Dated: April 21, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–9425 Filed 4–21–04; 1:03 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131

[Docket No. AO–14–A72, et al.; DA–03–08]

Milk in the Northeast and Other Marketing Areas; Interim Order Amending the Order

7 CFR part	Marketing area	AO Nos.
1001 ..	Northeast	AO–14–A72
1005 ..	Appalachian	AO–388–A13
1006 ..	Florida	AO–356–A36
1007 ..	Southeast	AO–366–A42
1030 ..	Upper Midwest	AO–361–A37
1032 ..	Central	AO–313–A46
1033 ..	Mideast	AO–166–A70
1124 ..	Pacific Northwest	AO–368–A33
1126 ..	Southwest	AO–231–A66
1131 ..	Arizona-Las Vegas	AO–271–A38

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This order amends certain classification of milk provisions in all Federal milk marketing orders. Specifically, this interim order reclassifies milk used to produce evaporated milk in consumer-type packages or sweetened condensed milk in consumer-type packages from Class III to Class IV. More than the required number of producers in each Federal milk order have approved the issuance of the interim order as amended.

EFFECTIVE DATE: May 1, 2004.

FOR FURTHER INFORMATION CONTACT: Antoinette M. Carter, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, STOP 0231—Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–3465, e-mail address: *antoinette.carter@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 a 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.

Regulatory Flexibility Act and Paperwork Reduction Act

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 proposed 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.

During June 2003—the most recent representative period used to determine the number of small entities associated with Federal milk orders—there were a total of 60,096 dairy producers whose milk was pooled under Federal milk orders. Of the total, 56,818 dairy producers—or about 95 percent—were considered small businesses based on the above criteria. During this same period, there were about 1,622 plants associated with Federal milk orders. Specifically, there were approximately 387 fully regulated plants (of which 143 were small businesses), 92 partially regulated plants (of which 41 were small businesses), 44 producer-handlers (of which 23 were considered small businesses), and 108 exempt plants (of which 98 were considered small businesses). Consequently, 950 of the 1,622 plants meet the definition of a small business.

Total pounds of milk pooled under all Federal milk orders was 10.498 billion for June 2003 which represents 73.5 percent of the milk marketed in the United States. Of the 10.498 billion pounds of milk pooled under Federal milk orders during June 2003, 1.78 million pounds—or 1.7 percent—was used to produce evaporated milk and sweetened condensed milk products in consumer-type packages. Additionally, during this same period, total pounds of Class I milk pooled under Federal milk orders was 3.475 billion pounds, which represents 82.3 percent of the milk used in Class I products (mainly fluid milk products) that were sold in the United States.

This interim final rule will reclassify milk used to produce evaporated milk or sweetened condensed milk in consumer-type packages from Class III to Class IV in all Federal milk orders. This decision is consistent with the Agricultural Agreement Act of 1937 (Act), which authorizes Federal milk marketing orders. The Act specifies that Federal milk orders classify milk "in accordance with the form for which or purpose for which it is used.''

Currently, the Federal milk order system provides for the uniform classification of milk in provisions that define four classes of use for milk (Class I, Class II, Class III, and Class IV). Each Federal milk order sets minimum prices that processors must pay for milk based on how it is used and computes weighted average or uniform prices that dairy producers receive.

Under the milk classification provisions of all Federal milk orders, Class I consists of those products that are used as beverages (whole milk, low fat milk, skim milk, flavored milk products like chocolate milk, etc.) [1] Class II includes soft or spoonable products such as cottage cheese, sour cream, ice cream, yogurt, and milk that is used in the manufacture of other food products. Class III includes all skim milk and butterfat used to make hard cheeses—types that may be grated, shredded, or crumbled; cream cheese; other spreadable cheeses; plastic cream; anhydrous milkfat; and butteroil. Class III also consists of evaporated milk and sweetened condensed milk in consumer-type packages. Class IV includes, among other things, butter and any milk product in dried form such as nonfat dry milk.

Evaporated milk and sweetened condensed milk in consumer-type packages should be classified as Class IV because of their product characteristics and because their product yields are tied directly to the raw milk used to make these products. Like other Class IV products, evaporated milk and sweetened condensed milk in consumer-type packages have a relatively long shelf-life (*i.e.,* the products can be stored for more than one year without refrigeration). These products also may be substituted for other Class IV products (*e.g.,* nonfat dry milk) and compete over a wide geographic area with products made from non-Federally regulated milk. Additionally, like other Class IV products, evaporated milk and sweetened condensed milk in consumer-type packages are competitive outlets for milk surplus to the Class I needs of the market.

The amendments should not have a significant economic impact on dairy producers or handlers associated with Federal milk orders. Since the reclassification of evaporated milk and sweetened condensed milk in consumer-type packages will be uniform in all Federal milk orders, dairy producers and handlers associated with the orders will be subject to the same provisions. The classification change should have only a minimal impact on the price dairy producers receive for their milk due to the small quantity of milk pooled under Federal milk orders that is used to produce evaporated milk or sweetened condensed milk in consumer-type packages. For example, using the Department's production data provided in the record for milk, skim milk, and cream used to produce evaporated milk and sweetened condensed milk in consumer-type packages by handlers regulated under Federal milk orders for the three years of 2000 through 2002, the reclassification of the milk used to produce these products from Class III to Class IV would have affected the statistical uniform price for all Federal milk orders combined by only $0.0117 per hundredweight.

Under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), these amendments will have no impact on reporting, recordkeeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

The primary sources of data used to complete the current forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Prior documents in this proceeding:

Notice of Hearing: Issued September 2, 2003; published September 8, 2003 (68 FR 52860).

Correction of Notice of Hearing: Issued October 9, 2003; published October 16, 2003 (68 FR 59554).

Tentative Final Decision: Issued February 27, 2004; published March 2, 2004 (69 FR 9763).

Findings and Determinations

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

The following findings are hereby made with respect to each of the aforesaid orders:

(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 agreements and to the orders regulating the handling of milk in the Northeast and other marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, for each of the aforesaid orders, it is found that:

(1) The said orders are 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 respective marketing areas, and the minimum prices specified in the orders, 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 said orders, as hereby amended on an interim basis, regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements 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 Northeast and other orders effective May 1, 2004. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing areas.

The interim amendments to these orders are known to handlers. The tentative final decision containing the proposed amendments to these orders was issued on February 27, 2004.

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 May 1, 2004. 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, 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

[1] Federal milk orders do not classify products but instead classify the milk (skim milk and butterfat) disposed of in the form of a product or used to produce a product. For simplification, this interim final rule references Class I products, Class II products, Class III products, and Class IV products.

more than 50 percent of the milk, which is marketed within the specified marketing areas, 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 Northeast and other orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the orders as hereby amended;

(3) The issuance of the interim order amending the Northeast and other orders 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 Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131

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 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 further amended on an interim basis, as follows:

■ 1. The authority citation for 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131 reads as follows:

Authority: 7 U.S.C. 601–674.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

■ 2. In § 1000.40, revise paragraph (c)(1)(ii), remove paragraph (c)(1)(iii), redesignate paragraph (d)(1)(ii) as paragraph (d)(1)(iii), and add new paragraph (d)(1)(ii) to read as follows:

§ 1000.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(ii) Plastic cream, anhydrous milkfat, and butteroil; and

* * * * *

(d) * * *

(1) * * *

(ii) Evaporated or sweetened condensed milk in a consumer-type package; and

* * * * *

Dated: April 19, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–9261 Filed 4–22–04; 8:45 am]

BILLING CODE 3410–02–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 102

RIN 3245–AE94

Disclosure of Information Regulations; Correction

AGENCY: U.S. Small Business Administration.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published in the **Federal Register** on October 14, 2003, amending the Small Business Administration's Disclosure of Information regulations.

DATES: This correction is effective April 23, 2004.

FOR FURTHER INFORMATION CONTACT: Kitty Higgins, Paralegal Specialist, Freedom of Information/Privacy Acts Office by telephone at (202) 401–8203 or by e-mail at *foia@sba.gov.* Individuals with disabilities may obtain this document in an alternate format (*e.g.,* Braille, large print, audiotape, or computer diskette) upon request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Background

On October 14, 2003, at 68 FR 59091 the Small Business Administration (SBA) published final amendments to its Disclosure of Information regulations, contained Subpart A of 13 CFR Part 102, implementing the Electronic Freedom of Information Act Amendments of 1996 and setting out the current information disclosure practices and procedures of the agency.

Need for Correction

Since publication of these amendments SBA has discovered that former § 102.12 of Subpart A, which related to the procedures for responding to subpoenas for records or testimony, was inadvertently omitted from the published document. If this section is not reinstated, there will be a critical gap in the regulations containing the procedure for responding to requests for information. The agency is proposing to reinsert former § 102.12 unrevised, as part of Subpart A. The only change required is that the section must be renumbered.

List of Subjects in 13 CFR Part 102

Freedom of Information, Privacy.

■ Accordingly 13 CFR Part 102, Subpart A is corrected by making the following correcting amendments:

PART 102—RECORD DISCLOSURE AND PRIVACY

■ 1. The authority citation for Part 102 continues to read as follows:

Authority: 5 U.S.C. 552 and 552a; 31 U.S.C. 1 *et seq.* and 67 *et seq.*; 44 U.S.C. 3501 *et seq.*; E.O. 12600, 3 CFR, 1987 Comp., p.235.

■ 2. Add § 102.10 to Subpart A to read as follows:

§ 102.10 What happens if I subpoena records or testimony of employees in connection with a civil lawsuit, criminal proceeding or administrative proceeding to which SBA is not a party?

(a) The person to whom the subpoena is directed must consult with SBA counsel in the relevant SBA office, who will seek approval for compliance from the Associate General Counsel for Litigation. Except where the subpoena requires the testimony of an employee of the Inspector General's office, or records within the possession of the Inspector General, the Associate General Counsel may delegate the authorization for appropriate production of documents or testimony to local SBA counsel.

(b) If SBA counsel approves compliance with the subpoena, SBA will comply.

(c) If SBA counsel disapproves compliance with the subpoena, SBA will not comply, and will base such noncompliance on an appropriate legal basis such as privilege or a statute.

(d) SBA counsel must provide a copy of any subpoena relating to a criminal matter to SBA's Inspector General prior to its return date.

Dated: April 16, 2004.

Delorice Price Ford,

Assistant Administrator for Hearing and Appeals.

[FR Doc. 04–9223 Filed 4–22–04; 8:45 am]

BILLING CODE 8025–01–P