

Invitation to Submit Proposals - Class III and IV Prices

January 31, 2000

TO: Interested Parties

The Consolidated Appropriations Act, 2000, requires the Secretary of Agriculture to conduct a formal rulemaking proceeding to reconsider the Class III and Class IV milk pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The formulas resulting from the required proceeding are to be implemented on January 1, 2001. Consequently, USDA is requesting that interested parties submit proposals to modify the computation of Class III and Class IV prices adopted in the final rule published in the Federal Register on September 1, 1999 (64 Fed. Reg. 47897-48021) by February 29, 2000. It is anticipated that such a hearing would be held in late April or early May 2000.

The legislation requiring the hearing describes the proceeding as an emergency. It should be noted that an emergency rulemaking proceeding omits a recommended decision with the opportunity to file comments thereon. The potential omission of a recommended decision will be an issue that will be considered at the hearing.

In addition to the Class III and Class IV prices adopted in the final rule, the hearing will consider proposals that address changes to any of the factors such as the specification of the products whose prices are identified, the yield factors, and the make allowances included in the computation of the component prices.

Two copies of the proposals should be mailed to: Deputy Administrator, Dairy Programs, Agricultural Marketing Service, United States Department of Agriculture, Room 2968, South Building, P.O. Box 96456, Washington, D.C. 20090-6456, by February 29, 2000.

Each proposal should be accompanied by a brief but comprehensive statement on the justification for the proposed changes. The statement will be used in deciding whether the proposals should be considered at the hearing. Those proposing changes to the Class III and Class IV price calculations contained in the final rule should plan to support their proposals with data, as well as arguments, at the hearing.

A hearing would be limited to the proposals included in a hearing notice. However, appropriate modifications of the proposals included in the notice also may be considered at the hearing if the modifications would not increase the scope of the hearing.

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Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act". 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 \$500,000, 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 \$500,000 per year criterion was used to establish a production guideline of 326,000 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 farmers. For the 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.

All known interested persons will be mailed a copy of the hearing notice when one is issued. Anyone who desires to present evidence on proposals set forth in the hearing notice will have an opportunity to do so at the hearing.

Once a hearing notice is issued and until issuance of a final decision, Department employees involved in the decisional process may not discuss the merits of a proceeding on an ex parte basis with any persons having an interest in the proceeding. For this purpose, the market administrator and staff are considered to be involved in the decisional process. Thus, it is suggested that any discussions that you may wish to have with Department personnel regarding hearing proposals be initiated soon. Procedural matters may be discussed at any time.

If you have any questions concerning the filing of the proposals or desire a copy of the final rule for the consolidation and reform of Federal milk orders, please contact this office.