

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part (1030)

[Docket No. AO-361-A35; DA-01-03]

Milk in the Upper Midwest Marketing Area; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; Notice of public hearing on proposed rulemaking.

SUMMARY: A public hearing is being held to consider proposals that would prevent the pooling of milk on the Upper Midwest Federal milk marketing order that is already pooled on a State milk marketing order that has marketwide pooling. Additionally, a proposal that would provide for separate pooling provisions for milk from areas outside of the states comprising the Upper Midwest order will also be considered. A proposal to change the advance payment to dairy farmers by milk handlers for milk delivered during the first half of the month will also be considered. Proponents have requested that this issue be handled on an emergency basis.

DATES: The hearing will convene at 9:00 a.m. on Tuesday, June 26, 2001.

ADDRESSES: The hearing will be held at the Radisson Hotel South & Plaza Tower, 7800 Normandale Blvd., Bloomington, Minnesota 55439, (952)835-7800.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Programs, Room 2967, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202)690-1366, e-mail address Gino.Tosi@usda.gov.

Persons requiring a sign language interpreter or other special accommodations should contact Paul Kyburz at (952)831-5292; e-mail: paul.kyburz@usda.gov before the hearing begins.

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 Radisson Hotel South & Plaza Tower, 7800 Normandale Blvd., Bloomington, Minnesota, 55439, beginning at 9:00 a.m., on Tuesday, June 26, 2001, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Upper Midwest 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), 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.

Notice of Hearing - Upper Midwest Marketing Area - DA-01-03

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 the proposed amendments.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than \$500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. 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. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement 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 Secretary 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 Secretary 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, or has its principal place of business, has jurisdiction in equity to review the Secretary'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 Presiding Officer at the hearing with 3 copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Part(s)

Milk marketing orders.

PART 1030 [amended]

The authority citation for 7 CFR Part 1030 continues to read as follows:

Authority: 7 U.S.C. 601-674.

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

Notice of Hearing - Upper Midwest Marketing Area - DA-01-03

Submitted by: Associated Milk Producers, Inc. et.al., First District Association, and Lakeshore Federated Dairy Cooperative

Proposal No. 1:

1. Amend §1030.12 by adding a new paragraph (b)(5) to read as follows:

§1030.12 Producer

* * * * *

(b) * * *

(5) A dairy farmer whose milk is pooled on a state order with a marketwide pool.

Submitted by: Land O'Lakes, Inc.

Proposal No. 2:

Proposes that California milk previously qualified for pooling on the Upper Midwest Order be "grandfathered" or exempt from any change in the marketing order that would provide for its exclusion.

Proposal No. 3:

Proposes that quota milk from California be excluded from being pooled on the Upper Midwest Order.

Submitted by: Dairy Farmers of America

Proposal No. 4:

1. Amend §1030.13 by renaming paragraph (d)(3) as (d)(4); adding a new paragraph (d)(3); and adding a new paragraph (e) to read as follows:

§1030.13 Producer Milk

* * * * *

(d) * * *

(3) The quantity of milk diverted to nonpool plants by a pool plant operator as described in §1030.7(a) or (b) may not exceed 90 percent of each reporting unit of the handler's receipts made pursuant to §1030.30(a). This percentage is subject to adjustments that may be made pursuant to §1030.7(g).

(e) Milk from producers physically located outside of the states of Illinois, Iowa, Minnesota, North Dakota, South Dakota, Wisconsin and the Upper Peninsula portion of Michigan shall be grouped by individual state units and each state unit shall be:

Notice of Hearing - Upper Midwest Marketing Area - DA-01-03

(1) Reported on separate report(s) pursuant to §1030.30; and

(2) At least 10 percent of each reporting unit of the handler shall be delivered to pool plants as described in §1030.7(a) or (b), and such deliveries shall not be used by the handler in meeting the minimum shipping percentages required pursuant to §1030.7(c) or (f) or §1030.13(d); and

(3) The percentages of §1030.13(e)(2) are subject to any adjustments that may be made pursuant to §1030.7(g).

Proposal No. 5

Proposes that the rate for advance payments be set at a percentage of the prior month's lowest class price, expected to be between 103 and 108 percent; or the rate for advance payment be set between 93 and 96 percent of the Class I price mover for the month.

Proposed by Dairy Programs, Agricultural Marketing Service:

Proposal No. 6

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 Upper Midwest Milk Marketing Area, or from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, 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.

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 Office of the Market Administrator for the Upper Midwest Milk Marketing Area.

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

Dated: June 5, 2001

/s/ Kenneth C. Clayton
Acting Administrator
Agricultural Marketing Service