

for pooling under the order until implementation of Federal Order Reform. The language suspended requires the milk of cooperative association members to "touch base" at pool distributing plants at least 3 times per month to be eligible for diversion. In addition, language limiting the quantity of milk diverted to nonpool plants by cooperative associations to 30 percent in the months of March through July and December, and to 20 percent in other months of the quantity received at pool distributing plants is suspended so that the effective limit on diversions becomes 50 percent of the total milk pooled by cooperatives.

Continuation of the Eastern Colorado suspension that expired on August 31, 1999, was requested by DFA, a cooperative association which represents nearly all of the dairy farmers who supply the Eastern Colorado market. DFA contended that milk from some producers is required every day of the month in order to meet market demands, while milk from some other producers is required most days of the month and milk from a few producers is required only a few days each month to meet market demands. DFA asserted that with the suspension in place the market can be served in the most efficient manner possible because milk required by the market only a few days each month can maintain association with the market without being required to be delivered to pool distributing plants each month. DFA projected that, without the suspension, inefficient and costly movements of milk would have to be made to maintain the pool status of producers who historically have supplied the market. No comments opposing the suspension were received.

Implementation of the consolidated Central order, which contains provisions that would accommodate the market's current conditions, was to have taken place on October 1, 1999. Implementation of that final rule has been delayed by judicial action, and continued suspension of the Order 137 provision is necessary to prevent uneconomical and inefficient movements of milk and to ensure that producers historically associated with the markets will continue to have their milk pooled under the order.

Accordingly, the suspension is found to be necessary for the purpose of assuring that producers' milk will not have to be moved in an uneconomic and inefficient manner to assure that producers whose milk has long been associated with the Eastern Colorado 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 areas, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the markets 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 Parts 1126 and 1137

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Parts 1126 and 1137 are amended as follows for the period from the day after publication of this rule in the **Federal Register** until implementation of Federal order reform.

1. The authority citation for 7 CFR Parts 1126 and 1137 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

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

##### § 1126.7 [Suspended in part]

2. In § 1126.7(d) introductory text, the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section" are suspended.

3. In § 1126.7(e) introductory text, the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested" are suspended.

##### § 1126.13 [Suspended in part]

4. In § 1126.13(e)(1), the words "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant" are suspended.

5. In § 1126.13, paragraph (e)(2) is suspended in its entirety.

6. In § 1126.13(e)(3), the sentence "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;" is suspended.

#### PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

##### § 1137.12 [Suspended in part]

7. In § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant"; and in the second sentence "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of", and the word "distributing" are suspended.

Dated: November 3, 1999.

**F. Tracy Schonrock,**

*Acting Deputy Administrator, Dairy Programs.*

[FR Doc. 99–29317 Filed 11–9–99; 8:45 am]

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#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

##### 7 CFR Parts 1131 and 1138

[DA–99–05 and DA–99–09]

#### Milk in the Central Arizona and New Mexico-West Texas Marketing Areas; Suspension of Certain Provisions of the Orders

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

**ACTION:** Interim final rule with request for comments; suspension.

**SUMMARY:** This document suspends certain provisions of the Central Arizona (Order 131) and New Mexico-West Texas (Order 138) Federal milk marketing orders from the day after publication in the **Federal Register** until implementation of Federal order reform.

The suspensions have been in effect for both orders for periods beginning in 1995 in Central Arizona and 1993 in New Mexico-West Texas at the request of cooperatives representing nearly all of the producers in Order 131 and most

of the producers in Order 138, and were expected to become unnecessary under the provisions of the final rule establishing the Arizona-Las Vegas and Southwest orders under Federal Milk Order Reform.

**DATES:** *Effective date:* November 11, 1999.

**COMMENTS:** Comments are due by January 10, 2000.

**ADDRESSES:** Comments (two copies) should be sent to USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456. Advance, unofficial copies of such comments may be faxed to (202)690-0552 or e-mailed to OFB-FMMO—Comments@usda.gov. Reference should be made to the title of the action and docket number.

**FOR FURTHER INFORMATION CONTACT:** Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-9368, e-mail address clifford.carman@usda.gov.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of Proposed Suspension (Central Arizona): Issued July 9, 1999; published July 15, 1999 (64 FR 38144).

Suspension of Certain Provisions (Central Arizona): Issued September 13, 1999; published September 20, 1999 (64 FR 50748).

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

This interim 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 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.

#### **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. For the purposes of determining which dairy farms are "small businesses," the \$500,000 per year criterion 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. 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.

For the month of September 1999, 101 dairy farmers were producers under Order 131. Of these producers seven were considered small businesses. For the same month, five handlers were regulated under Order 131. Three of these handlers were considered small businesses.

Eighty-nine dairy farmers were producers under Order 138 for the month of May 1999. Twenty-six of these producers were considered small businesses. Three handlers operating five pool plants were regulated under Order 138 during the month of May 1999. One of these handlers was considered a small business.

For the Central Arizona order, this interim final rule suspends the requirement that a cooperative association ship at least 50 percent of its receipts to other handler's pool plants to maintain the 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 Order 131 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 provision has been suspended for much of the time since April 1995.

For Order 138, this rule suspends: (1) The requirement that milk diverted to a nonpool plant be considered a receipt at the distributing plant from which it was diverted; (2) the requirement that a cooperative association deliver at least 35 percent of its milk to pool distributing plants in order to pool a plant that the cooperative operates which is located in the marketing area and is neither a distributing plant nor a supply plant; (3) the requirement that a producer deliver one day's production to a pool plant during the months of September through January to be eligible to be diverted to a nonpool plant; (4) the provision that limits a cooperative's diversions to nonpool plants to an amount equal to the milk it caused to be delivered to and physically received at pool plants during the month; and (5) the provision that excludes from the pool, milk diverted from a pool plant to the extent that the diverted milk would cause the plant to lose its status as a pool plant. 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 Order 138 and thereby receive the benefits that accrue from such pricing. This rule will not result in any additional regulatory burden on handlers in the New Mexico-West Texas marketing area since most of the provisions suspended by this action have been suspended since 1993.

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 and New Mexico-West Texas marketing areas.

After consideration of all relevant material, it is hereby found and determined that from the day after publication of this rule in the **Federal Register** until implementation of Federal order reform, the following provisions of the Central Arizona and New Mexico-West Texas orders do not tend to effectuate the declared policy of the Act:

1. 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".

2. In § 1138.7(a)(1), the words "including producer milk diverted from the plant".

3. In § 1138.7(c) introductory text, the words "35 percent or more of the producer".

4. In § 1138.13, paragraphs (d)(1), (2), and (5).

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, PO Box 96456, Washington, DC 20090-6456, by the 60th day after publication of this notice in the **Federal Register**.

All written submissions made pursuant to this notice will be made available for public inspection in Dairy Programs during regular business hours (7 CFR 1.27(b)).

#### Statement of Consideration

This rule continues suspension of certain provisions of the Central Arizona and New Mexico-West Texas Federal milk orders until implementation of Federal order reform. For Central Arizona, the suspension removes the requirement that a cooperative association operating a manufacturing plant in the marketing area must ship at least 50 percent of its milk supply during the current month or for the 12-month period ending with the current month to other handlers' pool plants to maintain the pool status of its manufacturing plant.

Suspension of the requirement for an indefinite period (until implementation of Federal order reform) is necessary because implementation of the 11 consolidated orders under Federal order reform has been delayed by judicial action. The Final Rule containing the 11 consolidated orders was issued August 23, 1999, and published September 1, 1999 (64 FR 47898). A Delay of Effective Date rule was issued September 30, 1999, and published October 5, 1999 (64 FR 53885).

Continued suspension of the Order 131 provision 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 stated that the pool status of its manufacturing plant is threatened if the suspension is not reinstated, and that the same marketing conditions that have warranted the suspension of the provision during the past four years still exist. UDA maintained that members

who increased their milk production to meet projected demand of fluid handlers for distribution into Mexico continue to suffer the adverse impact of the collapse of the Mexican peso. Absent continuation of the suspension, UDA projects that costly and inefficient movements of milk would have to be made to maintain the pool status of producers who have historically supplied the market and to prevent disorderly marketing in the Central Arizona marketing area.

A review of current marketing conditions in the Central Arizona marketing area indicates that, absent continuation of the suspension, the pool plant status of UDA's manufacturing plant will not be maintained. Thus, 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.

Therefore, the suspension is found to be necessary for the purpose of assuring that producers' milk will not have to be moved in an uneconomic and inefficient manner to assure that producers whose milk has long been associated with the Central Arizona marketing area will continue to benefit from pooling and pricing under the order. In addition, suspension of these provisions until implementation of Federal order reform will ensure that disorderly marketing conditions that may result from these provisions do not negatively impact producers in the future as these provisions have been modified in the Federal order reform regulatory language.

For Order 138, the suspension removes the requirement that milk diverted to a nonpool plant be considered a receipt at the distributing plant from which it was diverted, that a cooperative must deliver at least 35 percent of its milk to pool distributing plants in order to pool a plant that the cooperative operates which is located in the marketing area and is neither a distributing plant nor a supply plant, that a producer must deliver one day's production to a pool plant during the months of September through January to be eligible to be diverted to a nonpool plant, that a cooperative association's diversions to nonpool plants be limited to an amount equal to the milk the cooperative causes to be delivered to and physically received at pool plants during the month, and that milk diverted from a pool plant be excluded from pool milk to the extent that it would cause the plant to lose its status as a pool plant.

Continued suspension of the New Mexico-West Texas provisions was requested by Dairy Farmers of America, Inc. (DFA), a cooperative association that represents the largest volume of milk marketed under Order 138. The cooperative stated that marketing conditions have not changed since the provisions were suspended in 1993 and therefore the suspension should be continued until implementation of the consolidated Southwest order under Federal order reform since the provisions of the consolidated order reflect current industry needs. Implementation of that final rule has been delayed by judicial action, and continued suspension of the Order 138 provisions is necessary to prevent uneconomical and inefficient movements of milk and to ensure that producers historically associated with the markets will continue to have their milk pooled under the order.

A review of current marketing conditions in the New Mexico-West Texas marketing area indicates that, absent continuation of 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 New Mexico-West Texas marketing area. Therefore, the suspension is found to be necessary for the purpose of assuring that producers' milk will not have to be moved in an uneconomic and inefficient manner to assure that producers whose milk has long been associated with the New Mexico-West Texas marketing area will continue to benefit from pooling and pricing under the order. In addition, suspension of these provisions until implementation of Federal order reform will ensure that disorderly marketing conditions that may result from these provisions do not negatively impact producers in the future, as these provisions have been modified in the Federal order reform regulatory language.

This action imposes no additional reporting or recordkeeping requirements on either small or large handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information and reporting requirements and duplication.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Accordingly, it is appropriate to suspend the aforesaid provisions from October 1, 1999, until implementation of the consolidated Arizona-Las Vegas

and Southwest Federal milk orders under Federal order reform.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing areas, 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) This interim final rule provides a 60-day comment period, and all comments will be considered prior to finalization of this rule.

#### **List of Subjects in 7 CFR Parts 1131 and 1138**

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Parts 1131 and 1138 are amended as follows for the period of one day following publication of this rule in the **Federal Register** until implementation of Federal order reform:

1. The authority citation for 7 CFR Parts 1131 and 1138 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

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

##### **§ 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.

#### **PART 1138—MILK IN THE NEW MEXICO-WEST TEXAS MARKETING AREA**

##### **§ 1138.7 [Suspended in part]**

3. In § 1138.7(a)(1), the words “including producer milk diverted from the plant” are suspended;

4. In § 1138.7(c) introductory text, the words “35 percent or more of the producer” are suspended.

##### **§ 1138.13 [Suspended in part]**

5. In § 1138.13, paragraphs (d)(1), (2), and (5) are suspended.

Dated: November 3, 1999.

**F. Tracy Schonrock,**

*Acting Deputy Administrator, Dairy Programs.*

[FR Doc. 99–29318 Filed 11–9–99; 8:45 am]

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## **DEPARTMENT OF THE TREASURY**

### **Customs Service**

#### **19 CFR Part 10**

[T.D. 99–79]

#### **Foreign Locomotives and Railroad Equipment in International Traffic; Technical Amendment**

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** In accordance with Customs policy of periodically reviewing its regulations to ensure that they are consistent, this document makes a minor technical amendment to the Customs Regulations regarding entry requirements for foreign locomotives and railroad equipment that are brought into the United States in international traffic.

**EFFECTIVE DATE:** November 10, 1999.

**FOR FURTHER INFORMATION CONTACT:** Glen E. Vereb, Office of Regulations and Rulings, (202–927–2320).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Section 322, Tariff Act of 1930, as amended (19 U.S.C. 1322), provides that vehicles and other instruments of international traffic, of any class specified by the Secretary of the Treasury, shall be excepted from the application of the Customs laws, including the requirement of entry, to such an extent and subject to such terms and conditions as may be prescribed in regulations or instructions of the Secretary of the Treasury.

In this regard, § 10.41(a), Customs Regulations (19 CFR 10.41(a)), states that locomotives and other railroad equipment, as well as trucks, buses, taxicabs, and other vehicles used in international traffic are subject to the treatment provided in part 123, Customs Regulations (19 CFR part 123).

In particular, § 123.12(a) and (b) describes the circumstances under

which foreign locomotives or other railroad equipment may be admitted to the United States without the requirement of an entry; and § 123.14(c) likewise describes the circumstances under which foreign-based trucks, buses and taxicabs may be admitted to the United States without the requirement of an entry.

Against this backdrop, § 10.41(d) prescribes, in pertinent part, that any foreign-owned vehicle brought into the United States for the purpose of carrying passengers or merchandise domestically for hire or as an element of a commercial transaction, except as provided at § 123.14(c), would be subject to treatment as an importation of merchandise from a foreign country and an entry would be required for such vehicle.

The citation in § 10.41(d) to § 123.14(c) covers foreign trucks, buses and taxicabs. However, there is no reference to § 123.12(a) and (b), as there also should properly be in § 10.41(d), concerning foreign locomotives and railroad equipment.

Accordingly, consistent with § 10.41(a), § 10.41(d) is changed to make clear that foreign-owned vehicles include locomotives and railroad equipment, as well as trucks, busses and taxicabs. In addition, a reference to § 123.12 (a) and (b) is added to § 10.41(d) to reflect the existing conditions under which foreign locomotives and railway equipment may be admitted to the U.S. without the requirement of a Customs entry.

Furthermore, section 681 of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182; December 8, 1993) added a provision to the Harmonized Tariff Schedule of the United States (HTSUS) exempting from entry railway locomotives classified in headings 8601 and 8602, HTSUS, and railway freight cars classified in heading 8606, HTSUS, on which no duty is owed (see Additional U.S. Note 1, chapter 86, HTSUS). These exemptions from entry are noted in § 141.4(b)(4), Customs Regulations (19 CFR 141.4(b)(4)). Accordingly, to reflect these exemptions from entry, a reference to § 141.4(b)(4) is also added to § 10.41(d).

#### **The Regulatory Flexibility Act, Executive Order 12866 and Inapplicability of Public Notice and Comment and Delayed Effective Date Requirements**

Because the amendment merely conforms to existing law and regulatory practice as noted above, notice and public procedure in this case are inapplicable and unnecessary pursuant