

Questions & Answers Concerning Pilot Forward Contract Pricing Program

Q: Will all dairy farmers be guaranteed an opportunity to participate in this pilot program?

A: In order to participate in this program, two things are necessary. First, the handler to which a dairy farmer delivers milk must be willing to offer the dairy farmer a forward contract. Second, the handler must have non-fluid uses of milk--i.e., butter, powder, 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: A handler cannot force a producer to enter into a forward contract. The Consolidated Appropriations Act 2000 (i.e., Section 3 of H.R. 3428 of the 106th Congress, as enacted by Section 1001(a)(8) of Public Law 106-113), gives the Secretary of Agriculture the authority to implement this pilot program. If the program is abused, the Secretary will take appropriate remedial action.

Q: How do we know that a producer has “voluntarily” entered into a forward contract with a handler?

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 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 dairy farmer or cooperative association representative entering into the forward contract.

Q: Is there any restriction concerning the length of a forward contract?

A: A contract with a producer or cooperative association participating for the first time under the pilot program is limited to 12 months. Thereafter, any contract under the pilot program involving this producer or cooperative association may be unlimited in length provided that it does not extend beyond the pilot program termination date, December 31, 2004.

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

A: Yes.

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 nonfluid use drops below the amount of milk covered by forward contracts?

A: If this should happen and the contract price exceeded the order’s minimum price(s) for the month, the issue would be moot and the handler would continue to pay the producer the agreed-upon contract price for the milk covered by the contract. If, on the other hand, the contract price was 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 and

cooperative association having a forward contract with the handler.

Q: Can a handler enter into a forward contract with a cooperative association?

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 regardless of the impact such requirements may have on a handler's outstanding forward contracts. This responsibility would extend to any modification of shipping requirements resulting from a market administrator's adjustment of such requirements under the order.

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 minimum order price, the handler will still be required to account for all of its milk receipts at the classified prices provided by the order and will still be required to make a payment into the producer-settlement fund if its classified use value exceeds the marketwide average. On the other hand, if a handler's classified use value is below the marketwide 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 marketwide 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: Milk under forward contract will not be subject to the amount of payment specified under the order but contract payments will be required to be made on the same day as minimum order payments are required to be made.

Q: Can the components of milk under forward contract be priced on a different basis than the components of milk that is 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.

Q: Why restrict forward contracting to milk that is not used for fluid use?

A: This restriction was specified by the legislative amendment.

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 is in compliance with the

rules governing the pilot program. They will ensure that the contract is signed by both parties and will make certain that a signed disclosure statement is attached to each contract entered into by a dairy farmer under the pilot 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.