

Agricultural Marketing Service, USDA

§ 900.15

effective less than 30 days after its publication in the FEDERAL REGISTER, unless the Secretary, upon good cause found and published with the agreement, fixes an earlier effective date therefor: *Provided*, That no marketing agreement shall become effective as to any person signatory thereto before either (1) it has been filed with the Office of the Federal Register, or (2) such person has received actual notice that the Secretary has executed the agreement and the effective date of the marketing agreement.

(b) *Issuance of marketing order with marketing agreement.* Whenever, as provided in paragraph (a) of this section, the Secretary executes a marketing agreement, and handlers also have executed the same as provided in section 8c(8) of the Act, he shall, if he finds that it will tend to effectuate the purposes of the Act, issue and make effective the marketing order, if any, which was filed as a part of his decision pursuant to §900.13a: *Provided*, That the issuance of such order shall have been approved or favored by producers as required by section 8c(8) of the act.

(c) *Issuance of marketing order without marketing agreement.* If, despite the failure or refusal of handlers to sign the marketing agreement, as provided in section 8c(8) of the Act, the Secretary makes the determinations required under section 8c(9) of the Act, the Secretary shall issue and make effective the marketing order, if any, which was filed as a part of his decision pursuant to §900.13a.

(d) *Effective date of marketing order.* No marketing order shall become effective less than 30 days after its publication in the FEDERAL REGISTER, unless the Secretary, upon good cause found and published with the order, fixes an earlier effective date therefor: *Provided*, That no marketing order shall become effective as to any person sought to be charged thereunder before either (1) it has been filed with the Office of the Federal Register, or (2) such person has received actual notice of the issuance and terms of the marketing order.

(e) *Notice of issuance.* After issuance of a marketing order, such order shall be filed with the hearing clerk, and notice thereof, together with notice of the

effective date, shall be given by publication in the FEDERAL REGISTER. (7 U.S.C. 610(c).)

[25 FR 5907, June 28, 1960, as amended at 53 FR 15659, May 3, 1988]

§ 900.15 Filing; extensions of time; effective date of filing; and computation of time.

(a) *Filing, number of copies.* Except as is provided otherwise in this subpart, all documents or papers required or authorized by the foregoing provisions of this subpart to be filed with the hearing clerk shall be filed in quadruplicate. Any document or paper, so required or authorized to be filed with the hearing clerk, shall, during the course of an oral hearing, be filed with the presiding officer. The provisions of this subpart concerning filing with the hearing clerk of hearing notices, recommended and final decisions, marketing agreements and orders, and all documents described in §900.17 shall be met by filing a true copy thereof with the hearing clerk.

(b) *Extensions of time.* The time for the filing of any document or paper required or authorized by the foregoing provisions of this subpart to be filed may be extended by the judge before the record is certified by the judge or by the Administrator (after the record is so certified by the judge but before it is transmitted to the Secretary), or by the Secretary (after the record is transmitted to the Secretary) upon request filed, and if, in the judgment of the judge, Administrator, or the Secretary, as the case may be, there is good reason for the extension. All rulings made pursuant to this paragraph shall be filed with the hearing clerk.

(c) *Effective date of filing.* Any document or paper required or authorized in this subpart to be filed shall be deemed to be filed at the time it is received by the Hearing Clerk.

(d) *Computation of time.* Each day, including Saturdays, Sundays, and legal public holidays, shall be included in computing the time allowed for filing any document or paper: *Provided*, That when the time for filing a document or paper expires on a Saturday, Sunday, or legal public holiday, the time allowed for filing the document or paper

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shall be extended to include the following business day.

[25 FR 5907, June 28, 1960, as amended at 30 FR 254, Jan. 9, 1965; 67 FR 10829, Mar. 11, 2002]

§ 900.16 *Ex parte* communications.

(a) At no stage of the proceeding following the issuance of a notice of hearing and prior to the issuance of the Secretary's decision therein shall an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding discuss *ex parte* the merits of the proceeding with any person having an interest in the proceeding or with any representative of such person: *Provided*, That procedural matters and status reports shall not be included within this limitation; and *Provided further*, That an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding may discuss the merits of the proceeding with such a person if all parties known to be interested in the proceeding have been given notice and an opportunity to participate. A memorandum of any such discussion shall be included in the record of the proceeding.

(b) No person interested in the proceeding shall make or knowingly cause to be made to an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding an *ex parte* communication relevant to the merits of the proceeding except as provided in paragraph (a) of this section.

(c) If an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding receives or makes a communication prohibited by this section, the Department shall place on the public record of the proceeding:

- (1) All such written communications;
- (2) Memoranda stating the substance of all such oral communications; and
- (3) All written responses, and memoranda stating the substance of all oral responses thereto.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Department may, to

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the extent consistent with the interest of justice and the policy of the underlying statute, take whatever steps are deemed necessary to nullify the effect of such communication.

(e) For the purposes of this section, *ex parte communication* means an oral or written communication not on the public record with respect to which reasonable prior notice to all interested parties is not given, but which shall not include requests for status reports (including requests on procedural matters) on any proceeding.

[42 FR 10833, Feb. 24, 1977]

§ 900.17 Additional documents to be filed with hearing clerk.

In addition to the documents or papers required or authorized by the foregoing provisions of this subpart to be filed with the hearing clerk, the hearing clerk shall receive for filing and shall have custody of all papers, reports, records, orders, and other documents which relate to the administration of any marketing agreement or marketing order and which the Secretary is required to issue or to approve.

§ 900.18 Hearing before Secretary.

The Secretary may act in the place and stead of a judge in any proceeding under this subpart. When he so acts the hearing clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions and orders, and the Secretary shall thereupon, after due consideration of the record, issue his final decision in the proceeding: *Provided*, That he may issue a tentative decision in which event the parties shall be afforded an opportunity to file exceptions before the issuance of the final decision.

Subpart—Supplemental Rules of Practice Governing Proceedings To Amend Federal Milk Marketing Agreements and Marketing Orders

AUTHORITY: 7 U.S.C. 608c(17) and 610.

SOURCE: 73 FR 49088, Aug. 20, 2008, unless otherwise noted.