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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1106

#### Milk in the Southwest Plains Marketing Area; Order Suspending Certain Provisions of the Order

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

**ACTION:** Suspension of rules.

**SUMMARY:** This action for the Southwest Plains market suspends, for the months of March through August 1988, the shipping standards for supply plants and the monthly requirement that a dairy farmer's milk be received at a pool plant in order to be eligible for diversion to nonpool plants. The action was requested by Mid-America Dairymen, Inc., a cooperative association that represents producers who supply milk for the market. The action is necessary to assure the efficient disposition of an increasing supply of milk produced by dairy farmers who have historically supplied the market's fluid milk requirements.

**EFFECTIVE DATE:** Upon publication of this document in the *Federal Register* for the months of March through August 1988.

**FOR FURTHER INFORMATION CONTACT:** John F. Borovics, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

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

Notice of Proposed Suspension: Issued February 25, 1988; published March 1, 1988 (53 FR 6158). The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

Such action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers supplying the market's fluid needs will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing. This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This suspension order is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Southwest Plains marketing area.

Notice of proposed rulemaking was published in the *Federal Register* on March 1, 1988 (53 FR 6158). Such notice invited comments on a proposal to suspend certain provisions of the Southwest Plains order. Interested parties were given seven days after the notice was published in the *Federal Register* to file comments on the proposed action. No opposing views 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-August 1988 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1106.6, the words "during the month".

2. In § 1106.7(b)(1), the words "until any month of such period in which less than 20 percent of the milk received or diverted as previously specified, is shipped to plants described in paragraph (a) of this section. A plant not meeting such 20 percent requirement in any month of such February-August period shall be qualified in any remaining month of such period only if transfers and diversions pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) of the section are not less than 50 percent of receipts or diversions, as previously specified. A plant that was a pool supply plant under the Neosho Valley, Wichita, Red River Valley or Oklahoma Metropolitan orders (or any combination thereof) during the months of September through December 1982 shall qualify as a pool

plant in each of the months of February through August 1983 until any month of such period in which the plant fails to meet the 20 percent shipping requirement".

3. In § 1106.13, paragraph (d)(1) in its entirety.

#### Statement of Consideration

This action for the Southwest Plains market suspends, for the months of March through August 1988, the shipping standards for supply plants and the monthly requirement that a dairy farmer's milk be received at a pool plant in order to be eligible for diversion to nonpool plants.

The order defines a supply plant as a plant from which fluid milk products are transferred or diverted to distributing plants during the month. It further provides that a supply plant which was pooled under the order during each of the immediately preceding months of September through January shall continue to be pooled during the following months of February through August if 20 percent of the plant's receipts are shipped to distributing plants. The order also provides that a dairy farmer's milk may be diverted to nonpool plants and still be priced under the order if at least one day's production of such person is physically received at a pool plant during the month.

The suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that supplies a substantial portion of the milk for this market. The action is supported by Kraft, Inc., the operator of a pool supply plant at Bentonville, Arkansas and a nonpool manufacturing plant at Springfield, Missouri.

The action is needed because the market's milk production has increased dramatically since the termination of the whole-herd buyout program. Ample supplies of direct-ship milk, which are produced near the market's distributing plants, are available to supply the milk needs of such plants during the months of March-August this year and supplemental shipments from supply plants will not be necessary. Thus, no purpose would be served by requiring that supply plants make shipments to distributing plants in such months or that the milk of distant dairy farmers be delivered to a pool plant at least once during each month. The milk of producers can be marketed more

economically during this six-month period by supplying the needs of distributing plants regularly with direct-ship milk from producers who are favorably located near such plants and by continuously moving the milk of distant producers directly from the farm to manufacturing plants situated in the procurement area.

A suspension of these requirements is needed to give market suppliers the necessary additional flexibility to efficiently handle the market's increasing milk production. If the requirements are not suspended, costly and inefficient movements of milk will have to be made to assure the continued pooling of milk produced by dairy farmers who historically have been supplying the market's fluid needs.

Mid-Am asked that the requirements be suspended for the months of February-August. Although comments were invited on a proposal to suspend the provisions for such seven-month period, it was not possible to complete the required procedures and include February in the suspension period. Therefore, the suspension would apply for the months of March-August 1988.

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) This suspension is necessary to reflect current marketing conditions and to assure orderly marketing in the marketing area in that such action will eliminate unnecessary milk movements and will insure that dairy farmers who regularly have supplied the market's fluid needs will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing;

(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 an opportunity to file written data, views or arguments concerning this suspension. No opposing views were received.

Therefore, good cause exists for making this order effective upon publication in the *Federal Register* for the months of March-August 1988.

#### List of Subjects in 7 CFR Part 1106

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following provisions in §§ 1106.6, 1106.7(b)(1) and 1106.13(d)(1) are hereby suspended for the months of March-August 1988.

#### PART 1106—MILK IN SOUTHWEST PLAINS MARKETING AREA

1. The authority citation for 7 CFR Part 1106 continues to read as follows:

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

##### § 1106.6 [Amended]

2. In § 1106.6, the words "during the month" are suspended.

##### § 1106.7 [Amended]

3. In § 1106.7(b)(1), the words "until any month of such period in which less than 20 percent of the milk received or diverted as previously specified, is shipped to plants described in paragraph (a) of this section. A plant not meeting such 20 percent requirement in any month of such February-August period shall be qualified in any remaining month of such period only if transfers and diversions pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) of the section are not less than 50 percent of receipts or diversions, as previously specified. A plant that was a pool supply plant under the Neosho Valley, Wichita, Red River Valley or Oklahoma Metropolitan orders (or any combination thereof) during the months of September through December 1982 shall qualify as a pool plant in each of the months of February through August 1983 until any month of such period in which the plant fails to meet the 20 percent shipping requirement" are suspended.

##### § 1106.13 [Amended]

4. In § 1106.13, paragraph (d)(1) is suspended in its entirety.

Signed at Washington, DC, on March 21, 1988.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 88-6656 Filed 3-25-88; 8:45 am]

BILLING CODE 3410-02-M

#### 7 CFR Part 1260

#### Beef Promotion and Research Program; Procedures for Conduct of Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

**SUMMARY:** The purpose of this rule is to adopt as a final rule, with some changes, a proposed rule which was published in the *Federal Register* on January 8, 1988 (53 FR 509). Pursuant to the Beef Promotion and Research Act of 1985, a referendum among cattle producers and cattle and beef importers will be

conducted by the Secretary to determine whether the Beef Promotion and Research Order which was implemented July 18, 1986 should be continued. The Act requires the Secretary to conduct such referendum not later than 22 months after the issuance of the Order. This final rule establishes the procedures for conducting the required initial referendum which will be held on May 10, 1988, in all locations except for the State of West Virginia where the referendum will be held on May 9, 1988.

**DATE:** March 28, 1988.

**ADDRESS:** Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch, Livestock and Seed Division, Agricultural Marketing Service (AMS), USDA, Room 2610-S, P.O. Box 96456, Washington, DC 20090-6456.

**FOR FURTHER INFORMATION CONTACT:** Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch (202) 447-2650.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established to implement Executive Order No. 12291 and Departmental Regulation No. 1512-1 and has been classified as a non-major rule under the criteria contained therein.

This action also was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This rule establishes procedures for the conduct of a referendum to determine whether the Beef Promotion and Research Order (Order) should be continued. It permits all eligible cattle producers and importers of cattle, beef, and beef products to register and vote. Participation in the referendum is voluntary. In addition, the referendum is required by statute; therefore, a regulatory flexibility analysis was not prepared. The Administrator of the Agricultural Marketing Service (AMS), has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

The Beef Promotion and Research Act of 1985 (Act) (7 U.S.C. 2901 *et seq.*) provides for the establishment of a coordinated program of promotion and research designed to strengthen the beef industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products. The program is financed by a \$1-per-head assessment on domestic and imported cattle and an equivalent amount on imported beef and beef products. Pursuant to the Act, an Order was made effective July 18, 1986, and the collection of assessments began on October 1, 1986.