

Mark Up
MILK STABILIZATION RULES

I. Purpose

1. The purpose of these rules is to:

- a. Implement Act 521 of 2021, codified at Ark. Code Ann. § 2-10-104; and
- b. Ensure that Arkansas milk producers receive Class 1 prices for milk utilized or sold as fluid milk in this state.

2. It is the understanding of the Arkansas Milk Stabilization Board that:

- a. Prices for milk produced and sold in Arkansas are currently only regulated at the Federal level, pursuant to the state of Arkansas's inclusion in Federal Milk Marketing Order Number 7;
- b. The Federal regulations set the minimum prices of milk paid to producers based on the average utilization of milk within the entire marketing order region, which includes several southeastern states;
- c. Traditionally, the utilization of milk produced and sold in the state of Arkansas as fluid milk is much higher than the average utilization of milk as fluid milk in the Federal Milk Marketing Order Number 7;
- d. As a result, Arkansas milk producers are often underpaid for the milk they produce, making it necessary for the state to require a premium to fairly compensate milk producers;
- e. The overwhelming majority of milk producers in Arkansas are members of cooperative associations;
- f. Due to various economic reasons, the cooperative associations often negotiate with milk dealers to reach agreements for price premiums that exceed the Federal Marketing Order's established monthly minimum milk price;
- g. However, milk producers remain underpaid for the milk they produce as the premiums paid to cooperatives are not sufficiently passed on to producers;
- h. It is therefore necessary to establish clear circumstances that cause Arkansas milk producers to be underpaid for milk, and to require that premium payments are fairly passed through to producers in those circumstances.

II. DEFINITIONS AND CONTEXT

The following terms shall be construed in this rule to have the following meanings, except in those instances where the context clearly indicates otherwise:

"BOARD" means the Arkansas Milk Stabilization Board.

"BOOKS AND RECORDS" or "BOOKS OR RECORDS" shall include all pertinent books, ledgers, journals, records, papers, memoranda, correspondence, vouchers, bills, receipts, cancelled checks, accounts, exhibits, photographs and other documents.

"CONSUMER" means any person other than a milk dealer who purchases milk for consumption or use by him or herself or others.

"COOPERATIVE" means a cooperative agricultural association or corporation of producers organized under the laws of this State or of any other state and engaged in making collective sales or in the marketing of milk for producers under contract with it.

"DEALER" means any person, who purchases or receives or handles on consignment or otherwise milk within the State, for processing or manufacture and further sale, within or without the State, whether on behalf of himself or others, or both. A producer who delivers milk to a milk dealer only shall not be deemed a milk dealer.

"DEPARTMENT" means the Arkansas Department of Agriculture.

"HANDLE" to handle means the doing of any one or several or all of the following acts, to buy, sell, barter, acquire, store, process, consign, receive, transport, control as owner, buyer, seller, consignee, consignor, bailee, bailor, broker, or factor.

"MARKET" includes any county, city, borough, incorporated town, or township in the State, or any two or more such counties, cities, boroughs, incorporated towns, or townships, or any portions thereof, or any other land within the territorial limits of the State designated by the Board as a marketing area.

"MILK" includes fluid milk and cream, fresh, sour or storage, skimmed milk, low-fat milk, flavored milk or milk drink, buttermilk, ice cream mix, and condensed or concentrated whole or skimmed milk except when contained in hermetically sealed cans.

"OVER-MARKET PREMIUM" means the payment required to be paid to producers pursuant to Act 521 of 2021, and further provided for in this rule.

"PERSON" includes an individual, corporation, association, partnership, limited partnership, or other unincorporated enterprise owned or conducted by or on behalf of two or more individuals or other persons.

"PRICE" includes the amount paid or to be paid and the proceeds returned or to be returned, whether the transaction be one of purchase, sale, consignment, sale or return, accounting, or otherwise.

"PRODUCER" means a person producing milk in Arkansas.

"STORE" includes a grocery store, hotel, restaurant, soda fountain, dairy products store, or any similar mercantile establishment which sells or distributes milk.

Any reference in this rule to quantity of milk shall be construed to include its whole milk equivalent.

III. PRICES OF MILK

A. Calculations of Milk Prices

Milk class prices shall be calculated using the regulations set in 7 C.F.R. Part 1000. By the 17th of every month, a dealer shall determine the utilization of its milk that was both produced in and sold as fluid milk within Arkansas for the preceding month. If the dealer's percentage of utilization of milk that was produced in and sold as fluid milk within Arkansas exceeds the percentage of utilization of milk as Class I milk in Federal Milk Marketing Order (FMMO) Number 7, the producer shall be paid an Over-Market Premium, as calculated in Section III, Paragraph B.

B. Over-Market Premium

When an Over-Market Premium is owed to a producer, the premium shall be paid to the producer, or to the producer's cooperative, by the dealer pursuant to the rules for payments to producers set forth below.

If the Dealer pays the premium to the cooperative, the cooperative shall make the calculations. The premium shall be calculated as follows:

1. Calculate the Dealer's Class I Utilization Price by multiplying the percentage of its milk produced in and sold in Arkansas as fluid milk by the Class I Price as determined under the FMMO 7 (Dealer's Class I Utilization % x Class I Price);
2. Calculate the FMMO Class I Utilization Price by multiplying the percentage of milk utilized as Class I milk within the FMMO 7 by the Class I Price as determined under the FMMO 7 (FMMO 7 Utilization % x Class I Price); and
3. Subtract the FMMO 7 Class I Utilization Price from the Dealer's Class I Utilization Price (Dealer's Class I Utilization Price – FMMO Class I Utilization Price).

The figure that results from the calculation above is the Over-Market Premium that is owed to producers for every hundredweight of milk produced in and sold as fluid milk within Arkansas.

C. Terms of Payment

1. Producers shall be paid as follows:

- (a) Payment to producers, cooperatives and producer settlement funds shall be made under the Federal milk marketing order.
- (b) A final settlement payment for all milk and cream purchased shall be made not later than the 17th day of the following month. The final settlement shall include any balances due to the producer, including any Over-Market Premium owed, if applicable, and shall be accompanied by a statement to each producer setting forth the information required under Section II, paragraph D.
- (c) If a date required for payment falls on a Saturday, Sunday or State or National Holiday, the payment is due on the following business day.

2. This section may not be interpreted as prohibiting a dealer from paying its producers on a weekly basis; however, when a dealer pays on this basis, it shall also provide its producers with a monthly statement as prescribed by Section II, paragraph D. All advance payments on the weekly basis shall be at least at the lowest announced class price for the previous month for the number of pounds purchased or received during the week in question. The final settlement shall include any balances due for the initial weeks during the month and shall be accompanied by a statement to each producer setting forth the information required under Section II, paragraph D.

D. Monthly Statement to Producers

Dealers purchasing milk or cream from producers shall furnish producers, in addition to any reports to producers that may be required by the FMMO, with statements containing each of the following items at the time of the monthly final settlement payment. Producers receiving their statements through electronic media shall have an agreement to do so on file with the purchasing dealer.

1. The name and address of the dealer issuing statement.
2. The date of statement.
3. The period for which statement is rendered.
4. The name and either the address or the producer number of the producer for whom the statement is intended.
5. The total pounds of milk purchased from the producer.
6. The gross amount paid for milk.
7. The dealer's utilization percentage for milk produced in and sold as fluid milk in Arkansas.

8. The utilization percentage for class I milk in FMMO 7.
7. Itemization of the pounds of milk subject to Over-Market Premiums and additional amounts paid as premiums, bonuses, or similar payments.
8. The gross amount due after addition of premiums, bonuses, or similar payment.
9. Itemization of advance payments and authorized deductions.
10. The total deductions.
11. The net amount due and paid.
12. A listing of the amount of milk picked up each day.

IV. RECORDS, REPORTS, AND INFORMATION

A. Records

Milk dealers shall keep within the State the following records:

1. All records as may be required to be kept or produced under the FMMO.
2. Any records used to determine the dealer's liabilities for Over-Market Premiums under these rules.
3. All reports filed with the Board as required under these rules.
4. Such other records and information as the Board may deem necessary.

The records herein required shall be kept in the possession of the milk dealer for a period not less than two years unless the Board otherwise provides.

B. Reports

By the 20th of every month, each milk dealer shall submit to the Board a report for the preceding month stating whether the percentage of its milk produced in and sold as fluid milk within Arkansas is greater or less than the percentage of milk utilized as Class I milk in FMMO 7. The report shall list in detail the total amount of the dealer's milk produced in and sold within Arkansas and the total amount of the dealer's milk produced in and sold as fluid milk within Arkansas. If an Over-Market Premium is owed for the preceding month, the following additional information shall be included in the monthly report:

1. The Over-Market Premium price per hundredweight, as calculated under Section II Paragraph B.
2. An accounting of how much milk was subject to the Over-Market Premium.
3. Identification of producers owed an Over-Market Premium, including the names and addresses of the producers.
4. A copy of the statement provided to each producer upon final settlement payment, as required under Section II, Paragraph D.

V. COOPERATIVES

A. No provision of this rule shall prevent or interfere with, and no provision contained herein shall be deemed or construed to prevent or interfere with, any agreement between producers and milk cooperative agricultural association or corporation organized under the laws of this State, or a similar association or corporation organized under the laws of this or any other state.

B. Nothing herein contained shall prevent any milk dealer from contracting for his milk with such cooperative agricultural association or corporation.

C. Dealer payments of Over-Market Premiums made to cooperatives shall be passed through, in whole, to producers for the premium owed to the producer under this rule.

VI. VIOLATIONS

A. It shall be a violation of these rules for a milk dealer to fail to pay an Over-Market Premium as required under these rules.

B. It shall be a violation of these rules for a cooperative to fail to pass through Over-Market Premium payments in whole as required in Section VI(C).

C. A producer who is not paid an Over-Market Premium as required under these rules may file an action in a circuit court with proper jurisdiction to recover the Over-Market Premium and any other applicable damages under Arkansas law or rule.