

## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

**7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1075, 1076, 1079, 1093, 1094, 1096, 1106, 1108, 1124, 1126, 1131, 1134, 1135, 1137, 1138, and 1139**

[Docket Nos. AO-14-A67, etc.; DA-94-02]

**Milk in the New England and Other Marketing Areas; Order Amending the Orders**

7 CFR part	Marketing area	AO Nos.
1001	New England .....	AO-14-A67
1002	New York-New Jersey.	AO-71-A82
1004	Middle Atlantic .....	AO-160-A70
1005	Carolina .....	AO-388-A7
1006	Upper Florida .....	AO-356-A31
1007	Georgia .....	AO-366-A37
1011	Tennessee Valley ...	AO-251-A38
1012	Tampa Bay .....	AO-347-A34
1013	Southeastern Florida	AO-286-A41
1030	Chicago Regional ...	AO-361-A32
1032	Southern Illinois-Eastern Missouri.	AO-313-A41
1033	Ohio Valley .....	AO-166-A64
1036	Eastern Ohio-Western Pennsylvania.	AO-179-A59
1040	Southern Michigan ..	AO-225-A46
1044	Michigan Upper Peninsula.	AO-299-A29
1046	Louisville-Lexington-Evansville.	AO-123-A65
1049	Indiana .....	AO-319-A42
1050	Central Illinois .....	AO-355-A29
1064	Greater Kansas City	AO-23-A62
1065	Nebraska-Western Iowa.	AO-86-A51
1068	Upper Midwest .....	AO-178-A49
1075	Black Hills, South Dakota.	AO-248-A23
1076	Eastern South Dakota.	AO-260-A33
1079	Iowa .....	AO-295-A45
1093	Alabama-West Florida.	AO-386-A15
1094	New Orleans-Mississippi.	AO-103-A57
1096	Greater Louisiana ...	AO-257-A44
1106	Southwest Plains ....	AO-210-A55
1108	Central Arkansas ....	AO-243-A47
1124	Pacific Northwest ....	AO-368-A23
1126	Texas .....	AO-231-A63
1131	Central Arizona .....	AO-271-A33
1134	Western Colorado ...	AO-301-A24
1135	Southwestern Idaho-Eastern Oregon.	AO-380-A13
1137	Eastern Colorado ....	AO-326-A28
1138	New Mexico-West Texas.	AO-335-A39
1139	Great Basin .....	AO-309-A33

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

**ACTION:** Final rule.

**SUMMARY:** This final action provides a new formula to price Class II milk under 37 Federal orders. The Class II milk price will be calculated by adding a fixed differential of 30 cents to the basic formula price for the second preceding month. The Class II price will, like the Class I price in all Federal orders, be announced on or before the fifth day of the month and apply to milk marketed during the following month. This action also will eliminate the "add-back" provision which requires that the difference between the Class II price and the Class III price be added to the subsequent month's Class II price when the Class II price for the month falls below the Class III price.

Each of the amended orders was approved by producers who were eligible to have their milk pooled during the representative month for voting purposes. Referenda were conducted in six markets and cooperative associations were polled in the other markets. One order that was included in this proceeding—Paducah, Kentucky—is not included in this final rule. For Paducah, Kentucky, a referendum was conducted and a sufficient number of producers did not approve the issuance of the proposed amended order.

**EFFECTIVE DATE:** March 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Gino M. Tosi, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 690-1366.

**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 final 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.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action 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 the 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 December 14, 1993; published December 21, 1993 (58 FR 67380).

Recommended Decision: Issued August 22, 1994; published August 26, 1994 (59 FR 44074).

Final Decision: Issued December 2, 1994; published December 14, 1994 (59 FR 64524).

### Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when each of the aforesaid orders was first issued and when each was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid orders:

(a) Findings upon the basis of the hearing record. 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 and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the respective marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, for each of the specified orders, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;