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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1137

[DA-97-05]

#### Milk in the Eastern Colorado Marketing Area; Suspension of Certain Provisions of the Order

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

**ACTION:** Final rule; suspension.

**SUMMARY:** This document suspends certain performance standards of the Eastern Colorado Federal milk order. Mid-America Dairymen, Inc., a cooperative association that supplies milk for the market's fluid needs, requested the suspension. The suspension will make it easier for handlers to qualify milk for pool status and will prevent uneconomic milk movements that otherwise would be required to maintain pool status for milk of producers who have been historically associated with the market. The suspension will be effective through 1999.

**EFFECTIVE DATE:** The suspension to § 1137.7 is effective from September 1, 1997, through February 28, 1999. The suspensions to § 1137.12 are effective from September 1, 1997, through August 31, 1999.

**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:** Prior document in this proceeding:

Notice of Proposed Suspension: Issued April 30, 1997; published May 6, 1997 (62 FR 24610).

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this 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 the 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 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 415 producers was pooled on the Eastern Colorado Federal milk order. Of these producers, 308 producers were below the 326,000-pound production guideline and are considered small businesses. During this same period, there were 10 handlers operating 11 pool plants under the Eastern Colorado order. Five of these handlers would be considered small businesses.

This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers who have been historically associated with this market will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing. This suspension will not result in any additional regulatory burden on handlers in the Eastern Colorado marketing area.

#### Preliminary Statement

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Eastern Colorado marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on May 6, 1997 (62 FR 24610) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. Two comments supporting the proposed suspension were received.

After consideration of all relevant material, including the proposal in the notice, the comments received and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. For the months of September 1, 1997, through February 28, 1999: In the second sentence of § 1137.7(b), the words "plant which has qualified as a" and "of March through August"; and
2. For the months of September 1, 1997, through August 31, 1999: In the first sentence of § 1137.12(a)(1), the words "from whom at least three

deliveries of milk are received during the month at a distributing pool plant"; and in the second sentence, the words "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of", and the word "distributing".

#### **Statement of Consideration**

This rule suspends certain portions of the pool plant and producer definitions of the Eastern Colorado order. The suspension will make it easier for handlers to qualify milk for pooling under the order.

The suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that has pooled milk of dairy farmers on the Eastern Colorado order for several years. Mid-Am requested the suspension to prevent the uneconomic and inefficient movement of milk for the sole purpose of pooling the milk of producers who have been historically associated with the Eastern Colorado order.

Mid-Am and Western Dairymen Cooperative, Inc. (WDCI) filed comments in support of the suspension. Mid-Am asserts that they have made a commitment to supply the fluid milk requirements of distributing plants if the suspension request is granted. Without the suspension action, to qualify certain of its milk for pooling, it would be necessary for the cooperative to ship milk from distant farms to Denver-area bottling plants. The distant milk would displace milk produced on nearby farms that would then have to be shipped from the Denver area to manufacturing plants located in outlying areas. WDCI further reiterates the need for the suspension to assure continued pooling of producers associated with the market and to prevent such uneconomic milk movements.

Both Mid-Am and WDCI requested continuation of the suspension beyond the time period noticed in the proposed suspension. Both cooperatives expressed a desire to have the suspension extend until the Federal order reform process under the Federal Agriculture Improvement and Reform Act of 1996 is implemented.

For the months of September 1997 through February 1999, the restriction on the months when automatic pool plant status applies for supply plants will be removed. For the months of September 1997 through August 1999, the touch-base requirement will not apply and the diversion allowance for cooperatives will be raised.

These provisions have been suspended for several years to maintain the pool status of producers who have historically supplied the fluid needs of

Eastern Colorado distributing plants. The marketing conditions which justified the prior suspensions continue to exist. There are ample supplies of locally produced milk that can be delivered directly from farms to distributing plants to meet the market's fluid needs without requiring shipments from supply plants.

Since the suspension has been granted on a continual basis since 1985, and the marketing conditions that originally warranted the suspension continue to exist, it is found appropriate to extend the suspension period from 1998 to 1999.

This suspension is found to be necessary for the purpose of assuring that producers' milk will not have to be moved in an uneconomic and inefficient manner to ensure that producers whose milk has long been associated with the Eastern Colorado marketing area will continue to benefit from pooling and pricing under the order.

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

Milk marketing orders.

For the reasons set forth in the preamble 7 CFR Part 1137, is amended as follows:

#### **PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA**

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

**Authority:** 7 U.S.C. 601–674.

##### **§ 1137.7 [Suspended in Part]**

2. In § 1137.7(b), the second sentence is amended by suspending the words "plant which has qualified as a" and "of March through August" from September 1, 1997, through February 28, 1999.

##### **§ 1137.12 [Suspended in part]**

3. In § 1137.12(a)(1), the first sentence is amended by suspending the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant" from September 1, 1997, through August 31, 1999.

4. In § 1137.12(a)(1), the second sentence is amended by suspending the words "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of", and the word "distributing" from September 1, 1997, through August 31, 1999.

Dated: June 27, 1997.

**Michael V. Dunn,**

*Assistant Secretary, Marketing and Regulatory Programs.*

[FR Doc. 97–17508 Filed 7–2–97; 8:45 am]

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#### **FEDERAL HOUSING FINANCE BOARD**

#### **12 CFR Part 902**

[No. 97–42]

RIN 3069–AA51

#### **Procedure For Imposing Assessments on the FHLBanks**

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is amending its procedure for imposing semiannual assessments on the Federal Home Loan Banks (FHLBanks) as part of the conversion of Finance Board operations from the calendar year to the federal fiscal year.

**EFFECTIVE DATE:** The final rule will become effective August 4, 1997.

**FOR FURTHER INFORMATION CONTACT:** John C. Waters, Associate Director, Office of Resource Management, 202/408–2860, or Janice A. Kaye, Attorney-Advisor, Office of General Counsel, 202/408–2505, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Statutory and Regulatory Background**

Under section 18(b)(1) of the Federal Home Loan Bank Act (Bank Act), the Finance Board has the authority to impose a semiannual assessment on the FHLBanks in an amount sufficient to provide for the payment of the Finance Board's estimated expenses for the period covered by the assessment. See 12 U.S.C. 1438(b)(1). Section 18(b)(3) of the Bank Act requires the Finance Board to offset the amount of the current semiannual assessment by any amount it determines is remaining from a previous assessment. See *id.* 1438(b)(2).

In 1993, The Finance Board by regulation implemented its authority to assess the FHLBanks. See 58 FR 19195 (Apr. 13, 1993), codified at 12 CFR 902.2. The current rule requires the Finance Board to adopt an annual budget of expenses for each calendar year and authorizes the Finance Board to impose two semiannual assessments on the FHLBanks in each calendar year to pay its approved expenses. See 12 CFR 902.2. The current rule also establishes the procedure the Finance Board follows when imposing an assessment on the FHLBanks. See *id.*

Effective October 1, 1997, the Finance Board will transfer responsibility for operational support of its accounting and personnel systems from the Office of Thrift Supervision (OTS) to the