ACTION: Suspension of rules.

SUMMARY: This document extends a suspension of certain provisions of the Carolina, Georgia, Tennessee Valley, and Louisville-Lexington-Evansville Federal milk orders from March 1, 1995, through February 28, 1996, or until the conclusion of an amendatory proceeding (DA–94–12) which addressed these matters.

EFFECTIVE DATE: March 1, 1995, through February 28, 1996.

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: Prior

document in this proceeding: Notice of Proposed Suspension: Issued November 21, 1994; published November 25, 1994 (59 FR 60572).

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. This rule lessens the regulatory burden on small entities by removing pricing disparities that are causing or could cause financial hardship for certain regulated plants.

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This 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 provisions 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.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Carolina, Georgia, Tennessee Valley, and Louisville-Lexington-Evansville marketing areas.

Notice of proposed rulemaking was published in the **Federal Register** on November 25, 1994 (59 FR 60572), concerning a proposed suspension of certain provisions of the orders. Interested persons were afforded opportunity to file written data, views and arguments thereon. One comment supporting and three comments opposing the proposed suspension were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the period of March 1, 1995, through February 28, 1996, the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1005.7(d)(3) of the Čarolina order, the words "from", "there", "a greater quantity of route disposition, except filled milk, during the month", and "than in this marketing area";

2. In § 1007.7(e)(3) of the Georgia order, the words ", except as provided in paragraph (e)(4) of this section,";

3. In § 1007.7 of the Georgia order, paragraph (e)(4); 4 In § 1011.7(d)(2) of the Tenpose

4. In § 1011.7(d)(3) of the Tennessee Valley order, the words "from", "there", "a greater quantity of route disposition, except filled milk, during the month", and "than in this marketing area"; and

5. In § 1046.2 of the Louisville-Lexington-Evansville order, the word "Pulaski".

Statement of Consideration

This document extends an existing suspension that has been in effect since March 1, 1994. This suspension allows a distributing plant operated by Land-O-Sun Dairies, Inc., at Kingsport, Tennessee, that is located within the Tennessee Valley marketing area and that meets all of the pooling standards of the Tennessee Valley order (Order 11) to be regulated under that order rather than the Carolina order (Order 5) despite the plant having greater sales in the Carolina marketing area. It also allows a distributing plant operated by Southern Belle Dairy Company, Inc.,

located at Somerset, Kentucky, that has been regulated under the Tennessee Valley order for the past five years to remain regulated there even if it develops greater sales in the Louisville-Lexington-Evansville (Order 46) marketing area. In addition, the suspension allows a supply plant operated by Armour Food Ingredients at Springfield, Kentucky, that has been supplying the Southern Belle plant to remain pooled under the Tennessee Valley order without having to make uneconomic shipments of milk that it contends would be necessary to remain pooled if the Somerset plant were regulated under Order 46.

The problems prompting the existing suspension of these provisions were thoroughly explained in a suspension order (DA–93–29) issued on March 28, 1994 (published April 1, 1994 (59 FR 15315)). In that document, it was noted that "orderly marketing will be best preserved by adopting the proposed suspension, for a 12-month period only, to allow the industry time to develop proposals for a hearing to be held before the suspension period expires." [emphasis added]

Due to significant changes that have occurred in these markets within the past year, the Department was delayed in holding the promised hearing until January 4, 1995. (The one-day hearing was held in Charlotte, North Carolina.) Advised that the Department would be unable to evaluate the hearing record and amend the orders by the time the current suspension expires on February 28, both Southern Belle Dairy Company and Land-O-Sun Dairies, Inc., who were proponents of the existing suspension, submitted requests to extend the current suspension until the amendatory proceeding was concluded.

Mid-America Dairymen, Inc. (Mid-America) and Southern Milk Sales, on behalf of their member-producers who deliver producer milk to plants regulated under the Orders 5, 7, 11, and 46, filed a comment letter supporting the continued suspension. Coburg Dairy Inc. (Coburg), Edisto Milk Producers Association, and Purity Dairies, Inc. (Purity), filed comment letters in opposition to the continued suspension. Coburg and Edisto reiterated their opposition to the existing suspension and questioned the rationale for continuing it, but offered no opposition testimony to proposals at the hearing that would permanently regulate the Land-O-Sun and Southern Belle plants under Order 11. Purity Dairies, a Nashville, Tennessee, handler that is regulated under the Georgia order (Order 7), stated that it cannot procure milk from its traditional supply area in