

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 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131

[Docket No. AO-14-A77, et al.; DA-07-02]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; Supplemental notice of public hearing on proposed rulemaking.

SUMMARY: This document contains an additional proposal to be considered at a previously scheduled hearing to consider proposals that would amend the Class III and Class IV product price formulas applicable to all Federal milk marketing orders.

DATES: The hearing will convene at 9 a.m., Monday, February 26, 2007.

ADDRESSES: The hearing will be held at the Holiday Inn Select—Strongsville, 15471 Royalton Road, Strongsville, Ohio 44136, phone (440) 238-8800.

FOR FURTHER INFORMATION CONTACT: Jack Rower, Marketing Specialist, Order Formulation and Enforcement, USDA/AMS/Dairy Programs, Stop 0231—Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250-0231, (202) 720-2357, e-mail address: jack.rower@usda.gov.

Persons requiring a sign language interpreter or other special accommodations should contact Paul Huber, Assistant Market Administrator, at (330) 225-4758; e-mail: phuber@fmnaclev.com before the hearing begins.

SUPPLEMENTARY INFORMATION: This additional proposal, which supplements a proposal published on February 7, 2007 (72 FR 6179), seeks to establish cost-of-production surcharges that

manufacturers could include in the selling price of their products but would not be included in the determination of National Agricultural Statistics Service (NASS) survey prices for cheese, butter, nonfat dry milk and dry whey.

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 Holiday Inn Select, Strongsville, Ohio, beginning at 9 a.m. on Monday, February 26, 2007, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Northeast 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 amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Initial Regulatory Flexibility Analysis

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 information collection 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 \$750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees (13 CFR 121.201). Most parties subject to a milk order are considered as a small business.

For the purposes of determining which dairy farms are "small businesses," the \$750,000 per year criterion was used to establish a production guideline of 500,000 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 that during 2005 approximately 51,060 of the 54,652 dairy producers whose milk is pooled on Federal orders are small businesses. Small businesses represent about 93 percent of the dairy farmers who participate in the Federal milk order program.

On the processing side, during June 2005 there were approximately 350 fully regulated plants (of which 149 or 43 percent were small businesses) and 110 partially regulated plants (of which 50 or 45 percent were small businesses.) In addition, there were 48 producer-handlers, of which 29 were considered small businesses for the purposes of this initial regulatory flexibility analysis, who submitted reports under the Federal milk order program during this period.

The fluid use of milk represented about 37.6 percent of total Federal milk marketing order producer deliveries during calendar year 2006. Almost 237 million Americans, approximately 80 percent of the total U.S. population reside within the geographical boundaries of the 10 Federal milk marketing areas.

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. 3501 *et seq.*) In light of that review, it was determined that these proposed amendments would have little or no impact on reporting, record keeping, or other compliance requirements because these requirements would remain identical to those currently in effect under the Federal order program. No new or 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. Information currently collected through the use of OMB-approved forms and the primary sources of data used to complete the forms are

routinely used in business transactions. The forms require only a minimal amount of information that can be provided without data processing equipment or trained statistical staff. Thus, the information collection burden is relatively small. Requiring the same reports from all handlers does not disadvantage any handler that is smaller than the 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 these proposed amendments consideration was given to mitigating any negative impacts. It is expected that small producers would not experience any particular disadvantage compared to larger producers as a result of the proposed amendments. Similarly, it is expected that small handlers would not experience any particular disadvantage compared to larger handlers as a result of the proposed amendments. Possible changes to the Class III and Class IV price formulas should not have any special impacts on small handler entities. All handlers manufacturing dairy products from milk classified as Class III or Class IV would remain subject to the same minimum prices regardless of the size of their operations. Minimum prices should not raise barriers regarding the ability of small handlers to compete in the marketplace.

Interested parties are invited to present evidence on the probable regulatory and information collection impact of the hearing proposals on small businesses. Also, such parties may suggest modifications of the proposal for tailoring its applicability to small businesses.

Executive Order 12988, Civil Justice Reform

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 (7 U.S.C. 608c(15)(A)), any handler subject to an order may request

modification or exemption from such order by filing with the Department of Agriculture (Department) 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 Department 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 Department'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 (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 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131.

Milk marketing orders.

The authority citation for 7 CFR parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131 read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

The proposed amendment, as set forth below, has not received the approval of the Department.

Proposed by Dairylea Cooperative, Inc.

Proposal No. 20

The additional proposal seeks to establish cost-of-production surcharges that manufacturers could include in the selling price of their products but would not be included in the determination of the NASS survey prices for cheese, butter, nonfat dry milk and dry whey.

1. Amend § 1000.50 by:

- (a) Adding new paragraph (r);
- (b) Adding new paragraph (r)(1); and
- (c) Adding new paragraph (r)(2).

The additions read as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(r) *Manufacturing surcharges.* For the purposes of determining the NASS survey prices for this section, as reported by the Department, cost of production add-on surcharges, up to a maximum value as contained in part (1) of this section, shall not be included in the NASS survey prices.

(1) The maximum cost of production add-on surcharges shall be as follows:

- (i) Cheese: \$0.0xxx per pound;
- (ii) Butter: \$0.0xxx per pound;
- (iii) Whey powder: \$0.0xxx per pound; and
- (iv) Nonfat dry milk: \$0.0xxx per pound.

(2) To be excluded from the NASS survey price, cost of production factors must be shown on the appropriate invoice as a separately negotiated surcharge to the normal price charged on the invoice, up to the maximum amount shown for such product pursuant to part (1), above. Failure to show the add-on as such will result in any such values being included in the NASS survey price.

2. Amend § 1000.53 by adding new paragraph (a)(12), to read as follows:

§ 1000.53 Announcement of class prices, component prices, and advanced pricing factors.

(a) * * *

(12) The rates as determined in 1000.50(r)(1).

* * * * *

Copies of this supplemental 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, United States Department of Agriculture, STOP 9200—Room 1031, 1400 Independence Avenue, SW., Washington, DC 20250–9200, 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 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 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: February 14, 2007.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 07-746 Filed 2-14-07; 4:01 pm]

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