either be or have been involved in development of the product, the market, or market expansion activities for which the exemptions are sought or have had financial involvement in the activities. This involvement must be demonstrated and established to the satisfaction of the Board by the handler requesting the exemptions.

Dated: June 16, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–14062 Filed 6–21–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1033

[Docket No. AO–361–A35; DA–01–04]

Milk in the Mideast Marketing Area: Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with changes, an interim final rule concerning pooling provisions of the Mideast Federal milk order. More than the required number of producers in the Mideast marketing area have approved the issuance of the final order amendments. Conforming changes are made to clarify references to order provision paragraphs.

EFFECTIVE DATE: July 1, 2004.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, Stop 0231—Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–1366, e-mail: *gino.tosi@usda.gov.*

SUPPLEMENTARY INFORMATION: This document adopts as a final rule, with changes, an interim final rule, concerning pooling provisions of the Mideast Federal milk order. Specifically, this final rule continues to amend the *Pool plant* provisions which: Eliminate automatic pool plant status for the 6-month period of March through August, eliminate milk shipments to a distributing plant regulated by another Federal milk order as pool-qualifying shipments under the Mideast order, eliminate the ''split plant'' feature, eliminate including diversions made by a pool supply plant located outside the marketing area to a second pool plant, and establish a ''net shipments'' provision for pool supply plants not operated by a cooperative. For the *Producer milk* provisions, this final rule continues amendments which: Seasonally adjust and increase the number of days that the milk of a producer needs to be delivered to a pool plant and establish year-round diversion limits, adjusted seasonally, for producer milk for handlers pooled under the Mideast order.

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.

This final rule have been reviewed under the Executive Order 12988, Civil Justice Reform. This rule 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 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 request modification or exemption from such order by filing with the Department of Agriculture (USDA) 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 Department 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 Department'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.

Regulatory Flexibility Act and Paperwork Reduction Act

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 $750,000, 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 $750,000 per year criterion was used to establish a production guideline of 500,000 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.

On the producer side, 10,756 of the 11,133 dairy farmers, or 97 percent, whose milk was pooled under the Mideast order at the time of the hearing (October 2001) would meet the definition of small businesses. On the processing side, 27 of the 58 milk plants associated with the Mideast order during October 2001 would qualify as small businesses, constituting 47 percent of the total. Based on these criteria, the vast majority of the producers and handlers would be considered as small businesses.

The adoption of the proposed pooling standards serve to revise established criteria that determine those producers, producer milk, and plants that have a reasonable association with, and are consistently serving the fluid needs of, the Mideast milk marketing area and are not associated with other marketwide pools concerning the same milk. Criteria for pooling are established on the basis of performance levels that are considered adequate to meet the Class I fluid needs and, by doing so, determine those that are eligible to share in the revenue that arises from the classified pricing of milk. Criteria for pooling are established without regard to the size of any dairy industry organization or entity. The criteria established are applied in an identical fashion to both large and small businesses and do not have any different economic impact on small entities as opposed to large entities. Therefore, the amendments will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these amendments would have no impact on reporting, recordkeeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This action does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Prior documents in this proceeding:

Notice of Hearing: Issued September 21, 2001; published September 28, 2001 (66 FR 49571).

Tentative Final Decision: Issued June 4, 2002; published June 11, 2002 (67 FR 39871).

Interim Final Rule: Issued July 22, 2002; published July 26, 2002 (67 FR 48743).

Final Decision: Issued April 5, 2004; published April 12, 2004 (69 FR 19291).

Findings and Determinations

A conforming change is made to section 1033.13(d)(7) to clarify that the delivery day requirements that may be increased by the market administrator are specified in paragraphs (d)(2) and (d)(3) of this section and that the diversion percentages are specified in paragraph (d)(4) of this section.

The findings and determinations hereinafter set forth supplement those that were made when the Mideast 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 Mideast order:

(a) *Findings 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. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Mideast marketing area.

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

(1) The Mideast 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 Mideast 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, a marketing agreement upon which a hearing has been held.

(b) *Additional Findings.* It is necessary in the public interest to make these amendments to the Mideast order effective July 1, 2004. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing area.

The amendments to these order are known to handlers. The final decision containing the proposed amendments to these orders was issued on April 5, 2004 (69 FR 19291).

The changes that result from these amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these order amendments effective July 1, 2004. It would be contrary to the public interest to delay the effective date of these amendments for 30 days after their 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 sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the specified 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 Mideast 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(s) as hereby amended;

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

List of Subjects in 7 CFR Part 1033

Milk marketing orders.

Order Relative to Handling

■ *It is therefore ordered*, that on and after the effective date hereof, the handling of milk in the Mideast marketing area shall be in conormity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended, as follows:

■ The authority citation for 7 CFR part 1033 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 1033—MILK IN THE MIDEAST MARKETING AREA

■ The interim final rule amending 7 CFR part 1033 which was published on July 26, 2002, (67 FR 48743), is adopted as a final rule, with the following changes:

■ 1. Section 1033.7 is amended by revising paragraph (d)(2) to read as follows:

§ 1033.7 Pool plant.

* * * * *

(d) * * *

(2) The 30 percent delivery requirement may be met for the current month or it may be met on the basis of deliveries during the preceding 12-month period ending with the current month.

* * * * *

■ 2. Section 1033.13 is amended by revising the first sentence in paragraph (d)(7) to read as follows:

§ 1033.13 Producer milk.

* * * * *

(d) * * *

(7) The delivery day requirement in paragraphs (d)(2) and (d)(3) of this section and the diversion percentages in paragraph (d)(4) of this section may be increased or decreased by the market administrator if the market administrator finds that suhc revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area.

Dated: June 16, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–14060 Filed 6–21–04; 8:45 am]

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