

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1131

[DA-99-05]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; suspension.

SUMMARY: This document invites written comments on a proposal to suspend until completion of Federal Order Reform certain sections of the Central Arizona Federal milk marketing order at the beginning of the next marketing period. The proposed rule would reinstate a suspension that expired on March 31, 1999, which eliminates the requirement that a cooperative association that operates a manufacturing plant ship at least 50 percent of its receipts to other handler pool plants to maintain pool status of its manufacturing plant. United Dairymen of Arizona (UDA), a cooperative association that represents nearly all of the producers who supply milk to the Central Arizona market, has requested continuation of the suspension. UDA asserts that the suspension is necessary to prevent the uneconomical and inefficient movements of milk.

DATES: Comments must be submitted on or before July 22, 1999.

ADDRESSES: Comments (two copies) should be filed with USDA/AMS/Dairy Division, 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. Reference should be given to the title of 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: The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the 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 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 considered the economic impact of this action on small entities and has certified that this proposed 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 March 1999, the milk of 100 producers was pooled on the Central Arizona milk order. Of these producers, 3 produced below the 326,000-pound production guideline and are considered small businesses. Of the total number of producers whose milk was pooled during that month, 97 were members of UDA and 3 were independent producers.

For March 1999, there were 5 handlers operating pool plants under the Central Arizona milk order. Of these handlers, 2 are considered small businesses.

This rule would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Interested parties are invited to submit comments on the probable regulatory and informational impact of this proposed rule on small entities. Also, parties may suggest modifications of this proposal for the purpose of tailoring their applicability to small businesses.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the suspension of the following provision of the order regulating the handling of milk in the Central Arizona marketing area is being considered until completion of Federal Order Reform:

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."

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, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures before the start of the next marketing period.

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

The proposed rule would suspend certain provisions of the Central Arizona order until completion of Federal Order Reform. The proposed suspension would remove the requirement that a cooperative association which 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.

Reinstatement of the suspension which expired on March 31, 1999, was requested by United Dairymen of Arizona (UDA), a cooperative association which represents nearly all of the dairy farmers who supply the Central Arizona market. UDA contends that the pool status of their manufacturing plant would be threatened if the suspension is not reinstated. UDA states that the same marketing conditions that warranted the suspension for the past four 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. Absent a 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.

Accordingly, it may be appropriate to suspend the aforesaid provisions at the beginning of the next marketing period until completion of Federal Order Reform.

List of Subjects in 7 CFR Part 1131

Milk marketing orders.

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

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

Dated: July 9, 1999.

Richard M. McKee,

Deputy Administrator, Dairy Programs.

[FR Doc. 99-18051 Filed 7-14-99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 3

[Docket No. 98-121-1]

Animal Welfare; Draft Policy on Environment Enhancement for Nonhuman Primates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Draft policy statement and request for comments.

SUMMARY: Under the Animal Welfare Act, our regulations require that dealers, exhibitors, and research facilities that maintain nonhuman primates develop and follow a plan for environment enhancement adequate to promote the psychological well-being of the nonhuman primates. We have developed a draft policy to clarify what we believe must be considered and included in the plan in order for dealers, exhibitors, and research facilities to adequately promote the psychological well-being of nonhuman primates. We are seeking public comment on the draft policy before we implement it.

DATES: We invite you to comment. We will consider all comments that we receive by September 13, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98-121-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 98-121-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday,

except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT:

Natalie Roberts, Ph.D., Program Evaluation and Monitoring, PPD, APHIS, 4700 River Road Unit 120, Riverdale, MD 20737-1234, (301) 734-8937; or e-mail:

Natalie.A.Roberts@usda.gov.

SUPPLEMENTARY INFORMATION: The Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, exhibitors, and other regulated entities. The Secretary of Agriculture has delegated the responsibility for enforcing the AWA to the Administrator of the Animal and Plant Health Inspection Service (APHIS). Regulations established under the AWA are contained in 9 CFR parts 1, 2, and 3. The APHIS Animal Care program ensures compliance with the AWA regulations by conducting inspections of premises with regulated animals.

Subpart D of 9 CFR part 3 contains requirements for the humane handling, care, treatment, and transportation of nonhuman primates. Under subpart D, § 3.81 requires that dealers, exhibitors, and research facilities that maintain nonhuman primates develop, document, and follow an appropriate plan for environment enhancement adequate to promote the psychological well-being of nonhuman primates. Section 3.81 further requires that the plan be in accordance with currently accepted professional standards, as cited in appropriate professional journals or reference guides, and as directed by the attending veterinarian. At a minimum, § 3.81 requires the plan to address:

- The social needs of nonhuman primates known to exist in social groups;
- Enrichment of the physical environment of the nonhuman primates by providing means of expressing noninjurious species-typical behavior;
- Special considerations for infant and young nonhuman primates; nonhuman primates that show signs of psychological distress, are restricted in their activities, or are individually housed; and great apes weighing over 110 lbs.

Further guidance and specific examples are provided in § 3.81 for determining when social grouping of nonhuman primates is inappropriate and ways to provide environmental enrichment. In