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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1131

[DA-97-01]

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

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

**ACTION:** Final rule; suspension.

**SUMMARY:** This document continues to suspend certain provisions of the Central Arizona Federal milk marketing order. The continued 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, 1997 through March 31, 1999.

**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, e-mail address Clifford\_M\_Carman@usda.gov.

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

Notice of Proposed Suspension: Issued February 24, 1997; published March 3, 1997 (62 FR 9381).

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

This final 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 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 request modification or exemption from such order by filing with the Secretary 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, 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.

#### Small Business Consideration

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 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 \$500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. The \$500,000 per year criterion for dairy farmers was used to establish a production guideline of 326,000 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. With respect to 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.

For the month of August 1996, the milk of 102 producers was pooled on the Central Arizona milk order. Of these producers, 6 produced below the 326,000-pound production guideline and are considered as small businesses. Of the total number of producers whose milk was pooled during that month, 99 were members of United Dairymen of Arizona and 3 were independent producers.

For August 1996, there were 5 handlers operating pool plants under the Central Arizona milk order. Of these handlers, 2 are considered as small businesses.

This rule proposes to suspend 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. 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. This rule will not result in any additional regulatory burden on handlers in the Central Arizona marketing area since this suspension has been continually in effect since April 1995.

#### Preliminary Statement

Notice of proposed rulemaking was published in the **Federal Register** on March 3, 1997 (62 FR 9381) 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 opposing the proposed suspension was received from a dairy farmer.

After consideration of all relevant material, including the proposal in the notice, the comment received, and other available information, it is hereby found and determined for the months of April 1, 1997, through March 31, 1999, the following provision of the order does not tend to effectuate the declared policy of the Act:

In § 1131.7, paragraph (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 continues to suspend certain provisions of the Central Arizona order for the months of April 1, 1997, through March 31, 1999. 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.

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 previous 12-month period ending with the current month.

Continuation of the current suspension of this shipping requirement was requested by United Dairymen of Arizona (UDA), a cooperative association that represents nearly all of the dairy farmers who supply the Central Arizona market. UDA states that the continued pool status of their manufacturing plant is threatened if the suspension is not continued. UDA contends that the same marketing conditions that warranted the suspension the last two years still exist. UDA maintains that members who increased their milk production to meet the projected demands of fluid handlers for distribution into Mexico continue to suffer the adverse impact of the collapse of the Mexican peso.

The commenter opposing the continuing suspension contends that the expanded milk production was not for projected demands of fluid handlers but rather for projected cheese demand. The comment points out that the suspension will lower the blend price as more milk will be pooled with the suspension than without it.

During each of the past two years, there has been an increase in total producer milk in the Central Arizona market. Meanwhile the total handler requirements for bulk milk deliveries have decreased. However, it should be noted that Class I utilization has been highly erratic from month-to-month. For example during the first four months of 1996 fluid utilization on a daily average basis was up 2.6 percent, but for all of

1996, Class I was down 0.7 percent. The decrease in total handler deliveries and their erratic movements are likely a result of changing Class I sales by Central Arizona handlers into Mexico because of the devaluation of the Mexican peso. The situation has not stabilized adequately to assure a reliable fluid milk market for Central Arizona handlers.

Pool status of UDA's manufacturing plant would be jeopardized absent continuation of the suspension. Without the suspension, costly and inefficient movements of milk would have to be made to maintain pool status of producers who have historically supplied the market and to prevent disorderly marketing in the Central Arizona marketing area.

UDA requested that the suspension be granted for an indefinite period beginning in April 1997. After reviewing the marketing conditions of the Central Arizona marketing area and their relationship with the uncertain value of the Mexican peso, this suspension will be for a two-year period.

Accordingly, it is appropriate to suspend the aforesaid provision for the months of April 1, 1997, through March 31, 1999.

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, and 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.

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 1131

Milk marketing orders.

For the reasons set forth in the preamble 7 CFR Part 1131, is amended as follows:

#### PART 1131—MILK IN THE CENTRAL ARIZONA MARKETING AREA

1. The authority citation for 7 CFR Part 1131 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

#### § 1131.7 [Suspended in part]

2. 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" are suspended for the months of April 1, 1997, through March 31, 1999.

Dated: May 9, 1997.

**Michael V. Dunn,**

*Assistant Secretary, Marketing and Regulatory Programs.*

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#### FEDERAL RESERVE SYSTEM

#### 12 CFR Part 217

[Regulation Q; Docket No. R-0971]

#### Prohibition Against Payment of Interest on Demand Deposits

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Interpretation.

**SUMMARY:** The Board has amended an interpretation to provide an exception to the current limitations on premiums given on demand deposit accounts. Section 11 of the Banking Act of 1933 prohibits the payment of interest on demand deposits, and Regulation Q implements this prohibition. As an exception to this rule, an interpretation permits premiums up to \$10 for deposits of less than \$5000 and up to \$20 for deposits of \$5000 or more not more than twice per year (Interpretation). The Interpretation also limits the timing of such premiums to the opening of a new account or an addition to an existing account.

The Board has amended the Interpretation to provide an additional exception that permits premiums given without regard to the balance in a demand deposit account and the duration of the account balance, since from an economic point of view such premiums do not constitute interest on the account. Accordingly, depository institutions are permitted to give such premiums, without regard to the amount