

opinion of the Director, are appropriate to exclude, to the extent practicable, parties other than eligible persons from benefitting from the deferral of capital gains. Such actions may include, as permitted by applicable State law, division of the trust into separate portfolios, special distributions, dissolution of the trust, or anything else deemed feasible by the Director, in his or her sole discretion.

*Example 1 to paragraph (d):* An employee has a 90% beneficial interest in an irrevocable trust created by his grandfather. His four adult children have the remaining 10% beneficial interest in the trust. A number of the assets held in the trust must be sold to comply with conflicts of interest requirements. Due to State law, no action can be taken to separate the trust assets. Because the adult children have a small interest in the trust and the assets cannot be separated, the Director may consider issuing a Certificate of Divestiture to the trustee for the sale of all of the conflicting assets.

(e) *Time requirements.* A request for a Certificate of Divestiture does not extend the time in which an employee otherwise must divest property required to be divested pursuant to an ethics agreement, or prohibited by statute, regulation, rule, or Executive order. Therefore, an employee must submit his or her request for a Certificate of Divestiture as soon as possible once the requirement to divest becomes applicable. The Office of Government Ethics will consider requests submitted beyond the applicable time period for divestiture. If the designated agency ethics official submits a request to the Office of Government Ethics beyond the applicable time period for divestiture, he must explain the reason for the delay. (See 5 CFR 2634.802 and 2635.403 for rules relating to the time requirements for divestiture.)

(f) *Response by the Office of Government Ethics.* After reviewing the materials submitted by the employee and the designated agency ethics official, and making a determination that all requirements have been met, the Director will issue a Certificate of Divestiture. The certificate will be sent to the designated agency ethics official who will then forward it to the employee.

**§ 2634.1005 Rollover into permitted property.**

(a) *Reinvestment of proceeds.* In order to qualify for deferral of capital gains, an eligible person must reinvest the proceeds from the sale of the property divested pursuant to a Certificate of Divestiture into permitted property during the 60-day period beginning on the date of the sale. The proceeds may

be reinvested into one or more types of permitted property.

*Example 1 to paragraph (a):* A recently hired employee of the Department of Transportation receives a Certificate of Divestiture for the sale of a large block of stock in an airline. He may split the proceeds of the sale and reinvest them in an S&P Index Fund, a diversified Growth Stock Fund, and U.S. Treasury bonds.

*Example 2 to paragraph (a):* The Secretary of Treasury sells certain stock after receiving a Certificate of Divestiture and is considering reinvesting the proceeds from the sale into U.S. Treasury securities. However, because the Secretary of the Treasury is prohibited by 31 U.S.C. 329 from being involved in buying obligations of the United States Government, the Secretary cannot reinvest the proceeds in such securities. However, she may invest the proceeds in a diversified mutual fund. See the definition of *permitted property* at § 2634.1002.

(b) *Internal Revenue Service reporting requirements.* An eligible person who elects to defer the recognition of capital gains from the sale of property pursuant to a Certificate of Divestiture must follow Internal Revenue Service rules for reporting the sale of the property and the reinvestment transaction.

**§ 2634.1006 Cases in which Certificates of Divestiture will not be issued.**

The Director of the Office of Government Ethics, in his or her sole discretion, may deny a request for a Certificate of Divestiture in cases where an unfair or unintended benefit would result. Examples of such cases include:

(a) *Employee benefit plans.* The Director will not issue a Certificate of Divestiture if the property is held in a pension, profit-sharing, stock bonus, or other employee benefit plan and can otherwise be rolled over into an eligible tax-deferred retirement plan within the 60-day reinvestment period.

(b) *Complete divestiture.* The Director will not issue a Certificate of Divestiture unless the employee agrees to divest all of the property that presents a conflict of interest, as well as other similar or related property that also presents a conflict of interest under a Federal conflict of interest statute, regulation, rule, or Executive order. However, any property that qualifies for a regulatory exemption at 5 CFR part 2640 need not be divested for a Certificate of Divestiture to be issued.

*Example 1 to paragraph (b):* A new senior official at the Federal Aviation Administration owns stock in several airlines. The official is expected to participate in a matter dealing with the imposition of new safety standards on commercial airlines. The employee must divest his interest in all of the airline stock that exceeds the amounts he is permitted to

retain under the exemptions to 18 U.S.C. 208, which are described at 5 CFR part 2640.

*Example 2 to paragraph (b):* A Department of Agriculture employee owns shares of stock in Better Workspace, Inc. valued at \$25,000. As part of his official duties, the employee is assigned to evaluate bids for a contract to renovate office space at his agency. The Department's designated agency ethics official discovers that Better Workspace is one of the companies that has submitted a bid and directs the employee to sell his stock in the company. Because Better Workspace is a publicly traded security, the employee could retain up to \$15,000 of the stock under the regulatory exemption for interests in securities at 5 CFR 2640.202(a). He would be able to request a Certificate of Divestiture for the \$10,000 of Better Workspace stock that is not covered by the exemption. Alternatively, he could request a Certificate of Divestiture for the entire \$25,000 worth of stock. If he chooses to sell his stock down to an amount permitted under the regulatory exemption, the Office of Government Ethics will not issue additional Certificates of Divestiture if the value of the stock goes above \$15,000 again.

(c) *Property acquired under improper circumstances.* The Director will not issue a Certificate of Divestiture:

(1) If the eligible person acquired the property at a time when its acquisition was prohibited by statute, regulation, rule, or Executive order; or

(2) If circumstances would otherwise create the appearance of a conflict with the conscientious performance of Government responsibilities.

**§ 2634.1007 Public access to a Certificate of Divestiture.**

A Certificate of Divestiture issued pursuant to the provisions of this subpart is available to the public in accordance with the rules of § 2634.603 of this part.

[FR Doc. 04-685 Filed 1-12-04; 8:45 am]

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 1135**

[Docket No. AO-380-A18; DA-01-08-W]

**Milk in the Western Marketing Area; Proposed Termination of the Order**

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

**ACTION:** Proposed termination of order.

**SUMMARY:** This document invites written comments on the proposed termination of the order regulating the handling of milk in the Western marketing area. A proposal amending the Western order failed to receive the required two-thirds

approval in a recent producer referendum. Since the Department has determined that the provisions of the proposed amended order are necessary to effectuate the declared policy of the applicable statutory authority, it is necessary to consider terminating the present order.

**DATES:** Comments are due on or before February 12, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Gino M. Tosi, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, Room 2971—Stop 0231, 1400 Independence Avenue, SW., Washington, DC 20250-0231, (202) 690-1366, e-mail address: [gino.tosi@usda.gov](mailto:gino.tosi@usda.gov).

**SUPPLEMENTARY INFORMATION:** The Department is issuing this proposed action in conformance with Executive Order 12866.

This proposed termination has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the action.

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 the law. A handler is afforded the opportunity for a hearing 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 action will not have a significant economic impact on a substantial number of small entities. This rule would eliminate the regulatory impact of the order on dairy farmers and

regulated handlers. 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 \$750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees.

In the Western Federal milk order 550 of the 860 dairy producers (farmers), or 64 percent, whose milk was pooled under the order in June 2003 would meet the definition of small businesses. On the processing side, 15 of the 42 milk plants or 36 percent associated with the Western milk order during June 2003 would qualify as "small businesses".

Interested parties are invited to submit comments on the probable regulatory and informational impact of this proposed action on small entities.

**Proposed Termination of Rule**

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the termination of the order regulating the handling of milk in the Western marketing area is being considered.

All persons who want to send written data, views, or arguments about the proposed termination should send two copies to the USDA/AMS/Dairy Division, Order Formulation and Enforcement Branch Room 2971—Stop 0231, 1400 Independence Avenue, SW., Washington, DC 20250-0231, by the 30th day after the publication of this notice in the **Federal Register**. The period for filing comments is limited to 30 days because a longer period would not provide the time needed to complete the required procedures before the termination is to be effective.

The comments that are received 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 action would terminate the order regulating the handling of milk in the Western marketing area.

On August 8, 2003, the Department issued a tentative final decision on proposed amendments to the Western Federal milk order, which was published August 18, 2003 (68 FR 49375). The document was then followed by a referendum order for the Western marketing area to ascertain whether producers supplying that market approve the issuance of the proposed amended order.

The enabling statute requires that at least two-thirds of the producers (measured in terms of either number or volume) voting in a referendum must approve the issuance of an order before

it can be put into effect. Less than two-thirds percent of the voting producers in the referendum approved the issuance of the proposed amended order for the Western marketing area. In these circumstances, where it has been concluded that the order should be amended to effectuate the declared policy of the enabling statute and that the amended order was not approved by producers, it appears that continuation of the existing Western order would not be in conformity with the applicable statutory authority. Therefore, it is necessary to consider terminating the present order.

The period for filing comments is limited to 30 days because a longer period would not provide the time needed to complete the required procedures before and coordinate the termination with amendatory action being taken on milk orders for neighboring markets.

**List of Subjects in 7 CFR Part 1135**

Milk marketing orders.

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

Dated: January 7, 2004.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[CGD05-03-168]

**RIN 1625-AA-09**

**Drawbridge Operation Regulation; Chincoteague Channel, Chincoteague, VA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commander, Fifth Coast Guard District, is proposing to change the regulations that govern the operation of the SR 175 drawbridge across the Chincoteague Channel, mile 3.5, at Chincoteague, Virginia. These regulations are necessary to facilitate public safety during the Annual Pony Swim. This proposed change to the drawbridge operation schedule will allow the Chincoteague Channel Bridge to remain in the closed position from 7 a.m. to 5 p.m. on the last Wednesday and Thursday in July of every year.