



## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 1051**

**Docket No. AO-15-0071; AMS-DA-14-0095**

### **Proposed California Federal Milk Marketing Order; Documents for Official Notice**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Request for public comments.

**SUMMARY:** This document announces the intention of the Agricultural Marketing Service (AMS) to take Official Notice of documents related to the California Federal Milk Marketing Order (FMMO) rulemaking proceeding. This document invites interested parties to submit comments on whether the documents are relevant to the material issues of the proceeding.

**DATES:** Comments are due [Insert date 15 days after publication in the Federal Register].

**ADDRESSES:** Comments should be submitted at the Federal eRulemaking portal: [www.regulations.gov](http://www.regulations.gov). Comments may also be filed with the Hearing Clerk, U.S. Department of Agriculture, Room 1031-S, Washington, DC 20250-9200, Facsimile number (202) 720-9976. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments will be made available for public inspection in the Office of the Hearing Clerk during regular business hours, or can be viewed at: [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Erin Taylor, Acting Director, Order Formulation and Enforcement Division, USDA/AMS/Dairy Program, STOP 0231, Room 2969-S, 1400 Independence Ave, SW, Washington, DC 20250-0231, telephone: (202) 720-7311, or e-mail address: erin.taylor@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** The U.S. Department of Agriculture (Department) held a hearing from September 22, 2015, through November 8, 2015, regarding promulgation of a Federal Milk Marketing Order (FMMO) in California. During the hearing, participants requested the Department take Official Notice of several documents and resources relevant to the proceeding. The Administrative Law Judge presiding over the hearing ruled that interested parties could submit requests for Official Notice of documents and resources through their post-hearing briefs, and the Department could then make a determination regarding the requests.

Two parties submitted Official Notice requests in their post-hearing briefs and provided lists and sources for the relevant documents. On February 14, 2017, the Department published in the Federal Register a recommended decision on the establishment of a California FMMO (82 FR 10634). After an initial review, the Department took Official Notice of many of the documents in the recommended decision. However, the Department did not make a formal determination regarding others.

Two comments filed in response to the recommended decision took exception to the fact that the Department did not rule upon all documents requested for Official Notice submitted in post-hearing briefs by California Dairies, Inc.; Dairy Farmers of America,

Inc.; and Land O'Lakes, Inc. (the Cooperatives); and by the Dairy Institute of California (the Institute).

In response, AMS is considering taking Official Notice of these additional documents. The Code of Federal Regulations (7 CFR 900.8) requires providing interested parties an opportunity to object to taking Official Notice of documents because they are inaccurate or erroneously noticed; for example, if they are not relevant to the material issues of the proceeding. This Notice serves to provide interested parties the opportunity to object to the documents below if they believe that any do not meet the requirements of 7 CFR 900.8.

A complete list of these documents, along with links and sources to access them, is available at [www.ams.usda.gov/caorder](http://www.ams.usda.gov/caorder). Comments should focus on whether the documents are relevant to the material issues of the California FMMO proceeding, which are as follows:

1. Whether the handling of milk in the proposed marketing area is in the current of interstate commerce, or directly burdens, obstructs, or affects interstate commerce in milk or its products;
2. Whether economic and marketing conditions in California show a need for a Federal marketing order that would tend to effectuate the declared policy of the Act;
3. If an order is issued, what its provisions should be with respect to:
  - a. Handlers to be regulated and milk to be priced and pooled under the order;
  - b. Classification of milk, and assignment of receipts to classes of utilization;
  - c. Pricing of milk;

- d. Distribution of proceeds to producers; and
- e. Administrative provisions.

The Department will consider any objections filed prior to making a determination in this matter.

The Department compiled the following list after reviewing the documents submitted for Official Notice, verifying or correcting the titles provided, and determining whether publically accessible sources exist. As interested parties did not provide hard copies of the documents they were requesting for Official Notice, those documents for which a source was not provided or that the Department determined to lack a publically accessible source are excluded from Official Notice consideration.

**Academic Sources:**

- Pratt, James E., Phillip M. Bishop, Eric M. Erba, Andrew M. Novakovic, and Mark W. Stephenson: A Description of the Methods and Data Employed in the U.S. Dairy Sector Simulator, Cornell Program on Dairy Markets and Policy, July 1997;
- Pratt, James E., Phillip M. Bishop, Eric M. Erba, Andrew M. Novakovic, and Mark W. Stephenson: Normative Estimates of Class I Prices Across U.S. Milk Markets, Cornell Program on Dairy Markets and Policy, July 1998;
- Class I Surface Maps, March 2014 and September 2014: Mark Stephenson;
- Jacobson, Robert E., et al., Research Bulletin 1105: Pricing Grade A Milk Used in Manufactured Dairy Products, Ohio Agriculture Research and Development Center, December 1978; and

- Baker, Burton A., and Rudolph K. Froker: The Evaporated Milk Industry Under Federal Marketing Agreements, University of Wisconsin, August 1945

**Agricultural Marketing Service (AMS) Data and Publications:**

- AMS Dairy Market News, weekly reports, January 1, 2015 – April 2016;
- AMS Dairy Market Statistics, annual reports, 1997 – 2015;
- AMS FMMO Marketing and Utilization Summary, annual, 2015;
- AMS FMMO Statistics, annual summaries, 1980 – 2015;
- AMS Mailbox Milk Prices, monthly, January 2012 – February 2016;
- AMS Market Information Branch Publication: Measures of Growth in Federal Milk Orders, September 2016;
- AMS National Dairy Product Sales Reports, weekly, 2012 – 2016;
- AMS Regulatory Impact Analysis on FMMO Reform, March 1999;
- Letter to Handlers in FMMO 1 regarding temporary dumped milk policy, March 2016;
- Letter to Handlers in FMMO 1 regarding temporary dumped milk policy, December 2015;
- List of Supply Plant Systems: Upper Midwest Marketing Area, annual, 2014 – 2016;
- Lists of Plants and Handlers: Northeast Marketing Area, monthly, 2014 – 2016;
- Lists of Plants and Handlers: Pacific Northwest and Arizona Marketing Area, monthly, 2014 – 2016;

- Lists of Plants, Handlers, and Cooperative Associations: Upper Midwest Marketing Area, monthly, 2014 – 2016; and
- USDA response to industry request for a national hearing on FMMO program prices, September 17, 2012

**California Department of Food and Agriculture (CDFA) Data and Publications:**

- CDFA Annual Dairy Data, 2015
- CDFA Appendix: Glossary of Dairy Terms;
- CDFA California Dairy Plant List, 2015;
- CDFA California Dairy Statistics, annual, 2014 and 2015;
- CDFA California Price Data, weighted average prices received for nonfat dry milk and volumes sold by California processors, weekly and monthly;
- CDFA CME Cheddar Cheese and Butter Prices vs. California Sales, monthly, February 2004 – November 2013;
- CDFA Dairy Industry Fact Sheet, 2000;
- CDFA Dairy Manufacturing Cost Surveys (September 18, 2007; November 14, 2013; and December 9, 2015);
- CDFA Dairy Product Data, monthly, 2014 – year-to-date;
- CDFA Designated Supply Handlers for Procurement, Regions 1 and 2, 2015 – 2016
- CDFA Full Manufacturing Cost Survey, 2014;
- CDFA Hearing Panel Report on Class 4b Pricing, June 2015;

- CDFA Milk Production Cost Data, quarterly, 2013 – 2016;
- CDFA Milk Production Pooling Data, monthly, 2014;
- CDFA Dairy Review Newsletters, monthly, 2003 – 2016;
- CDFA Pooling Plan for Market Milk as Amended, June 2013;
- CDFA Stabilization and Marketing Plan for Market Milk as Amended, Northern California Marketing Area, August 2015;
- CDFA Stabilization and Marketing Plan for Market Milk as Amended, Southern California Marketing Area, August 2015;
- CDFA Statistics and Trends Annual Tables and Data, 2014;
- CDFA Statistics and Trends Mid-Year Review, January – June 2015;
- CDFA transcripts from Public Hearing to Consider Amendments to Stabilization and Marketing Plans (Class 4b pricing formula changes), June 2015; and
- CDFA Water Quality Regulations for Dairy Operators in California’s Central Valley–Overview and Compliance Cost Analysis, November 2010

**California State Statutes:**

- California Food and Agriculture Code: Division 21, Part 3, Chapter 1, Sections 61301-61573: Marketing of Milk and Other Dairy Products;
- California Food and Agriculture Code: Division 21, Part 3, Chapter 2, Sections 61801-62402: Stabilization and Marketing of Market Milk;
- California Food and Agriculture Code: Division 21, Part 3, Chapter 2.5, Sections 62500-62667: Milk Producer’s Security Fund;

- California Food and Agriculture Code: Division 21, Part 3, Chapter 3, Sections 62700-62731: Equalization Pools; and
- California Food and Agriculture Code: Division 21, Part 3, Chapter 3.5, Sections 62750-62757: Milk Pooling

**Congressional Legislation:**

- 1965 Farm Bill;
- 1970 Farm Bill;
- 1985 Farm Bill;
- 2008 Farm Bill;
- 2000 Appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies; and
- Milk Regulatory Equity Act of 2005

**Economic Research Service (ERS) Publications:**

- ERS Dairy Data Spreadsheets: U.S. Dairy Situation at a Glance; Dairy Products Per Capita Consumption; Milk Cows and Production by State and Region; Annual Milk Production and Factors Affecting Supply; Per Capita Consumption of Selected Cheese Varieties (most current spreadsheets);
- ERS Milk Costs of Production: costs and returns per hundredweight sold by state, annual, 2010 – 2014;
- ERS Milk Costs of Production: costs and returns per hundredweight sold by size group, annual, 2014 (data set contains 2010 – 2014);

- ERS Milk Costs of Production: U.S. dairy costs of production per hundredweight of milk sold, monthly, 2015;
- ERS Publication: Pricing Milk and Dairy Products: Principles, Practices, and Problems, 1971;
- ERS Report to Congress: Report on the United States Department of Agriculture's Reporting Procedures for Nonfat Dry Milk, September 2007;
- ERS Situation and Outlook Reports: Feed Outlook Reports, monthly, 2014 – 2015; and
- ERS Situation and Outlook Reports: Livestock, Dairy and Poultry Outlook Reports (Dairy Part), monthly, 2014 – 2016

**National Agricultural Statistics Service (NASS) Data and Publications:**

- NASS Dairy Products Mandatory Program webpage;
- NASS Dairy Products Prices, weekly, 1998 – 2012;
- NASS Dairy Products, annual summary, 1997 – 2015 (data for 1995 – 2014);
- NASS Dairy Products, monthly, January 2015 – April 2016;
- NASS Milk Cows and Production Final Estimates (SB 988), data covers 1998 – 2002
- NASS Milk Cows and Production Final Estimates (SB 1022), data covers 2003 – 2007
- NASS Milk Cows and Production Final Estimates (SB 1036), data covers 2008 – 2012

- NASS Milk Production, Disposition, and Income Annual Summary, 1995 – 2015;
- NASS Milk Production, monthly reports, January 2015 – February 2016;
- NASS Overview of the United States Dairy Industry, September 22, 2010;
- NASS Dairy Products Prices: How Does That Work?; and
- NASS Survey Cheddar Cheese Price Data (May 23, 1997; June 27, 1997; August 1, 1997; September 5, 1997; October 10, 1997; December 19, 1997; December 29, 1997; January 23, 1998; February 20, 1998; March 20, 1998; April 24, 1998; May 29, 1998; June 26, 1998; July 31, 1998; August 28, 1998; and October 2, 1998)

**USDA Office of the Chief Economist Publication:**

- Drought Monitor: Percentage of crops and livestock located in drought, March 2016

**Federal Government Resources:**

- Census Bureau data on Upper Midwest FMMO, Market Area Population;
- Energy Information Administration Weekly Retail Gasoline and Diesel Prices, January 2011 – July 2015;
- Federal Highway Administration Highway Statistics Summary to 1995; and
- Federal Highway Administration Highway Statistics, Annual Issues, 1995 – 2012

**Federal Register Publications:**

- 3 Fed. Reg. 1945 – 1949 regarding the handling of milk in the New York Metropolitan Marketing Area, August 1938;
- 26 Fed. Reg. 7134 – 7141 regarding amendments to the Chicago marketing order, August 1961;
- 27 Fed. Reg. 799 – 816 regarding amendments to pricing of milk reserves and excess reserves, January 1962;
- 31 Fed. Reg. 7062 regarding a Puget Sound, Washington, market area expansion and amendments to producer-handler definition, May 1966;
- 39 Fed. Reg. 11567 – 11571 regarding a partial decision on emergency measures to suspend butter powder prices, March 1974;
- 44 Fed. Reg. 48128 – 48130 regarding a decision to not promulgate an order in the Southwestern Idaho-Eastern Oregon marketing area, August 1979;
- 50 Fed. Reg. 32716, 32718 – 32719 regarding a decision to expand two marketing areas and revise location differentials in the Middle Atlantic and New York-New Jersey areas, August 1985;
- 52 Fed. Reg. 15951 – 15960 regarding termination of proceedings on proposed amendments to the Georgia and certain other marketing areas, May 1987;
- 53 Fed. Reg. 686 – 731 regarding the merger of two marketing areas in the Great Basin and Lake Mead marketing areas, January 1988;
- 53 Fed. Reg. 36321 – 36334 regarding a final decision to provide partial credits to handlers hauling surplus milk in the Texas marketing area, September 1988;

- 55 Fed. Reg. 25618 – 25669 regarding promulgation of a Carolina FMMO, June 1990;
- 56 Fed. Reg. 57850 – 57864 regarding a decision to adopt multiple component pricing for the Mid-Atlantic FMMO, November 1991;
- 58 Fed. Reg. 58112 – 58137 regarding amendments to the New England and Certain Other Marketing Areas, October 1993;
- 59 Fed. Reg. 8546 – 8565 regarding amendments to the Pacific Northwest and Southwestern Idaho-Eastern Oregon Marketing Areas, February 1994;
- 60 Fed. Reg. 7290 – 7333 regarding amendments to the New England and Other Marketing Areas, February 1995;
- 60 Fed. Reg. 25014 – 25071 regarding amendments to the Georgia and Certain Other Marketing Areas, May 1995;
- 60 Fed. Reg. 41833 – 41868 regarding amendments to the Chicago Regional and Other Marketing Areas, August 1995;
- 60 Fed. Reg. 43066 – 43089 regarding amendments to the Southern Michigan Marketing Area, August 1995;
- 64 Fed. Reg. 70868 – 70912 regarding amendments to the New England and Other Marketing Areas, December 1999;
- 65 Fed. Reg. 76832 – 76861 regarding amendments to the Northeast and Other Marketing Areas, December 2000;

- 70 Fed. Reg. 74166, 7418 regarding a final decision on amendments to the Pacific Northwest and Arizona-Las Vegas Marketing Areas, December 2005;
- 71 Fed. Reg. 67467 – 67495 regarding amendments to the Northeast and Other Marketing Areas, November 2006;
- 73 Fed. Reg. 11194 – 11229 regarding amendments to the Appalachian, Florida, and Southeast Marketing Areas, February 2008;
- 73 Fed. Reg. 35306 – 35331 regarding amendments to the Northeast and Other Marketing Areas, June 2008;
- 75 Fed. Reg. 33534 – 33533 regarding amendments to the Northeast and Other Marketing Areas, June 2010; and
- 78 Fed. Reg. 9248 regarding a final decision to adopt changes to the make allowances and butterfat yield factor in Class III and IV price formulas, February 2013

(Authority: 7 U.S.C. 601-608)

Dated: August 8, 2017

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