

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(s) 1001, 1002, 1004, 1005, 1006, 1007, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1124, 1126, 1131, 1134, 1135, 1137, 1138, and 1139.

[Docket No. AO-14-A68, et al.; DA-98-01]

Milk in the New England and Other Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	AO Nos.
1001	New England	AO-14-A68
1002	New York-New Jersey	AO-71-A83
1004	Middle Atlantic	AO-160-A72
1005	Carolina	AO-388-A10
1006	Upper Florida	AO-356-A33
1007	Southeast	AO-366-A39
1012	Tampa Bay	AO-347-A36
1013	Southeastern Florida	AO-286-A43
1030	Chicago Regional	AO-361-A33
1032	Southern Illinois-Eastern Missouri	AO-313-A42
1033	Ohio Valley	AO-166-A66
1036	Eastern Ohio-Western Pennsylvania	AO-179-A60
1040	Southern Michigan	AO-225-A47
1044	Michigan Upper Peninsula	AO-299-A30
1046	Louisville-Lexington-Evansville	AO-123-A68
1049	Indiana	AO-319-A43
1050	Central Illinois	AO-355-A30
1064	Greater Kansas City	AO-23-A63
1065	Nebraska-Western Iowa	AO-86-A52
1068	Upper Midwest	AO-178-A50
1076	Eastern South Dakota	AO-260-A34
1079	Iowa	AO-295-A46
1106	Southwest Plains	AO-210-A56
1124	Pacific Northwest	AO-368-A26
1126	Texas	AO-231-A64
1131	Central Arizona	AO-271-A34
1134	Western Colorado	AO-301-A25
1135	Southwestern Idaho-Eastern Oregon	AO-380-A16
1137	Eastern Colorado	AO-326-A29
1138	New Mexico-West Texas	AO-335-A40
1139	Great Basin	AO-309-A34

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 consider flooring the level of the basic formula price for the purpose of

determining Class I and Class II prices through December 1998. Mid-America Dairymen, Inc., the proponent of the proposed amendment, has requested

that this issue be handled on an emergency basis.

DATES: The hearing will convene at 9:30 a.m. on February 17, 1998.

ADDRESSES: The hearing will be held at the Jefferson Auditorium, South Agriculture Building, 1400 Independence Avenue, S.W., Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

Constance M. Brenner, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Division, Room 2971, South Building, P.O. Box 96456, Washington, D.C. 20090-6456, (202) 720-2357, e-mail address Connie_M_Brenner@usda.gov.

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 Jefferson Auditorium, South Agriculture Building, 1400 Independence Avenue S.W., Washington, D.C. 20250, beginning at 9:30 a.m., on Tuesday, February 17, 1998, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the New England and 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 flooring of the basic formula price, with the proposed amendments set forth hereinafter, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders. In addition to considering the specific proposal submitted by Mid-America Dairymen, Inc. (now part of Dairy Farmers of America), testimony should be addressed as to whether the \$13.50 level proposed or some alternative level would be more appropriate.

The proposed amendment, if adopted through December 1998, should be considered an interim action because the entire pricing structure of the Federal milk order program is under consideration as part of the Federal order reform process required by the 1996 Farm Bill.

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 the proposal. Since this proposal will be heard on an urgent 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 as soon as possible.

Initial Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of the proposed amendment on small entities and has prepared this initial regulatory flexibility analysis. The RFA provides that when preparing such analysis an agency shall address: the reasons, objectives, and legal basis for the anticipated proposed rule; the kind and number of small entities which would be affected; the projected recordkeeping, reporting, and other requirements; and federal rules which may duplicate, overlap, or conflict with the proposed rule. Finally, any significant alternatives to the proposal should be addressed. This initial regulatory flexibility analysis considers these points and the impact of this proposed regulation on small entities.

The cooperative association requesting the hearing observes that per capita milk production is declining in many states with the greatest declines in areas with high Class I utilization, that the number of dairy farms continues to decline at a rapid rate, and the milk-feed price relationships have dropped dramatically. The cooperative states that the price floor is needed to maintain productive capacity sufficient to meet current and anticipated future needs of milk for Class I and Class II uses.

After receiving a hearing request and determining that the proposed amendment would not violate the provisions of the Act and that the issues raised for consideration warrant a public hearing, AMS is authorized to hold a public hearing to consider adoption of the proposed amendment.

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. For the purposes of

determining which dairy farms are "small businesses," the \$500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

USDA has identified as small businesses approximately 80,000 of the 83,000 dairy producers (farmers) that have their milk pooled under a Federal order. Thus, small businesses represent approximately 96 percent of the dairy farmers in the United States. On the processing side, there are over 1,200 plants associated with Federal orders, and of these plants, approximately 700 qualify as "small businesses," representing about 55 percent of the total.

During August 1997, there were 524 fully regulated handlers, 134 partially regulated handlers and 111 producer-handlers submitting reports under the Federal milk marketing order program. This volume of milk pooled under Federal orders represents 69 percent of all milk marketed in the U.S. and 72 percent of the milk of bottling quality (Grade A) sold in the country. Producer deliveries of milk used in Class I products (mainly fluid milk products) totaled 45.5 billion pounds—43.5 percent of total Federal order producer deliveries. More than 200 million Americans reside in Federal order marketing areas—77 percent of the total U.S. population.

In order to accomplish the goal of imposing no additional regulatory burdens on the industry, a review of the current reporting requirements was completed pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). In light of this review, it was determined that this proposed amendment would have little or no impact on reporting, recordkeeping, or other compliance requirements because these would remain identical to the current Federal order program. No new forms have been proposed, and no additional reporting would be necessary.

This notice does not require additional information collection that requires clearance by the OMB beyond the currently approved information collection. The primary sources of data used to complete the forms are routinely

used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than industry average.

No other burdens are expected to fall upon the dairy industry as a result of overlapping Federal rules. This proposed rulemaking does not duplicate, overlap or conflict with any existing Federal rules.

To ensure that small businesses are not unduly or disproportionately burdened based on this proposed amendment, consideration was given to mitigating negative impacts. Flooring the BFP should not have any special impact on small handler entities. Handlers similarly located would be subject to the same minimum Class I prices, regardless of the size of their operations, and all handlers would be subject to the same minimum prices for Class II milk. Such handlers would also be subject to the same minimum prices to be paid to producers. These features of minimum pricing should not raise barriers to the ability of small handlers to compete in the marketplace. It is similarly expected that small producers would not experience any particular disadvantage to larger producers as a result of this proposed amendment.

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.

Preliminary Cost-Benefit Analysis

To help fulfill the objectives of a Regulatory Impact Analysis, a preliminary cost-benefit analysis follows:

The BFP is used as the basis for establishing class prices paid by handlers for milk in all Federal order markets and varies month-to-month depending on market conditions for milk and milk products. The BFP is the average price paid for manufacturing grade (Grade B) milk in Minnesota and Wisconsin in the base month updated to the current month with a cheese-butter-nonfat dry milk product price formula. The Class I price is the BFP plus a Class I price differential that reflects the added value needed to attract milk to fluid milk processing plants, as well as the additional costs of producing and marketing milk for fluid use. As a result, Class I prices vary among markets, being generally higher in southern markets and lower in midwestern markets. The Class II price, like the Class I price, is based on the BFP with a differential of only thirty cents in all orders. The result of establishing a floor under the BFP for purposes of computing the Class I and II prices would be to maintain these prices at a level they otherwise might not reach.

Dairy producers are expected to fare about the same in 1998 as they did in

1997, according to recent estimates of the Dairy Interagency Commodity Estimates Committee (ICEC). The 1998 all-milk price was projected in November 1997 to be slightly lower than the 1997 all-milk price; \$13.10 per hundredweight in 1998 compared with \$13.35 in 1997. This preliminary analysis was based on the \$13.10 estimate. However, the 1998 estimate was updated in January 1998 to \$13.35. As a result, the actual impact of a floor under the BFP could be expected to be less than shown in this preliminary analysis. Further analysis will be based on more recent price estimates.

A BFP floor for computing Class I and II prices would apply only to the 70 percent of the milk marketed in the United States that is marketed under Federal milk orders. USDA's preliminary analysis indicated that flooring Class I and Class II prices with a \$13.50 minimum BFP would increase the U.S. all-milk price by \$0.40 to \$0.50 per hundredweight. Prices to producers delivering to Federal order markets could increase by an average of \$0.60 to \$0.75 per hundredweight.

Producers delivering to markets with higher Class I use, such as the three Florida markets and the Southeast market, would benefit more (as much as \$1.10–\$1.30 per hundredweight) than those delivering to markets with lower Class I utilization. The attached table provides estimates of change in the all-milk prices for all Federal order markets, assuming BFP floors of \$13.50 and \$12.83 per hundredweight (the October 1997 BFP).

CHANGE IN THE ALL-MILK PRICE.—ALTERNATIVES FLOORING BFP AT \$13.50 OR \$12.83 FOR CLASS I AND CLASS II PRICING CALENDAR YEAR 1998

Marketing area	Change in all-milk price per hundredweight	
	\$13.50 Floor	\$12.83 Floor
New England	\$0.20	\$0.11
New York-New Jersey .....	.74	.40
Middle Atlantic .....	.81	.45
Carolina	1.28	.70
Louis.-Lex.-Evans	1.22	.67
Southeast	1.21	.66
Upper Florida	1.18	.64
Tampa Bay	1.28	.70
Southeastern Florida	1.30	.71
Michigan Upper Peninsula	1.13	.62
Southern Michigan .....	.90	.49
E. Ohio—W. Pennsylvania .....	.88	.48
Ohio Valley	1.14	.63
Indiana	1.20	.66
Chicago Regional .....	.29	.16
Upper Midwest .....	.26	.14
Iowa .....	.50	.27
Nebraska-Western Iowa .....	.64	.35
Eastern South Dakota .....	.93	.51
Central Illinois	1.09	.60
S. Illinois-E. Missouri	1.05	.57

CHANGE IN THE ALL-MILK PRICE.—ALTERNATIVES FLOORING BFP AT \$13.50 OR \$12.83 FOR CLASS I AND CLASS II PRICING CALENDAR YEAR 1998—Continued

Marketing area	Change in all-milk price per hundredweight	
	\$13.50 Floor	\$12.83 Floor
Southwest Plains .....	.75	.41
Eastern Colorado .....	.72	.39
Greater Kansas City	1.10	.60
Texas .....	.89	.48
New Mexico-West Texas .....	.42	.23
Southwestern Idaho-E. Oregon .....	.11	.06
Great Basin .....	.60	.33
Western Colorado	1.23	.67
Central Arizona .....	.65	.35
Pacific Northwest .....	.42	.23
Federal Order Average .....	.65-.75	.35-.45

In addition to increasing income to dairy producers, adoption of a BFP floor would also result in increased prices of fluid milk products to consumers. Increased Class I milk prices would be reflected in retail prices for fluid milk, which may result in reduced per capita consumption and an increase in total consumer expenditures for dairy products.

Legislative and Background Requirements

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.

Request for Public Input

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with 6 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 1001 through 1139

Milk marketing orders.

The authority citation for 7 CFR Parts 1001 through 1139 continues to read as follows:

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 Dairywomen, Inc.:

Proposal No. 1: Through December 1998, amend the introductory text of § _____.51 of 7 CFR Parts 1001 through 1139 to read as follows:

§ _____.51 Basic formula price.

* * * For the purpose of computing the Class I and Class II prices, the resulting price shall be not less than \$13.50.

* * * * *

Proposed by Dairy Programs, Agricultural Marketing Service:

Proposal No. 2: 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 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, D.C. 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 Programs, 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: January 21, 1998.

Enrique E. Figueroa,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 98-1813 Filed 1-23-98; 8:45 am]

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