

USDA Terminates F.O. 4 Base-Excess Plan

WASHINGTON, D.C. — The U.S. Department of Agriculture has announced that it has terminated, as of Jan. 1, the base-excess plan for the Federal Order 4 milk marketing area.

According to Rex Lothrop, market administrator, "The termination was due to the expiration of legislative authority to incorporate base-excess plans in federal milk marketing orders on Dec. 31, 1996.

The termination notice that follows was issued by Michael Dunn, assistant secretary of marketing and regulatory programs in the USDA Agricultural Marketing Service.

For more information, call (703) 549-7000, or (800) 336-0232; or

write to Federal Milk Market Administrator, 333 N. Fairfax Street - Suite 200, P.O. Box 25828, Alexandria, Va., 22313.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1004, 1005, 1007, 1011, and 1046

[DA-96-15]

Milk in the Middle Atlantic, Carolina, Southeast, Tennessee Valley and Louisville-Lexington-Evansville Marketing Areas; Termination of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA

ACTION: Final rule

SUMMARY: This document terminates the base-excess payment plan provisions of the Middle Atlantic, Carolina, Southeast, Tennessee Valley, and Louisville-Lexington-Evansville Federal milk marketing orders due to the expiration of legislative authority to incorporate base-excess plans in Federal milk marketing orders on December 31, 1996

EFFECTIVE DATE: January 1, 1997

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202)690-1932, e-mail address Nicholas_X_Memoli@usda.gov

SUPPLEMENTARY INFORMATION:

The Department is issuing this final rule in conformance with Executive Order 12866

This final rule has been reviewed under Executive Order 12958, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 801-874), 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 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 the 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. A bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) as amended the Agricultural Marketing Service has considered the economic impact of this action on small entities and believes that this rule could have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than \$500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the \$500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For 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.

This rule terminates the base-excess plan provisions of five Federal milk orders. Producers with earned base will no longer receive base prices as in the past, but will be paid at least the uniform price throughout the year for their hundredweight of milk.

Under a base-excess payment plan, a producer is paid a "base price" for "base milk" and an "excess price" for production in excess of base milk. During the base-paying period of a base-excess plan, base prices are higher than the uniform prices computed for those months while the excess prices are below the uniform prices. Using a representative period of May 1996, the difference between the base and uniform prices in the five orders was not greater than \$0.28/cwt., while the difference between the uniform and excess prices ranged from \$0.45 to \$2.81/cwt.

The economic impact of the termination of base-excess plans is likely to be threefold. First, for those producers who have been most successful in shifting their herd's production from the spring to the fall, there will be a reduction in total revenue. The loss in revenue would be determined by multiplying the producer's total hundredweight of milk by the uniform price and subtracting that figure from the producer's base milk at the estimated base price plus the excess milk at the estimated excess price. This calculation would have to be computed for each month of the base-paying period. On the other hand, for those producers who have made no effort to shift production from the spring to the fall, there is likely to be an economic windfall at the difference between the uniform price multiplied by their total production and what the producer's milk would have earned using base and excess prices.

A second economic impact for producers under Orders 5, 7, 11, and 46 will be experienced by those producers who were planning to go out of business and sell their base at the end of the base-building period, but before the start of the base-paying period. These producers will lose the amount of money that they could have realized by selling their base. For example, during the 1995 base-building period, 5500 producers earned base in the Southeast market. The average daily base for a single producer was 2.933 lbs. Based on the average price per pound for base in 1995 (\$1.62/lb based on figures obtained from the Market Administrator's office), an average producer in the Southeast could have obtained \$4,751.46 from the sale of such base in 1997.

The final effect of the base-excess plan termination is impossible to measure in advance of the facts. Under the base and excess plans in Orders 5, 7, 11 and 46, dairy farmers who were not on a market during the base-building period are discouraged from pooling their milk on the market during the base-paying period because they would only receive the excess price for their milk. Without a base and excess plan, however, there would be no such disincentive. Theoretically, therefore, it is possible that producers who are not normally associated with these markets will become associated with them during the flush production months to take advantage of a price difference between these generally deficit, high Class I utilization markets and the producers' normal, lower utilization, lower-priced market. To what extent the attachment of this additional milk will lower the uniform price in the 5 base-excess plan markets cannot be determined at this time.

Regardless of the possible economic effects which may result from termination of seasonal base plans upon small entities there is no alternative to this termination action since the underlying statutory authority expires on December 31, 1996.

In considering the impact of this action on small businesses, the termination of seasonal base plans will also cause a reduction in

paperwork. Base-excess plans generate a large volume of paperwork for the Market Administrator's office, as well as for cooperative associations and handlers with non-member supplies. Termination of such plans will place less of a regulatory burden on those responsible for recordkeeping, administration, and compliance with these provisions.

Statement of Consideration

This order of termination is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the orders regulating the handling of milk in the Middle Atlantic, Carolina, Southeast, Tennessee Valley and Louisville-Lexington-Evansville marketing areas.

It is determined that notice of proposed rulemaking and public procedure thereon is impracticable, unnecessary and contrary to the public interest. The expiration of authority to incorporate seasonal base plans in Federal milk marketing orders on December 31, 1996 necessitates the termination of base-excess plan provisions.

The Department received several letters requesting that seasonal base plans be suspended, rather than terminated. While the Department considered suspending the provisions, we concluded that an order provision cannot be suspended once the underlying legislative authority for that provision has expired. Nevertheless, should Congress pass future legislation authorizing seasonal base plans, it could provide for an expedited procedure to reinstate the order provisions.

After consideration of all relevant material, and other available information, it is hereby found and determined that effective January 1, 1997, the provisions of each of the orders specified below do not tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Parts 1004, 1005, 1007, 1011, and 1046

Milk marketing orders. For the reasons set forth in the preamble, 7 CFR Parts 1004, 1005, 1007, 1011, and 1046 are amended as follows:

1. The authority citation for 7 CFR Parts 1004, 1005, 1007, 1011, and 1046 continues to read as follows:

Authority: 7 U.S.C. 601-674

PART 1004 - MILK IN THE MIDDLE ATLANTIC MARKETING AREA

§ 1004.61 (Amended)

2. In § 1004.61, paragraph (b) is removed and reserved, and the section heading and introductory text are revised to read as follows:

§ 1004.61 Computation of weighted average differential price and producer nonfat milk solids price.

For each month the market administrator shall compute a "weighted average differential price" and a "producer nonfat milk solids price", as follows:

§ 1004.63 (Amended)

3. In § 1004.63, the words "the weighted average differential price for base milk and" are removed, and the section heading is revised to read as follows:

§ 1004.63 Announcement of weighted average differential price, nonfat milk solids price and producer nonfat milk solids price.

§ 1004.73 (Amended)

4. In § 1004.73, paragraph (a) is amended by removing the word "base". Paragraph (a)(1) is amended by removing the phrase "for base milk computed pursuant to § 1004.61(b)" and the word "base", and paragraph (b) is removed.

§ 1004.75 (Amended)

5. In § 1004.75 paragraph (a) the words "for base milk computed pursuant to § 1004.61(b)" are removed.

§ 1004.90, 1004.91, 1004.92, 1004.93, 1004.94 and 1004.95 (Removed)

6. § 1004.90 and the undesignated centerheading preceding it, and §§ 1004.91 through 1004.95 are removed.

PART 1005 - MILK IN THE CAROLINA MARKETING AREA

§ 1005.32 (Amended)

7. In § 1005.32, paragraph (a) is removed and reserved.

§ 1005.61 (Amended)

8. In § 1005.61, paragraph (a) is amended by removing the words "of June through January", paragraph (a)(6) is amended by removing the words "for the months of June through January", paragraph (b) is removed and the section heading is revised to read as follows:

§ 1005.61 Computation of uniform price (including weighted average price).

§ 1005.62 (Amended)

9. In § 1005.62 paragraph (b) is revised to read as follows:

§ 1005.62 Announcement of uniform price and butterfat differential.

(b) The 11th day after the end of each month the uniform price pursuant to § 1005.61 for such month.

§ 1005.71 (Amended)

10. In § 1005.71 paragraph (a)(2)(i), the letter "(s)" at the end of the word "price(s)" is removed.

§ 1005.73 (Amended)

11. In § 1005.73, paragraph (a)(2) is amended by removing the letter "(s)" at the end of the word "price(s)", and the words "or base milk and excess milk", paragraph (c)(2) is amended by removing the word "appropriate" and the letter "(s)" at the end of the word "price(s)", paragraphs (d)(4) and (5) are amended by removing the letter "(s)" at the end of the word "rate(s)" everywhere it appears, and paragraph (d)(3) is removed and reserved.

§ 1005.74 (Amended)

12. § 1005.74 is amended by removing the letter "(s)" at the end of the word "price(s)".

§ 1005.75 (Amended)

13. In § 1005.75, paragraph (a) is amended by removing the words "and the uniform price for base milk".

§ 1005.90, 1005.91, 1005.92, 1005.93, and 1005.94 (Removed)

14. § 1005.90 and the undesignated centerheading preceding it, and §§ 1005.91 through 1005.94 are removed.

PART 1007 - MILK IN THE SOUTHEAST MARKETING AREA

§ 1007.32 (Amended)

15. In § 1007.32, paragraph (a) is removed and reserved.

§ 1007.61 (Amended)

16. In § 1007.61 paragraph (a) is amended by removing the words "of June through January", paragraph (a)(5) is amended by removing the words "for the months of June through January", paragraph (b) is removed, and the section heading is revised to read as follows:

§ 1007.61 Computation of uniform price (including weighted average price).

§ 1007.62 (Amended)

17. In § 1007.62, paragraph (b) is amended by removing the word "applicable" and the letter "(s)" at the end of the word "price(s)".

§ 1007.71 (Amended)

18. In § 1007.71, paragraph (a)(2)(i) is amended by removing the letter "(s)" at the end of the word "price(s)".

§ 1007.73 (Amended)

19. In § 1007.73 paragraph (a)(1) is amended by removing the phrase "or if the producer had no established base upon which to receive payments during the base paying months of February through May,".

Paragraph (a)(2) is amended by removing the letter "(s)" at the end of the word "price(s)" and the words "or base milk and excess milk", paragraph (d)(2) is amended by removing the word "appropriate" and the letter "(s)" at the end of the word "price(s)", paragraphs (f)(4) and (5) are amended by removing the letter "(s)" at the end of the word "rate(s)" and the word "(are)" wherever they appear, and paragraph (f)(3) is removed and reserved.

§ 1007.74 (Amended)

20. In § 1007.74 the letter "s" at the end of the word "prices" and the words "for base and excess milk" are removed.

§ 1007.75 (Amended)

21. In § 1007.75 paragraph (a) is amended by removing the phrase "and the uniform price for base milk".

§ 1007.90, 1007.91, 1007.92, 1007.93, and 1007.94 (Removed)

22. § 1007.90 and the undesignated centerheading preceding it, and §§ 1007.91 through 1007.94 are removed.

PART 1011 - MILK IN THE TENNESSEE VALLEY MARKETING AREA

§ 1011.32 (Amended)

23. In § 1011.32 paragraph (a) is removed and reserved.

§ 1011.61 (Amended)

24. In § 1011.61, paragraph (a) is amended by removing the words "of July through February", paragraph (b) is removed, and the section heading is revised to read as follows:

§ 1011.61 Computation of uniform price (including weighted average price).

§ 1011.62 (Amended)

25. In § 1011.62 paragraph (b) is amended by removing the word "applicable" and the letter "s" at the end of the word "prices".

§ 1011.71 (Amended)

26. In § 1011.71 paragraph (a)(2)(i) is amended by removing the letter "s" at the end of the word "prices".

§ 1011.73 (Amended)

27. In § 1011.73, paragraph (a)(2) is amended by removing the phrase "or base milk and excess milk" and the letter "(s)" at the end of the word "price(s)", paragraph (c)(2) is amended by removing the word "appropriate" and the letter "(s)" at the end of the word "price(s)", paragraphs (d)(4) and (5) are amended by removing the letter "(s)" at the end of the word "rate(s)" wherever it appears, and paragraph (d)(3) is removed and reserved.

§ 1011.74 (Amended)

28. In § 1011.74, the letter "(s)" at the end of the word "price(s)" is removed.

§ 1011.75 (Amended)

29. In § 1011.75, paragraph (a) is amended by removing the words "and the uniform price for base milk".

§ 1011.90, 1011.91, 1011.92, 1011.93, and 1011.94 (Removed)

30. § 1011.90 and the undesignated centerheading preceding it, and §§ 1011.91 through 1011.94 are removed.

PART 1046 - MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

§ 1046.32 (Amended)

31. In § 1046.32, paragraph (d) is removed and reserved.

§ 1046.61 (Amended)

32. In § 1046.61, paragraph (a) is amended by removing the words "of July through February", paragraph (b) is removed, and the section heading is revised to read as follows:

§ 1046.61 Computation of uniform price (including weighted average price).

§ 1046.62 (Amended)

33. In § 1046.62 paragraph (b) is amended by removing the word "applicable" and the letter "(s)" at the end of the word "price(s)".

§ 1046.71 (Amended)

34. In § 1046.71 paragraph (a)(2)(i) is amended by removing the word "applicable" and the letter "(s)" at the end of the word "price(s)".

§ 1046.73 (Amended)

35. In § 1046.73 the last sentence in paragraph (a) is removed, paragraph (b) is amended by removing the letter "(s)" at the end of the word "price(s)" and the words "or base milk and excess milk", paragraphs (d)(4) and (5) are amended by removing the letter "(s)" at the end of the word "rate(s)" everywhere it appears, and paragraph (d)(3) is removed and reserved.

§ 1046.74 (Amended)

36. In § 1046.74, the letter "(s)" at the end of the word "price(s)" is removed.

§ 1046.75 (Amended)

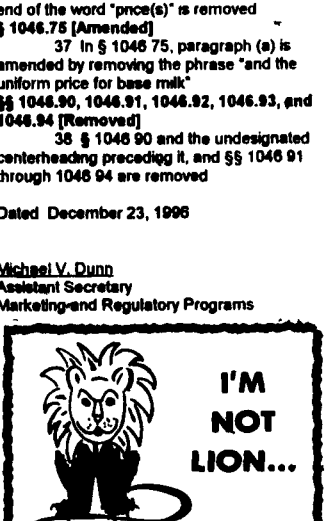
37. In § 1046.75, paragraph (a) is amended by removing the phrase "and the uniform price for base milk".

§ 1046.90, 1046.91, 1046.92, 1046.93, and 1046.94 (Removed)

38. § 1046.90 and the undesignated centerheading preceding it, and §§ 1046.91 through 1046.94 are removed.

Dated December 23, 1996

Michael V. Dunn
Assistant Secretary
Marketing and Regulatory Programs



I'M NOT LION...

THE CLASSIFIED LIVESTOCK SECTION HAS BEASTLY SELECTIONS!

Green Dragon Livestock

(Continued from Page A18)

remain, along with, as stated earlier, the small animal sale. All the other Green Dragon auctions—which include the hay straw and grain sale at 10 a.m.; the outdoor flea and tool sale also at 10 a.m.; the produce and household sale at 2 p.m.—will remain as they are.

"We're sorry to see it go but we feel the Green Dragon will go on without it," Rohrbach said. "We want our farm friends to keep coming. We are rural-oriented and that is why it is a farmer's market and we want it to stay that way."

Green Dragon is open every Friday from 9 a.m.-10 p.m.

• Disease Resistance North and South •

Talk to your Pioneer Representative. Ask about:

9363 **NEW**

36 RELATIVE MATURITY MID-GROUP III

What a combination! SCN resistance and the Roundup Ready¹ gene.

Exceptional yield potential, excellent emergence and shattering resistance. Roundup¹ resistance and resistance to soybean cyst nematode Races 3 and 14 make this variety one you'll want to try. Plant on well-drained soils as Phytophthora tolerance is moderate.

9364 **NEW**

36 RELATIVE MATURITY MID-GROUP III

Exciting, new STS² bean.

9364 offers top-end yield potential for growers wishing to use the STS² method of weed control. Strong standability. Very good Phytophthora root rot field tolerance but no genetic resistance. This variety is widely adapted and well suited for no-till. Very good emergence. Tall plant with a bushy canopy.

9392

39 RELATIVE MATURITY LATE GROUP III

Record-setting yield potential.

Very good Phytophthora root rot tolerance. Excellent field emergence and shattering resistance. Outstanding standability.

9396 **NEW**

39 RELATIVE MATURITY LATE GROUP III

A widely adapted variety with the Roundup Ready¹ gene.

9396 features the Roundup Ready¹ gene and superior yield potential. Excellent standability and field emergence. This is a very attractive variety with outstanding shattering resistance.

Convenient Bulk Option • Worldwide Research • Field Agronomists • Biotechnology • Strong Strands • Stringent Quality Control • Roundup Ready¹ Gene