Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1006

[AMS–DA–17–0068; AO–18–0008]

Milk in the Florida Marketing Area; Decision on Proposed Amendments to Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to adopt, on an emergency basis, amendments to the Florida Federal milk marketing order (FMMO) that would implement a temporary assessment on Class I milk. Revenues collected through the assessment would be disbursed to handlers and producers who incurred extraordinary marketing losses and expenses due to Hurricane Irma, which caused considerable market disruptions in September 2017.

DATES: March 30, 2018.

FOR FURTHER INFORMATION CONTACT: Erin Taylor, Acting Director, Order Formulation and Enforcement Division, USDA/AMS/Dairy Program, Stop 0231—Room 2963, 1400 Independence Avenue SW, Washington, DC 20250–0231; phone: (202) 720–7311; email: *Erin.Taylor@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule, in accordance with 7 CFR 900.13a, is the Secretary's final decision in this proceeding and proposes the issuance of a marketing order as defined in 7 CFR 900.2(j).

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

This proposed rule is not considered an Executive Order 13771 regulatory action because it does not meet the definition of a ''regulation'' or ''rule'' under Executive Order 12866.

The proposed amendments have been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. If adopted, the proposed rule will not preempt any state or local law, regulations, or policies, unless they present an irreconcilable conflict with this rule.

AMS is committed to complying with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674 and 7253), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the AMAA, any handler subject to a marketing order may request modification or exemption from such order by filing with the U.S. Department of Agriculture (USDA) 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 law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The AMAA 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 USDA's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this proposed action on small entities and has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities.

For the purpose of the RFA, a dairy farm is considered a small business if it has an annual gross revenue of less than $750,000. Dairy product manufacturers are considered small businesses based on the number of people they employ. Small fluid milk and ice cream manufacturers are defined as having 1,000 or fewer employees. Small butter and dry or condensed dairy product manufacturers are defined as having 750 or fewer employees. Small cheese manufacturers are defined as having 1,250 or fewer employees. Manufacturing plants that are part of larger companies operating multiple plants with total numbers of employees that exceed the threshold for small businesses will be considered large businesses, even if the local plant has fewer employees than the threshold number.

AMS estimates that 248 dairy farms produced milk pooled on the Florida FMMO in 2017. One hundred forty-one farms delivered milk to Florida pool plants fewer than 100 days during 2017, and of those, 66 pooled less than 48,000 pounds of milk on the order during the entire year. AMS estimates 107 farms (248 minus 141) were part of the ''normal'' Florida milk supply last year. Nineteen of those farms had less than $750,000 in gross milk sales, based upon estimated 2017 production and a weighted average uniform price of $20.98 per cwt.

Considering all 248 farms that had producer milk on the Florida FMMO, AMS estimates that 101 farms had less than $750,000 in gross milk sales, no matter where all of their production was pooled, and would be considered small businesses.

Interested persons were invited to present evidence at the hearing on the possible regulatory impact of the proposals on small businesses. Four witnesses testified at the hearing, each representing one or all of the proponent cooperatives. Each of the witnesses indicated their cooperatives include dairy farmer members who would be considered small businesses.

AMS data indicates that six dairy farmer cooperatives, in their capacity as handlers, pooled producer milk on the Florida FMMO in 2017. AMS estimates that two of those cooperative handlers have fewer than 500 employees and would be considered small businesses. Thirty-eight processing plants received producer milk in 2017, of which AMS estimates that 13 would be considered small businesses. Two of the 13 small businesses are fully regulated distributing plants on the Florida FMMO. The remaining 11 small business are nonpool or exempt plants.

The proposed amendments recommended in this final decision will provide temporary reimbursement to handlers (cooperative associations and proprietary handlers) who incurred

extraordinary losses in connection with Hurricane Irma in September 2017. The proposed amendments were requested by Southeast Milk, Inc.; Dairy Farmers of America, Inc.; Premier Milk, Inc.; Maryland and Virginia Milk Producers Cooperative Association, Inc.; and Lone Star Milk Producers, Inc. The dairy farmer members of these five cooperatives supply the majority of the milk pooled under the Florida FMMO. The proposed amendments would implement, for a 7-month period beginning with the first month the amendments would be effective, a temporary assessment on Class I milk pooled on the Florida FMMO at a rate not to exceed $0.09 per hundredweight (cwt). The amount generated through the temporary assessment would be disbursed during the 7-month period starting the month after the amendments become effective to qualifying handlers who incurred extraordinary losses and expenses as a result of the hurricane.

Hurricane Irma disrupted the orderly flow of milk movements within the Florida marketing area between September 6, 2017, and September 15, 2017. Handlers in Florida experienced disruptions in moving and marketing bulk milk to supply the Class I (fluid milk) needs of the marketing area.

One of the functions of the FMMO program is to provide for the orderly exchange of milk between the dairy farmer and the handler (first buyer) to ensure the Class I needs of the market are met. The record evidence clearly shows that the movements of bulk milk in the Florida marketing area were disrupted because of the hurricane. As well, handlers experienced losses due to selling milk at distressed prices or dumping milk that could not be delivered to its usual destination. Accordingly, the adoption of the proposed amendments would provide financial relief to qualifying handlers who incurred additional marketing expenses and losses for bulk milk movements that were disrupted as a result of Hurricane Irma.

The proposed amendments would reimburse handlers for marketing expenses and losses in four categories: Transportation costs to deliver loads to other than their normal receiving plants; lost location value due to selling milk in lower location value zones; milk dumped at farms or on tankers, and skim milk dumped at plants; and distressed milk sales. Reimbursement would be funded through an assessment on Class I milk at a maximum rate of $0.09 per cwt. Record evidence indicates that this would increase the consumer price of milk by less than $0.01 per gallon during the 7-month proposed assessment period.

Handlers in the Florida marketing area would not be at a competitive disadvantage due to the temporary assessment because of its uniform application to all Class I milk. Additionally, any handler, regardless of size, who experienced a qualifying marketing expense or loss would be eligible to receive reimbursement. Dairy farmer blend prices would not be impacted by the proposed amendments because the assessment is not funded through the marketwide pool. Dairy farmer cooperatives who pooled milk on the Florida order, and therefore qualified as the pooling handler, would also be eligible for reimbursement. In those instances, producers are receiving relief as the money is returned to their dairy farmer-owned cooperative. Accordingly, the adoption of the proposed amendments would not significantly impact producers or handlers of any size, due to the limited implementation period and the minimal impact to the Class I milk price.

A review of reporting requirements was completed in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). As such, the information collection requirements related to this final decision do not require clearance by the Office of Management and Budget (OMB) beyond the currently approved information collection [0581–0032]. The information necessary to qualify for reimbursement, as proposed in this decision, has already been submitted through the monthly handler receipts and utilization form (INSERT FORM #), or is part of the normal business records that are inspected during routine FMMO audits.

The primary sources of information that would be required for application for reimbursements are documents currently generated in customary business transactions. These documents include—but are not limited to—invoices, receiving records, bulk milk manifests, hauling bills, and contracts. These documents are routinely inspected by the market administrator during handler audits. Thus no new information would be collected as a result of the amendments.

Prior Documents in This Proceeding

Notification of Hearing: Issued December 6, 2017; published December 11, 2017 (82 FR 58135).

Supplemental Notice of Hearing: Issued December 7, 2017; published December 11, 2017 (82 FR 58135).

Secretary's Decision

Notice is hereby given of the filing with the Hearing Clerk of this final decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Florida marketing area. This decision is issued pursuant to the provisions of the AMAA and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900). The tentative marketing agreement and order are authorized under 7 U.S.C. 608c.

The proposed amendments set forth below are based on the record of a public hearing held in Tampa, Florida, December 12 through 14, 2017, pursuant to a notification of hearing issued December 6, 2017, and published December 11, 2017 (82 FR 58135).

The material issues on the record of this proceeding relate to:

1. Temporary Class I assessment for reimbursement of extraordinary expenses and losses resulting from Hurricane Irma; and

2. Determination of whether emergency marketing conditions exist that warrant the omission of a recommended decision and the opportunity to file written exceptions.

Overview of Proposal

Proposal 1 was submitted by an association of cooperative dairy producers who operate in the Florida milk marketing area. The proponents include Southeast Marketing, Inc.; Dairy Farmers of America, Inc.; Premier Milk, Inc.; Maryland and Virginia Producers Cooperative Association, Inc.; and Lone Star Milk Producers, Inc. (hereinafter referred to as ''Cooperatives''). According to the hearing record, the proponents together market in excess of 90 percent of the milk pooled on the Florida FMMO.

Proposal 1 would provide for emergency relief for Florida dairy handlers and producers for extraordinary marketing expenses and losses incurred September 6 through 15, 2017, as a result of Hurricane Irma. Proposal 1 would amend the Florida FMMO by providing for a temporary increase of $0.09 per cwt on Class I milk to fund reimbursements for eligible reimbursement claims. The proposal would provide for reimbursements related to: Transportation costs to deliver milk to plants other than the normal receiving plant; lost location value due to selling milk in lower location value zones; milk dumped at farms or on tankers, and skim milk dumped at plants; and distressed milk sales.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Temporary reimbursement for extraordinary expenses and losses resulting from Hurricane Irma.* At issue in this proceeding is the consideration of proposed amendments to the Florida FMMO to provide reimbursement to qualifying handlers (handlers and dairy farmer-owned cooperative associations in their capacity as handlers) for certain categories of extraordinary losses and expenses due to market disruptions caused by Hurricane Irma in September 2017. This decision finds that reimbursement through a temporary assessment ($0.09 per cwt) on Class I milk is appropriate.

A witness appearing on behalf of the Cooperatives testified in support of Proposal 1. The witness explained that normal milk movements in the Florida marketing area were disrupted as a result of Hurricane Irma, and that producers and handlers resorted to extraordinary measures to find alternative market outlets for milk that could not be delivered and processed at its normal destination. According to the witness, providing regulatory relief through a temporary assessment on Class I milk, as proposed, would ensure that all affected Class I handlers can be reimbursed for eligible claims.

The Cooperative witness stated that Proposal 1 would provide reimbursement across four categories to handlers who experienced extraordinary marketing expenses and losses. The witness categorized the costs as extra transportation costs for hauling milk to more distant plants; revenue lost due to the difference in location value as a result of delivering milk to more distant plants; revenue lost on milk that was dumped due to plant unavailability or logistical delays; and revenue lost on sales of milk to unregulated manufacturing plants at distressed milk prices.

In regards to transportation cost reimbursement, the Cooperative witness clarified Proposal 1 only seeks reimbursement for transportation costs in excess of what handlers would have normally paid if the hurricane had not forced them to find alternative market outlets. The witness explained the modification also would allow handlers to receive hauling cost reimbursement for milk rerouted to plants outside of Florida, even if the milk was not pooled on the Florida FMMO in September 2017. Proposed language would also impose a $3.75 per loaded mile upper limit on transportation cost reimbursement. The witness explained the $3.75 limit was based upon the proponents' industry experience and reflects current hauling rates for bulk milk.

The Cooperative witness explained that Proposal 1 seeks reimbursement for revenue lost due to receiving a lower location value than the milk would have normally received. The witness also modified Proposal 1 to allow milk rerouted to plants outside of the Florida milk marketing area to be eligible for location value reimbursement, even if the milk was not pooled on the Florida FMMO. The witness explained there were instances where milk normally associated with the Florida marketing area was rerouted to alternative plants and pooled on another FMMO. The witness said the modification would allow the handler to recoup the lost location value despite the milk not being pooled on the Florida FMMO. As with transportation costs, reimbursement would apply to the difference between the location value handlers would have normally received and the location value they actually received.

The Cooperative witness also clarified they are only seeking a net reimbursement, on a load-by-load basis, between losses in location value and any savings or losses on transportation costs. In this way, the witness explained, proponents would not receive reimbursement in excess of the actual cost incurred as a result of the hurricane.

The Cooperative witness explained that Proposal 1 also seeks reimbursement for milk dumped on farms, in tankers, or skim milk dumped at plants at the lowest classified value for the month. According to the witness, there are documented cases where milk was dumped at the farm because roads were impassable or tanker trucks or drivers were unavailable to haul the milk. In other cases, milk was dumped from tankers when no plants were available to receive it, or delivered to plants that were able to skim off and market the butterfat, but the skim milk had to be dumped. The witness noted that there may be loads of dumped milk that were not reported in a handlers' September 2017 Report of Receipts and Utilization, and asked that the Market Administrator allow handlers to revise their reports to reflect these dumped loads, although such a provision had not been included in the original proposal.

The last reimbursement category, said the Cooperative witness, is reimbursement for distressed milk sales. The witness modified the original proposal and testified that proponents are now seeking reimbursement for distressed milk sales equal to the difference between the announced price applicable to the milk at its classified use value and the actual price received for the distressed milk moved to nonpool plants. The witness explained that the purpose of this modification was to seek reimbursement on distressed milk sales at the milk's actual classified use value, as opposed to the lowest classified value, which in September 2017 was Class IV. The witness said reimbursing handlers for the actual classified use value ensures handlers are made whole based on how the milk was actually used. The witness clarified that reimbursement for distressed milk sales should not be limited to pooled milk.

The Cooperative witness explained the proposed reimbursement categories would be funded through a temporary assessment on Class I milk at a maximum rate of $0.09 per cwt per month for a limited period determined appropriate by USDA. The witness stated $0.09 per cwt was the rate USDA allowed previously to fund reimbursements following losses due to Hurricanes Charley, Frances, Ivan, and Jeanne in 2004. According to the witness, $0.09 per cwt generated necessary funds without causing market disruptions.

The witness said that in the Cooperatives' proposal, the Market Administrator would determine and announce the temporary assessment on Class I milk for each month the provisions are in effect. As the witness explained, during each applicable month, the Market Administrator would pay out verified eligible costs and losses, up to the amount of funds collected under the assessment for that month, uniformly prorating reimbursements if the eligible claims exceed funds available for the month. The witness testified that if the total dollars collected across all months exceed the total eligible claims, the Market Administrator should reduce the temporary assessment in the final month so as to not collect excess funds.

The Cooperative witness testified that because Class I prices are announced in advance of the month, there is a possibility that in the last month of the reimbursement period there could be a difference between the amount of money generated and the amount needed to pay final claim reimbursements. According to the witness, if the additional funds exceed the final costs, the extra funds could be added to the marketwide pool and

distributed to producers, or they could be returned pro rata to the handlers. If funds from the assessment are less than the total eligible claims due to handlers, the Market Administrator could prorate available funds for reimbursement.

The same witness later appeared on behalf of Lone Star Milk Producers, Inc. (Lone Star), in support of Proposal 1. Lone Star is a dairy farmer-owned cooperative that markets milk on behalf of more than 100 producers located in the Florida, Southeast, and Southwest FMMO areas. Lone Star is one of the Cooperative proponents of Proposal 1. The witness testified that the majority of Lone Star producers who market milk on the Florida FMMO would qualify as small businesses. The witness testified to the expenses and losses Lone Star incurred as a result of disorderly milk movements caused by Hurricane Irma.

According to the witness, Lone Star represents a small volume of milk relative to other marketers of milk in the Florida marketing area, but its members' pay prices were significantly impacted due to hurricane-related costs associated with rerouting milk. The witness testified that Lone Star was able to quantify its losses attributable to the storm because in September, all of Lone Star's milk marketed in Florida would have normally gone to its only customer in the Florida milk marketing area.

The witness testified that Lone Star actually saved on transportation costs, but experienced losses in location value of approximately $1.80 per cwt, compared to their normal milk marketings for September. The witness said Lone Star's losses in location value exceed transportation savings, and that they would seek reimbursement for only the difference. The witness also identified an $8,800 loss for one load of dumped milk and $22,000 in losses for distressed milk sales to unregulated plants. The witness summarized Lone Star's net losses, after offsetting savings in hauling costs, as more than $38,000 on milk normally pooled on the Florida order but which was rerouted or dumped.

The Lone Star witness testified regarding how USDA should view reimbursement for dumped milk and distressed milk sales. If, the witness explained, USDA determined that dumped milk was eligible for reimbursement at the lowest classified value in September 2017, but determined distressed milk sales were not eligible for reimbursement, handlers would effectively be penalized for finding an alternative market. The witness testified that if dumped milk was eligible for reimbursement but distressed milk sales were not, this might incentivize handlers to elect to dump milk in future natural disasters instead of trying to find an alternative market outlet. The witness concluded by expressing Lone Star's support for the proposed amendments as an emergency action and urged USDA to omit issuance of a recommended decision.

A witness testified in support of Proposal 1 on behalf of Southeast Milk, Inc. (SMI). SMI is a dairy-farmer owned cooperative representing approximately 150 dairy farmers located throughout the Southeast, of which 64 are located in Florida. Approximately 70 percent of SMI's milk production is located in the state of Florida, accounting for a significant portion of the milk pooled on the Florida FMMO each month. SMI is one of the proponent cooperatives of Proposal 1. According to the witness, the Small Business Administration would classify approximately 10 percent of all SMI producers as small businesses.

The SMI witness presented testimony regarding the Florida market conditions attributable to Hurricane Irma. The witness testified that the hurricane caused every plant in Florida to shut down between one and five days and, of the eight plants where SMI delivers, the average closure lasted 3.15 days.

The SMI witness also cited data released by the Florida Department of Agriculture and Consumer Services (FDACS) reporting tropical storm conditions in each of Florida's 67 counties. According to the FDACS data, estimated agriculture losses from Hurricane Irma were in excess of $2.5 billion, exceeding those of Hurricanes Charley and Frances in 2004. According to the FDACS information presented, Hurricane Irma was the largest, most powerful hurricane ever recorded on the Atlantic Ocean, making landfall in South Florida as a category three hurricane. FDACS data estimates the value of lost production in the Florida dairy sector to be at least $7.5 million. This estimate, the witness said, does not account for the losses for which the Cooperatives are seeking reimbursement through Proposal 1, but focuses on losses such as on-farm structure damage.

The SMI witness noted USDA declared 19 Florida counties Primary Natural Disaster Areas, with another 25 counties eligible for Federal assistance. The witness testified that 57 (or 87 percent) of SMI's 64 Florida dairy farms are located in counties declared disaster areas, and these farms produce approximately 91 percent of SMI's Florida milk production. According to the witness, some of SMI's southern Florida producers reported a 25 percent reduction in their daily milk production as a result of the stress to the milking herd. For the month of September, the witness stated that SMI members' production reports show a decrease of 3 percent, or 4 million pounds, as compared to September 2016. The witness noted that the loss in production will impact farmers for months to come.

The SMI witness testified that more than 15 million people were without power as a result of the storm and cited state agency reports indicating that on September 13, two days after the storm had passed, nearly 3.8 million customers still had no power. The witness explained that power outages meant that plants were unable to process milk, grocery stores were unable to store milk, and customers were unable to purchase milk, leaving dairy farmers with no market for their milk for multiple days.

In addition to the disruption caused by power outages, the SMI witness described fuel shortages that impacted farmers who rely on fuel to run on-farm generators. Without power or fuel to run generators, many farmers were unable to milk cows or keep bulk tanks cold. Farmers that were able to run generators had difficulty getting milk tankers to pick up their milk and deliver to plants in time for the milk to be pasteurized in accordance with health and sanitation standards. These factors, along with processing plant and road closures, led SMI producers to dump over 2 million pounds of milk on the farm or from tankers during and after the storm. SMI estimates the value lost due to dumped milk at approximately $328,000.

The witness testified SMI also incurred losses from milk sold at distressed prices. According to the witness, SMI estimates the lost value of selling milk that normally services the Class I market to a cheese processor at distressed prices to be at around $73,000, and an additional $19,300 loss on the same milk due to the difference in location value. The witness noted that these losses do not include the additional transportation costs SMI incurred shipping the milk out of the marketing area. According to the witness, dairy farmers will continue to see reduced mailbox prices for months to come as a result of the milk dumped and the milk sold at distressed prices.

The SMI witness explained that when electric power was restored and plants began to reopen, demand for fluid milk was extremely high. The witness noted that SMI experienced additional disorder and expenses as they worked to fill the pipeline. The witness said the

demand to restock the Florida market significantly impacted milk movements through September 15.

A witness testified on behalf of Premier Milk, Inc. (Premier), in support of Proposal 1. Premier is a dairy farmer-owned cooperative that markets nearly all of its members' milk on the Florida FMMO, with occasional sales on the Southeast FMMO. Premier is one of the proponent cooperatives of Proposal 1. In September 2017, Premier marketed milk on behalf of fifteen producers in the Florida FMMO, five of which are considered small businesses.

During September 2017, the witness said Premier shipped almost all of its members' milk to a dairy processor in Orange City, Florida. The witness explained Premier began experiencing delays delivering milk between September 7 and September 9 due to heavily congested roads resulting from pre-storm evacuations. According to the witness, the processor then announced it would close its plant on September 9 and would not process milk until the power was fully restored, which did not occur until September 13. The witness testified Premier took steps to minimize losses and avoid dumping milk, and was able to reroute some of its milk to a cheese plant in Alabama; however driver availability became an issue. According to the witness, Premier also worked with a small local processor to skim butterfat from some of its loads and dump the skim milk.

Ultimately, the witness testified, Premier's marketing losses had a significant impact on producer pay prices. The witness stated that reduced pay, in combination with farm losses due to structural damage and lost production, meant some of Premier's members had not been able to pay all their bills during the months after the hurricane.

The witness estimated Premier's total losses to be approximately $106,000: Losses for dumped milk at $32,000; net losses for distressed milk sales due to location value loss and freight costs at $33,000; and losses due to selling butterfat and dumping skim milk at $41,000. Premier urged USDA to expedite decision making regarding the proposed amendments in order to relieve some of the financial stress dairy farmers continue to be faced with after Hurricane Irma.

A witness representing Dairy Farmers of America, Inc. (DFA), testified in support of Proposal 1. DFA is a dairy farmer-owned cooperative marketing milk on all FMMOs except Arizona. According to the witness, 1,367 member farms service the cooperative's operational area that includes the Florida market, of which 10 farms are associated with the Florida FMMO during a typical month. The witness stated that none of its Florida farms would be considered small businesses. DFA is one of the proponent cooperatives of Proposal 1.

The DFA witness explained its members suffered marketing losses from Hurricane Irma and were seeking emergency relief in the form of reimbursement through the provisions of Proposal 1, as modified at the hearing. The DFA witness reiterated Proposal 1's intent to only seek compensation for net market losses resulting from the hurricane's disruption. The witness testified that DFA supports implementing the temporary maximum $0.09 per cwt assessment on Class I milk until all eligible claims are paid.

The DFA witness highlighted Market Administrator data that demonstrated changes in daily milk deliveries before, during and after the storm. The witness also referenced additional Market Administrator data showing a substantial amount of milk dumped on farms in September 2017, a practice that is highly unusual during a normal marketing month.

The DFA witness estimated the cooperative's losses due to the hurricane at approximately $150,000. Similar to earlier witnesses, the witness described DFA's efforts to minimize marketing losses. The witness said although DFA tried to meet the demand for extra milk prior to the storm, movements were difficult and costly because of highway congestion and the lack of available drivers. The witness explained that only three of the 75 loads of milk DFA would have normally delivered to Florida marketing area processors between September 9 and 13 went to their usual destinations; the rest were rerouted elsewhere, in most cases to pool plants and non-pool plants in neighboring marketing areas. The witness testified that DFA found an alternative market for almost all of its milk, but in doing so, tanker loads traveled longer distances and were sold at lower values than if they had been delivered to Florida plants. The witness noted that such extensive market disruption was historically unprecedented, even during emergency plant closures due to power or water loss.

The DFA witness stated that at the rate of $0.09 per cwt, the impact of the proposed temporary assessment on consumers would be less than $0.01 per gallon. According to the witness, providing for reimbursements through the proposed amendments to the Florida FMMO supports orderly marketing, as it recognizes the extraordinary nature of the hurricane's impact, and ensures the impact on milk producers, processors, sellers, and consumers is shared equally by the entire affected market. Finally, the witness urged USDA to expedite the rulemaking process necessary to make a determination in this matter.

The Cooperatives submitted a post-hearing brief reiterating the effects Hurricane Irma had on milk marketing conditions in Florida. The brief highlighted the unprecedented nature of the hurricane, noting the simultaneous closure of all processing plants in the state, extensive milk dumping, and resulting depressed producer pay prices. The brief noted the lack of opposition from any interested and impacted industry participants to substantiate the case for expedited relief. The Cooperatives' brief stated that the AMAA provides the authority for the adoption of Proposal 1 on an emergency basis.

The Cooperatives' brief stressed that Hurricane Irma impacted the entire state of Florida, emphasizing that historically, hurricanes in Florida have severely impacted a portion of the state but left other portions intact, allowing the dairy industry to mitigate market disruptions. Hurricane Irma, however, caused all fluid milk processing plants to simultaneously close from one to five days. The brief estimated that during the 10-day period from September 6 through September 15, 2017, more than 20 million pounds of milk that was part of the normal Florida milk supply had to find an alternative market outlet.

The Cooperatives' brief summarized the marketing expenses and losses for which handlers are seeking reimbursement, organized by four categories: Extra transportation expenses; lost location value; revenue lost due to dumped milk; and revenue lost due to distressed milk sales to unregulated manufacturing plants. The brief explained the differences between the proposal as published in the Notice of Hearing and the modified proposal submitted at the hearing. The Cooperatives wrote that the modifications were made following further review of actual milk movements and data, as well as adapting the proposal to account for the regulatory impact of Florida FMMO diversion limits.

Regarding transportation costs, the Cooperative brief clarified their intention to reimburse handlers for only the transportation costs of milk that exceed what the handler would have paid had there been no hurricane. The brief also explained that after reviewing data on milk movements, the

Cooperatives realized that some milk was delivered to plants fully regulated on another FMMO, and therefore the milk was pooled on the other FMMO. Under the language submitted in the Notice of Hearing, this milk would have been excluded from receiving reimbursement for additional transportation costs because the milk was not pooled on the Florida order. As the order limits the pooling of diversions to nonpool plants based on volumes delivered to pool plants, the plant closures that resulted from the Hurricane reduced allowable diversions to nonpool plants and prevented handlers from pooling all of the normal milk supply on the Florida FMMO.

The Cooperatives' brief explained a similar modification made to the provisions seeking reimbursement for lost location value. As with transportation cost reimbursement, the proposed modifications clarify that milk rerouted to plants outside of Florida also would be eligible for location value reimbursement, even if the milk was not pooled on the Florida FMMO in September 2017.

The Cooperatives brief reviewed the proposed reimbursement for dumped milk and distressed milk sales, and clarified that reimbursement for distressed milk sales should be equal to the actual classified use value of the milk rather than the lowest classified use value for the month of September 2017.

The Cooperatives brief emphasized the necessity of obtaining regulatory relief by outlining the difficulties, in absence of a regulatory scheme, associated with ensuring all Class I milk is assessed and all Class I handlers are treated uniformly. In addition, the brief restated hearing testimony noting there is no market process for repooling reimbursable costs and no market arbiter to administer a private surcharge and repooling program.

Dean Foods Company (Dean), while not present at the hearing, submitted a post-hearing brief in support of Proposal 1. Dean is a dairy processor that owns and operates three distributing plants fully regulated by the Florida FMMO. To supply its Florida distributing plants, Dean relies on milk from both cooperatives and independent producers. Dean's brief expressed support for exercising emergency rulemaking authority and instituting a temporary $0.09 per cwt assessment on Class I milk to fund reimbursement. The brief highlighted Dean Foods' support for the proposed assessment to the extent that it funds reimbursement only for losses sustained due to Hurricane Irma. According to Dean, funds generated above the amount necessary to pay reimbursement claims should be returned to Class I handlers on a pro rata basis.

The Cooperatives are seeking regulatory relief though a temporary assessment on Class I milk to provide financial assistance to the area's handlers and producers that experienced extraordinary marketing expenses and losses as a result of the hurricane. This decision evaluated the entire hearing record to determine whether Hurricane Irma impacted the orderly marketing conditions in the Florida FMMO marketing area to an extent that justifies regulatory relief.

The record of this proceeding clearly demonstrates that Hurricane Irma impacted the entire Florida marketing area. The hurricane's track went through the entire state, resulting in significant road closures and widespread, prolonged electrical outages. The electrical outages caused not only extensive plant closures for extended periods of time, but also grocery store closures, which resulted in lost Class I sales in the retail sector and a trickle-down impact through the entire milk supply chain. The record of the proceeding indicates that this extraordinary market situation left dairy farmers with limited—and in some cases no—market outlets in the marketing area for several days. Proponents stressed that the storm disrupted dairy plant operations and retail marketing, but producers could not stop their cows from producing milk. This market reality, the proponents emphasized, left pooling handlers with few options for marketing milk, and many incurred significant losses despite their best efforts to balance the milk supply of the entire marketing area.

The record contains extensive evidence detailing the difficulties of marketing milk September 6 through September 15, 2017, the time period in which Hurricane Irma impacted the market, according to proponents. While Hurricane Irma first hit the state approximately September 10, 2017, disruptions to the milk supply were experienced both days before and after landfall. The record shows that during that time period the Cooperatives, in their capacity as the pooling handlers of their members' milk, were forced to transport milk long distances to find alternative outlets. As a last resort, witnesses said they were forced to dump milk, if no alternative outlet could be found. These losses were borne by the cooperatives, and the record indicates they have no viable method for recouping those losses. Detailed record testimony also shows that the losses borne by producers have directly impacted the cash flows of their dairy farm operations.

The record contains detailed information regarding the extraordinary losses for which the proponents are seeking reimbursement through this proceeding. Record evidence provided shows total losses for the Cooperatives are estimated to exceed $700,000 for the four categories of reimbursement, excluding additional transportation costs that at the time of the hearing had yet to be quantified by all witnesses.

The AMAA provides authority for payments to handlers for services of marketwide benefit.[1] These payments are authorized to come from marketwide pool monies before a producer blend price is computed. The record of this proceeding contains substantial evidence that from September 6 through 15, 2017, the Florida dairy market was completely disrupted due to Hurricane Irma and Florida handlers did their best to market and balance the area's milk supply. The record reveals that, in performing this marketwide service, handlers incurred marketing expenses and losses solely attributable to the market situation created by Hurricane Irma. Further, the record demonstrates that handlers have no market process for recouping these marketing expenses and losses.

Accordingly this decision finds a temporary assessment of $0.09 per cwt on Class I milk is justified to provide reimbursement to handlers for demonstrated extraordinary costs incurred September 6 through 15, 2017, that fall into the four identified general categories. The hearing record reflects that the assessment would have an impact of less than $0.01 per gallon on milk consumers in the Florida marketing area. The assessment would only be collected during the 7-month period starting in the initial month the assessment would become effective. Assessment funds would be collected by the market administrator and distributed to qualifying handlers who incurred costs in the four identified categories, and who provide proof satisfactory to the market administrator that costs are eligible for reimbursement.

This decision finds it appropriate that handlers be required to submit all claim requests to the market administrator during the first month the assessment would become effective. This would provide handlers adequate time to assemble and submit necessary records, and give the market administrator

[1] 7 U.S.C. 608c(5)(J).

sufficient time to determine the total amount of eligible claims and adjust the assessment accordingly in the last month, ensuring that, as accurately as possible, only the necessary funds are collected.

For all claims submitted to the market administrator, documents substantiating the claims may include, but are not limited to, invoices, receiving records, bulk milk manifests, hauling billings, transaction records and contract agreements. Handlers would not be eligible to obtain reimbursement through these temporary provisions if they have applied for or received reimbursement through insurance claims or through any State, Federal, or other programs for the same losses.

Transportation Costs: This decision finds that handlers should be reimbursed for transportation expenses in excess of costs associated with customary shipping routes for milk that would have been considered part of the regular producer milk supply of the order, but was delivered to plants outside of the marketing area from September 6 through 15, 2017. Extensive record testimony was provided describing how Hurricane Irma caused significant road closures and lengthy plant closings that forced handlers to reroute a large number of milk tankers from their customary shipping destinations within the marketing area to alternative outlets outside of the marketing area. In many, but not all, cases described, the transportation costs associated with these alterative outlets were more expensive.

This decision finds it reasonable to reimburse handlers for the increase in transportation costs for each eligible load over what would be considered transportation costs during normal market conditions. Record evidence demonstrates that handlers faced unprecedented challenges and additional transportation costs and it is reasonable to provide these handlers with limited reimbursement for additional transportation costs incurred. Limiting transportation cost reimbursement to only the increase in transportation costs due to the hurricane will ensure that handlers are not being reimbursed for costs associated with marketing milk under normal market conditions.

This decision finds that while the milk on eligible loads did not have to be pooled as producer milk on the Florida FMMO during September 2017 to be eligible for reimbursement, proof must be provided to the market administrator that milk on those loads would have been part of the normal producer milk supply of the Florida FMMO. This decision finds a reasonable reimbursement rate on eligible loads should be the lesser of actual demonstrated transportation expenses or $3.75 per loaded mile. Record evidence supports $3.75 per loaded mile as an appropriate maximum reimbursement rate, based on the proponents' industry knowledge of current bulk milk transportation costs. Further, reimbursement should only be granted for the transportation costs incurred in excess of what the handlers would have paid during normal marketing conditions. This decision finds that milk rerouted from pool distributing plants to plants outside of the marketing area, milk transported off the farm but then dumped from milk tankers, and skim milk dumped after the butterfat was removed at a plant would be eligible for transportation cost reimbursement.

The record testimony reflects that the Florida FMMO diversion limitations, combined with milk deliveries to alternative outlets, caused some milk normally pooled on the Florida FMMO to instead be pooled on another FMMO. Much of the milk was delivered to plants in the Southeast and Appalachian marketing areas and may have been pooled on those respective orders. The Southeast and Appalachian order provisions provide for transportation credits on supplemental milk supplies sourced from outside of those combined marketing areas. Therefore, there could be instances where milk normally associated with the Florida FMMO was instead pooled on the Southeast or Appalachian order and may have received a transportation credit. This decision finds that transportation credits received on loads eligible for transportation cost reimbursement through this proceeding would have the transportation credits received netted out of any final transportation cost reimbursement due to the requesting handler.

Lost Location Value: This decision finds that handlers should be reimbursed for lost location value on milk that would have normally been delivered to fluid milk plants within the marketing area but was instead rerouted to plants outside of the marketing area because of Hurricane Irma. The location value of milk is the Class I differential associated with plant of first receipt. The FMMO system has a coordinated national set of Class I differentials that set a Class I differential level for each county in the contiguous United States.[2]

[2] 7 CFR 1000.52 as adjusted by §§ 1005.51(b), 1006.51(b), and 1007.51(b).

The hearing record shows that from September 6 through 15, 2017, there were many instances where the only available market outlet for milk that would have normally been delivered to plants inside the Florida marketing area was to plants outside of the state. Record evidence indicates that during the hurricane, milk was delivered to plants in lower location value zones outside of the marketing area, and as a result, producers received a lower location value than they otherwise would have if that milk had been delivered to its normal market outlet. For example, the record indicates that milk was delivered to a plant located outside of Florida in the $3.40 per cwt zone, instead of its normal plant located within the state of Florida in the $5.40 per cwt zone. The change in plant of first receipt reduced the location value of that milk by $2.00 per cwt.

Record evidence estimates the Cooperatives incurred a total loss in location value of $30,000. The record supports claims that producers would have normally received the additional location value had it not been for disruptions caused by Hurricane Irma, which forced handlers to deliver milk to alternative locations.

Record testimony indicates that in some instances, while loads that were rerouted to a plant outside the marketing area did receive a lower location value, the transportation cost to move some of those loads was actually less than if the milk was delivered to its normal outlet. In those instances, this decision finds that the reimbursement owed to the handlers should be the net value when considering both change in location value and change in transportation costs, on a load-by-load basis.

Dumped Milk: This decision finds that handlers should be reimbursed, at the lowest classified use value for September 2017, for milk dumped on farms, milk dumped from tankers after being moved off farms, or skim milk dumped at plants due to Hurricane Irma. The record evidence contains detailed information regarding the market conditions associated with Hurricane Irma. The hurricane's far reaching impact across the entire state caused road closings and electrical outages that necessitated the dumping of milk because there were no available market outlets. In some cases, producers dumped milk on their farms because road closures prevented trucks from picking up milk. In other instances, handlers that normally pick up farm milk and assemble tanker loads for plant deliveries at an assembly point had to dump milk from milk tankers because of

limited available plant processing capacity. Record testimony also described situations where handlers were able to find a market outlet for butterfat. In those situations handlers delivered farm milk to plants where the butterfat was removed for sale and the skim milk was dumped at the plants.

The record indicates that the market administrator allowed pooling handlers to pool the dumped milk. The milk was classified as ''other use'' milk and assigned a Class IV value (the lowest classified value for September 2017), and the pooling handler received a payment from the pool equal to the difference between the order's uniform blend price for the month and the Class IV price. The proposal for consideration at this hearing would reimburse pooling handlers for the lost Class IV value, essentially making the pooling handler whole. Record evidence estimates the Cooperatives dumped milk at a total value of $368,000.

Record evidence clearly indicates the hurricane was an extraordinary weather event, and despite the best efforts from pooling handlers, not all milk could find a market outlet, which led to unusual milk dumping situations. This decision finds that pooling handlers should be reimbursed for the lost value of dumped milk that was reported to the market administrator and reflected on their September 2017 Receipts and Utilization report. Handlers had 22 days between the end of the time period they assert the market was impacted by Hurricane Irma (September 15, 2017) and when September pool handler reports were due to the market administrator (October 7, 2017). Milk not reported as dumped milk on the September 2017 Receipts and Utilization report would not be eligible for reimbursement.

Distressed Milk: This decision finds handlers who sold milk at distressed prices due to Hurricane Irma should be reimbursed for the difference between the end-use classified value and the price the handler actually received for the milk. The hearing record indicates that in an effort to find an alternative outlet for the regular milk supply of the Florida market, pooling handlers sold milk to nonpool manufacturing plants outside of the marketing area at prices below its classified use value. Pooling handlers testified that selling milk at distressed prices was better than the alternative of dumping the milk and receiving no compensation from the market. Proposal 1, as amended at the hearing, seeks reimbursement for the difference between the classified use value of the milk had it been pooled, and the actual price received for the milk. This reimbursement rate would be based on the actual price received and the end product utilization, and would be verified through documentation submitted to the market administrator. Record testimony estimates the Cooperatives incurred an aggregate loss on distressed milk sales of $168,000.

This decision finds that reimbursement for distressed milk sales at the milks end-use classification is justified. Similar to the requirements for other cost reimbursement categories recognized in this decision, handlers of distressed milk loads would need to submit documentation to the market administrator demonstrating that while the milk may or may not have been pooled on the Florida order that month, the milk was part of the normal milk supply of the Florida marketing area.

2. *Determination of whether emergency marketing conditions exist that warrant the omission of a recommended decision and the opportunity to file written exceptions.*

Record evidence supports the adoption of Proposal 1, as modified at the hearing and in this decision, on an emergency basis due to Hurricane Irma's significant impact on the orderly marketing conditions of the entire Florida marketing area between September 6 and September 15, 2017. The proposed amendments to the Florida FMMO would provide reimbursement to handlers (handlers and dairy-farmer-owned cooperative associations in their capacity as handlers) who incurred marketing expenses and losses in the four categories previously discussed through a maximum 7-month $0.09 per cwt assessment on Class I milk.

The Rules of Practice and Procedure governing FMMO rulemaking proceedings allow the Department to omit issuing a recommended decision should such omission be found warranted on the basis of the hearing record.[3]

Record evidence clearly indicates that the marketing of bulk milk for the entire Florida marketing area was significantly impacted due to Hurricane Irma. Such evidence includes official disaster declarations, reports of processing plant closures and suspended operations, widespread and prolonged electrical outages, road closures that required the rerouting of milk or dumping of milk with no market outlet, and the direct impact on producers' cash flow in the months since the hurricane. The record indicates that no market mechanism is available to provide uniform relief to all handlers and producers who incurred the marketing expenses and losses that have been documented in this hearing record. Further, record evidence indicates producer pay prices are continuing to be reduced as their Cooperatives have no means for alternative financial relief.

The record shows that the timely implementation of the proposed amendments would provide much needed relief to handlers and producers who incurred this marketing expenses and losses as a direct result of Hurricane Irma. No record evidence was presented opposing the omission of a recommended decision. Accordingly, this decision finds that emergency marketing conditions exist that warrant the omission of a recommended decision and the opportunity to file written exceptions.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Florida FMMO was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the AMAA;

(b) The parity prices of milk as determined pursuant to section 2 of the AMAA are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions that affect market supply and demand for milk in the Florida marketing area, and the minimum prices specified in the tentative marketing agreement and order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

[3] 7 CFR 900.12(d).

(c) The tentative marketing agreement and order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Marketing Agreement and Order Amending the Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Florida marketing area, which has been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

August 2017 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Florida marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

List of Subjects in 7 CFR Part 1006

Milk marketing orders.

Dated: March 23, 2018.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Milk in the Florida Marketing Area

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Florida marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is determined that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Florida marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

PART 1006—MILK IN THE FLORIDA MILK MARKETING AREA

■ 1. The authority citation for 7 CFR part 1006 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

■ 2. Section 1006.60 is amended by revising paragraphs (a) and (g) and adding paragraphs (h) and (i) to read as follows:

§ 1006.60 Handler's value of milk.

* * * * *

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to 7 CFR 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts; except that for the months of____2018 through ____2018, the Class I skim milk price for this purpose shall be the Class I skim milk price as determined in 7 CFR 1000.50(b) plus $0.09 per hundredweight, and the Class I butterfat price for this purpose shall be the Class I butterfat price as determined in 7 CFR 1000.50(c) plus $0.0009 per pound. The adjustments to the Class I skim milk and butterfat prices provided herein may be reduced by the market administrator for any month if the market administrator determines that the payments yet unpaid computed pursuant to paragraphs (g)(1) through (6) of this section will be less than the amount computed pursuant to paragraph (h) of this section. The adjustments to the Class I skim milk and butterfat prices provided herein during the months of____ 2018 through____ 2018 shall be announced along with the prices announced in 7 CFR 1000.53(b);

* * * * *

(g) For transactions occurring during the period of September 6, 2017, through September 15, 2017, for handlers who have submitted proof satisfactory to the market administrator no later than____, 2018, to determine eligibility for reimbursement of hurricane-imposed costs, subtract an amount equal to:

(1) The additional cost of transportation on loads of milk rerouted from pool distributing plants to plants outside the state of Florida as a result of Hurricane Irma, and the additional cost of transportation on loads of milk moved and then dumped. The reimbursement of transportation costs pursuant to this section shall be the actual demonstrated cost of such transportation of bulk milk or the miles of transportation on such loads of bulk milk multiplied by $3.75 per loaded mile, whichever is less;

(2) The lost location value on loads of milk rerouted to plants outside the state of Florida as a result of Hurricane Irma. The lost location value shall be the difference per hundredweight between the value specified in 7 CFR 1000.52, adjusted by § 1006.51(b), at the location of the plant where the milk would have normally been received and the value specified in 7 CFR 1000.52, as adjusted by 7 CFR 1005.51(b) and 1007.51(b), at the location of the plant to which the milk was rerouted;

(3) The value per hundredweight at the lowest classified price for the month of September 2017 for milk dumped at the farm and classified as other use milk pursuant to 7 CFR 1000.40(e) as a result of Hurricane Irma;

(4) The value per hundredweight at the lowest classified price for the month of September 2017 for milk dumped

from milk tankers after being moved off-farm and classified as other use milk pursuant to 7 CFR 1000.40(e) as a result of Hurricane Irma;

(5) The value per hundredweight at the lowest classified price for the month of September 2017 for skim portion of milk dumped and classified as other use milk pursuant to 7 CFR 1000.40(e) as a result of Hurricane Irma; and

(6) The difference between the announced class price applicable to the milk as classified by the market administrator for the month of September 2017 and the actual price received for milk delivered to nonpool plants outside the state of Florida as a result of Hurricane Irma.

(h) The total amount of payment to all handlers under paragraph (g) of this section shall be limited for each month to an amount determined by multiplying the total Class I producer milk for all handlers pursuant to 7 CFR 1000.44(c) times $0.09 per hundredweight.

(i) If the cost of payments computed pursuant to paragraphs (g)(1) through (6) of this section exceeds the amount computed pursuant to paragraph (h) of this section, the market administrator shall prorate such payments to each handler based on each handler's proportion of transportation and other use milk costs submitted pursuant to paragraphs (g)(1) through (6). Costs submitted pursuant to paragraphs (g)(1) thought (6) which are not paid as a result of such a proration shall be paid in subsequent months until all costs incurred and documented through (g)(1) through (6) have been paid.

[This marketing agreement will not appear in the Code of Federal Regulations.]

Marketing Agreement Regulating the Handling of Milk in the Florida Marketing Area

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof, as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1006.1 to 1006.86, all inclusive, of the order regulating the handling of milk in the Florida marketing area (7 CFR part 1006), which is annexed hereto; and

II. The following provision:

§ 1006.87—Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of [insert representative period], _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ 1006.87 Effective Date. This marketing agreement shall become effective upon the execution of a counterpart thereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) _____

(Title) _____

(Address) _____

(Seal)

Attest

[FR Doc. 2018–06286 Filed 3–29–18; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1216

[Document Number AMS–SC–16–0115]

Peanut Promotion, Research, and Information Order; Change in Assessment Rate Computation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on changing the assessment rate computation under the Agricultural Marketing Service's (AMS) regulations regarding a national research and promotion program for U.S. peanuts. This proposal would change the basis for assessment under the regulations from value to volume (per ton). Two rates of assessment would be established instead of using a formula currently specified in the regulations. This proposal would also update the definition for ''fiscal year'' specified in the regulations to reflect current practices.

DATES: Comments must be received by April 30, 2018.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments may be submitted on the internet at: *http://www.regulations.gov* or to the Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Room 1406–S, Stop 0244, Washington, DC 20250–0244; facsimile: (202) 205–2800. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection, including name and address, if provided, in the above office during regular business hours or it can be viewed at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jeanette Palmer, Marketing Specialist, Promotion and Economics Division, Specialty Crops Program, AMS, USDA, Stop 0244, 1400 Independence Avenue SW, Room 1406–S, Washington, DC 20250–0244; telephone: (202) 720–9915; facsimile: (202) 205–2800; or electronic mail: *Jeanette.Palmer@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This proposal affecting 7 CFR part 1216 is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act)(7 U.S.C. 7411–7425).

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this proposed rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing