

---

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Parts 1000, 1001, 1005, 1006,  
1007, 1030, 1032, 1033, 1124, 1126,  
1131, and 1135**

[Docket No. AO-14-A72, et al.; DA-03-08]

**Milk in the Northeast and Other  
Marketing Areas; Notice of Hearing on  
Proposed Amendments to Tentative  
Marketing Agreements and Orders**

7 CFR part	Marketing area	AO Nos.
1001	Northeast	AO-14-A72
1005	Appalachian	AO-388-A13
1006	Florida	AO-356-A36
1007	Southeast	AO-366-A42
1030	Upper Midwest	AO-361-A37
1032	Central	AO-313-A46
1033	Mideast	AO-166-A70
1124	Pacific Northwest	AO-368-A33
1126	Southwest	AO-231-A66
1131	Arizona-Las Vegas	AO-271-A38
1135	Western	AO-380-A20

**AGENCY:** Agricultural Marketing Service, USDA.

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

**SUMMARY:** A hearing is being held to consider proposals to amend all 11 Federal milk marketing orders. The proposals would reclassify evaporated milk in consumer-type packages and sweetened condensed milk in consumer-type packages from Class III products to Class IV products. Another proposal would reclassify bulk ending inventory each month to the lower-priced class of Class III or Class IV. Proponents have requested that the proposals be handled on an emergency basis.

**DATES:** The hearing will convene at 8:30 a.m. on October 21, 2003.

**ADDRESSES:** The hearing will be held at the Holiday Inn and Suites Alexandria (Historic District), 625 First Street, Alexandria, Virginia 22314. Telephone Number: (703) 548-6300 or 1-877-732-3318.

**FOR FURTHER INFORMATION CONTACT:** Antoinette M. Carter, Marketing Specialist, Order Formulation and Enforcement, USDA/AMS/Dairy Programs, Room 2971-Stop 0231, 1400 Independence Avenue, SW., Washington, DC 20250-0231, (202) 690-3465, e-mail address: [Antoinette.Carter@usda.gov](mailto:Antoinette.Carter@usda.gov).

Persons requiring a sign language interpreter or other special accommodations should contact Erik F. Rasmussen, Market Administrator, at (617) 737-7199; e-mail [maboston@fedmilk1.com](mailto:maboston@fedmilk1.com) 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 Holiday Inn and Suites, Alexandria Historic District, beginning at 8:30 a.m., on Tuesday, October 21, 2003, with respect to

proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Northeast and other marketing areas.

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 agreements and to the orders.

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 proposals.

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 \$750,000, 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 (6) 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

##### 7 CFR Part 1000

Milk marketing orders; Reporting and recordkeeping requirements.

##### 7 CFR Parts 1001 Through 1135

Milk marketing orders.

The authority citation for 7 CFR parts 1001 through 1135 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.

*Proposed by O-AT-KA Milk Products Cooperative, Inc.:*

## Proposal No. 1

In § 1000.40, revise paragraph (c)(1)(iii) and paragraph (d)(1)(i), redesignate paragraph (d)(1)(ii) as paragraph (d)(1)(iii), and add new paragraph (d)(1)(ii) to read as follows:

**§ 1000.40 Classes of utilization.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(iii) Sweetened condensed milk in a consumer-type package; and

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(i) Butter, plastic cream, anhydrous milkfat, and butteroil;

(ii) Evaporated milk in a consumer-type package; and

(iii) Any milk product in dried form;

\* \* \* \* \*

*Proposed by Diehl, Inc., and Milnot Holding Corporation:*

## Proposal No. 2

In § 1000.40, remove paragraph (c)(1)(iii), revise paragraph (d)(1)(i), redesignate paragraph (d)(1)(ii) as paragraph (d)(1)(iii), and add new paragraph (d)(1)(ii) to read as follows:

**§ 1000.40 Classes of Utilization.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(i) Butter, plastic cream, anhydrous milkfat, and butteroil;

(ii) Evaporated or sweetened condensed milk in a consumer-type package; and

(iii) Any milk product in dried form;

\* \* \* \* \*

*Proposed by New York State Dairy Foods, Inc.:*

## Proposal No. 3

In § 1000.40, paragraph (d)(2) is removed, paragraphs (d)(3) and (d)(4) are redesignated as paragraphs (d)(2) and (d)(3), and paragraph (e) is revised to read as follows:

**§ 1000.40 Classes of utilization.**

\* \* \* \* \*

(e) Other uses shall include all skim milk and butterfat:

(1) In inventory at the end of the month of fluid milk products and fluid cream products in bulk form. Such uses of skim milk and butterfat shall be assigned to the lowest priced class for the month.

(2) Used in any product described in this section that is dumped, used for animal feed, destroyed, or lost by a handler in a vehicular accident, flood, fire, or similar occurrence beyond the

handler's control. Such uses of skim milk and butterfat shall be assigned to the lowest priced class for the month to the extent that the quantities destroyed or lost can be verified from records satisfactory to the market administrator.

*Proposed by Dairy Programs, Agricultural Marketing Service:*

## Proposal No. 4

For all Federal Milk Marketing Orders, make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid marketing areas, 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 Offices of all Market Administrators.

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

Dated: September 2, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03-22683 Filed 9-5-03; 8:45 am]

**BILLING CODE 3410-02-P**