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April 27, 2020

*Via electronic mail to:* [Dana.coale@usda.gov](mailto:Dana.coale@usda.gov)

Ms. Dana Coale, Deputy Administrator  
Agricultural Marketing Service  
United States Department of Agriculture  
USDA-AMS-1400 Independence Avenue, SW  
Washington, D.C. 20250-0225

Re: Request for an emergency national hearing  
to amend all federal milk marketing orders

Dear Ms. Coale:

On behalf of the common marketing agencies, associations of cooperatives, individual dairy cooperatives (See Attachment "A") and their dairy farmer member-owners, we request that the Secretary of Agriculture immediately call an emergency hearing pursuant to 7 C.F.R. § 900.1, *et seq.*, to amend all federal milk marketing orders to establish a minimum Class I milk price mover of \$15.68 for the months of June, July, and August 2020.

The common marketing agencies, dairy cooperatives, and associations of cooperatives that bring this urgent hearing request represent the great majority of dairy farmers in the United States whose milk marketings are subject to the minimum price regulations of the federal milk marketing orders promulgated pursuant to the Agricultural Marketing Agreement Act, 7 U.S.C. § 601 *et seq.*, and administered by the Department. The coronavirus pandemic has caused extreme marketing disorder and disastrous plunges in prices in dairy product markets. These developments have placed the economic viability of dairy farms in all regions of the country at risk. Without immediate intervention, the supply of fresh, wholesome milk and dairy products to the public will be jeopardized. Therefore, we request the following amendment to all federal milk marketing orders:

**The proposed amendment to all orders**

Amend 7 C.F.R. Section 1000.50 by adding new paragraphs (b.1) and (c.1) as follows:

**§ 1000.50. Class prices, component prices, and advanced pricing factors.**

....

(b.1) *Class I skim milk price.* The Class I skim milk price per hundredweight for the months of June, July, and August 2020 shall be the adjusted Class I differential specified in § 1000.52, plus the adjustment to Class I prices specified in §§ 1000.51(b), 1006.51(b) and 1007.51(b), plus \$9.91.

....

(c.1) *Class I butterfat price.* The Class I butterfat price per pound for the months of June, July, and August 2020 shall be the adjusted Class I differential specified in § 1000.52 divided by 100, plus the adjustments to Class I prices specified in §§ 1005.51(b), 1006.51(b) and 1007.51(b) divided by 100, plus \$1.7481.

**Background of emergency disorderly marketing conditions**

The national and global effect of the coronavirus pandemic has resulted in significantly diminished market value of the commodities used to determine the Federal Order Class I Price of milk from dairy farmers. The Class I Price is expected to drop levels that will create a catastrophic impact on farmer income.

The speed at which the pandemic spread worldwide and caused market disruptions is alarming. On December 31, 2019, the World Health Organization (WHO) was informed of cases of pneumonia of unknown etiology detected in Wuhan City, Hubei Province of China<sup>1</sup>. A novel coronavirus was eventually identified as the cause. The first coronavirus death was reported on January 11, 2020. The first confirmed case of novel coronavirus in the U.S. was reported 20 days later. On January 30, 2020, the WHO issued a statement that “the outbreak constituted a Public Health Emergency of International Concern”<sup>2</sup>.

Following the WHO announcement, countries around the world began implementing protective measures to contain the spread of the virus. These measures included closures of businesses, restaurants, sports and entertainment venues, and other public gathering places and

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<sup>1</sup> <https://www.who.int/news-room/detail/08-04-2020-who-timeline---covid-19>

<sup>2</sup> <https://www.who.int/news-room/detail/08-04-2020-who-timeline---covid-19>

also required citizens to remain in their homes unless leaving for essential reasons. The effects of these closures and restrictions compounded the negative impact on dairy product demand.

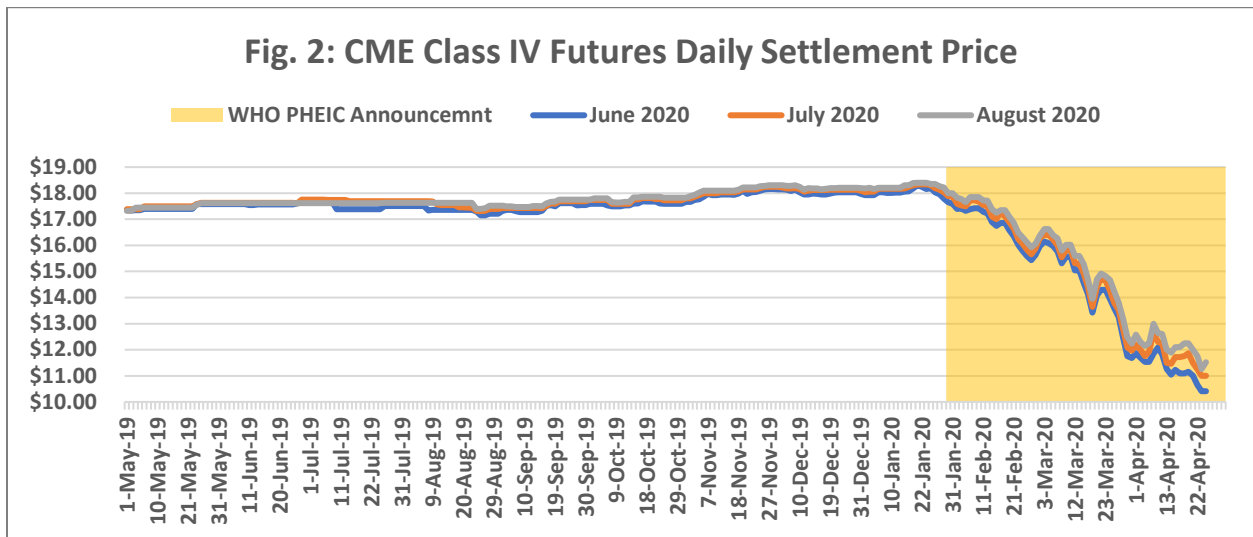
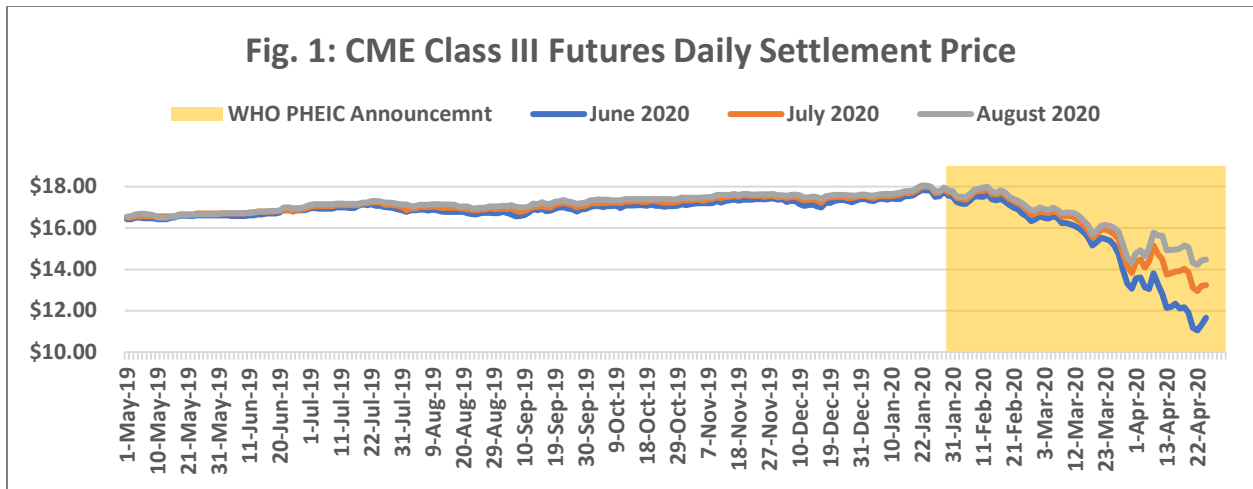
The first major effect was a loss of export markets for U.S. goods. Ports located in key export destinations for U.S. dairy products were closed or experienced a significant drop in cargo receiving capacity due to the protective measures implemented to protect worker health and reduce the spread of the virus. With the marketing channel for exports significantly interrupted, these dairy products were diverted to warehouses in the U.S. leading to growing domestic inventories.

While diminished export opportunities for dairy products were the first wave to hit the dairy industry, the crippling blow was a loss of domestic consumer demand. The first “shelter-in-place” orders were not issued until March 17, 2020 and were limited to the state of California. Just two weeks later, 45 states had similar measures in place. These measures significantly reduced the demand for U.S. dairy products. Recent data indicates approximately half of consumers’ food budgets is spent at grocery stores and the other half is spent through food service such as restaurants, quick service, and other out of home sources. The shelter-in-place and other protective measures implemented by the states has resulted in significant reduction of sales through food service channels. Additionally, the protective measures called for the closure of schools which represent 8% of U.S. fluid milk consumption.

While these preventative measures are in place, consumers will continue to need access to food and will transition their purchases from the food service options to primarily retail. However, dairy products manufactured for food service applications are not quickly nor easily converted for distribution in retail channels. Regulatory requirements for labeling and packaging differ between retail and food service. Processing and distribution equipment used for food service are typically dedicated to specific package sizes and materials needed in food service. These package sizes and materials are not always desired by retail consumers for use in their homes.

Futures market prices for dairy products provide a good example of how market participants have reacted to the decline in demand caused by the coronavirus impact on exports and consumer consumption. The daily settlements indicate the price level that market participants are willing to buy or sell a given product at a point in the future based on information available today. The prices for the same future period will fluctuate daily as market participants react to changes in current events or market conditions. Figure 1 and Figure 2 below illustrate the CME Group (CME) daily futures settlement prices for Class III Milk and Class IV Milk for the June, July and August 2020 monthly periods. These prices showed the strength and stability that characterize markets with growth opportunities. The Class III and Class IV prices peaked during the week before the January 30, 2020, WHO announcement that the coronavirus pandemic should be considered a Public Health Emergency of International Concern. Following the announcement, the prices dropped dramatically and have mostly continued to decline to the current trading date. As of April 24, 2020, the Class III futures prices have declined \$3.58 to \$6.17 per hundredweight from their peak and Class IV futures have declined \$6.88 to \$7.90 per

hundredweight from their peak. This drop represents a loss in value of 27% on average for Class III Milk futures and loss in value of 40% for Class IV Milk futures (Figure 3).



<b>Fig. 3: CME Group Daily Futures Price Settlements</b>						
	<b>Class III Milk</b>			<b>Class IV Milk</b>		
	June 2020	July 2020	August 2020	June 2020	July 2020	August 2020
Price week of January 20th	\$17.83	\$17.99	\$18.05	\$18.31	\$18.34	\$18.40
Current Price on April 24th	\$11.66	\$13.23	\$14.47	\$10.41	\$11.00	\$11.52
Change in Price	(\$6.17)	(\$4.76)	(\$3.58)	(\$7.90)	(\$7.34)	(\$6.88)
Percent of Value Lost	-35%	-26%	-20%	-43%	-40%	-37%

The current Federal Order Class I mover price formulas were not crafted for these unforeseeable pandemic market conditions. As a consequence, the current USDA announced prices for milk do not reflect an appropriate Class I price mover. At present, the Class I price is determined by the commodity prices transacted in the AMS price survey for the first two weeks of the prior month. The April Class I price was based on prices transacted the first two weeks of March, which was when the effects of the coronavirus were just beginning to reverberate across the market. Consequently, the April announced price had only decreased \$0.82 per hundredweight from the March price. The May price, however, was based on transactions during the first two weeks of April, a period when the coronavirus effects had become more prevalent across the dairy market. The precipitous collapse in the dairy product markets in early April led to the May price being \$3.69 per hundredweight less than the April price. The next USDA Class I price announcement is scheduled to occur on May 20, 2020. We anticipate market conditions will further deteriorate resulting in a further decline in the Class I price to a level well below the historical averages.

The CME prices are often used by the industry as a proxy for USDA Federal Order prices. To provide some insight into how much further the Class I price may decline, we used the applicable CME futures prices for cheese, butter, nonfat dry milk and dry whey to represent the commodity prices used to calculate the Federal Order Class I price formula and estimated the Class I mover price for June, July, and August. The results are as follows:

June 2020     \$11.19  
 July 2020     \$11.79  
 August 2020   \$12.79

These resulting Class I prices estimated using the CME futures prices for June, July and August 2020 are disastrously below the USDA Class I announced mover price average of \$16.72 for 2020 year-to-date and \$17.35 for the prior 10-year average. These estimated prices indicate that, without intervention, the announced USDA Class I price will be nearing the lowest levels seen since the Federal Order pricing reform was completed more than twenty years ago.

The coronavirus crisis has not only crushed demand and reduced market prices, it has also resulted in processing capacity constraints for milk from dairy farms. Dairy processing plants, particularly manufacturing plants, have been unwilling to produce product for which sales are unknown. As long as food service buyers remain shut down, dairy processing plants have no choice but to limit production to what can be sold. Milk processing capacity has been reduced since the beginning of March, but the milk supply has continued to increase which has further exacerbated the imbalance between supply and demand. Farm milk production typically experiences a seasonal increase during the spring months as the weather improves and forages are more readily available. The U.S. milk supply for 2020 has not seen a deviation from this trend with the USDA milk production data<sup>3</sup> indicating year-to-date milk production through March has increased 1.8% compared to the same period in 2019. The significant reduction in consumer demand and export opportunities has resulted in processing capacity falling short of the needs in several regions of the U.S. Data on milk disposals are not publicly available. News reports from industry analysts suggest sizeable volumes have been disposed and these disposals may continue for the near future. Milk that is disposed will further reduce the value paid to farmers below the already historically low Class prices we are expecting to see.

#### **Purpose of the proposal<sup>4</sup>**

The purpose of this proposal is to minimize the destructive impact on the Class I price of the dairy commodities' price plunge caused by the coronavirus pandemic. While the proposal will not mitigate all the market value loss dairy farms are expected to experience, implementing the temporary Class I price will meaningfully help reduce the overall impact. According to the most recent USDA Dairy Market News data for February, Class I sales accounted for approximately 28% of the milk marketed that month under the FMMOs. Curtailing the decline in the price on 28% of federal milk marketing order sales will substantially benefit dairy farmers.

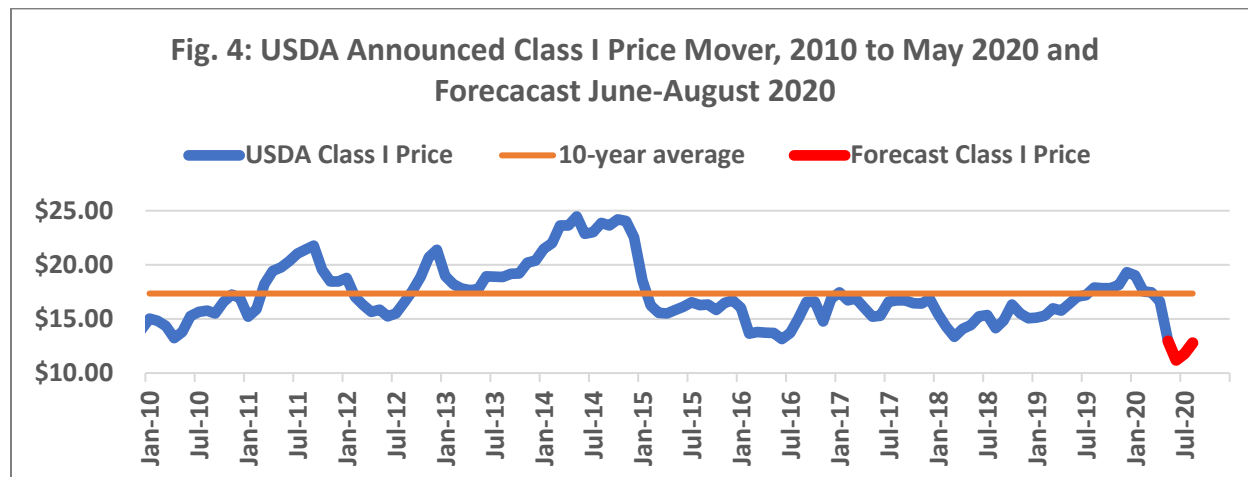
Utilizing the previously stated Class I prices calculated using CME futures commodities prices, the average forecast price for the months June, July and August is \$11.93 per hundredweight. This is the lowest price level during the preceding 10-year period of January 2010 through December 2019 and \$5.42 less than the average price during this time (see Fig. 4). At these low-price levels over multiple months, dairy farms will experience significant financial hardships. Unfortunately, we often see financial institutions and lenders withdraw lines of credit or limit financing options in order to protect themselves from the risk associated with the market instability. We are entering a period of severe market volatility and dairy farms will likely have little or no options for supplementing critical cash flow until milk prices eventually recover. In these instances of low market prices and limited cash flow, we often see dairy farms forced out of business. At some point, we anticipate market conditions will improve and processors will look to the dairy farms to supply the milk needed to fill the rebounding domestic and global

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<sup>3</sup> <https://usda.library.cornell.edu/concern/publications/h989r321c>

<sup>4</sup> Attachment B further addresses the purposes, operation and impact of the proposal in the context of the specific questions enumerated in the "Supplemental Rules of Practice Governing Proceedings to Amend Federal Milk Marketing Agreements and Marketing Orders", 7. C.F.R. § 900.22.

demand. The milk supply may be limited for the processors should a considerable number of farms go out of business.



Dairy farmers are not an economic island. The dairy industry creates an economic ripple effect that touches many people and industries across the United States. The ripple effects directly extend into other agricultural commodities such as beef and commodity feed crops. As mentioned previously, under the current state of the industry, significant volumes of milk are being disposed. Without a means to increase demand, the only option to avoid the costs of milk disposals is to reduce milk production. The most effective means for a dairy farmer to reduce production is culling cows from the milking herd. Some analysts estimate demand for dairy is currently down 10%. In order to reduce the milk supply by 10%, an estimated 940,000 dairy cows would need to be culled from the milk herd. The addition of this many dairy cows to the supply side for beef packing houses would overwhelm the market and severely depress prices for the beef industry. In addition, the reduced feed needs from dairy farms would also significantly reduced demand for commodity feed crops.

### **Requested Emergency Hearing Procedures**

It is urgent that these requested amendments be effective for the month of June, which is projected to have the lowest prices during this crisis. To accomplish that, we request that special procedures be utilized for this hearing. The Department has previously found that these procedures are appropriate for formal rulemaking hearings, see 82 Fed. Reg. 51149 (November 3, 2017) (promulgating 7 C.F.R. § 1.800-1.819), and utilized similar procedures for a marketing order hearing. For notice to all, the procedures should be published in the Notice of Hearing.

We request the following:

1. The hearing should be called on three (3) days' notice as authorized by 7 C.F.R. § 900.4(a).

2. The hearing notice should expressly state that issues in the hearing will include the need for: (1) omission of a recommended decision; and (2) the publication of a final order less than 30 days prior to it being effective.
3. The hearing should be conducted using the Department's Zoom meeting technology, as was the recent Walnut marketing order hearing. See 85 Fed. Reg. 20202 (April 10, 2020).
4. The hearing notice should incorporate the procedures provided in 7 C.F.R. § 1.807 and require pre-submission 24 hours before the hearing of written testimony and exhibits.
5. The hearing notice should also incorporate the procedures in 7 C.F.R. § 1.809(c)(1)-(4) relating to the presentation of testimony and extent of allowable cross-examination.
6. The hearing notice should indicate that the presiding judge may allow deviations from the limitations of the procedures in the hearing notice, but only for 'good cause' shown.

### **Summary and conclusion**

The proponents wish to thank Secretary Perdue and the Department for the assistance provided to date and announced to be forthcoming to dairy farmers. The direct assistance with federal funds is greatly needed and greatly appreciated. In contrast to that assistance, however, this request for regulatory action to quell disorder in federal milk markets requires no federal funds and will benefit multiple sectors of the economy directly and indirectly. Dairy farmers will benefit directly with a stabilized Class I price. Other agricultural producers will benefit from the alleviation of pressure on beef and grain markets. Consumers will also benefit from the stabilizing of the dairy farm sources for fresh milk and at prices below historical levels.

Thank you in advance for your consideration of our request.

Very truly yours,

JOHNSON, DUFFIE, STEWART & WEIDNER



Marvin Beshore  
Jason A. Statler  
*Attorneys for Proponents*



Dana Coale, Deputy Administrator  
April 27, 2020  
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Attachments:

1. List of proponents and market orders represented
2. Response to 7 C.F.R. § 900.22 requests

cc: Erin Taylor, AMS Dairy Programs  
John A. St. Peter, Esquire  
Federal Milk Market Administrators  
All Proponent Cooperatives

**Attachment A**  
**List of Proponents and Market Orders Represented**

The following marketing agencies-in-common, associations of cooperatives, and cooperative milk marketing associations support this request for an emergency national hearing to amend all federal milk marketing orders:

<b>Name of Agency</b>	<b>Members</b>	<b>Federal Order Number</b>
Dairy Cooperative Marketing Association, Inc. (DCMA)	Appalachian Dairy Farmers Cooperative, Inc. Cobblestone Milk Cooperative, Inc. Cooperative Milk Producers, Inc. Dairy Farmers of America, Inc. Lanco Dairy Farms Co-op, Inc. Lone Star Milk Producers, Inc. Maryland and Virginia Milk Producers' Cooperative Association, Inc. Premier Milk, Inc. Select Milk Producers, Inc. Southeast Milk, Inc.	F.O. 5 F.O. 6 F.O. 7 F.O. 32 F.O. 126
Agri-Mark, Inc.		F.O. 1
California Dairies, Inc.		F.O. 51
Central Milk Producers Cooperative (CMPC)	Dairy Farmers of America, Inc. FarmFirst Dairy Cooperative Foremost Farms USA Land O' Lakes, Inc. NFO, Inc. Scenic Central Milk Producers Cooperative Association	F.O. 30
Common Marketing Agency (CMA)	Dairy Farmers of America, Inc. Southeast Milk, Inc.	F.O. 6
Great Lakes Southern Milk Marketing Agency (GLSMMA)	Dairy Farmers of America, Inc. Foremost Farms USA Michigan Milk Producers Association NFO, Inc. Prairie Farms Dairy, Inc. Select Milk Producers, Inc.	F.O. 33
Land O' Lakes, Inc.		F.O. 51

Pennsylvania Association of Dairy Cooperatives (PADC)	Dairy Farmers of America, Inc. Lanco Dairy Farms Co-op, Inc. Land O' Lakes, Inc. Maryland and Virginia Milk Producers' Cooperative Association, Inc.	F.O. 1 F.O. 33
Southern Cooperatives Marketing Agency (SCMA)	Dairy Farmers of America, Inc. Lone Star Milk Producers, Inc. Select Milk Producers, Inc.	F.O. 126
United Dairymen of Arizona (UDA)		F.O. 131
Upper Midwest Marketing Agency (UMMA) (supporting members listed)	Bongards' Creameries Dairy Farmers of America, Inc. First District Association Foremost Farms USA Land O' Lakes, Inc. NFO, Inc. Plainview Milk Products Cooperative	F.O. 30

**Attachment B**  
**Supplementary responses to topics addressed in 7 CFR §900.22**

7 CFR §900.22 requires several questions to be answered by proponents in a Federal Milk Marketing Order hearing request.

§900.22(a). *Explain the proposal. What is the disorderly marketing condition that the proposal is intended to address?*

All federal milk orders build up the Class I price from the base of the “Class I mover” prices specified in §1000.50. The Class I mover, in turn, is the direct product of formulas based on the market prices of manufactured dairy products. The effects of the coronavirus pandemic have significantly diminished the market value of these commodities used to determine the Federal Order Class I Price paid to farmers such that absent immediate intervention, the Class I price is expected to drop to levels that will have a catastrophic impact on farmer income. The proposal addresses this extreme disorderly marketing condition by establishing a fixed Class I mover price for the months of June, July, and August 2020.

§900.22(b). *What is the purpose of the proposal?*

The intent of the proposal is to minimize the destructive impact of the dairy commodity market prices to the Class I price caused by the coronavirus pandemic and, thereby, cushion the drastic drop in dairy farmer income throughout the federal order system, from coast to coast. The proposal will also minimize the impact to other agricultural prices -- including beef prices, as well as corn, hay, alfalfa, cotton seed and other dairy feed input prices – an impact which would be caused by extraordinary dairy cow culling and dairy farm closures.

§900.22(c). *Describe the current Federal order requirements or industry practices relative to the proposal.*

The current federal order provisions inextricably link Class I prices to the dairy product commodity market prices, the result is disorderly and inappropriate in the circumstances of the coronavirus pandemic events.

§900.22(d). *Describe the expected impact on the industry, including on producers and handlers, and on consumers.*

As described in more detail in the letter, the Class I prices which will result from the proposal will be higher for producers than without adoption of the proposal; but the prices for processors and consumers will remain substantially below the 10-year average of Class I prices.

§900.22(e). *What are the expected effects on small businesses as defined by the Regulatory Flexibility Act (5 U.S.C. §601-612)?*

The great majority of dairy farmers whose milk is priced by the federal order system are small businesses which will be benefitted by the proposal.

A number of regulated handlers are also small businesses. They will not be adversely impacted. Their regulatory status will not change, and their minimum prices will continue to be uniform with all market participants.

§900.22(f). *How would adoption of the proposal increase or decrease costs to producers, handlers, others in the marketing chain, consumers, the Market Administrator offices and/or the Secretary?*

- a. Producers will see no cost impact. This improves revenue.
- b. Fluid handlers will see a reduction in the anticipated market-related cost decrease.
- c. Other non-fluid handlers and others in the marketing chain are not expected to be impacted.
- d. Consumer impact is unknown as retail prices are not regulated under the federal orders.
- e. Market Administrators and the USDA will not see a cost impact.

§900.22(g). *Would a pre-hearing information session be helpful to explain the proposal?*

The emergency time schedule for the hearing will not readily accommodate a pre-hearing information session.