

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1002, 1004, 1005, 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1075, 1076, 1079, 1093, 1094, 1096, 1099, 1106, 1108, 1124, 1126, 1131, 1134, 1135, 1137, 1138, 1139

[Docket No. AO-14-A66, etc.; DA-92-11]

RIN 0581-AA57

Milk in the New England and Other Marketing Areas; Decision on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	AO Nos.
1001	New England	AO-14-A66
1002	New York-New Jersey	AO-71-A81
1004	Middle Atlantic	AO-160-A69
1005	Carolina	AO-388-A6
1006	Upper Florida	AO-356-A30
1007	Georgia	AO-366-A35
1011	Tennessee Valley	AO-251-A37
1012	Tampa Bay	AO-347-A33
1013	Southeastern Florida	AO-286-A40
1030	Chicago Regional	AO-361-A30
1032	Southern Illinois-Eastern Mis-souri	AO-313-A40
1033	Ohio Valley	AO-166-A63
1036	Eastern Ohio-Western Penn-sylvania	AO-179-A58
1040	Southern Michi-gan	AO-225-A44
1044	Michigan Upper Peninsula	AO-299-A28
1046	Louisville-Lexing-ton-Evansville ..	AO-123-A64
1049	Indiana	AO-319-A41
1050	Central Illinois	AO-355-A28
1064	Greater Kansas City	AO-23-A61
1065	Nebraska-West-ern Iowa	AO-86-A49
1068	Upper Midwest	AO-178-A47
1075	Black Hills, South Dakota	AO-248-A22
1076	Eastern South Dakota	AO-260-A31
1079	Iowa	AO-295-A43
1093	Alabama-West Florida	AO-386-A13
1094	New Orleans-Mis-sissippi	AO-103-A55
1096	Greater Louisiana	AO-257-A42
¹ 1097	Memphis, Ten-nessee	AO-219-A48
¹ 1098	Nashville, Ten-nessee	AO-184-A57
1099	Paducah, Ken-tucky	AO-183-A47
1106	Southwest Plains	AO-210-A54
1108	Central Arkansas	AO-243-A45
1124	Pacific Northwest	AO-368-A22
1126	Texas	AO-231-A62

7 CFR part	Marketing area	AO Nos.
1131	Central Arizona ...	AO-271-A31
1134	Western Colorado	AO-301-A23
1135	Southwestern Idaho-Eastern Oregon	AO-380-A12
1137	Eastern Colorado	AO-326-A27
1138	New Mexico-West Texas	AO-335-A38
1139	Great Basin	AO-309-A32

¹ The Memphis, Tennessee, and Nashville, Tennessee, orders were terminated, effective July 31, 1993.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts the base month Minnesota-Wisconsin (M-W) price updated with a butter/powder/cheese formula as the replacement for the Minnesota-Wisconsin price series, which establishes minimum prices for milk under all Federal milk orders. The amendments adopted in this decision are based on evidence received at a public hearing held June 15-19, 1992. The amendments differ from the Recommended Decision in that they use the Western Dry Buttermilk and Nonfat Dry Milk prices in the updating formula instead of the Central States Dry Buttermilk and Nonfat Dry Milk prices. Referenda will be conducted in five markets, and dairy farmer cooperatives will be polled in the other markets to determine whether dairy farmers approve the issuance of the orders as amended to incorporate the base month M-W price updated with a butter/powder/cheese formula.

FOR FURTHER INFORMATION CONTACT: John F. Borovics, Branch Chief, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, D.C. 20090-6456, (202) 720-6274.

SUPPLEMENTARY INFORMATION: This administrative rule 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.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments will promote orderly marketing of milk by producers and regulated handlers.

The U.S. Small Business Administration (SBA) objected to the

previous certification in a letter to the Administrator of the Agricultural Marketing Service. The SBA indicated that the certification does not comply with the analytical mandate of the Regulatory Flexibility Act (RFA) in that at least a brief explanation of the reasons for the certification must be provided to inform the regulated community of the reasons for the certification. Furthermore, the SBA contends that the simple assertion that the amendments would promote the orderly marketing of milk by producers and regulated handlers is insufficient and is contradicted by the findings in the recommended decision. Specifically, the SBA contends that the recommended decision "acknowledges that the proposed modifications could result in wide swings in price for any given month (59 FR 40428)." The SBA contends that these price changes could be significant for small handlers and processors.

Since the SBA letter refers to a specific finding in the recommended decision to question the certification, the letter was filed with the Hearing Clerk as an exception to the decision. Also, since the "exception" refers to a specific finding, it is dealt with in the findings and conclusions below. With regards to the basis for the certification, SBA ignores the fact that the recommended decision contained an extensive analysis of the effect of the proposed amendments, as well as numerous alternatives, and their comparative effect on the current price series. Reference by SBA only to the conclusory statements in the recommended decision, therefore, is not justified.

At this point, we reaffirm that the proposed rule will not have a significant economic impact on a substantial number of small entities for reasons that are set forth later in this decision. The base month M-W price, updated by a product price formula, will continue to apply in the same manner as the current M-W price but has a greater degree of reliability for reasons that are set forth in this decision.

These proposed amendments have been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (the Act), provides that administrative proceedings must be exhausted before parties may file suit in court. Under