

Proposed Rules

Federal Register

Vol. 63, No. 196

Friday, October 9, 1998

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 967

[Docket No. FV98-967-1 PR]

Celery Grown in Florida; Proposed Termination of Marketing Order No. 967

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on the termination of the Federal marketing order regulating the handling of celery grown in Florida (order) and the rules and regulations issued thereunder. The Florida celery industry has not operated under the order since its provisions were suspended January 12, 1995. The celery industry has experienced a loss of market share, a significant reduction in the number of producers and handlers has diminished the need for regulating Florida celery, and there is no industry support for reactivating the order. Therefore, there is no need to continue this order.

DATES: Comments must be received by December 8, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456, Fax: (202) 205-6632; or E-mail: moabdocket_clerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883-2276; telephone (941) 299-4770, Fax:

(941) 299-5169; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 205-6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone (202) 720-2491, Fax: (202) 205-6632.

SUPPLEMENTARY INFORMATION: This proposal is governed by provisions of § 608(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act and § 967.85 of the order.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act 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 provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the 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 his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule would terminate the order regulating the handling of celery grown in Florida. Sections 967.85 and 967.86 of the order contain the

authority and procedures for termination.

The order was initially established in 1965 to help the industry solve specific marketing problems and maintain orderly marketing conditions. It was the responsibility of the Florida Celery Committee (committee), the agency established for local administration of the marketing order, to periodically investigate and assemble data on the growing, harvesting, shipping, and marketing conditions of Florida celery. The committee tried to achieve orderly marketing and improve acceptance of Florida celery through the establishment of volume regulations and promotion activities.

The Florida celery industry has not operated under the marketing order for three years. The order and all of its accompanying rules and regulations were suspended January 12, 1995, through December 31, 1997 (60 FR 2873). Regulations have not been applied under the order since that time, and no committee has been appointed since then.

In 1965, when the marketing order was issued, there were over 41 producers of Florida celery. The earliest handling figures available indicate that in 1983 there were 11 handlers. As of the date of suspension of the order (January 12, 1995), there were six handlers of Florida celery who were subject to regulation under the marketing order and five celery producers within the production area. Currently, there is one producer who is also a handler.

When the order was suspended, all of the committee members and their alternates were named as trustees to oversee the administrative affairs of the order. The Department attempted to contact as many of these trustees as it could with respect to the need for reinstating the marketing order. All of the individuals contacted (10 of the 18 trustees) were in favor of terminating the order. We believe that there is no justification for continuing the current order.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of

business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There is one handler of Florida celery who would be subject to regulation under the marketing order. This handler is also a producer within the production area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000. The Florida celery producer-handler may be classified as a small entity.

This proposed rule would terminate the order regulating the handling of celery grown in Florida. The order and its accompanying rules and regulations were suspended on January 12, 1995. No regulations have been implemented since then, and there is no indication that such regulations will again be needed.

The industry has been operating without a marketing order since its suspension. Reestablishing the order would mean additional cost to the industry stemming from assessments to maintain the order (the last assessment was \$0.01 per crate) and any associated costs generated by regulation. By not reinstating the marketing order, the industry would benefit from avoiding these costs. Regulatory authorities that would be terminated include authority to implement grade, size, container, and inspection requirements and provisions for research and development and volume regulation. Because the industry has been operating without an order for over three years, the termination of the order would have no noticeable effect on either small or large operations.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements under the order were approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0145. When the order was suspended on January 12, 1995, these information collection requirements were also suspended. When the order is terminated, these requirements will be eliminated. There is one handler remaining under the order with an estimated burden of 9.05 hours.

The Department has not identified any relevant Federal rules that

duplicate, overlap, or conflict with this proposed rule.

The Department attempted to solicit as much industry input on this decision as possible. In addition, this action provides the opportunity for all interested persons to comment on this proposal.

The Department believes that conducting a termination referendum would merely reaffirm the Florida celery industry's continued lack of interest in reactivating the marketing order and that conducting such a referendum would be wasteful of Departmental and public resources.

Therefore, pursuant to § 608c(16)(A) of the Act and § 967.85 of the order, the Department is considering the termination of Marketing Order No. 967, covering celery grown in Florida. If the Secretary decides to terminate the order, trustees would be appointed to continue in the capacity of concluding and liquidating the affairs of the former committee.

Section 608c(16)(A) of the Act requires the Secretary to notify Congress 60 days in advance of the termination of a Federal marketing order. Congress will be so notified upon publication of this proposed termination.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 967

Celery, Marketing agreements, Reporting and recordkeeping requirements.

PART 967—[REMOVED]

For the reasons set forth in the preamble, and under authority of 7 U.S.C. 601-674, 7 CFR part 967 is proposed to be removed.

Dated: October 2, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98-27178 Filed 10-8-98; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1065

[DA-98-10]

Milk in the Nebraska-Western Iowa 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 11 counties from the marketing area definition of the Nebraska-Western Iowa Federal milk marketing order (Order 65) for the period of November 1, 1998, through December 31, 1999. The action was requested by Gillette Dairy (Gillette) of Rapid City, South Dakota, which contends the suspension is necessary to maintain its milk supply and to remain competitive in selling fluid milk products in the marketing area.

DATES: Comments must be submitted on or before November 9, 1998.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456. 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:

Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, 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 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