Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1011

[DA–97–09]

Milk in the Tennessee Valley Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; suspension.

SUMMARY: This document suspends certain provisions of the Tennessee Valley Federal milk marketing order during the period of consideration of the termination of the Tennessee Valley order. The suspension deactivates the provisions that allow funds to be transferred from the Producer-Settlement Fund to the Transportation Credit Balancing Fund when the latter fund does not have sufficient funds to cover the amount of credits to be disbursed.

EFFECTIVE DATE: September 5, 1997.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202)690–1932, e-mail address Nicholas__Memoli@usda.gov.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Termination: Issued June 30, 1997; published July 3, 1997 (62 FR 36022).

Notice of Extension of Time for Filing Comments: Issued July 9, 1997; published July 14, 1997.

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

This final rule has been reviewed under Executive Order 12988, 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 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 the 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.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During the representative month of February 1997, the milk of 1,469 producers was pooled on the Tennessee Valley order. Of these producers, 1,442 are considered as small businesses.

There were 7 handlers operating 8 pool distributing plants regulated under the Tennessee Valley milk order for February 1997. Of these handlers, 3 are considered small businesses.

This rule lessens the regulatory impact of the order on dairy farmers by prohibiting an unwarranted reduction of their blend price to cover costs associated with obtaining supplemental milk.

Preliminary Statement

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Tennessee Valley marketing area.

After consideration of all relevant material and available information, it is hereby found and determined that during the period of consideration involving the termination of the Tennessee Valley milk order, the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1011.61, paragraph (a)(4); and
2. § 1011.81, paragraph (b).

Statement of Consideration

This suspension order removes a provision of the Tennessee Valley order that requires the market administrator to transfer money from the producer-settlement fund (psf) to the transportation credit balancing fund (TCBF) when the latter fund has an insufficient balance from which to pay the current month's transportation costs associated with supplemental milk obtained from outside the marketing area. This suspension is effective pending consideration of the termination of the Tennessee Valley milk order.

On May 12, 1997, the Department issued a partial final decision on proposed amendments to the Carolina, Southeast, Tennessee Valley, and Louisville-Lexington-Evansville milk orders which was published on May 20, 1997 (62 FR 27525). The final decision contained proposed amended orders for the 4 southeast marketing areas, including the Tennessee Valley order, and directed the respective market

administrators of the 4 orders to ascertain whether at least two-thirds of the producers marketing their milk under each of the orders approved the issuance of the amended orders. The final decision concluded that amended orders were needed to effectuate the declared policy of the Agricultural Marketing Agreement Act. That Act requires that at least two-thirds of the producers voting in a referendum must vote affirmatively before an order can be issued.

Less than two-thirds of the producers whose milk is pooled under the Tennessee Valley order approved the issuance of the proposed amended order. Consequently, on July 3 the Department issued a notice of proposed termination of the Tennessee Valley order. It is now evaluating comments received in response to that notice.

At the present time, the Tennessee Valley milk order is being administered under the interim provisions adopted in August 1996, whereas the surrounding orders with transportation credit provisions are being administered with revised provisions that became effective on August 1, 1997.

In July 1997, an extraordinary volume of supplemental milk was received in the neighboring Southeast order. As a result of these receipts, the transportation credit balancing fund for that order was virtually depleted in July. There is now good reason to believe that shipments of supplemental milk may be rerouted to handlers under the Tennessee Valley order in September since that order still has the interim provision allowing unlimited payments for transportation credits even if the money to pay for the credits must come from the producer-settlement fund. Although the Tennessee Valley order has a viable balance in the TCBF at the present time, it is likely that funds from the producer-settlement fund will be necessary for transportation credit payments for September's milk. Were this to happen, it would reduce blend prices to producers in the Tennessee Valley order while their counterparts in the surrounding markets with transportation credit provisions would suffer no such reduction under the revised August 1997 amendments. This situation would be inconsistent with the premises upon which the psf transfer provision was included in the Tennessee Valley order.

This suspension is necessary to ensure that producers' milk will not be moved in an uneconomic and inefficient manner simply to obtain unlimited transportation credits under the Tennessee Valley order and to ensure that producers in the Tennessee Valley order will be treated in an equitable manner in relation to producers supplying the adjacent Southeast, Carolina, and Louisville-Lexington-Evansville orders.

Accordingly, it is appropriate to suspend the aforesaid provisions during the period of consideration of terminating the Tennessee Valley milk order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk; and

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1011

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Part 1011 is amended as follows:

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

1. The authority citation for 7 CFR Part 1011 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 1011.61 [Suspended in part]

2. In § 1011.61, paragraph (a)(4) is suspended.

§ 1011.81 [Suspended in part]

3. In § 1011.81, paragraph (b) is suspended.

Dated: August 29, 1997.

Lon Hatamiya,

Administrator.

[FR Doc. 97–23568 Filed 9–3–97; 8:45 am]

BILLING CODE 3410–02–P

CONSUMER PRODUCT SAFETY COMMISION

16 CFR Parts 1000, 1014, 1021, 1051, 1115, 1211, 1402, 1406, 1500, 1502, 1700, and 1702

Address and Telephone Number Corrections

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending 16 CFR chapter II to correct errors in addresses and telephone numbers.

EFFECTIVE DATE: September 4, 1997.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207, telephone 301-504-0980.

SUPPLEMENTARY INFORMATION: Some addresses, office designations, and telephone numbers in various parts of 16 CFR chapter II are obsolete as a result of the Consumer Product Safety Commission's relocation to new headquarters in 1994. This rule makes the necessary corrections. It also revises some authority citations to conform to **Federal Register** recommendations.

Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553(b), notice and other public procedures are not required and it is effective immediately on the specified effective date. Further, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612 and, thus, is exempt from the provisions of the Act. This action will have no effect on the environment.

List of Subjects

16 CFR Part 1000

Organization and functions (Government agencies).

16 CFR Part 1014

Privacy

16 CFR Part 1021

Environmental impact statements.

16 CFR Part 1051

Administrative practice and procedure, consumer protection.

16 CFR Part 1115

Administrative practice and procedure, business and industry, consumer protection, reporting and recordkeeping requirements.

16 CFR Part 1211

Consumer protection, imports, labeling, reporting and recordkeeping requirements.

16 CFR Part 1402