



**3410-02 P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 1000**

**[Doc. no. AMS-DA-07-0026; AO-14-A77, et al.; DA-07-02]**

**Milk in the Northeast and Other Marketing Areas; Order Amending the Orders**

**AGENCY:** Agricultural Marketing Service, USDA

**ACTION:** Final rule.

**SUMMARY:** This final rule permanently adopts changes to the manufacturing cost allowances and the butterfat yield factor used in Class III and Class IV product-price formulas applicable to all Federal milk marketing orders. These amendments were adopted by an interim final rule issued on July 25, 2008, that became effective on October 1, 2008. More than the required number of producers approved the issuance of the orders as amended.

**EFFECTIVE DATE:** July 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** William Francis, Director, Order Formulation and Enforcement Division, USDA/AMS/Dairy Programs, Order Formulation and Enforcement, Stop 0231-Room 2971-S 1400 Independence Avenue, SW., Washington, DC 20250-0231, (202) 720-7183, e-mail address: [william.francis@ams.usda.gov](mailto:william.francis@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This final rule finalizes manufacturing (make) allowances for cheese, butter, nonfat dry milk (NFDM) and dry whey contained in the Class III and Class IV product price formulas that were implemented October 1, 2008, on an interim basis. Specifically, this decision finalizes the following make allowances: cheese (\$0.2003 per pound);

butter (\$0.1715 per pound); NFDN (\$0.1678 per pound); and dry whey (\$0.1991 per pound). In addition, the butterfat yield factor in the butterfat price formula continues to be 1.211.

Accordingly, this final rule adopts proposed amendments detailed in the final decision (78 FR 9248).

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.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) (Act), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the 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 in equity to review USDA'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.

#### **Regulatory Flexibility Act and Paperwork Reduction Act**

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has

certified that this rule would not have a significant economic impact on a substantial number of small entities. For the purposes of the Regulatory Flexibility Act, a dairy farm is considered 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.

For the purposes of determining which dairy farms are small businesses, the \$750,000 per year criterion was used to establish a marketing 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 farms. 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.

For the month of February 2007, the month the initial public hearing was held, the milk of 49,712 dairy farms were pooled on the Federal order system. Of the total, 46,729 dairy farms, or 94 percent, were considered small businesses. During the same month, 352 plants were regulated by or reported their milk receipts to be pooled and priced on a Federal order. Of the total, 186 plants, or 53 percent, were considered small businesses.

This decision finalizes the make allowances contained in the formulas used to compute component prices and the minimum class prices in all Federal milk orders. Specifically, the make allowance for butter continues to be \$0.1715 per pound (initially increased from \$0.1202 per pound), the make allowance for cheese continues to be \$0.2003 per pound (initially increased from \$0.1682 per pound), the make allowance for NFDM continues to be \$0.1678 per pound (initially increased from \$0.1570 per pound), and the make allowance for dry whey continues to

be \$0.1991 per pound (initially increased from \$0.1956 per pound). Finally, the butterfat yield factor in the butterfat price formulas continues to be 1.211 (initially increased from 1.20).

These make allowances serve to approximate the average cost of producing cheese, butter, NFDM and dry whey for manufacturing plants located in Federal milk marketing areas. The established criteria for the make allowance changes are applied in an identical fashion to both large and small businesses and will not have any different impact on those businesses producing manufactured milk products.

An economic analysis has been performed that discusses impacts of the proposed amendments on industry participants including producers and manufacturers. It can be found on the AMS website at [www.ams.usda.gov/dairy](http://www.ams.usda.gov/dairy). Based on that economic analysis we have concluded that the proposed amendments will not have a significant economic impact on a substantial number of small entities.

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.

This final rule does not require additional information collection that needs clearance by the Office of Management and Budget (OMB) beyond 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 that 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 the industry average.

### **Prior documents in this proceeding**

Notice of Hearing: Issued February 5, 2007; published February 9, 2007 (72 FR 6179).

Supplemental Notice of Hearing: Issued February 14, 2007; published February 20, 2007 (72 FR 7753).

Notice to Reconvene Hearing: Issued March 15, 2007; published March 21, 2007 (72 FR 13219).

Notice to Reconvene Hearing: Issued May 2, 2007; published May 8, 2007 (72 FR 25986).

Tentative Partial Final Decision: Issued June 16, 2008; published June 20, 2008 (73 FR 35306).

Interim Final Rule: Issued July 25, 2008; published July 31, 2008 (73 FR 44617).

Delay of Effective Date: Issued August 28, 2008; published September 3, 2008 (73 FR 51352).

Final Decision: Issued February 1, 2013; published February 7, 2013 (78 FR 9248)

### **Findings and Determinations**

The findings and determinations hereinafter set forth supplement those that were made when the Northeast and other orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Northeast and other marketing orders:

- (a) Findings upon the basis of the hearing record.

A public hearing was held upon certain 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 was held 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 (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas. The minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders, as hereby amended, regulate the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the specified marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the Northeast and other orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the orders as hereby amended;

(3) The issuance of this order amending the Northeast and other orders is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the respective marketing areas.

**List of Subjects in 7 CFR Part 1000**

Milk marketing orders.

**Order Relative to Handling:**

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Northeast and other marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

The provisions of the order amending the orders contained in the interim amendments of the orders issued by the Administrator, Agricultural Marketing Service, on July 25, 2008, and published in the **Federal Register** on July 31, 2008, (73 FR 44617), are adopted and shall be the terms and provisions of these orders.

Dated: April 22, 2013

David R. Shipman

Administrator

Agricultural Marketing Service

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