

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 1126

[DA-97-06]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; revised suspension.

SUMMARY: This notice invites written comments on a revised proposed suspension that would increase the diversion limitation applicable to cooperatives from one-third to an amount equal to the amount of producer milk the cooperative association delivered to pool plants under the Texas order for the months of August 1997 through July 1999. As originally noticed in a proposed suspension the diversion limitation would be suspended completely. Associated Milk Producers, Inc., a cooperative association that represents producers who supply milk to the market and the proponent of the proposed suspension, requested modification to the suspension of diversion limitation to achieve orderly marketing conditions within the Texas marketing area. Written comments are invited regarding this modification, as well as on the other segments of the pool plant and producer milk definitions previously noticed.

DATES: Comments are due no later than July 11, 1997.

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

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, PO 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 May 7, 1997; published May 13, 1997 (62 FR 26255).

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 would lessen the regulatory impact of the order on certain milk handlers by increasing diversion limitations applicable to cooperatives 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.

Preliminary Statement

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 are 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(e)(2), the words "one-third of" and the words "(a), (b), (c), and (d)".

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 revised 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 14th day after publication of this notice in the **Federal Register**. Comments filed in response to the proposed suspension will be considered and do not need to be resubmitted unless amended due to the revision addressed in this docket.

The period for filing comments is limited to 14 days because a longer period would not provide the time needed to complete the required procedures before the requested suspension is to be effective.

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 revises the proposed suspension of § 1126.13(e)(2) as noticed in the May 13, 1997, **Federal Register** (62 FR 26255). The proposed suspension requested the suspension of paragraph § 1126.13(e)(2) which would remove the diversion limitation applicable to cooperative associations. The revised proposed suspension of portions of § 1126.13(e)(2) would increase the diversion limitation applicable to cooperatives from one-third to an amount equal to the amount of producer milk the cooperative association delivered to pool plants.

Associated Milk Producers, Inc. (AMPI), a cooperative association that represents a substantial number of dairy farmers who supply the Texas market

and the proponent of the proposed suspension of paragraph § 1126.13(e)(2), requested the modification. AMPI stated that the modification is necessary to achieve orderly marketing conditions in the Texas market. AMPI asserts that changes have occurred in the marketplace caused by a continued increase in production accompanied by a decrease in the number of dairy farms since the suspension was first granted. AMPI believes that the revised proposed suspension will maintain a balance of milk within the production area while allowing reserve supplies to move to the most efficient alternative market. AMPI contends that this will assure a more distinct association with the Class I market and limit sharing in the uniform price by cooperative associations that do not make milk available for fluid use.

Accordingly, it may be appropriate to suspend the aforesaid provision 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: June 23, 1997.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 97-16790 Filed 6-26-97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 92 and 98

[Docket No. 97-014-1]

Canadian Border Ports; Champlain, NY, and Derby Line, VT

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the animal and animal product importation regulations by removing Champlain, NY, and Derby Line, VT, as land border ports of entry for animals and animal germ plasm imported from Canada into the United States. We want to improve the efficiency of our animal inspection operations along the U.S.-Canada border, and we do not believe that the current level of use of the animal importation facilities at these two ports justifies the cost of keeping them open. Importers may continue to use other ports along the U.S.-Canada border, including Highgate Springs, VT,

and Buffalo and Alexandria Bay, NY, to import animals and animal germ plasm from Canada. We believe that new livestock inspection facilities and extended hours of operation at the port at Highgate Springs, VT, will enable us to handle any additional needs for inspection services caused by closing the ports at Champlain, NY, and Derby Line, VT, which are currently open on a part-time basis only.

DATES: Consideration will be given only to comments received on or before August 26, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97-014-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 97-014-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, Import/Export Animals, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737-1231, (301) 734-3276.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 92 and 98 (referred to below as the regulations) restrict the importation of specified animals and animal products into the United States to prevent the introduction of communicable animal diseases. The regulations designate land border ports along the U.S.-Canada border having inspection facilities for the importation of certain animals and animal germ plasm that require inspection. Section 92.203(b) lists the border ports through which poultry from Canada may be imported; § 92.303(b) lists the border ports through which horses from Canada may be imported; § 92.403(b) lists the border ports through which ruminants from Canada may be imported; § 92.418(c)(2) lists the border ports through which cattle from Canada may be imported; and § 92.503(b) lists the border ports through which swine from Canada may be imported. Section 98.33(b) lists the border ports through which certain animal semen from Canada may be imported, and § 98.6 provides that