

Brief

Filed on Behalf the States Departments of Agriculture of New York, Pennsylvania, New Hampshire, Vermont and Wisconsin Related to Producer-Handler Regulations in Federal Milk Marketing Orders 3:25

Docket Number AO-14-A78, et al; DA-09-02; AMS-09-0007

This brief is being filed on behalf of the State Departments of Agriculture of New York, Pennsylvania, New Hampshire, Vermont and Wisconsin (hereinafter referred to as The States) to address issues related to Docket Number AO-14-A78, et al; DA-09-02; AMS -09-0007.

The States provided joint direct testimony at the public hearings held in Cincinnati, Ohio beginning on May 4, 2009. The States' testimony is officially designated Exhibit 36 and exists in the hearing transcript from page 1083-1173.

Direct testimony by the States emphasized the following points:

1. Producers who process their own milk need a continued exempt status to allow them to meet growing demands for locally produced and single source milk. However, the exemption for producer handlers should be limited.
2. The justification for limiting exempt volumes is because of economies of size in dairy farming level off at about 1,000 milking cows, the size limit should be large enough to allow the farming part of the producer handler operation to be efficient.
3. While a limited exemption for producer handlers is justified, an unlimited one is not. An unlimited exemption erodes the market wide pool value for all farmers.
4. Milk and dairy products distributed and sold by producer handlers of limited size have grown in the past 10 years, and likely will grow somewhat in the future. But by no measure will their impact cause disorderly marketing or compete directly with modern, large scale processors. The States have various economic development programs that support producer handlers but do not actively encourage dairy farmers to bottle and sell fluid milk products.
5. Some provision for temporary purchases of supplemental milk from other sources, such as currently allowed in Federal Order 1 (7 C.F.R. § 1001.10(c)), is warranted for the producer handler of the size proposed by the states.

The priority for the States in this proceeding is to establish a size limit for the purposes of exempting producer-handlers. After reviewing the hearing record, the States recommend a 3 million pound per day limit for final rule adoption. The justification for 3 million pounds is based on a balance of the economies of size requirements in farming and the offsetting diseconomies faced by processing at this size (transcript page 1111). The fact that the 3 million pound limit was established for the Pacific Northwest and Arizona orders is a reinforcing justification of the States' proposed limit.

The 3 million pound limit should cover all route sales in all orders (transcript page 1108). There is no need to change the current ownership structure requirements found in current order regulations except that integrated or franchised systems should not be exempt or allowed to circumvent exemption.

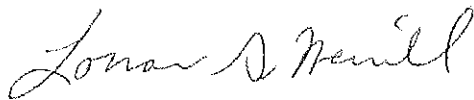
None of the arguments in testimony or in cross examination is convincing justification for total exemptions for producer handlers or for very small pound limits. Total exemption undermines market wide pooling which is the essential benefit to all pooled producers under federal orders. There is no justification for continuing total exemption. Similarly there is no justification for grandfathering current producer handlers.

Any limit smaller than 2 million pounds would destroy any size economies on the farming side of producer handler operations. The 3 million pound limit provides a safe margin for growth without significantly undermining market wide pooling or creating disorderly marketing.

A growing segment of consumers are demanding locally produced food. By providing a limited exemption to producer handlers as proposed by the States, these consumers can be adequately served without creating disorderly marketing in any way.

The States have consulted with producer handlers in their respective states in developing the States' proposal and testimony and we can hereby claim that this brief represents a consensus view among the states and its producer handlers.

Signed the 15th day of July, 2009.



Lorraine Merrill, Commissioner
New Hampshire Department of Agriculture, Markets and Food



Patrick Hooker, Commissioner
New York Department of Agriculture and Markets



Dennis Wolff, Secretary
Pennsylvania Department of Agriculture



Roger Allbee
Vermont Agency of Agriculture, Food and Markets

A handwritten signature in black ink, reading "Rod Nilsestuen". The signature is fluid and cursive, with the first name "Rod" being more prominent than the last name "Nilsestuen".

Rod Nilsestuen

Wisconsin Department of Agriculture, Trade and Consumer Protection