

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-95-12]

Milk in the Texas Marketing Area; 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 to suspend certain provisions of the Texas Federal milk marketing order from March 1, 1995, through July 31, 1995. The proposed suspension would remove the diversion limitation applicable to cooperative associations. Associated Milk Producers, Inc., a cooperative association representing a substantial number of producers who supply milk to the market, has requested the suspension. The cooperative asserts that the suspension is necessary to prevent uneconomical and inefficient movements of milk.

DATES: Comments are due no later than February 23, 1995.

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.

SUPPLEMENTARY INFORMATION: 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 Administrator of the Agricultural Marketing Service has certified that this proposed rule would

not have a significant economic impact on a substantial number of small entities. 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.

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

This proposed rule has been reviewed under Executive Order 12778, 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 file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. 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.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the suspension of the following provision of the order regulating the handling of milk in the Texas marketing area is being considered for the months of March 1, 1995, through July 31, 1995: In § 1126.13, paragraph (e)(2).

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-

6456, by the 15th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 15 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

The proposed rule would suspend certain provisions of the producer milk definition of the Texas order for the months of March through July 1995. The proposed suspension would remove the limitation on the amount of producer milk that a cooperative may divert to a nonpool plant.

Currently the order permits a cooperative association to divert up to one-third of the amount of producer milk that the cooperative causes to be physically received during the month at handlers' pool plants to nonpool plants. The diversion provisions provide an efficient means to move milk that is in excess of fluid milk needs directly from farms to nonpool plants for manufacturing and still be priced under the order.

Associated Milk Producers, Inc. (AMPI), a cooperative association representing a substantial number of producers who supply milk to the market, has requested the suspension. AMPI states that during recent months the cooperative has reached maximum pooling capability because of the diversion limitations to nonpool plants. AMPI contends that during the flush season (March through July) the cooperative will be adversely impacted as local production expands and the cooperative exceeds the one-third diversion limitation. AMPI projects that when this occurs more milk will be shipped to other pool plants than is needed at such plants to gain eligibility for pooling and diversion status. Absent a suspension, AMPI asserts that costly and inefficient movements of milk would have to be made to maintain pool status of producers who have historically supplied the fluid milk needs of the market.

Accordingly, it may be appropriate to suspend the aforesaid provisions from March 1, 1995, through July 31, 1995.