

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY <sup>1 2</sup>—Continued

(iv) All other carriers (per examination) .....	15.00
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<sup>1</sup> Fees apply for original inspection and weighing, reinspection, and appeal inspection service include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72(a).

<sup>2</sup> An additional charge will be assessed when the revenue from the services in Schedule A, Table 2, does not cover what would have been collected at the applicable hourly rate as provided in § 800.72(2).

<sup>3</sup> If performed outside of normal business, 1½ times the applicable unit fee will be charged.

<sup>4</sup> If, at the request of the Service, a file sample is located and forwarded by the Agency for an official agency, the Agency may, upon request, be reimbursed at the rate of \$2.50 per sample by the Service.

TABLE 3.—MISCELLANEOUS SERVICES <sup>1</sup>

(1) Grain grading seminars (per hour per \$45.00 service representative) <sup>2</sup> .....	\$45.00
(2) Certification of diverter-type mechanical samplers (per hour per service representative) <sup>2</sup> .....	45.00
(3) Special weighing services (per hour per service representative) <sup>2</sup> .....	
(i) Scale testing and certification .....	45.00
(ii) Evaluation of weighing and material handling systems .....	45.00
(iii) NTEP Prototype evaluation (other than Railroad Track Scales) .....	45.00
(iv) NTEP Prototype evaluation of Railroad Track Scales (plus usage fee per day for test car) .....	45.00
(v) Mass standards calibration and reverification .....	100.00
(vi) Special projects .....	45.00
(4) Foreign travel (per day per service representative) .....	420.00
(5) Online customized data EGIS service:	
(i) One data file per week for 1 year .....	500.00
(ii) One data file per month for 1 year .....	300.00
(6) Samples provided to interested parties (per sample) .....	2.50
(7) Divided-lot certificates (per certificate) .....	1.50
(8) Extra copies of certificates (per certificate) .....	1.50
(9) Faxing (per page) .....	1.50
(10) Special mailing (actual cost) .....	
(11) Preparing certificates onsite or during other than normal business hours (use hourly rates from Table 1).	

<sup>1</sup> Any requested service that is not listed will be performed at \$45.00 per hour.

<sup>2</sup> Regular business hours—Monday thru Friday—service provided at other than regular hours charged at the applicable overtime hourly rate.

Dated: May 7, 1997.

**James R. Baker,**  
Administrator.

[FR Doc. 97-12435 Filed 5-12-97; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1126

[DA-97-06]

#### Milk in the Texas Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

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

**ACTION:** Proposed suspension of rule.

**SUMMARY:** This document invites written comments on a proposal that would continue the suspension of segments of the pool plant and producer milk definitions of the Texas order for a two-year period. Associated Milk Producers, Inc., a cooperative association that represents producers who supply milk to the market, has requested the continuation of the suspension. The cooperative asserts that continuation of this suspension is necessary to ensure

that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order without incurring costly and inefficient movements of milk.

**DATES:** Comments are due no later than June 12, 1997.

**ADDRESSES:** Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-9368.

**FOR FURTHER INFORMATION CONTACT:** Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-9368, e-mail address: Clifford\_M\_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 has 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 1997, the milk of 1,805 producers was pooled on the Texas Federal milk order. Of these producers, 1,350 producers were below the 326,000-pound production guideline and are considered small businesses. During this same period, there were 24 handlers operating pool plants under the Texas order. Five of these handlers would be considered small businesses.

This rule proposes to continue the suspension of segments of the pool plant and producer milk definitions under the Texas order. 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.

### Proposed Rule

Notice is hereby given that, pursuant to the provisions of the Act, the suspension of the following provisions of the order regulating the handling of milk in the Texas marketing area is being considered for the months of August 1, 1997, through July 31, 1999:

1. 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".

2. 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".

3. 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".

4. In § 1126.13, paragraph (e)(2).

5. 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;"

All persons who desire to submit written data, views or arguments about the proposed suspension should send two copies to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 30th 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 the Dairy Division during regular business hours (7 CFR 1.27(b)).

### Statement of Consideration

This action would continue the suspension of segments of the pool plant and producer milk definitions under the Texas order. This proposed suspension would be in effect from August 1997 through July 1999. The current suspension will expire July 31, 1997. The proposed action would continue the suspension of: (1) The 60 percent delivery standard for pool plants operated by cooperatives; (2) the diversion limitation applicable to cooperative associations; (3) the limits on the amount of milk that a pool plant operator may divert to nonpool plants; (4) the shipping standards that must be met by supply plants to be pooled under the order; and (5) the individual producer performance standards that must be met in order for a producer's milk to be eligible for diversion to a nonpool plant.

The order permits a cooperative association plant located in the marketing area to be a pool plant if at least 60 percent of the producer milk of members of the cooperative association

is physically received at pool distributing plants during the month. In addition, a cooperative association may divert to nonpool plants up to one-third of the amount of milk that the cooperative causes to be physically received during the month at handlers' pool plants. The order also provides that the operator of a pool plant may divert to nonpool plants not more than one-third of the milk that is physically received during the month at the handler's pool plant. The proposed action would continue to inactivate the 60 percent delivery standard for plants operated by a cooperative association and remove the diversion limitations applicable to a cooperative association and to the operator of a pool plant.

The order also provides for regulating a supply plant each month in which it ships a sufficient percentage of its receipts to distributing plants. The order provides for pooling a supply plant that ships 15 percent of its milk receipts during August and December and 50 percent of its receipts during September through November and January. A supply plant that is pooled during each of the immediately preceding months of September through January is pooled under the order during the following months of February through July without making qualifying shipments to distributing plants. The requested action would continue the current suspension of these performance standards for supply plants that were regulated under the Texas order during each of the immediately preceding months of September through January.

The order also specifies that the milk of each producer must be physically received at a pool plant in order to be eligible for diversion to a nonpool plant. During the months of September through January, 15 percent of a producer's milk must be received at a pool plant for diversion eligibility. The proposed action would continue to suspend these requirements.

The continuation of the current suspension was requested by Associated Milk Producers, Inc., a cooperative association that represents a substantial number of dairy farmers who supply the Texas market. The cooperative stated that marketing conditions have not changed since the provisions were initially suspended and therefore should be continued until restructuring of the Federal order program is achieved as mandated in the 1996 Farm Bill.

The cooperative states that the continuation of the current suspension is necessary to ensure that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order. In

addition they maintain that the suspension would continue to provide handlers the flexibility needed to move milk supplies in the most efficient manner and to eliminate costly and inefficient movements of milk that would be made solely for the purpose of pooling the milk of dairy farmers who have historically supplied the market.

Accordingly, it may be appropriate to suspend the aforesaid provisions from August 1, 1997, through July 31, 1999.

#### List of Subjects in 7 CFR Part 1126

Milk marketing orders.

The authority citation for 7 CFR Part 1126 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

Dated: May 7, 1997.

**Richard M. McKee,**

*Director, Dairy Division.*

[FR Doc. 97–12502 Filed 5–12–97; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1138

[DA–97–07]

#### Milk in the New Mexico-West Texas Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

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

**ACTION:** Proposed suspension of rule.

**SUMMARY:** This document invites written comments on a proposal that would continue the suspension of certain segments of the pool plant and producer milk definitions of the New Mexico-West Texas order for a two-year period. Associated Milk Producers, Inc. (AMPI), a cooperative association that represents a substantial number of the producers who supply milk to the market, has requested continuation of the suspension. The cooperative asserts that continuation of the suspension is necessary to ensure that dairy farmers who have historically supplied the New Mexico-West Texas order will continue to have their milk priced under the order without incurring costly and inefficient movements of milk.

**DATES:** Comments are due no later than June 12, 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:

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:** 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 has 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 1997, the milk of 174 producers was pooled on the New Mexico-West Texas Federal milk order. Of these producers, 26 producers were below the 326,000-pound production guideline and are considered small businesses. During this same period, there were 19 handlers operating pool plants under the New Mexico-West Texas order. Twelve of these handlers would be considered small businesses.

The proposed suspension would continue the current suspension of segments of the pool plant and producer milk definitions under the New Mexico-West Texas order. The provisions proposed for continued suspension limit the pooling of diverted milk. 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.

#### Proposed Rule

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the suspension of the following provisions of the order regulating the handling of milk in the New Mexico-West Texas marketing area is being considered for the months of October 1, 1997, through September 30, 1999:

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

2. In § 1138.7, paragraph (c), the words "35 percent or more of the producer"; and

3. In § 1138.13(d), paragraphs (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 the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–