

STATEMENT

PROPOSAL NO. 1

FEDERAL ORDER NO. 1 HEARING

DOCKET NOS. AO-14-A70; DA-02-01

HELD SEPTEMBER 10, 2002

IN ALEXANDRIA, VIRGINIA

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ON BEHALF OF

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PROPOSAL NO. 1

The four amendments incorporated under proposal no. 1 would essentially restore the reporting and payment dates previously specified in the former New York-New Jersey Order. Proponent and supporting handlers, hereinafter listed, consider these proposals necessary to correct disorderly marketing conditions that have resulted from the “advanced” reporting and payment dates promulgated under the Reform Order made effective January, 2000.

1. The first of the proposed four “date” changes to the Order, involves the date for filing monthly reports with the market Administrator. As noticed for this hearing the specific amendment language is as follows:

Section 1001.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator’s office receives the report on or before the 10th day after the end of the month, in the detail and on prescribed forms, as follows:

* * * (unchanged)

JUSTIFICATION RE: ITEM 1: The due dates for MA reports, equalization payments, and payments for milk to vendors under new Reform Order requirements, have become very difficult for proponent buyer handlers to meet. The advent of the Reform Order brought with it a departure from “farm town-zone pricing”, unique under the former NY-NJ Order, as well as detailed reporting requirements mandated for the switch from basic skim and butterfat accounting to complete “component” accounting for protein and other solids, as well as for the butterfat in the milk.

Adapting to the new reporting provisions (moved ahead a day, from the 10th to the 9th) of the following month was difficult enough, without the added strain caused by the fact the basic system was being radically changed from farm to plant zone pricing, together with component milk pricing and certain other Order changes, —all at the same time. As a result, MA reports suffered from inadequate and inappropriate data collection, which has not been completely sorted out in audit even to this day.

The Reform Order failed to justify moving the reporting date ahead to the 9th. Suppliers have consistently experienced considerable difficulty furnishing needed milk component data and billings to buyer-handlers in time for the latter to meet the new reporting and payment deadlines. Often MA reports were and still are filed containing erroneous or estimated data, simply because the reporting handler could not ascertain the correct data in time. We know this continuing problem would be greatly alleviated, if the reporting date were to be moved back to the 10th, giving both suppliers and buyers an additional day to complete their work.

It is our position that milk handlers should not be penalized for failure to meet reporting deadlines, if they can't verify the data in the time allowed. Also, the fact that Order No. 1 is the largest milk Order, dealing with so many special marketing complexities, needs to be given greater consideration in setting the mandated reporting and payment dates. For example, some Northeastern milk handlers process or account for more milk than was received and processed in some milk Orders in the U.S., prior to Order reform consolidation. Furthermore, there is extensive co-mingling of bulk milk on tankers traveling over great distances—a condition extensively cultivated among handlers in the former NY-NJ Order, due to the prior system of farm-point pricing and related need to maximize hauling efficiencies from farm to plant. Consequently, the fact that there is more co-mingling of milk on the same tankers, automatically entails more time in verifying receipts from each source represented in the co-mingled load. And

because the Order No. 1 milkshed is so large, milk hauling costs become very important to both handlers and producers. Therefore, we think the Order should encourage rather than discourage the least-cost hauling solutions that have evolved over the years, as represented in existing co-mingled bulk routes. By allowing the additional day in verifying respective handler component volumes, the accuracy of MA reports will be enhanced and audits made easier and less costly for all concerned, including the MA.

All handlers, including co-operatives, should be required to meet information report deadlines. We find that inordinate “rushing” causes too many MA report adjustments and tends to increase the administrative workload for everyone involved.

2. The second change in reporting requirement proposed by NYSDFI, involves the date specified in the Order for the market administrator to announce the producer price differential (PPD) and the statistical uniform price each month.

Specifically, we proposed the following changes:

Section 1001.62 Announcement of producer prices.

*** (in the introductory text), revise the reference to the “13th day” to “14th day” and add new paragraph (h) to read:

(h) If the 14th falls on a Saturday, Sunday, or national holiday, the market administrator may have up to two additional days to announce the producer price differential and the statistical uniform price.

JUSTIFICATION RE: ITEM 2: Our proposed change to the introductory text in Section 1001.62, simply gives the Market Administrator up to the 14th of the month to announce the final producer pay price, as was provided previously in the former NY-NJ Order. This suggested amendment is consistent with our proposed 1-day extension for submission of handler MA

reports. Furthermore, it would allow the MA additional time, if needed, up to two additional days, if the stated official deadline of the 14th of the following month, falls on a weekend or a national holiday.

This proposal is consistent with our first “date” change proposal (discussed above) to restore the mandated MA report deadline to the 10th rather than the 9th. It also would give the MA more latitude in establishing monthly uniform price announcement dates, should the official deadline otherwise fall on a weekend or a national Holiday. This latter provision would extend to the MA, sufficient time to make the necessary price computations without undue pressure brought about by weekend or Holiday circumstances.

Although this proposal could give the MA up to two additional days for making the price computations, it does not require the additional time be used, if the MA finds it possible and advisable to announce the producer pay prices earlier. In fact, the MA might still announce the final PPD on the 13th or earlier, if feasible to do so. The MA would have such flexibility under our proposal, because the language currently refers to “on or before” the final date and we do not propose removing this text relative to proposed new date of the 14th. However, we do recognize that the day-later handler report deadline that we are proposing, would also be expected to require similar additional day for the MA staff to complete their work as well.

With respect to proposed new paragraph (h) in Section 1001.62, we are suggesting this amendment only because the current provision does not appear to give the MA flexibility in announcing the official producer pay price, if the stated report date of the 14th (currently the 13th) happens to fall on a weekend or a national holiday.

Under current conditions, the MA staff must work overtime or on the weekend, in order to get the necessary work done and the producer pay price announced on time, if the announcement date provided in the Order happens to fall on a weekend or a national holiday. We note that, on several occasions, the MA has announced the producer pay price on the 12th of the month under difficult time constraints. We believe the MA should not have to meet an unreasonable report deadline and therefore should be extended the same courtesy as is now provided handlers in making payments pursuant to Section 1000.90. This provision states “ If a date required for a payment contained in a Federal milk order falls on a Saturday, Sunday, or national holiday, such payment will be due on the next day that the market administrator’s office is open for public business.” Our proposal would give the MA the flexibility to adjust the producer price announcement date up to two additional days, if necessary, under such circumstances. We stress; however, that there is no requirement under our proposal that the MA use the extra time afforded.

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3. The third proposed “date” change involves the required date of settlement by handlers with the market administrator for payment to the producer settlement fund. The proposal, as written in the hearing notice is as follows:

Section 1001.71 Payments to the producer settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than two days after the announcement of the producer price differential and the statistical uniform price pursuant to Section 1001.62 (except as provided for in section 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section.

JUSTIFICATION RE: ITEM 3:

This proposal is intended primarily as a conforming change made necessary by the 1-day proposed extension in the date for filing MA reports and the computation of the producer price differential (PPD) and the statistical uniform price. It would make the handler payment deadline fit better with the date the uniform price is announced.

Currently, the Reform Order specifies that handler payments to the producer settlement fund be made no later than the 15th after the end of the month, unless modified pursuant to Section 1000.90, which provides additional time if the 15th falls on a weekend or a national holiday. In the latter circumstance, the payment to the PSF can be delayed to the next business day.

Since the current Order also specifies the 13th as deadline for computing the producer price differential (PPD), (a two-day interval from the 15th); we have similarly proposed a conforming two-day interval from the date that the PPD would be announced under our proposal. We also propose to maintain the existing special exemption pursuant to Section 1000.90, allowing additional time if the PPD is announced on a weekend or a national holiday.

Proponents consider the current handler payment requirement to the PSF (deadline of the 15th) difficult to comply with, given the current deadline mandated for computing the PPD and uniform price. Rather than proposing new handler payment deadline date extended by one day (which would be the 16th), we have instead simply proposed the new deadline be “no later than two days following date of the PPD price announcement. The change would better suit capital flow from handlers to the PSF from month to month, knowing the interval in business days from the time the PPD is announced to payment to the PSF—would always be no more than two business days. Our proposal gives handlers a consistent time frame in which to execute the capital transfers involved. It also enables improved concurrent billings for milk transfers or diversions , because a more consistent time interval is provided in which to ascertain what the MA assignment to classes was on such transfers at pool time.

* * * * *

4. The fourth and final “date” change set forth in Proposal No. 1 of the Hearing Notice, would amend the payment dates to producers in subparagraphs (a)(1) and (a)(2) of Section 1001.73.

The proposal was as follows:

Section 1001.73 Payments to producers and cooperative associations.

**** (introductory text unchanged)

(a) **** (Preliminary text in (a) unchanged)

- (1) Partial payment. For each producer who has not discontinued shipments as of the 23rd day of the month, payment shall be made so that it is received by the producer on or before the 30th day of the month (except as provided in Section 1000.90) for milk received during the first 15 days of the month at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.
- (2) Final payment. For milk received during the month, payment shall be made so it is received by each producer **no later than the day after the required day of payment by the market administrator the following month, pursuant to Section 1001.72**, in an amount computed as follows:

**** (subsequent text unchanged)

JUSTIFICATION: RE: ITEM 4:

The Primary purpose of this proposal is to make date of final payment to producers conform with the changes previously proposed in payment dates for computing the uniform price and in settlement dates to and from the producer settlement fund (PSF) account. We are, therefore, at this point in our statement, addressing the need to amend Section 1001.73(a) to best accommodate our prior "date change" amendment proposals.

We feel it important at this time, to also call attention to the fact that we did not propose any change in the requirement for "day-earlier" payment to cooperatives, as currently set forth in Section 1001.73(b). Our proposal would continue to relate the date for final payment to the day after payments are made by the MA from the PSF. Therefore, under our proposal, dates of final payment could move a day or two later, only if the date of payment from the PSF were extended the same number of days. This sequence in the relationship of date of final payment to date of payment from the PSF, should be continued.

Upon careful reflection on the issues involved with the several "date changes" proposed, we find it is necessary to move the date of "partial" or advance payments, as well. Otherwise, the number of days between dates of "partial" and "final" payments will narrow still more. We find that , during 2001, the current "spread" in days between final payment date for milk received the prior

month and the date of advance partial payment for milk received in the current month, averaged only 9 days—with the variation from 6 to 12 days. The 6-day spread was in February and the 12-day spread occurred in May. That spread in days would be reduced possibly 2-4 days pursuant to our proposed “date change” extensions. Consequently, we have proposed in paragraph (a)(1), that the date of Partial” payment be moved to the “30th” of the month instead of the “26th”, as now provided.

For the convenience of interested parties, we have attached TABLE 1, which shows year 2002 dates of partial advance and final milk payments to cooperatives, together with dates of payment into and out of the producer settlement fund account. From the data, we find that a much longer spread in days currently exists between dates of advance and final payments for milk received the same month. In 2002, that spread will average 22 days by year end, as shown in Table 1.

Making advance payments on or before the 30th of the month would conform more closely with the dates previously set in the respective orders prior to merger and, more importantly, would create better “spacing” between required pay dates, more to the liking of many independent producers as well as handlers. And while the date of advance payment was moved ahead under Order Reform, it is important to note that some cooperatives have not changed member pay dates in like manner. Other handler witnesses will testify at this hearing regarding the difficulties they have experienced under the current “partial” payment provisions contained in subparagraph (a)(1).

We also call attention to the fact that, while we propose the 30th as new deadline for the making of partial payments, actual advance pay dates may differ, as the proposed order language still refers to “on or before” the 30th of the month.

* * *

There is another NYSDFI proposed "date" change not included under Proposal No. 1 by USDA. Rather, it was "joined" with others (ADCNE & the Market Administrator) in Proposal No. 4, which would amend Section 1001.72, regarding dates of payment from the Producer Settlement Fund by the Market Administrator. Accordingly, we will address this issue in separate testimony on the merits of Proposal No. 4.

* * *

Finally, we call special attention to a marketing problem experienced by certain NYSDFI membership, which would be alleviated considerably, were the amended payment dates incorporated in Proposal No. 1 adopted by the Secretary. The "problem" relates to "tolled" bulk milk purchased by licensed milk distributors for processing and packaging into class 1 product at pool distributing plant(s). New cooperative 9 (C) provisions in Order 1, require that the "tolled" milk be purchased at the PPD and component prices, rather than at straight class 1 skim and butterfat prices, as before. Consequently, an adjustment is required each month for the MA "credit" issued to the processing handler on the 9 (C) receipts together with a "charge" for the MA assessment fee on the tolled milk. The processor must then prepare billing to the "distributor" at the difference between class 1 cost of the skim and butterfat and the 9 (C) credit from the market administrator, plus the MA fee involved. To do so, requires detailed component values as well as the final PPD price. The "billing" involved is made subsequent to the PPD price announcement and issuance by the MA of the Handler's pool obligation, which is needed to make the "billing" for the 9 (C) adjustment involved. This requires some additional time –after the MA announces the Uniform Price. Adoption of Proposal No. 1 by the Secretary will help proponent handler(s) who experience this special problem.

This concludes our statement on Proposal No.1, except for direct supporting testimony that may be offered by certain proponents.