

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 1099

[DA-95-10]

Milk in the Paducah, Kentucky, Marketing Area; Proposed Termination of Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed termination of order.

SUMMARY: This document invites written comments on the proposed termination of the order regulating the handling of milk in the Paducah, Kentucky, marketing area. A proposed amended Paducah, Kentucky, order failed to receive the required two-thirds approval in a recent producer referendum. Since the Department has determined that the provisions of the proposed amended order are necessary to effectuate the declared policy of the applicable statutory authority, it is necessary to consider terminating the present order.

DATES: Comments are due on or before March 24, 1995.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456.

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: 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 would not have a significant economic impact on a substantial number of small entities. This rule would eliminate the

regulatory impact of the order on dairy farmers and regulated handlers.

This proposed action has been reviewed under Executive Order 12866.

This proposed termination order has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the 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 law and request 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.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, the termination of the order regulating the handling of milk in the Paducah, Kentucky, marketing area is being considered.

All persons who want to send written data, views, or arguments about the proposed termination should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 15th day after the publication of this notice in the **Federal Register**. The period for filing comments is limited to 15 days because a longer period would not provide the time needed to complete the required procedures before and coordinate the termination with amendatory action being taken on milk orders for neighboring markets. The

comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed action would terminate the order regulating the handling of milk in the Paducah, Kentucky, marketing area.

On December 2, 1994, the Department issued a final decision on proposed amendments to all Federal milk orders, which was published December 14, 1994 (59 FR 64524). The final decision document contained proposed amended orders for all marketing areas, including the Paducah order. The document also included a referendum order for the Paducah, Kentucky, market to ascertain whether producers supplying that market approve the issuance of the proposed amended order. The final decision concluded that amended orders were needed to effectuate the declared policy of the applicable statutory authority.

The enabling statute requires that at least two-thirds of the producers (measured in terms of either number or volume) voting in a referendum must approve the issuance of a marketwide pool order before it can be put into effect. Only 37.8 percent of the voting producers representing 59.8 percent of the milk produced by the dairy farmers who voted in the referendum approved the issuance of the proposed amended order for the Paducah, Kentucky, marketing area. In these circumstances, where it has been concluded that the order should be amended to effectuate the declared policy of the enabling statute, and that the amended order was not approved by producers, it appears that continuation of the existing Paducah, Kentucky, order would not be in conformity with the applicable statutory authority. Therefore, it is necessary to consider terminating the present order.

List of Subjects in 7 CFR Part 1099

Milk marketing orders.

The authority citation for 7 CFR Part 1099 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.