

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1002, 1004, 1005, 1006, 1007, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1124, 1126, 1131, 1134, 1135, 1137, 1138 and 1139

DA-97-12

Milk in the New England and Other Marketing Areas; Order Amending the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

7 CFR Part	Marketing Area
1000	General Provisions of Federal Milk Marketing Orders
1001	New England
1002	New York-New Jersey
1004	Middle Atlantic
1005	Carolina
1006	Upper Florida
1007	Southeast
1012	Tampa Bay
1013	Southeastern Florida
1030	Chicago Regional
1032	Southern Illinois-Eastern Missouri
1033	Ohio Valley
1036	Eastern Ohio-Western Pennsylvania
1040	Southern Michigan
1044	Michigan Upper Peninsula
1046	Louisville-Lexington-Evansville
1049	Indiana
1050	Central Illinois
1064	Greater Kansas City
1065	Nebraska-Western Iowa
1068	Upper Midwest
1076	Eastern South Dakota
1079	Iowa
1106	Southwest Plains

1124	Pacific Northwest
1126	Texas
1131	Central Arizona
1134	Western Colorado
1135	Southwestern Idaho-Eastern Oregon
1137	Eastern Colorado
1138	New Mexico-West Texas
1139	Great Basin

SUMMARY: This final rule consolidates the current 31 Federal milk marketing orders into 11 orders. This consolidation complies with the 1996 Farm Bill which mandates that the current Federal milk orders be consolidated into between 10 to 14 orders. This final rule will be effective for milk marketed on or after October 1, 1999, thereby conforming to the Omnibus Consolidated and Emergency Supplemental Appropriations Bill, which required that the Federal milk order reform amendments be implemented on October 1, 1999. This rule sets forth a replacement for the Class I price structure and replaces the basic formula price with a multiple component pricing system. This rule also establishes a new Class IV which includes milk used to produce nonfat dry milk, butter, and other dry milk powders; reclassifies eggnog; and addresses other minor changes. Part 1000 is expanded to include sections that are identical in all of the consolidated orders to assist in simplifying and streamlining the orders.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Branch Chief, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-6274, e-mail address John.Borovies@usda.gov.

SUPPLEMENTARY INFORMATION:
Executive Order 12988

The contents of this final rule were reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect and 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 (AMAA), as amended, 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 request modification or exemption from such order by filing 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. 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.

Executive Order 12866

The Department is issuing this final rule in conformance with Executive Order 12866. The final rule is determined to be economically significant for the purposes of Executive Order 12866. To comply with the requirements of Executive Order 12866, the Department prepared a final Regulatory Impact Analysis (RIA). Information contained in the RIA pertains to the costs and benefits of the revised regulatory structure contained in this final rule and is explained and summarized in detail in the final decision (64 FR 16030). Copies of the RIA can be obtained from Dairy Programs at (202) 720-4392, any Market Administrator office, or via the Internet at <http://www.ams.usda.gov/dairy/>.

Civil Rights Impact Analysis

Pursuant to Departmental Regulation (DR) 4300-4, a Civil Rights Impact Analysis (CRIA) was completed that reviewed the reforms to the Federal milk marketing order program implemented by this final rule to identify any provisions with actual or potential adverse effects for minorities, women, and persons with disabilities. The analysis disclosed no potential for affecting dairy farmers with specific characteristics differently than the general population of dairy farmers. All producers, regardless of race, national origin, or disability choosing to deliver milk to a Federal order regulated handler will receive the minimum blend price.

Copies of the Civil Rights Impact Analysis can be obtained from Dairy Programs at (202) 720-4392; any Market Administrator office; or via the Internet at <http://www.ams.usda.gov/dairy/>.

Small Business Consideration

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agricultural Marketing Service (AMS) considered the economic impact of the reforms to the Federal milk marketing order program implemented by this final rule on small entities and prepared a final regulatory flexibility analysis that was included in the final decision (64 FR 16034). The analysis indicates that the Department minimized the significant economic impacts of the regulations on small entities to the fullest

extent reasonably possible while adhering to the stated objectives. The Department reviewed the regulatory and financial burdens resulting from the regulations and determined, to the fullest extent possible, the impact on small businesses' abilities to compete in the market place. The Department reviewed the regulations from both the small producer and small processor perspectives attempting to maintain a balance between these competing interests.

Copies of the final regulatory impact analysis can be obtained from Dairy Programs at (202) 720-4392; any Market Administrator office; or via the Internet at <http://www.ams.usda.gov/dairy/>.

Paperwork Reduction Act of 1995

The information collection requirements contained in this final rule previously were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0581-0032, through September 30, 2001.

Prior documents in this proceeding:

Proposed Rule: Issued January 21, 1998; published January 30, 1998 (63 FR 4802).

Correction: Issued February 19, 1998; published February 25, 1998 (63 FR 9686).

Extension of Time: Issued March 10, 1998; published March 13, 1998 (63 FR 12417).

Final Decision on Proposed Amendments: Issued March 12, 1999; published April 2, 1999 (64 FR 16026).

Correction: Issued July 8, 1999; published July 14, 1999 (64 FR 37892).

Notice of Referenda: Issued July 14, 1999; published July 21, 1999 (64 FR 39092).

Findings and Determinations

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

The following findings are hereby made with respect to the each of the aforesaid orders:

Upon the basis of the record of this proceeding it is found that:

(1) The said orders, as hereby amended, and all of 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 areas, and the minimum prices specified in the orders, 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;

(3) The said orders, as hereby amended, regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements;

(4) All milk and milk products handled by handlers, as defined in the orders as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrators for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1000.85 of the General Provisions.

(b) Additional Findings. It is necessary in the public interest to make these amendments to each of the orders effective for milk marketed on or after October 1, 1999. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the specified marketing areas.

The amendments to these orders are known to handlers. The final decision containing the proposed amendments to these orders was issued on March 12, 1999.

(c) 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 specified marketing areas, to sign proposed marketing agreements, tends to prevent the effectuation of the declared policy of the Act;

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

(3) The issuance of the order amending the specified orders is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing areas.

List of Subjects in 7 CFR Parts 1000, 1001, 1002, 1004, 1005, 1006, 1007, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1124, 1126, 1131, 1134, 1135, 1137, 1138 and 1139

Milk marketing orders.

Order Relative to Handling

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

For the reasons set forth in the preamble and under the authority of Title 7, chapter X, Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135 are revised and Parts 1002, 1004, 1012, 1013, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1134, 1137, 1138 and 1139 are removed and reserved as follows: