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BILLING CODE 8325-47-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000 and 1033

[Docket No. AO-166-A77; DA-08-06]

Milk in the Mideast Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: A public hearing is being held to consider and take evidence on a proposal to temporarily adjust certain Class I differentials in the Mideast milk marketing order.

DATES: The hearing will convene at 9 a.m., on Tuesday, August 19, 2008.

ADDRESSES: The hearing will be held at the Westin Cincinnati Hotel—21 E 5th Street, Cincinnati, Ohio 45202, phone (513) 621-7700.

FOR FURTHER INFORMATION CONTACT: Erin C. Taylor, Marketing Specialist, Order Formulation and Enforcement, USDA/AMS/Dairy Programs, Stop 0231—Room 2963, 1400 Independence Avenue, SW., Washington, DC 20250-0231, (202) 720-2357, e-mail-address: erin.taylor@usda.gov.

Persons requiring a sign language interpreter or other special accommodations should contact Paul Huber, Assistant Market Administrator, at (330) 225-4758; e-mail: pHuber@fmnaclev.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 Westin Cincinnati Hotel, Cincinnati, Ohio, beginning at 9 a.m. on Tuesday, August 19, 2008, with respect to a proposed amendment to the tentative marketing agreement and to the order regulating the handling of milk in the Mideast 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) (Act), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Land O'Lakes, Inc., Michigan Milk Producers Association, Inc., Foremost Farms USA Cooperative, Inc., Dairy Lea Cooperative Inc., National Farmers Organization Inc., and Dairy Farmers of America, Inc. have jointly submitted a proposal that seeks to temporarily increase the Class I differentials in the southern tier of the Mideast milk marketing order. In addition to this proposed amendment to the order, AMS proposes to make any such changes as may be necessary to the order and its administrative rules and regulations to conform to any amendment that may result from the hearing.

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.

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 any proposed amendments.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601-612) (RFA). The RFA seeks to ensure that, within the statutory authority of a program, the regulatory and information

collection requirements are tailored to the size and nature of small businesses. For the purpose of the RFA, 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 (13 CFR 121.201). 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 Department of Agriculture (Department) 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 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, has its principal place of business, has jurisdiction in equity to review the Department'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.

DEPOSITION
EXHIBIT

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with (4) 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.

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

List of Subjects in 7 CFR Parts 1000 and 1033

Milk marketing orders.

The authority citations for 7 CFR parts 1000 and 1033 read as follows:

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

Proposed by Land O'Lakes, Inc., Michigan Milk Producers Association, Inc., Foremost Farms USA Cooperative, Inc., Dairylea Cooperative Inc., National Farmers Organization Inc., and Dairy Farmers of America, Inc.

Proposal 1

This proposal would temporarily adjust the Class I pricing surface for the southern counties within the

geographical marketing area of the Mideast milk marketing order. Specifically, this proposal, on a temporary basis, would modify section 1000.51 of the general provisions of Federal milk orders by including a "Class I price adjustment," which would be added to the Class I price "mover," and to the section 1000.52 Class I differential, to obtain the minimum Order Class I price. The proposed changes to the Class I prices for plant locations in the Mideast milk marketing area would range from an increase of \$0.15 per cwt to an increase of \$0.40 per cwt.

1. Amend § 1000.50 by revising paragraphs (b) and (c), to read as follows:

§ 1000.50 Class prices, component prices and advanced pricing factors.

* * * * *

(b) Class I skim milk price. The Class I skim milk price per hundredweight shall be the adjusted Class I differential specified in § 1000.52 plus the adjustment to Class I prices specified in § 1005.51(b), § 1006.51(b), § 1007.51(b)

and § 1033.51(b) plus the higher of the advanced pricing factors computed in paragraphs (q)(1) or (2) of this section.

(c) Class I butterfat price. The Class I butterfat price per pound shall be the adjusted Class I differential specified in § 1000.52 divided by 100, plus the adjustments to Class I prices specified in § 1005.51(b), § 1006.51(b), § 1007.51(b) and § 1033.51(b) divided by 100, plus the advanced butterfat price computed in paragraph (q)(3) of this section.

* * * * *

2. Revise § 1033.51 to read as follows:

§ 1033.51 Class I differential, adjustments to class I prices and class I price.

(a) The Class I differential shall be the differential established for Cuyahoga County, Ohio, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1033.50 (a) for Cuyahoga County, Ohio.

(b) Adjustments to Class I prices. Class I prices shall be established pursuant to § 1000.50 (a), (b), and (c) using the following adjustments:

State	County/parrish	FIPS	Class I adjustment
IN	ADAMS	18001	0.00
IN	ALLEN	18003	0.00
IN	BARTHOLOMEW	18005	0.20
IN	BENTON	18007	0.00
IN	BLACKFORD	18009	0.00
IN	BOONE	18011	0.15
IN	BROWN	18013	0.20
IN	CARROLL	18015	0.00
IN	CASS	18017	0.00
IN	CLAY	18021	0.15
IN	CLINTON	18023	0.00
IN	DE KALB	18033	0.00
IN	DEARBORN	18029	0.20
IN	DECATUR	18031	0.20
IN	DELAWARE	18035	0.15
IN	ELKHART	18039	0.00
IN	FAYETTE	18041	0.15
IN	FOUNTAIN	18045	0.00
IN	FRANKLIN	18047	0.15
IN	FULTON	18049	0.00
IN	GRANT	18053	0.00
IN	HAMILTON	18057	0.15
IN	HANCOCK	18059	0.15
IN	HENDRICKS	18063	0.15
IN	HENRY	18065	0.15
IN	HOWARD	18067	0.00
IN	HUNTINGTON	18069	0.00
IN	JACKSON	18071	0.20
IN	JASPER	18073	0.00
IN	JAY	18075	0.00
IN	JEFFERSON	18077	0.20
IN	JENNINGS	18079	0.20
IN	JOHNSON	18081	0.15
IN	KOSCIUSKO	18085	0.00
IN	LA PORTE	18091	0.00
IN	LAGRANGE	18087	0.00
IN	LAKE	18089	0.00
IN	LAWRENCE	18093	0.20
IN	MADISON	18095	0.15
IN	MARION	18097	0.15
IN	MARSHALL	18099	0.00

State	County/parrish	FIPS	Class 1 adjustment
IN	MIAMI	18103	0.00
IN	MONROE	18105	0.20
IN	MONTGOMERY	18107	0.15
IN	MORGAN	18109	0.15
IN	NEWTON	18111	0.00
IN	NOBLE	18113	0.00
IN	OHIO	18115	0.20
IN	OWEN	18119	0.15
IN	PARKE	18121	0.15
IN	PORTER	18127	0.00
IN	PULASKI	18131	0.00
IN	PUTNAM	18133	0.15
IN	RANDOLPH	18135	0.15
IN	RIPLEY	18137	0.20
IN	RUSH	18139	0.15
IN	SHELBY	18145	0.15
IN	ST. JOSEPH	18141	0.00
IN	STARKE	18149	0.00
IN	STEBEN	18151	0.00
IN	SULLIVAN	18153	0.00
IN	SWITZERLAND	18155	0.20
IN	TIPPECANOE	18157	0.00
IN	TIPTON	18159	0.00
IN	UNION	18161	0.15
IN	VERMILLION	18165	0.15
IN	VIGO	18167	0.15
IN	WABASH	18169	0.00
IN	WARREN	18171	0.00
IN	WAYNE	18177	0.15
IN	WELLS	18179	0.00
IN	WHITE	18181	0.00
IN	WHITLEY	18183	0.00
KY	BOONE	21015	0.20
KY	BOYD	21019	0.20
KY	BRACKEN	21023	0.20
KY	CAMPBELL	21037	0.20
KY	FLOYD	21071	0.40
KY	GRANT	21081	0.20
KY	GREENUP	21089	0.20
KY	HARRISON	21097	0.20
KY	JOHNSON	21115	0.40
KY	KENTON	21117	0.20
KY	LAWRENCE	21127	0.20
KY	LEWIS	21135	0.20
KY	MAGOFFIN	21153	0.40
KY	MARION	21155	0.00
KY	MARSHALL	21157	0.00
KY	MARTIN	21159	0.40
KY	MASON	21161	0.20
KY	PENDLETON	21191	0.20
KY	PIKE	21195	0.20
KY	ROBERTSON	21201	0.20
MI	ALCONA	26001	0.00
MI	ALGER	26003	0.00
MI	ALLEGAN	26005	0.00
MI	ALPENA	26007	0.00
MI	ANTRIM	26009	0.00
MI	ARENAC	26011	0.00
MI	BARAGA	26013	0.00
MI	BARRY	26015	0.00
MI	BAY	26017	0.00
MI	BENZIE	26019	0.00
MI	BERRIEN	26021	0.00
MI	BRANCH	26023	0.00
MI	CALHOUN	26025	0.00
MI	CASS	26027	0.00
MI	CHARLEVOIX	26029	0.00
MI	CHEBOYGAN	26031	0.00
MI	CHIPPEWA	26033	0.00
MI	CLARE	26035	0.00
MI	CLINTON	26037	0.00
MI	CRAWFORD	26039	0.00
MI	EATON	26045	0.00

State	County/parrish	FIPS	Class 1 adjustment
MI	EMMET	26047	0.00
MI	GENESEE	26049	0.00
MI	GLADWIN	26051	0.00
MI	GRAND TRAVERSE	26055	0.00
MI	GRATIOT	26057	0.00
MI	HILLSDALE	26059	0.00
MI	HOUGHTON	26061	0.00
MI	HURON	26063	0.00
MI	INGHAM	26065	0.00
MI	IONIA	26067	0.00
MI	IOSCO	26069	0.00
MI	IRON	26071	0.00
MI	ISABELLA	26073	0.00
MI	JACKSON	26075	0.00
MI	KALAMAZOO	26077	0.00
MI	KALKASKA	26079	0.00
MI	KENT	26081	0.00
MI	KEWEENAW	26083	0.00
MI	LAKE	26085	0.00
MI	LAPEER	26087	0.00
MI	LEELANAU	26089	0.00
MI	LENAWEE	26091	0.00
MI	LIVINGSTON	26093	0.00
MI	LUCE	26095	0.00
MI	MACKINAC	26097	0.00
MI	MACOMB	26099	0.00
MI	MANISTEE	26101	0.00
MI	MARQUETTE	26103	0.00
MI	MASON	26105	0.00
MI	MECOSTA	26107	0.00
MI	MIDLAND	26111	0.00
MI	MISSAUKEE	26113	0.00
MI	MONROE	26115	0.00
MI	MONTCALM	26117	0.00
MI	MONTMORENCY	26119	0.00
MI	MUSKEGON	26121	0.00
MI	NEWAYGO	26123	0.00
MI	OAKLAND	26125	0.00
MI	OCEANA	26127	0.00
MI	OGEMAW	26129	0.00
MI	OSCEOLA	26133	0.00
MI	OSCODA	26135	0.00
MI	OTSEGO	26137	0.00
MI	OTTAWA	26139	0.00
MI	PRESQUE ISLE	26141	0.00
MI	ROSCOMMON	26143	0.00
MI	SAGINAW	26145	0.00
MI	SANILAC	26151	0.00
MI	SCHOOLCRAFT	26153	0.00
MI	SHIAWASSEE	26155	0.00
MI	ST. CLAIR	26147	0.00
MI	ST. JOSEPH	26149	0.00
MI	TUSCOLA	26157	0.00
MI	VAN BUREN	26159	0.00
MI	WASHTENAW	26161	0.00
MI	WAYNE	26163	0.00
MI	WEXFORD	26165	0.00
OH	ADAMS	39001	0.20
OH	ALLEN	39003	0.00
OH	ASHLAND	39005	0.00
OH	ASHTABULA	39007	0.00
OH	ATHENS	39009	0.15
OH	AUGLAIZE	39011	0.00
OH	BELMONT	39013	0.00
OH	BROWN	39015	0.20
OH	BUTLER	39017	0.15
OH	CARROLL	39019	0.00
OH	CHAMPAIGN	39021	0.00
OH	CLARK	39023	0.15
OH	CLERMONT	39025	0.20
OH	CLINTON	39027	0.15
OH	COLUMBIANA	39029	0.00
OH	COSHOCTON	39031	0.00

State	County/parrish	FIPS	Class I adjustment
OH	CRAWFORD	39039	0.00
OH	CUYAHOGA	39035	0.00
OH	DARKE	39037	0.15
OH	DEFIANCE	39039	0.00
OH	DELAWARE	39041	0.00
OH	FAIRFIELD	39045	0.15
OH	FAYETTE	39047	0.15
OH	FRANKLIN	39049	0.15
OH	FULTON	39051	0.00
OH	GALLIA	39053	0.20
OH	GEAUGA	39055	0.00
OH	GREENE	39057	0.15
OH	GUERNSEY	39059	0.15
OH	HAMILTON	39061	0.20
OH	HANCOCK	39063	0.00
OH	HARDIN	39065	0.00
OH	HARRISON	39067	0.00
OH	HENRY	39069	0.00
OH	HIGHLAND	39071	0.20
OH	HOCKING	39073	0.15
OH	HOLMES	39075	0.00
OH	JACKSON	39079	0.20
OH	JEFFERSON	39081	0.00
OH	KNOX	39083	0.00
OH	LAKE	39085	0.00
OH	LAWRENCE	39087	0.20
OH	LICKING	39089	0.15
OH	LOGAN	39091	0.00
OH	LORAIN	39093	0.00
OH	LUCAS	39095	0.00
OH	MADISON	39097	0.15
OH	MAHONING	39099	0.00
OH	MARION	39101	0.00
OH	MEDINA	39103	0.00
OH	MEIGS	39105	0.15
OH	MERCER	39107	0.00
OH	MIAMI	39109	0.15
OH	MONROE	39111	0.15
OH	MONTGOMERY	39113	0.15
OH	MORGAN	39115	0.15
OH	MORROW	39117	0.00
OH	MUSKINGUM	39119	0.15
OH	NOBLE	39121	0.15
OH	PAULDING	39125	0.00
OH	PERRY	39127	0.15
OH	PICKAWAY	39129	0.15
OH	PIKE	39131	0.20
OH	PORTAGE	39133	0.00
OH	PREBLE	39135	0.15
OH	PUTNAM	39137	0.00
OH	RICHLAND	39139	0.00
OH	ROSS	39141	0.15
OH	SANDUSKY	39143	0.00
OH	SCIOTO	39145	0.20
OH	SENECA	39147	0.00
OH	SHELBY	39149	0.00
OH	STARK	39151	0.00
OH	SUMMIT	39153	0.00
OH	TRUMBULL	39155	0.00
OH	TUSCARAWAS	39157	0.00
OH	UNION	39159	0.00
OH	VAN WERT	39161	0.00
OH	VINTON	39163	0.15
OH	WARREN	39165	0.15
OH	WASHINGTON	39167	0.15
OH	WAYNE	39169	0.00
OH	WILLIAMS	39171	0.00
OH	WOOD	39173	0.00
OH	WYANDOT	39175	0.00
PA	ALLEGHENY	42003	0.00
PA	ARMSTRONG	42005	0.00
PA	BEAVER	42007	0.00
PA	BUTLER	42019	0.00

State	County/parrish	FIPS	Class I adjustment
PA	CLARION	42031	0.00
PA	CRAWFORD	42039	0.00
PA	ERIE	42049	0.00
PA	FAYETTE	42051	0.00
PA	GREENE	42059	0.00
PA	LAWRENCE	42073	0.00
PA	MERCER	42085	0.00
PA	VENANGO	42121	0.00
PA	WASHINGTON	42125	0.00
PA	WESTMORELAND	42129	0.00
WV	BARBOUR	54001	0.00
WV	BOONE	54005	0.40
WV	BROOKE	54009	0.00
WV	CABELL	54011	0.20
WV	CALHOUN	54013	0.20
WV	DODDRIDGE	54017	0.00
WV	FAYETTE	54019	0.40
WV	GILMER	54021	0.20
WV	HANCOCK	54029	0.00
WV	HARRISON	54033	0.00
WV	JACKSON	54035	0.20
WV	KANAWHA	54039	0.40
WV	LEWIS	54041	0.00
WV	LINCOLN	54043	0.40
WV	LOGAN	54045	0.40
WV	MARION	54049	0.00
WV	MARSHALL	54051	0.00
WV	MASON	54053	0.20
WV	MINGO	54059	0.40
WV	MONONGALIA	54061	0.00
WV	OHIO	54069	0.00
WV	PLEASANTS	54073	0.20
WV	PRESTON	54077	0.00
WV	PUTNAM	54079	0.20
WV	RALEIGH	54081	0.40
WV	RANDOLPH	54083	0.00
WV	RITCHIE	54085	0.20
WV	ROANE	54087	0.20
WV	TAYLOR	54091	0.00
WV	TUCKER	54093	0.00
WV	TYLER	54095	0.00
WV	UPSHUR	54097	0.00
WV	WAYNE	54099	0.20
WV	WETZEL	54103	0.00
WV	WIRT	54105	0.20
WV	WOOD	54107	0.20
WV	WYOMING	54109	0.40

*Proposed by Dairy Programs,
Agricultural Marketing Service.*

Proposal No. 2

For all Federal Milk Marketing Orders, make necessary changes 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 the Mideast marketing area, or from the Hearing Clerk, United States Department of Agriculture, STOP 9200—Room 1031, 1400 Independence Avenue, SW., Washington, DC 20250-9200, 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: July 21, 2008.

Lloyd C. Day,
Administrator, Agricultural Marketing Service.

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