

# 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, 1007, 1011 and 1046

[Docket No. AO-388-A9, et al.; DA-96-08]

#### Milk in the Carolina and Certain Other Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	Docket No.
1005	Carolina .....	AO-388-A9
1007	Southeast .....	AO-366-A38
1011	Tennessee Valley .....	AO-251-A40
1046	Louisville-Lexington-Evansville.	AO-123-A67

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

**ACTION:** Notice of public hearing on proposed rulemaking.

**SUMMARY:** A public hearing is being held in response to industry requests to amend four Southeastern Federal milk marketing orders. One proposal would provide transportation credits for bulk milk that is imported into these markets for fluid use. Mid-America Dairymen, Inc., the proponent of the proposed amendments, has requested that this issue be handled on an emergency basis. A second proposal by Milkco, Inc., and Hunter Farms, Inc., would specify, in each of the four orders, those costs which are the responsibility of the plant operator and that may not, accordingly, be passed on to producers in any manner.

**DATES:** The hearing will convene at 9:00 a.m. on May 15, 1996.

**ADDRESSES:** The hearing will be held at the Sheraton Airport Plaza Hotel, 3315 South I-85 at Bill Graham Parkway, Charlotte, North Carolina, 28208. (Telephone: 704/392-1200).

**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.

Notice is hereby given of a public hearing to be held at the Sheraton Airport Plaza Hotel, 3315 South I-85 at Bill Graham Parkway, Charlotte, North Carolina, 28208 beginning at 9:00 a.m., on May 15, 1996, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Carolina and certain other marketing areas.

The hearing is called 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).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to proposal number one. Since this proposal will be handled on an emergency basis, it is necessary to provide interested parties with less than 15 days notice of the public hearing to ensure that the proposed amendments, if found to be appropriate, will be effective by July 1, 1996.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96-354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than \$500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500

employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

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 provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(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.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with four copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1005, 1007, 1011, and 1046

Milk marketing orders.

The authority citation for 7 CFR Parts 1005, 1007, 1011, and 1046 continues to read as follows:

**PARTS 1005, 1007, 1011, 1046—  
[AMENDED]**

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

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Mid-America Dairymen, Inc.

*Proposal No. 1:* Amend 7 CFR Parts 1005, 1007, 1011, and 1046 as follows:

a. Amend § 10XX.61 of each order by redesignating paragraph (a)(4) as paragraph (a)(5), paragraph (a)(5) as paragraph (a)(6), paragraph (b)(5) as paragraph (b)(6), paragraph (b)(6) as paragraph (b)(7), and adding new paragraphs (a)(4) and (b)(5) to read as follows:

\* \* \* \* \*

(a) \* \* \*

(4) Deduct the amount by which the amount due to be paid from the Hauling Credit Balancing Fund pursuant to § 10XX.82 exceeds the available balance in the Hauling Credit Balancing Fund pursuant to § 10XX.80.

\* \* \* \* \*

(b) \* \* \*

(5) Deduct the amount by which the amount due to be paid from the Hauling Credit Balancing Fund pursuant to § 10XX.82 exceeds the available balance in the Hauling Credit Balancing Fund pursuant to § 10XX.80.

\* \* \* \* \*

b. Add new §§ 10XX.80, 10XX.81, and 10XX.82 to each order to read as follows:

**§ 10XX.80 Hauling credit balancing fund.**

The market administrator shall maintain a separate fund known as the Hauling Credit Balancing Fund into which he shall deposit the payments made pursuant to the hauling credit balancing adjustment specified in § 10XX.82; Provided, That the market administrator shall offset the payment due to a handler against payments due from such handler.

**§ 10XX.81 Payments to the hauling credit balancing fund.**

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the value, if any, of the hauling credit balancing adjustment determined by multiplying the pounds of Class I milk assigned pursuant to § 10XX.44 by \$0.03 per hundredweight hauling credit balancing adjustment; Provided, That for any of the months of July through December in which the balance in the Hauling Credit Balancing Fund for the second preceding month is less than the total value of the hauling credit

balancing adjustments applicable for the previous six months, then the hauling credit balancing adjustment shall be \$0.06 per hundredweight; Provided Further, That for any of the months of January through June the hauling credit balancing adjustment shall be zero for any month in which the balance in the Hauling Credit Balancing Fund for the second preceding month is greater than the total value of the hauling credit balancing adjustments applicable during the previous six months.

(b) On or before the 13th day after the end of the month, the market administrator shall credit the Hauling Credit Balancing Fund, from the Producer Settlement Fund, any amount deducted pursuant to § 10XX.61 (a)(4) or (b)(5).

**§ 10XX.82 Payments from the hauling credit balancing fund.**

On or before the 13th day after the end of each of the months of July through December, and any other month in which the classification of producer milk allocated to Class I pursuant to § 10XX.44 exceeds 80 percent, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from an other order plant and allocated to Class I milk, by a rate equal to 3.9 cents per hundredweight for each 10 miles or fraction thereof less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant. Provided, That payments may be assigned to any cooperative association which provides written notice to the market administrator prior to the date payment is due.

Proposed by Milkco, Inc., and Hunter Farms, Inc.

*Proposal No. 2:* Amend § 10XX.73 of 7 CFR Parts 1005, 1007, 1011, and 1046 by adding a new paragraph (e) to read as follows:

**§ 10XX.73 Payments to producers and to cooperative associations.**

\* \* \* \* \*

(e) A handler may not reduce its obligations hereunder to producers or cooperatives by permitting producers or cooperatives to provide "services which are the responsibility of the handler. The services which are the responsibilities of the handler are:

- (1) Preparation of producer payroll;
- (2) Conduct of screening tests of tanker loads of milk required by duly constituted regulatory authorities before milk may be transferred to the plant's holding tanks and any other tanker load

tests required to establish the quantity and quality of milk received; and

(3) Any services for processing of raw milk or marketing of packaged milk by the handler.

Proposed by the Dairy Division, Agricultural Marketing Service

*Proposal No. 3:* Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders regulating the aforesaid marketing areas may be inspected at or procured from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or from the following market administrators: Sue L. Mosley, Market Administrator, P.O. Box 1208, Norcross, GA 30091-1208 (Tel: 770/448-1194); or Arnold M. Stallings, Market Administrator, P.O. Box 18030, Louisville, KY 40261-0030 (Tel: 502-499-0040).

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture;  
Office of the Administrator, Agricultural Marketing Service;  
Office of the General Counsel;  
Dairy Division, Agricultural Marketing Service (Washington office); and  
Offices of the Market Administrators of the orders involved in this proceeding.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: May 1, 1996.

Lon Hatamiya,  
Administrator.

[FR Doc. 96-11170 Filed 5-2-96; 8:45 am]

BILLING CODE 3410-02-P