List of Subjects in 7 CFR Part 930

Marketing agreements, Tart cherries, Reporting and recordkeeping requirements.

Dated: December 5, 2000.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin [1]

Findings and Determinations

Thefindings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations 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 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

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

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

(2) The marketing agreement and order, as hereby proposed to be amended, regulate the handling of tart cherries grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The marketing agreement and order, as hereby proposed to be amended, are limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act; and

(4) The marketing agreement and order, as hereby proposed to be amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of tart cherries grown in the production area; and

(5) All handling of tart cherries grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing agreement and the order amending the order contained in the Recommended Decision issued by the Administrator on December 29, 1999, and published in the **Federal Register** on January 5, 2000, shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In part 930, § 930.16 is revised to read as follows:

§ 930.16 Sales constituency.

Sales constituency means a common marketing organization or brokerage firm or individual representing a group of handlers and growers. An organization which receives consignments of cherries and does not direct where the consigned cherries are sold is not a sales constituency.

3. In § 930.50, paragraph (a) is revised to read as follows:

§ 930.50 Marketing policy.

(a) *Optimum supply.* On or about July 1 of each crop year, the Board shall hold a meeting to review sales data, inventory data, current crop forecasts and market conditions in order to establish an optimum supply level for the crop year. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years, reduced by the average sales that represent dispositions of restricted percentage cherries qualifying for diversion credit for the same three years, unless the Board determines that it is necessary to recommend otherwise with respect to sales of restricted percentage cherries, to which shall be added a desirable carryout inventory not to exceed 20 million pounds or such other amount as the Board, with the approval of the Secretary, may establish. This optimum supply volume shall be announced by the Board in accordance with paragraph (h) of this section.

* * * * *

[FR Doc. 00–31455 Filed 12–8–00; 8:45 am]

BILLING CODE 3410–02–P

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA–209P]

RIN 1117–AA59

Schedule of Controlled Substances: Placement of Dichloralphenazone Into Schedule IV

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule is issued by the Deputy Administrator of the Drug Enforcement Administration (DEA) to expressly list dichloralphenazone as a Schedule IV controlled substance under the Controlled Substances Act (CSA). This proposed action is based on the DEA's interpretation that dichloralphenazone is a compound containing chloral hydrate, a Schedule IV controlled substance under 21 CFR part 1308; by definition, dichloralphenazone is also a Schedule IV substance. If finalized, this action will impose the regulatory controls and criminal sanctions of Schedule IV on those persons who handle dichloralphenazone or products containing dichloralphenazone.

DATES: Comments must be received by February 9, 2001.

ADDRESSES: Comments should be submitted in triplicate to the Deputy Administrator, Drug Enforcement Administration, Washington, D.C. 20537; Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION:

What Is Dichloralphenazone?

Dichloralphenazone (also known as dichloralantipyrine) is a compound containing two molecules of chloral hydrate (2,2,2-trichloro-1,1-ethanediol) and one molecule of phenazone (1,2-dihydro-1,5-dimethyl-2-phenyl-3Hpyrazol-3-one); CAS No. 480–30–8. Dichloralphenazone is a sedative typically used in combination with isometheptene mucate and acetaminophen in formulating prescription pharmaceuticals for the relief of tension and vascular headaches. When dichloralphenazone is administered or placed in an aqueous solution (a liquid preparation of any substance dissolved in water) it dissociates to form chloral hydrate and phenazone.

Why Is DEA Issuing This Notice?

Schedule IV controlled substances are listed in 21 CFR 1308.14. Section 1308.14(c) lists 49 depressants, including chloral hydrate, that are Schedule IV controlled substances. The first sentence of 21 CFR 1308.14(c) states that the category of Schedule IV depressants includes ''any material, compound, mixture, or preparation which contains any quantity of'' the substances listed in the section. Since dichloralphenazone is a compound containing chloral hydrate, it is likewise a Schedule IV depressant.

It has come to the attention of the DEA that a large portion of the pharmaceutical industry that handles dichloralphenazone or products containing dichloralphenazone has failed to recognize that this is a compound containing chloral hydrate. To clarify this situation, the Deputy Administrator is publishing this notice proposing that dichloralphenazone be expressly listed as a Schedule IV depressant and assigned a specific DEA control number.

What Is the Effect of This Notice?

This notice clarifies the DEA's position regarding the control status for dichloralphenazone. This proposed rule, if finalized, would specifically list dichloralphenazone as a Schedule IV depressant. In addition, this notice provides an opportunity for interested persons to comment, in writing, with regard to any information they feel may have a bearing on this matter.

What Regulatory Requirements Will Be Applied to Handlers of Dichloralphenazone?

Persons currently involved with the manufacture or handling of this substance are not expected to comply with DEA regulations applicable to a Schedule IV substance until such time as a final rule is published in the **Federal Register**. If/When a final rule is published in the **Federal Register**, persons who manufacture, distribute, dispense, import, export, store or engage in research with dichloralphenazone will be provided with delayed dates for compliance with Federal regulations in order to avoid imposing any special hardship. Upon publication of a final rule, the applicable regulations and amount of time for compliance will be as follows:

1. Registration

Any person who manufactures, distributes, dispenses, imports or exports dichloralphenazone or who engages in research or conducts instructional activities or chemical analysis with respect to this preparation, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with 21 CFR part 1301 on and after 30 days from date of the publication of the final rule in the **Federal Register**. Any person who is currently engaged in any of the above activities must submit an application for registration by 30 days from date of publication of the final rule in the **Federal Register**. Any such person may then continue their activities until the DEA has approved or denied that application.

2. Disposal of Stocks

Any person who elects not to obtain a Schedule IV registration or is not entitled to such registration must surrender all quantities of currently held dichloralphenazone in accordance with procedures outlined in 21 CFR 1307.21 on or before 30 days from date of publication of the final rule in the **Federal Register**, or may transfer all quantities of currently held dichloralphenazone to a person registered under the CSA and authorized to possess Schedule IV control substances on or before 30 days from date of publication of the final rule in the **Federal Register**.

Dichloralphenazone to be surrendered to DEA must be listed on a DEA Form 41, ''Inventory of Controlled Substances Surrendered for Destruction.'' DEA Form 41 and instructions can be obtained from the nearest DEA office.

3. Security

Dichloralphenazone must be manufactured, distributed and stored in accordance with 21 CFR 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c) and 1301.76 after date of publication of the final rule in the **Federal Register**.

4. Labeling and Packaging

All commercial containers of dichloralphenazone that are packaged on or after 180 days from date of publication of the final rule in the **Federal Register** must have the appropriate Schedule IV labeling and packaging as required by 21 CFR 1302.03–1302.07. Commercial containers of dichloralphenazone packaged before 180 days from date of publication of the final rule in the **Federal Register** and not meeting the requirements specified in 21 CFR 1302.03–1302.07 may be distributed until 270 days from date of publication of the final rule in the **Federal Register**. On and after 270 days from date of publication of the final rule in the **Federal Register** all commercial containers of dichloralphenazone must bear the CIV labels as specified in 21 CFR 1302.03–1302.07.

5. Inventory

Registrants possessing dichloralphenazone are required to take inventories pursuant to 21 CFR 1304.03, 1304.04 and 1304.11 after publication of the final rule in the **Federal Register**.

6. Records

All registrants must keep records pursuant to 21 CFR 1304.03, 1304.04 and 1304.21–1304.23 after publication of the final rule in the **Federal Register**.

7. Prescriptions

All prescriptions for dichloralphenazone or prescriptions for products containing dichloralphenazone are to be issued pursuant to 21 CFR 1306.03–1306.06 and 1306.21–1306.26. All prescriptions for dichloralphenazone or products containing dichloralphenazone issued on or before 60 days from date of publication of the final rule in the **Federal Register**, if authorized for refilling, shall, as of that date, be limited to five refills and shall not be refilled after 180 days from date of publication of the final rule in the **Federal Register**.

8. Importation and Exportation

All importation and exportation of dichloralphenazone shall be in compliance with 21 CFR part 1312 after publication of the final rule in the **Federal Register**.

9. Criminal Liability

Any activity with dichloralphenazone not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act shall be unlawful on or after 30 days from date of publication of the final rule in the **Federal Register**, except as authorized in that rule.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in a manner consistent with the principles of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). It will not have a significant economic impact on a substantial number of small business entities. Most handlers of dichloralphenazone or prescription products containing this substance are already registered to handle controlled substances and are subject to the regulatory requirements of the CSA.

Executive Order 12866

The Deputy Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 Section 1(b). DEA has determined that this is not a significant rulemaking action. Therefore, this action has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive order 13132. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

The Drug Enforcement Administration makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation, call or write Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, telephone (202) 307–7297.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, prescription drugs.

Under the authority vested in the Attorney General by Section 201(a) of the CSA [21 U.S.C. 811(a)], and delegated to the Administrator of the DEA by the Department of Justice regulations (21 CFR 0.100), and redelegated to the Deputy Administrator of the DEA pursuant to 28 CFR 0.104, the Deputy Administrator hereby proposes that 21 CFR part 1308 be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.14 is proposed to be amended by redesignating the existing paragraphs (c)(15) through (c)(49) as (c)(16) through (c)(50) and by adding a new paragraph (c)(15) to read as follows:

§ 1308.14 Schedule IV.

* * * * *

(c) * * *

(15) Dichloralphenazone 2467

* * * * *

Dated: November 30, 2000.

Julio F. Mercado,

Deputy Administrator.

[FR Doc. 00–31356 Filed 12–8–00; 8:45 am]

BILLING CODE 4410–09–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2000–4B]

Public Performance of Sound Recordings: Definition of a Service

AGENCY: Copyright Office, Library of Congress.

ACTION: Petition for rulemaking, denial.

SUMMARY: On April 17, 2000, the Digital Media Association (''DiMA'') filed a petition with the Copyright Office, requesting that the Office initiate a rulemaking proceeding to amend the rule that defines the term ''Service'' for purposes of the statutory license governing the public performance of sound recordings by means of digital audio transmissions. DiMA sought an amendment that, if adopted, would expand the current definition of the term ''Service'' to state that a service is not interactive simply because it offers the consumer some degree of influence over the programming offered by the webcaster. For the reasons set forth in this notice, the Copyright Office is denying the DiMA petition.

DATE: December 11, 2000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

Since the enactment of the Digital Performance Right in Sound Recordings Act of 1995 (''DPRA''), Public Law 104–39, copyright owners of sound recordings have enjoyed an exclusive right to perform their copyrighted works publicly by means of a digital audio transmission, subject to certain limitations and exemptions. Among the limitations on the newly created digital performance right was the creation of a statutory license for nonexempt, noninteractive, digital subscription transmissions. 17 U.S.C. 114(d)(2), (3) and (f) (1995).