Questions & Answers Concerning Dairy Forward Pricing Program

Q: What is a dairy forward contract, and what are its purposes?
A: In general, a forward contract is an agreement between a milk buyer (handler) and a dairy farmer or a cooperative association of dairy farmers to sell a stated quantity of milk, for a stated period in the future, at a stated price. (Hereafter, the term "producer" may refer to a single dairy farmer or a cooperative association of dairy farmers.) A forward contract is a type of risk management instrument that has potential benefits to both parties. Producers and handlers are able to "lock in" prices, thereby reducing risk associated with milk price volatility. One benefit is the enhanced ability of producers and handlers to obtain new or continued financing. A forward price contract is a tool that can be used alone or in conjunction with other pricing tools to manage risk.

Q: What is the Dairy Forward Pricing Program?
A: The Dairy Forward Pricing Program allows producers to voluntarily enter into forward price contracts with handlers for pooled milk used for Class II, III, or IV purposes under the Federal Milk Marketing Orders. The program allows handlers regulated under the Federal milk marketing order program to pay producers in accordance with the terms of a forward contract and not have to pay the minimum Federal order blend price for pooled milk.

Q: What are some items that a producer should consider when entering into a forward contract?
A: A producer entering into a forward contract should understand all of the terms of the contract including how their milk will be priced, the length of the contract, and any charges or deductions that will be made. If a formula is used to price the milk, the producer should understand how the formula works and what factors affect it. The producer should understand what will happen if the terms of the contract are not fulfilled and the remedies available if the handler defaults on the contract. The contract should indicate how disagreements will be settled. Contract terms and conditions should be in writing. Federal Milk Market Administrators will not enforce forward price contracts.

Q: Will all producers be guaranteed an opportunity to participate in this program?
A: In order to participate in this program, two things are necessary. First, the handler to which a producer delivers milk must be willing to offer a forward contract. Second, the handler must have non-fluid uses of milk—i.e., butter, nonfat dry milk, cheese, ice cream, yogurt, etc.—to cover the quantity of milk under forward contract.

Q: Can a handler force a producer to enter into a forward contract?
A: Contracts under the Dairy Forward Pricing Program must be entered into voluntarily. Section 1502 of the Food, Conservation and Energy Act of 2008 (2008 Farm Bill) states, "The Secretary shall investigate complaints made by producers or cooperative associations of coercion by handlers to enter into forward contracts….If the Secretary finds evidence of coercion the Secretary shall take appropriate action." If a handler pressures a producer to sign a forward contract, this should be reported to the Market Administrator immediately.

Q: Does the milk handler have a responsibility to report information concerning the contract to the Market Administrator?
A: Before a handler can be exempt from paying a producer the Federal order's minimum price(s), the Market Administrator must have a signed and dated copy of a forward contract with both the handler's and producer's signatures. The contract must be signed prior to the first day of the month for which it is to be effective and must be in the possession of the Market Administrator by the 15th day of the month. In addition, attached to each contract must be a disclosure statement signed by the producer entering into the forward contract. If the producer and handler renegotiate or modify any terms of the contract, any such change must be put in writing as an amendment to the contract and submitted to the Market Administrator.

Q: What is included in the disclosure statement to be signed by the producer?
A: Regulation requires that the following disclosure statement be signed for each contract:

DISCLOSURE STATEMENT

I am voluntarily entering into a forward contract with [insert handler's name]. I have been given a copy of the contract. By signing this form, I understand that I am forfeiting my right to receive the Federal milk marketing order's minimum prices for that portion of the milk which is under contract for the duration of the contract. I also understand that this contract milk will be priced in accordance with the terms and conditions of the contract.

Printed Name: ___________________________________

Signature: ______________________________________

Date: ____

Address: _______________________________________

Producer Number: _______________________________

Q: Is there any restriction concerning the length of a forward contract?
A: No forward price contract may be entered into under the program after September 30, 2018, and no forward contract entered into under the program may extend beyond September 30, 2021.

Q: Can a producer enter into a forward contract with more than one handler?
A: Yes.

Q: Can a producer enter into more than one forward contract with a handler that covers milk delivered in the same month?
A: Yes. For example, a producer delivering 100,000 pounds of milk in a month could have 50 thousand pounds priced under one forward contract, 30 thousand pounds priced under another forward contract, and 20 thousand pounds not included in a forward contract.

Q: Will the Market Administrator verify the weights and tests of milk under forward contract?

A: The Market Administrator will verify the weights and tests of milk of producers who are not members of a cooperative association in the same manner as would be done if the milk were not under contract.

Q: What happens if, after a handler has entered into forward contracts, the handler's non-fluid use drops below the total amount of milk covered by forward contracts?
A: If this should happen and the contract price exceeds the order's minimum price(s) for the month, the issue would be moot and the handler would pay the producer the agreed-upon contract price for the milk covered by the contract. If, on the other hand, the contract price is below the order's minimum price(s) for the month, the handler would be required to pay the higher minimum price(s) for the quantity of over-contracted milk.

Q: In the situation just described, who determines which producers get the higher minimum order price for their over-contracted milk?
A: This determination is left to the handler. If the handler fails to indicate which milk is over contract milk, the Market Administrator will prorate the quantity of over-contract milk to each producer having a forward contract with the handler.

Q: Can a handler enter into a forward contract with a cooperative association of producers?
A: Yes.

Q: Can a forward contract between a handler and a cooperative association cover milk transferred from the cooperative association's plant?
A: Forward contracts can apply to bulk milk or milk components transferred from a cooperative association's plant.

Q: How will a handler's Class II, III, and IV utilization be determined?
A: Each month the Market Administrator will combine all of the handler's reported Class II, III, and IV utilization for all of the handler's plants receiving producer milk under the specific order.

Q: Will a handler's forward contracts with producers relieve the handler of responsibility for supplying the market with milk for fluid use if the Market Administrator increases shipping requirements for supply plants, balancing plants, and/or a system of supply plants?
A: No, any handler operating a pool plant will be responsible for meeting the order's pooling requirements, including any modifications due to adjustments by the Market Administrator, regardless of the impact such requirements may have on a handler's outstanding forward contracts.

Q: Will Market Administrators enforce payment of the contract price for milk covered by forward contracts?
A: No, Market Administrators will only enforce payment of the minimum order prices provided under the order for milk that is not subject to a forward contract.

Q: For that portion of their milk covered by forward contracts, will handlers still be subject to the order's classified pricing system?

A: Yes, even though a handler has forward contracted for a portion of its milk supply at a price that is higher or lower than the Federal order minimum blend price, the handler will still be required to account for all of its milk receipts and uses at the classified prices provided by the order. If a handler's classified use value exceeds the market-wide average, it will be required to make a payment into the producer-settlement fund. On the other hand, if a handler's classified use value is below the market-wide average, the handler will draw a payment out of the producer-settlement fund at the difference between its classified use value and the value of the milk at the market-wide average use value.

Q: For milk under forward contract, will a handler have to make partial and final payments by the dates required under the order?
A: Payments for milk under forward contract, are required on the same days as payments subject to Federal order minimum pricing requirements.

Q: Can the components of milk under forward contract be priced on a different basis than the components of milk subject to minimum Federal order pricing?
A: Yes, milk under forward contract can be priced any way that the handler and producer mutually agree upon. However, if the forward contract includes pricing of components that are not included in tests for milk priced under the order in which it is pooled, it would be necessary for the producer to arrange for private testing to verify the milk handler's weights and tests.

Q: Why restrict forward contracting to milk that is not used for fluid use?
A: This restriction was specified by the Farm Bill legislation.

Q: Will Market Administrators have any role in reviewing or approving forward contracts?
A: Market Administrators will review a forward contract to be certain that it complies with the rules governing the program. They will ensure that the contract is signed and dated by both parties and will make certain that a signed disclosure statement is attached to each contract entered into by a producer under the program. Other than reviewing the contract for these items, the Market Administrator will not comment on or seek to change a contract that has been approved between a producer and a handler.

Q: If a producer delivers both contract and non-contract milk in a given month, how will the Market Administrator and producer determine if the Federal order minimum blend price has been paid for the portion of the milk not under contract?
A: The monthly payroll reports of participating handlers provided to Market Administrators and remittance information from participating handlers to participating producers are required to contain detailed accounting that distinguishes gross values paid for applicable volumes of contract versus non-contract milk for each producer. These distinctions must be clear to avoid questions concerning compliance with Federal order minimum price requirements for participant milk not under contract.