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

[Docket No. AO–271–A32; DA–92–24]

Milk in the Central Arizona Marketing Area; Decision on Proposed Amendments to Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision revises the definition of producer-handler to prohibit deliveries of fluid milk products to a wholesale customer if the customer is also receiving the same products in the same-sized package with a similar label from a fully or partially regulated handler during the month. It also clarifies the limits and sources of supplemental supplies of producer-handlers. Finally, the decision removes the ''associated producer'' and ''associated producer milk'' provisions. The decision is based on proposals presented at a public hearing held in Phoenix, Arizona, on February 2–3, 1993.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

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 action will not have a significant economic impact on a substantial number of small entities. The amended order will promote orderly marketing of milk by producers and regulated handlers.

These proposed amendments have been reviewed under Executive Order 12278, Civil Justice Reform. This rule is not intended to have 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 file 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 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.

Prior Documents in This Proceeding

Notice of Hearing: Issued December 21, 1992; published December 30, 1992 (57 FR 62241).

Recommended Decision: Issued December 15, 1993; published December 22, 1993 (57 FR 67703).

Extension of Time for Filing Exceptions: Issued February 4, 1994; published February 14, 1994 (59 FR 6916).

Revised Recommended Decision: Issued November 4, 1994; published November 14, 1994 (59 FR 56414).

Preliminary Statement

A public hearing was held to consider proposed amendments to the marketing agreement and the order regulating the handling of milk in the Central Arizona (Order 1131) marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR Part 900), in Phoenix, Arizona, on February 2–3, 1993. Notice of such hearing was issued on December 21, 1992, and published December 30, 1992 (57 FR 62241).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on December 15, 1993, and November 4, 1994, issued a recommended decision and a revised recommended decision, respectively, containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the revised recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. The proposed pool payment by a producer-handler that was provided for in the proposed amendments to §§ 1131.60 and 1131.71 has been dropped;

2. A new paragraph (a)(3) has been added to the producer-handler definition (§ 1131.10) which prohibits a producer-handler from distributing fluid milk products to a wholesale customer who also is receiving the same product in the same-sized package with a similar label from a fully or partially regulated handler during the month; and

3. The discussion of Issue No. 1 in the findings and conclusions has been revised to reflect these changes.

The material issues on the record of hearing relate to:

1. The definition and treatment of producer-handlers;

2. The definition and treatment of associated producers; and

3. Conforming changes and non-substantive changes.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. The definition and treatment of producer-handlers. The order should be amended to prohibit producer-handlers (P–Hs) from distributing fluid milk products to wholesale customers [1] who

[1] As used in the amended order, the term ''wholesale customer'' means distributors or jobbers, stores that are owned or leased by others, or institutions such as schools, hospitals, prisons, and nursing homes. It does not mean retail sales to consumers at the P–H's dock, at the P–H's own

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also receive the same products in the same-sized package with similar labels from a fully or partially regulated handler during the month. Additional amendments will clarify the limits and sources of supplemental supplies of the P–H. The basic intent of these provisions is to continue to allow the operations of P–Hs, while ensuring they bear the burden of their own reserve supply of milk.

At the time of the hearing, Heartland Dairy was the largest P–H in the Central Arizona market. Since then, it has sold its cows and dairy farms and has become a fully regulated handler under the order. Testimony at the hearing indicated that Heartland had been sharing a joint account with a fully regulated handler, Jackson Foremost Foods, to supply Fry's Food Stores, the dominant supermarket chain in the Phoenix area.

The Executive Director of The United Dairymen of Arizona (UDA), a cooperative association in the market, testified that Fry's Food Stores is the principal outlet for Heartland Dairy's fluid milk product distribution in the Central Arizona marketing area. The witness stated that Heartland shared the Fry's account with Jackson Foremost Foods, a fully regulated handler supplied by UDA. He said that when Heartland's deliveries to Fry's were insufficient to cover its commitment, Fry's called on Jackson to make up the deficit. Jackson, in turn, called on UDA to supply it with more milk. The witness indicated that this scenario had occurred repeatedly in the last three years, particularly during the low production months of July, August, September, and October, and throughout the year on Fridays and Saturdays.

The UDA spokesman testified that this pattern of operation by Heartland Dairy violated the spirit of the P–H provision. He referenced the Secretary of Agriculture's 1962 decision (27 FR 3923) which states that:

> A producer-handler should be required to maintain his own reserve supply since he is exempted from pooling his Class I sales with other producers. The limitation on the amount of milk which an exempt producer-handler may purchase from pool plants will make it necessary for him to maintain herd production equal to his Class I sales plus a reserve to cover variations in production and sales.
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> * * * [P]roducer-handlers' milk sales represent a potential threat to orderly marketing if producer-handlers are permitted to shift their excess burden to other producers. The Central Arizona market is composed of large producers delivering nearly one million pounds a month. If such large volume producers could market their own production entirely as Class I and buy reserve milk to balance daily fluctuations in their production and sales, they would be a disturbing element in the market.

The Vice President of Sales for Shamrock Foods, one of the largest handlers in the Central Arizona market, testified that Heartland Dairy supplied private label milk to the Southwest Supermarket chain in December of 1992, when Shamrock was also supplying milk to Southwest stores. In addition, he said that from time to time Southwest would call Shamrock asking for additional milk when Southwest was not getting its orders filled by Heartland Dairy. It was his understanding, he testified, that when Southwest was required to buy this extra milk from Shamrock, Heartland Dairy would pay the difference in price between what it would have charged Southwest and what Shamrock charged Southwest for this milk.

In this market, the annual variation in producer milk from the lowest production month to the highest production month has averaged 28 percent during the past five years. Given this seasonality in production, a P–H must find a way to handle its seasonal production problem. One method would be to maintain a fluid milk distribution level equal to its highest month's production—typically, March—and purchase enough supplemental milk during the other eleven months. However, unrestricted supplemental purchases are conceptually antithetical to the principle of maintaining one's own reserve supply. Alternatively, a P–H could maintain a fluid milk product distribution level equal to its lowest month's production—typically, August—and send the additional production during the other 11 months to a manufacturing plant.

At the present time, the only manufacturing plant within reasonable distance of Heartland Dairy is UDA's butter-powder plant at Tempe, Arizona. There are no other manufacturing plants in the Central Arizona marketing area, except for a cheese plant which is under the same roof as UDA's butter-powder plant and which is fully supplied by UDA, and a yogurt processing plant, LaCorona Yogurt, which, according to the manager of Heartland Dairy, was under contract to buy its milk from Shamrock. Consequently, the only surplus outlet available to Heartland Dairy in this area is UDA's butter-powder plant.

The Heartland Dairy manager testified that when Heartland Dairy sent surplus milk to the UDA butter-powder plant for manufacturing use, it was in the position of having to accept whatever the cooperative was willing to pay for the milk. For example, he said that in December 1992 Heartland sold 427,210 pounds of surplus milk to UDA and was paid $10.25 per hundredweight for it, which was $1.09 less than the order's Class III price.

The evidence in the record indicates that Heartland used other ways to handle its seasonal production problem. It shared joint Class I sales accounts with fully regulated handlers and disposed of fluid milk products outside of the marketing area when extra milk was available.

UDA's proposal to address these practices would require the market administrator to closely monitor the P–H's operations and to make several subjective judgments regarding whether the P–H was maintaining its own reserve supply. Specifically, the market administrator would be asked to: (1) Compare weekly volumes sold to accounts serviced by the P–H and by other handlers under this or any other Federal milk order; (2) determine whether the P–H packaged milk in the same label as another handler under this or any other Federal milk order; (3) determine if the P–H's pro rata share of Class I route disposition in the marketing area during the flush milk production months (March, April, May) was substantially the same as during the short milk production months (July, August, September); and (4) use any other method that would indicate when the P–H was not maintaining the burden of its own reserve supply. Under the proposal, the P–H would be fully regulated for the next 12 months if the market administrator found that the P–H was not maintaining its own reserve supply.

Another part of the UDA proposal was designed to preclude P–Hs from sharing Class I accounts with fully regulated handlers. In this case, the order would treat packaged fluid milk that is delivered by a P–H to a market outlet which is also serviced by a pool plant (using the same label as the P–H) as having been ''acquired for distribution'' by the pool plant. In such circumstances, the P–H's milk would be assigned a Class III classification at the pool plant. This procedure would force an equal amount of ''producer milk'' into Class I and thereby increase the pool plant's obligation to the pool.

In its brief, UDA stated that, based on the evidence in the record, a producer-handler should be required to carry 135 percent of its monthly Class I sales in its own herd production. To implement

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retail stores (wherever located), or on the P–H's home delivery routes.

this requirement, the cooperative suggested that its proposal be amended by inserting a new paragraph in § 1131.10(a), which would read as follows:

(2) Produces in his own herd a rolling average during the preceding three months of 135 percent of Class I route disposition. If such person's milk production from his own herd falls below 135 percent of Class I route disposition in any such period, such person shall be pooled in the next succeeding month and continue to be pooled until production from his own herd equals or exceeds 135 percent of Class I route disposition for a three month period.

The UDA proposal should not be adopted. It lacks objective standards and instead relies on many subjective judgments, which would make it very difficult to administer and enforce. In addition, it would penalize P–Hs and fully regulated handlers even when a P–H was operating in a totally unobjectionable manner. For example, if a P–H serviced an account with a fully regulated handler and each party contributed a fixed amount of fluid milk products each month to the account, the order, as modified by UDA's proposal, would nonetheless treat the P–H's deliveries as receipts of the pool plant and penalize the pool plant as described above.

Although UDA did not include any specific order language to address the appropriate size of a P–H, the cooperative attempted to modify the language of its proposal to restrict the P–H exemption to a ''family-type farm operation.'' The Administrative Law Judge presiding at the hearing disallowed the modification but permitted the testimony as an ''offer of proof.'' We concur with the Judge that this modification is beyond the scope of the hearing.

A representative of the National Milk Producers Federation (NMPF) appeared at the hearing to present a proposal that was ruled by the Administrative Law Judge to be outside the scope of the hearing. The NMPF proposal would have limited the size of a P–H. The witness stated that the NMPF was offering the proposal as an alternative to the UDA proposal because, in his opinion, the UDA proposal would be impossible to administer or enforce.

A consultant for Heartland Dairy testified in support of a modified Heartland Dairy proposal that would enable a P–H to purchase unlimited supplies of supplemental milk from any source, but which also would require the P–H to make a payment into the order's marketwide pool each month to compensate the market's producers for carrying Heartland's reserve supply of milk. The consultant stated that the goal of the Federal order program is to insure minimum prices to dairy farmers. This goal, he said, could be accomplished without fully regulating producer-handlers.

The modified proposal of Heartland Dairy calls for the P–H to make a payment into the pool each month based on the difference between the P–H's production in the current month and its lowest month's production during the immediately preceding 12 months. The difference in production between the current month and the lowest month would be prorated to the P–H's utilization of milk in each class in the current month. The payment would then be computed by: (1) Multiplying the pounds assigned to Class I by the difference between the Class I price and the blend price (a positive value); (2) multiplying the pounds assigned to Class II by the difference between the Class II price and the blend price (a positive or negative value); (3) multiplying the pounds assigned to Class III by the difference between the Class III price and the blend price (a negative value); and (4) adding these products together. If the current month's production were less than the lowest month's production during the preceding 12 months, no payment would be required.

There can be no argument with certain basic facts that must be taken into consideration in resolving the problems described in the hearing record. First, the seasonal variation in production in this market is significant, and this variation in production adversely affects the cost of handling and manufacturing the market's reserve supply of milk. From the evidence in the record, it would appear that this burden falls largely on UDA.

Second, there is really only one place to economically dispose of surplus milk for manufacturing use: UDA's butter-powder plant at Tempe. This lack of viable economic alternatives leads to marketing practices which some parties in the market deem to be ''disruptive'' and which nearly all parties in the market concede result in an unequal sharing of the cost of maintaining the market's reserve supply of milk.

Third, there is really only one place to obtain supplemental supplies of milk in this market. UDA accounts for 88 percent of the producer milk in the market, and Shamrock Foods accounts for the remaining 12 percent, which is largely used for its own use, except for the amount which it supplies to LaCorona Yogurt.

The recommended and revised recommended decisions concluded that additional flexibility was needed in the order to permit a P–H to bear its pro rata share of the cost of maintaining the market's reserve supply while, at the same time, operating in a reasonably efficient manner. Those decisions recommended the adoption of a formula for computing the degree to which a producer-handler was relying on the market to bear its reserve supplies and the imposition of a pool payment to remunerate the market for carrying the P–H's reserve supply.

This final decision abandons that recommendation and substitutes, in its place, a far simpler provision which is designed to prevent a similar problem from ever occurring rather than to control it once it has started. It accomplishes this goal by inserting a new paragraph—(a)(3)—in the producer-handler definition (§ 1131.10) which specifically prohibits the type of activity that Heartland Dairy engaged in.

Heartland Dairy was able to manipulate the producer-handler provision of the order because Jackson Foremost Foods was willing to perform a balancing function for Heartland. Both Heartland and Jackson provided Fry's Food Stores with the same fluid milk product in the same-sized container with the same label on it. Consequently, specifically prohibiting similar types of practices now seems to us to be the least burdensome way to amend the order to insure that this situation does not arise again.

While we continue to believe in the viability of the approach taken in the recommended decisions, we also recognize that this approach may require further ''fine-tuning,'' may be difficult to administer or enforce, and surely would complicate the order. Therefore, given the changes which have occurred in this market since the time of the hearing, we must conclude that a simple provision that bars the activity which led to the problem is the most effective and least burdensome way to prevent its recurrence.

This final decision continues to embrace several of the other proposed changes adopted in the revised recommended decision. Specifically, it amends the order to permit a P–H to obtain supplemental fluid milk products by transfer or diversion from pool plants and other order plants, and by diversion from a cooperative bulk tank handler. However, it limits such receipts to 5,000 pounds or 5 percent of the P–H's monthly fluid milk product disposition. No other sources of supply will be allowed regardless of whether such purchases entered the P–H's plant or were acquired elsewhere.

The limit on supplemental purchases will not only apply to bulk or packaged fluid milk products that are received by transfer or diversion at the P–H's plant, but also will apply equally to packaged fluid milk products that are acquired for route disposition to any of the P–H's retail outlets. This means that any acquisition of a fluid milk product, whether it entered the P–H's plant or retail facility, was picked up by the P–H's truck, or was acquired in some other way, will still count against the monthly 5,000-pound/5 percent limit.

Currently, P–Hs are not permitted to purchase milk directly from dairy farms. However, as noted previously, UDA accounts for 88 percent of the producer milk in the Central Arizona market. Accordingly, the cooperative is the likely source for supplemental milk supplies. Even if the P–H were to obtain transfers from a pool plant operated by another handler, in all likelihood it would be UDA milk since the cooperative association supplies all of the pool plants in this market. In view of this, it is much more efficient to allow a P–H to obtain milk from a cooperative association in its capacity as a handler on milk delivered directly from producers' farms. This milk will be classified as Class I milk, and the cooperative association handler delivering the milk will account to the pool for it.

While a P–H may now receive transfers from pool plants and other order plants, it may not receive diverted milk from these plants. This restriction also is removed to allow a P–H to obtain supplemental milk by diversion from these plants directly from the farms of producers. Under most circumstances, this would be the most efficient way to obtain a load of supplemental milk, and there is no reason to preclude such shipments. Such receipts will be classified as Class I milk, and the diverting handler will account to the pool for this milk.

This final decision continues the earlier recommendations requiring a P–H to file monthly reports with the market administrator and giving the market administrator full access to all of a producer-handler's records, including all of the milk production and farm pickup records pertaining to the dairy operations of each of a P–H's farms. By having complete access to a P–H's records, the market administrator will be in a better position to enforce the order and to prevent or minimize a problem before it gets out of hand.

Exceptions to the Revised Recommended Decision

Three letters were received in response to the revised recommended decision.

Comment: UDA indicated in its letter that while it continues to believe that P–Hs should not be exempt from full regulation, it commended the Department ''for taking this first step toward an approach to competitive parity between P–Hs and the fully regulated handlers with whom they are in daily competition.''

Response: While some aspects of the revised recommended decision have not been carried forward in this final decision, several new provisions in the order should strengthen the hand of the market administrator to ensure that a similar situation does not again arise in this market. In particular, P–Hs will be required to report their receipts and utilization to the market administrator monthly. This will permit the market administrator to ascertain whether the P–H is operating in a manner that qualifies it for its exempt status under the order.

Comment: Sarah Farms, a P–H located in Yuma, Arizona, submitted the following comment:

> We feel that this recommended decision and proposed amendment * * * was for a particular situation that no longer exists. The P–H effectuating this action violated the spirit and intention of the laws governing a P–H, was held accountable to these existing regulations, failed the criterion, and because of this is no longer a P–H today. The order as it is written is correct, it worked, don't change a thing.

Response: At the time of the hearing, Sarah Farms was not fully operational and did not participate in the hearing. For this reason, there is no information in the record concerning its mode of operation.

We appreciate Sarah Farms' argument that they could be unnecessarily burdened by a provision that was designed for a situation that no longer exists. For this reason, we have significantly changed this final decision.

Sarah Farms exhibits an understanding of how Heartland Dairy manipulated its P–H exemption. For this reason, the new provision in § 1131.10(a)(3) should pose no burden to it. Under the order, as amended, Sarah Farms may supply wholesale accounts; they may deliver more products to such accounts in one month than in another month without penalty; they may even supply a wholesale account when that account is also supplied by a fully or partially regulated handler. What they may not do, however, is supply the same product (e.g., 2% milk) in the same-sized package and with a similar label as is being supplied to that customer by a fully or partially regulated handler during the same month.

While Sarah Farms would be subject to the new monthly reporting provisions that are contained in § 1131.30(d), this is not an unreasonable burden to ensure that it is properly entitled to its exemption under the order.

Comment: Goldenwest Dairies, another P–H under the Central Arizona order, suggested that mechanical breakdowns be included with natural disasters in computing a P–H's low month of production in § 1131.60(J)(4)(i).

Response: This suggestion is no longer relevant in view of the changes made in this final decision.

2. The definition and treatment of associated producers. A proposal by The United Dairymen of Arizona to remove all language from the order relating to ''associated producer'' should be adopted. UDA's general manager testified that UDA had proposed the associated producer provisions at a hearing held on November 9–10, 1982. The purpose of these provisions, he explained, was to enable a dairy farmer in the Phoenix area to retain ''producer'' status on a portion of his milk which he was unable to market to an Order 131 handler.

The UDA witness stated that the Phoenix producer never availed himself of these provisions, but that a dairy farmer from California had ''exploited'' the provision during a 21-month period from June 1987 through February 1989. He said that this dairy farmer had drawn $192,340 out of the pool in the form of ''phantom freight'' on more than 8 million pounds of milk diverted to a nonpool plant in California.

The ''associated producer'' provision now in the order is not a provision that is commonly found in Federal orders. Normally, a pool plant operator who regularly receives a dairy farmer's milk will willingly serve as the handler for the milk when it is not needed at the pool plant and must be diverted to a nonpool plant for manufacturing use. In the Central Arizona market, however, a pool plant operator who had received a dairy farmer's milk was not willing to bear responsibility for the milk when it was diverted to a nonpool plant. Accordingly, UDA proposed—and the Secretary adopted, with some modifications—the ''associated producer'' provisions.

The producer for whom the ''associated producer'' provision was intended did not appear at the hearing

to present any opposition testimony but did submit a brief in which he explained that he was unable to attend the hearing because of a flooding problem. In his brief, he stated that the associated producer provision is needed because ''the pool should service all producers in it, not just a select few.'' He suggested, however, that it be modified to restrict it to ''producer milk originating in the geographical boundaries of Order 131.'' He did not indicate that he has used the provision or plans to use it in the future but implied that it should be kept as a safeguard.

Under the associated producer provisions, a producer is permitted to divert a certain portion of his/her milk to a nonpool plant for Class III use if 50 percent of that person's milk is ''producer milk'' in the current month and in each of the immediately preceding two months. On the milk diverted to the nonpool plant, the producer draws a payment from the pool based on the difference between the order uniform price and the Class III price for the month.

The non-member dairy farmer who inspired the cooperative's 1982 proposal has never used the associated producer provision and now markets his milk through UDA. According to the UDA general manager, the California producer who had used the provision for a 21-month period joined UDA in the fall of 1989 and stopped using the provision in February 1989.

The associated producer provisions, when used, have been difficult to administer. In a letter referenced by the UDA witness at the hearing, the Order 131 market administrator is quoted as stating that he had ''no handle under the order for determining the volume of milk shipped from a producer's farm to a nonpool plant because there were no reporting requirements'' with which to verify the information supplied by the producer.

In view of the difficulty of administering the associated producer provision, its lack of use during the past three years, the potential for its abuse, and the limited opposition to its removal, there is no valid reason to keep it in the order. Under these circumstances, it no longer effectuates the declared policy of the Act and should be removed.

3. *Conforming and non-substantive changes.* Certain conforming changes are needed to implement the proposed changes adopted above. In particular, § 1131.13 (Producer milk) is changed to allow a cooperative bulk tank handler or a pool plant operator to divert milk for their accounts to a producer-handler; § 1131.30 (Reports of receipts and utilization) is modified to report the P–H's own-farm production and supplemental milk purchases each month; § 1131.42 (Classification of transfers and diversions) is modified to provide for the classification of milk diverted to a P–H from a cooperative bulk tank handler or a pool plant operator; and § 1131.61 (Computation of uniform price) is changed to remove obsolete language related to ''associated producer milk.''

Other changes of a minor and non-substantive nature have also been made to the order to remove obsolete language from the Class I price provision and to correct errors in § 1131.44 (i.e., change ''ilk'' to ''milk'') and § 1131.72 (i.e., change ''for'' to ''from'' and remove obsolete language related to associated producers).

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when Order 1131 was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the Central Arizona marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk in the Central Arizona marketing area and an Order amending the order regulating the handling of milk in the Central Arizona marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions. It is hereby ordered that this entire decision and the two documents annexed hereto be published in the Federal Register.

Determination of Producer Approval and Representative Period

August 1995 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Central Arizona marketing area is approved or favored by producers as defined under the terms of the order (as amended and as hereby proposed to be amended) who during the representative period were engaged in the production of milk for sale within the Central Arizona marketing area.

List of Subjects in 7 CFR Part 1131

Milk marketing orders.

Dated: September 19, 1995.

Shirley R. Watkins,

Acting Assistant Secretary, Marketing and Regulatory Programs.

Order Amending the Order Regulating the Handling of Milk in the Central Arizona Marketing Area

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Central Arizona marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Central Arizona marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby 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.

2. § 1131.10, paragraph (a)(3) is redesignated as (a)(4), a new paragraph (a)(3) is added, and paragraph (a)(1)(ii) is revised to read as follows:

§ 1131.10 Producer-handler.

* * * * *

(a) * * *

(1) * * *

(ii) Fluid milk products obtained by transfer or diversion from pool plants, other order plants, or from a handler described in § 1131.9(b), in an amount not to exceed 5 percent of its fluid milk product disposition for the month or 5,000 pounds, whichever is less;

(2) * * *

(3) Does not distribute fluid milk products to a wholesale customer who also is serviced by a handler described in § 1131.9(a) or (d) that supplied the same product in the same-sized package with a similar label to the wholesale customer during the month; and

* * * * *

§ 1131.13 [Amended]

3. In § 1131.13 paragraphs (a)(2) and (b)(1), the words ''that is not a producer-handler plant'' are removed.

§§ 1131.21 and 1131.22 [Removed]

4. Sections 1131.21 and 1131.22 are removed.

5. In § 1131.30, paragraph (d) is redesignated as paragraph (e), in newly designated (e) the words ''(a) through (c)'' are revised to read ''(a) through (d)'', and a new paragraph (d) is added to read as follows:

§ 1131.30 Reports of receipts and utilization.

* * * * *

(d) Each handler described in § 1131.10 shall report:

(1) The pounds of milk received from each of the handler's own-farm production units, showing separately the production of each farm unit and the number of dairy cows in production at each farm unit;

(2) Fluid milk products and bulk fluid cream products received at its plant or acquired for route disposition from pool plants, other order plants, and handlers described in § 1131.9(b);

(3) Receipts of other source milk not reported pursuant to paragraph (d)(2) of this section;

(4) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1131.40(b)(1); and

(5) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

* * * * *

§ 1131.33 [Removed]

6. Section 1131.33 is removed.

7. In § 1131.42 paragraph (d)(2)(vi), the words ''pursuant to § 1131.22 or'' are removed, and the introductory text of paragraph (c) and paragraph (c)(1) are revised to read as follows:

§ 1131.42 Classification of transfers and diversions.

* * * * *

(c) *Transfers and diversions to producer-handlers.* Skim milk or butterfat transferred or diverted from a pool plant or diverted from a handler described in § 1131.9(b) to a producer-handler under this or any other order shall be classified:

(1) As Class I milk, if transferred or diverted in the form of a fluid milk product; and

* * * * *

§ 1131.44 [Amended]

8. In § 1131.44(a)(4), the word ''.ilk'' is revised to read ''milk''.

9. In § 1131.50, paragraph (a) is revised to read as follows:

§ 1131.50 Class prices.

* * * * *

(a) The Class I price shall be the basic formula price for the second preceding month plus $2.52.

* * * * *

10. In § 1131.61, paragraph (b) is removed, paragraphs (c) through (f) are redesignated as paragraphs (b) through (e), and newly redesignated paragraph (d) is amended by removing paragraph (d)(3) and revising paragraphs (d)(1) and (2) to read as follows:

§ 1131.61 Computation of uniform price.

* * * * *

(d) * * *

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1131.60(f).

* * * * *

§ 1131.72 [Amended]

11. In § 1131.72, the word ''for'' is revised to read ''from'' in the section heading, paragraph (b) is removed, and paragraph (c) is redesignated as paragraph (b).

§ 1131.77 [Amended]

12. In § 1131.77, the last sentence is removed.

§ 1131.85 [Amended]

13. In § 1131.85, paragraph (b) is removed and reserved.

[FR Doc. 95–23896 Filed 9–27–95; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS No. 1692–95]

RIN 1115–AD92

Fees Assessed for Defaulted Payments

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend existing Immigration and Naturalization Service (Service) regulations to increase the fee imposed when a check submitted to the Service in payment of a fee is not honored by the bank upon which it is drawn, from $5.00 to $30.00. The purpose of the proposed change is to enable the Service to recoup the administrative costs incurred in processing all returned checks and other defaulted payments. This action will result in the Service no longer losing money as a result of bad check activity.

DATES: Written comments must be submitted on or before November 27, 1995.

ADDRESSES: Written comments should be submitted, in triplicate, to Chief, Debt Collection and Cash Management Branch, Office of Finance, Immigration and Naturalization Service, 425 I Street, NW., Room 6309, Washington, DC 20536–0002. Facsimile submissions may be made to (202) 514–7860. To facilitate processing, please reference INS No. 1692–95 on all correspondence.

Before adopting this proposal, consideration will be given to any written comments that are submitted to the Service. All such comments received from the public pursuant to this notice of proposed rulemaking will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Debt Collection and Cash Management Branch, 425 I Street, NW., Room 6309, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Allen H. Sinsheimer, Systems Accountant, Debt Collection and Cash Management Branch, Office of Finance, Immigration and Naturalization Service, 425 I Street, NW., Room 6008, Washington, DC 20536, telephone (202) 616–7715.

SUPPLEMENTARY INFORMATION:

I. Introduction

Changes in the current regulation are needed to make the bad check charge consistent with the actual costs incurred by the Service in processing returned checks and other defaulted payments. The current bad check charge is $5.00.

The Service has studied the costs incurred by several Administrative Centers attributable to the return of a bad check from a financial institution. The Administrative Center, Dallas, and the Administrative Center, Twin Cities, were asked to identify each action that must be undertaken and quantify the time and costs involved in processing a bad check. Meaningful and reliable accumulations of the time and expense involved in the average costs of processing each bad check have been gathered, since these centers handle a substantial number of financial transactions each year. For example, three employees at the Dallas Administrative Center each spend 38 hours each month processing bad checks. Over 900 bad checks are processed each year at the Dallas Administrative Center. Data for over 1,800 bad checks were provided by the Administrative Centers.

As a result of our study, we have determined that the average cost to the Service to process each bad check received is $30.11. We have rounded off the cost to $30.00.

The Service notes that the United States Customs Service has recently completed a review of the costs incurred in processing bad checks and has also concluded that a $30.00 fee is appropriate compensation for the costs it incurs in processing bad checks.

Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and for the reasons stated in the preamble, it is certified that the proposed rule would not have a significant impact on a substantial number of small entities. Accordingly, the proposed rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. The proposed rule would not result in a ''significant regulatory action'' under Executive Order 12866.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252(b), 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. Section 103.7 is amended by:

a. Redesignating paragraph (a) as paragraph (a)(1);

b. Removing in the fifth sentence of newly designated paragraph (a)(1) the term ''$5.00'' and adding in its place the term ''$30.00''; and

c. Removing the sixth sentence of newly designated paragraph (a)(1); and

d. Adding a new paragraph (a)(2) to read as follows:

§ 103.7 Fees.

(a) * * *

(2) A charge of $30.00 will be imposed if a check in payment of a fee, fine, penalty, and/or any other matter is not honored by the bank or financial institution on which it is drawn. A receipt issued by a Service officer for any such remittance shall not be binding upon the Service if the remittance is found uncollectible. Furthermore, credit for meeting legal and statutory deadlines will not be deemed to have been met if payment is not made within 10 business days after notification by the Service of the dishonored check.

* * * * *

Dated: September 12, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

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