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United States Department of Agriculture

AGRICULTURAL MARKETING SERVICE
DAIRY PROGRAMS

MIDEAST MARKETING AREA
Federal Order No. 33

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February 5, 2009

Invitation to Submit Proposals for Consideration at a Public Hearing that May Be Held to Discuss Elimination of the Producer-Handler Provision and Revision of the Exempt Plant Provision in All Federal Milk Marketing Orders

National Milk Producers Federation and International Dairy Foods Association have requested that the Department of Agriculture (USDA) hold a public hearing to consider a proposal to eliminate the producer-handler provision in all Federal milk marketing orders. Additionally, National Milk Producers Federation and International Dairy Foods Association have requested that USDA consider revision of the exempt plant provision in all Federal milk marketing orders in the same rulemaking proceeding. The proposals would eliminate the provision exempting producer-handlers from pricing and pooling provisions; and would revise the current limit on monthly route disposition of packaged fluid milk required for exemption from pricing and pooling provisions as an exempt plant.

Copies of the proposals may be obtained from the Dairy Programs website at www.ams.usda.gov/dairy.

The proposals have not yet been approved for inclusion in a Notice of Hearing. Before deciding whether a hearing will be held, USDA is providing the opportunity for interested parties to submit additional proposals regarding the elimination of the producer-handler provision and the revision of the exempt plant provision in all Federal milk marketing orders.

The preferred method of submission is via email. Electronic submissions should be emailed to amsdairycomments@usda.gov. Proposals can also be mailed to: Deputy Administrator, USDA/AMS/Dairy Programs, STOP-0231-Room 2971, 1400 Independence Ave., SW, Washington, DC 20250-0225. **Proposals must be received by March 9, 2009.** Each proposal should be accompanied by a comprehensive statement on the need for the proposal. The statement will be evaluated to determine whether the proposal will be accepted if a hearing to amend all orders is held. In accordance with 7 CFR 900.22 and adoption of the final rule published in the **Federal Register** on August 20, 2008 (73 FR 49085), proposal submissions must include detailed explanations of the following:

1. Explain the proposal. What is the disorderly marketing condition that the proposal is intended to address?
2. What is the purpose of the proposal?
3. Describe the current Federal order requirements or industry practices relative to the proposal.
4. Describe the expected impact on the industry, including on producers and handlers, and on consumers. Explain/Quantify.
5. What are the expected effects on small businesses as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612)? Explain/Quantify.
6. How would the proposal increase or decrease costs to producers, handlers, others in the marketing chain, consumers, the Market Administrator offices and/or the Secretary? Explain/Quantify?
7. Would a pre-hearing information session be helpful to explain the proposal?

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act which seeks to ensure that the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purposes of the Federal order program, 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 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. Interested persons are encouraged to submit proposals that carry out the intent of the Regulatory Flexibility Act.

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

Once a Notice of Hearing 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. Accordingly, it is suggested that any discussions you may wish to have with USDA personnel, including Market Administrator employees, be initiated as soon as possible. Procedural matters may be discussed at any time throughout the proceeding.

Sincerely,



David Z. Walker
Market Administrator