DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1002, 1004, 1005, 1006, 1007, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1124, 1126, 1131, 1134, 1135, 1137, 1138 and 1139

DA-97-12

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

7 CFR Part	Marketing Area
1000	General Provisions of Federal Milk Marketing Orders
1001	New England
1002	New York-New Jersey
1004	Middle Atlantic
1005	Carolina
1006	Upper Florida
1007	Southeast
1012	Tampa Bay
1013	Southeastern Florida
1030	Chicago Regional
1032	Southern Illinois-Eastern Missouri
1033	Ohio Valley
1036	Eastern Ohio-Western Pennsylvania
1040	Southern Michigan
1044	Michigan Upper Peninsula
1046	Louisville-Lexington-Evansville
1049	Indiana
1050	Central Illinois
1064	Greater Kansas City
1065	Nebraska-Western Iowa
1068	Upper Midwest
1076	Eastern South Dakota
1079	Iowa

1106	Southwest Plains
1124	Pacific Northwest
1126	Texas
1131	Central Arizona
1134	Western Colorado
1135	Southwestern Idaho-Eastern Oregon
1137	Eastern Colorado
1138	New Mexico-West Texas
1139	Great Basin

SUMMARY: This final decision consolidates the current 31 Federal milk marketing orders into 11 orders. This consolidation complies with the 1996 Farm Bill which mandates that the current Federal milk orders be consolidated into between 10 to 14 orders. This decision also conforms to the Omnibus Consolidated and Emergency Supplemental Appropriations Bill, which requires that this decision be issued between February 1 and April 4, 1999, and extends the time for implementing Federal milk order reform amendments to October 1, 1999. This decision sets forth a replacement for the Class I price structure and replaces the basic formula price with a multiple component pricing system. This decision also establishes a new Class IV which would include milk used to produce nonfat dry milk, butter, and other dry milk powders; reclassifies eggnog; and addresses other minor classification changes. Part 1000 is expanded to include sections that are identical to all of the consolidated orders to assist in simplifying and streamlining the orders.

This decision does not provide for conducting referendums of producers to determine if they approve of the issuance of the consolidated orders.

DATE: A notice to conduct a referendum on each of the consolidated orders will be published separately at a future date.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Branch Chief, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-6274, e-mail address John_F_Borovies@usda.gov (after April 19, 1999, the e-mail address will change to John.Borovies@usda.gov).

For specific information on the Final Regulatory Impact Analysis and the Civil Rights Impact Analysis contact: John R. Mengel, Chief Economist, USDA/AMS/Dairy Programs, Office of Chief Economist, Room 2753, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-4664, e-mail address

John_R_Mengel@usda.gov (after April 19, 1999, the e-mail address will change to John.Mengel@usda.gov).

SUPPLEMENTARY INFORMATION:

Major changes from the proposed rule issued on January 21, 1998, are as follows:

1. Consolidation of marketing areas:

(a) The Western New York State order was removed from the proposed Northeast marketing area.

(b) Six currently-unregulated counties were removed from the consolidated Central marketing area.

(c) The current Western Colorado order was moved from the consolidated Western order to the consolidated Central marketing area along with 7 currently-unregulated Colorado counties.

2. Basic formula price replacement:

(a) The proposed Class III and Class IV pricing formulas are revised to adjust for product yields and make allowances that result in lowering the Class III and IV prices.

(b) Barrel cheese prices (NASS survey) are included in the Class III price formula.

(c) The basis for measuring the protein content in milk is changed from a test for total nitrogen to a test for true protein.

(d) Advance pricing for Class I will continue to be provided, but with a shorter time period (7 days vs. 25 days) prior to the effective month. The proposed rule had suggested a 6-month declining average mover.

(e) Provides for advance pricing for skim milk in Class II uses in the same manner as for Class I.

3. Class I price structure: Adopts a Class I price structure that uses the generally higher differential levels as proposed in Option 1A while retaining the pricing surface of the Department's preferred option.

4. Classification:

(a) Cream cheese is moved from Class II to Class III.

(b) Shrinkage calculations are revised.

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Consolidation Report

I. Prior Documents

Prior documents in this proceeding include:

Proposed Rule: Issued January 21, 1998; published January 30, 1998 (63 FR 4802).

Correction: Issued February 19, 1998; published February 25, 1998 (63 FR 9686).

Extension of Time: Issued March 10, 1998; published March 13,1998 (63 FR 12417).

II. Legislative And Background Requirements

Legislative Requirements

Section 143 of the Federal Agriculture Improvement and Reform Act of 1996 (Farm Bill), 7 USC § 7253, required that by April 4, 1999[1], the current Federal milk marketing orders issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), be consolidated into between 10 to 14 orders[2]. The Secretary of Agriculture (Secretary) is also directed to designate the State of California as a Federal milk order if California dairy producers petition for and approve such an order. In addition, the Farm Bill provided that the Secretary may address related issues such as the use of utilization rates and multiple

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[1]Section 143(b)(2) requires that a proposed rule be published by April 4, 1998, and Section 143(b)(3) provides that "in the event that the Secretary is enjoined or otherwise restrained by a court order from publishing or implementing the consolidation and related reforms under subsection (a), the length of time for which that injunction or other restraining order is effective shall be added to the time limitations specified in paragraph (2) thereby extending those time limitations by a period of time equal to the period of time for which the injunction or other restraining order is effective."

[2] Since this proceeding was initiated on May 2, 1996, the Black Hills, South Dakota and the Tennessee Valley orders have been terminated. Effective October 1, 1996, the operating provisions of the Black Hills order were terminated (61 FR 47038), and the remaining administrative provisions were terminated effective December 31, 1996 (61 FR 67927). Effective October 1, 1997, the operating provisions of the Tennessee Valley order were terminated (62 FR 47923). The remaining administrative provisions of the Tennessee Valley order will be terminated before this consolidation process is completed.

basing points for the pricing of fluid milk and the use of uniform multiple component pricing when developing one or more basic prices for manufacturing milk[3].

Besides designating a date for completion of the required consolidation, the Farm Bill further required that no later than April 1, 1997, the Secretary shall submit a report to Congress on the progress of the Federal order reform process that included: a description of the progress made toward implementation, a review of the Federal order system in light of the reforms required, and any recommendations considered appropriate for further improvements and reforms. This report was submitted to Congress on April 1, 1997[4].

Finally, the 1996 Farm Bill specified that USDA use informal rulemaking to implement these reforms.

Background

The authorization of informal rulemaking to achieve the mandated reforms of the Farm Bill has resulted in a rulemaking process that is substantially different from the formal rulemaking process required to promulgate or amend Federal orders. The formal rulemaking process requires that decisions by USDA be based solely on the evidentiary record of a public hearing held before an Administrative Law Judge. Formal rulemaking involves the presentation of sworn testimony, the cross-examination of witnesses, the filing of briefs, the issuance of a recommended decision, the filing of exceptions, the issuance of a final decision that is voted on by affected producers, and upon approval by producers, the issuance of a final order.

The informal rulemaking process does not require these procedures. Instead, informal rulemaking provides for the issuance of a proposed rule by the Agricultural Marketing Service,

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[3]The Omnibus Consolidated and Emergency Supplemental Appropriations Bill, passed in October 1998, extended the time frame for implementing Federal milk order reform amendments from April 4, 1999, to October 1, 1999. The extension specifies that the final decision, defined as the final rule for purposes of this legislation, will be issued between February 1 and April 4, 1999, with the new amendments becoming effective on October 1, 1999. The legislation also provides that California has from the date of issuance of the final decision until September 30, 1999, to become a separate Federal milk marketing order.

[4]Copies of the Report to Congress can be obtained from Dairy Programs at (202) 720-4392 or via the Internet at http://www.ams.usda.gov/dairy/.

a period of time for the filing of comments by interested parties, and the issuance of a final decision by the Secretary. Referendums will be conducted to determine approval of the final decision by the requisite number of producers before the new orders will become effective.

Full participation by interested parties has been essential in the reform of Federal milk orders. The issues are too important and complex to be developed without significant input from all facets of the dairy industry. The experience, knowledge, and expertise of the industry and public have been integral to the development of the rule. To ensure that maximum public input into the process was received, USDA developed a plan of action and projected time line. The plan of action developed consists of three phases: developmental, rulemaking, and implementation.

The first phase of the plan was the developmental phase. The use of a developmental phase allowed USDA to interact freely with the public to develop viable proposals that accomplished the Farm Bill mandates, as well as related reforms. The USDA met with interested parties to discuss the reform process, assisted in developing ideas or provided data and analysis on various possibilities, issued program announcements, and requested public input on all aspects of the Federal order program. The developmental phase began on April 4, 1996, and concluded with the issuance of the proposed rule on January 21, 1998 (68 FR 4802).

The second phase of the plan is the rulemaking phase. The rulemaking phase began with the issuance and publication of the proposed rule. The proposed rule provided the public 60 days to submit written comments on the reform proposals to USDA. On March 10, 1998, (68 FR 12417) the comment period was extended for an additional 30 days until April 30, 1998. In addition to requests for written comments, four listening sessions were held to receive verbal comments on the proposed rule. All comments were reviewed and considered prior to the issuance of this rule.

The third and final phase of the plan is the implementation phase. The implementation phase begins after this rule is published in the **Federal Register**. This phase consists of informational meetings conducted by Market Administrator personnel and referendums.[5] The objective of the informational meetings is to inform producers and handlers about the newly consolidated orders and explain the projected effects on producers and handlers in the new marketing order areas. After informational meetings

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[5]As previously noted, this is also the time period in which California can consider becoming a Federal order based on the Omnibus Consolidated and Emergency Supplemental Appropriations Bill provisions.

are held, the referendums will be conducted. Upon approval of the consolidated orders and related reforms by the required number of producers in each marketing area, a final order implementing the new orders will be issued and published in the **Federal Register**.

Although all of the issues regarding Federal milk order reform are interrelated, USDA established several committees to address specific issues. The use of committees allowed the reform process to be divided into more manageable tasks. The committees worked throughout the developmental and rulemaking phases. The committees established were: Price Structure, Basic Formula Price, Identical Provisions, Classification, and Regional. The Regional committee was divided into four sub-committees: Midwest, Northeast, Southeast, and West. Committee membership consisted of both field and headquarters Dairy Programs personnel. The committees were given specific assignments related to their designated issue and began meeting in May 1996.

In addition to utilizing USDA personnel, partnerships were established with two university consortia to provide expert analyses on the issues relating to price structure and basic formula price options. Dr. Andrew Novakovic of Cornell University led the analysis on price structure and published a staff paper entitled "U.S. Dairy Sector Simulator: A Spatially Disaggregated Model of the U.S. Dairy Industry" and a research bulletin entitled "An Economic and Mathematical Description of the U.S. Dairy Sector Simulator"[6] Dr. Ronald Knutson of Texas A&M University led the analysis on basic formula price options and published three working papers entitled "An Economic Evaluation of Basic Formula Price (BFP) Alternatives", "The Modified Product Value and Fresh Milk Base Price Formulas as BFP Alternatives", and “Evaluation of ’Final’ Four Basic Formula Price Options”.[7]

Actions Completed During Developmental Phase

USDA maintained frequent contact with the industry regarding the reform process. To begin, on May 2, 1996, the Agricultural Marketing Service (AMS) Dairy Division issued a memorandum to interested parties announcing the planned procedures for

[6]Copies of these reports may be obtained by contacting Ms. Wendy Barrett, Cornell University, ARME, 348 Warren Hall, Ithaca, NY 14853-7801, (607) 255-1581,

[7]Copies of these reports may be obtained by contacting Dr. Ronald Knutson, Agricultural and Food Policy Center, Dept. of Ag. Economics, Texas A&M University, College Station, TX 77843-2124, (409) 845-5913.

implementing the Farm Bill[8]. In this memorandum, all interested parties were requested to submit ideas on reforming Federal milk orders, specifically as to the consolidation and pricing structure of orders. Input was requested by July 1, 1996.

On June 24, 1996, USDA issued a press release announcing that a public forum would be held in Madison, Wisconsin, on July 29, 1996. The forum would address price discovery techniques for the value of milk used in manufactured dairy products. Thirty-one Senators, Congressmen, university professors, representatives of processor and producer organizations, and dairy farmers made presentations at the forum.

On October 24, 1996, AMS Dairy Division issued a memorandum to interested parties requesting input regarding all aspects of Federal milk order reform and specifically as to its impact on small businesses. USDA anticipated that the consolidation of Federal orders would have an economic impact on handlers and producers affected by the program, and USDA wanted to ensure that, while accomplishing their intended purpose, the newly consolidated Federal orders would not unduly inhibit the ability of small businesses to compete.

On December 3, 1996, AMS Dairy Division issued a memorandum to interested parties announcing the release of the preliminary report on Federal milk order consolidation. The report suggested the consolidation of the then current 32 Federal milk orders into ten orders. (See Appendix A for report summary.) The memorandum requested input from all interested parties on the suggested consolidated orders and on any other aspect of the milk marketing order program by February 10, 1997.

On March 7, 1997, AMS Dairy Division issued a memorandum to interested parties announcing the release of three reports that addressed the Class I price structure, the classification of milk, and the identical provisions contained in a Federal milk order. The price structure report consisted of a summary report and a technical report and discussed several options for modifying the Class I price structure. (See Appendix B for report summary.) The classification report recommended the reclassification of certain dairy products, including the removal of Class III-A pricing for nonfat dry milk. (See Appendix C for report summary.) The identical provisions report recommended simplifying, modifying, and eliminating unnecessary differences in Federal order provisions. (See Appendix D for report summary.) Comments

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[8]Copies of this announcement and all subsequent announcements and reports can be obtained from Dairy Programs at (202) 720-4392, any Market Administrator office, or via the Internet at http://www.ams.usda.gov/dairy/.

on the contents of these reports, as well as on any other aspect of the program, were requested from interested parties by June 1, 1997.

On April 18, 1997, AMS Dairy Division issued a memorandum to interested parties announcing the release of the preliminary report on Alternatives to the Basic Formula Price (BFP). The report contained suggestions, ideas, and initial findings for BFP alternatives. Over eight categories of options were identified with four options recommended for further review and discussion. (See Appendix E for report summary.) The memorandum requested input from all interested parties on a BFP alternative and on any other aspect of the milk marketing order program by June 1, 1997.

On May 20, 1997, AMS Dairy Division issued a memorandum to interested parties announcing the release of a revised preliminary report on Federal milk order consolidation. The revisions were based on the input received from interested parties in response to the initial preliminary report on order consolidation. (See Appendix F for report summary.) Instead of suggesting 10 consolidated orders as in the first report, the revised report suggested 11 consolidated orders and suggested the inclusion of some currently unregulated territory. The memorandum requested comments from all interested parties on the suggested consolidated orders and on any other aspect of the milk marketing order program by June 15, 1997.

To elicit further input on the role of the National Cheese Exchange price in calculating the basic formula price, on January 29, 1997, the Secretary issued a press release announcing steps being taken by USDA to address concerns raised by dairy producers about how milk prices are calculated. In the press release, the Secretary requested further comments from interested parties about the use of the National Cheese Exchange in the determination of the basic formula price, which is the minimum price that handlers must pay dairy farmers for milk used to manufacture Class III products (butter and cheese) and the price used to establish the Class I and Class II prices. These comments were requested by March 31, 1997, and were useful in analyzing alternatives to the basic formula price in context of the order reform process.

Actions Completed During Rulemaking Phase

On January 21, 1998, USDA issued a proposed rule (68 FR 4802) that recommended consolidating the current 31 orders into 11 orders, proposed two options for consideration as a replacement for the Class I price structure, and recommended replacing the basic formula price. The proposed rule also recommended establishing a new Class IV which would include milk used to produce nonfat dry milk, butter, and other dry milk powders;

recommended reclassifying eggnog and cream cheese, addressing other minor classification issues; and recommended expanding part 1000 to include sections that are identical to all of the consolidated orders. A Preliminary Regulatory Impact Analysis (PRIA) was also issued that evaluated the costs and benefits of the proposed rule contents and alternatives. Comments were requested on the proposed rule and the PRIA on or before March 31, 1998. An informational packet describing the contents of the proposed rule was sent to interested parties.

On March 10, 1998, USDA issued a document that extended the time for filing comments on the proposed rule an additional 30 days, until April 30, 1998. The document also announced that USDA would conduct four listening sessions to assist interested parties in submitting comments to USDA. The listening sessions were held on March 30 in Atlanta, Georgia; Liverpool, New York; and Dallas, Texas; and on March 31 in Green Bay, Wisconsin.

On April 15, 1998, AMS Dairy Programs announced the issuance of a report entitled “Report on the Impacts of the Federal Order Reform Proposals on Food and Nutrition Service Programs, Participants, and Administering Institutions” by the Food and Nutrition Service of USDA. The report analyzed the potential impacts of the milk order reform pricing proposals contained in the proposed rule on the Food Stamp Program, the Women, Infants, and Children Program, and the National School Lunch and Breakfast Programs.[9] The report indicated that adoption of the proposed rule with either Class I price structure would have minimal economic impact on these programs. Comments on the report were requested by April 30, 1998. No comments were received.

Public Interaction and Input

As a result of the developmental phase announcements and forum, more than 1,600 individual comments were received by USDA. In addition to the individual comments, more than 2,000 form letters were received. As a result of the rulemaking phase proposed rule and listening sessions, nearly 4,500 additional comments were received. A further breakdown of the rulemaking comments by issue is as follows: 1,273 consolidation; 376 basic formula price; 4,224 Class I price structure; 101 classification; and 79 provisions applicable to all orders.

The proposed rule provided interested parties an opportunity to file comments until March 31, 1998. This period was later extended to April 30, 1998. Over 205 comments were postmarked

[9] Copies of this report can be obtained from Dairy Programs at (202) 720-4392, or via the Internet at http://www.ams.usda.gov/dairy/.

after the April 30th deadline. Most of these comments did not raise any issues that were not previously addressed by comments timely submitted and considered in this rulemaking.

All comments that were reviewed by USDA personnel were available for public inspection at USDA. To assist the public in accessing the comments, USDA contracted to have the comments scanned and published on compact discs. The use of this technology allowed interested parties throughout the United States access to the information received by USDA.

USDA also made all publications and requests for information available on the Internet. A separate page under the Dairy Programs section of the AMS Homepage was established to provide information about the reform process. To assist in transmitting correspondence to USDA, a special electronic mail account--Milk_Order_Reform@usda.gov--was opened to receive input on Federal milk order reforms.

USDA personnel met frequently with interested parties from May 1996 through the issuance of the proposed rule to gather information and ideas on the consolidation and reform of Federal milk orders. During this time period, USDA personnel addressed over 250 groups comprised of more than 22,000 individuals on various issues related to Federal order reform.

USDA personnel also conducted in-person briefings for both the Senate and House Agricultural Committees on the progress of Federal milk order reforms. Since May 1996, nine briefings were conducted for the committees. The briefings advised the committees of the plan of action for implementing the Farm Bill mandates; explained the preliminary report on the consolidation of Federal milk orders; explained the contents of the reports addressing Class I price structure, classification of milk, identical provisions and basic formula price; discussed the congressional report; and explained the proposed rule contents.

To ensure the involvement of all interested parties, particularly small businesses as defined in the Initial Regulatory Flexibility Analysis (IRFA), in the process of Federal order reform, three primary methods of contact were used: direct written notification, publication of notices through various media forms, and speaking and meeting with organizations and individuals regarding the issue of Federal order reforms. In addition, information has been made available to the public via the Internet. USDA also made one written program announcement specifically requesting information from small businesses. Comments were also specifically requested on the IRFA published in the January 21, 1998, proposed rule. More than 1,000 comments were received from interested parties that specifically stated or documented they were small businesses. However, this number may not be fully representative of the number of small businesses that actually submitted comments because a majority of commenters did not indicate their size. A few comments specifically addressed the IRFA, Executive Order 12866, and the paperwork reduction analysis.

All announcements and an information packet summarizing the proposed rule were mailed to over 20,000 interested parties, State Governors, State Department of Agriculture Secretaries or Commissioners, and the national and ten regional Small Business Administration offices. In addition, most dairy producers under the orders were notified through regular market service bulletins published by Market Administrators on a monthly basis. Press releases were issued by USDA for the May 2, 1996, December 3, 1996, January 29, 1997, March 7, 1997, and May 20, 1997, announcements; for the July 31, 1996, public forum; for the January 21, 1998, proposed rule; and for the March 30 and 31, 1998, listening sessions and extension of time for submitting comments.[10] These press releases were distributed to approximately 33 wire services and trade publications and to each State Department of Agriculture Communications Officer. These methods of notification helped to ensure that virtually all identified small businesses were contacted.

Departmental personnel, both in the field and from Washington, actively met with interested parties to gather input and to clarify and refine ideas already submitted. Formal presentations, round table discussions, and individually scheduled meetings between industry representatives and Departmental personnel were held. Over 250 organizations and more than 22,000 individuals were reached through this method. Of these individuals, approximately 13,400 were identified as small businesses.

Executive Order 12988

This final decision has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937 (AMAA), as amended, provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing

[10]Copies of these press releases may be obtained from Dairy Programs at (202) 720-4392, or via the Internet at http://www.ams.usda.gov/news/newsrel.htm.

with the Secretary 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 law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary 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 Secretary'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.

Executive Order 12866

The Department is issuing the final decision in conformance with Executive Order 12866. The final decision is determined to be economically significant for the purposes of Executive Order 12866. When adopting regulations which are determined to be economically significant, agencies are required, among other things, to: assess the costs and benefits of available regulatory alternatives; base regulatory decisions on the best reasonably-obtainable technical, economic, and other information; avoid duplicative regulations; and tailor regulations to impose the least burden on society consistent with obtaining regulatory objectives. Therefore, to assist in fulfilling the objectives of Executive Order 12866, the Department prepared a final Regulatory Impact Analysis (RIA) for this action. Information contained in the RIA pertains to the costs and benefits of the revised regulatory structure and is summarized in the following analysis. Copies of the RIA can be obtained from Dairy Programs at (202) 720-4392, any Market Administrator office, or via the Internet at http://www.ams.usda.gov/dairy.

This regulatory action is in accordance with Section 143 of the Federal Agriculture Improvement and Reform Act of 1996, 7 U.S.C. §7253, (the Farm Bill) which required the Secretary of Agriculture (Secretary) to consolidate the existing 31 Federal milk marketing orders, as authorized by the AMAA, into between 10 and 14 orders. The Farm Bill further provided that the Secretary may address related issues such as the use of utilization rates and multiple basing points for the pricing of fluid milk and the use of uniform multiple component pricing when developing one or more basic formula prices for manufacturing milk. The Secretary was also directed to designate the State of California as a Federal milk order if California dairy producers petition for and approve such an order. Finally, the Farm Bill specified that the Department of Agriculture use informal rulemaking to implement these reforms.

The Farm Bill required that a proposed rule be published by

April 4, 1998, and all reforms of the Federal milk order program be completed by April 4, 1999. However, the Omnibus Consolidated and Emergency Supplemental Appropriations Bill, passed in October 1998, extended the time frame for implementing Federal milk order reform amendments from April 4, 1999, to October 1, 1999. The extension specified that the final decision, defined as the final rule for purposes of this legislation, be issued between February 1 and April 4, 1999, with the new amendments becoming effective on October 1, 1999. The legislation also provides that California has from the date of issuance of the final decision until September 30, 1999, to become a separate Federal milk marketing order.

The final decision sets forth the consolidation of the current 31 Federal milk orders into 11 orders. The marketing areas are: Northeast, Mideast, Upper Midwest, Central, Appalachian, Southeast, Florida, Southwest, Arizona-Las Vegas, Western, and Pacific Northwest. Several issues related to the consolidation of Federal milk orders are also addressed. The final decision contains a replacement for the current Class I price structure and the basic formula price (BFP). The final decision adopts a Class I price structure that uses the proposed Option 1B price surface as modified to provide for better alignment of Class I prices and increases the differential level by 40 cents. The current BFP is replaced with a multiple component pricing system that derives component values from surveyed prices of manufactured dairy products. These changes set the stage for increasing efficiencies in supplying the milk needs of Class I markets and address concerns that the BFP is no longer a statistically significant measure of the value of manufacturing milk.

The rule also classifies milk into four classes according to the products made from such milk. Milk used to produce defined fluid milk products is classified as Class I milk. Milk used to produce defined soft manufactured products is classified as Class II milk. Class III milk is milk used to produce cream cheese and defined hard manufactured cheeses, and Class IV milk is milk used to produce butter and all milk powders.

The minimum monthly price for milk classified as Class I is equal to the Class I differential specified for each marketing order plus the Class I price mover announced on or before the 23rd day of the month preceding the month for which the price is being announced. The Class I price mover is equal to the higher result from the formulas used to establish Class III and Class IV prices using weighted average prices for manufactured products as published by the National Agricultural Statistics Service (NASS) for the most recent two weeks preceding the 23rd of the month. Weekly prices are weighted by sales volumes reported by NASS.

Finally, this rule expands Part 1000 to include provisions that are identical within each consolidated order to assist in simplifying the regulations. These provisions include the definitions of route disposition, plant, distributing plant, supply plant, nonpool plant, handler, other source milk, fluid milk product, fluid cream product, cooperative association, and commercial food processing establishment. In addition, the milk classification section, pricing provisions, and most of the provisions relating to payments have been included in the General Provisions. These changes adhere with the efforts of the National Performance Review - Regulatory Reform Initiative to simplify, modify, and eliminate unnecessary repetition of regulations. Unique regional issues or marketing conditions have been considered and included in each market's order provisions.

In the summary of the initial RIA for the January 21, 1998, proposed rule, the economic impact of certain individual sections of the regulations were discussed that were considered to be economically significant. Not all of the changes contained in the proposed rule were considered economically significant. The sections individually addressed in the January 21st proposed rule were marketing area consolidation, the BFP, the Class I pricing structure and classification provisions. Since these are adopted together in the final decision, this analysis reviews the impacts of adopting all of the provisions simultaneously on the dairy industry. The analysis also reviews the impacts of adopting the provisions contained in the January 21st proposed rule with two alternative Class I pricing structures.

The final RIA and the final decision explain in detail the components adopted in the Federal order regulations and analyzed by the model. A review of the projected economic impacts of the final decision and the projected economic impacts of the alternatives that were considered on dairy producers, processors, consumers, and international trade follows. The projected impacts are compared to the baseline projections over a 6-year period from the years of 2000-2005. The baseline assumes that the Class III price would be the BFP, the Class II price would be the BFP plus 30 cents, each region's Class I price would be the BFP plus the current Class I differential and the Class III-a price would continue. The RIA details the impacts of the final decision and the other options considered on each current order, the Federal orders combined, the State of California, and the United States.

The following table summarizes the impacts of adopting the newly consolidated orders and their specific provisions, including the Class I price structure adopted in this final decision. The table also provides data detailing the projected impacts of the consolidated orders and the specific provisions utilizing the two alternative Class I price structures--Location-Specific Differentials (Option 1A) and Relative-Value Specific Differentials (Option 1B). Since adopting new Federal milk order provisions affect both the regulated dairy industry and associated producers, as well as the unregulated and State regulated dairy industries, a comparison of the impacts both Federally and US-wide are included where possible.

Comparisons of Certain Impacts of Consolidated Order Changes Utilizing Three Price Structures on Federal Order (Fed) and U.S. data: 6-year Averages (2000-2005)[1]

			Change From Baseline:		
	Unit	Baseline	Final Decision	Modified Option 1B	Modified Option 1A
Class I Diff. (Fed)	$/cwt	2.56	-0.29	-0.69	0.04
Class I price (Fed)	$/cwt	16.22	-0.19	-0.49	0.08
Class I price (U.S.)	*$/cwt*	*16.26*	*-0.14*	*-0.38*	*0.06*
All-Milk Price (Fed)	$/cwt	15.23	-0.02	-0.10	0.03
All-Milk Price (U.S.)	*$/cwt*	*14.73*	*0.00*	*-0.05*	*0.04*
Milk Marketings (Fed)[2]	mil lbs	111,182.0	8.3	-130.8	149.0
Milk Marketings (U.S.)	*mil lbs*	*165,142.2*	*15.2*	*-90.9*	*128.7*
Class I use (Fed)	mil lbs	46,955.7	42.0	106.7	-16.6
Class I use (U.S.)	*mil lbs*	*58,782.2*	*37.7*	*98.8*	*-14.9*
Cash Receipts (Fed)[3]	mil $	16,944.5	-2.5	-128.4	104.9
Cash Receipts (U.S.)[4]	*mil $*	*24,347.9*	*3.5*	*-89.9*	*77.0*
Retail Price (Fed)	$/gal		-0.02	-0.04	0.01

Fluid Expend. (Fed)	mil $	7,617.8	-80.2	-215.4	36.4
Fluid Expend. (U.S.)	*mil $*	*9,562.0*	*-79.1*	*-209.7*	*31.3*
Manufac. Expend. (Fed)	mil $	9,326.7	77.7	87.0	68.5
Manufac. Expend. (U.S.)	*mil $*	*14,785.9*	*82.5*	*119.8*	*45.7*

[1] Includes the effects of the Class II, III, and IV pricing formulas.

[2] Changes in the Final Decision and Modified Option 1A marketings do not include the additional milk from the Upper Midwest and Chicago Regional orders that is expected to be pooled under these options.

[4] Cash receipts do not reflect the termination of the $0.15 per hundredweight transportation credit in the New York-New Jersey order and exclude the income from additional pooled milk in the consolidated Upper Midwest order for the Final Decision and Modified Option 1A.

[5] Cash receipts do not reflect the termination of the $0.15 per hundredweight transportation credit in the New York-New Jersey order and exclude the income from additional pooled milk in the consolidated Upper Midwest order for the Final Decision and Modified Option 1A.

As is evidenced by the summary table, the economic impacts resulting from the adoption of the final decision are minimal when compared to the total values included in the Federal order system and in the U.S. This is also true with the alternative options that were considered. Changes in the all-milk price, milk marketings, Class I use, and cash receipts all represent less than one percent of the total baseline projections. Although the total impacts are minimal from a national perspective, producers, processors, and consumers may experience a greater impact on a more localized level as is described in the RIA.

The consolidation of Federal milk orders into 11 orders with the adopted price structure and all other provision modifications of the final decision best adheres to the requirements of the Farm Bill while fulfilling the objectives of the AMAA. The changes adopted in the final decision enhance the efficiencies of fluid milk markets while maintaining equity among processors of fluid milk selling in marketing order areas and among dairy farmers supplying the areas’ fluid demands. The final decision provisions achieve this while having minor overall impacts on the Federal order system and on the U.S. dairy industry. Although both of the alternatives considered also have minimal impacts, the final decision best achieves economic efficiencies, equity, and program objectives.

Final Decision:

A brief review of the impacts that are projected to occur with the implementation of the final decision are:

Producers. In general, producers in markets located in the western, southwestern, and northeastern areas of the U.S. may not fare as well as producers located in other parts of the country, as measured by the all-milk price and cash receipts from milk marketings. The average all-milk price for the combined Federal order markets is expected to average $0.02 per hundredweight lower than the baseline. The average all-milk price is projected to increase in 13 current markets from $0.01 to $0.52 per hundredweight and decrease in 19 markets from $0.01 to $0.50. One market is estimated to average unchanged. The average all-milk price throughout the entire U.S. is projected to remain unchanged. It is important to recognize that the all-milk price can be impacted considerably by the change in the Class I utilization due to consolidation and the necessary alignment of Class I prices within consolidated areas.

Over the 2000-2005 period, gross cash receipts within the Federal order system are expected to increase an estimated $222.3 million primarily because of changes in transportation payments and the pooling of additional milk under the Federal order system. After adjusting for these changes, annual cash receipts are projected to decline from the baseline an average of $2.5 million during the 6-year period. With the baseline cash receipts averaging $16,944.5 million this represents a very insignificant reduction. Fifteen markets are projected to have increases with 18 markets projected to have decreases.

Processors. Since the final decision is expected to have little effect on where milk is produced, little impact is expected on fluid milk processors or manufacturers of dairy products. Impacts on fluid milk processors will likely result from changes in the minimum Class I and Class II prices that are the handler's obligation under the Federal order system. Fluid processors in 14 of the current Federal order markets will experience increased differentials, while processors in 17 of the markets will see decreases. Fluid processors in two markets will see no change. The estimated weighted average Class I differential for all current Federal order markets would decrease $0.29 per hundredweight. The all-market average Federal order Class I price would decrease $0.19 per hundredweight when compared to the baseline during the years of 2000-2005. The value of manufacturing milk would be increased, on average, $82.5 million per year during the six-year period.

Consumers. Since adoption of the final decision is projected to result in a slight decrease in the average Class I price for the years of 2000-2005, it is expected that average retail prices will decrease about $0.02 per gallon. On an individual order basis, the changes in the average retail price per gallon may range from an increase of $0.06 to a decrease of $0.09. Although consumers will be spending less on fluid milk products, consumption is projected to remain relatively unchanged.

International Trade. Adopting the final decision is not expected to have a significant impact on domestic butter and nonfat dry milk prices and therefore, little change in international trade is expected. International trade of raw milk and fluid milk products between the United States, Mexico, and Canada should be unaffected. However, the increase in the Class II price could negatively affect the Mexican market for those products.

Other Alternatives:

Although implementation of the consolidated orders with either the Option 1B or Option 1A price surface would still result in less than a projected one percent change in overall Federal order and U.S. prices, cash receipts, and marketings, these two alternatives do not promote market efficiencies, equity or program objectives as well as the provisions adopted and would not result in the most preferable allocation of resources over time. A brief review of the impacts that were projected to occur with the implementation of these two alternatives are:

Producers. In general, Option 1B would have reduced producer income in total and would have reduced the proportion of the Class I value represented in Federal order pools. Mainly producers located in the Upper Midwest and Florida areas would have benefitted while producers throughout the rest of the U.S. would have been negatively impacted. The all-milk price for all Federal order markets combined was expected to average $0.10 per hundredweight lower than the baseline during the years of 2000-2005. The average all-milk price was projected to increase in 10 current markets from $0.06 to $0.42 per hundredweight and decrease in 23 markets from $0.01 to $0.61 during this time period. This would have resulted in changing the gross cash receipts on an individual order basis during this period ranging from an annual average decrease of $48.4 million to an increase of $38.5 million. Overall, gross cash receipts would have averaged $128.4 million less than currently received.

Under Option 1A the all-milk price for all Federal order markets combined was expected to average $0.03 per hundredweight higher than the baseline during the years of 2000-2005. The average all-milk price was projected to increase in 15 current markets from $0.01 to $0.34 per hundredweight and decrease in 18 markets from $0.01 to $0.66. These changes would have resulted in changing the gross cash receipts on an individual order basis during this period ranging from an annual average decrease of

$10.3 million to an increase of $48.4 million. Overall, gross cash receipts would have averaged $104.9 million higher than currently received.

Processors. Since Option 1B would have lowered the Class I differentials by a weighted average of $0.69 per hundredweight, the all-market average Class I price charged to fluid handlers would have declined by $0.49 per hundredweight when compared to the baseline during the years of 2000-2005. Lower Class I prices would have been expected to increase sales of fluid milk within the Federal order system by an annual average of 106.7 million pounds, representing less than a one percent increase. Similar responses would have occurred throughout the U.S. Fluid processors would have benefitted from lower fluid milk prices and increased fluid milk sales.

Option 1A would have increased Class I differentials by a weighted average of $0.04 per hundredweight resulting in the all-market average Class I price charged to fluid handlers increasing by $0.08 per hundredweight when compared to the baseline during the years of 2000-2005. Since the impact of the increased Class I prices would have resulted in an insignificant decrease in fluid milk consumption within the Federal order system, a decrease of 16.6 million pounds, and within the U.S., a decrease of 14.9 million pounds, this option would have little expected overall effect on processors or manufacturers of dairy products.

Consumers. Since adoption of Option 1B was projected to result in a decrease in the average Class I price for the period 2000-2005, it was expected that retail prices would decrease an average of $0.04 per gallon. On an individual order basis the changes in the average retail price per gallon would have ranged from an increase of $0.03 to a decrease of $0.12. As a result of the overall price decrease, consumers would have spent less on fluid milk products while increasing consumption. The increase in fluid consumption was estimated to be less than one percent.

Since adoption of Option 1A was projected to result in an increase in the average Class I price for the period of the years 2000-2005, it was expected to minimally increase retail prices an average of $0.01 per gallon. On an individual order basis the changes in the average retail price per gallon would have ranged from an increase of $0.05 to a decrease of $0.01. As a result of the price increase, consumers would have spent slightly more on fluid milk products and purchased about the same amount of milk for fluid use.

International Trade. Options 1B or 1A were not expected to have a significant impact on domestic butter and nonfat dry milk prices and therefore, little change in international trade would have resulted. International trade of raw milk and fluid milk products between the United States, Mexico, and Canada would have been unaffected.

In response to the final decision, the Food and Nutrition Service updated the analysis on the impacts of Federal Order reform provisions on Food and Nutrition Service programs, participants, and administering institutions. The updated report analyzes the potential impacts of the milk order reform pricing provisions contained in the final decision on the Food Stamp Program, the Women, Infants, and Children Program, and the National School Lunch and Breakfast Programs. The report also analyzes impacts of adopting either of the alternative Class I price structure options. The report indicates that adoption of the final decision provisions, as well as either of the alternatives considered, will have minimal economic impact on these programs. This report is included in the final RIA appendix.

The impacts of the provisions adopted in the final decision or either of the alternatives considered are minimal when compared to the total marketings and revenue generated in the dairy industry both on a national and Federal order basis. However, neither of the alternative options considered would appear to improve market efficiencies or equity as well as adopting the provisions contained in the final decision. Based on the analyses completed, the final decision regulations have been tailored to impose the least burden on society while meeting regulatory objectives. In doing so, these regulations will replace current regulations and will not duplicate any current regulations that may exist.

Civil Rights Impact Analysis Executive Summary

Pursuant to Departmental Regulation (DR) 4300-4, a Civil Rights Impact Analysis (CRIA) reviews the final decision regarding reforms to the Federal Milk Marketing Order program to identify any provisions within the final decision with actual or potential adverse effects for minorities, women, and persons with disabilities.

The CRIA includes descriptions of (1) the purpose of performing a CRIA; (2) the civil rights policy of the U.S. Department of Agriculture (USDA); and (3) basics of the Federal milk marketing order program are provided for background information. The civil rights impact analysis of Federal Order Reform meets the requirements prescribed by DR 4300-4. As part of the analysis, the extensive outreach efforts of USDA through the entire reform process and after the final decision is published are highlighted. Additionally, statistical detail is provided of the characteristics of the dairy producer and general populations located within the current and consolidated marketing areas.

The analysis discloses no potential for affecting dairy farmers with specific characteristics differently than the general population of dairy farmers. All producers, regardless of race, national origin, or disability choosing to deliver milk to a Federal order regulated handler will receive the minimum blend price.

Copies of the Civil Rights Impact Analysis can be obtained from Dairy Programs at (202) 720-4392; any Market Administrator office; or via the Internet at http://www.ams.usda.gov/dairy/.

The Regulatory Flexibility Act and the Effects on Small Businesses.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agricultural Marketing Service (AMS) has considered the economic impact of the rule on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act provides, in summary, that when preparing such analysis an agency shall address: the need for and objectives of the rule; summary of the significant issues raised in public comments, agency assessment of the issues raised, and changes made to the proposed rule based on these issues; the kind and number of small entities affected; the recordkeeping, reporting, and other requirements; and steps taken to minimize the economic impact on small entities.

This regulatory action is in accordance with Section 143 of the Federal Agriculture Improvement and Reform Act of 1996, 7 U.S.C. §7253, (the Farm Bill) which required the Secretary of Agriculture (Secretary) to consolidate the existing 31 Federal milk marketing orders, as authorized by the Agricultural Marketing Agreement Act of 1937 (AMAA), into between 10 and 14 orders. The Farm Bill further provided that the Secretary may address related issues such as the use of utilization rates and multiple basing points for the pricing of fluid milk and the use of uniform multiple component pricing when developing one or more basic prices for manufacturing milk. The Secretary was also directed to designate the State of California as a Federal milk order if California dairy producers petition for and approve such an order. Finally, the Farm Bill specified that the Department of Agriculture use informal rulemaking to implement these reforms.

The Farm Bill required that a proposed rule be published by April 4, 1998, and all reforms of the Federal milk order program be completed by April 4, 1999. However, the Omnibus Consolidated and Emergency Supplemental Appropriations Bill, passed in October 1998, extended the time frame for implementing Federal milk order reform amendments from April 4, 1999, to October 1, 1999. The extension specified that the final decision, defined as the final rule for purposes of this legislation, be issued between February 1 and April 4, 1999, with the new amendments becoming effective on October 1, 1999. The legislation also provides that California has from the date of issuance of the final decision until

September 30, 1999, to become a separate Federal milk marketing order.

The final decision sets forth the consolidation of the current 31 Federal milk orders into 11 orders. Several issues related to the consolidation of Federal milk orders are also addressed. The final decision contains a replacement for the Class I price structure and the basic formula price. These changes set the stage for increasing efficiencies in supplying the milk needs of Class I markets and address concerns that the BFP is no longer a statistically significant measure of the value of manufacturing milk. The final decision also changes the classification of milk by (1) establishing Class IV provisions which would include milk used to produce nonfat dry milk, butter, and other dry milk powders; (2) reclassifying eggnog; and (3) making other minor classification changes. These changes recognize the position of butter and milk powders as residual products that balance the supply of milk with overall demand, and equalize the cost of competing products. Finally, this final decision expands Part 1000 to include provisions that are identical within each consolidated order to assist in simplifying the regulations. These provisions include the definitions of route disposition, plant, distributing plant, supply plant, nonpool plant, handler, other source milk, fluid milk product, fluid cream product, cooperative association, and commercial food processing establishment. In addition, the milk classification section, pricing provisions, and some of the provisions relating to payments have been included in the General Provisions. These changes adhere with the efforts of the National Performance Review - Regulatory Reform Initiative to simplify, modify, and eliminate unnecessary repetition of regulations. Unique regional issues or marketing conditions have been considered and included in each market’s order provisions.

The purpose of the Regulatory Flexibility Act is to fit regulatory actions to the scale of business subject to the actions in order that small businesses are not unduly or disproportionately burdened. To accomplish this purpose, it first is necessary to define a small business. According to the Small Business Administration’s definition of a “small business,” a dairy farm is a “small business” if it has an annual gross revenue of less than $500,000 and a handler 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 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.

Based on 1996 data, USDA identified approximately 80,000 of the 83,000 dairy producers (farmers) that had their milk pooled under a Federal order as small businesses. Thus, small businesses represent approximately 96 percent of the producers in the United States. By 1997 the total number of dairy producers that had their milk pooled under a Federal order had declined to about 79,000. It is estimated that nearly 76,000 are small businesses.

During 1997, 78,590 dairy farmers delivered over 105.2 billion pounds of milk to handlers regulated under the milk orders. This volume represents 68 percent of all milk marketed in the U.S. and 70 percent of the milk of bottling quality (Grade A) sold in the country. The value of the milk delivered to Federal milk order handlers at minimum order blend prices was nearly $14.0 billion. Producer deliveries of milk used in Class I products (fluid milk products) totaled 44.9 billion pounds--42.7 percent of total Federal order producer deliveries. More than 200 million Americans reside in Federal order marketing areas--77 percent of the total U.S. population.

On the processing side, there are over 1,200 individual plants associated with Federal orders, and of these plants, approximately 700 qualify as "small businesses" representing about 55 percent of the total. During October 1997, there were more than 485 fully regulated handlers (306 distributing plants of which 111 were small businesses and nearly 180 supply plants of which about 50 percent were small businesses), 51 partially regulated handlers of which 28 were small businesses and 111 producer-handlers of which all were considered small businesses for purposes of this final RFA, submitting reports under the Federal milk marketing order program.

The Federal milk order program is designed to set forth the terms of trade between buyers and sellers of fluid milk. A Federal order enforces the minimum price that processors (handlers) in a given marketing area must pay producers for milk according to how it is utilized. A Federal order further requires that the payments for milk be pooled and paid to individual dairy producers or cooperative associations on the basis of a uniform or average price. It is important to note that a Federal milk order, including the pricing and all other provisions, only becomes effective after approval, through a referendum, by dairy producers associated with the order.

Development of this final decision began with the premise that no additional burdens should be placed on the industry as a result of Federal order consolidation and reform. As a step in accomplishing the goal of imposing no additional regulatory burdens, a review of the current reporting requirements was completed pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). In light of this review, it was determined that this final decision would have little impact on reporting, recordkeeping, or other compliance requirements because these would remain almost identical to the current Federal order program. No new forms are required; however, some additional reporting will be necessary in the orders that are adopting multiple component pricing if the current orders do not contain these provisions. Overall, there would be slight change in the burdens placed on the dairy industry.

There are two principal reporting forms for handlers to complete each month that are needed to administer the Federal milk marketing orders. The forms are used to establish the quantity of milk used and received by handlers, the pooling status of the handler, the class-use of the milk used by the handler, the butterfat content and amounts of other components of the milk. This information is used to compute the monthly uniform price paid to producers in each of the markets. Handlers in the marketing areas adopting multiple component pricing will be required to complete additional information regarding the components of the milk and to assure that proper payments are made to producers. This information is necessary to establish the values of milk on the basis of milk components and to assure that producers are paid correctly. Many handlers already collect and report this information.

This rule does not involve additional information collection that requires clearance by the Office of Management and Budget beyond the currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

New territory, or pockets of unregulated territory within and between current order areas has been included in the consolidated marketing areas where such expansion will not have the effect of fully regulating plants that are not now regulated. The addition of these areas benefits regulated handlers by eliminating the necessity of reporting sales outside the Federal order marketing area for the purpose of determining pool qualification. Where such areas can be added to a consolidated area without having the effect of causing the regulation of any currently-unregulated handler, they are added.

Handlers not currently fully regulated under Federal orders may become regulated for two main reasons: first, in the process of consolidating marketing areas, some handlers who currently are partially regulated may become fully regulated because their sales in the combined marketing areas meet the pooling standards of a consolidated order area. Second, a previously unregulated area in New York, Vermont, New Hampshire and Massachusetts was added on the basis of supporting information. As a result, previously unregulated handlers would become fully regulated. Because of these two reasons, 11 additional plants are expected to become fully regulated under the program. Of these 11 plants, it is estimated that 5 are small businesses that would need to comply with the reporting, recordkeeping, and compliance requirements. The completion of these reports will require a person knowledgeable about the receipt and utilization of milk and milk products handled at the plant. This most likely will be a person already on the payroll of the business such as a bookkeeper, controller or plant manager. The completion of the necessary reporting, recordkeeping, and compliance requirements does not require any highly specialized skills and should not require the addition of personnel to complete. In fact, much of the information that handlers report to the market administrator is readily available from normally maintained business records, and as such, the burden on handlers to complete these recordkeeping and reporting requirements is minimal. In addition, assistance in completing forms is readily available from market administrator offices. A description of the forms and a complete Paperwork Reduction Act analysis follows this section.

No other burdens are expected to fall upon the dairy industry as a result of overlapping Federal rules. The regulations contained in this final decision do not duplicate, overlap or conflict with any existing Federal rules.

PUBLIC COMMENTS

More than 1,000 comments were received from interested parties that specifically stated or documented they were small businesses. However, this number may not be fully representative of the number of small businesses that actually submitted comments because a majority of commenters did not indicate their size. Of the comments submitted, the majority were received from dairy producers. The comments from the producers primarily addressed the issues of Class I pricing and consolidation.

A few comments were received that specifically addressed the initial regulatory flexibility analysis (IRFA). These comments also addressed the issues of Class I pricing and consolidation and further addressed the issue of producer-handler regulation. The Small Business Administration submitted views specifically addressing exempt plant status and requesting further analysis of the impact of consolidation on previously unregulated entities, if possible.

Nearly all of the 1,000 comments addressed Class I pricing and discussed the impact of Option 1A or Option 1B on dairy producers' income. A majority of these comments supported Option 1A because it would maintain the revenue necessary to stay in business. Many commenters opposing Option 1B argued that the Class I differential decreases that would occur under this option would result in financial losses that would force many dairy farmers out of business. Comments filed by service providers such as feed and implement stores that claimed to be small businesses commented on the negative impact lower prices received by dairy producers had on surrounding community businesses. One commenter supporting Option 1A further stated that in order to comply with the purposes and objectives of the Regulatory Flexibility Act, as stated in the IRFA, a Class I price structure that avoids a burdensome financial impact on dairy farmers must be adopted.

About 200 of the comments received from declared small businesses addressed consolidation issues. These comments focused on the impact of including or excluding currently-unregulated areas. A majority of the comments focused on the Northeast order and the inclusion or exclusion of the currently- unregulated territories in New York, Pennsylvania, and Maryland. Comments supporting the inclusion of currently-unregulated territory discussed the need to include this territory to prevent inequitable, unfair and disorderly marketing conditions. One supporting commenter noted that the expansion into unregulated areas would result in more small businesses becoming subject to Federal order regulation but the commenter did not believe that it would unduly impact their ability to compete. Commenters opposing the inclusion of currently-unregulated Pennsylvania territory argued that producer returns would decline if handlers in this area were subject to Federal order regulations.

A few comments were received addressing the extent of regulation applied to producer-handlers. One commenter, a small business producer-handler, indicated that the combination of new definitions and classification of milk provisions will result in its regulation. The commenter argued that this effect is contrary to the IRFA that stated "no additional regulatory burdens should be placed on the industry" and to the intent of the proposed rule that stated the changes were not intended to fully regulate any producer-handler that is currently exempt from regulation. Other commenters suggested that producer-handlers should not be exempt from regulation if their route disposition of Class I products at wholesale exceeds 500,000 pounds per month or if they have retail sales other than at a retail establishment located on the premises of the producer-handler's plant. They argued that producer-handlers with route disposition above this limit cannot be considered small businesses and should be subject to regulation.

After reviewing the public comments filed by small businesses in combination with updated marketing data and information and updated analyses, changes were made to the provisions contained in the proposed rule. Not all of the changes requested by small businesses were feasible but when changes were beneficial to small businesses without affecting the objectives of the rule, they were incorporated. The changes made to the proposed rule, based in part on small business comments, are discussed below by issue.

Consolidation:

The proposed rule advanced 11 consolidated Federal milk marketing orders. The marketing areas of these orders were expanded to include currently-unregulated areas if this did not result in the regulation of any currently-unregulated handlers or was not an area in which handlers are subject to minimum Class I pricing provisions under State regulations. After reviewing the issue in light of the public comments and updating the initial analysis based on more recent marketing data, 11 consolidated orders are adopted in the final decision, the same number as proposed in the January 21, 1998, rule, but with significant modifications being made to the marketing areas of the proposed Northeast and Western orders, and minor modifications to the marketing areas of the proposed Southeast, Mideast, Upper Midwest and Central orders. The final decision continues to omit currently-unregulated areas specified in the January 21st proposed rule and also omits currently-unregulated areas that comprise a significant distribution area for currently-unregulated handlers, some of which were proposed to be included in consolidated areas.

Numerous comments were received from small businesses supporting the inclusion of currently-nonregulated areas in the Northeast order. However, after considering the requirements of the Farm Bill, the consolidation of the existing orders does not necessitate expansion of the consolidated orders into unregulated areas or areas in which handlers are subject to minimum Class I pricing under State regulation, especially when the states' Class I prices exceed or equal those that would be established under Federal milk order regulation. Such regulation could have the effect of reducing returns to producers already included under State regulation without significantly affecting prices paid by handlers who compete with Federally-regulated handlers.

Two changes made to the prior proposed rule as a result of comments submitted by small businesses related to the exclusion of territory in the consolidated marketing areas. These changes occurred in the Mideast and Central orders. The changes ensure that two currently-unregulated handlers maintain this status.

One change occurred in the Mideast order. Based on a comment received from Toft Dairy, Incorporated (Toft Dairy), a small business dairy processor, and Sandusky County Milk Producers Association, a dairy cooperative representing dairy farmers classified as small businesses, one partial and three entire counties in north Central Ohio are excluded from the Mideast marketing area. These areas are currently unregulated. The proposed rule had suggested including this currently-unregulated territory in the Mideast marketing area which would have resulted in the regulation of Toft Dairy. Since the intent of the consolidating marketing orders was not to cause the regulation of any currently-unregulated handler, these areas have been removed from the marketing area of the Mideast order. Toft Dairy will remain an unregulated processor unless its sales area changes significantly.

Another change occurred in the Central order. Based on a comment received from Central Dairy, Incorporated (Central Dairy), a small business dairy processor, six currently-unregulated counties in northeast Missouri that were proposed to be included in the Central order are excluded from the marketing area. These areas are currently unregulated. Central Dairy opposed inclusion of these six counties because the handler plans to expand its distribution into this area. Again, since the intent of consolidating marketing orders was not to cause the regulation of any currently-unregulated handler these areas have been removed from the marketing area of the Central order.

Producer-Handlers:

Another change to the proposed rule resulting from public comments involves producer-handlers. Since the intent of the proposed rule was not to increase regulation to any currently-unregulated producer-handlers, minor modifications have been made to the classification of milk provisions applicable to all orders and to the producer-handler definition in certain individual orders.

A comment submitted by Promised Land Dairy, a producer-handler defined as a small business, stated that the change in the classification of milk provisions combined with other order changes would result in their regulation. Promised Land Dairy argues that the addition of the words “or acquired for distribution” in §1000.44(a)(3)(iv) would force milk delivered by a producer-handler to any store associated with a regulated handler to be sold at no more than the Class III price because it would be considered a receipt from a producer-handler. Promised Land Dairy argued that this would force producer-handlers to become fully regulated. In addition, they argued that changes made to the Southwest order’s producer-handler definition are not warranted and would further result in the regulation of Promised Land Dairy.

The changes in the proposed rule were not intended to fully regulate any producer-handler that is currently exempt from regulation. Producer-handlers have been exempt from the pricing and pooling provisions of the orders for several reasons. First, the care and management of the dairy farm and other resources necessary for own-farm production and the management and operation of the processing are the personal enterprise and risk of the owner. Second, typically producer-handlers are small businesses that operate in a self-sufficient manner. Finally, producer-handlers do not have an advantage as either producers or handlers so long as they are responsible for balancing their fluid milk needs and cannot transfer balancing costs to other market participants.

While the provisions objected to by Promise Land Dairy would not directly regulate this entity, they could have a very serious negative economic impact on its continued operations as a producer-handler. Because it is still the intent of the Department to allow currently-unregulated producer-handlers to maintain this status, changes have been made to §1000.44(a)(3)(iv) in the general provisions by removing the words "or acquired for distribution" and re-adding these words to §1124.44, and changes have been made to the individual order definitions of producer-handlers. Hence, no changes are made in the final decision to regulate a producer-handler that is currently exempt from regulation.

Additional comments submitted by small businesses regarding producer-handlers advocated implementing a limitation on the exemption of producer-handlers based on size. The commenters suggested that the producer-handler exemption should be limited to those whose Class I route disposition is 500,000 pounds or less, or whose entire Class I disposition of fluid milk is made as retail sales from a retail establishment located on the premises of the producer-handler's processing plant.

Since the intent of the final decision is not to regulate any currently-unregulated producer-handlers, these requests have been denied. A review of October 1997 producer-handler route disposition data indicates that if a 500,000 pound Class I route disposition limit were implemented, 20 producer-handlers out of 111 producer-handlers, would become regulated. The Department's reasons for exempting producer-handlers as discussed previously have not changed and the intent of this rule is not to make changes to regulate currently-unregulated producer-handlers regardless of size. Consequently, these suggested changes have not been included in the final decision.

Class I Price Structure:

Another change to the proposed rule, resulting in part from the public comments received, involves the Class I price structure. In the proposed rule the Department advanced two main price options--1A and 1B. The Department indicated a preference for Option 1B because it was more market-oriented. However, the Department recognized in the proposed rule that Option 1B would result in lower Class I prices and lower blend prices which would have a significant economic impact on small businesses, particularly producers. To lessen the impact, three phase-in program options were proposed to be adopted in conjunction with Option 1B. The objective of the phase-in programs was to provide dairy producers and processors the opportunity to adjust marketing practices to adapt to more market-determined Class I prices.

A majority of the public comments received from small businesses supported Option 1A. Many of the commenters opposing Option 1B indicated that the price levels established under this price structure would be significantly lower than present levels, and as a result, they--primarily dairy producers--would be forced out of business. Of the commenters supporting Option 1B, few supported the adoption of a phase-in program.

Option 1B was preferred by the Department because it would move the dairy industry into a more market-determined pricing system. Establishing a national Class I price structure based on results from the U.S. Dairy Sector Simulator model[11], developed and administered by Cornell University, may increase market efficiencies in the dairy industry and lowering the differentials would allow marketing conditions to have a greater impact on actual Class I prices paid to producers who service the Class I market. The Department recognized that this would impact small businesses, both producer and processors, because less of the actual value of Class I milk would be regulated. In the proposed rule the Department stated the following:

> “Smaller, less efficient producers would likely have a greater responsibility to bargain with processors for over-order premiums that adequately cover their costs. With processors less likely to face similar raw product costs, less efficient small processors may have to negotiate and/or sustain over-order price levels necessary to attract and maintain a sufficient supply of milk. Large businesses, both producers and processors, may be in a better competitive position to do this.” (63 FR 4912)

After reviewing the public comments and updating marketing data and analyses of Option 1A and Option 1B, the Department adopted a Class I price structure that provides greater structural efficiencies in the assembly and shipment of milk and dairy products. The adopted Class I pricing structure establishes a price surface that utilizes USDSS model results adjusted for all known plant locations and establishes differential levels that will result in prices that generate sufficient revenue to assure an adequate supply of milk. The differential levels will better

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[11] The U.S. Dairy Sector Simulator model is used to evaluate the geographic or “spatial” value of milk and milk components across the U.S. under the assumption of globally efficient markets. A more detailed description of the model is contained in the decision.

maintain equity by raising the level 40 cents per hundredweight higher than the level proposed in Option 1B. The higher differential level reduces the likelihood of class-price inversions, where the Class I prices are below the manufacturing milk prices for the month. Updated analysis conducted by the Interagency Dairy Analysis Team in the final Regulatory Impact Analysis[12] indicates that increasing the differential level lessens the economic impact of moving toward more market-orientation on small businesses.

Exempt Plant Limits:

The Office of the Chief Counsel for Advocacy (Office of Advocacy) of the U.S. Small Business Administration submitted views on the IRFA pursuant to its authority under the Regulatory Flexibility Act, 5 U.S.C. §601, as amended by the Small Business Regulatory Enforcement Fairness Act, Pub. L. No. 104-121, 110 Stat. 866 (1996). With regard to the impact of the order consolidation and pricing formulae, the Office of Advocacy stated that these issues should be left to the regulated community and the Department. The Office of Advocacy did comment that a system that “best resembles the free market and imposes the least burden on the industry would be the best alternative.”

The Office of Advocacy requested an explanation of how the 150,000 pound handler exemption was derived and a determination of whether this exemption could be increased. They questioned whether a greater number of small entities would benefit from an increase in the limit. The Office of Advocacy further requested additional analysis on the impact of the consolidation of orders on previously unregulated entities, if possible.

The 150,000 pound handler exemption was determined after reviewing provisions currently contained in the Federal milk marketing orders. The 150,000 pound exemption was the highest level currently utilized, with some orders containing no such exemption. A review of the impact of this exemption level on distributing plants that were fully regulated in October 1997 indicated that 15 plants, 14 of which are small businesses, would become exempt from regulation based on this provision. In addition, five partially-regulated plants, four of which are small businesses, would also become exempt. No public comments were received addressing this issue.

Federal milk order regulations must balance the interests of small business dairy producers versus small business dairy processors. Although only processors are regulated under Federal milk orders, producers receive benefits from the regulations. Thus, whenever dairy processors are exempt from Federal order

[12] Copies of the Regulatory Impact Analysis can be obtained from Dairy Programs at (202) 720-4392, any Market Administrator office, or via the Internet at http://www.ams.usda.gov/dairy.

regulations they are not required to pay dairy producers minimum Federal order prices. Exempting processors from regulation directly impacts dairy producers.

Based on October 1997 data, a review of the impacts of increasing the exemption levels on processors was completed. As expected, increasing the level would allow additional processors to become exempt. In October 1997, 54 handlers had route disposition equal to or less than 150,000 pounds. An additional 57 handlers had route disposition between 150,000 to 1,000,000 pounds and 327 handlers had route disposition greater than 1 million pounds.

Although it may appear that increasing the exemption level would not result in exempting many additional plants, these plants receive milk from a significant number of producers, a majority of whom are small businesses. In addition, contrary to the intent of benefitting small businesses by increasing the exemption level, more handlers that are considered large businesses could become exempt from regulation. Implementing the 150,000 pound level results in two large businesses currently regulated (one fully-regulated and one partially-regulated) becoming exempt plants. When more large businesses become exempt it not only impacts producers, but also impacts other regulated handlers.

In an attempt to maintain a balance between the interests of both small handlers and small dairy producers, the 150,000 pound exemption is maintained. Based on previous experience, the exemption of plants of this size poses no economic threat to the order’s regulated handlers.

MINIMIZATION OF SIGNIFICANT ECONOMIC IMPACTS ON SMALL BUSINESSES

The Department developed the final decision aware of the impacts of its adoption on small businesses, both dairy producers and processors. In the final decision, the Department has minimized the significant economic impacts of these regulations on small entities to the fullest extent reasonably possible while adhering to the stated objectives. The Department reviewed the regulatory and financial burdens resulting from these regulations and determined, to the fullest extent possible, the impact on small businesses’ abilities to compete in the market place. The Department reviewed the regulations from both the small producer and small processor perspectives attempting to maintain a balance between these competing interests.

The Farm Bill mandated that the current 31 orders be consolidated into between 10 to 14 orders. The Farm Bill also specified that other issues could be addressed. Eleven orders are adopted in the final decision as well as a new Class I price structure, a basic formula price replacement, classification of milk provisions, and the establishment of identical provisions in all orders where possible. The objectives of the final decision are (1) to comply with the requirements of the Farm Bill and (2) to make other changes in order provisions consistent with the goals and requirements of the AMAA. The focus of these changes is to enhance the efficiencies of fluid milk markets while maintaining equity among processors of fluid milk selling in marketing order areas and among dairy producers supplying the areas’ fluid demands.

Federal milk order regulations do not disparately apply to small and large businesses. If a handler is regulated under a Federal milk order, the provisions of that order apply the same to all handlers regardless of size. Likewise, if a producer’s milk is associated with a Federal order pool, the same pricing and payment provisions will be utilized for all producers regardless of size. This final decision addresses several issues and adopts provisions that will continue to apply equally to all businesses, both large and small. The provisions adopted herein attempt to reduce the economic impact of Federal milk order regulations on small businesses to the most reasonable extent possible.

After reviewing submitted comments and updating marketing data and analyses, changes were made to the provisions contained in the proposed rule. The IRFA discussed the projected impacts of the primary components of the proposed rule on small entities. These included consolidation, basic formula price, Class I price structure, and classification. Because Federal order provisions are interrelated, it was difficult to determine the overall impact of each component on small entities because the proposed rule contained two pricing options. To the fullest extent possible, such estimations were set forth in the proposed rule.

Below is a description of the primary components contained in the final decision that were discussed in the IRFA. For comparison purposes, impacts resulting from each component are briefly discussed. Because this rule establishes the specific provisions to be contained in Federal milk marketing orders, analysis of the impacts of the consolidated orders on small businesses is provided.

Consolidation:

The IRFA discussed three order consolidation options: (1) the consolidated marketing areas suggested in the December 1996 Initial Preliminary Report on Order Consolidation; (2) the consolidated marketing areas suggested in the May 1997 Revised Preliminary Report on Order Consolidation; and (3) the consolidated marketing areas suggested in the proposed rule. Determining the specific economic impacts of marketing area consolidation on handlers, producers, and consumers is difficult. The IRFA detailed the assumptions utilized to quantify the economic effects of consolidation. The IRFA included an analysis of each of the three consolidation options on the weighted average use value to determine the potential impacts of each option on producers. The IRFA also included projections regarding the number of handlers that would be regulated under the consolidation options and the number of these handlers that are small businesses.

The consolidation of orders adopted in the final decision is a result of the examination and analysis of more recent marketing data in combination with the comments received on the proposed rule. This resulted in modifying significantly from the proposed rule the marketing areas of the Northeast and Western orders, and in making minor modifications to the marketing areas of the proposed Southeast, Mideast, Upper Midwest and Central orders. The consolidated orders adopted in the final decision are as follows (* denotes changes made from the proposed rule):

*1. NORTHEAST - current marketing areas of the New England, New York-New Jersey and Middle Atlantic Federal milk orders, with the addition of: the contiguous unregulated areas of New Hampshire, northern New York and Vermont; and the non-Federally regulated portions of Massachusetts. *The Western New York State order area (ten entire and 5 partial western New York counties) proposed to be included in the expanded Northeast order area has been omitted.

2. APPALACHIAN - Current marketing areas of the Carolina and Louisville-Lexington-Evansville (minus Logan County, Kentucky) Federal milk orders plus the marketing area of the former Tennessee Valley order, with the addition of 21 currently-unregulated counties in Indiana and Kentucky.

3. FLORIDA - current marketing areas of the Upper Florida, Tampa Bay, and Southeastern Florida Federal milk orders.

*4. SOUTHEAST - current marketing area of the Southeast Federal milk order, plus 1 county from the Louisville-Lexington-Evansville Federal milk order marketing area; plus 11 northwest Arkansas counties and 22 entire Missouri counties that currently are part of the Southwest Plains marketing area; plus 6 Missouri counties that currently are part of the Southern Illinois-Eastern Missouri marketing area; plus 16 currently unregulated southeast Missouri counties (including 4 that were part of the former Paducah marketing area); plus 20 currently-unregulated Kentucky counties (including 5 from the former Paducah marketing area). *A partial Missouri county that has been part of the Southwest Plains marketing area will become completely unregulated.

***5.** MIDEAST - current marketing areas of the Ohio Valley, Eastern Ohio-Western Pennsylvania, Southern Michigan and Indiana Federal milk orders, plus Zone 2 of the Michigan Upper Peninsula Federal milk order, and most currently-unregulated counties in Michigan, Indiana and Ohio. *One partial and 3 entire counties in north central Ohio are left unregulated, as they represent the distribution area of a currently-partially regulated distributing plant (Toft Dairy in Sandusky, Ohio).

*6. UPPER MIDWEST - current marketing areas of the Chicago

Regional, Upper Midwest, Zones I and I(a) of the Michigan Upper Peninsula Federal milk orders, and unregulated portions of Wisconsin. *The Iowa Federal order marketing area portion of one Illinois county is added to the consolidated Upper Midwest marketing area and the Chicago Regional portion of another Illinois county is removed and added to the consolidated Central area.

7. CENTRAL - current marketing areas of the Southern Illinois-Eastern Missouri, Central Illinois, Greater Kansas City, Southwest Plains, Eastern Colorado, Nebraska-Western Iowa, Eastern South Dakota, Iowa (less the portion of an Illinois county that will become part of the consolidated Upper Midwest area) and *Western Colorado Federal milk orders, * plus the portion of an Illinois county currently in the Chicago Regional Federal order area, minus 11 northwest Arkansas counties and 1 partial and 22 entire Missouri counties that are part of the current Southwest Plains marketing area, minus 6 Missouri counties that are part of the current Southern Illinois-Eastern Missouri marketing area, plus 54 currently-unregulated counties in Kansas, Missouri, Illinois, Iowa, Nebraska and Colorado, plus 8 counties in central Missouri *(six fewer than in the proposed rule) that are not considered to be part of the distribution area of an unregulated handler in central Missouri, *plus 7 currently unregulated Colorado counties located between the current Western and Eastern Colorado order areas.

8. SOUTHWEST- current marketing areas of Texas and New Mexico-West Texas Federal milk orders, with the addition of two currently-unregulated northeast Texas counties and 47 currently-unregulated counties in southwest Texas.

9. ARIZONA-LAS VEGAS - current marketing area of Central Arizona, plus the Clark County, Nevada, portion of the current Great Basin marketing area, plus eight currently-unregulated Arizona counties.

*10. WESTERN - current marketing areas of the Southwestern Idaho-Eastern Oregon and Great Basin Federal milk orders, minus Clark County, Nevada. *The Western Colorado order area, proposed to be included in the Western order area, is instead included in the consolidated Central order.

11. PACIFIC NORTHWEST - current marketing area of the Pacific Northwest Federal milk order plus 1 currently-unregulated county in Oregon.

The consolidated orders presented herein reflect the most appropriate boundaries for the purpose of implementing the requirements of the Farm Bill. These orders attempt to avoid extending regulation to handlers whose primary sales areas are outside current Federal order marketing areas and who are not subject to Federal order regulation. These orders also minimize the regulatory burden placed on handlers.

Based on October 1997 data, it is projected that 306 distributing plants will be fully regulated and 32 distributing plants will be exempt. The number of fully-regulated small businesses will be 111. The number of fully-regulated small businesses is down from 164, a 32 percent decline from the proposed rule. This is mainly a result from either large business acquisitions of these small businesses or because they have gone out of business. Two small businesses that are currently unregulated will become regulated and, as mentioned previously, 14 fully regulated and four partially-regulated small businesses will become exempt.

Basic Formula Price:

The IRFA reviewed the basic formula price replacement options considered. These options included pricing components based on their value in manufactured products which was proposed and is adopted in the final decision, economic formulas, futures markets, cost of production, competitive pay pricing, and pricing differentials only.

The rule closely follows the pricing plan described in the proposed rule by replacing the current basic formula price (BFP) with a multiple component pricing system that derives component values from surveyed prices of manufactured dairy products. The adopted pricing system determines butterfat prices for milk used in Class II, Class III and Class IV products from a butter price; protein and other solids prices for milk used in Class III products from cheese and whey prices; and nonfat solids prices for milk used in Class II and Class IV products from nonfat dry milk product prices. The specific formulas used to calculate the prices are described in complete detail in the final decision.

All market participants, both large and small, would be affected by the BFP replacement in the same manner. There would be no uneven impact on market participants on the basis of size. However, the existence of minimum order pricing serves to assure that large handlers pay no less for their milk than smaller entities, and that small producers receive at least the same minimum uniform price for the milk or components of milk they produce as large producers. Consumers can be assured that the prices generally charged for dairy products are prices that reflect, as closely as possible, the forces of supply and demand in the market.

Impact of Multiple Component Pricing Provisions on Small Entities:

As set forth in the proposed rule, seven of the 11 orders adopted in the final decision provide for milk to be paid for on the basis of its components--multiple component pricing (MCP). Five of the seven MCP orders also provide for milk values to be adjusted according to the somatic cell count of producer milk.

The equipment needed for testing milk for its component content can be very expensive to purchase, and requires highly-skilled personnel to maintain and operate. The cost of infra-red analyzers ranges from just under $100,000 to $200,000. The infra-red machines that are used by most laboratories would test for total solids and somatic cells at the same time the butterfat and protein tests are done.

No new report forms are needed under multiple component pricing; however, some additional reporting is necessary to enable handlers' values of milk to be determined on the basis of components, and to assure that producers are paid correctly. For the market administrators to compute the producer price differential, handlers would need to supply additional information on their currently-required monthly reports of receipts and utilization. In addition to the product pounds and butterfat currently reported, handlers would be required to report pounds of protein, pounds of other solids, and, in 5 of the orders, somatic cell information. This data would be required from each handler for all producer receipts, including milk diverted by the handler, receipts from cooperatives as 9(c) handlers (that is, the cooperative acts as a handler); and, in some cases, receipts of bulk milk received by transfer or diversion.

Since producers would be receiving payments based on the component levels of their milk, the payroll reports that handlers supply to producers must reflect the basis for such payment. Therefore the handler would be required to supply the producer not only with the information currently supplied, but also, (a) the pounds of butterfat, the pounds of protein, and the pounds of other solids contained in the producer's milk, as well as the producer's average somatic cell count, and (b) the minimum rates that are required for payment for each pricing factor and, if a different rate is paid, the effective rate also. Many handlers already report this additional information. It should be noted that handlers already are required to report information relative to pounds of production, butterfat and rates of payment for butterfat and hundredweight of milk to the appropriate Market Administrator.

Of over 74,000 producers whose milk was pooled in December 1996 under 23 of the current orders that would be part of consolidated orders providing for multiple component pricing, the milk of 52,500 of these producers was pooled under 13 current orders that have MCP. Handlers in these markets already have incurred the initial costs of testing milk for its component content, and have made the needed transition to reporting the component contents of milk receipts on their handler reports to the market administrators, and on their reports of what they have paid producers.

Of the remaining 21,750 producers who would be affected by

MCP provisions under a Federal order (including an estimated 20,650 producers qualifying as small businesses), the milk of approximately 13,000, or 60 percent, currently is received by handlers who test or have the capability of testing for multiple components and, in many cases, somatic cells. Many of these handlers also report component results to the producers with their payments. Almost all of the producers whose milk currently is not being tested or paid for on the basis of components are located in the New England and New York-New Jersey marketing areas, which would be consolidated with the Middle Atlantic area into the Northeast order.

Accommodation has been made to ameliorate handlers' expenses of testing producer milk for component content. As component pricing plans have been adopted under a number of the present Federal milk orders since 1988, the component testing needed to implement these pricing plans has been performed by the market administrators responsible for the administration of the orders involved for handlers who have not been equipped to make all of the determinations required under the amended orders. It has been made clear in the decisions under which these plans have been adopted that handlers who would find it unduly burdensome to obtain the equipment and personnel needed to accomplish the required testing may rely on the market administrators to verify or establish the tests under which producers are paid. As noted above, however, many handlers not now subject to MCP provisions under Federal orders have nevertheless already undertaken multiple component testing and payment programs.

Class I Price Structure:

The IRFA discussed two price structure options--location-specific differentials (Option 1A) and relative-value specific differentials (Option 1B). The IRFA set forth the projected impacts that these two price structures would have on producers and processors.

The price structure adopted in this final decision resulted from an examination and review of more recent marketing data in combination with the comments received on the proposed rule. As discussed previously, the Department adopted a Class I price structure that provides greater structural efficiencies in the assembly and shipment of milk and dairy products. The adopted Class I pricing structure establishes a price surface that utilizes USDSS model results adjusted for all known plant locations and establishes differential levels that will result in prices that generate sufficient revenue to assure an adequate supply of milk. The differential levels will better maintain equity by raising the level 40 cents per hundredweight higher than the level proposed in Option 1B. The higher differential level reduces the likelihood of class-price inversions, where the Class I prices are below the manufacturing milk prices for the month.

Updated analysis conducted by the Interagency Dairy Analysis Team in the final Regulatory Impact Analysis[13] indicates that increasing the differential level lessens the economic impact of moving toward more market-orientation on small businesses.

The adopted Class I price structure reduces Class I differentials from current levels in 17 markets ranging from $0.04 per hundredweight in the Ohio Valley order to $1.18 per hundredweight in the Eastern Colorado order. Option 1B would have reduced differentials from current levels in 29 markets ranging from $0.01 in Central Illinois order to $1.58 in the Eastern Colorado order. The adopted Class I price structure will increase Class I differentials in 14 markets ranging from $0.08 in the Greater Kansas City order to $0.57 in the Southeastern Florida order and leaves two orders unchanged. Option 1B would have increased Class I differentials in only two markets--$0.15 in Chicago Regional and $0.17 in Southeastern Florida--and would have left two orders unchanged. Option 1A would have increased differentials in 21 markets ranging from $0.01 per hundredweight in New England, New York-New Jersey, and Unregulated New York and New England to $0.50 in the Upper Midwest order, lowered differentials in seven markets from $0.04 in Ohio Valley to $0.18 in Eastern Colorado, and left four markets unchanged.

Although the adopted Class I price structure will result in price changes that affect both large and small entities, this option best meets the objectives of the AMAA. The adopted Class I price structure recognizes that there are limitations in the extent that the marketplace can be relied upon to establish prices to producers that are equitable and reasonable given marketing conditions. Similarly, it recognizes that handlers will be assured a higher degree of price equity. The adopted Class I price structure best provides the incentives necessary for increased efficiency in the organization and distribution of the milk supply and dairy products.

<u>Classification Provisions</u>:

The IRFA discussed the classification of milk provisions contained in the proposed rule. The IRFA concluded that the classification of milk provisions would not have a significant economic impact on a substantial number of small entities. With two primary exceptions, these changes are adopted in the final decision. The two exceptions are: (1) leaving cream cheese as a Class III product as currently classified, and (2) leaving the fluid milk product exclusion standard for products packaged in “all-metal, hermetically-sealed containers” as currently classified. In addition, other minor changes have been made

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[13] Copies of the Regulatory Impact Analysis can be obtained from Dairy Programs at (202) 720-4392, any Market Administrator office, or via the Internet at http://www.ams.usda.gov/dairy.

including revising the shrinkage provisions to more closely resemble current provisions, re-adding the provision for milk that is dumped or used for animal feed, and classifying inventory of fluid milk products and fluid cream products in bulk form in Class IV. One additional change, as previously discussed in the comment section, was made to ensure that producer-handlers that are not currently regulated by the Federal order program will maintain this status. The provisions improve reporting and accounting procedures for handlers and provide for greater market efficiencies.

CONCLUSION

A review of the impacts on small entities of consolidating the current Federal milk orders into 11 orders in conjunction with the basic formula price replacement, classification provisions, and the three different Class I price structure options, indicates that the provisions set forth in the final decision adhere to the mandates of the Farm Bill, and provides more market efficiencies while minimizing the impact of these regulations on small entities. Since the Federal order program serves to benefit dairy producers by regulating dairy processors through classified pricing, provisions must be established that maintain a balance between the interests of small dairy producers and processors. The provisions contained in the final decision best maintain this balance.

The adoption of the consolidated orders and the provisions contained therein, including the adopted Class I price structure, will affect some small entities. Producers located in the western, southwestern, and northeastern areas may not fare as well as producers in other parts of the country when comparing the all-milk prices and cash receipts from milk marketings to current baseline projections. These producers represent approximately one-third of the total producers associated with Federal orders. Of these producers, about 30 percent are considered small businesses. When compared to the baseline, over a 6-year period from the years of 2000-2005, the all-milk price for all Federal orders is expected to decrease an average of $0.02 per hundredweight. Changes in the all-market price on an individual order basis is projected to range from a decrease of $0.50 per hundredweight to an increase of $0.52 per hundredweight. Cash receipts are expected to increase by an estimated $222.3 million primarily because of changes in transportation payments and the pooling of additional milk. After adjusting for these changes, cash receipts are projected to decline from the baseline an average of $2.5 million during the 6-year period. With the baseline cash receipts averaging $16,944.5 million this represents a very small reduction.

Since the final decision is projected to have minor effects on where milk is produced, little impact is expected on processors or manufacturers of dairy products. A majority of the fully-regulated processors associated with Federal orders will benefit from a decrease in Class I prices. About 209 processors, 74 of which are small businesses, would experience decreases ranging from $0.04 to $1.18 per hundredweight. About 69 processors, 22 of which are small businesses, located primarily in the Midwest and Florida areas, would experience Class I price increases ranging from $0.08 to $0.57 per hundredweight. About 28 processors, 14 of which are small businesses, would experience no change in Class I prices.

Implementing the consolidated orders with the modified Option 1B price structure would have a significant impact on many small entities, both producers and processors. Producers located everywhere except the Midwest and Florida regions would have been negatively impacted. When compared to the baseline, over a 6-year period from the years of 2000-2005, the all-milk price for all Federal orders was projected to annually average $0.09 per hundredweight lower, with individual order changes ranging from -$0.61 per hundredweight to $0.42 per hundredweight. Cash receipts were expected to annually average over $100 million less than the baseline, a .01 percent decrease.

Most fully-regulated fluid processors would have benefitted from the decrease in Class I differentials. Lower differentials would have reduced Class I prices in 29 of the current markets from between $0.01 to $1.58 per hundredweight. Two markets would have had increases of $0.15 and $0.17 per hundredweight in Class I prices. When compared to the baseline, the Class I price for all Federal orders was projected to average $0.49 per hundredweight lower over a 6-year period from the years of 2000-2005. Lower Class I prices would have been expected to increase U.S. sales of fluid milk by 98.8 million pounds annually. Most fluid processors would have benefitted from the lower fluid milk prices and increased fluid milk sales.

Although most fluid processors would have benefitted from the consolidation of orders with the modified Option 1B price surface, only about one-third of the fully-regulated plants are small businesses and these plants may have been negatively impacted. With less of the actual value of fluid milk represented by the minimum prices established by Federal orders, more emphasis would have been placed on processors’ and producers’ abilities to negotiate and/or sustain over-order prices that might be necessary to maintain an adequate supply of milk. This would have resulted in less handler equity which could have placed small processors at a disadvantage in competing for a supply of milk.

Adoption of this option would have resulted in large fluid processors benefitting from the regulations at the expense of more than 50 percent of the total producers who would have experienced price decreases. Additionally, small processors would not have been assured equity in competing with large businesses for a milk supply. Hence, the Department determined the impact of consolidating orders with the modified Option 1B price structure would have had a more burdensome financial impact on a significant number of small businesses.

Implementing the consolidated orders with the Option 1A price structure would have minimal overall impact on small businesses. When compared to the baseline, the all-milk price for all Federal orders was projected to average $0.03 per hundredweight higher, with individual order changes ranging from -$0.66 per hundredweight to $0.34 per hundredweight over a 6-year period from the years of 2000-2005. Cash receipts were expected to average over $482.1 million more than the baseline, a .02 percent increase. Nearly 50 percent of the producers would have benefitted from this modest increase.

Since this option is projected to have minor effects on where milk is produced, little impact would have been expected on processors or manufacturers of dairy products. Option 1A would have increased Class I differentials by an average of $0.04 per hundredweight resulting in the all-market average Class I price charged to fluid handlers increasing by $0.08 per hundredweight when compared to the baseline during the years of 2000-2005. Processors would have experienced a Class I price increase in 21 of the current orders ranging from $0.01 to $0.50 per hundredweight, affecting nearly 190 fully-regulated processors of which about one-third are small businesses. Since the impact of the increased Class I prices would have resulted in an insignificant decrease in fluid milk consumption within the Federal order system, a decrease of 17.1 million pounds, and within the U.S., a decrease of 14.9 million pounds, this option would have little expected effect on processors or manufacturers of dairy products.

Implementing the consolidated orders with the Option 1A price structure would likely have minimized the financial impact of Federal milk orders on small entities. However, this option does not facilitate the movement towards a more efficient system of supplying fluid milk to meet market demands within the Federal order regulatory program. Although this option minimizes the impact of regulations on small businesses, it does not best meet the desired outcomes and objectives of the final decision.

The provisions adopted in the final decision best fulfill the requirements of the AMAA while minimizing the regulatory burdens on small businesses. The consolidated orders, with the adopted Class I price structure and other provisions, ensures that the Federal order program will continue to establish and maintain market stability and orderly marketing conditions for milk. The adopted provisions will further provide that milk prices are established at levels high enough to generate sufficient revenue for producers to maintain adequate supplies of milk while providing equity to handlers. The provisions contained in the final decision do not unduly or disproportionately burden small businesses.

Paperwork Reduction Act of 1995

The information collection requirements contained in this decision previously were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0581-0032, through September 30, 2001.

The amendments set forth in the final decision do not contain additional information collections that require clearance by the OMB under the provisions of 44 U.S.C. Chapter 35. Following is a general description of the reporting and recordkeeping requirements, reasons for these requirements and an estimate of the annual burden on the dairy industry.

Title: Report Forms Under Federal Milk Orders (From Milk Handlers and Milk Marketing Cooperatives)

OMB Control Number: 0581-0032.

Expiration Date of Approval: September 30, 2001.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Federal Milk Marketing Order regulations authorized under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), require milk handlers to report in detail the receipt and utilization of milk and milk products handled at each of their plants that are regulated by a Federal Order. The data are needed to administer the classified pricing system and related requirements of each Federal Order.

Rulemaking amendments to the orders must be approved in referenda conducted by the Secretary.

The terms of each of the current milk marketing orders are found at 7 CFR Parts 1001-1199; the terms of each of the proposed orders in this document are found at 7 CFR Parts 1001-1135. The authority for requiring reports is found at 8c(5) and (7) and 8d of the Act. The current authority for requiring records to be kept is found in the general provisions at 7 CFR Part 1000.5. In the final decision, this authority is found in the general provisions at 7 CFR Part 1000.27. The Act also provides for milk marketing agreements, but there are none in effect.

A Federal milk marketing order is a regulation issued by the Secretary of Agriculture that places certain requirements on the handling of milk in the area it covers. It requires that handlers of milk for a marketing area pay not less than certain minimum class prices according to how the milk is used. These prices are established under an order on the basis of evidence concerning the supply and demand conditions for milk in the market. A milk order requires that payments for milk be pooled and paid to individual farmers or cooperative associations of farmers on the basis of a uniform or average price. Thus, all eligible farmers (producers) share in the market wide use-values of milk by regulated handlers.

The Report of Receipts and Utilization and the Producer Payroll Report are completed by regulated milk handlers and milk marketing cooperatives and are the principal reporting forms needed to administer Federal milk marketing orders.

The orders also provide for the public dissemination of market statistics and other information for the benefit of producers, handlers, and consumers. Each milk order is administered by a market administrator who is an agent of the Secretary of Agriculture. Part of the market administrator's duties are to prescribe reports required of each handler, and to assure that handlers properly account for milk and milk products, and that such handlers pay producers and associations of producers according to the provisions of the order. The market administrator employs a staff that verifies handlers' reports by examining records to determine that the required payments are made to producers. Most reports required from handlers are submitted monthly to the market administrator. Confidentiality of information collection is assured through Section 608(d) of the Act, which imposes substantial penalties on anyone violating these confidentiality requirements.

The forms used by the market administrators are required by the respective milk orders that are authorized by the Act. The forms are authorized either in the general provisions (Part 1000) or in the sections of the respective orders. The forms are used to establish the quantity of milk received by handlers, the pooling status of handlers, the class-use of the milk used by the handler and the butterfat content and amounts of other components of the milk.

The frequency of performing these recordkeeping and reporting duties varies according to the form; the frequency ranges from "on occasion" to "annually" but "monthly" is perhaps most common. In general, most of the information that handlers report to the market administrator is readily available from normally maintained business records. Thus, the burden on handlers to complete these recordkeeping and reporting requirements is expected to be minimal. In addition, assistance in completing forms is readily available from market administrator offices.

Regarding the use of improved information technology to reduce the reporting and recordkeeping burden, the information requested is the minimum necessary to carry out the program. Since the type of information required to be collected and the certification and reporting of that information is required, no other alternative to the mode of information collection has been found. However, where possible, reported information is accepted using computer tapes or diskettes as alternatives to submitting the requested information on these report forms. Comments were requested to help assess the number of handlers using computers, word processors and other electronic equipment to create and store documents, as well as the extent to which the Internet is used to exchange information.

We are confident that the information we collect does not duplicate information already available. Dairy Programs has an ongoing relationship with many organizations in the dairy industry that also respond to other governmental agencies. Thus, we are aware of the reports dairy industry organizations are submitting to other government agencies.

Information collection requirements have been reduced to the minimum requirements of the orders, thus minimizing the burden on all handlers--those considered to be small as well as large entities. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. The primary source of data used to complete the forms are routinely used in all business transactions. Thus, the information collection and reporting burden is relatively small. Requiring the same reporting requirements for all handlers does not significantly disadvantage any handler that is smaller than industry average.

If the collection of this information were conducted less frequently, data needed to keep the Secretary informed concerning industry operations would not be available. Timing and frequency of the various reports are such to meet the needs of the industry and yet minimize the burden of the reporting public.

The collection of the required information is conducted in a manner consistent with guidelines in 5 CFR 1320.6. The orders require that the market administrator compute monthly minimum prices to producers based on monthly information. Without monthly information, the market administrator, for example, would not have the information to compute each monthly price, nor to know if handlers were paying producers on dates prescribed in the order, such as the partial payment for milk received the first 15 days of the month and the final payment which is payable after the end of the month. The Act imposes penalties for order violations, such as the failure to pay producers not later than prescribed dates. The orders require payments to and from the producer-settlement fund to be made monthly. Also, class prices are based on the monthly Basic Formula price series.

<u>Annual Reporting and Recordkeeping Burden</u>:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.87 hours per response.

Respondents: Milk Handlers and Milk Marketing Cooperatives.

Estimated Number of Respondents: 772.

Estimated Number of Responses per Respondent: 35.

Estimated Total Annual Burden on Respondents: 23,858 hours. Estimated annual cost to respondents for report preparation: $276,514 (23,858 hours at $11.59 per hour). Although hourly rates vary among handlers in various localities, the wage paid to clerical workers engaged in report preparation is estimated to be comparable to about a grade GS-7, step 1.

It is important to note that the burden being reported is an estimate of the amount of time that would be required of current program participants.

It is expected that the final decision should have little impact on the reporting and recordkeeping burden on handlers regulated under the Federal milk marketing order program. In fact, as a result of the consolidation of Federal orders from 31 to 11 as proposed, an overall reduction in reporting and recordkeeping requirements may occur due to greater uniformity in forms used and fewer "special" forms that currently apply to one or a few orders. There should also be a reduction in the burden on handlers that currently file reports for individual orders that are being consolidated.

Non-substantial changes would be necessary on the required reports and records to correctly identify the new Federal market order (e.g. the current--and separate--reports for the Upper Florida, Tampa Bay and Southeastern Florida marketing areas would be combined into one report for the Florida marketing area).

Request for Public Input on Analyses

Comments on the Executive Order 12866 analysis, the initial regulatory flexibility analysis, and the paperwork reduction analysis were requested in the proposed rule, which was published in the **Federal Register** on January 30, 1998. Specifically, interested parties were invited to submit comments on the regulatory and informational impacts of this proposed rule on small businesses. More than 1,000 comments were received from interested parties that specifically stated or documented they were small businesses. However, this number may not be fully representative of the number of small businesses that actually submitted comments because a majority of commenters did not indicate their size. A few comments specifically addressed the initial regulatory flexibility analysis (IRFA), the Executive Order 12866, and the Paperwork Reduction Analysis. These comments have been considered and addressed above.

Preliminary Statement

The material issues in this rule relate to:

1. Consolidation of marketing areas.
2. Basic formula price replacement and other class price issues.
3. Class I pricing structure.

4. Classification of milk and related issues.
5. Provisions applicable to all orders.
6. Regional issues:
    a. Northeast Region.
    b. Southeast Region.
    c. Midwest Region.
    d. Western Region.
7. Miscellaneous and administrative matters.
    a. Consolidation of the marketing service, administrative expense, and producer-settlement funds.
    b. Consolidation of the transportation credit balancing funds.
    c. General findings.