

# Rules and Regulations

Federal Register

Vol. 60, No. 65

Wednesday, April 5, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1126

[DA-95-12]

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

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

**ACTION:** Suspension of rule.

**SUMMARY:** This document suspends certain provisions of the Texas Federal milk marketing order from March 1, 1995, through July 31, 1995. The suspension removes the diversion limitation applicable to cooperative associations. The suspension was requested by Associated Milk Producers, Inc., a cooperative association representing a substantial number of producers who supply milk to the market. The suspension is necessary to prevent uneconomical and inefficient movements of milk.

**EFFECTIVE DATE:** March 1, 1995, through July 31, 1995.

**FOR FURTHER INFORMATION CONTACT:** Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-9368.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of Proposed Suspension: Issued February 2, 1995; published February 8, 1995 (60 FR 7465).

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 Texas marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on February 8, 1995 (60 FR 7465) concerning a proposed suspension of a certain provision of the order. 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 the months of March 1, 1995,

through July 31, 1995, the following provision of the order does not tend to effectuate the declared policy of the Act:

In § 1126.13, paragraph (e)(2).

#### Statement of Consideration

This rule suspends certain provisions of the producer milk definition in the Texas order for the months of March through July 1995. The suspension removes the limitation on the amount of producer milk that a cooperative may divert to a nonpool plant.

Currently the order permits a cooperative association to divert up to one-third of the amount of producer milk that the cooperative causes to be physically received during the month at handlers' pool plants to nonpool plants. The diversion provisions provide an efficient means to move milk that is in excess of fluid milk needs directly from farms to nonpool plants for manufacturing and still be priced under the order.

Associated Milk Producers, Inc. (AMPI), a cooperative association representing a substantial number of producers who supply milk to the market, requested the suspension. AMPI stated that during recent months the cooperative had reached maximum pooling capability because of the diversion limitations to nonpool plants. AMPI contends that during the flush season (March through July) the cooperative will be adversely impacted as local production expands and the cooperative exceeds the one-third diversion limitation.

Current projections indicate that there will be ample supplies of milk to meet the fluid demand of the market during the months of March through July 1995. It is impractical to require that more milk be shipped by cooperative associations to other pool plants than is needed at such plants merely to gain eligibility for pooling and diversion status. Absent this suspension, costly and inefficient movements of milk will be made to maintain pool status of producers who have historically supplied the fluid milk needs of the market.

Accordingly, it is appropriate to suspend the aforesaid provision beginning March 1, 1995, through July 31, 1995.

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 1126**

Milk marketing orders.

For the reasons set forth in the preamble, the following provision in Title 7, Part 1126, is amended as follows:

#### **PART 1126—MILK IN THE TEXAS MARKETING AREA**

1. The authority citation for 7 CFR Part 1126 continues to read as follows:

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

##### **§ 1126.13 [Suspended in part]**

2. In § 1126.13, paragraph (e)(2) is suspended for the months of March 1, 1995, through July 31, 1995.

Dated: March 27, 1995.

**Patricia Jensen,**

*Acting Assistant Secretary, Marketing and Regulatory Programs.*

[FR Doc. 95–8354 Filed 4–4–95; 8:45 am]

BILLING CODE 3410–02–P

#### **7 CFR Part 1131**

[DA–95–11]

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

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

**ACTION:** Suspension of rule.

**SUMMARY:** This document suspends certain provisions of the Central Arizona Federal milk marketing order beginning April 1, 1995, through March 31, 1996. The suspension eliminates the

requirement that a cooperative association ship at least 50 percent of its receipts to other handler pool plants to maintain pool status of a manufacturing plant operated by the cooperative.

United Dairymen of Arizona, a cooperative association that represents nearly all of the producers who supply milk to the market, requested the suspension. The suspension is necessary to prevent uneconomical and inefficient movements of milk.

**EFFECTIVE DATE:** April 1, 1995, through March 31, 1996.

#### **FOR FURTHER INFORMATION CONTACT:**

Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of Proposed Suspension: Issued February 2, 1995; published February 8, 1995 (60 FR 7466).

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 Arizona marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on February 8, 1995 (60 FR 7466)

concerning a proposed suspension of certain provisions of the order.

Interested persons were afforded opportunity to file written data, views and arguments thereon. One comment supporting and one comment opposing the suspension were received.

After consideration of all relevant material, including the proposal in the notice, the comments received and other available information, it is hereby found and determined that for the months of April 1, 1995, through March 31, 1996, the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1131.7(c), the words “50 percent or more of”, “(including the skim milk and butterfat in fluid milk products transferred from its own plant pursuant to this paragraph that is not in excess of the skim milk and butterfat contained in member producer milk actually received at such plant)” and “or the previous 12-month period ending with the current month.”

#### **Statement of Consideration**

This rule suspends certain provisions of the Central Arizona order for the months of April 1995 through March 1996. The suspension removes the requirement that a cooperative association that operates a manufacturing plant in the marketing area must ship at least 50 percent of its milk supply during the current month or the previous 12-month period ending with the current month to other handlers' pool plants to maintain the pool status of its manufacturing plant.

Currently the order permits a cooperative association's manufacturing plant, located in the marketing area, to be a pool plant if at least 50 percent of the producer milk of members of the cooperative association is physically received at pool plants of other handlers during the current month or the