

# 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 1137

[DA-97-05]

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

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

**ACTION:** Proposed suspension of rule.

**SUMMARY:** This notice 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 for the market's fluid needs. The suspension was requested to prevent the uneconomic movement of milk that otherwise would be required in order to maintain the pooling status of milk that has been historically associated with the order.

**DATES:** Comments are due no later than June 5, 1997.

**ADDRESSES:** Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456. Reference should be given to the title of action and docket number.

**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 not 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 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 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. This proposed suspension will not result in any additional regulatory burden on handlers in the Eastern Colorado marketing area since this suspension has been continually in effect since 1985.

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 Eastern Colorado marketing area is being considered:

1. For the months of September 1, 1997, through February 28, 1998: 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, 1998: 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 "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 want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, 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 normal business hours (7 CFR 1.27(b)).

#### Statement of Consideration

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.

The proposed suspension was requested by Mid-America Dairyman, 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 1997 through February 1998, that the limit on the period of automatic pool plant status for a supply plant that met pool shipping standards during the previous September through February period be suspended. This provision has been suspended annually for several years. Mid-Am also requests the suspension of the touch-base and diversion limitation requirements during the months of September 1997 through August 1998. These requirements have been suspended since September 1985.

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 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 action, Mid-Am contends that it will be necessary to ship milk from distant areas to Denver area bottling plants. This will displace locally produced milk that would then have to be shipped from the Denver area to surplus handling plants.

In addition, Mid-Am maintains that ample supplies of locally produced milk will be available to meet fluid needs without requiring that each producer's milk be received at least three times each month at a pool distributing plant or by restricting the amount of milk that can be diverted to nonpool plants.

#### 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:** 7 U.S.C. 601–674.

Dated: April 30, 1997.

**Aggie Thompson,**

*Acting Director, Dairy Division.*

[FR Doc. 97–11745 Filed 5–5–97; 8:45 am]

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#### DEPARTMENT OF AGRICULTURE

#### Animal and Plant Health Inspection Service

#### 9 CFR Part 3

[Docket No. 95–029–1]

#### Animal Welfare; Perimeter Fence Requirements

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the Animal Welfare regulations to require that a perimeter fence be placed around the outdoor areas of sheltered housing facilities and outdoor housing facilities for marine mammals and certain other regulated animals. Although it has been our policy that such fences should be in place around sheltered and outdoor housing facilities for such animals, there have been no provisions in the regulations specifically requiring their use. Adding the perimeter fence requirement to the regulations for these additional categories of animals would serve to protect the safety of the animals and provide for their well being.

**DATES:** Consideration will be given only to comments received on or before July 7, 1997.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 95–029–1, 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. 95–029–1. 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. Barbara Kohn, Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833.

#### SUPPLEMENTARY INFORMATION:

#### Background

The Animal Welfare regulations contained in 9 CFR chapter 1, subchapter A, part 3 (referred to below as “the regulations”) provide specifications for the humane handling, care, treatment, and transportation, by regulated entities, of animals covered by the Animal Welfare Act (7 U.S.C. 2131, *et seq.*) (The Act). The regulations in part 3 are divided into six subparts, designated as subparts A through F, each of which contains facility and operating standards, animal health and husbandry standards, and transportation standards for a specific category of animals. These categories are: (A) cats and dogs, (B) guinea pigs and hamsters, (C) rabbits, (D) nonhuman primates, (E) marine mammals, and (F) animals other than cats, dogs, guinea pigs, hamsters, rabbits, nonhuman primates, and marine mammals.

Each of these subparts contains regulations regarding outdoor housing facilities, and subparts A and D contain regulations regarding sheltered housing facilities. However, only subpart D (nonhuman primates) includes a requirement for a perimeter fence surrounding outdoor housing facilities and sheltered housing facilities. Although perimeter fences are not required by the regulations for animals other than nonhuman primates, most facilities do have perimeter fences in place. It has been the policy of the Animal and Plant Health Inspection Service (APHIS) that perimeter fences should be in place at outdoor and sheltered housing facilities for animals other than nonhuman primates, but, as noted above, only the regulations in subpart D require perimeter fences. We now believe that it is necessary to include perimeter fence requirements in subparts E and F in order to protect the safety of marine mammals and certain other animals and to provide for their well-being. We will not be amending subpart A (cats and dogs) or subpart C (rabbits) at this time as most dogs, cats, and rabbits are currently maintained in enclosed kennels or indoors, with the exception of tethered dogs. Tethered dogs are already required to have a perimeter fence. No amendment is needed in subpart B (guinea pigs and hamsters) because outdoor housing for hamsters is prohibited, and any outdoor housing for guinea pigs must be approved in advance by APHIS.

Therefore, we are proposing to amend §§ 3.103 and 3.127 to require that a perimeter fence be placed around the outdoor areas of sheltered housing facilities and outdoor housing facilities