



## Northeast Dairy Foods Association, Inc.

*Full Service Trade Association Representing Dairy Processors, Manufacturers and Distributors Since 1928*

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March 16, 2009

USDA/AMS/Dairy Programs

Dana H. Coale, Deputy Administrator

STOP-0231-Room 2971

1400 Independence Avenue, S.W.

Washington, DC 20250-0225

Dear Ms. Coale,

Northeast Dairy Foods Association, Inc. is a full service membership trade association consisting of over a total of 120 dairy product processors, manufacturers and distributors headquartered and doing business in the Northeast United States. Many of our members are the customers of dairy producers in the region.

Pursuant to 7 C.F.R. 900.3, our association would like to request and propose USDA to initiate a formal rule making proceeding that would include a public hearing to collect evidence regarding proposed changes to the producer-handler provision and the exempt plant provisions in all Federal milk marketing orders. We ask to amend the current Federal Milk Marketing Orders 7 C.F.R. Parts 1000-1135, in order to : (a) eliminate the producer –handler exemption; and (b) increase the size limit for exempt handlers.

Our association is aware of petitions have already been submitted by the National Milk Producers Federation and the International Dairy Foods Association. We are in support of their petitions at this time. We will reserve final opinion and decision to the exact amount and specific adjustments to the size limit exemption of route sales for non-exempt handlers at this time. We have concerns the proposed limit might be too high.

Per requirements set forth in 7 C.F.R. 900.22 we would like to supply the following reasons new amendments should be adopted.

1. **Disorderly Marketing Conditions:** As of December 2008, there were 14 producer-handlers and 40 exempt plants reporting sales under the Northeast Order. Producer-handlers are exempted from the obligation to pay minimum class prices. This exemption provides those producer-handlers with a large bottom line cost pay price advantage in the marketplace. This was not the original intent of the system. During the recent decade, there has been a large increase in the number of producer-processors and increase in volume of milk sold outside their traditional marketplace. Many of these larger producer-processors are shipping milk in to the Federal Milk Market Northeast Order 1. Not only do these producer-processors outside of Order 1 have a raw milk price cost advantage over traditional milk handlers, they also unfairly compete directly with in Order producer-processors. Our association is concerned more of the producer-processors who are currently exempt will grow larger and have a bigger and even more unfair marketing advantage in the future.

The historical justification that existed for the producer-handler exemption no longer exists due to consolidation of the entire industry. The ability for some producer-handlers to grow their business, long distance transport and have an unfair competitive advantage in the marketplace should be reviewed.

It is our concern and observation the Market Order 1 pool, money distributed to dairy producers, will be negatively affected by allowing some producer-handlers to have an unfair raw milk cost advantage if the law is not amended to include them in pools.

2. **Proposal Purpose:** To amend the exemption allowed to producer-handlers to eliminate potential disorderly marketing conditions; to provide some exemption for smaller plants.

3. **Federal Order Requirements and Industry Practices:** See 1 above.

4. **Impact on Industry:** In the Northeast Order 1, given the combined number of producer-handlers and exempt plants, 54 total, the changes proposed by IDFA and NMPF would allow those companies to fairly compete in the marketplace with traditional handlers. Changes in exemption sales limits would set a standard within the order while keeping the original intent of the exemption for most producer-handlers as small plants.

5. **Effects to small Business:** It is our estimation very few current exempt or producer-handlers would be negatively affected by the proposed changes. Small plants that are producer-handlers would still be allowed to be exempt. Those that would no longer be exempt should the proposal be adopted would not be disadvantaged in the marketplace. Small plants enjoy local brand identity with their customers. They have the ability to sell economically within a local market recognized by loyal customers. Consumers looking for locally produced fresh milk products would demand those items providing a small plant not meeting the exemption the ability to compete in the marketplace.

6. **Cost Changes for Producers, Handlers, Retailers, Consumers, and Market Administrator Offices:** Within the Northeast Order 1, it is unknown how many current producer-handlers would no longer be exempt under the new proposal. It is our estimation most would still remain exempt. Those that would not remain exempt would participate in the Order. This would provide for a much fair pool distribution for all producers within the Order; provide for more fair competition pricing with traditional handlers; retailers and consumers might benefit with lower wholesale prices and more competition in the marketplace; Dairy producers might benefit with increase sales of milk with lower competitive retail prices; The Market Administrator would benefit with more operating income from non-exempt plants paying the administrative fee; The dairy industry would benefit with better oversight reporting and control of the entire system.

7. **Is a pre-hearing information session necessary?** Our association does not believe a pre-hearing information session is necessary. The topic is not complicated and the industry clearly understands the ramifications based on recent marketplace observations, conditions and business activity. We encourage the Department to move swiftly to convene a hearing on this topic.

Sincerely,



Bruce W. Krupke  
Executive Vice President