



## **Agricultural Marketing Service**

### **7 CFR Part 1145**

**[Doc. No. AMS-DA-25-0001]**

**RIN 0581-AE37**

### **Reauthorization of Dairy Forward Pricing Program**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule reauthorizes the Dairy Forward Pricing Program (DFPP) in accordance with the American Relief Act, 2025 (Relief Act). Establishing new contracts under the DFPP was prohibited between the expiration of the program on September 30, 2024, and publication of this final rule. The Relief Act reauthorizes the DFPP program to allow handlers to enter into new contracts until September 30, 2025. Any forward contract entered prior to the September 30, 2025, deadline is subject to a September 30, 2028, expiration date.

**DATES:** [INSERT DATE 1 DAY AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

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**SUPPLEMENTARY INFORMATION:** The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill)<sup>1</sup> initially established the DFPP.<sup>2</sup> The DFPP allows milk handlers, under the Agricultural Marketing Agreement Act of 1937, (AMAA)<sup>3</sup> to pay producers or

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<sup>1</sup> Pub. L. 110-234.

<sup>2</sup> 73 FR 64868.

<sup>3</sup> 7 U.S.C. 601-614.

cooperative associations of producers a negotiated price for producer milk, rather than the Federal order minimum blend price for non-fluid classes of milk (Classes II, III, and IV under the FMMO system). The DFPP does not allow for forward contracting Class I, or fluid, milk.

Following the initial expiration of the DFPP which prevented the establishment of new contracts after September 30, 2012, the “American Taxpayer Relief Act of 2012,” (ATRA)<sup>4</sup> revised the program to allow handlers to enter into new contracts until September 30, 2013. The “Agricultural Act of 2014” (2014 Farm Bill)<sup>5</sup> then extended the program to allow new contracts until September 30, 2018. The Agriculture Improvement Act of 2018 (2018 Farm Bill)<sup>6</sup> reauthorized the program to allow handlers to enter into new contracts until September 30, 2023. The Further Continuing Appropriations and Other Extensions Act of 2024 reauthorized the program to allow handlers to enter into new contracts until September 30, 2024.<sup>7</sup> The Relief Act<sup>8</sup> extends the program to allow handlers to enter into new contracts until September 30, 2025, subject to a September 30, 2028, expiration date.

Participation in the DFPP is voluntary for dairy farmers, dairy farmer cooperatives, and handlers. Handlers may not require producer participation in a forward pricing program as a condition for accepting milk. USDA, including Market Administrator personnel, does not determine the terms of forward contracts or enforce negotiated prices. This regulation also does not affect contractual arrangements between a cooperative association and its members.

Under the DFPP, regulated handlers must still account to the FMMO pool for the classified use value of their milk. Regulated handlers claiming exemption from the

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<sup>4</sup> Pub. L. 112-240.

<sup>5</sup> Pub. L. 113-79.

<sup>6</sup> Pub. L. 115-334.

<sup>7</sup> Pub. L. 118-22.

<sup>8</sup> Pub. L. 118-158.

Federal order minimum pricing provisions must submit to the Market Administrator a copy of each forward contract. The contract must contain a disclosure statement— either as part of the contract itself or as a supplement—to ensure producers understand the nature of the program as well as the basis on which they will be paid for their milk. Contracts that do not contain a disclosure statement are deemed invalid and returned to the handler. Signed contracts must be received by the Market Administrator before the first of a month in order to be effective for the month. For example, contracts must be received by the Market Administrator by December 31, 2024, to be effective for the month of January 2025.

Handlers with forward contracts remain subject to all other milk marketing order provisions. Payments specified under a forward contract must be made on or before the same date as the federal order payments they replace. Required payment dates are specified in 7 CFR §1145.2(e).

This final rule reauthorizes producers and cooperative associations of producers to enter into forward price contracts under the DFPP through September 30, 2025. All terms of the new forward contracts must expire prior to September 30, 2028. All other provisions and requirements of the program as provided for in the final rule<sup>9</sup> published October 31, 2008, are still in effect.

### **Executive Orders 12866 and 13563**

USDA is issuing this rule in conformance with Executive Order (EO) 12866, Regulatory Planning and Review, as amended by EO 12415 of February 18, 2025, Ensuring Accountability for All Agencies, and EO 13563, Improving Regulation and Regulatory Review. Executive Order 12866, as amended by EO 12415, and EO 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits

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<sup>9</sup> 73 FR 64868.

(including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866, as amended by EO 12415, and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This does not have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

### **Executive Order 13175**

This proposed rule has been reviewed under Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

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

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified this proposed rule will not have a significant economic impact on a substantial number of small entities. 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. Marketing orders and amendments thereto are unique in that they are normally brought about through group

action of essentially small entities for their own benefit. A small dairy farm as defined by the Small Business Administration (SBA) (13 CFR 121.201) (NAICS Code 112120) is one that has an annual gross revenue of \$3.75 million or less, and a small dairy products manufacturer is one that has no more than the number of employees listed in the chart below:

<b>NAICS Code</b>	<b>NAICS U.S. industry title</b>	<b>Size standards in number of employees</b>
311511	Fluid Milk Manufacturing	1,150
311512	Creamery Butter Manufacturing	750
311513	Cheese Manufacturing	1,250
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing	1,000

To determine which dairy farms are "small businesses," the \$3.75 million per year income limit was used to establish an annual milk marketing threshold of 18.3 million pounds. Although this threshold does not factor in additional monies that may be received by dairy producers, it should be an accurate standard for most "small" dairy farmers. Based on the U.S. 2023 average yield per cow and 2023 NASS average All-Milk price, a dairy farm with approximately 780 cows or fewer would meet the definition of small business. In 2022, the most recent year with statistics available, there were 24,470 dairy farms with milk sales, of which approximately 19,576 had milk regulated on an FMMO for at least one month of the year. Based on the 2022 Census of Agriculture, Milk Cow Herd Size by Inventory and Sales, an estimated 89 percent of operations with milk sales are likely to be small businesses.

To determine a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 750-employee limit for creamery butter manufacturing; the 1,000-employee limit for dry, condensed, and evaporated dairy product manufacturing; the 1,150-employee limit for fluid milk manufacturing; or the 1,250-employee limit for cheese manufacturing; the plant was considered a large business

even if the local plant does not exceed the 750, 1,000, 1,150, or 1,250-employee limit, respectively.

In 2022, 322 dairy plants were regulated for at least one month of the year in a FMMO. According to the 2022 Census of Agriculture, approximately 86 percent of fluid milk manufacturing plants, approximately 96 percent of cheese plants, approximately 82 percent of dry products plants, and approximately 78 percent of butter plants met the SBA definition of small businesses.

Producers and handlers use the DFPP as a risk management tool. Under the DFPP, producers and handlers can “lock-in” prices, thereby minimizing risks associated with price volatility that are particularly difficult for small businesses to mitigate.

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.

Section 1601(c)(2)(B) of the 2014 Farm Bill provides that the administration of the DFPP shall be made without regard to the Paperwork Reduction Act (PRA), 44 U.S.C. Chapter 35. Section 1701 of the 2018 Farm Bill extended that Congressional direction through September 30, 2023. Congress again extended the direction through September 30, 2024, by the Further Continuing Appropriations and Other Extensions Act, 2024, and that direction is further extended to September 30, 2025, by the current reauthorization of the DFPP through the Relief Act.<sup>10</sup> Thus, any information collection conducted for the DFPP is not subject to the PRA.

## **FINAL ACTION**

In accordance with the Relief Act, this final rule extends the DFPP to all Federal milk marketing orders. New contracts under the program may be entered into until

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<sup>10</sup> Pub. L. 118-158.

September 30, 2025. Any forward contract entered into up to and until the September 30, 2025, deadline is subject to a September 30, 2028, expiration date.

Section 1601(c)(2)(A) of the 2014 Farm Bill provides that the promulgation of the regulations to implement the reauthorization of the DFPP shall be made without regard to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553. Section 1701 of the 2018 Farm Bill extended the Congressional direction, and Section 4101 of the Relief Act extends that direction to the current reauthorization of the DFPP. It is unnecessary and contrary to the public interest to delay the effective date of the final rule. Dairy stakeholders have been unable to enter in contracts since the DFPP expired on September 30, 2024. Producers and handlers have thus been unable to rely on these forward contracts as a risk management tool. Stakeholders have inquired about when the program will be reimplemented and have signaled they intend to immediately enter into new contracts. Further, all contracts are voluntary. AMS, therefore, is issuing this final rule one day after publication, without prior notice or public comment.

#### **List of Subjects in 7 CFR Part 1145**

Forward pricing contracts, Milk marketing orders, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 1145 as follows:

#### **PART 1145 - DAIRY FORWARD PRICING PROGRAM**

1. The authority citation for 7 CFR part 1145 continues to read as follows:

**Authority:** 7 U.S.C. 8772.

2. Amend § 1145.2 by revising paragraph (b) to read as follows:

#### **§ 1145.2 Program.**

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(b) No forward price contract may be entered into under the program after September 30, 2025, and no forward contract entered into under the program may extend beyond September 30, 2028.

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**Erin Morris,**

*Acting Administrator,*

*Agricultural Marketing Service.*

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