



Agricultural Marketing Service

7 CFR Part 1000

[Doc. No. 23-J-0067; AMS-DA-23-0031]

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

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: A national public hearing is being held to consider and take evidence on proposals to amend the pricing formulas in the 11 Federal Milk Marketing Orders (FMMOs).

DATES: The hearing will convene at 9:00 a.m. ET on Wednesday, August 23, 2023.

ADDRESSES: The hearing will be held at the 502 East Event Centre, 502 East Carmel Drive, Carmel, Indiana, 46032. Telephone (317) 843-1234.

Copies of this notice of hearing may be procured from the Market Administrator of any of the 11 marketing areas, 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 notice of hearing and the corresponding hearing record will be made available online on the Hearing website: <https://www.ams.usda.gov/rules-regulations/moa/dairy/hearings/national-fmmo-pricing-hearing>.

FOR FURTHER INFORMATION CONTACT: Erin Taylor, Director, Order Formulation and Enforcement Division, USDA/AMS/Dairy Programs, Stop 0225 – Room 2530, 1400 Independence Avenue, SW, Washington, DC 20250-0225, (202) 720-7311, e-mail: Erin.Taylor@usda.gov.

Persons requiring a sign language interpreter or other special accommodations should contact FMMOHearing@usda.gov a minimum of five days before the start of the hearing.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of 5 U.S.C. 556 and 557 and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the 502 East Event Centre, 502 East Carmel Drive, Carmel, Indiana, beginning Wednesday, August 23, 2023, at 9:00 a.m. ET, with respect to proposed amendments 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) (Act), and the applicable rules of practice and procedure governing amendments to 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 related to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof to the marketing orders.

Actions under the FMMO 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 \$3.75 million or less, and a dairy products manufacturer is a “small business” if it has no more than the number of employees listed in the chart below (13 CFR 121.201):

NAICS Code	NAICS U.S. industry title	Size standards in number of employees
311511	Fluid Milk Manufacturing	1,000

311512	Creamery Butter Manufacturing	750
311513	Cheese Manufacturing	1,250
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing	750

Most parties subject to a FMMO are considered 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.

The Agricultural Marketing Service (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.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under sec. 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the U.S. 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, the USDA would rule on the petition. The Act provides that the United States District Court in any district in which the handler is an inhabitant or has its principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an appeal is filed not later than 20 days after the ruling is issued.

Testimony Guidelines

Each witness will have 60 minutes to present their testimony and have direct examination. If a witness's prepared testimony and direct examination would be expected to exceed 60 minutes, the witness should submit in advance a written prepared statement as an exhibit and present a summary of that statement during their allotted time. This summary does not need to be submitted in advance, but paper copies should be provided the day of submission in accordance with the exhibit guidelines outlined below, if the summary is in written form. The full written prepared statement should be submitted as an exhibit in advance of testifying according to the Exhibit Submission Schedule found on the Hearing website. There will be no time limit on cross-examination or re-direct.

Dairy farmers may testify in person at any time during the hearing, or virtually via Zoom on Fridays. Starting Friday, September 1, 2023, and each Friday thereafter during the hearing, beginning at 12:00 p.m. ET, ten (10) time slots will be available for dairy farmers to testify virtually. Dairy farmers must pre-register to testify virtually, as outlined in the instructions provided on the Hearing website. Each registered dairy farmer will be allocated up to 15 minutes to present testimony. Additional time may be requested. There will be no time limit on cross-examination. Dairy farmers testifying, either in person or virtually, are not required to pre-submit testimony or exhibits.

Exhibit Guidelines

Any party with a proposal noticed herein, when participating as a witness, must enter exhibits related to testimony in advance, according to an Exhibit Submission Schedule posted on the Hearing website. Prepared exhibits must be submitted electronically to FMMOHearing@usda.gov. Submitted exhibits will be posted online within 2 business days following the submission deadline. Fifteen (15) paper copies of each exhibit submitted in advance should also be submitted at the hearing to the designated USDA official. Four of the 15 copies will be submitted to the Administrative

Law Judge for the Official Record, and the remaining copies will be distributed to USDA staff.

Interested parties entering exhibits during the hearing, not in advance, must provide 15 paper copies to the designated USDA official, plus additional paper copies for distribution to other hearing participants and interested parties. In order to submit exhibits into the record, exhibits should be sent to FMMOHearing@usda.gov by 8:00 a.m. ET on the day of scheduled testimony.

All exhibits should be prenumbered in the following format: “[Submitter Name or Acronym] – Number” on the top righthand corner of each page. For example, “USDA-1.” Each exhibit must include a page number “X of Y” on the bottom righthand corner. For example, “1 of 100.” Each exhibit will be given an Official Exhibit Number upon presentation.

Individual dairy farmers are not subject to the Exhibit Guidelines.

Data Requests

Interested parties requesting USDA data to be used at the hearing must submit requests via FMMOHearing@usda.gov by August 11, 2023.

Hearing Schedule

The hearing will continue until such time as determined to have ended by the presiding Administrative Law Judge. The hearing will be in recess and will not convene on September 4, 2023, for the Labor Day holiday or on September 21-22, 2023. If necessary, in addition to the dates listed, the schedule for the next session will be announced at the time of adjournment. Such reconvening date and time will also be posted on the Hearing website.

Testimony is invited on the following proposals or appropriate modifications to such proposals. Proposed regulatory text may be found in a supplemental document on the Hearing website.

Testimony will be heard by subject area, in the following order:

1. Milk Composition

Proposal 1: Submitted by the National Milk Producers Federation

Proposal 2: Submitted by National All-Jersey Inc.

2. Surveyed Commodity Products

Proposal 3: Submitted by the National Milk Producers Federation

Proposal 4: Submitted by the American Farm Bureau Federation

Proposal 5: Submitted by the American Farm Bureau Federation

Proposal 6: Submitted by the California Dairy Campaign

3. Class III and Class IV Formula Factors

Proposal 7: Submitted by the National Milk Producers Federation

Proposal 8: Submitted by the Wisconsin Cheese Makers Association

Proposal 9: Submitted by the International Dairy Foods Association

Proposal 10: Submitted by Select Milk Producers, Inc.

Proposal 11: Submitted by Select Milk Producers, Inc.

Proposal 12: Submitted by Select Milk Producers, Inc.

4. Base Class I Skim Milk Price

Proposal 13: Submitted by the National Milk Producers Federation

Proposal 14: Submitted by the International Dairy Foods Association

Proposal 15: Submitted by the Milk Innovation Group

Proposal 16: Submitted by Edge Dairy Farmer Cooperative

Proposal 17: Submitted by Edge Dairy Farmer Cooperative

Proposal 18: Submitted by the American Farm Bureau Federation

5. Class I and Class II Differentials

Proposal 19: Submitted by the National Milk Producers Federation

Proposal 20: Submitted by the Milk Innovation Group

Proposal 21: Submitted by the American Farm Bureau

6. AMS Proposal

Proposal 22: Submitted by Dairy Programs, Agricultural Marketing Service:

Summary of Proposals

Milk Composition

Proposal 1: Submitted by the National Milk Producers Federation

This proposal seeks to amend the milk component factors in the Class III and Class IV skim milk price formulas. Specifically, the proposal seeks to increase the skim component factors to equal the weighted average nonfat solids, true protein, and other solids factors for milk pooled on Federal orders using data for the three years prior to implementation, with a 12-month implementation lag. The factors are proposed to be updated as follows:

- Nonfat solids: from 9.0 to 9.41 per hundredweight of Class IV skim milk;
- Protein: from 3.1 to 3.39 per hundredweight of Class III skim milk; and
- Other solids: from 5.9 to 6.02 per hundredweight of Class III skim milk.

The proponent also proposes the skim component factors be updated no less than every three years, but only once the weighted average nonfat solids component for the prior three years changes by at least 0.07 percentage points. The updated component values would be calculated, and, if a change is warranted, formally announced in February of such year, with the implementation of such changes occurring March 1 of the following year.

Proposal 2: Submitted by National All-Jersey Inc.

This proposal seeks to amend the milk component factors in the Class III and Class IV skim milk price formulas. The proposal seeks to update the factors annually using the previous year's weighted average calculations, with a 12-month implementation lag.

Surveyed Commodity Products

Proposal 3: Submitted by the National Milk Producers Federation

This proposal seeks to eliminate the Cheddar cheese 500-pound barrel price series from protein price formula.

Proposal 4: Submitted by the American Farm Bureau Federation

This proposal seeks to add 640-pound Cheddar cheese blocks to the protein price formula.

Proposal 5: Submitted by the American Farm Bureau Federation

This proposal seeks to add unsalted butter to the butterfat and protein price formulas.

Proposal 6: Submitted by the California Dairy Campaign

This proposal seeks to add mozzarella to the protein price formula.

Class III and Class IV Formula Factors

Proposal 7: Submitted by the National Milk Producers Federation

This proposal seeks to amend the manufacturing cost (make) allowances found in the four component price formulas. The proposal includes the following increases:

Butterfat: from \$0.1715 to \$0.2100 per pound of butter,

Nonfat Solids: from \$0.1678 to \$0.2100 per pound of nonfat dry milk (NFDM),

Protein: from \$0.2003 to \$0.2400 per pound of Cheddar cheese,

Other Solids: from \$0.1991 to \$0.2300 per pound of dry whey.

The requested changes are equivalent to an increase of \$0.0385 per pound in the butter make allowance, an increase of \$0.0422 per pound in the nonfat dry milk make allowance, an increase of \$0.0397 per pound in the Cheddar cheese make allowance, and an increase of \$0.0309 per pound in the dry whey make allowance.

Proposal 8: Submitted by the Wisconsin Cheese Makers Association

This proposal seeks to update the current make allowances with a 4-year phase-in implementation schedule.

Proposed Make Allowance Levels					
Product	Current	Year 1	Year 2	Year 3	Year 4
Cheese	\$0.2003	\$0.2422	\$0.2561	\$0.2701	\$0.2840
Whey	\$0.1991	\$0.2582	\$0.2778	\$0.2976	\$0.3172
NFDM	\$0.1678	\$0.2198	\$0.2370	\$0.2544	\$0.2716
Butter	\$0.1715	\$0.2251	\$0.2428	\$0.2607	\$0.2785

This proposal also proposes not to adopt any of the increases described above if, prior to January 1 of that year, USDA has been provided authority and funding to conduct audited dairy product cost studies of all manufacturers of products used to set Class III and Class IV prices, has promulgated regulations implementing that authority, and has adopted make allowances pursuant thereto.

Proposal 9: Submitted by the International Dairy Foods Association

This proposal seeks to update the current make allowances with a 4-year phase-in implementation schedule.

Proposed Make Allowance Levels					
Product	Current	Year 1	Year 2	Year 3	Year 4
Cheese	\$0.2003	\$0.2422	\$0.2561	\$0.2701	\$0.2840
Whey	\$0.1991	\$0.2582	\$0.2778	\$0.2976	\$0.3172
NFDM	\$0.1678	\$0.2198	\$0.2370	\$0.2544	\$0.2716
Butter	\$0.1715	\$0.2251	\$0.2428	\$0.2607	\$0.2785

This proposal also proposes not to adopt any of the increases described above if, prior to January 1 of that year, USDA has been provided authority and funding to conduct audited dairy product cost studies of all manufacturers of products used to set Class III and Class IV prices, has promulgated regulations implementing that authority, and has adopted make allowances pursuant thereto.

Proposal 10: Submitted by Select Milk Producers, Inc.

This proposal seeks to increase the butterfat recovery factor in the Class III price formula to 93 percent, which would necessitate a corresponding increase in the butterfat yield in cheese to 1.624.

Proposal 11: Submitted by Select Milk Producers, Inc.

This proposal seeks to update the specified yield factors to reflect actual farm-to-plant shrink. The yield factors for nonfat solids and other solids would remain unchanged. The proposed yield factors are:

Butterfat: 1.22;

Protein value in cheese: 1.386; and

Butterfat value in cheese: 1.582.

Proposal 12: Submitted by Select Milk Producers, Inc.

This proposal seeks to update the nonfat solids factor from 0.99 to 1.03.

Base Class I Skim Milk Price

Proposal 13: Submitted by the National Milk Producers Federation

This proposal seeks to amend the base Class I skim milk price in all Federal orders. Specifically, the proposal seeks to replace the simple average of the Class III and Class IV Advanced Skim Milk pricing factors with the “higher of” the two factors and remove the additional \$0.74 per hundredweight.

Proposal 14: Submitted by the International Dairy Foods Association

This proposal seeks to amend the base Class I skim milk price to equal the simple average of the Advanced Class III and Class IV prices, plus the “higher of” either \$0.74 or an adjuster equal to the 24-month (August – July) rolling simple average difference between the Advanced Class III and Class IV skim milk prices.

Proposal 15: Submitted by the Milk Innovation Group

This proposal seeks to retain the current “average of” formula for the base Class I skim milk price and proposes to update the adjuster monthly using a 24-month look back

period with a 12-month lag, i.e., the preceding the 13-to-36-month period. The “rolling” adjuster calculation would be the *difference between* the “higher of” the advanced Class III or IV skim milk price for each month and the “average of” the advanced Class III or IV skim milk price, averaged over the preceding 13-to-36-month period, *plus* the “average of” the Class III and IV advanced skim milk prices for that month.

Proposal 16: Submitted by Edge Dairy Farmer Cooperative

This proposal seeks to change the base Class I skim milk price to the announced Class III skim milk price, plus an adjuster. The proposal seeks to amend calculation of Class I prices to use announced rather than advanced prices. The proposed adjuster would be a 36-month average (August – July) of the monthly differences between the “higher of” the advanced Class III skim milk price or advanced Class IV skim milk price, and the Class III skim milk price.

Proposal 17: Submitted by Edge Dairy Farmer Cooperative

This proposal seeks to use the “higher of” the Class III skim milk price or the Class IV skim milk price to calculate the base Class I skim milk price. The proposal also seeks to amend calculation of Class I prices to use announced rather than advanced prices.

Proposal 18: Submitted by the American Farm Bureau Federation

This proposal seeks to eliminate the advanced pricing of Class I milk and components, and Class II skim milk and components. As proposed, the Class II skim milk price would be equal to the Announced Class IV skim milk price plus the Class II differential; the Class II nonfat solids price would be equal to the Announced Class IV nonfat solids price plus one-hundredth of the Class II differential. The proponent proposes the Class I skim milk price would be the “higher of” the Announced Class III or Class IV skim milk prices plus the Class I differential; and the Class I butterfat price would be equal to the butterfat price plus one-hundredth of the Class I differential.

Class I and Class II Differentials

Proposal 19: Submitted by the National Milk Producers Federation

This proposal seeks to update the Adjusted Class I differentials as referenced in all Federal orders for the 3,108 named counties, parishes, and independent cities in the contiguous 48 United States. The proposed update would increase Class I differentials at all locations, in varying amounts.

Proposal 20: Submitted by the Milk Innovation Group

This proposal seeks to lower the current base Class I differential from \$1.60 to \$0.00.

Proposal 21: Submitted by the American Farm Bureau Federation

This proposal seeks to update the Class II differential to \$1.56. Specifically, the proposal seeks to calculate the Class II differential using the current nonfat dry milk make allowance multiplied by the current nonfat solids yield factor and updated butterfat and nonfat solids tests for milk in the FMMOs.

Proposal 22: Submitted by Dairy Program, Agricultural Marketing Service:

Make such changes as may be necessary to make the respective marketing orders conform with any amendments thereto that may result from this hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, USDA 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 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 Program, Agricultural Marketing Service (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.

List of Subjects in 7 CFR Part 1000

Milk marketing orders.

Erin Morris,

Associate Administrator,

Agricultural Marketing Service.

[FR Doc. 2023-15496 Filed: 7/21/2023 8:45 am; Publication Date: 7/24/2023]