



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1006

[AMS-DA-17-0068; AO-18-0008]

Milk in the Florida Marketing Area; Notification of Hearing

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed Rule: notification of public hearing.

SUMMARY: A public hearing is being held, on an emergency basis, to consider a proposal submitted by Southeast Milk, Inc., Dairy Farmers of America, Inc., Premier Milk, Inc., Maryland and Virginia Milk Producers Cooperative Association, Inc., and Lone Star Milk Producers, L.C. The proposal seeks a temporary supplemental charge on Class I milk to provide emergency reimbursement to handlers and producers for costs incurred as a result of market disruptions stemming from Hurricane Irma in September 2017 which caused extensive damage in the United States.

DATES: The hearing will convene at 9:00 am on December 12, 2017.

ADDRESSES: The hearing will be held at the Embassy Suites by Hilton Tampa Downtown Convention Center, 513 South Florida Avenue, Tampa, Florida 33602; telephone (813) 769-8326.

FOR FURTHER INFORMATION CONTACT: Erin Taylor, Acting Director, Order Formulation and Enforcement Division, USDA/AMS/Dairy Program, Stop 0231-Room 2963, 1400 Independence Avenue, SW., Washington, DC 20250-0231; (202) 720-7311; e-mail address: erin.taylor@ams.usda.gov.

Persons requiring a sign language interpreter or other special accommodations should contact Sherry Swanson, AMS Dairy Program, at (470) 767-5084, e-mail: sswanson@fmmatlanta.com, at least 3 days before the hearing begins.

SUPPLEMENTARY INFORMATION: This proposed rule is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is not subject to the requirements of Executive Order 12866.

This proposed rule is not expected to be an Executive Order 13771 regulatory action because this proposed rule is exempt from the definition of “regulation” or “rule” in Executive Order 12866 and, thus, is not a regulatory action.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) (Act), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Notice is hereby given of a public hearing to be held at the Embassy Suites by Hilton Tampa Downtown Convention Center, 513 South Florida Avenue, Tampa, Florida 33602, beginning at 9:00 am on December 12, 2017, with respect to proposed amendments to the tentative marketing agreements and order regulating the handling of milk in the Florida milk marketing area.

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 order.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601-612) (RFA). The RFA 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 RFA, 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 small businesses. 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 offer modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments 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 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 United States Department of Agriculture (USDA) 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, USDA 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 to review USDA's decision on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

The public hearing is being conducted to collect evidence for the record concerning the potential need for emergency payments to reimburse handlers and producers for costs they incurred as a result of disruptions stemming from Hurricane Irma. The payments as proposed would be through a temporary \$0.09 per hundredweight increase in the Class I price under the order. The increase would only be applicable for the number of months necessary to cover the documented costs.

Evidence also will be taken at the hearing 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 any proposed amendments.

Interested parties who wish to introduce exhibits should provide the Administrative Law Judge at the hearing with four (4) copies of such exhibits for the official record. Additional copies should be made available for the use of other hearing participants. Any party that has submitted a proposal noticed herein, when participating as a witness, is required to make their testimony – if prepared as an exhibit – and any other exhibits, available to USDA officials prior to the start of the hearing on the day of their appearance. Individual dairy farmers are not subject to this requirement.

Copies of this notification of hearing may be obtained online at, <http://www.ams.usda.gov/dairy>, or from the Hearing Clerk, United States Department of Agriculture, STOP 9200—Room 1031, 1400 Independence Avenue, SW., Washington, DC 20250–9200.

Copies of the transcript of testimony and exhibits taken at the hearing will be made available for viewing at <http://www.ams.usda.gov/dairy> after the hearing adjourns. 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, AMS; Office of the General Counsel; and the AMS Dairy Program (Washington, DC office), and the offices of all Market Administrators. Procedural matters are not subject to the above prohibition and may be discussed at any time.

Testimony is invited on the following proposal or appropriate modifications to such proposal. The proposed amendment, as set forth below, has not received the approval of the Department.

Proposal Number 1

Proposed by Southeast Milk, Inc., Dairy Farmers of America, Inc., Premier Milk, Inc., Maryland and Virginia Milk Producers Cooperative Association, Inc., and Lone Star Milk Producers, L.C.

The proposal details substantial and extraordinary losses to the Florida dairy industry as a result of physical damages; heat stress to animals; market losses; and additional transportation costs stemming from Hurricane Irma. The proposal would provide for emergency relief for Florida handlers and producers for costs incurred September 6 through September 15, 2017. The categories of recovery costs requested include: (1) the minimum class price value of whole and skim milk dumped due to market unavailability during plant shutdowns; (2) additional transportation costs associated with milk movements resulting from the hurricane; (3) lost minimum location price value on milk movements out of market; and (4) price losses on distress sales of milk. Proposed amendments to the Florida Federal Milk Marketing Order are set out in the regulatory text below.

Proposal Number 2

Proposed by Dairy Program, Agricultural Marketing Service

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

List of Subjects in 7 CFR Part 1006

Milk marketing orders.

For the reasons discussed in the preamble, AMS proposes to amend 7 CFR part 1006 as follow:

PART 1006—MILK IN THE FLORIDA MILK MARKETING AREA

1. The authority citation for 7 CFR part 1006 continues to read as follows:

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

2. Section 1006.60 is amended by revising paragraphs (a) and (g) and adding paragraphs (h) and (i) to read as follows:

§ 1006.60 Handler's value of milk.

* * * * *

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to §1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts; except that for the months of _____ 2018 through _____ 2018, the Class I skim milk price for this purpose shall be the Class I skim milk price as determined in §1000.50(b) plus \$0.09 per hundredweight, and the Class I butterfat price for this purpose shall be the Class I butterfat price as determined in §1000.50(c) plus \$0. _____ per pound. The adjustments to the Class I skim milk and

butterfat prices provided herein may be reduced by the market administrator for any month if the market administrator determines that the payments yet unpaid computed pursuant to paragraphs (g)(1) through paragraph (g)(6) of this section will be less than the amount computed pursuant to paragraph (g)(6) of this section. The adjustments to the Class I skim milk and butterfat prices provided herein during the months of _____ shall be announced along with the prices announced in §1000.53(b).

* * * * *

(g) For transactions occurring during the period of September 6, 2017 through September 15, 2017, for handlers who have submitted proof satisfactory to the market administrator to determine eligibility for reimbursement of hurricane-imposed costs, subtract an amount equal to:

(1) The cost of transportation on loads of producer milk rerouted from pool distributing plants to plants outside the state of Florida which were rerouted as a result of Hurricane Irma. The reimbursement of transportation costs pursuant to this section shall be the actual demonstrated cost of such transportation of bulk milk or the miles of transportation on such loads of bulk milk multiplied by \$3.75 per loaded mile, whichever is less.

(2) The lost location value on loads of producer milk rerouted to plants outside the state of Florida as a result of Hurricane Irma. The lost location value shall be the difference per hundredweight between the value stated in part 1000.52 at the plant to which the milk would have gone and the value in part 1000.52 at the plant to which the milk was rerouted;

(3) The value per hundredweight at the lowest classified price for the month of September 2017 for milk dumped at the farm and classified as other use milk pursuant to section 1000.40(e) as a result of Hurricane Irma;

(4) The value per hundredweight at the lowest classified price for the month of September 2017 for milk dumped from milk tankers after being moved off-farm and classified as other use milk pursuant to section 1000.40(e) as a result of Hurricane Irma;

(5) The value per hundredweight at the lowest classified price for the month of September 2017 for skim milk dumped and classified as other use milk pursuant to Section 1000.40(e) as a result of Hurricane Irma; and

(6) The difference between the lowest class price for the month of September 2017 and the actual price received for distress milk moved to nonpool plants as a result of Hurricane Irma;

(h) The total amount of payment to all handlers under this section shall be limited for each month to an amount determined by multiplying the total Class I producer milk for all handlers pursuant to §1000.44(c) times \$0.09 per hundredweight;

(i) If the cost of payments computed pursuant to paragraphs (g)(1) through (6) of this section exceeds the amount computed pursuant to paragraph (h) of this section, the market administrator shall prorate such payments to each handler based on each handler's proportion of transportation and other use milk costs submitted pursuant to paragraphs (g)(1) through (6). Costs submitted pursuant to paragraphs (g)(1) through (6) which are not paid as a result of such a proration shall be paid in subsequent months until all costs incurred and documented through (g)(1) through (6) have been paid.

Dated: December 6, 2017

Bruce Summers,
Acting Administrator,
Agricultural Marketing Service.
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