

Prior Documents in This Proceeding

Notice of Hearing: Issued October 17, 2001; published October 23, 2001 (66 FR 53551).

Tentative Final Decision: Issued November 8, 2002; published November 19, 2002 (67 FR 69910).

Interim Final Rule: Issued February 6, 2003; published February 12, 2003 (68 FR 7070).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Central marketing area. The hearing was held, 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), at Kansas City, Missouri, on November 14–15, 2001, pursuant to a notice of hearing issued October 17, 2001, and published October 23, 2001 (66 FR 53551).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on November 8, 2002, issued a Tentative Final Decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings, and conclusions, rulings, and general findings of the tentative final decision are hereby approved and adopted and are set forth in full herein. The material issues on the record of the hearing relate to:

1. Pooling Standards

- a. Supply plant pooling standards.
- b. Cooperative supply plant performance standards.
- c. Supply plant system standards.
- d. Standards applicable for Producer milk.
- e. Establishing pooling standards for "State units."
2. Simultaneous pooling of milk on the order and on a State-operated milk order providing for marketwide pooling.
3. Rate of partial payments to producers.
4. Determining whether emergency marketing conditions existed warranting the omission of a recommended decision and the opportunity to file written exceptions.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Pooling Standards**a. Supply Plant Pooling Standards**

Several amendments to the pooling provisions of the Central order, previously adopted on an interim basis, are proposed to be adopted on a permanent basis by this final decision. According to the tentative decision, certain inadequacies of the supply plant pooling provisions were resulting in disorderly marketing conditions and the unwarranted erosion of the blend price received by those producers who consistently provide milk to meet the fluid demands of the Central marketing area. Specifically, the following amendments to the Central order (Order 32) for pool supply plants, previously adopted on an interim basis, are proposed to be adopted on a permanent basis by this final decision: (1) Lower the performance standards to 20 percent in each of the months of August through February and 15 percent in each of the months of March through July. Accordingly, automatic pool plant status during the 3-month period of May through July is thereby eliminated from the order; (2) Eliminate the volume of milk shipments made by supply plants to distributing plants regulated by another Federal milk marketing order as qualifying shipments in meeting the Central order supply plant shipping standard; (3) Exclude from receipts the diversions made by a pool plant to a second pool plant from the calculation of the diversion limits established for pool plants; and (4) Provide a "net shipments" standard for supply plant deliveries to the order's distributing plants for the purpose of meeting the Central order's supply plant shipping standard. Expanding pool supply plant qualification to include milk shipments to any plant that is part of a distributing plant unit was not adopted in the interim rule and is not adopted in this final rule.

Prior to the adoption of the interim rule, the Central order provided a supply plant performance standard whereby 35 percent of the milk received directly from dairy farms and cooperative handlers had to be transferred or diverted to distributing plants, including milk diverted by the plant operator, during each of the months of September through November and January. For all other months a 25 percent standard applied.

In addition, the Central marketing order provided automatic pool plant status during the 3-month period of May through July for supply plants provided they were pool plants during each of the immediately preceding months of August through April. The order did not

include a performance standard which considered shipments to any plant that was part of a distributing plant unit as a qualifying shipment. The order did not limit supply plant shipments to distributing plants on a "net shipments" basis.

Prior to adoption of the interim rule, handlers could qualify supply plants as pool plants located inside or outside the market area by diverting milk to a pool distributing plant regulated by the Central order. Supply plant transfers to distributing plants regulated by another Federal order were considered as qualifying shipments for the purpose of determining if the Central supply plant shipping standard had been met.

The following amendments to the supply plant pooling standards were presented in testimony related to a proposal published in the hearing notice as Proposal 1. This proposal was offered by Dairy Farmers of America (DFA), Prairie Farms Cooperative (Prairie Farms), and Swiss Valley Farms (Swiss Valley). These organizations are cooperative associations that historically have pooled milk on the Central milk order or one of the nine orders consolidated to form the Central milk order. Hereinafter, this decision will refer to these proponents as "DFA, *et al.*" All three cooperative associations have ownership interests in fluid milk processing plants. Prairie Farms and Swiss Valley operate fluid plants.

Amendments to the supply plant pooling standards were offered, the proponents assert, because the pooling provisions of the order are not appropriately linking the ability to pool milk on the order with demonstrating consistent service in supplying the fluid needs of the market. DFA, *et al.*, proposed changing the seasonally adjusted performance standard for supply plants to 25 percent during each of the months of August through November and to 20 percent for each of the months of December through July. Adopting these standards would also eliminate automatic pool plant status for the 3-month period of May through July provided by the order. DFA, *et al.*, expressed continued support for these performance levels during the same periods in their comments on the tentative final decision.

Proposal 1 as offered would no longer consider milk deliveries to distributing plants regulated by another Federal milk marketing order as qualifying shipments for determining if the supply plant performance standard for the Central Order had been met. Similarly, the proposal would not consider milk deliveries to distributing plants that are part of a distributing plant unit as