

# 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 1011

[Docket No. DA-97-09]

#### Milk in the Tennessee Valley Marketing Area; Notice of Extension of Time for Filing Comments

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

**ACTION:** Proposed rule; extension of time for filing comments.

**SUMMARY:** This document extends the time for filing comments to the proposed termination for the Tennessee Valley Federal milk marketing order from July 10, 1997, to July 31, 1997. The Department issued the proposed termination in response to producer disapproval of the Tennessee Valley order as provided for in the May 12, 1997, final decision which proposes to amend transportation credit provisions in 4 southeastern milk orders. Southern Belle Dairy, a handler regulated under the Tennessee Valley milk order, requested the extension of time contending that the original comment period was too short to prepare a proper response.

**DATES:** Comments are now due on or before July 31, 1997.

**ADDRESSES:** Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456.

**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, e-mail address Nicholas.Memoli@usda.gov.

#### SUPPLEMENTARY INFORMATION:

Prior documents in this proceeding:

*Notice of Proposed Termination:* Issued June 30, 1997; published July 3, 1997 (62 FR 36022).

Notice is hereby given that the time for filing comments to the proposed termination is hereby extended from July 10, 1997, to July 31, 1997.

Southern Belle Dairy requested the extension of time for comments arguing that the extension was necessary in order to have sufficient time to prepare a proper response to the proposed termination. Taking into consideration other obligations by interested parties, the Department contends that the additional time is reasonable and justified.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

#### List of Subjects in 7 CFR Part 1011

Milk marketing orders.

Dated: July 9, 1997.

**Lon Hatamiya,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 97-18393 Filed 7-11-97; 8:45 am]

BILLING CODE 3410-02-U

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1137

[DA-97-02]

#### Milk in the Eastern Colorado Marketing Area; Termination of Proceeding on Proposed Suspension/Termination of Certain Provisions of the Order

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

**ACTION:** Proposed rule; termination of proceeding.

**SUMMARY:** This document terminates the proceeding that was initiated to consider a proposal to suspend or terminate a portion of the performance standard for regulating a distributing plant under the Eastern Colorado Federal milk marketing order. Currently, the order specifies that a distributing plant disposing of 10 percent or more of its Grade A milk receipts, or 12,000 pounds per day, whichever is less, as route disposition in the marketing area is a fully regulated distributing plant. Brown-Swiss Gillette Dairy, a handler

operating a distributing plant that is partially regulated under 3 Federal milk orders, requested the suspension or termination.

#### FOR FURTHER INFORMATION CONTACT:

Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-9368, e-mail address:

Clifford\_M\_Carman@usda.gov.

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

Notice of Proposed Suspension: Issued April 2, 1997; published April 8, 1997 (62 FR 16737).

#### 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 January 1997, the milk of 426 producers was pooled on the Eastern Colorado Federal milk order. Of these producers, 323 produced below the 326,000-pound production guideline and are considered as small businesses. A majority of these producers produce less than 100,000 pounds per month. Of the total number of producers whose milk was pooled during that month, 6 were non-member producers and 420 were members of either Mid-America

Dairymen or Western Dairymen Cooperative, Inc. For January 1997, 322 cooperative members and one non-member producer met the small business criterion.

For the month of January 1997, there were 10 handlers operating 11 plants pooled or regulated under the Eastern Colorado milk order. Of these handlers, half have 500 or fewer employees and qualify as small businesses.

Brown Swiss-Gillette Dairy (Gillette) receives its milk from Black Hills Milk Producers Cooperative. During the month of January 1997, 55 of the 58 producers supplying milk to Black Hills Milk Producers Cooperative would be considered small businesses.

This document terminates the proceeding to suspend or terminate part of a provision of the Eastern Colorado marketing order which makes a distributing plant disposing of 10 percent or more of its Grade A receipts, or 12,000 pounds per day, whichever is less, as route disposition in a marketing area a fully regulated plant. The termination of this proceeding will not have a significant economic impact on a substantial number of small entities because the order will continue to function as it has with no noticeable impact on producers and will not result in any additional regulatory burden on handlers in the Eastern Colorado marketing area. Handlers in the marketing area will continue to pay the minimum order prices to producers.

#### Preliminary Statement

This termination of proceeding is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). Notice of proposed rulemaking was published in the **Federal Register** on April 8, 1997 (62 FR 16737) concerning a proposed suspension of part of a provision of the Eastern Colorado milk order. The proposal would have suspended or terminated a portion of the provision which specifies that a distributing plant disposing of 10 percent or more of its Grade A milk receipts, or 12,000 pounds per day, whichever is less, as route disposition in the marketing area be considered a fully regulated pool plant. Interested persons were afforded opportunity to file written data, views and arguments thereon. Five comments opposing the proposed suspension or termination were received. No supporting comments were received.

#### Statement of Consideration

This document terminates the proceeding to suspend or terminate a portion of the performance standard for regulating a distributing plant under the Eastern Colorado milk order. Currently, the order specifies that a distributing plant disposing of 10 percent or more of its Grade A milk receipts, or 12,000 pounds per day, whichever is less, as route disposition in the marketing area is a fully regulated distributing plant.

Gillette requested the termination or suspension of the 12,000-pound limitation, contending that the limitation is unreasonable when considering the plant size which must be maintained in order for Gillette to survive financially and also maintain its status as a partially regulated plant. Gillette also states that the 12,000-pound limitation is unreasonable when compared to the amount of packaged products delivered in one truckload, which greatly exceeds this limitation. Gillette states that termination or suspension will assure equity among producers and among handlers.

A comment filed on behalf of Western Dairymen Cooperative, Inc. (WDCI), a cooperative association marketing approximately 83% of the total amount of milk pooled on Order 137, opposes the proposed suspension as requested by Brown Swiss-Gillette Dairy. WDCI states that Gillette's route disposition in the Eastern Colorado marketing area is significant in the northern sections of the marketing area and contends that Gillette vigorously competes with fully regulated handlers serving the retail markets in that portion of the marketing area. Due to Gillette's partially regulated handler status that only obligates Gillette to pay into the producer-settlement fund the difference between Order 137's uniform price less \$.58 and what it actually pays its producers, WDCI states that it is possible that Gillette already possesses a price advantage over fully regulated competing handlers in the Order 137 marketing area. WDCI also states that the 12,000-pound per day disposition criterion is a reasonable performance standard and any disposition in excess of this amount by a handler should result in such handler being fully regulated. WDCI opposes the proposed suspension contending that it would open the door for unequal costs among handlers and would result in harm to producers whose milk is pooled under Order 137.

Borden/Meadow Gold Dairies, Inc., an Order 137 regulated handler, which competes for sales with Gillette, also

opposes the proposed suspension or termination. Borden/Meadow Gold Dairies states that the 12,000-pound per day route disposition limitation includes enough sales to cause competitive market pricing and that Gillette has a choice whether to increase their share of sales in the Eastern Colorado marketing area and become fully regulated or stay within the limitation and remain partially regulated. Furthermore, the commentor recommends that the Department should not suspend the 12,000-pound per day limitation while the Federal order reform process is under review.

Sinton Dairy Foods Company, Dairy Gold Foods, and Robinson Dairy, handlers regulated under Order 137, also submitted comments in opposition to Gillette's request. The handlers state that removal of the 12,000-pound per day limitation would allow Gillette to expand their sales without being a fully regulated handler. Additionally, the handlers maintain that all handlers should be subject to the same provisions.

The comments submitted in response to the proposed suspension or termination reveal that there is overwhelming opposition to Gillette's proposal. For January 1997, WDCI and the 4 handlers that submitted opposing comments represented a significant amount of Class I producer milk on such market. The comments indicate that the 12,000-pound per day limitation is reasonable for this market. The removal of the 12,000-pound limitation would place fully regulated handlers at a competitive disadvantage. Any handler exceeding this limitation will be competing with fully regulated handlers and should be subject to the same order provisions. Gillette will remain a partially regulated pool plant or become fully regulated according to the standards of the Eastern Colorado milk order. Therefore, the proceeding to suspend or terminate part of the pool plant definition is terminated.

#### List of Subjects in 7 CFR Part 1137

Milk marketing orders.

The authority citation for 7 CFR Part 1137 continues to read as follows:

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

Dated: July 8, 1997.

**Michael V. Dunn,**

*Assistant Secretary, Marketing and Regulatory Services.*

[FR Doc. 97-18328 Filed 7-11-97; 8:45 am]

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