

# 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 1006

[DA-97-03]

#### Milk in the Upper Florida 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 indefinitely certain provisions of the Upper Florida Federal milk marketing order. The proposed suspension would eliminate the requirement that a cooperative association operating a plant have at least 50 percent of the producer milk of its members received at pool distributing plants to retain its pool plant status. Florida Dairy Farmers Association, a cooperative association representing producers whose milk is pooled on the 3 Florida orders, has requested the suspension. The cooperative association asserts that the suspension is necessary to maintain the orderly marketing of milk.

**DATES:** Comments must be submitted on or before May 27, 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:** Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 690-1932, e-mail address: Nicholas\_Memoli@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 affect 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. The \$500,000 per year criterion for dairy farmers 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. With respect to

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 80 producers was pooled on the Upper Florida Federal milk order. Of these producers, 23 were below the 326,000-pound production guideline and are considered to be small businesses. A majority of these producers produce more than 100,000 pounds per month. Of the total number of producers whose milk was pooled during that month, all were members of Florida Dairy Farmers Association.

In January 1997, there were 2 handlers operating 2 plants under the Upper Florida order. One of these would be considered a small business.

This rule proposes to suspend or terminate part of a provision of the Upper Florida marketing order which requires a cooperative association to have at least 50 percent of its members' producer milk received at pool distributing plants to retain its pool plant status. If adopted, the proposed suspension would promote orderly marketing of milk by permitting a plant operated by a cooperative association to qualify as a pool plant with minimal deliveries of milk by the cooperative to pool distributing plants in the market. This will facilitate the shipment of surplus milk to the cooperative's plant, where it will then be concentrated and shipped to distant plants for its ultimate disposition.

#### Proposed Rule

This rule proposes to suspend or terminate part of a provision of the Upper Florida marketing order which requires a cooperative association to have at least 50 percent of its members' producer milk received at pool distributing plants to retain its pool plant status. If adopted, the proposed suspension would promote orderly marketing of milk by permitting a plant operated by a cooperative association to qualify as a pool plant with minimal deliveries of milk by the cooperative to pool distributing plants in the market. This will facilitate the shipment of surplus milk to the cooperative's plant, where it will then be concentrated and shipped to distant plants for its ultimate disposition.

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 indefinite suspension of the following provisions of the order regulating the handling of milk in the Upper Florida marketing area is being considered:

(1) In § 1006.7, the introductory text of paragraph (c), the words "50 percent or more of the"; and

(2) In § 1006.7, paragraph (c)(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 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 suspend indefinitely certain provisions of the Upper Florida milk order. The proposed suspension would remove the requirement that a cooperative association have 50 percent of the producer milk of its members received at pool distributing plants to retain its pool plant status. It would also suspend the condition that the plant not qualify as a pool supply plant under this or any other Federal milk order.

The order permits a plant operated by a cooperative association that is located in the marketing area to be a pool plant if at least 50 percent of the producer milk of its members is received at pool distributing plants either directly from farms or by transfer from plants of the cooperative association, the plant is duly approved for Grade A milk disposition, and the plant does not qualify as a pool supply plant under this order or any other Federal milk order.

The suspension was requested by Florida Dairy Farmers Association (FDFA), a cooperative association representing producers whose milk is pooled on the 3 Florida orders. FDFA contends that the suspension of the requirement would allow the continued pooling of the cooperative's Jacksonville, Florida, plant under the Upper Florida order irrespective of the

quantity of producer milk received at pool distributing plants. With assurance of pooling, surplus producer milk from the Tampa Bay and Southeastern Florida marketing areas could be diverted to the Jacksonville plant for processing into concentrated milk and shipment to manufacturing plants. Also, in order to prevent the pooling of the Jacksonville plant under another Federal order, FDFA requested the suspension of § 1006.7(c)(2), which would yield regulation of the plant to another Federal order if the plant met the other order's supply plant shipping requirements. With this paragraph suspended, however, the plant would remain regulated under the Upper Florida order even if it were to qualify as a pool plant under another order.

#### List of Subjects in 7 CFR Part 1006

Milk marketing orders.

The authority citation for 7 CFR Part 1006 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

Dated: April 21, 1997.

**Richard M. McKee,**

*Director, Dairy Division.*

[FR Doc. 97-10657 Filed 4-23-97; 8:45 am]

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## DEPARTMENT OF ENERGY

### 10 CFR Part 835

#### Occupational Radiation Protection; Availability of Draft Guides and Technical Standards

**AGENCY:** Department of Energy.

**ACTION:** Notice of availability of draft guidelines; request for comments.

**SUMMARY:** The Department of Energy (DOE) announces that drafts of guidance documents that may be used to implement Occupational Radiation Protection regulations are available for public comment. These draft guidance documents consist of 13 implementation guides, a radiological control technical standard, and two Department of Energy Laboratory Accreditation Program (DOELAP) technical standards. These guidance documents are intended to provide useful information and methodologies on how the requirements in the proposed Occupational Radiation Protection regulations might be implemented.

**DATES:** Written comments for the 13 draft implementation guides must be submitted by May 28, 1997, for the draft Radiological Control Standard by May 23, 1997, and for the two draft DOELAP technical standards by May 27, 1997.

**ADDRESSES:** A copy of each draft implementation guide and technical standard is available at the DOE Freedom of Information Reading Room, 1E-190, 1000 Independence Avenue, SW, Washington D.C. 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Submit written comments to Dr. Joel Rabovsky for the 13 draft implementation guides; to Dr. Judith Foulke for the draft Radiological Control Standard; and to Mr. Robert Loesch for the two draft DOELAP technical standards. The address for all three is: U.S. Department of Energy, EH-52/GTN/270CC, 19901 Germantown Road, Germantown, Maryland 20874-1290.

#### SUPPLEMENTARY INFORMATION:

##### Background

The draft guides are being made available for public comment pursuant to a DOE policy statement, DOE P 450.2A, "Identifying, Implementing and Complying With Environment, Safety and Health Requirements" (May 15, 1996). DOE's policy statement explains the purpose of guides. A Notice of Proposed Rulemaking was published on December 23, 1996 (61 FR 67600), for the purpose of amending 10 CFR 835, "Occupational Radiation Protection." Because of additions and significant changes, it was necessary to provide new implementation guides and technical standards to assist those who must comply with the new requirements. Guidance documents, including technical standards, can assist contractors in implementing requirements. Because of the importance of guidance documents to implementation, the Department will endeavor to develop and issue guidance documents concurrently with the development of requirements.

Guidance documents include background information regarding the intent of the requirement and its technical underpinnings. Unlike the requirements specifically set forth in a rule, the provisions in guidance documents are not mandatory. Failure to follow a guidance document does not in itself indicate noncompliance with a specific requirement—a finding of noncompliance must be based on a failure to satisfy the requirement. The guidance provided in these documents and the standards referenced therein are considered acceptable methods to satisfy requirements. Alternative methods that satisfy the requirements of a rule or Order are also acceptable. Any implementation method selected must be justified to ensure that an adequate level of safety commensurate with the