



United States
Department of
Agriculture

Agricultural
Marketing
Service

1400 Independence Ave., SW.
Stop 0225, South Building
Washington, DC 20250-0231

November 28, 2022

**Invitation to Submit Proposals for Consideration at a Public Hearing
that may be held to Discuss Amendments to the Appalachian, Southeast,
and Florida Milk Marketing Orders**

The Dairy Cooperative Marketing Agency (DCMA) has requested that the Department of Agriculture (USDA) hold a public hearing to consider proposals to amend inter-market transportation credits in the Appalachian and Southeast Milk Marketing Orders and create distributing plant delivery credits in the Appalachian, Southeast, and Florida Milk Marketing Orders. Proponents contend the three southeastern FMMO areas have a chronic milk deficit, creating challenging marketing conditions to ensure the fluid milk needs of the orders are met. Consequently, they have requested a rulemaking be initiated on an emergency basis.

The proposal may be viewed on the Dairy Programs website at: <https://www.ams.usda.gov/rules-regulations/moa/dairy/petitions>.

The proposal has 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 potential amendments to the current inter-market transportation credit provisions in the Appalachian and Southeast orders and creating distributing plant delivery credits in the Appalachian, Southeast, and Florida 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-0225-Room 2530, 1400 Independence Ave., SW, Washington, DC 20250-0225. **Proposals must be received by December 19, 2022.** 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 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 \$3.75 million.¹ A dairy products manufacturer is a small business if it has fewer than the number of employees listed in the chart below:

NAICS Code	NAICS U.S. industry title	Size standards in number of employees
311511	Fluid Milk Manufacturing	1,000
311512	Creamery Butter Manufacturing	750
311513	Cheese Manufacturing	1,250
311514	Dry, Condensed, and Evaporated Dairy Product Manufacturing	750

For purposes of determining a handler’s size, if the plant is part of a larger company operating multiple plants that collectively exceed the listed-employee limit, the plant will be considered a large business even if the local plant has fewer than the listed number of employees. Interested persons are encouraged to submit proposals that carry out the intent of the Regulatory Flexibility Act.

If USDA determines that a hearing be held, all known interested parties would be sent a copy of the Notice of Hearing. Anyone who desires to present evidence on proposals set forth in the Notice of Hearing would 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,

/s/ Dana H. Coale

Dana H. Coale
Deputy Administrator
Dairy Programs

¹ The Small Business Administration has issued a Final Rule, effective December 19, 2022, increasing the size of a small business dairy farm to an annual gross revenue of less than \$3.75 million. See: <https://www.federalregister.gov/documents/2022/11/17/2022-24595/small-business-size-standards-adjustment-of-monetary-based-size-standards-disadvantage-thresholds>