

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
DAIRY PROGRAMS
MILK MARKET ADMINISTRATOR

APPALACHIAN MARKETING AREA
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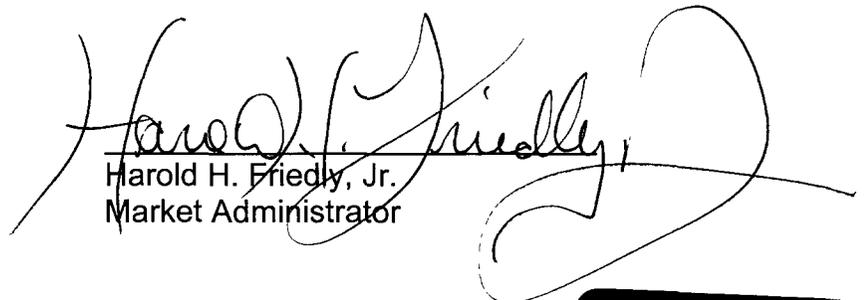
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DETERMINATION)
)
 re) **Docket No. AO-388-A16, DA-04-07**
)
MAILING OF NOTICE OF HEARING)
)

Pursuant to the authority delegated to me by the Director, Dairy Division, I hereby determine that the requirements of the General Regulations in Section 900.4(b)(1)(ii), (7 CFR Part 900) were complied with and that a true copy of the notice of hearing with respect to this proceeding relating to proposed amendments to the marketing agreement(s) and to the order(s) regulating the handling of milk in the marketing area(s) specified below, was mailed to each of the persons known to be interested therein:

| <u>Part No.</u> | <u>Name of Marketing Area</u> |
|-----------------|-------------------------------|
| 1005 | Appalachian Marketing Area |

Date: September 30, 2004


Harold H. Friedly, Jr.
Market Administrator

EXHIBIT

Proposed Rules

Federal Register

Vol. 69, No. 189

Thursday, September 30, 2004

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005, 1006 and 1007

[Docket No. AO-388-A16, AO-356-A38 and AO-366-A45; DA-04-07]

Milk in the Appalachian, Florida and Southeast Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; notice of public hearing on proposed rulemaking.

SUMMARY: A public hearing is being held, on an emergency basis, to consider a proposal submitted by Dairy Farmers of America, Inc., Lone Star Milk Producers Inc., Maryland & Virginia Milk Producers Cooperative Association, Inc., and Southeast Milk, Inc. The proposal would implement a temporary supplemental charge on Class I milk that would be disbursed through a marketwide service payment provision in the Appalachian, Florida and Southeast orders. The proposal would provide for emergency payments to reimburse handlers the cost of additional transportation expenses incurred as a result of disruptions occurring from several hurricanes in the Southeastern United States.

DATES: The hearing will convene at 9 a.m. on Thursday, October 7, 2004.

ADDRESSES: The hearing will be held at the Sheraton Gateway Atlanta Airport Hotel, 1900 Sullivan Road, Atlanta, Georgia 30337; (770) 997-1100.

FOR FURTHER INFORMATION CONTACT: Antoinette M. Carter, Marketing Specialist, Order Formulation and Enforcement, USDA/AMS/Dairy Programs, Room 2971 Stop 0231, 1400 Independence Avenue, SW., Washington, DC 20250-0231, (202) 690-3465, e-mail address: Antoinette.Carter@usda.gov.

Persons requiring a sign language interpreter or other special accommodations should contact Sue L. Mosley, Market Administrator, at (770) 682-2501; e-mail smosley@fmmlatlanta.com before the hearing begins.

SUPPLEMENTARY INFORMATION: 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.

Notice is hereby given of a public hearing to be held at the Sheraton Gateway Atlanta Airport Hotel, 1900 Sullivan Road, Atlanta, Georgia 30337; (770) 997-1100, beginning at 9 a.m. on October 7, 2004, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Appalachian, Florida and Southeast milk 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), and the applicable rules of practice and procedure governing the formulation of 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 that relate to the proposed amendments, *hereinafter set forth*, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is 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. Most parties subject to a milk order are considered as 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. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(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 (Department) 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 Department 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 the Department'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.

This public hearing is being conducted to collect evidence for the record concerning the need for emergency payments to reimburse handlers the cost of additional transportation expenses incurred as a result of disruptions occurring from several hurricanes in the Southeastern United States. The payments would be dispensed during the period of January 2005 through March 2005 based on transportation expenses incurred by handlers transporting milk to or from the Appalachian, Florida, and Southeast milk marketing areas, or any combination of the above.

Proposal two was submitted by Dairy Programs, Agricultural Marketing Service, to make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Evidence also will be taken at the hearing to determine whether

emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to any proposed amendments.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with (4) copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1005, 1006 and 1007.

Milk marketing orders.

The authority citation for 7 CFR parts 1005, 1006 and 1007 continues to read as follows:

Authority: 7 U.S.C. 601–674.

The proposed amendment, as set forth below, have not received the approval of the Department.

Proposal No. 1

Proposed by Dairy Farmers of America, Inc., Lone Star Milk Producers Inc., Maryland & Virginia Milk Producers Cooperative Association, Inc., and Southeast Milk, Inc.

The proposal would provide for emergency payments to reimburse handlers the cost of additional transportation expenses incurred as a result of disruptions occurring from several hurricanes in the Southeastern United States.

- 1. Section 1005.60 is amended by:
 - (a) Revising paragraph (a);
 - (b) Adding a new paragraph (g).

The revisions and additions read as follows:

§ 1005.60 Handler's value of milk.

* * * * *

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts; except that for the months of January 2005 through March 2005, the Class I skim milk price for this purpose shall be the Class I skim milk price as determined in § 1000.50(b) plus \$0.04 per hundredweight, and the Class I butterfat price for this purpose shall be the Class I butterfat price as determined in § 1000.50(c) plus \$0.0004 per pound. The adjustments to the Class I skim milk and butterfat prices provided herein may be reduced by the market administrator for any month if the market administrator determines that the payments yet unpaid computed pursuant to (g)(1) through (4) and (g)(6) of this section will be less than the

amount computed pursuant to section (g)(5) of this section. The adjustments to the Class I skim milk and butterfat prices provided herein during the months of January 2005 through March 2005 shall be announced along with the prices announced in § 1000.53(b);

* * * * *

(g) For the months of January 2005 through March 2005 for handlers who have submitted proof satisfactory for the market administrator to determine eligibility for reimbursement of transportation costs of marketwide benefit, subtract an amount equal to:

(1) The cost of transportation on loads of producer milk delivered or rerouted to a pool distributing plant, which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(2) The cost of transportation on loads of producer milk delivered or rerouted to a pool supply plant which was then transferred to a pool distributing plant, which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne, and;

(3) The cost of transportation on loads of bulk milk delivered or rerouted to a pool distributing plant from a pool supply plant, which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(4) The cost of transportation on loads of bulk milk delivered or rerouted to a pool distributing plant from an other order plant, which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(5) The total amount of payment to all handlers under this section shall be limited during the month to an amount determined by multiplying the total Class I producer milk for all handlers pursuant to § 1000.44(c) times \$0.09 per hundredweight.

(6) If the cost of transportation computed pursuant to (g)(1) through (4) of this section exceeds the amount computed pursuant to (g)(5), the market administrator shall prorate such payments to each handler based on each handler's proportion of transportation costs submitted pursuant to (g)(1) through (4). Transportation costs submitted pursuant to (g)(1) through (4) which are not paid as a result of such a proration shall be included in each subsequent month's transportation costs submitted pursuant to (g)(1) through (4) until paid, or until the time period for such payments is concluded.

(7) The reimbursement of transportation costs of marketwide benefit pursuant to this section shall be the actual demonstrated cost of such transportation of bulk milk delivered or rerouted as described in (g)(1) through

(4) of this subsection, or the miles of transportation on loads of bulk milk delivered or rerouted as described in (g)(1) through (4) of this subsection multiplied by \$2.25 per loaded mile, whichever is less.

* * * * *

2. Section 1006.60 is amended by:

- (a) Revising paragraph (a);
- (b) Adding a new paragraph (g).

The revisions and additions read as follows:

§ 1006.60 Handler's value of milk.

* * * * *

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts; except that for the months of January 2005 through March 2005, the Class I skim milk price for this purpose shall be the Class I skim milk price as determined in § 1000.50(b) plus \$0.04 per hundredweight, and the Class I butterfat price for this purpose shall be the Class I butterfat price as determined in § 1000.50(c) plus \$0.0009 per pound. The adjustments to the Class I skim milk and butterfat prices provided herein may be reduced by the market administrator for any month if the market administrator determines that the payments yet unpaid computed pursuant to (g)(1) through (4) and (g)(6) of this section will be less than the amount computed pursuant to section (g)(5) of this section. The adjustments to the Class I skim milk and butterfat prices provided herein during the months of January 2005 through March 2005 shall be announced along with the prices announced in § 1000.53(b);

* * * * *

(g) For the months of January 2005 through March 2005 for handlers who have submitted proof satisfactory for the market administrator to determine eligibility for reimbursement of transportation costs of marketwide benefit, subtract an amount equal to:

(1) The cost of transportation on loads of producer milk delivered or rerouted to a pool distributing plant, which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(2) The cost of transportation on loads of producer milk delivered or rerouted to a pool supply plant which was then transferred to a pool distributing plant, which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne, and;

(3) The cost of transportation on loads of bulk milk delivered or rerouted to a pool distributing plant from a pool supply plant, which were delivered as

a result of hurricanes Charley, Frances, Ivan and Jeanne.

(4) The cost of transportation on loads of bulk milk delivered or rerouted to a pool distributing plant from an other order plant, which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(5) The total amount of payment to all handlers under this section shall be limited during the month to an amount determined by multiplying the total Class I producer milk for all handlers pursuant to § 1000.44(c) times \$0.09 per hundredweight.

(6) If the cost of transportation computed pursuant to (g)(1) through (4) of this section exceeds the amount computed pursuant to (g)(5), the market administrator shall prorate such payments to each handler based on each handler's proportion of transportation costs submitted pursuant to (g)(1) through (4). Transportation costs submitted pursuant to (g)(1) through (4) which are not paid as a result of such a proration shall be included in each subsequent month's transportation costs submitted pursuant to (g)(1) through (4) until paid, or until the time period for such payments is concluded.

(7) The reimbursement of transportation costs of marketwide benefit pursuant to this section shall be the actual demonstrated cost of such transportation of bulk milk delivered or rerouted as described in (g)(1) through (4) of this subsection, or the miles of transportation on loads of bulk milk delivered or rerouted as described in (g)(1) through (4) of this subsection multiplied by \$2.25 per loaded mile, whichever is less.

* * * * *

3. Section 1007.60 is amended by:

(a) Revising paragraph (a);

(b) Adding a new paragraph (g).

The revisions and additions read as follows:

§ 1007.60 Handler's value of milk.

* * * * *

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts; except that for the months of January 2005 through March 2005, the Class I skim milk price for this purpose shall be the Class I skim milk price as determined in § 1000.50(b) plus \$0.04 per hundredweight, and the Class I butterfat price for this purpose shall be the Class I butterfat price as determined in § 1000.50(c) plus \$0.0004 per pound. The adjustments to the Class I skim milk and butterfat prices provided herein may be reduced by the market

administrator for any month if the market administrator determines that the payments yet unpaid computed pursuant to (g)(1) through (4) and (g)(6) of this section will be less than the amount computed pursuant to section (g)(5) of this section. The adjustments to the Class I skim milk and butterfat prices provided herein during the months of January 2005 through March 2005 shall be announced along with the prices announced in § 1000.53(b);

* * * * *

(g) For the months of January 2005 through March 2005 for handlers who have submitted proof satisfactory for the market administrator to determine eligibility for reimbursement of transportation costs of marketwide benefit, subtract an amount equal to:

(1) The cost of transportation on loads of producer milk delivered or rerouted to a pool distributing plant, which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(2) The cost of transportation on loads of producer milk delivered or rerouted to a pool supply plant which was then transferred to a pool distributing plant, which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne, and;

(3) The cost of transportation on loads of bulk milk delivered or rerouted to a pool distributing plant from a pool supply plant, which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(4) The cost of transportation on loads of bulk milk delivered or rerouted to a pool distributing plant from an other order plant, which were delivered as a result of hurricanes Charley, Frances, Ivan and Jeanne.

(5) The total amount of payment to all handlers under this section shall be limited during the month to an amount determined by multiplying the total Class I producer milk for all handlers pursuant to § 1000.44(c) times \$0.04 per hundredweight.

(6) If the cost of transportation computed pursuant to (g)(1) through (4) of this section exceeds the amount computed pursuant to (g)(5), the market administrator shall prorate such payments to each handler based on each handler's proportion of transportation costs submitted pursuant to (g)(1) through (4). Transportation costs submitted pursuant to (g)(1) through (4) which are not paid as a result of such a proration shall be included in each subsequent month's transportation costs submitted pursuant to (g)(1) through (4) until paid, or until the time period for such payments is concluded.

(7) The reimbursement of transportation costs of marketwide

benefit pursuant to this section shall be the actual demonstrated cost of such transportation of bulk milk delivered or rerouted as described in (g)(1) through (4) of this subsection, or the miles of transportation on loads of bulk milk delivered or rerouted as described in (g)(1) through (4) of this subsection multiplied by \$2.25 per loaded mile, whichever is less.

* * * * *

Proposal No. 2

*Proposed by Dairy Programs,
Agricultural Marketing Service*

For all Federal Milk Marketing Orders, make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid marketing areas, or from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisionmaking 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 particular 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 Programs, Agricultural
Marketing Service (Washington office)
and the Offices of all Market
Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: September 28, 2004.

Kenneth C. Clayton,

*Associate Administrator, Agricultural
Marketing Service.*

[FR Doc. 04-22055 Filed 9-28-04; 1:18 pm]

BILLING CODE 3410-02-P