

making process of the market administrator.

A witness for Eastern Milk Producers Cooperative Association (Eastern) also testified in opposition to Proposal Nos. 5 and 8. Eastern indicated that it makes sense to provide a degree of administrative discretion to the market administrator to resolve the problems that may arise as a result of changes in supply and demand conditions in the marketplace that would warrant adjustment of shipping percentages. Nevertheless, before such discretion is exercised, Eastern maintained that there be notice to the industry and preferably that there be an opportunity for a public meeting for interested parties to bring evidence in aiding the market administrator to make a proper decision. Eastern noted that the "call" provision of the New York-New Jersey marketing order, which requires the market administrator to conduct a public meeting in setting performance standards on handlers to ensure that the fluid market needs are adequately served, works well. Eastern indicated support for a proposal that would be similar in scope for the Middle Atlantic order.

At issue on the part of those who oppose granting administrative discretion to the market administrator in adjusting shipping requirements and diversion limitations is the lack of a public meeting. Opponents have firm opinions that the public and interested parties should have a greater degree of participation in the decisional process than the proposed administrative proceeding would require. However, opponents take no issue on the ability, impartiality or integrity of the market administrator to make appropriate administrative decisions regarding adjustments to shipping requirements and diversion limits. The issue here is one of procedure.

The informal rulemaking procedure is routinely used for making temporary suspensions or revisions to pool plant shipping requirements and diversion limitations. The procedure of public notice and comment before deciding on the appropriate course of action that is proposed in Proposals Nos. 5 and 8 follow in identical fashion the procedures followed by the Department. This informal rulemaking procedure does not include reliance on public hearings or meetings because of the need for urgent and expeditious action to address rapidly changing market conditions. Nevertheless, any interested party has the opportunity to have their views included in the decision making process.

As the record reveals, such a procedure has been used in the Upper Midwest Marketing Area since 1990. Since the record does not reveal any lack of confidence in the ability of market administrators (who are entrusted with great responsibility in administering the order) to effectively carry out this duty, it is reasonable to conclude that on the basis of the broad authorities already entrusted to the market administrator to provide for the effective administration of the order, such discretionary authority that would be granted with the adoption of Proposals Nos. 5 and 8 are consistent with those already given. Furthermore, these two proposals have the broad support of producers who represent some 90 percent of the milk associated with the market.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

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

(a) The tentative marketing agreement and the order, as hereby proposed to be 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 marketing area, and the minimum prices specified in the tentative marketing agreement and the order, 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; and

(c) The tentative marketing agreement and the order, 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 a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Middle Atlantic marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1004

Milk marketing orders.

For the reasons set forth in the preamble, the following provision(s) in Title 7, Part 1004, is amended as follows:

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. The authority citation for 7 CFR part 1004 continues to read as follows:

Authority: Secs. 1–19, 48 Stat 31, as amended; 7 U.S.C. 601–674.

2. Section 1004.7 is amended by revising paragraphs (a)(1) and (a)(4); revising paragraph (d)(1); and by adding a new paragraph (g), to read as follows:

§ 1004.7 Pool plant.

* * * * *

(a) * * *

(1) Milk received at such plant directly from dairy farmers (excluding milk diverted as producer milk pursuant to § 1004.12, by either the plant operator or by a cooperative association, and also excluding the milk of dairy farmers for other markets) and from a cooperative in its capacity as a handler pursuant to § 1004.9(c); or

* * * * *

(4) A plant's status as an other order plant pursuant to paragraph (f) of this section will become effective beginning the third month in which a plant is subject to the classification and pricing provisions of another order.

* * * * *

(d) * * *

(1) A reserve processing plant operated by a cooperative association at