

QUARTERLY DAIRY LEGAL WEBINAR

2nd Quarter-2023
July 18, 2023

***Focus Topic: Administrative process
to establish and amend Federal Milk
Marketing Orders (FMMOs)***

Webinar will start soon!



PennState Law

Center for Agricultural
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National Agricultural Library

UNITED STATES DEPARTMENT OF AGRICULTURE





HOUSEKEEPING

- This webinar will be recorded.
- Use the Q&A feature for questions.
- **CLE credits:**
 - Link will be posted in the chat
 - Please fill out form
 - Listen for code word
 - Questions?
 - Email: jks251@psu.edu



Quarterly Dairy Legal Webinar Series

#12 in the series – covering the 2nd quarter of 2023

[Link to webinar series webpage](#)



July 18, 2023 (2nd Quarter of 2023) 12 noon–1pm (ET). The focus topic this quarter will be *the administrative process to establish and amend Federal Milk Marketing Orders (FMMOs)*. The webinar will address the statutory authorization behind the entire FMMO system and discuss how FMMOs are administered in comparison to other marketing orders adopted by producers under federal law. The webinar will also provide some background on prior reform effort proposals. This background will be provided in order for participants to better understand the current reform proposals filed with USDA and how they may proceed. We'll also touch upon the substance and run-up to the recent filings, their procedural posture, and some posturing of other sorts that has caused rifts between major players in the industry.

Quarterly Dairy Legal Webinar Series

[Find upcoming webinars in this series here](#) - Series Homepage

[April 2023 Quarterly Dairy Legal Webinar Part 1: Industry Round Up](#)

[April 2023 Quarterly Dairy Legal Webinar Part 2: International Dairy Trade](#)

[January 2023 Quarterly Dairy Legal Webinar: Interstate Regulation of Milk Production and Processing](#)

[October 2022 Quarterly Dairy Legal Webinar: 2023 Farm Bill and the Potential Implications for the Dairy Industry](#)

[July 2022 Quarterly Dairy Legal Webinar: Labeling Standards](#)

[April 2022 Quarterly Dairy Legal Webinar Part 1: Industry Round-Up](#)

[April 2022 Quarterly Dairy Legal Webinar Part 2: Animal Welfare](#)

[February 2022 Quarterly Dairy Legal Webinar Part 1: Industry Round-Up](#)

[February 2022 Quarterly Dairy Legal Webinar Part 2: Dairy Industry Carbon Reduction Programs](#)

[December 2021 Quarterly Dairy Legal Webinar Part 2: USDA's Pandemic Assistance Programs](#)

[December 2021 Quarterly Dairy Legal Webinar Part 1: Industry Round-Up](#)

[July 2021 Quarterly Dairy Legal Webinar: Geographical Indications](#)

[April 2021 Quarterly Dairy Legal Webinar: Federal Milk Marketing Order Reform](#)

[January 2021 Quarterly Dairy Legal Webinar Part 2: International Trade with Becky Rasdall](#)

[January 2021 Quarterly Dairy Legal Webinar Part 1: Industry Round-Up](#)

[November 2020 Quarterly Dairy Legal Webinar Part 2: Federal Milk Marketing Order 51](#)

[November 2020 Quarterly Dairy Legal Webinar Part 1: Industry Round-Up](#)



Past Quarterly Dairy Legal Webinars and Materials

April 18, 2023 (1st Quarter of 2023) 12 noon ET. In addition to a round-up of quarterly legal developments, the focus topic will be the **International Dairy Trade: Canada-U.S. USMCA Arbitration Round 2**. Almost immediately upon entering the USMCA trade pact with Canada and Mexico in 2020, the U.S. trade relationship with Canada hit a rough patch over potential dairy exports to Canada, specifically the eligibility criteria for Canadian importers' potential use of a quota of favorable dairy tariff rates on U.S. dairy products. The U.S. took Canada to arbitration in 2021 and won. Nevertheless, Canada held steadfast to its dairy tariff rate quota system and made minimal changes. As a result, we are now headed to a second round of USMCA arbitration between the U.S. and Canada over the same, and some newly added, tariff rate eligibility issues. All will be explained as we examine the details of this dispute between international neighbors.

- [PowerPoint – April 2023 Quarterly Dairy Legal Webinar](#)
- [January-March 2023 Quarterly Dairy Legal Update](#) 📎
- [Recording: April 2023 Quarterly Dairy Legal Webinar – Industry Round Up](#)
- [Recording: April 2023 Quarterly Dairy Legal Webinar – International Dairy Trade](#)

January 17, 2023 (4th Quarter of 2022) 12 noon ET. In addition to a round-up of quarterly legal developments, the focus topic will be the *Interstate Regulation of Milk Production and Processing: An Overview of the Pasteurized Milk Ordinance and Interstate Milk Shippers Program*. The federal government's current role in the creation and maintenance of a federal milk pricing system is recognized. The historical state-by-state regulation of milk production and processing as a food safety function of government is sometimes said to be historically "left to the states." However, the reality is much more complex. Learn the nuts and bolts of how this most perishable of agricultural commodities has been freely flowing across state lines through a combination of federal and state regulatory authority and a large amount of voluntary industry contribution and compliance.

- [2022 Annual Dairy Legal Update](#) 📎
- [October-December 2022 Quarterly Dairy Legal Update](#) 📎
- [PowerPoint – January 2023 Quarterly Dairy Legal Webinar](#) 📎
- [Recording: January 2023 Quarterly Dairy Legal Webinar](#)

Shale Law Weekly Review

A WEEKLY UPDATE ON IMPORTANT
SHALE LAW DEVELOPMENTS



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<https://aglaw.psu.edu/quarterly-dairy-legal-webinar/>



Round Up – 2nd Quarter 2023

- The PA Milk Marketing Board Issued Order Continuing \$1 Over-Order Premium Until December 2023
- The U.S. Department of Agriculture (USDA) Announced \$104 Million in Organic Dairy Marketing Assistance Program
- The U.S. Food and Drug Administration (FDA) Amended 2021 Yogurt Standard of Identity
- The U.S. Food and Drug Administration (FDA) Updated Equivalence Processes, Determining Grade A Dairy Equivalences from Canada, EU, New Zealand
- U.S. House Committee Recommended Passage of Whole Milk for Healthy Kids Act, Ensuring Whole Milk Variety in School Lunches
- The International Dairy Foods Association (IDFA) Announced Healthy School Milk Commitment
- Iowa Enacts Law Allowing Raw Milk Production and Sales





PA Milk Marketing Board Issued Order Continuing \$1 Over-Order Premium Until December 2023

- On June 21, 2023, the Pennsylvania Milk Marketing Board (PMMB) [issued](#) Official General Order No. A-1017, **extending the current \$1.00 per hundredweight over-order premium (OOP)** for all Class I milk produced, processed, and sold in Pennsylvania.
 - Effective from July 1, 2023, **until December 31, 2023.**
 - Continuance of status-quo since April 2019.
- **Concerns and calls for reform:**
 - Higher milk prices passed on to consumers
 - Incentive for milk processors to leave Pennsylvania, impacting the state dairy industry
 - Legislative efforts for reform:
 - House Bill 224 sought to grant the PMMB the authority to coordinate the collection and distribution of the over-order premium, allowing the PMMB to collect the premium from processors and distribute it to farmers in a more efficient way.
 - Senate Bill 50 sought to completely abolish the over-order premium.
- **Pennsylvania Department of Agriculture's involvement:**
 - May 27, 2022 – PDA [filed](#) a petition for a hearing to explore alternatives to the over-order premium
 - **April 25, 2023** – PA Secretary of Agriculture Russel Redding [proposed](#) a plan for equitable distribution
 - Retailers to collect the entire premium at the point of sale instead of wholesale build-up.



USDA Announced \$104 Million in Organic Dairy Marketing Assistance Program

On May 19, 2023, USDA [announced](#) **\$104 million in funding assistance** to support organic dairy producers as part of the Organic Dairy Marketing Assistance Program.

- **Eligibility and Payments**

- Eligible organic dairy producers will receive a one-time payment to assist with their projected marketing expenses for 2023
- Payment capped at 5 million pounds per dairy operation.

- **Payment Calculation**

- Payment amount determined based on a cost share of marketing expenses calculated in proportion to the pounds of organic milk marketed in the 2022 calendar year.



FDA Amended 2021 Yogurt Standard of Identity

On April 14, 2023, the U.S. Food and Drug Administration (FDA) [announced](#) revision of the rule [adopted](#) in June 2021 for yogurt standard of identity ([21 CFR 131.200](#)).

- **Previous Minimum Acidity Requirements**

- Provided two options:
 - Minimum titratable acidity of 0.7%, expressed as lactic acid; OR
 - Maximum pH of 4.6 before bulky flavoring ingredients added.

- **International Dairy Foods Association's (IDFA) Opposition and Request**

- IDFA opposed minimum acidity requirement
- Recommended a titratable acidity of not less than 0.6% measured in the white mass of yogurt OR pH of 4.6 or lower measured in the finished product within 24 hours of filing.

- **FDA's Final Order**

- Eliminated minimum titratable acidity option
- Yogurt must have **pH of 4.6 or lower measured within 24 hours after filing**—producers must comply with the revised rule starting January 1, 2024.



FDA Updated Equivalence Processes, Determining Grade A Dairy Equivalences from Canada, EU, and New Zealand

On June 5, 2023, the U.S. Food and Drug Administration (FDA) [updated](#) its Equivalence and Food Safety webpage to include additional details on determining equivalence.

- **Equivalence Defined**

- Equivalence process determines if foreign food safety controls offer similar public health protection to U.S. mandate measures.
- Different systems can be equivalent if they meet the same standards.
- Enables food product trade between countries with non-identical safety systems.

- **FDA's Current Review**

- **Equivalence review of Grade A dairy products.**
- Countries under assessment: **Canada, European Union, and New Zealand.**
- Review conducted under FDA's [Systems Recognition \(SR\) program](#).
- SR program evaluates food safety systems of other countries.



U.S. House Committee Recommended Passage of Whole Milk for Health Kids Act, Ensuring Whole Milk Variety in School Lunches

On June 30, 2023, the House Education and the Workforce Committee [reviewed](#) House Resolution 1147 and [recommended](#) passage of the "Whole Milk for Healthy Kids Act of 2023."

- Introduced on February 21, 2023, by U.S. Representative Glenn "GT" Thompson (PA-15)
- Aims to **allow schools participating in the National School Lunch Program to serve whole milk to students, flavored or unflavored.**
- Current regulations only permit low-fat or fat-free milk.
- The bill proposes not counting the fat in school-provided milk when assessing meal compliance with allowable saturated fat content regulations.



IDFA Announced Healthy School Milk Commitment

On April 5, 2023, the International Dairy Foods Association (IDFA) [introduced](#) the [Healthy School Milk Commitment](#), which aims to provide schools with healthier milk options following the Dietary Guidelines for Americans.

- Dairy processing companies **pledge to limit added calories and sugars in flavored milk served in school cafeterias.**
- Aligns with the [proposed rule for Child Nutrition Program](#) (88 FR 8050)
 - USDA Food and Nutrition Service (FNS) published proposed rule on February 7, 2023.
 - Aims to restrict added sugars in certain dairy products for school lunch and breakfast programs.
 - Proposed limit: 10 grams per 8 fluid ounces or 15 grams per 12 fluid ounces for flavored milk in middle and high schools
- Commitment timeline
 - **By the academic year 2025-2026, milk served in schools will contain no more than 10 grams of added sugar per 8 fluid-ounce serving.**
- Child Nutrition Program Final Rule
 - USDA plans to release a final rule before the start of the 2024-2025 school year



Iowa Enacted Law Allowing Raw Milk Production, Sales

On May 11, 2023, Iowa Governor Kim Reynolds [signed into law](#) Senate Bill 315, **allowing the production and sale of raw milk in the state, subject to certain requirements.**

- **Definition of Raw Milk:**
 - Raw milk defined as milk unpasteurized or not meeting grading requirements under Iowa law.
- **Production & labeling requirements:**
 - Production and sale restricted to “raw milk dairies” with a maximum of ten dairy animals producing milk.
 - Raw milk must be labeled with a warning indicating it is not pasteurized or graded.
- **Quality standards:**
 - Prohibits selling raw milk with coliform count exceeding ten colony-forming units per millimeter.
 - Dairy animals in raw milk production require an annual examination by a licensed veterinarian.
 - Monthly testing for coliform and standard plate counts.

***Focus Topic:* Administrative process to establish and amend Federal Milk Marketing Orders (FMMOs)**

**QUARTERLY DAIRY
LEGAL WEBINAR**

**1st Quarter – 2023
April 18, 2023**



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Agricultural Law Virtual Resource Rooms

Agricultural Law Virtual Resource Rooms provide a comprehensive resource with select topics for stakeholders who are interested in learning more about a specific area of agricultural law. Each of the Virtual Resource Rooms listed below contain a compilation of statutes, regulations, case law, and related publications relevant to the chosen topic. To suggest a new topic for our Agricultural Law Virtual Resource Rooms, feel free to [Contact Us](#).



[Bioengineered Disclosure](#)



[Dairy and Dairy Products Law](#)



[Food Safety Modernization Act](#)



DAIRY AND DAIRY PRODUCTS LAW



VIRTUAL RESOURCE ROOM NAVIGATION

CENTER RESOURCES

PRICE REGULATION – FEDERAL



PRICE REGULATION – STATE

RISK MANAGEMENT AND INCOME
PROTECTION

DAIRY PROMOTION PROGRAMS

DAIRY ANIMAL HEALTH AND WELFARE

DAIRY PRODUCTION AND PRODUCTS
REGULATION

DOMESTIC DAIRY POLICY AND OTHER
LEGAL ISSUES

INTERNATIONAL MARKETS AND DAIRY
TRADE

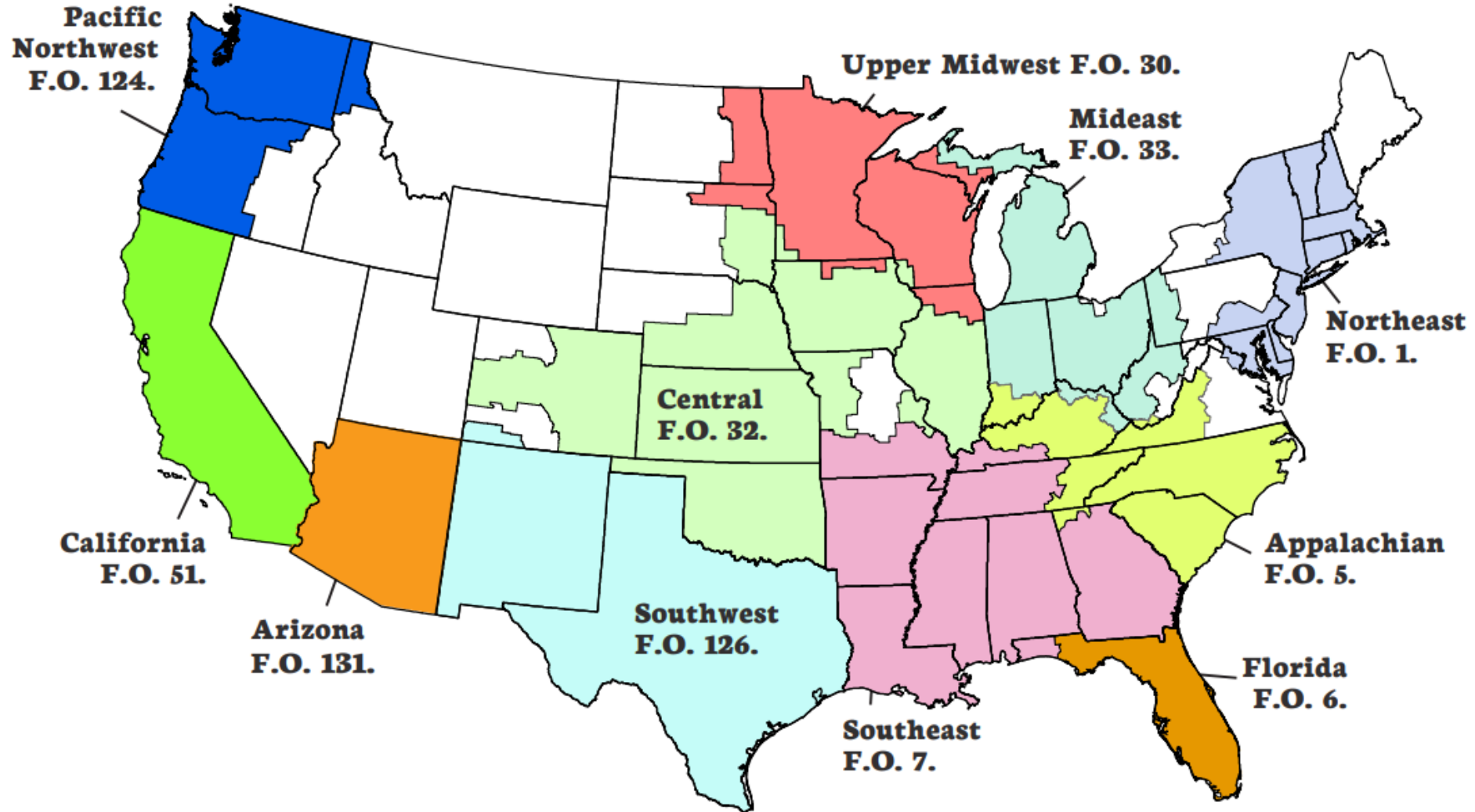
DAIRY JURISPRUDENCE

LAW REVIEWS ARTICLES AND ACADEMIC
PUBLICATIONS

INDUSTRY RESOURCES AND DATA



11 Federal Milk Marketing Order Areas





Petitions for Federal Milk Marketing Order Reform

NMPF Petition: 3/7/23 - National Milk Producers Federation (NMPF) publicly [announce](#) Board approval to file FMMO reform petition. 5/1/23 - [Petition](#) filed.

- Returning to the “higher of” Class I mover;
- Discontinuing the use of barrel cheese in the protein component price formula;
- Extending the current 30-day reporting limit to 45 days on forward priced sales on nonfat dry milk and dry whey to capture more exports sales in the USDA product price reporting;
- Updating milk component factors for protein, other solids and nonfat solids in the Class III and Class IV skim milk price formulas;
- Developing a process to ensure make-allowances are reviewed more frequently through legislation directing USDA to conduct mandatory plant-cost studies every two years;
- Updating dairy product manufacturing allowances contained in the USDA milk price formulas; and
- Updating the Class I differential price system to reflect changes in the cost of delivering bulk milk to fluid processing plants.



Petitions for FMMO Reform (cont.)

Make Allowance Petition: 3/28/23 - the Wisconsin Cheese Makers Association and International Dairy Foods Association separately petition to amend make-allowances.

- [Petition of the Wisconsin Cheese Makers Association \(“WCMA”\)](#)
- [Petition of the International Dairy Foods Association \(“IDFA”\)](#)
- NMPF and nine other dairy and agricultural associations [oppose](#) both petitions, calling for a balanced, measured approach that modernizes the program by addressing other “outdated” pricing factors.



USDA AMS Commences FMMO Reform Hearing Process

On June 1, 2023, the U.S. Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) published an [Action Plan on Proposed Amendments to the Pricing Provisions of All Federal Milk Marketing Orders](#) (FMMOs). This action plan is in response to the National Milk Producers Federation's (NMPF) formal proposal, filed on May 1, 2023, which requests amendments to all FMMOs. USDA is considering initiating a rulemaking process that would involve holding a public hearing to gather evidence concerning proposed pricing provision changes that would apply to all eleven FMMOs. The [published schedule](#) includes a call for additional reform proposals by June 14, 2023. A virtual pre-hearing information session is set to take place on June 16, 2023. Furthermore, USDA anticipates publishing a notice for the hearing in late July 2023, with a tentative start date for the hearing on August 23, 2023.



Ten Proposals for FMMO Reform

Pursuant to direction given during the June 16, 2023, virtual pre-hearing info session, on June 20, 2023, ten dairy groups submitted [revised proposals](#) for FMMO reform:

1. [American Farm Bureau Federation](#)
2. [California Dairy Campaign \(California Farmers Union\)](#)
3. [Cedar Grove Cheese](#)
4. [Dairy Pricing Association, Inc.](#)
5. [Edge Dairy Farmer Cooperative](#)
6. **International Dairy Foods Association:** [Class I Mover](#) & [Make Allowances](#)
7. [Milk Innovation Group](#)
8. [National All-Jersey, Inc.](#)
9. [National Milk Producers Federation](#)
10. [Wisconsin Cheese Markers Association](#)

According to [USDA's FMMO Action Plan](#), if USDA decides to proceed with a formal hearing, a notice of the hearing will be published in the Federal Register by the end of July and the scheduled commencement date for hearings would be August 23, 2023, in Indianapolis (Carmel), IN.



AFBF Market Intel - *Tracking FMMO Policy Developments*

- [Part 1](#) (4/13/23) & [Part 2](#) (6/22/23), by AFBF Economist Daniel Munch. This is a great discussion of where we are and how we got here. Part 2 spends time on proposals in AFBF's petition that are not in NMPF proposal, or at least not identical in detail. Beware: it is highly technical but can be read to “get the gist” without command of every detail.

FIGURE 1: CURRENT CLASS PRICES | AVERAGE OF + \$0.74 CLASS I MOVER

\$/CWT | Including Producer Price Differentials

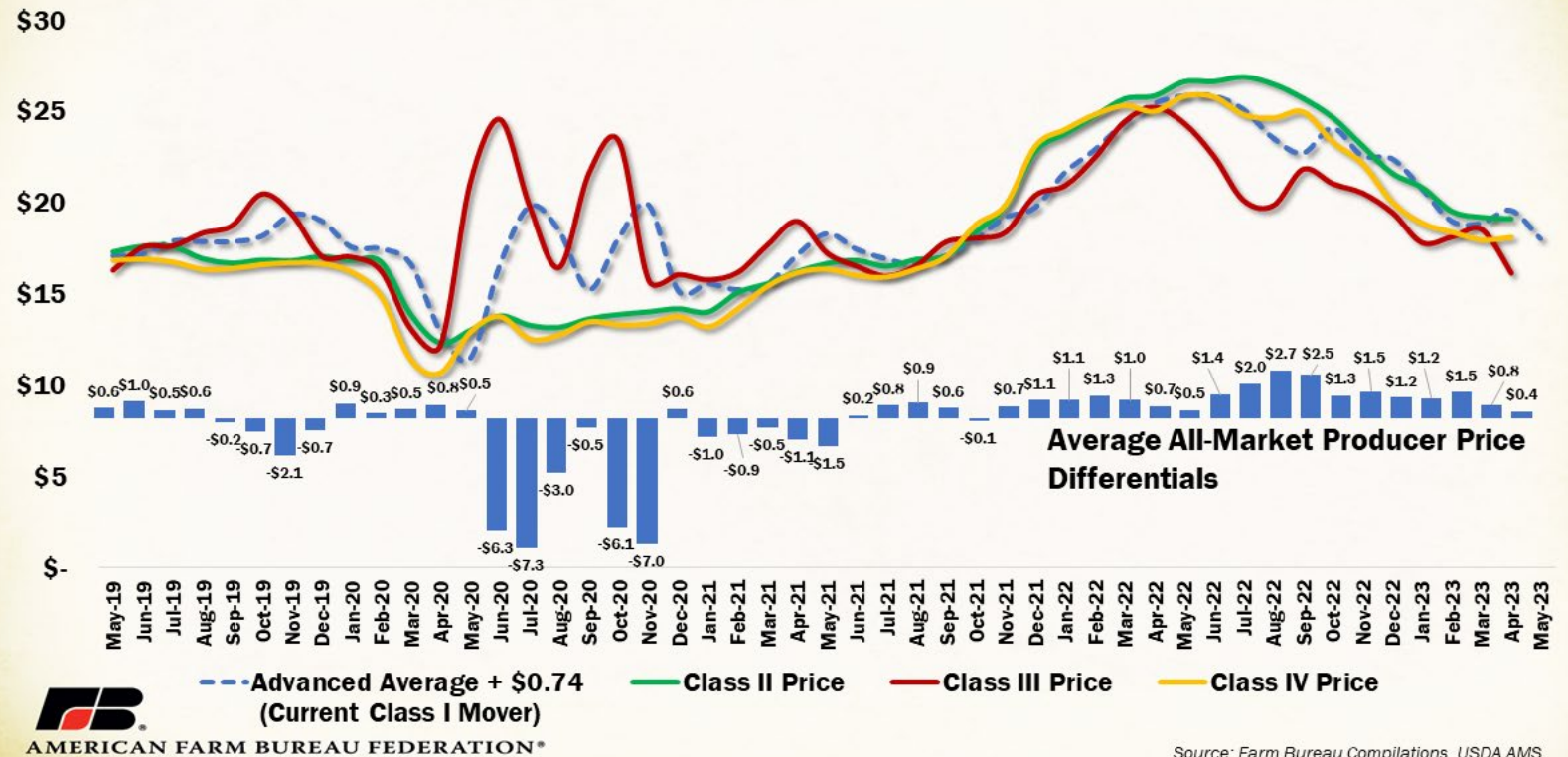
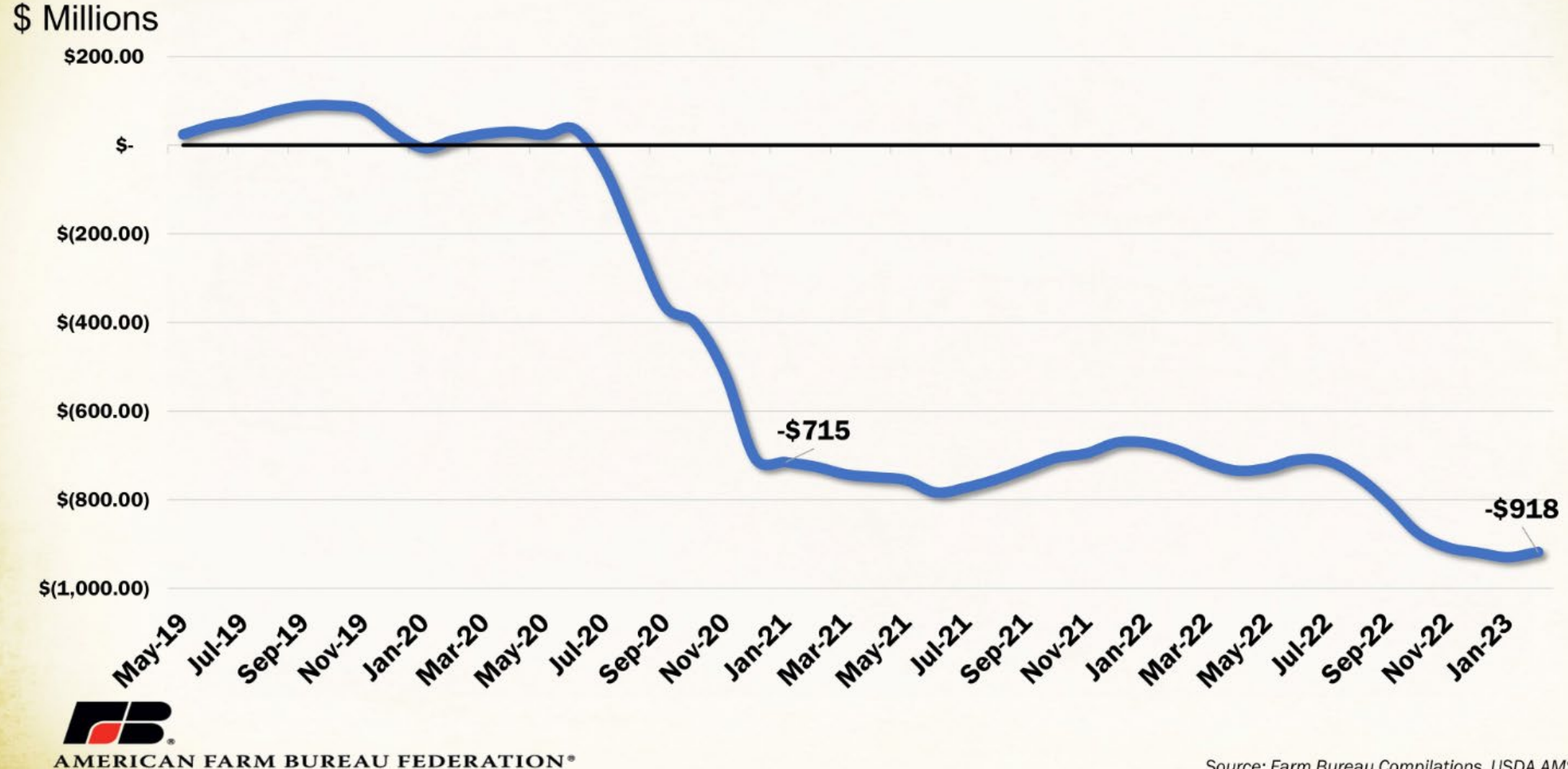


FIGURE 2: CUMULATIVE FEDERAL ORDER POOL LOSSES DUE TO CLASS I MOVER CHANGE



Pandemic Market Volatility Assistance Program (PMVAP): Round 1 - \$250M (80% of losses on production up to 5M lbs.) Round 2 - \$100M (80% of losses on production between 5M – 9M lbs.). Covers July –Dec. 2020.



When was the last FMMO amendment proceeding?

Milk in the Appalachian, Florida, and Southeast Marketing Areas; Recommended Decision on Proposed Amendments to Marketing Agreements and to Orders

A Proposed Rule by the [Agricultural Marketing Service](#) on 07/18/2023



This document has a comment period that ends in 62 days. (09/18/2023)

[SUBMIT A FORMAL COMMENT](#)

PUBLISHED DOCUMENT



Start Printed Page 46016

AGENCY:

Agricultural Marketing Service, USDA.

ACTION:

Proposed rule.

SUMMARY:

This decision proposes to amend the transportation credit balancing fund provisions for the Appalachian and Southeast Federal milk marketing orders, and establish distributing plant delivery credits in the Appalachian, Florida, and Southeast Federal milk marketing orders.

DOCUMENT DETAILS

Printed version:

[PDF](#)

Publication Date:

[07/18/2023](#)

Agencies:

[Agricultural Marketing Service](#)

Dates:

Written exceptions and comments to this proposed rule must be submitted on or before September 18, 2023.

Comments Close:

[09/18/2023](#)

Document Type:

Proposed Rule

Federal Milk Marketing Order National Hearings

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Overview

Milk Market Administrator Web Sites

Milk Marketing Order Statistics

Qualification of Milk Marketing
Cooperative Associations

Federal Milk Marketing Order Reform
Documents

Current FMMO Regulations

- [National Producer Handler Hearing](#)

Dairy Price Petition 2012

- [Industry Request-August 17, 2012 \(pdf\)](#)
- [USDA Response-September 17, 2012 \(pdf\)](#)

Price Formulas Hearings

- [Hearing on Class III and IV Prices - February 26, 2007](#)
- [Hearing on Class I and II Prices - December 11, 2006](#)
- [Hearing on Class I Definitions - June 20-23, 2005](#)
- [Hearing on Class III/IV Classification October 21, 2003](#)
- [Hearing on Class III and IV Prices May 8-12, 2000](#)

Make Allowances Hearings

- [Class III/IV Price Make Allowances - January 24, 2006](#)

<https://www.ams.usda.gov/rules-regulations/moa/dairy/hearings>

Federal Milk Marketing Order Regional Hearings

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[Milk Marketing Order Statistics](#)

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Cooperative Associations](#)

[Federal Milk Marketing Order Reform
Documents](#)

[Current FMMO Regulations](#)

California

- [California Promulgation – September 22- November 8, 2015](#)

Northeast

- [Pooling Provisions-September 10-13, 2002](#)

Mideast

- [Pool Distributing Plant Definition - October 4-5, 2011](#)
- [Class I Differentials August 19-20, 2008](#)
- [Hearing on Mideast Pooling Provisions March 7-10, 2005](#)
- [Pooling Provisions October 23-24, 2001](#)

Upper Midwest

- [Pooling Provisions August 16-19, 2004](#)
- [Upper Midwest Hearing: June 26-27, 2001](#)

Central

- [Transportation Credits & Pooling Standards - December 6-8, 2004](#)
- [Pooling Standards - November 14-15, 2001](#)

Pacific-Northwest

- [Request for Additional Proposals to Expand the Pacific Northwest Order](#)

<https://www.ams.usda.gov/rules-regulations/moa/dairy/hearings/regional>

Federal Milk Marketing Orders Petitions

HOME › RULES & REGULATIONS › MARKETING ORDERS & AGREEMENTS › FEDERAL MILK MARKETING ORDERS › FEDERAL MILK MARKETING ORDERS PETITIONS

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Qualification of Milk Marketing
Cooperative Associations

Federal Milk Marketing Order Reform
Documents

Current FMMO Regulations

- FMMO National Pricing Petitions
 - Revised Additional Proposals Received
 - [AFBF \(pdf\)](#)
 - [California Dairy Campaign \(pdf\)](#)
 - [Cedar Grove Cheese \(pdf\)](#)
 - [Dairy Pricing Association \(pdf\)](#)
 - [Edge Dairy Farmer Cooperative \(pdf\)](#)
 - [IDFA Class I Mover \(pdf\)](#)
 - [IDFA Make Allowance \(pdf\)](#)
 - [Milk Innovation Group \(pdf\)](#)
 - [National All Jersey \(pdf\)](#)
 - [National Milk Producers Federation \(pdf\)](#)
 - [Wisconsin Cheese Makers Association \(pdf\)](#)

<https://www.ams.usda.gov/rules-regulations/moa/dairy/petitions>



AGRICULTURAL MARKETING AGREEMENT ACT OF 1937,¹

**REENACTING, AMENDING, AND SUPPLEMENTING THE AGRICULTURAL
ADJUSTMENT ACT, AS AMENDED**

(7 U.S.C. 601, 602, 608a–608e, 610, 612, 614, 624, 627, 671–674)

AN ACT To reenact and amend provisions of the Agricultural Adjustment Act,
as amended, relating to marketing agreements and orders.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following provisions of the Agricultural Adjustment Act, as amended, not having been intended for the control of the production of agricultural commodities, and having been intended to be effective irrespective of the validity of any other provision of that Act are expressly affirmed and validated, and are reenacted without change except as provided in section 2:

(a) Section 1 (relating to the declaration of emergency);

DECLARATION

[It is hereby declared that the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure and that these conditions affect transactions in agricultural commodities with a national public interest, and burden and obstruct the normal channels of interstate commerce. (7 U.S.C. 601.)]²



Administrative Procedure Act (5 U.S.C. Subchapter II)

[§ 551](#) Definitions

[§ 552](#) Public information; agency rules, opinions, agency rules, opinions, orders, records, and proceedings

[§ 552a](#) Records maintained on individuals

[§ 552b](#) Open meetings

[§ 553](#) Rule making

[§ 554](#) Adjudications

[§ 555](#) Ancillary matters

[§ 556](#) Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision

[§ 557](#) Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record

[§ 558](#) Imposition of sanctions; determination of applications for licenses; suspension, revocation, and expiration of licenses

[§ 559](#) Effect on other laws; effect of subsequent statute

Title 7 Agriculture

Subtitle B Regulations of the Department of Agriculture

27 – 5099

Chapter X Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture 1000– 1199

Part 1000	General Provisions of Federal Milk Marketing Orders	1000.1 – 1000.93
Part 1001	Milk in the Northeast Marketing Area	1001.1 – 1001.86
Part 1005	Milk in the Appalachian Marketing Area	1005.1 – 1005.86
Part 1006	Milk in the Florida Marketing Area	1006.1 – 1006.86
Part 1007	Milk in the Southeast Marketing Area	1007.1 – 1007.86
Part 1030	Milk in the Upper Midwest Marketing Area	1030.1 – 1030.86
Part 1032	Milk in the Central Marketing Area	1032.1 – 1032.86
Part 1033	Milk in the Mideast Marketing Area	1033.1 – 1033.86
Part 1051	Milk in the California Milk Marketing Area	1051.1 – 1051.90
Part 1124	Milk in the Pacific Northwest Marketing Area	1124.1 – 1124.86
Part 1126	Milk in the Southwest Marketing Area	1126.1 – 1126.86
Part 1131	Milk in the Arizona Marketing Area	1131.1 – 1131.86]
Part 1135	Milk in the Western Marketing Area	1135.1
Part 1145	Dairy Forward Pricing Program	1145.1 – 1145.3
Part 1146	Milk Donation Reimbursement Program	1146.1 – 1146.210
Part 1147	Dairy Donation Program	1147.1 – 1147.212
Part 1150	Dairy Promotion Program	1150.101 – 1150.278
Part 1160	Fluid Milk Promotion Program	1160.101 – 1160.609
Part 1170	Dairy Product Mandatory Reporting	1170.1 – 1170.17

This brochure is designed to provide an overview of the Federal milk marketing order amendment process. It is not intended to provide comprehensive guidance on the rulemaking process. Rules for amendatory proceedings of Federal orders can be found in Title 7 of the Code of Federal Regulations (CFR), Subtitle B-Regulations of the U.S. Department of Agriculture, Part 900-General Regulations.

For information concerning proposals to amend provisions of the Federal order program, visit www.ams.usda.gov/rules-regulations/moa/dairy.

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October 2018



Agricultural Marketing Service

Federal Milk Marketing Order Program: *Understanding the Milk Order Amendment Process*

As the dairy industry changes, the U.S. Department of Agriculture (USDA) provides a process for amending the regulatory structure of Federal milk marketing orders (Federal orders) to keep pace with industry needs. This brochure outlines the steps followed under the formal rulemaking, process from introduction of a proposal through the producer referendum and implementation. The rulemaking process is designed to allow for maximum public participation.

Any producer, handler, or other interested party may submit a proposal for consideration and request a hearing to establish a new Federal order or amend one or more provisions of an existing Federal order. The rulemaking procedures outlined in this brochure are governed by the Federal Administrative Procedures Act and USDA's Rules of Practice and Procedure.

Proposal Requirements

Proposals to amend a Federal order must contain the following, as applicable:

- An explanation of the proposal, including its purpose, and a description of the marketing conditions that the proposal is intended to address.
- A description of the current Federal order requirements or industry practices relative to the proposal.
- A description and quantification of the expected impact on all segments of the industry, including producers, handlers, and consumers.
- A description and quantification of the expected impact on small businesses as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612).

- An explanation of how adoption of the proposed amendment would increase or decrease costs to producers, handlers, consumers, and others in the marketing chain.
- A response as to whether a pre-hearing information session would be helpful to explain and understand the proposal. Information from such a session can aid USDA in determining the necessity of holding a hearing.

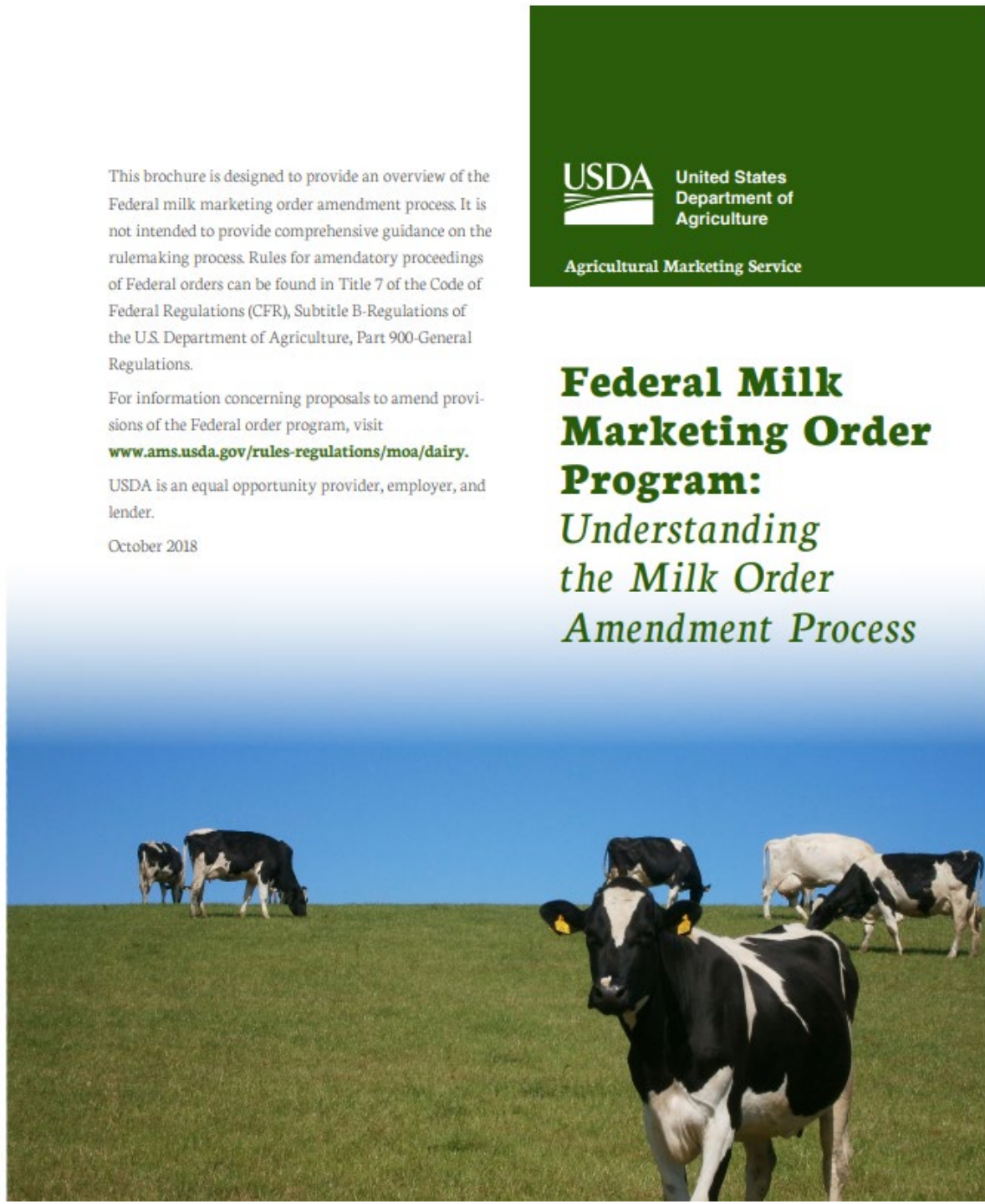
Informal Rulemaking

For provisions that do not directly affect milk prices, USDA may elect to use informal rulemaking procedures to amend Federal orders. Such procedures typically shorten the rulemaking process. Informal rulemaking is a three-step process in which:

1. USDA recognizes that a regulation needs to be issued or changed;
2. USDA publishes a proposed rule and provides time for public comment; and
3. USDA considers the submitted comments and issues a final rule.

Mail Proposals to:

Deputy Administrator
USDA - AMS - Dairy Programs
Stop 0225
Room 2968 - South
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Formal Rulemaking: Steps for Amending a Federal Milk Marketing Order

1 USDA Receives A Proposal.

USDA has **30 days** to issue an “action plan” to complete the hearing within **120 days**, request additional information from proponent(s), or deny a request. USDA may decide to hold a pre-hearing information session in response to a proposal. Information sessions provide an opportunity for interested parties to present their proposal to a USDA panel.

2 USDA Issues a Notice of Hearing.

A Notice of Hearing is published in the Federal Register, and can be found online at: www.federalregister.gov

Once the Notice of Hearing is issued, the *ex parte* period begins. During this time, USDA employees may not discuss the merits of the proposal(s) with interested persons or their representatives unless all parties are given notice and allowed to participate.

3 Proponents Request USDA Data.

Requests for preparation of USDA data to be used at a hearing must be received at least **10 days** before the beginning of the hearing. If a hearing is announced less than **10 days** prior to the start of the hearing, data requests must be submitted within **2 days** following the publication of the Notice of Hearing.

4 Witnesses submit Testimony in Advance.

Those proposing amendments and participating in a hearing as witnesses must make copies of their testimony and any other exhibits available to USDA officials before the hearing begins on their expected day of testimony. Individual dairy farmers are not subject to this requirement.

5 USDA Holds Public Hearing.

The USDA Secretary appoints a presiding official to oversee a public hearing conducted in accordance with the rules of practice for formal rulemaking.

6 USDA Makes the Hearing Record Available.

The hearing record is made available within **2 weeks** of the completion of the hearing and can be found online at: www.ams.usda.gov/rules-regulations/moa/dairy.

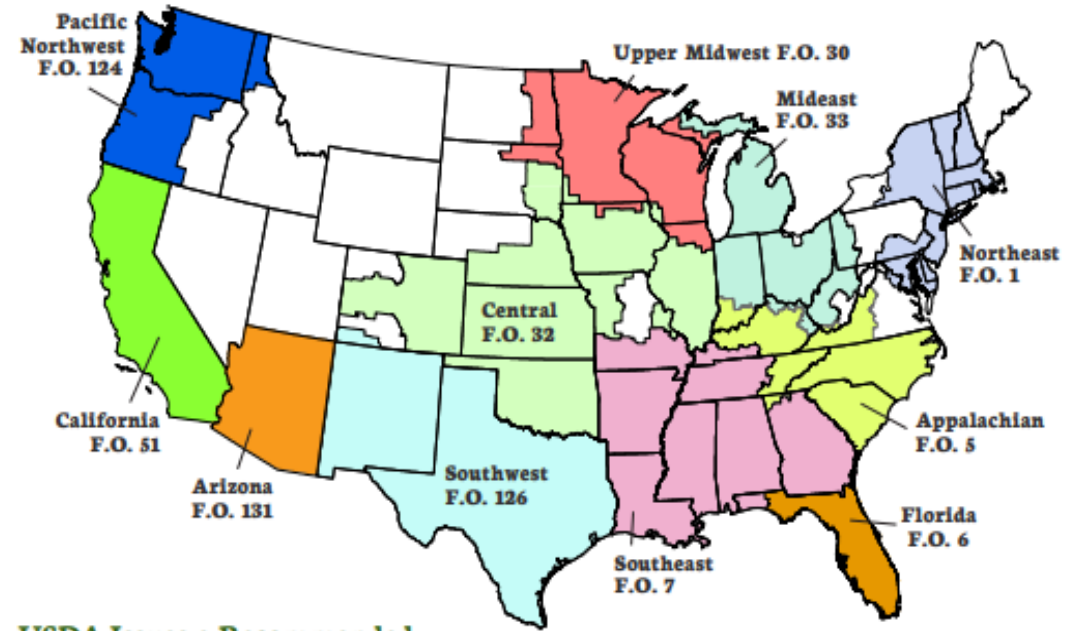
7 Parties File Corrections to Transcript.

Interested persons may file suggested corrections to the transcript of testimony by a date determined by the presiding official, not to exceed **30 days** after the hearing record is made available.

8 Participants File Post-Hearing Briefs.

Interested persons may file proposed findings and conclusions, and written arguments or briefs, by a date determined by the presiding official, not to exceed **60 days** after completion of the hearing.

11 Federal Milk Marketing Order Areas



9 USDA Issues a Recommended Decision.

USDA shall issue a recommended decision or, when applicable, a tentative final decision, not later than **90 days** after the deadline for submission of post-hearing briefs. The decision is published in the **Federal Register**.

10 Parties File Comments and Exceptions to Recommended Decision.

Comments and exceptions to a recommended decision may be filed with the USDA Hearing Clerk not later than **60 days** after publication of the recommended decision in the **Federal Register**, unless otherwise specified in that decision. Comments and exceptions may also be filed online using the Federal eRulemaking portal at: www.regulations.gov.

11 USDA Issues a Final Decision.

USDA shall issue a final decision not later than **60 days** after the deadline for submission of comments and exceptions to the recommended decision. The final decision is published in the **Federal Register**.

12 USDA Holds a Referendum and Implements the Amendments.

Through a referendum process, producers are able to approve the Federal order(s) as amended, or reject the proposed changes, effectively terminating the Federal order(s). If approved by producers, the amendment(s) to the order(s) are published in the **Federal Register** as a final rule. The publication of the final rule announces when the amendment(s) become effective and concludes the rulemaking process.



How to Create a Marketing Order

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Because marketing orders are used to solve shared problems across an industry, the first step to creating a one is for the industry to hold a meeting where they formally identify mutual marketing problems and determine whether a marketing order could help them solve these problems. During these discussions, USDA staff may help the industry identify marketing order authorities relevant to the industry's problems. After that point, these steps are followed:



- 1.If there is general industry support for a program, a preliminary proposal is prepared by a steering committee of key industry people. Growers and shippers are included in discussions on the proposal.**
- 2.A list of industry growers and handlers is developed by proponents. Next a request for a hearing on the proposal is sent to the Administrator of AMS. It should indicate the degree of industry support, the problems the program would address, and suggest a possible hearing site and approximate date.**
- 3.AMS reviews the request and supporting documents, as well as any alternative proposals from interested parties. During this period, the staff of USDA is free to discuss the merits of elements included in any proposal with the industry.**
- 4.A Notice of Public Hearing is then issued, and it is published at least 15 days before the hearing. USDA staff can comment only on procedural questions after this point.**
- 5.A USDA Administrative Law Judge presides at the public hearing and a verbatim record is compiled of the testimony of opponents, proponents and others, including USDA personnel. Because proponents bear the burden of proof, they must present evidence to support the need for the program, and every provision in it. Briefs arguing for particular decisions may be filed with USDA after the hearing.**



- 6. A recommended decision is issued by USDA based on hearing evidence. This is USDA's formal recommendation on the proposal. Persons are allowed to file exceptions to it for a set time period.**
- 7. After consideration of all exceptions to the recommended decision, USDA prepares a final decision. If it is favorable, a grower referendum is held on the proposal.**
- 8. While producers are voting, copies of a companion marketing agreement are sent to handlers for their signature. Through their signatures on the agreement, handlers indicate their intention to abide by the terms of the program.**
- 9. If at least two thirds of the growers voting by number or by volume approve the proposal, the Secretary of Agriculture issues the marketing order.**

This process may take up to one and one-half years (18 months) to complete, depending on the complexity of the proposal, the size of the industry, and the availability of resources within the industry and USDA to devote to the proposed program.



THANK YOU! PLEASE SUBMIT QUESTIONS!

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CENTER MISSION AND BACKGROUND

The Center for Agricultural and Shale Law conducts research and educational programs to serve a wide variety of stakeholders including agricultural producers, landowners, mineral interest and royalty owners, business professionals, judges, attorneys, legislators, government officials, community groups, and the general public. Center programs are funded in part by the Commonwealth of Pennsylvania through the Pennsylvania Department of Agriculture. The Center for Agricultural and Shale Law is a partner of the National Agricultural Law Center (NALC) at the University of Arkansas System Division of Agriculture, which serves as the nation's leading source of agricultural and food law research and information.

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