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

**ACTION:** Final rule.

**SUMMARY:** This document removes certain provisions in the regulations issued under the New York-New Jersey Federal milk marketing order (Order 2) from publication in the Code of Federal Regulations. Specifically, this action removes the Order 2 subparts that contain the market administrator's Classification and Accounting Rules and Regulations, and the Determination and Public Announcement of Freight Zones. The market administrator will continue to maintain these provisions as separate documents. This action is taken to reduce printing costs and to comply with the President's regulatory reform initiative.

**EFFECTIVE DATE:** December 4, 1995.

**FOR FURTHER INFORMATION CONTACT:** Gino 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 regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

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

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a 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 reduces the cost involved with publishing in the Code of Federal Regulations a publication that is already made publicly available. Furthermore, this action makes no changes to the operation of the order or the provision of the rules and regulations issued thereunder.

This 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 the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may 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 law and request 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 rule is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the New York-New Jersey marketing area. It is hereby found and determined that the following provisions of the regulations issued under the order do not need to be published in the Code of Federal Regulations:

1. Subpart—Classification and Accounting Rules and Regulations (§§ 1002.100 through 1002.260).

2. Subpart—Determination and Public Announcement of Freight Zones (§§ 1002.500 and 1002.501).

#### Findings and Determinations

This action removes the aforementioned subparts issued by the market administrator of the New York-New Jersey order (Order 2) from publication in annual Code of Federal Regulations.

The market administrator will continue to promulgate and maintain classification and accounting rules and regulations and to determine and publicly announce freight zones pursuant to the provisions of the order and subject to the approval of the Secretary. The market administrator will also continue to publish these documents and make them available upon request from any interested party. Industry representatives may request a copy of these documents from the market administrator at any time.

The publication of the aforementioned subparts for Order 2 is furnished to the industry by the market administrator in the performance of his duties. The provisions of these subparts are issued and administered by the Order 2 market administrator as specified in § 1002.46 and § 1002.52 of the order. Thus, it is not necessary to replicate the administrator's efforts in this regard by publishing these subparts in the Code of Federal Regulations. Furthermore, this removal action is consistent with the President's regulatory reform initiative.

Pursuant to 5 U.S.C. 553, it is hereby found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice or to engage in further public procedure prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because the removal of these subparts will not affect the operation or administration of the order or the provisions issued thereunder.

#### List of Subjects in 7 CFR Part 1002

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Part 1002 is amended as follows:

**PART 1002—MILK IN NEW YORK-NEW JERSEY MARKETING AREA**

1. The authority citation for 7 CFR Part 1002 continues to read as follows:  
Authority: 7 U.S.C. 601-674.

**§ 1002.100-1002.260 [Removed]**

2. In part 1002, Subpart—Classification and Accounting Rules and Regulations, §§ 1002.100 through 1002.260 and their undesignated centerheadings and the subpart heading are removed.

**§ 1002.500-1002.501 [Removed]**

3. In part 1002, Subpart—Determination and Public Announcement of Freight Zones, §§ 1002.500 through 1002.501, and their subpart heading are removed.

Dated: November 27, 1995.

Shirley R. Watkins,

*Acting Assistant Secretary, Marketing and Regulatory Programs.*

[FR Doc. 95-29460 Filed 12-1-95; 8:45 am]

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**7 CFR Part 1002**

[DA-95-23B]

**Milk in the New York-New Jersey Marketing Area; Interim Rule: Termination of Certain Order Provisions and Removal of Certain Regulations of the Order**

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

**ACTION:** Interim Rule terminating certain provisions with request for comments.

**SUMMARY:** This document removes certain provisions of the New York-New Jersey Federal milk marketing order (Order 2) and removes two subparts of provisions issued thereunder from publication in the Code of Federal Regulations. Specifically, this document terminates the requirement that certain changes to the market administrator's rules and regulations be published in the Federal Register. Additionally, this document removes the publication of two Order 2 subparts containing the market administrator's rules and regulations—Conduct of Hearings Relating to Suspended Cooperative Payments, and Cooperative Payment Rules and Regulations Approval of Tentative Amendment—from the annual Code of Federal Regulations. Nevertheless, the provisions of the subparts will continue to apply to the administration of the order and will be maintained by the market administrator as separate documents. This action is taken to reduce printing costs and to comply with the President's regulatory reform initiative.

**DATES:** Effective: December 4, 1995. Comments are due on or before January 3, 1996.

**ADDRESSES:** Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456.

**FOR FURTHER INFORMATION CONTACT:** Gino 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 regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force. 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 these actions would not have a significant economic impact on a substantial number of small entities. These actions would reduce the cost involved with publishing in the Code of Federal Regulations regulations that are available to the industry from the market administrator. Furthermore, except for order provisions concerning publication in the Federal Register, this action makes no changes in the operation of the order or the provisions of the rules and regulations issued thereunder.

The Department is issuing these interim rules in conformance with Executive Order 12866.

These interim rules have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have a retroactive effect. These interim rules will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rules.

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 law and request 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.

Pursuant to the provisions of the Agricultural Marketing Agreement Act, the following provisions of the order regulating the handling of milk in the New York-New Jersey marketing area are terminated by this interim rule:

1. In § 1002.77(I)(1), the following words: "published in the Federal Register and".

2. In § 1002.77(I)(3), the following words: "approval, and shall be published in the Federal Register following such".

In addition, the following provisions of the rules and regulations issued under the order do not need to be published in the Code of Federal Regulations:

3. Subpart—Conduct of Hearings Relating to Suspended Cooperative Payments (§§ 1002.300 through 1002.353).

4. Subpart—Cooperative Payment Rules and Regulations Approval of Tentative Amendment (§§ 1002.400 through 1002.444).

All persons who want to send written data, views, or arguments about these interim actions should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 30th day after the publication of this document in the Federal Register.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CAR 1.27(b)).

**Statement of Consideration**

This interim rule terminates the requirement which provides that certain rules and regulations issued by the market administrator of the New York-New Jersey order (Order 2) be published in the Federal Register after they have been approved by the Secretary. Additionally, two Order 2 subparts, which contain the market administrator's rules and regulations involving the conduct of hearings related to suspended cooperative payments and cooperative payment rules and regulations, would no longer be published in the annual Code of Federal Regulations.

The market administrator will continue to issue any specific rules and