

7. MISCELLANEOUS AND ADMINISTRATIVE.

(a) Consolidation of the marketing service, administrative expense, and producer-settlement funds. To complete the consolidation of the present 31 Federal orders effectively and equitably, the reserve balances in the marketing service, administrative expense, and producer-settlement funds that have resulted under the individual orders would be combined.

The balances in these three funds should be combined on the same basis that the marketing areas are consolidated into regional orders herein. For instance, the Texas and New Mexico-West Texas marketing areas are merged into a new regional Southwest order. Accordingly, the reserve balances in the marketing service, administrative expense and producer-settlement funds of the two individual orders likewise should be combined into three separate funds established under the consolidated Southwest order.

The marketing areas of the 11 consolidated orders essentially represent the territory covered by the 31 individual orders plus the territory included in the former Tennessee Valley marketing area. Because of this, the handlers and producers servicing the milk needs of the individual markets will continue to furnish the milk needs of the applicable regional market for the most part.

In that regard, the reserve balances in the funds that have resulted under the 31 individual orders should be combined on a marketing area basis into the appropriate separate fund established for each of the 11 regional orders. Any liabilities of such funds under the individual orders would be paid from the appropriate newly established fund of the applicable regional order. Similarly, obligations that are due the separate funds under the individual orders would be paid to the appropriate combined fund of the applicable consolidated order.

In most cases, the entire marketing area of an order or orders is included in the consolidated marketing area of one of the 11 regional orders. Four present marketing areas would be split between two consolidated orders. One county of the present Louisville-Lexington-Evansville (Order 46) marketing area would be included in the Southeast order, and the rest of the territory in the Order 46 marketing area would be included under the Appalachian order. Even though one Order 46 county is included in the consolidated Southeast order, all of the present Order 46 producers and handlers are expected to be covered under the consolidated Appalachian order. Accordingly, the balances in the Order 46 marketing service, administrative expense, and producer settlement funds should be consolidated into the three separate funds established for the consolidated Appalachian market.

Different regulatory situations, however, will occur in the other three instances where a current marketing area is divided between two consolidated orders. The southwest Missouri and

northwest Arkansas portions of the current Southwest Plains order area are included in the consolidated Southeast marketing area, while the remainder of the Southwest Plains area is combined with the marketing areas of eight other orders in the consolidated Central marketing area. Similarly, one county of the current Great Basin (Order 139) marketing area is included in the consolidated Arizona-Las Vegas order and the rest of the Order 139 marketing area is included in the consolidated marketing area for the West. In the third instance, two zones of the Michigan Upper Peninsula (Order 44) marketing area are included in the consolidated Upper Midwest marketing area and the other zone of the Order 44 marketing area is included in the marketing area for the Midwest regional order.

In each of these 3 cases, some of the producers and handlers of each of the current order areas that are being divided will become pooled under one consolidated order, while the other producers and handlers of each of these areas will become pooled under another regional order. Accordingly, any reserve balances in the marketing service, administrative expense and producer-settlement funds of these three individual orders should be divided equitably among the applicable consolidated orders.

The money accumulated in the marketing service funds of the individual orders is that which has been paid by producers for whom the market administrators are performing such services. Since the marketing areas of the 11 regional orders encompass the territory covered by the individual orders, for the most part, the producers who have contributed to the marketing service funds of the individual orders are expected to continue supplying milk for the consolidated orders. Since marketing service programs will be continued for these producers under the regional orders, it would be appropriate to combine the reserve balances in the marketing service funds of the order or orders that are represented in the consolidation of each of the 11 regional orders.

When the consolidated marketing area includes the marketing area of one or more individual orders, any remaining balance in the marketing service fund of the individual order or orders should be combined in the marketing service fund established for the applicable consolidated order. If a current marketing area is split between two consolidated markets and the regulatory status of producers and handlers is divided between the two regional orders, as is the case with the Michigan Upper Peninsula, Southwest Plains, and Great Basin orders, any balance in the marketing service fund of the individual order should be prorated between the two consolidated orders on the basis of the amount of milk subject to the marketing service deduction that will be covered by each respective regional order (using producer deliveries in the last month the individual orders are in effect

but assuming that the marketing areas had been consolidated).

The money paid to the administrative expense fund is each handler's proportionate share of the cost of administering the order. For the most part, handlers currently regulated under the individual orders will continue to be regulated under the consolidated orders. In view of this, it would be an unnecessary administrative and financial burden to allocate the reserve funds of the individual orders back to handlers and then accumulate an adequate reserve for each of the consolidated orders. It would be as equitable and more efficient to combine the remaining administrative monies accumulated under the individual orders in the same manner as the marketing areas are combined.

For the orders where the consolidated marketing area includes the regulated territory of one or more of the individual orders, any remaining balance in the administrative expense fund of the individual order or orders would be combined into the administrative expense fund established for the applicable consolidated order. In the situations where the current individual marketing area is split and the regulatory status of producers and handlers is divided (as in the case of the Michigan Upper Peninsula, Southwest Plains, and Great Basin orders) between two consolidated marketing areas, the remaining balance in the administrative expense fund should be prorated between the two regional orders on the basis of the amount of milk that would be pooled and priced under each respective consolidated order (using producer milk deliveries during the last month the individual orders are in effect but assuming that the orders had been consolidated).

Likewise, the producer-settlement fund balances of the individual orders should be combined. They should be combined on the same basis as the marketing areas are consolidated herein. This will enable the producer-settlement funds of the consolidated orders to continue without interruption.

The producers currently supplying the individual markets are expected to supply milk for the consolidated markets. Thus, monetary balances in the producer-settlement funds of the individual orders now would be reflected in the pay prices of the producers who will benefit from the applicable consolidated orders. The combined fund for each consolidated order also would serve as a contingency fund from which money would be available to meet obligations (resulting from audit adjustments and otherwise) occurring under the individual orders.

The same procedure used in combining the remaining balances in the marketing service and administrative expense funds of the individual orders should be followed in combining the producer-settlement fund balances when the individual orders are consolidated. For orders where the consolidated marketing area

includes the marketing area of one or more orders, any remaining balance in the producer-settlement fund of the individual order or orders would be combined into the producer-settlement fund established for the applicable consolidated order. In the three situations (Michigan Upper Peninsula, Southwest Plains, and Great Basin) where the marketing area of a current order is split between two consolidated orders and some of the individual market's producers and handlers would be regulated under one consolidated order and others would be regulated under another consolidated order, the balance in the producer-settlement fund should be divided equitably between the two consolidated orders. Since the Michigan Upper Peninsula order is an individual-handler pool market, no producer-settlement fund is provided. In the 2 remaining instances in which current marketing areas are divided between 2 consolidated orders, the remaining balance in the producer-settlement funds of the Southwest Plains and Great Basin orders should be prorated between the consolidated orders on the basis of the amount of milk that will be pooled and priced under each respective consolidated order (using producer milk deliveries during the last month the individual orders are in effect but assuming that the orders had been consolidated).

(b) Consolidation of the transportation credit balancing funds. To complete the consolidation process, the reserve balances in the transportation credit balancing funds that are in effect now under three Southeast orders (Carolina, Order 5; Southeast, Order 7; and Louisville-Lexington-Evansville, Order 46) also should be consolidated. These funds should be combined on a marketing area basis. In that regard, the reserve balances in the transportation credit balancing funds of the Carolina and Louisville-Lexington-Evansville orders should be consolidated into a newly established transportation credit balancing fund for the consolidated Appalachian order, which also includes the current marketing areas of these two orders with the exception of one county. Similarly, the reserve balance in the transportation credit balancing fund of the present Southeast order should be transferred to the consolidated Southeast order, which includes all of the marketing area of the present Southeast order. These procedures will enable the transportation credits to continue without interruption under these two consolidated orders.

(c) General findings.

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.

(1) The tentative marketing agreements and the orders, 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 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 each of the aforesaid marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be 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 tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in the marketing agreements;

(4) All milk and milk products handled by handlers, as defined in the tentative marketing agreements and the orders as hereby proposed to be 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 administrator 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.

Comments

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the comments received was carefully and fully considered in conjunction with the rulemaking record.

Marketing Agreements and Order Amending the Orders

The marketing agreements regulating the handling of milk in each of the consolidated orders are not included in this final decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby amended. The following order amending the orders regulating the handling of milk in the respective marketing areas of these orders is proposed as the detailed and appropriate means by which the foregoing conclusions may be carried out.

Referendum Order to Determine Producer Approval

This decision does not provide for conducting referendums of

producers to determine if they approve of the issuance of the consolidated orders. A notice to conduct a referendum on each of the consolidated orders will be issued at a future date.

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.

Date: March 12, 1999

**Michael V. Dunn
Under Secretary
Marketing and Regulatory Programs**

Order Amending the Orders Regulating the Handling of Milk in the Northeast and Other Marketing Areas

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.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the 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.

(a) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) 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 aforesaid marketing areas. 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; and

(c) 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 or commercial activity specified in, the marketing agreements;

(d) 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

(e) 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.

Order Relative to Handling

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

The provisions of the proposed marketing agreements and order amending the orders contained in the proposed rule issued by the Administrator, Agricultural Marketing Service, on January 21, 1998, and published in the **Federal Register** on January 31, 1998 (63 FR 4802), as modified herein, shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein.

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: