



United States Department of Agriculture

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/FederalMilkMarketingOrders.

Agricultural Marketing Service

Federal Milk Marketing Order Program:

Understanding the Milk Order Amendment Process



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As the U.S. dairy industry changes, the United States Department of Agriculture (USDA) provides a process for the regulatory structure of Federal milk marketing orders (Federal orders) to be amended 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 of the proposed Federal order(s) as amended. 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 amend one or more provisions of the Federal order or to establish a new 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 address 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 as well as Market Administrator offices and USDA.
- 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 to comment; and
- (3) USDA considers the submitted comments and issues a final rule.

PROPOSAL SUBMISSION ADDRESS

Mail proposals to:
Deputy Administrator
USDA - AMS - Dairy Programs,
Stop 0225
Room 2968 - South
1400 Independence Ave., SW
Washington, DC 20250-0225



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.gpoaccess.gov/fr/

Once the Notice of Hearing is issued, *Ex parte* begins. USDA employees may not discuss 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 the expected day of testimony. Individual dairy farmers are not subject to this requirement.

5

USDA HOLDS PUBLIC HEARING.

A USDA Administrative Law Judge presides over 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: <http://www.ams.usda.gov/FederalMilkMarketingOrders>.



7

PARTIES FILE CORRECTIONS TO TRANSCRIPT.

Interested persons may file suggested corrections to the transcript of testimony by a date determined by the USDA Administrative Law Judge, 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 USDA Administrative Law Judge, not to exceed **60 days** after completion of the hearing.

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**.

FEDERAL MILK MARKETING ORDER AREAS



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). Following the producer referendum, the amendment(s) to the order(s) are published in the **Federal Register** as a final rule. This signifies that the rulemaking process has been completed and announces when the amendment(s) become effective.

