

# 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 1007

[Docket No. AO-366-A37; AO-388-A9, et al.; DA-95-22]

#### Milk in the Carolina and Certain Other Marketing Areas; Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments to Marketing Agreements and Orders

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

**ACTION:** Proposed rule.

**SUMMARY:** This document recommends adoption of proposed amendments that would modify certain location adjustments under the Southeast Federal milk marketing order. The recommended decision denies a proposal to provide a fluid milk surcharge during the period of November 1995 through March 1996 and a transportation credit on bulk milk purchased for 6 Federal milk orders in the Southeastern United States. The recommendations are based on the record of a public hearing held in Atlanta, Georgia, on September 19, 1995.

**DATES:** Comments are due on or before January 26, 1996.

**ADDRESSES:** Comments (four copies) should be filed with the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Memoli, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Division, 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 proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed amendments would promote orderly marketing of milk by producers and regulated handlers.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would 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 August 11, 1995; published August 17, 1995 (60 FR 42815).

*Supplemental Notice of Hearing:* Issued September 8, 1995; published September 13, 1995 (60 FR 47495).

#### Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and the orders

regulating the handling of milk in the 7 Federal milk marketing areas in the Southeastern United States. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 30th day after publication of this decision in the Federal Register. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Atlanta, Georgia, on September 19, 1995, pursuant to a notice of hearing issued August 11, 1995 (60 FR 42815), and a supplemental notice of hearing issued September 8, 1995 (60 FR 47495).

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

1. Whether the location adjustment at Hammond, Louisiana, should be increased by 7 cents under Order 7.
2. Whether the location adjustment at Mobile, Alabama, should be reduced by 7 cents under Order 7.
3. Whether a transportation credit for supplemental milk should be adopted for Orders 5, 6, 7, 11, 12 and 13.<sup>1</sup>
4. Whether a fluid milk surcharge should be provided on a temporary basis for Orders 5, 6, 7, 11, 12, and 13.
5. Whether emergency marketing conditions in the 6 regulated areas warrant the omission of a recommended decision and the opportunity to file written exceptions thereto.

#### 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. Whether the Location Adjustment at Hammond, Louisiana, Should be Increased by 7 Cents Under Order 7

The location adjustment in the portion of Tangipahoa Parish,

<sup>1</sup> The Louisville-Lexington-Evansville order was dropped from Proposals 4 and 5, as contained in the hearing notice, at the hearing.