



United States Department of Agriculture

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MIDEAST MARKETING AREA
Federal Order No. 33

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November 18, 2004

TO: Interested Parties – Mideast Marketing Area

FROM: David Z. Walker
Market Administrator
Cleveland, Ohio

SUBJECT: Proposals to Amend the Pooling Provisions of the Mideast Marketing Order

We have received a request from Ohio Dairy Producers (ODP) for a public hearing to change the pooling standards of the Mideast Order. One proposal seeks to limit the pooling of producer milk normally associated with the Mideast market that was not pooled in a prior month(s), while another proposed to establish a dairy farmer for other markets provision that would require a year round commitment by producers seeking to have their milk pooled on the Mideast order.

The proponent contends that depooling is having a negative impact on producer price differentials (PPD) received by dairy farmers who are consistently pooled. They state that the ability of some producers to depool when prices are low and repool with no penalty has lowered the PPD for those Ohio producers who consistently remain pooled by as much as \$1.66 per hundredweight in some months. ODP stated that other marketing orders are currently considering proposals to limit depooling, and predicted that if the depooling problem is corrected in those markets it may lead to larger problems for the Mideast order if there is no change in the current regulations.

Copies of the proposals may be obtained from either Gino Tosi, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, STOP 0231–
Room 2971, 1400 Independence Avenue, SW, Washington, DC 20250-0231, (202) 690-1366,
e-mail: Gino.Tosi@usda.gov or David Z. Walker, Mideast Market Administrator, USDA/AMS/Dairy, P.O. Box 5102, 1325 Industrial Parkway North, Brunswick, Ohio 44212, (330)225-4758.

These proposals have not yet been approved for inclusion in a Notice of Hearing. Before deciding whether a hearing should be held, USDA is providing interested parties an opportunity to submit additional proposals regarding the pooling standards in the Mideast order.

Interested Parties

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Additional proposals should be mailed to: Deputy Administrator, USDA/AMS/Dairy Programs, STOP 0225–Room 2968, 1400 Independence Avenue, SW, Washington, DC 20250-0225, by January 7, 2005. Each proposal should be accompanied by a brief but comprehensive statement on the need for the proposal. The statement will be used in deciding whether the proposals should be considered if a hearing to amend the order is to be held.

A hearing would be limited to proposals included in a hearing notice. However, appropriate modifications of the proposals in the hearing notice may be considered at the hearing. Any proposals that would extend regulation should be accompanied by the names and addresses of persons who proponents believe would be affected by the proposed extension and an estimate of the number of additional dairy farmers involved.

Actions under the Federal Milk Order Program are subject to the "Regulatory Flexibility Act (Act)." 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 Federal Order Program, a dairy farm is a "small business" if it has an annual gross revenue of less than \$750,000 resulting in a production guideline of 500,000 pounds per month. A handler is a "small business" if they have fewer than 500 employees. If the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees. Interested persons are invited to submit hearing proposals that would carry out the intent of the Act.

If USDA concludes that a hearing should be held, all known interested persons will be mailed a copy of the hearing notice. Anyone who desires to present evidence on proposals set forth in the hearing notice will have an opportunity to do so at the hearing.

Once a hearing notice is issued and until the issuance of a final decision, USDA employees involved in the decisional process may not discuss the merits of a proceeding on an ex parte basis with any persons having an interest in the proceeding. For this purpose, the Market Administrator and his staff are considered to be involved in the decisional process. Thus, it is suggested that any discussions that you may wish to have with USDA personnel regarding hearing proposals be initiated soon. Procedural matters may be discussed at any time.

If you have any questions concerning the filing of the proposals or desire a copy of the present order, please contact this office.

David Z. Walker
Market Administrator