



# National Milk Producers Federation

National Milk Producers Federation • 2101 Wilson Blvd., Arlington, VA 22201 • 703-243-6111; FAX 703-841-9328

March 16, 2009

Agri-Mark, Inc.  
Arkansas Dairy Cooperative Association  
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Cooperative Milk Producers Assn.  
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Scioto County Co-op Milk Producers' Assn.  
Select Milk Producers, Inc.  
Southeast Milk, Inc.  
Swiss Valley Farms, Co.  
Tillamook County Creamery Assn.  
United Dairymen of Arizona  
Upstate Niagara Cooperative, Inc.  
Zia Milk Producers

Dana Coale, Deputy Administrator for Dairy Programs  
Agricultural Marketing Service  
U.S. Department of Agriculture  
1400 Independence Avenue, SW  
Washington, DC 20250

Re: Additional proposal to amend exempt handler provisions in Federal milk orders

Dear Ms. Coale:

In response to your February 6 request for additional proposals, we attach NMPF's petition requesting that all Federal milk marketing orders be amended to provide a "grandfather" exemption from pooling for current producer-handlers, up to 3 million pounds per month.

Producer-handler status was never intended to give unfair advantages to large milk plants; but such large producer-handlers put many small farms at risk. In our original proposal, our primary aims were to end the exemption of very large producer-handlers and to preempt the proliferation of mid-sized producer-handlers.

However, as a matter of fairness, we propose today that the elimination of the producer-handler provisions be tempered with a "grandfathering" of smaller producer-handlers within the exempt plant provisions. This will avoid putting an unnecessary burden on small producer-handlers, while achieving the primary goals of our previous proposal.

Thank you for your consideration on this important issue, and please feel free to call me or Roger Cryan if you have any questions about this.

Sincerely,

Jerry Kozak

cc:

Cindy Smith, Acting Deputy Under Secretary for Marketing and Regulatory Programs  
David Shipman, Acting Administrator, Agricultural Marketing Service

**Jerry Kozak, President/Chief Executive Officer**

**Randy Mooney, Chairman**

## Proposal by the National Milk Producers Federation to Amend Federal Milk Marketing Orders To Provide a Qualified Exemption for Current Producer-Handlers

The National Milk Producers Federation (NMPF) is the voice of American dairy farmers and their cooperative associations. NMPF's 31 member cooperatives represent three-fifths of the nation's 60,000 commercial dairy farmers and a similar share of their production.

NMPF has long supported the full and fair regulation of fluid milk handlers who are also producers under Federal milk marketing orders, as detailed in our January 30 petition to eliminate the producer-handler provisions and expand the exempt handler definition.

However, just as NMPF concluded that there is good reason to expand the current exemption for small plants, there is also good reason not to fully regulate existing smaller producer-handlers whose impact on the market is limited and for whom such regulation may be an unbearable burden.

This remains consistent with our earlier petition, which NMPF continues to support in full. The dual objectives of that petition are 1) to limit the disruptive impact of large existing producer-handlers and 2) prevent the disruptive impact of a proliferation of new middle-sized producer-handlers. Allowing existing producer-handlers to maintain an exemption up to 3 million pounds per month will allow these objectives to be achieved without undue regulatory impact on these smaller existing operations.

\* \* \*

**Specifically, NMPF proposes** to amend Section 8 of 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:

...

(5) A distributing plant that was operated during 2008 by a producer-handler in a Federal order market within the meaning of the Federal milk marketing order at that time, provided that the plant:

(A) Has route disposition in all markets and packaged sales of fluid milk products to other plants in all markets that are uniquely branded and total 3,000,000 pounds or less during the month.

(B) Receives no fluid milk products, and acquires no fluid milk products for route disposition, from sources other than own farm production;

(C) The plant disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production; and

(D) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled, and the processing and packaging operations, are the plant owner's own enterprise and are operated at the plant owner's own risk, and that the plant owner has no interest in any other distributing plant (except through membership in a Capper-Volstead cooperative association) or in any farms from which the plant does not receive milk. The burden rests upon the handler who is designated as exempt under subsection (5) to establish through records required pursuant to §1000.27 that the requirements of such exemption are met.

\* \* \*

The following are the required elements of this proposal, per 7 CFR 900.22.

**Explanation of the proposal.** NMPF continues to support its previous proposal in full. NMPF now further proposes to allow a qualified exempt status to current producer-handlers. Route disposition and sales of packaged fluid milk products by such plants may be no more than 3,000,000 pounds per month, and most of the current conditions for producer-handlers must be met. In addition, the provisions are tightened to disallow ownership of other farms or other distributing plants by the owner of a plant exempted under this proposal. This may also require conforming language similar to that now used to classify receipts of, and from, producer-handlers.

**Purpose of the proposal.** This proposal, implemented simultaneously with NMPF's previously proposed elimination of the producer-handler provision, would reduce the regulatory impact on numerous small businesses. Regulatory risk is a part of doing business, and we believe that USDA has a clear right to regulate any and all distributing plants, provided that such regulation meets the objectives of the Federal orders. NMPF believes that it is crucial to regulate all large producer-handlers and to stem the proliferation of middle-sized producer-handlers, either of which will disorder marketing through their large volumes of non-pooled Class I milk.

However, NMPF also believes that the benefits to orderly marketing of regulating smaller existing producer-handlers, whose volume is presently limited, are outweighed by the negative impact on those businesses, and will trust to time to further reduce the impact of this proposed exemption.

**Current Federal order requirements and industry practices.** Current regulations allow producer-handlers of unlimited size. This has led to large producer-handlers whose share of an order's Class I market, individually or collectively, can reduce producer prices and disrupt competition in the market, based on an unfair regulatory pricing advantage.

**Expected impact on industry.** These provisions would temper the impact of NMPF's previous proposal, by reducing the negative regulatory impact on 10 to 15 smaller producer-handlers, whose businesses are built upon the current regulations. Those producer-handlers, with between 450,000 and 3,000,000 pounds of packaged fluid milk sales per month, have a negligible impact upon their markets.

**Expected effects on small businesses.** Taken alone, these provisions would have no impact, relative to the *status quo*. In connection with the previous NMPF proposals to eliminate the producer-handler provisions and expand the size-based distributing plant exemption, they would reverse the negative regulatory impact of the former for those 10 to 15 current producer-handlers between 450,000 pounds and 3,000,000 pounds of monthly packaged fluid milk product sales. The benefit to such handlers would be up to 15¢ per gallon of Class I milk not pooled, depending on their market. There would be a negligible impact on prices paid and received by small businesses, including producers and handlers who are fully participating in the Federal order pools, resulting from this lost Class I revenue from Federal order pools.

**Effect on cost to producers, handlers, wholesalers, retailers, and consumers.** As indicated above, the impact on the market of this proposal taken alone, relative to the *status quo*, is zero, since the plants we propose to exempt are already exempted from pooling and pricing requirements under the Federal orders. As also indicated above and aside from the impact on small businesses, the impact on the market generally in connection with NMPF's previous proposals, is negligible, based on the limited impact of existing smaller producer-handlers on Federal order pools and market pricing.

**Desirability of holding an information session.** An information session has already been scheduled.

## **Conclusion**

NMPF continues to support its original proposal regarding the elimination of the general producer-handler provisions, and the expansion of the exempt handler definition. NMPF now proposes, in addition, to temper these changes with a "grandfathering" of smaller existing producer-handlers, so as to avoid undue regulatory burden on small business that have limited impact on their markets, but whose proliferation could lead to disorderly marketing.

The current producer-handler provisions have become outmoded by a changing industry, and we believe that their underlying intent of limiting the regulatory burden of small handlers who do not substantially impact the market is better served through an expansion of the exempt handler provision.