

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 Parts 1005, 1011, and 1046

[Docket No. AO-388-A8 et al.; DA-94-12]

Milk in the Carolina, Tennessee Valley, and Louisville-Lexington-Evansville Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

7 CFR part	Marketing area	AO Nos.
1005	Carolina	AO-388-A8
1011	Tennessee Valley ...	AO-251-A39
1046	Louisville-Lexington-Evansville.	AO-123-A66

SUMMARY: This final decision proposes to amend the pooling standards of the Tennessee Valley and Carolina orders; modifies the marketing areas of the Tennessee Valley and Louisville-Lexington-Evansville orders; changes the location adjustment under the Carolina order for plants located in the Middle Atlantic marketing area; and changes the base-paying months under the Carolina order. The decision is based upon industry proposals presented at a public hearing in Charlotte, North Carolina, on January 4, 1995.

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.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to

examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. The amended orders will promote more orderly marketing of milk by producers and regulated handlers.

These proposed amendments have been reviewed under Executive Order 12778, 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 this 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 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 the law and requesting a modification of an order or to be exempted from the order. 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.

Prior documents in this proceeding: Notice of Hearing: Issued November 21, 1994; published November 25, 1994 (59 FR 60574).

Recommended Decision: Issued August 17, 1995; published August 24, 1995 (60 FR 43986).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Carolina, Tennessee Valley, and Louisville-Lexington-Evansville marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7

U.S.C. 601-674), and the applicable rules of practice (7 CFR Part 900), at Charlotte, North Carolina, on January 4, 1995. Notice of such hearing was issued on November 21, 1994, and published November 25, 1994 (59 FR 60574).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on August 17, 1995, issued a recommended decision containing notice of the opportunity to file written exceptions thereto. Two comments were received in response to the notice, both of which fully support the findings and conclusions of the recommended decision.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, with no material modifications.

The material issues on the record of the hearing relate to:

1. Marketing area modifications to the Tennessee Valley and Louisville-Lexington-Evansville orders;
2. Where to regulate a distributing plant that meets the pooling standards of more than one order;
3. Supply plant pooling standards under the Tennessee Valley order;
4. Distributing plant pooling standards under the Carolina order;
5. Location adjustments under the Carolina order; and
6. Base-paying months under the Carolina order.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Marketing Area Modifications to the Tennessee Valley (Order 11) and Louisville-Lexington-Evansville (Order 46) Orders

Six now-unregulated Kentucky counties between the Order 11 and Order 46 marketing areas should be added to the Order 11 marketing area and one county that is now part of the Order 46 marketing area should be removed and added to the Order 11 marketing area.

A spokesman for Southern Belle Dairy Company, Inc., testified that the six unregulated counties—Clay, Jackson, Laurel, McCreary, Owsley, and Rockcastle—and the one Order 46