

Rules and Regulations

Federal Register

Vol. 60, No. 107

Monday, June 5, 1995

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1099

[Docket No. AO-183-A47; DA-92-11]

Milk in the Paducah, Kentucky, Marketing Area; Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Paducah, Kentucky, Federal milk order based on final decisions issued by the Acting Assistant Secretary on December 2, 1994 (59 FR 64524) and on January 27, 1995 (60 FR 7290). The amendments to the order provide a new formula to price Class II milk and implement the base month Minnesota-Wisconsin (M-W) price updated with a butter/powder/cheese formula as the replacement for the M-W price series.

EFFECTIVE DATE: June 5, 1995.

FOR FURTHER INFORMATION CONTACT: John F. Borovics, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, Room 2968, South Building, P.O. Box 96456, Washington, D.C. 20090-6456, (202) 720-6274.

SUPPLEMENTARY INFORMATION: This administrative rule 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 action 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 action is not intended to have 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) (the Act), 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 his or her 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 date of the entry of the ruling.

Prior documents in this proceeding: Notice of Hearing (M-W price): Issued May 12, 1992; published May 15, 1992 (57 FR 20790).

Notice of Hearing (Class II price): Issued December 14, 1993; published December 21, 1993 (58 FR 67380).

Recommended Decision (M-W price): Issued August 3, 1994; published August 8, 1994 (59 FR 40418).

Recommended Decision (Class II price): Issued August 22, 1994; published August 26, 1994 (59 FR 44074).

Final Decision (Class II price): Issued December 2, 1994; published December 14, 1994 (59 FR 64524).

Final Rule (Class II price): Issued January 27, 1995; published February 2, 1995 (60 FR 6606).

Final Decision (M-W price): Issued January 27, 1995; published February 7, 1995 (60 FR 7290).

Proposed Termination of Order: Issued March 3, 1995; published March 9, 1995 (60 FR 12907).

Extension of Time for Filing Comments on Proposed Termination of Order: Issued March 27, 1995; published March 31, 1995 (60 FR 16589).

Final Rule (M-W price): Issued April 6, 1995; published April 14, 1995 (60 FR 18952).

Referendum Order: Issued May 8, 1995; published May 12, 1995 (60 FR 25628).

Findings and Determinations

The proceeding on the proposed termination of the Paducah, Kentucky, milk marketing order, issued March 3, 1995 (60 FR 12907), is hereby terminated.

When producer approval of the order, as proposed to be amended, was not indicated in a referendum conducted in the Class II proceeding, comments were sought concerning possible termination of the order. The number of comments received from producers indicated that there was support for the order and provided a sufficient basis for conducting another referendum. Thus, another referendum was conducted to determine if producers approved of the order as amended by the Class II proceeding and by the M-W proceeding. The order, as proposed to be amended, was subsequently approved. Therefore, it is appropriate at this time to terminate the proposed termination proceeding issued March 3, 1995, and to proceed to amend the order as approved by producers.

The following findings and determinations hereinafter set forth supplement those that were made when the Paducah, Kentucky, 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.

The following findings are hereby made with respect to the aforesaid order:

(a) Findings upon the basis of the hearing records. 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), public hearings were held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of

milk in all Federal milk order marketing areas.

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

(1) The Paducah, Kentucky, order 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 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, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

(b) Additional findings. It is necessary in the public interest to make this order amending the Paducah, Kentucky, order effective June 5, 1995. Any delay beyond that date would disrupt the orderly marketing of milk in the marketing area because there would be no pricing constituent available to use to establish minimum prices of milk.

The provisions of this order are known to handlers. The final decisions of the Acting Assistant Secretary containing proposed amendments to the order were issued on December 2, 1994, and January 27, 1995, and were published in the **Federal Register** on December 14, 1994 (59 FR 64524), and February 7, 1995 (60 FR 7290), respectively.

The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the Paducah, Kentucky, order effective June 5, 1995, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551-559.)

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Section 8c(9) of the Act) of more than 50 percent of the milk which is marketed within the 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 approved or favored by producers of at least two-thirds of the milk produced for sale in the marketing area who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1099

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after June 5, 1995, the handling of milk in the Paducah, Kentucky, 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:

PART 1099—MILK IN THE PADUCAH, KENTUCKY, MARKETING AREA

1. The authority citation for 7 CFR Part 1099 continues to read as follows:

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

2. Section 1099.20 is removed.

3. Section 1099.50 is amended by revising paragraph (b) to read as follows:

§ 1099.50 Class prices.

* * * * *

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus \$0.30.

* * * * *

4. Section 1099.51 is revised to read as follows:

§ 1099.51 Basic formula price.

The basic formula price shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the "base month" series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1099.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to

manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in

paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

5. Section 1099.51a is removed.

6. Section 1099.53 is revised to read as follows:

§ 1099.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III and Class III-A prices for the preceding month.

7. Section 1099.74 is revised to read as follows:

§ 1099.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the "base month" series, adjusted pursuant to § 1099.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

Dated: May 31, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95-13688 Filed 6-2-95; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 3

[EOIR No. 101F; AG Order No. 1970-95]

RIN 1125-AA05

Citizenship Requirement for Employment

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule requires that employees hired by the Executive Office for Immigration Review (EOIR or Agency) be citizens of the United States of America. This rule exempts EOIR from the Immigration Reform and Control Act of 1986's general prohibition of discrimination based on citizenship status and supplements E.O. 11935, which requires United States citizenship for almost all Federal employees in the competitive service.

EFFECTIVE DATE: July 5, 1995.

FOR FURTHER INFORMATION CONTACT:

Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, Telephone: (703) 305-0470.

SUPPLEMENTARY INFORMATION: The Department of Justice published a proposed rule on October 27, 1994 (59 FR 53946) in order to exempt the Executive Office for Immigration Review (EOIR) from the general rule of the Immigration Reform and Control Act of 1986, 8 U.S.C. 1324b(a)(1) (IRCA), by invoking IRCA's provision for regulatory exception to the general rule, 8 U.S.C. 1324b(a)(2)(C). The proposed rule is corollary to E.O. 11935, 41 FR 37301 (1976), which requires United States citizenship for almost all Federal employees in the competitive service. The Agency did not receive any timely comments. One comment was received well after the closing date.

The rule authorizes EOIR to require its employees and volunteers to be citizens of the United States of America. This rule will affect EOIR employees such as Immigration Judges, Board Members of the Board of Immigration Appeals and their legal staffs. The primary mission of these employees is to adjudicate or to facilitate the

adjudication of immigration-related cases. Such Agency employees and volunteers often have access to sensitive information and handle complex and sensitive immigration issues. Furthermore, the citizenship requirement is designed to bolster public confidence in the proper administration of the country's immigration laws. It is imperative that individuals who work at EOIR, either as employees or volunteers, demonstrate their allegiance to the United States by being able to document that they are United States citizens.

Pursuant to E.O. 11935, 41 FR 37301 (1976), the Executive Branch requires United States citizenship for employees hired in the competitive service. This rule extends the citizenship requirement to all EOIR employees and volunteers. The rule exempts EOIR from the prohibition of discrimination based on citizenship status, pursuant to the procedures established by IRCA. This Attorney General rule is consistent with E.O. 11935. The rule is an exercise of the Attorney General's authority to regulate the employment of sensitive, non-competitive service Department of Justice employees.

Additionally, this rule allows the Agency to exercise its discretion to hire non-citizens when necessary to accomplish the Agency's mission. For example, this rule would permit the Director of the Agency to authorize hiring an interpreter skilled in the English language and an unusual foreign language when a United States citizen interpreter is not available.

This rule draws on well-established Supreme Court jurisprudence upholding the reservation of certain rights, such as the right to govern, to citizens. *Foley v. Connelie*, 435 U.S. 291 (1978) (affirming a requirement that police officers be citizens based on the precept that "[t]he act of becoming a citizen is more than a ritual * * * [The citizen] is entitled to participate in the process of democratic decisionmaking. *Id.* at 295"). See also *Ambach v. Norwick*, 441 U.S. 68 (1979) (affirming a citizenship requirement for public school teachers). The Supreme Court recognized that a citizenship employment requirement is sometimes necessary in *Bernal v. Fainter*, 467 U.S. 216 (1984), holding that, "[s]ome public positions are so closely bound up with the formulation and implementation of self-government that the State is permitted to exclude from those positions persons outside the political community, hence persons who have not become part of the process of democratic self-determination." *Id.*, at 221. The *Bernal* court relied on an