



United States
Department of
Agriculture

Agricultural
Marketing
Service

1400 Independence Avenue, SW
Washington, DC
20250-0231

March 17, 2004

Invitation to Submit Proposals for a Public Hearing to Amend the Pooling Provisions of the Upper Midwest Marketing Order

We have received two requests for an emergency public hearing to change the pooling standards of the Upper Midwest Order. One request—from Mid-West Dairymen's Co. on behalf of Cass-Clay Creamery Inc., Dairy Farmers of America, Foremost Farms USA, Land O'Lakes, Mid-West Dairymen's Co., Milwaukee Cooperative Milk Producers, Manitowoc Milk Producers Cooperative, Swiss Valley Farms, and Woodstock Progressive Milk Producers (Mid-West, et. al.)—proposes to limit the pooling of producer milk normally associated with the market that was not pooled in a prior month(s), and to change the pooling requirements for producer milk originating outside of the States where the Upper Midwest Marketing Area is located. Another request—from Associated Milk Producers, Inc. (AMPI) on behalf of AMPI, Bongards' Creameries, Ellsworth Cooperative Creamery, and First District Association (AMPI, et. al.)—proposes to limit the pooling of milk located long distances from Order 30.

All proponents state that minimum prices and pooling requirements have been developed to assure an adequate supply of fluid milk for the Upper Midwest market and an equal sharing of the dollars generated by the order. Both AMPI, et. al., and Mid-West, et. al., contend that the orderly marketing of fluid milk in Order 30 is being prevented by the pooling of milk from producers so distant from the market that they cannot be considered viable suppliers to Order 30 fluid processors. Mid-West, et. al., also contends that there are inequities among producers caused by provisions that allow reserve milk, which is used solely in cheese production, to share in the benefits of pooling, but do not require such milk to pool where there is a cost, i.e., when the Class III price is above the blend price.

Copies of the proposals may be obtained from either Jack Rower, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, STOP 0231—Room 2971, 1400 Independence Avenue, SW, Washington, DC 20250-0231, (202) 720-2357, e-mail: Jack.Rower@usda.gov or H. Paul Kyburz, Upper Midwest Market Administrator, USDA/AMS/Dairy, Suite 210, 4570 West 77th Street, Minneapolis, MN 55435-5037, (952) 831-5292.

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 Upper Midwest order.

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 April 30, 2004. Each proposal should be accompanied by a brief but comprehensive statement

Interested Parties

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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.

Sincerely,

/s/

Richard M. McKee
Deputy Administrator
Dairy Programs