

(d) The highest previous rate may be based upon a rate of pay received during a temporary promotion, so long as the temporary promotion is for a period of not less than 1 year. This limitation does not apply upon permanent placement in a position at the same or higher grade.

6. In § 532.415, paragraph (c) is revised to read as follows:

§ 532.415 Application of new or revised wage schedules.

* * * * *

(c) In applying a new or revised wage schedule, the scheduled rate of pay of an employee paid at one of the steps of the employee's grade on an old wage schedule shall be adjusted upward to the newly adjusted rate for the same numerical step of the grade whenever there is an increase in rates. Except when there is a decrease in wage rates because of a statutory reduction in scheduled rates, the employee is entitled to pay retention as provided in 5 CFR 536.104(a)(3).

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1004

[Docket No. AO-160-A71; DA-93-30]

Milk in the Middle Atlantic Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document recommends changes in some provisions of the Middle Atlantic milk marketing order based on industry proposals considered at a public hearing. The changes would reduce the standards for regulating distributing plants and cooperative reserve processing plants and increase the amount of producer milk that can be diverted to nonpool plants. Additional changes would authorize the market administrator to adjust pool plant qualification standards and producer milk diversion limits to reflect changes in marketing conditions. Also, the decision provides that a pool distributing plant that meets the pooling standards of more than one Federal order should continue to be regulated under this order for two months before regulation can shift to the other order.

A decision on a proposal that would utilize only a route disposition standard to determine under which Federal order a plant should be regulated cannot be made on the basis of the hearing record.

DATES: Comments are due on or before August 14, 1995.

ADDRESSES: Comments (six copies) should be filed with the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 690-1366.

SUPPLEMENTARY INFORMATION: This administrative action 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.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The amendments would promote more orderly marketing of milk by producers and regulated handlers.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would 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 file 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 and requesting a modification of an order or to be exempted from the order. 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.

Prior document in this proceeding: Notice of Hearing: Issued February 25, 1994; published March 4, 1994 (59 FR 10326).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Middle Atlantic marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 30th day after publication of this decision in the **Federal Register**. Six copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at the Holiday Inn-Independence Mall, 400 Arch Street, Philadelphia, Pennsylvania, on May 3, 1994, pursuant to a notice of hearing issued February 25, 1994, and published in the **Federal Register**, March 4, 1994 (59 FR 10326).

The material issues on the record of the hearing relate to:

1. Pool plant definitions and qualifications;
2. Diversions of milk to nonpool plants;
3. Regulation of distributing plants that meet the pooling standards of more than one Federal order.
4. Discretionary authority to revise pooling standards and producer milk diversion limits.

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. Pool Plant Definitions and Qualifications

Two proposals that would modify the pool plant definition of the order should be adopted. One proposal would exclude diversions of producer milk