



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1000

[Docket no. AMS-DA-18-0096]

Federal Milk Marketing Orders – Amending the Class I Skim Milk Price Formula

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Class I skim milk price formula for milk pooled under Federal milk marketing orders (FMMO) as required by the Agriculture Improvement Act of 2018 (2018 Farm Bill). Under the amended price formula, the Class I skim milk price will be the simple average of the monthly advanced pricing factors for Class III and Class IV skim milk, plus \$0.74 per cwt, plus the applicable adjusted Class I differential. Prior to this amendment, the Class I skim milk price was the higher of the two advanced pricing factors, plus the applicable adjusted Class I differential.

DATES: This rule becomes effective May 1, 2019.

FOR FURTHER INFORMATION CONTACT: Erin Taylor, Acting Director, Order Formulation and Enforcement Division, USDA/AMS/Dairy Program, STOP 0231, Room 2963, 1400 Independence Ave. SW, Washington, DC 20250-0231; telephone: (202) 720-7311; or email: erin.taylor@usda.gov.

SUPPLEMENTARY INFORMATION: On December 20, 2018, the Agriculture Improvement Act of 2018 (Public Law 115-334)(2018 Farm Bill) amended the Agricultural Marketing Agreement Act of 1937¹, as amended (AMAA), by revising the provision related to determining the monthly Class I skim milk price for Class I milk regulated under each of the

¹ 7 U.S.C 601-674, 7253

FMMO. Amendment to the AMAA requires conforming changes to the FMMO regulations that specify the Class I skim milk price formula. Previously, the regulations specified that the Class I skim milk price was the higher of the monthly advanced pricing factors for Class III and Class IV skim milk, plus the applicable adjusted Class I differential. This rule revises the regulations to specify that the Class I skim milk price will be the simple average of the two advanced pricing factors, plus \$0.74, plus the applicable adjusted Class I differential. In accordance with the 2018 Farm Bill, the amendment is effective indefinitely, until further modified, and may not be modified earlier than two years after the effective date of this rule. The formula may be modified after the two-year period through the standard FMMO amendment process.

Final Action

In accordance with the 2018 Farm Bill, this final rule amends the Class I skim milk price formula for milk pooled under Federal milk marketing orders. Under the amended price formula, the Class I skim milk price will be the simple average of the monthly advanced pricing factors for Class III and Class IV skim milk, plus \$0.74 per cwt, plus the applicable adjusted Class I differential.

Section 1403(b)(2)(B) of the 2018 Farm Bill provides that the implementation of the regulations to amend the Class I skim milk price formula shall not be subject to the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553), the notice and hearing requirements of section 8c(3) of the Agricultural Adjustment Act (7 U.S.C. 608c(3)), the order amendment requirements of section 8c(17) of that Act (7 U.S.C. 608c(17)), nor a referendum under section 8c(19) of the same Act (7 U.S.C. 608c(19)). Additionally, this final rule must become effective on May 1, 2019, as required by section 1403(b)(1) of the 2018 Farm Bill. AMS, therefore, is issuing this final rule without prior notice or public comment.

Executive Orders 12866 and 13771

This rule has been determined to be not significant for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB). In addition, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. *See* OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. The amendment does not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) considered the economic impact of this action on small entities. Accordingly, AMS prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Small dairy farm businesses have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those businesses having annual gross receipts of less than \$750,000. The SBA's definition of small agricultural service firms, which includes handlers that are regulated under Federal milk marketing orders, varies depending on the product manufactured. Small fluid milk and ice cream manufacturers are defined as having 1,000 or fewer employees. Small butter and

dry or condensed dairy product manufacturers are defined as having 750 or fewer employees. Small cheese manufacturers are defined as having 1,250 or fewer employees.

Based on AMS data, the milk of 33,481 U.S. dairy farmers was pooled on the FMMO system for the month of May 2017. Of that total, AMS estimates that 32,958 dairy farmers, or 98 percent, would be considered small businesses. During the same month, 301 handler plants were regulated by or reported their milk receipts to be pooled and priced under a FMMO. Of the total, AMS estimates approximately 163 handler plants, or 54 percent, would be considered small businesses. AMS does not expect the change in the Class I price formula to negatively impact small entities or impair their ability to compete in the marketplace.

The change in the Class I price formula applies uniformly to both large and small businesses. The dairy industry has calculated that applying the “higher of” provisions to skim milk prices has returned a price \$0.74 per hundredweight above the average of the two factors since the pricing formulas were implemented in 2000. Thus, the inclusion of the \$0.74 in the calculation should make the change roughly revenue neutral. At the same time, it is anticipated that using the average of the Class III and Class IV advanced pricing factors in the Class I skim milk price formula will allow handlers to better manage volatility in monthly Class I skim milk prices using Class III milk and Class IV milk futures and options. Until now, uncertainty about which Class price will end up being higher each month has made effective hedging difficult. Amending the Class I skim milk price provisions may help small businesses better utilize currently available risk management tools.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). This final rule will have no impact on reporting, recordkeeping, or compliance requirements under the FMMOs because there are no changes to the current requirements. No new forms are added, and no additional reporting requirements are necessary. This final rule does not require additional information collection beyond that currently approved by OMB for FMMOs (OMB Number 0581-0032 – Report Forms Under the Federal Milk Marketing Order Program).

List of Subjects in 7 CFR Part 1000

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR part 1000 is amended as follows:

PART 1000 – GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

1. The authority citation for 7 CFR part 1000 reads as follows:

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

Subpart G – Class Prices

2. Section 1000.50 is amended by revising paragraph (b) to read as follows:

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

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(b) *Class I skim milk price.* The Class I skim milk price per hundredweight shall be the adjusted Class I differential specified in § 1000.52, plus the adjustment to Class I prices specified in §§ 1000.51(b), 1006.51(b) and 1007.51(b), plus the simple average of the advanced pricing factors computed in paragraph (q)(1) and (2) of this section, plus \$0.74 per hundredweight.

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Dated: March 6, 2019.

Bruce Summers,

Administrator.

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