



## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 1033**

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

### **Milk in the Mideast Marketing Area; Order Amending the Order**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Pool Plant provisions of the Mideast Federal milk marketing order regulating distributing plants physically located within the marketing area, with a Class I utilization of at least 30 percent and with combined route disposition and transfers of at least 50 percent distributed into Federal milk marketing areas, as Pool Distributing Plants under the terms of the order. More than the required number of producers for the Mideast marketing area approved the issuance of the final order as amended.

**FOR FURTHER INFORMATION CONTACT:** Erin C. Taylor, Order Formulation and Enforcement Division, USDA/AMS/Dairy Programs, STOP 0231-Room 2963, 1400 Independence Ave, SW., Washington, DC 20250-0231, (202) 720-7183, e-mail address: [erin.taylor@ams.usda.gov](mailto:erin.taylor@ams.usda.gov).

**EFFECTIVE DATE:** October 1, 2012.

**SUPPLEMENTARY INFORMATION:** This final rule more adequately defines the plants, and the producer milk associated with those plants, that serve the fluid needs of the Mideast market and therefore which producers should share in the additional revenue arising from fluid milk sales.

Accordingly, this final rule adopts proposed amendments detailed in the final decision (77 FR 38536).

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.

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) (the Act), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c (15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with 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 U.S. Department of Agriculture (USDA or Department) 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 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.

#### **Regulatory Flexibility Act and Paperwork Reduction Act**

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities.

For the purpose of the Regulatory Flexibility Act, a dairy farm is considered 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. For the purposes of determining which dairy farms are “small businesses,” the \$750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most “small” dairy farms. For purposes of determining a handler’s size, 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.

During October 2011, the time of the hearing, there were 6,651 dairy farms pooled on the Mideast order. Of these, approximately 6,169 dairy farms (or 92.8 percent) were considered small businesses. During the same month, there were 51 handler operations associated with the Mideast order (25 fully regulated handlers, 8 partially regulated handlers, 2 producer-handlers, and 16 exempt handlers). Of these, approximately 38 handlers (or 74.5 percent) were considered small businesses.

The Pool Plant provisions of the Mideast order define which plants have an association with serving the fluid milk market demand of the Mideast marketing area, and therefore determine the producers and the producer milk that can participate in the marketwide pool as well as share in the Class I market revenues. The proposed amendment adopted in this final rule will fully regulate some handlers that currently fall under partial regulation. As a result, these handlers will be required to account to the Mideast order marketwide pool. Consequently, all producers whose milk is pooled and priced under the terms of the Mideast order will benefit

from the additional revenue contributed to the marketwide pool by the newly-regulated distributing plant. The Department anticipates that while these additional monies will be shared with all producers serving the market, the amendment will not have a significant economic impact on a substantial number of small entities.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that the amendment will have no impact on reporting, recordkeeping, or other compliance requirements because it will remain identical to the current requirements. No new forms are proposed and no additional reporting requirements are necessary.

This notice does not require additional information collection that will necessitate clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the approved forms are routinely used in most business transactions. The forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

**Prior Documents in this Proceeding:**

Notice of Hearing: Issued September 2, 2011; published September 8, 2011 (76 FR 55608).

Recommended Decision: Issued February 24, 2012; published February 29, 2012 (77 FR 12216).

Final Decision: Issued June 22, 2012; published June 28, 2012 (77 FR 38536).

### **Findings and Determinations**

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

#### (a) Findings upon the basis of the hearing record.

A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Mideast marketing area. The hearing was held 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 (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

- (1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;
- (2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) Additional Findings.

The amendment to this order is known to handlers. The final decision containing the proposed amendment to this order was issued on June 22, 2012, and published in the **Federal Register** on June 28, 2012 (77 FR 38536).

The changes that result from this amendment will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this amendment effective following October 1, 2012. (Section 553(d), Administrative Procedures Act, 5 U.S.C. 551-559.)

(c) Determinations.

It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the AMAA) of more than 50 percent of the milk, which is marketed within the specified marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the AMAA;

(2) The issuance of this order amending the Mideast order is the only practical means pursuant to the declared policy of the AMAA of advancing the interests of producers as defined in the orders as hereby amended; and

(3) The issuance of this order amending the Mideast order is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the respective marketing areas.

**List of Subjects in 7 CFR part 1033**

Milk marketing orders.

**Order Relative to Handling**

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Mideast marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

For reasons set forth in the preamble, 7 CFR part 1033 is amended as follows:

**PART 1033--MILK IN THE MIDEAST MARKETING AREA**

1. The authority citation for 7 CFR part 1033 continues to read as follows:

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

2. 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 that meet the 30 percent route disposition standard contained above, and have combined route disposition and transfers of at least 50 percent into Federal order marketing areas will be regulated as a distributing plant in this order.

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Dated: August 21, 2012

David R. Shipman  
Administrator  
Agricultural Marketing Service

Billing Code: 3410-02P

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