

# 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

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. 96-083-2]

#### Importation of Cotton and Cotton Products

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

**ACTION:** Notice of reopening and extension of comment period.

**SUMMARY:** We are reopening and extending the comment period for our advance notice of proposed rulemaking that solicits public comment on whether and how our regulations for importing cotton (including seed cotton, cottonseed, cotton lint and linters, cottonseed products, and cotton waste) and cotton covers into the United States need to be changed. This reopening and extension will provide interested groups and individuals with additional time to prepare comments on the advance notice of proposed rulemaking.

**DATES:** Consideration will be given only to comments on Docket No. 96-083-1 that are received on or before April 30, 1997.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 96-083-1, 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. 96-083-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8:00 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:** Mr. James Petit de Mange, Staff Officer, USDA-APHIS-PPQ-Phytosanitary

Issues Management Team, 4700 River Road, Unit 140, Riverdale, Maryland 20737, Telephone: (301) 734-6799; FAX: (301) 734-5786; or E-mail: jpdmanage@aphis.usda.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

On December 30, 1996, we published in the **Federal Register** (61 FR 68673-68674, Docket No. 96-083-1) an advance notice of proposed rulemaking for 7 CFR part 319 on whether and how our regulations for importing cotton (including seed cotton, cottonseed, cotton lint and linters, cottonseed products, and cotton waste) and cotton covers into the United States need to be changed.

Comments on the advance notice were required to be received on or before March 31, 1997. We have received a request from the National Cotton Council to extend the period during which comments will be accepted. In response, we are reopening and extending the comment period on Docket No. 96-083-1 for an additional 30 days. This action will allow the National Cotton Council and all other interested groups and individuals additional time to prepare and submit comments.

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff, 151-167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 1st day of April 1997.

**Terry L. Medley,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 97-8922 Filed 4-7-97; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1137

[DA-97-02]

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

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

**ACTION:** Proposed suspension or termination of rule.

**SUMMARY:** This document invites written comments on a proposal to suspend indefinitely or terminate part of a provision in the Eastern Colorado milk order which specifies that a distributing plant disposing of ten percent or more of its Grade A milk receipts, or 12,000 pounds per day, whichever is less, as route disposition in the marketing area be considered a fully regulated pool plant. This request was submitted by Brown Swiss-Gillette Dairy, a handler operating a distributing plant that is partially regulated under 3 Federal milk orders. The handler contends that the action is necessary to assure equity among producers and competitiveness among handlers.

**DATES:** Comments must be submitted on or before May 8, 1997.

**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. Advance, unofficial copies of such comments may be faxed to (202) 690-0552 or e-mailed to OFB-FMMO-Comments@usda.gov. Reference should be given to the title of action and docket number.

#### FOR FURTHER INFORMATION CONTACT:

Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-2357, e-mail address: connie m brenner@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 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 January 1997, the milk of 426 producers was pooled on the Eastern Colorado Federal milk order. Of these producers, 323 produced below the 326,000-pound production guideline and are considered as small businesses. A majority of these producers produce less than 100,000 pounds per month. Of the total number of producers whose milk was pooled during that month, 6 were non-member producers and 420 were members of either Mid-America Dairymen or Western Dairymen Cooperative Inc. For January 1997, 322 cooperative members and one non-member producer met the small business criterion.

For the month of January 1997, there were 10 handlers operating 11 plants

pooled or regulated under the Eastern Colorado milk order. Of these handlers, half have 500 or fewer employees and qualify as small businesses.

Brown Swiss-Gillette Dairy (Gillette) receives its milk from Black Hills Milk Producers Cooperative. During the month of January 1997, 55 of the 58 producers supplying milk to Black Hills Milk Producers Cooperative would be considered small businesses.

This rule proposes to suspend or terminate part of a provision of the Eastern Colorado marketing order which makes a distributing plant disposing of ten percent or more of its Grade A receipts, or 12,000 pounds per day, whichever is less, as route disposition in a marketing area a fully regulated plant. The proposal would lessen the regulatory impact of the order on certain milk handlers and would not affect the price received by dairy farmers in Eastern Colorado. Handlers in the marketing area will continue to pay the minimum order prices to producers.

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.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the suspension or termination of the following provisions of the order regulating the handling of milk in the Eastern Colorado marketing area is being considered for an indefinite period:

In § 1137.7(a)(2), the words " , or 12,000 pounds per day, whichever is less,".

All persons who want to submit written data, views or arguments about the proposed suspension or termination 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 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 regular business hours (7 CFR 1.27(b)).

### Statement of Consideration

The proposed rule would terminate or suspend indefinitely the portion of the

Eastern Colorado Federal milk order's pool distributing plant definition that defines a plant with 12,000 pounds of route disposition per day in the marketing area as a fully regulated pool plant.

Pooling qualifications included in the Eastern Colorado order define a pool distributing plant as any plant in which during the month fluid milk products are processed or packaged and from which 10 percent or more of such receipts, or 12,000 pounds per day, whichever is less, are disposed of as route disposition in the marketing area.

Gillette requested the termination or suspension of the 12,000-pound limitation, contending that the limitation is unreasonable when considering the plant size which must be maintained in order for Gillette to survive financially and also maintain its status as a partially regulated plant. Gillette also states that the 12,000-pound limitation is unreasonable when compared to the amount of packaged products delivered in one truckload, which greatly exceeds this limitation. Gillette states that termination or suspension will assure equity among producers and competitiveness among handlers.

As part of the Federal Order Reform process, all aspects of Federal milk marketing orders are presently undergoing review, including the definition of a pool plant. The Department is accepting and will continue to accept comments from all interested parties throughout the reform process regarding any modifications to order provisions. Therefore, Gillette's proposal requesting an indefinite suspension or termination should prevent Gillette from becoming fully regulated at least until the conclusion of the reform period.

Accordingly, it may be appropriate to terminate or suspend indefinitely the aforesaid provisions.

### 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 2, 1997.

**Aggie Thompson,**

*Acting Director, Dairy Division.*

[FR Doc. 97-8904 Filed 4-7-97; 8:45 am]

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