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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1033

[Docket No. AO-361-A35; DA-01-04]

#### Milk in the Mideast Marketing Area; Interim Order Amending the Order.

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule.

**SUMMARY:** This order amends certain pooling provisions of the Mideast Federal milk order on an interim basis. Disorderly marketing conditions from inadequate pooling provisions warrant these amendments. It implements amendments to the *Pool plant* provisions which eliminate automatic pool plant status for the 6-month period of March through August, eliminate the inclusion of milk shipments to a distributing plant regulated by another Federal milk order as pool-qualifying shipments, eliminate the “split plant” feature, eliminate the inclusion of diversions made by a pool supply plant located outside the marketing area to a pool distributing plant as the supply plant’s qualifying shipments, and establish a “net shipments” provision for supply plants. For the *Producer milk* provisions, this interim order implements amendments that increase the number of days that the milk of a producer needs to be delivered to a pool plant before being eligible for diversion, establish year-round diversion limits for producer milk, adjusted seasonally, for distributing plants pooled on the order, and exclude from receipts the diversions made by a pool plant to a second pool plant from the calculation of the diversion limitation. More than the required number of producers in the Mideast marketing area have approved the issuance of the interim order as amended.

**EFFECTIVE DATE:** August 1, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Gino M. Tosi, Marketing Specialist, Stop 0231, Room 2968, USDA/AMS/Dairy Programs, Order Formulation Branch, 1400 Independence Avenue SW., Washington, DC 20250-0231, (202) 690-1366, e-mail address [Gino.Tosi@usda.gov](mailto:Gino.Tosi@usda.gov).

**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.

This interim rule has been reviewed under 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 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.

#### 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 interim 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. 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. In October 2001, there were 11,120 producers pooled on and 40 handlers regulated by the Mideast order. Based on these criteria, the vast majority of the producers and handlers would be considered small businesses. The adoption of the amended pooling standards serve to revise and establish criteria that ensure the pooling of producers, producer milk, and plants that have a reasonable association with, and are consistently serving, the fluid milk needs of the Mideast milk marketing area. Criteria for pooling milk are established on the basis of performance standards that are considered adequate to meet the Class I fluid needs of the market, and 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 equal fashion to both large and small businesses.

*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).

## Findings and Determinations

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 on an interim basis, 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 on an interim basis, 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 on an interim basis, 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 and in the public interest to make these interim amendments to the Mideast order effective August 1, 2002. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing area.

The interim amendments to this order are known to handlers. The final decision containing the proposed amendments to this order was issued on June 4, 2002.

The changes that result from these interim 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 interim order amendments effective on August 1, 2002. 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 interim 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 as hereby amended;

(3) The issuance of the interim 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 conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended on an interim basis, as follows:

The authority citation for 7 CFR Part 1033 reads as follows:

**Authority:** 7 U.S.C. 601–674.

## PART 1033—MILK IN THE MIDEAST MARKETING AREA

1. Section 1033.7 is amended by:
  - a. Removing “; and” at the end of paragraph (c)(1)(iii) and adding a period in its place;
  - b. Removing paragraph (c)(1)(iv);
  - c. Revising paragraphs (c)(2), (c)(4), and (d)(2);
  - d. Removing the words “or its predecessor orders” in paragraph (e) introductory text;
  - e. Removing “and;” at the end of paragraph (h)(6) and adding a period in its place; and
  - f. Removing paragraph (h)(7).The revisions read as follows:

## § 1033.7 Pool plant.

\* \* \* \* \*

(c) \* \* \*

(2) The operator of a supply plant located within the marketing area may include deliveries to pool distributing plants directly from farms of producers pursuant to § 1033.13(c) as up to 90 percent of the supply plant’s qualifying shipments. Handlers may not use shipments pursuant to § 1033.13(c) to qualify plants located outside the marketing area.

\* \* \* \* \*

(4) Shipments used in determining qualifying percentages shall be milk transferred or diverted and physically received by pool distributing plants, less any transfers or diversions of bulk fluid milk products from such pool distributing plants.

\* \* \* \* \*

(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. Shipments used in determining qualifying shipments in meeting this 30 percent delivery requirement shall be milk transferred or diverted and physically received by pool distributing plants, less any transfers or diversions of bulk fluid milk products from such pool distributing plants;

\* \* \* \* \*

2. Section 1033.13 is amended by:

- a. Revising paragraph (d)(2);
- b. Redesignating paragraphs (d)(3) through (d)(6) as paragraphs (d)(4) through (d)(7);
- c. Adding a new paragraph (d)(3); and
- d. Revising newly designated paragraph (d)(4).

The revisions and additions read as follows:

## § 1033.13 Producer milk.

\* \* \* \* \*

(d) \* \* \*

(2) The equivalent of at least two days’ milk production is caused by the handler to be physically received at a pool plant in each of the months of August through November;

(3) The equivalent of at least two days’ milk production is caused by the handler to be physically received at a pool plant in each of the months of December through July if the requirement of paragraph (d)(2) of this section (§ 1033.13) in each of the prior months of August through November are not met, except in the case of a dairy farmer who marketed no Grade A milk during each of the prior months of August through November.

(4) Of the total quantity of producer milk received during the month (including diversions but excluding the quantity of producer milk received from a handler described in § 1000.9(c) of this chapter or which is diverted to another pool plant), the handler diverted to nonpool plants not more than 60 percent in each of the months of August through February and 70 percent in each of the months of March through July.

\* \* \* \* \*

Dated: July 22, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02-18923 Filed 7-25-02; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 50

[Docket No. 00-105-1]

RIN 0579-AB36

#### Payments for Cattle and Other Property Because of Tuberculosis

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the regulations regarding payments made in connection with animals and other property disposed of because of bovine tuberculosis to provide that the Animal and Plant Health Inspection Service will make payments to owners of dairy cattle and other property used in connection with a dairy business, and a dairy processing plant in the area of El Paso, TX, provided the owners agree to dispose of their herds, close their existing dairy operations, and refrain from establishing new cattle breeding operations in the area. This action is necessary to further tuberculosis eradication efforts in the United States and protect livestock not affected with bovine tuberculosis from the disease.

**DATES:** This interim rule is effective July 26, 2002. We will consider all comments that we receive on or before September 24, 2002.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 00-105-1,

Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 00-105-1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 00-105-1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Joseph Van Tiem, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737-1231; (301) 734-7716.

#### SUPPLEMENTARY INFORMATION:

##### Background

Bovine tuberculosis (tuberculosis) is a contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. It affects cattle, bison, deer, elk, goats, and other warm-blooded species, including humans. Tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts, causes weight loss and general debilitation, and can be fatal. At the beginning of the past century, tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for tuberculosis in livestock. Through this program, the Animal and Plant Health Inspection Service (APHIS) works cooperatively with the national livestock industry and State animal health agencies to eradicate tuberculosis from domestic livestock in the United States and prevent its recurrence.

Federal regulations implementing this program are contained in 9 CFR part 77, "Tuberculosis" and in the "Uniform

Methods and Rules—Bovine Tuberculosis Eradication" (UMR), January 22, 1999, edition, which is incorporated by reference into the regulations in part 77. Additionally, the regulations in 9 CFR part 50 (referred to below as the regulations) provide for the payment of indemnity to owners of certain animals destroyed because of tuberculosis, in order to encourage destruction of animals that are infected with, or at significant risk of being infected with, the disease.

#### Scope of This Interim Rule

In this interim rule, we are adding provisions to part 50 of the regulations to allow APHIS to make payments to owners of dairy cattle and other property in the area of El Paso, TX, in connection with the disposal of their herds and dairy operations, under the condition that the owners agree to dispose of their herds, close their existing dairies and refrain from establishing new cattle breeding operations in the area. The provisions of this interim rule apply to owners of dairy herds and other property only within a specified area in Texas. All other animals in the United States destroyed because of tuberculosis will continue to be eligible for indemnity in accordance with the existing regulations. To make this clear, we are designating the existing regulations in part 50 as subpart A, and are designating the provisions we are adding in this interim rule (new §§ 50.17 through 50.22) as subpart B of part 50. Additionally, we are adding language to § 50.2 to make clear our intent.

The action we are taking in this interim rule is part of a cooperative plan with the State of Texas to create a buffer zone along the United States-Mexico border that will contain no cattle that are at significant risk of being infected with tuberculosis. Since 1985, State animal health officials in Texas, along with APHIS, have been taking measures to eliminate tuberculosis in dairy herds in the El Paso area. (Tuberculosis has been diagnosed in only one herd of beef cattle in the area, and that infection was due to an infected steer from Mexico that was added to the herd. We believe the lack of tuberculosis infection in beef cattle is due to the relatively short time such cattle remain on a premises, compared to dairy cattle.) As a result of these eradication efforts, dairy herds in the El Paso area have become free of tuberculosis, only to be reinfected despite the application of sound agricultural practices designed to prevent reintroduction of the disease.