Proposed Rules

Federal Register
Vol. 61, No. 174
Friday, September 6, 1996

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 1137

[DA–96–13]

Milk in the Eastern Colorado Marketing Area; Notice of Proposed Suspensions 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 to suspend certain performance standards of the Eastern Colorado Federal milk order. The suspension was requested by Mid-America Dairymen Inc., a cooperative association that supplies milk forthe market's fluid needs. The suspension was requested to prevent uneconomic milk movements that otherwise would be required to maintain pool status for milk of producers who have been historically associated with the order.

DATES: Comments are due no later than September 13, 1996.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, D.C. 20090–6456.

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, D.C. 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: The Department is issuing this proposed rule in conformancewith Executive Order 12866.

This proposed revision of rules has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. If adopted, this proposedaction 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 mustbe exhausted before parties may file suit in court. Undersection 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed inconnection with the order is not in accordance with the law and request a modification of an order or to be exempted from theorder. 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 billin equity is filed not later than 20 days after date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended, the following sections of the order regulating the handling of milk in the Eastern Colorado marketing area are being considered:

1. For the months of September 1, 1996, through February 28, 1997: In § 1137.7(b), the second sentence is amended by suspending the words ''plant which has qualified as a'' and ''of March through August''; and

2. For the months of September 1, 1996, through August 31, 1997: 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''; and in the second sentence ''30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of'', and the word ''distributing''.

All persons who desire to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, D.C. 20090–6456 by the 7th day after publication of this notice in the Federal Register. The filing period is limited to seven 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)).

Small Business Consideration

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 Agricultural Marketing Service has certified that this action would not have asignificant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of theorder 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.

The Regulatory Flexibility Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is 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 purpose of determining which dairy farms are small businesses, the $500,000 per year criterion was divided by 12, then by the uniform price, to arrive at a 300,000 pounds-per-month limit for ''small'' dairy farmers.

For the month of June 1996, 429 dairy farmers were producers under the Eastern Colorado milk order. Of these, all but 115 would be considered small businesses, having less than 300,000 pounds of marketings for the month. Of the dairy farmers in the small business category, 181 marketed less than 100,000 pounds of milk, 105 marketed between 100,000 and 200,000 pounds, and 28 marketed between 200,000 and 300,000 pounds of milk during June.

There were 10 handlers operating 11 plants for the month of June 1996, pooled, or regulated, under the Eastern Colorado order. The individual plants, for the most part, would meet the SBA definition of a small business, having

less than 500 employees. However, most of these plants are part of larger businesses that operate multiple plants and meet the definition of large entities on that basis.

The proposed rule would suspend certain portions of the pool plant and producer definitions of the Eastern Colorado order. The proposed suspension would make it easier for handlers to qualify milk for pooling under the order and tend to ensure that dairy farmers would continue to have their milk priced under theorder and thereby receive the benefits that accrue from such pricing.

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Interested parties are invited to submit comments on the probable regulatory and informational impact of this proposed rule on small businesses. Also, parties may suggest modifications of this proposal for the purpose of tailoring their applicability to small businesses.

Statement of Consideration

The proposed 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 has requested the suspension to prevent the uneconomic and inefficient movement of milk for the sole purpose of pooling the milk of producers historically associated with the Eastern Colorado order.

Mid-Am requests for the months of September 1996 through February 1997 the removal of the restriction on the months when automatic pool plant status applies for supply plants. Mid-Am also proposes that, for the months of September 1996 through August 1997, the touch-base requirement not apply and the diversion allowance for cooperatives be raised.

These provisions have been suspended previously in order to maintain the pool status of producers who have historically supplied the fluid needs of Eastern Colorado distributing plants. Mid-Am states that the marketing conditions that justified the prior suspensions continue to exist. Mid-Am asserts that they have made a commitment to meet the fluid requirements of fluid distributing plants if the suspension request is granted. Without the suspension, Mid-Am contends that it will be necessary to ship milk from distant farms to Denver-area bottling plants to qualify milk for pooling. The distant milk will displace locally-produced milk that would then have to be shipped from the Denver area to manufacturing plants located in outlying areas.

In addition, Mid-Am maintains that ample supplies of locally produced milk that can be delivered directly to distributing plants will be available to meet the market's fluid needs without requiring shipments from supply plants. Mid-Am also claims that neither the elimination of the touch-base requirement for producers nor the increase in the amount of milk that a cooperative can divert to nonpool plants should jeopardize the needs of the market's fluid processors.

In view of the foregoing, it may be appropriate to suspend the aforesaid portion of the pool plant and producer definitions of the Eastern Colorado order for the time periods stated.

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: §§ 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: August 30, 1996.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 96–22787 Filed 9–5–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1160

[DA–96–09]

Fluid Milk Promotion Order; Invitation To Submit Comments on Proposed Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document invites written comments on proposals to amend the Fluid Milk Promotion Order. The proposed amendments, requested by the National Fluid Milk Processor Promotion Board, which administers the order, would modify the term limits and membership status of Board members. The proposed rule would also amend certain order language in conformance with the 1996 Federal Agriculture Improvement and Reform Act. In addition, this proposed rule would revise or remove order language that has become obsolete and no longer effectuates the declared policy of the Fluid Milk Promotion Act of 1990, as amended.

DATES: Comments are due no later than October 7, 1996.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Promotion and Research Staff, Room 2734, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Eugene Krueger, Head, Promotion and Research Staff, USDA/AMS/Dairy Division, Room 2734, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6909.

Small Business Consideration

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Small businesses in the fluid milk processing industry have been defined by the Small Business Administration as those employing less than 500 employees. There are approximately 250 fluid milk processors subject to the provisions of the Fluid Milk Promotion Order. Most of the parties subject to the Order are considered small entities.

This rule would modify the term of office and membership provisions of the Fluid Milk Promotion Order. The proposed amendments would allow a National Fluid Milk Processor Promotion Board member who changes fluid milk processor affiliations during his or her term to be eligible to serve on the Board in another capacity during that same term. The proposed amendments would also modify the term of Board members to allow any member elected during the initial period to serve a term of one or two years to be eligible for reappointment for two additional three-year terms. The proposed amendments should clarify the Order with respect to membership status and term limits of its members.

This rule would also amend order language in conformance with the 1996 Federal Agriculture Improvement and Reform Act; the definition of research would be changed to conform with the definition in the Act and the order would be revised to reflect changes in the 1996 Act concerning those fluid milk processors who may request a referendum to suspend or terminate the order and who may vote to suspend or terminate the order or adjust the assessment rate.

Further, the rule would also revise or remove obsolete or unnecessary order language in conformance with the President's Regulatory Reform Initiative. Pursuant to 5 U.S.C. 605(b), the Agricultural Marketing Service has certified that this rule would not have a significant economic impact on a substantial number of small entities.

SUPPLEMENTARY INFORMATION: The Department is issuing this proposed rule in conformance with Executive Order 12866.