

§ 1446.310 Additional peanut support levels.

(a) The national support rate for additional peanuts for the 1996 crop is \$132 per short ton.

(b) The national support rate for additional peanuts for the 1997 crop will be between \$125 per short ton and \$140 per short ton.

§ 1446.311 Minimum CCC sales price for certain peanuts.

(a) The minimum CCC sales price for additional peanuts to be sold from the price support loan inventory for export edible use from the 1996 crop is \$400 per short ton.

(b) The minimum CCC sales price for additional peanuts to be sold from the price support loan inventory for export edible use from the 1997 and subsequent crops will be between \$375 and \$425 per short ton.

Signed at Washington, DC, on November 20, 1996.

Grant Buntrock,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

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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 To Reopen Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	AO Nos.
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 to reopen public hearing on proposed rulemaking.

SUMMARY: This notice announces a reopening of the hearing initially held on May 15-16, 1996, in Charlotte, North Carolina, to consider supplemental testimony and record evidence regarding the proposal to incorporate transportation credits for bulk milk that is imported for fluid use into 4 Southeastern milk orders. The reopened hearing, to be held on December 17, 1996, in Atlanta, Georgia, will receive supplementary data, testimony, and

arguments concerning the operation and impact of the interim amendments since their inception on August 10, 1996, in the 4 orders.

The Department has received many comments from dairy farmers who have expressed concerns about the impact of the currently implemented transportation credits. Any changes to the interim amendments resulting from the impact of the credits must be based upon evidence placed in the record of the hearing. Accordingly, the Department has decided to reopen the hearing to receive such evidence.

Testimony on a related proposal submitted by Carolina-Virginia Milk Producers' Association (CVMPPA) and Mid-America Dairymen, Inc., to incorporate a "dairy farmer for other markets" provision to help ensure an adequate milk supply for the seasonally-deficit markets of the southeastern United States will also be heard.

DATES: The hearing will convene at 9:00 a.m. on December 17, 1996.

ADDRESSES: The hearing will be held at the Hilton Airport Hotel, 1031 Virginia Avenue, Atlanta, Georgia 30354, telephone (404) 767-9000.

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 reopened public hearing to be held at the Hilton Airport Hotel, 1031 Virginia Avenue, Atlanta, Georgia, beginning at 9:00 a.m. on December 17, 1996, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Carolina, Southeast, Tennessee Valley, and Louisville-Lexington-Evansville 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 reopened hearing is to receive supplemental testimony and evidence with respect to the economic and marketing conditions which relate to the interim amendments, one new proposed amendment, hereinafter set forth, and

any appropriate modifications of these amendments to the tentative marketing agreements and to the orders.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). 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 12988, 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 request modification or exemption from such order by filing 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. 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.

A public hearing was held to consider proposed amendments to the marketing agreements and the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held 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 (7

CFR Part 900), in Charlotte, North Carolina, on May 15–16, 1996. Notice of such hearing was issued on May 1, 1996, and published May 3, 1996 (61 FR 19861).

Interested parties were given until May 28, 1996, to file post-hearing briefs on the proposals as published in the Federal Register and as modified at the hearing. Information also was requested on whether the proposals should be considered on an emergency basis.

Based upon the record of this hearing, an emergency tentative decision was issued on July 12, 1996, proposing amendments to the 4 orders. The amendments provided transportation credits for handlers to offset costs in importing supplemental milk for fluid use to these seasonally deficit markets. Having been approved by more than two-thirds of the producers in each of the respective marketing areas, the amendments became effective on an interim basis on August 10, 1996. The initial comment period for filing exceptions to the tentative decision was extended twice, based upon industry requests, and is now set to expire on November 30, 1996.

The Department has decided to reopen the hearing in this matter on December 17, 1996. Based upon the comments that it has already received, the Department is reasonably certain that it will be asked to modify the interim amendments based upon experience with these provisions during the past 3 months. Any modifications to the interim amendments may be based only on factual information that is in the hearing record of this proceeding. In view of these considerations, the Department sees no point in waiting until the expiration of the current comment period to call for a reopened hearing.

Interested parties who are planning to make an appearance at the reopened hearing need not send in written comments by November 30, 1996, as requested in the Department's tentative decision and the two subsequent extensions of time, but instead should enter their statements into the record of the hearing. Although written comments may still be submitted concerning this matter, interested parties should understand that the Department cannot make any changes to the interim amendments based upon events that have occurred while the interim amendments were in effect unless the events are documented in the hearing record.

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.

The May 15–16 hearing also considered a second proposal which concerned costs which are the responsibility of the plant operator. That proposal, and any modifications thereof, is being considered on a non-emergency basis and there is no indication that further evidence needs to be received on that issue. Hence, that issue will be outside the scope of the reopened hearing.

Prior Documents in This Proceeding

Notice of Hearing: Issued May 1, 1996; published May 3, 1996 (61 FR 19861).

Tentative Decision: Issued July 12, 1996; published July 18, 1996 (61 FR 37628).

Interim Amendment of Rules: Issued August 2, 1996; published August 9, 1996 (61 FR 41488).

Notice of Extension of Time for Filing Comments to Tentative Partial Decision: Issued August 16, 1996; published August 23, 1996 (61 FR 43474).

Notice of Extension of Time for Filing Comments to Tentative Partial Decision: Issued October 18, 1996; published October 25, 1996 (61 FR 55229).

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:

Authority: 7 U.S.C. 601–674.

In addition to receiving testimony concerning the interim amendments, the Department will hear the following related proposal submitted by Carolina-Virginia Milk Producers' Association. This proposal, as set forth below, has not received the approval of the Secretary of Agriculture.

Proposed by Carolina-Virginia Milk Producers' Association and Mid-America Dairymen, Inc.: Proposal #4

Add a new subparagraph to paragraph 100X.12(b) of each of the four orders to read as follows:

100X.12 Producer

* * * * *

(b) Producer shall not include:

* * * * *

() Any person with respect to milk produced by him during the months of February through May that is caused to be delivered to a pool plant by a

cooperative association or a pool plant operator if during the immediately preceding months of July through November more than 40 percent of the milk from the same farm was caused by such cooperative association or pool plant operator to be delivered to plants as other than producer milk (except milk that is not producer milk as a result of a temporary loss of grade A approval or the application of Section 100X.13), unless such pool plant was a nonpool plant during any of such immediately preceding months.

Provided however, that for the purpose of determining the percentage of a person's milk that was pooled during the previous months of August through November, deliveries of the person's milk to plants as producer milk under Federal orders 100X, 100X or 100X shall be considered as deliveries of producer milk under this order.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid marketing areas, or from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

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 decisionmaking 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 the
Offices of all Market Administrators.

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

Dated: November 19, 1996.

Lon Hatamiya,
Administrator.

[FR Doc. 96–30034 Filed 11–22–96; 8:45 am]

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