



International Dairy Foods Association
Milk Industry Foundation
National Cheese Institute
International Ice Cream Association

**UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE**

**PROPOSAL OF THE INTERNATIONAL DAIRY FOODS ASSOCIATION
TO AMEND FEDERAL MILK MARKETING ORDERS TO ELIMINATE
THE PRODUCER-HANDLER EXEMPTION AND TO INCREASE THE
SIZE LIMIT FOR EXEMPT HANDLERS**

The International Dairy Foods Association (“IDFA”) represents the nation's dairy manufacturing and marketing industries and their suppliers. IDFA's approximately 220 dairy processing members operate more than 600 plant operations and range from large multi-national organizations to single-plant companies. Most of the milk bought and handled by IDFA members is purchased under the Federal Milk Marketing Orders (“FMMOs”) promulgated pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (“AMAA”), 7 U.S.C. §§ 601 *et seq.*

Pursuant to 7 C.F.R. 900.3, IDFA hereby petitions the Secretary of Agriculture to institute a proceeding to amend all current Federal Milk Marketing Orders (“FMMOs”), 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. IDFA's specific proposed amendatory language to carry out these regulatory changes is set forth on Attachment A hereto.

IDFA is aware that the National Milk Producers Federation (“NMPF”) is today also filing a petition seeking these same regulatory amendments. IDFA has reviewed the NMPF petition, which sets forth extensive arguments and factual materials in support of these proposals. In light of the NMPF presentation, IDFA's petition is limited to a brief discussion of the overarching reasons why these regulatory amendments should be adopted, consistent with the requirements set forth in 7 C.F.R. 900.22.

a. Disorderly marketing conditions. Federal orders establish the minimum price that dairy handlers must pay dairy farmers and their cooperatives. The

minimum price established for Class I (fluid) milk is the highest of these regulated prices. The regulated price actually received by farmers is the uniform or blend price, which reflects the order's utilization of each class of milk and the minimum price for each class. Because the regulated minimum price for classes other than Class I are lower than the Class I price, the uniform price is lower than the Class I price.

Producer-handlers are exempted from the obligation to pay minimum class prices. This means that, with respect to Class I milk, a producer-handler can, in effect, pay the uniform price rather than the Class I price. This provides a producer-handler a very substantial cost advantage over regulated plants, solely as a result of this regulatory exemption.

Having some but not all handlers subject to the Class I minimum price clearly creates disorderly marketing conditions. Handlers not subject to such regulations can use their artificial cost advantage either to offer customers lower priced processed milk, or to expand their production facilities based on the increased profits artificially created by their regulatory exemption. Neither of these constitutes orderly marketing.

By the same token, exempting producer-handlers creates disorderly marketing by excluding from the order pool the funds representing the difference between the Class I and uniform price with respect to the producer-handler's sales volumes. This is disorderly in that it both deprives farmers of additional funds, and denies farmers a uniform price, because the producer-handler can derive and keep a price in excess of the uniform price by selling its milk to customers at any price above the uniform price.

Whatever historical justification may have once existed for the producer-handler exemption, it clearly no longer applies in light of the substantial growth in some such producer-handlers, and the severe market disruptions that they now create.

IDFA also proposes a concomitant increase in the exemption for small handlers, from 150,000 pounds of fluid milk a month to 450,000 pounds a month. This will preserve the exemption from regulation for those plants too small to cause material market disruption, including those small plants previously exempted as producer-handlers.

IDFA's proposal will require that an exempt plant sell its milk under a unique label, lest this exemption be abused through the establishment of numerous

“small” plants effectively linked together so as to market their milk jointly and to garner all of the advantages of a large plant without being subjected to minimum price regulations.

b. Purpose of the Proposal. The purpose of the proposal, as described in Section (a) above, is to eliminate the disorderly marketing conditions created by the producer-handler exemption, while preserving and increasing the exemption for small plants.

c. Current Federal Order Requirements or Industry Practices Relative to the Proposal. See Section (a) above.

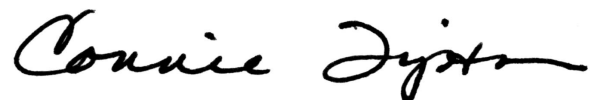
d. Expected Impact on the Industry. IDFA expects the impact of the proposal will be the elimination of the disorderly marketing conditions described in Section (a) above. More specific information as to the number of producer-handlers affected, and related information, are set forth in the tables to the NMPF proposal.

e. Expected Impact on Small Businesses. IDFA believes that the proposed exemption for plants with Class I sales of less than 450,000 pounds a month will effectively exclude small businesses from the minimum milk price regulations.

f. Effect of the Proposal on Costs. The proposal will ensure that the costs of minimum regulated prices are shared equitably among all handlers, while exempting small handlers.

g. Pre-Hearing Information Session. IDFA does not believe that a pre-hearing information session would be helpful, given that the producer-handler exemption is well understood and has been the subject of other recent hearings in specific orders.

Respectfully submitted,

A handwritten signature in cursive script, reading "Connie Tipton".

Connie Tipton
President & CFO
International Dairy Foods Association

PROPOSED REGULATORY AMENDMENTS

1. Delete Section 10 in Parts 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135, and all references to those sections and to “producer-handlers”.

2. Amend Section 8 in Part 1000, as follows:

§ 1000.8 Nonpool plant.

Nonpool plant means any milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) A plant fully regulated under another Federal order means a plant that is fully subject to the pricing and pooling provisions of another Federal order.

(b) ~~Producer-handler plant means a plant operated by a producer handler as defined under any Federal order.~~

(c) Partially regulated distributing plant means a nonpool plant that is not a plant fully regulated under another Federal order, ~~a producer handler plant~~, or an exempt plant, from which there is route disposition in the marketing area during the month.

(d) Unregulated supply plant means a supply plant that does not qualify as a pool supply plant and is not a plant fully regulated under another Federal order, ~~a producer handler plant~~, or an exempt plant.

(e) An exempt plant means a plant described in this paragraph that is exempt from the pricing and pooling provisions of any order provided that the operator of the plant files reports as prescribed by the market administrator of any marketing area in which the plant distributes packaged fluid milk products to enable determination of the handler's exempt status:

(1) A plant that is operated by a governmental agency that has no route disposition in commercial channels;

(2) A plant that is operated by a duly accredited college or university disposing of fluid milk products only through the operation of its own facilities with no route disposition in commercial channels;

(3) A plant from which the total route disposition is for individuals or institutions for charitable purposes without remuneration; or

(4) A plant that in all markets has route disposition and packaged sales of fluid milk products to other plants of ~~150,000~~ 450,000 pounds or less during the month, all of which are uniquely branded.