

## 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 1033

[Docket No. AO-11-0333; AMS-DA-11-0067; DA-11-04]

#### Milk in the Mideast Marketing Area; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

**SUMMARY:** A public hearing is being held to consider and take evidence on a proposal to modify the Pool Plant Definition in the Mideast Milk Marketing Order.

**DATES:** The hearing will convene at 8 a.m. on Tuesday, October 4, 2011.

**ADDRESSES:** The hearing will be held at the Westin Cincinnati Hotel, 21 E 5th Street, Cincinnati, Ohio 45202, (513) 621-7700.

**FOR FURTHER INFORMATION CONTACT:** William Francis, Director, Order Formulation and Enforcement Division, USDA/AMS/Dairy Programs, Stop 0231—Room 2971—S, 1400 Independence Avenue, SW., Washington, DC 20250-0231, (202) 720-7183, e-mail: [William.Francis@ams.usda.gov](mailto:William.Francis@ams.usda.gov).

Persons requiring a sign language interpreter or other special accommodations should contact Paul Huber, Market Administrator, before the hearing begins at (330) 225-4758 or e-mail: [phuber@fmmacllev.com](mailto:phuber@fmmacllev.com).

**SUPPLEMENTARY INFORMATION:** This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Westin Cincinnati Hotel, Cincinnati, Ohio beginning at 8 a.m. on Tuesday, October 4, 2011, with respect to a proposed

amendment to the tentative marketing agreement and to the order regulating the handling of milk in the Mideast marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) (Act), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to any proposed amendments.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601-612) (RFA). The RFA seeks to ensure that, within the statutory authority of a program, the regulatory and information collection requirements are tailored to the size and nature of small businesses. For the purpose of the RFA, a dairy farm is a "small business" if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees (13 CFR 121.201). Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such

order by filing with the 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 the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, has its principal place of business, has jurisdiction in equity to review the 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.

Interested parties who wish to introduce exhibits should provide the Administrative Law Judge at the hearing with (4) copies of such exhibits for the Official Record. Additional copies should be made available for use by other hearing participants. Any party that has submitted a proposal notice herein, when participating as a witness, is required to make their testimony—if prepared as an exhibit—and any other exhibits, available to USDA officials prior to the start of the hearing on the day of their appearance. Individual dairy farmers are not subject to this requirement.

The hearing will continue until such time as determined to have ended by the presiding Administrative Law Judge. If necessary, the schedule for the next session will be announced at the time of adjournment. Such reconvening date and time will also be posted on the AMS-Dairy Programs Web site at: <http://www.ams.usda.gov/dairy>.

The proposed amendments, as set forth below, have not received the approval of the Department.

#### List of Subjects in 7 CFR Part 1033

Milk marketing orders.

The authority citations for 7 CFR part 1033 read as follows:

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

Proposed by Foremost Farms USA Cooperative, Inc.; National Farmers Organization, Inc.; Dairy Farmers of America, Inc.; Michigan Milk Producers Association; Dairy Lea Cooperative, Inc.; and Continental Dairy Products, Inc.

*Proposal 1*

This proposal seeks to alter the definition of a pool distributing plant within the Mideast Milk Marketing Order. Specifically, the proposal recommends that a distributing plant, which is physically located within the Mideast Milk Marketing Order, be regulated by that order if half of its total route disposition is within Federal Milk Marketing Area boundaries and its sales patterns are such that no one Order has more than 25% of its sales volume. This proposed change would only affect the Mideast Milk Marketing Order.

1. Amend § 1033.7 by revising paragraph (a) to read as follows:

**§ 1033.7 Pool plant**

\* \* \* \* \*

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or § \_\_\_\_\_.7(b) of any other Federal milk order, from which during the month 30 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area. Plants located within the marketing area with combined route disposition and transfers of at least 50% into Federal Order marketing areas but without 25% of route disposition and transfers into any one Federal Order will be regulated as a distributing plant in this Order.

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Proposed by Dairy Programs,  
Agricultural Marketing Service

*Proposal 2*

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator of the Mideast Marketing Area, or from the Hearing Clerk, United States Department of Agriculture, STOP 9200—Room 1031, 1400 Independence Avenue, SW.,

Washington, DC 20250–9200, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing. Copies of the transcript will also be made available online at: <http://www.ams.usda.gov/dairy>.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture, Office of the Administrator, Agricultural Marketing Service, Office of the General Counsel, Dairy Programs, Agricultural Marketing Service (Washington Office) and the Offices of all Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: September 2, 2011.

David R. Shipman,  
Acting Administrator.

[FR Doc. 2011–22945 Filed 9–7–11; 8:45 am]

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