

central Kentucky in competition with Armour and Southern Belle because its blend price in Nashville is no longer competitive with the Order 11 blend price.

While it is true that Purity's blend price under Order 7 and former<sup>1</sup> Order 98 (Nashville, Tennessee) was frequently close to or below the Order 11 blend price during the months of December 1993 through April 1994, data introduced into the record of the Charlotte hearing indicate that since May 1994 the Nashville-Springfield price relationship has returned to a more normal pattern, as shown in the Table 1.

TABLE 1.—COMPARISON OF BLEND PRICES: JANUARY 1992–NOVEMBER 1994 NASHVILLE, TN (ORDER 98/7)—SPRINGFIELD, KY (ORDER 11)

	Average blend price at Nashville, TN, under order 98/7	Average blend price at Springfield, KY, under order 11	Dif-ference
1/92–11/93	13.85	13.58	.26
12/93–4/94	14.22	14.33	-.11
5/94–11/94	14.01	13.72	.28

If Purity has difficulty in attracting a milk supply, it should direct its concern to the open record for the proposed Southeast marketing area, which encompasses the Nashville area.

There was no testimony at the January 4 hearing in opposition to either the continuation of the current suspension or to the Southern Belle proposals, which, as noted above, effectively would allow Southern Belle, and therefore Armour, to be permanently regulated under Order 11.

Accordingly, it is necessary to suspend the aforesaid provisions from March 1, 1995, through February 28, 1996, or until such earlier time as an order amending the aforesaid orders is issued on the basis of the January 4, 1995, hearing record.

#### List of Subjects in 7 CFR Parts 1005, 1007, 1011, and 1046

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in Title 7, Parts 1005, 1007, 1011, and 1046, are amended as follows:

1. The authority citation for 7 CFR Part 1005, 1007, 1011, and 1046 continues to read as follows:

<sup>1</sup> The Nashville, Tennessee, order was terminated effective July 31, 1993.

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

#### PART 1005—MILK IN THE CAROLINA MARKETING AREA

##### § 1005.7 [Suspended in part]

2. In § 1005.7(d)(3), the words "from", "there", "a greater quantity of route disposition, except filled milk, during the month", and "than in this marketing area" are suspended from March 1, 1995, through February 28, 1996;

#### PART 1007—MILK IN THE GEORGIA MARKETING AREA

##### § 1007.7 [Suspended in part]

3. In § 1007.7(e)(3), the words "except as provided in paragraph (e)(4) of this section" are suspended from March 1, 1995, through February 28, 1996;

4. In § 1007.7, paragraph (e)(4) is suspended from March 1, 1995, through February 28, 1996;

#### PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

##### § 1011.7 [Amended]

5. In § 1011.7(d)(3), the words "from", "there", "a greater quantity of route disposition, except filled milk, during the month", and "than in this marketing area" are suspended from March 1, 1995, through February 28, 1996; and

#### PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

##### § 1046.2 [Amended]

6. In § 1046.2 of the Louisville-Lexington-Evansville order, the word "Pulaski" is suspended from March 1, 1995, through February 28, 1996.

Dated: February 2, 1995.

**Patricia Jensen,**

*Acting Assistant Secretary, Marketing and Regulatory Programs.*

[FR Doc. 95-3143 Filed 2-7-95; 8:45 am]

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#### 7 CFR Part 1050

##### [DA-95-09]

#### Milk in the Central Illinois Marketing Area; Suspension of Certain Provisions of the Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Suspension of rule.

**SUMMARY:** This document suspends the aggregate limits on the amount of producer milk that may be diverted from a pool plant under the Central Illinois Federal milk marketing order for

an indefinite period beginning with the month of January 1995. The proposal was submitted by Prairie Farms Dairy, Inc., and Associated Milk Producers, Inc. Both cooperatives contend the suspension is necessary to ensure that producers historically associated with the market will continue to have their milk pooled under the order without having to move milk uneconomically.

**EFFECTIVE DATE:** February 8, 1995.

#### FOR FURTHER INFORMATION CONTACT:

Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 690-1932.

#### SUPPLEMENTARY INFORMATION:

Prior document in this proceeding:

Notice of Proposed Suspension:  
Issued December 28, 1994; published  
January 4, 1995 (60 FR 379).

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 rule will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, 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 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 provisions 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.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Central Illinois marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on January 4, 1995 (60 FR 379), concerning a proposed suspension of the aggregate diversion limits for a pool distributing plant regulated under Order 50. Interested persons were afforded opportunity to file written data, views and arguments thereon. No comments were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for an indefinite period beginning January 1, 1995, the following provision of the order does not tend to effectuate the declared policy of the Act:

In § 1050.13(d)(2), the words “: *Provided*, That the total quantity of producer milk diverted does not exceed 35 percent of the physical receipts of producer milk at the handler's pool plant during the month, exclusive of milk of producers who are members of a cooperative association that is diverting milk and the milk of other producers that is diverted pursuant to paragraph (d)(3) of this section”.

#### **Statement of Consideration**

This rule suspends the aggregate limit on the amount of milk that may be diverted from a pool plant during the months of August through April. At the present time, for each day's production of a producer's milk that is delivered to a pool plant during these months, another day's production may be diverted to a nonpool plant. However, in addition to this individual producer limit, there is an aggregate limit of 35 percent that applies to the total amount of milk that a pool plant operator may divert during the month. The suspension removes this 35 percent aggregate limit, effectively increasing the aggregate limit to 50 percent of a pool plant operator's total producer receipts during the month.

In their letter requesting the suspension, Prairie Farms Dairy, Inc. (Prairie Farms) and the Morning Glory Farms region of Associated Milk Producers, Inc. (AMPI), explained that Prairie Farms now operates the only distributing plant under the Central

Illinois order (Order 50) and that both cooperatives supply milk to this plant, which is located in Peoria. For several reasons, including the availability of abundant quantities of good quality feed, milk production is up substantially in recent months compared to the same period of last year. This has resulted in both cooperatives having to divert additional milk to nearby unregulated manufacturing plants on weekends, holidays, and other days when the Peoria plant is not in operation.

Prairie Farms and AMPI state that the suspension will allow them to continue to balance the supply of milk needed at the Peoria plant while at the same time eliminate the need to haul milk in and out of the plant merely to keep their milk pooled under the order.

Market statistics indicate that the average daily milk marketed per farm in the Central Illinois marketing area during August through November 1994 was about 300 pounds greater than for the same period in 1993. This increase in production, in conjunction with the single pool plant outlet available in this market, supports a suspension of the aggregate diversion limitations for an indefinite period so that producers whose milk has long been associated with the Central Illinois marketing area will continue to benefit from pooling and pricing under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

#### **List of Subjects in 7 CFR Part 1050**

Milk marketing orders.

For the reasons set forth in the preamble, the following provision in

Title 7, Part 1050, is amended as follows:

#### **PART 1050—MILK IN THE CENTRAL ILLINOIS MARKETING AREA**

1. The authority citation for 7 CFR Part 1050 continues to read as follows:

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

#### **§ 1050.13 [Suspended in part]**

**Note:** This amendment will not be published in the annual *Code of Federal Regulations*.

2. In § 1050.13(d)(2), the words “: *Provided*, That the total quantity of producer milk diverted does not exceed 35 percent of the physical receipts of producer milk at the handler's pool plant during the month, exclusive of milk of producers who are members of a cooperative association that is diverting milk and the milk of other producers that is diverted pursuant to paragraph (d)(3) of this section” are suspended for an indefinite period beginning January 1, 1995.

Dated: February 2, 1995.

**Patricia Jensen,**

*Acting Assistant Secretary, Marketing and Regulatory Programs.*

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#### **7 CFR Part 1212**

**[FV-93-707FR]**

**RIN 0581-AB19**

#### **Lime Research, Promotion, and Consumer Information Order; Amendments**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Lime Research, Promotion, and Consumer Information Order. These amendments revise the definition of the term “lime” in order to cover seedless rather than seeded limes; increase the exemption level from less than 35,000 pounds annually to less than 200,000; alter the size, composition, and term of office of the Lime Board; and make necessary conforming changes. This document is necessary to implement amendments to the Lime Research, Promotion, and Consumer Information Act of 1990.

**EFFECTIVE DATE:** February 8, 1995.

**ADDRESSES:** Richard Schultz, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2535-S, Washington, DC 20090-6456.