



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

March 9, 2009

Dana Coale, Deputy Administrator for Dairy Programs
USDA/AMS/Dairy Programs
STOP-0231-Rom 2941
1400 Independence Avenue
SW, Washington DC 20250-0225

RE: Invitation to Submit Proposals on Producer Handlers and Exempt Plants

Dear Deputy Administrator Coale:

On behalf of a group of neighborhood producer handlers and exempt plants in Wisconsin, the Wisconsin Department of Agriculture, Trade and Consumer Protection is submitting the following proposals for consideration and inclusion in any forthcoming hearing noticed on the matter of producer handlers and exempt plants that is currently under consideration by the department.

Proposal 1. Retain producer-handler provisions and include an exemption from pooling obligations on fluid milk product distribution of up to 2.0 million pounds per month.

Proposal 2. Retain the Exempt Plant provision in all orders of up to 2.0 million pounds of fluid milk product distribution per month.

Explanation: All producer handlers in Wisconsin are small businesses. There are currently 8 producer-handlers in Wisconsin ranging in size from 20 cows to 550 cows. All but two of these entities are new businesses established within the last 5 years. Most serve a defined niche such as cream line bottled milk or organic milk. All are focused on local markets. None of these create disorderly marketing currently nor will they if they are able to grow moderately in the future.

Proposal 1 is intended to retain the traditional producer-handler exemption under federal milk marketing orders. The reason for the distribution cap is to offer modern producers the ability to add value to their own milk up to a size where there is no cause of disorderly marketing in competition with major bottlers. Farm production economies need to be maintained to even have a chance at profitability in processing.

Adding value at the farm level is encouraged at both the federal and state levels. A modern dairy in traditional dairy state will normally grow to the size of between 500 and 1000 cows to achieve labor and capital efficiencies unless the dairy farm focuses on grazing or organic milk production. There are inefficiencies in processing and distribution at this size that more than offset any cost advantages of being exempt.

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The farm businesses that enter fluid milk processing using their own milk are taking extraordinary risks. They should not be subjected to further regulatory obstacles and costs imposed by federal orders. They should be allowed to serve local markets in an orderly manner without being hamstrung. None of these producer handlers under the proposed exemption limits would create disorderly marketing or as small business impose competitive threats to major fluid milk processors with their enormous economies of size and market power. Consumers also should not be denied the opportunity to obtain locally processed milk from farms.

Proposal 2 is intended to align the proposed producer handler volume limit with the proposed exempt plant limit. The 2 million pound per month limit for exempt plants will not provide any significant regulatory incentive to enter bottling and nor would it create disorderly marketing.

We intend to work aggressively to not have federal milk marketing orders curtail innovative farmers who wish to process their own milk and market it in an orderly fashion.

We believe these proposals on behalf of Wisconsin's neighborhood producer handlers are responsible alternatives to eliminating producer handler exemptions while allowing for modern farming efficiencies to be realized. The State of Wisconsin has a direct interest in helping its small businesses, in this case producer handlers, remain viable and still have room for sustainable growth.

Thank you for your consideration.



Will Hughes
Administrator
Division of Agricultural Development
Wisconsin Department of Agriculture, Trade and Consumer Protection

cc. Rod Nilsestuen, Secretary
The Honorable Senator Herb Kohl
The Honorable Congressman David Obey

attachment: Proposed regulatory language

Proposed amendments to Section 8 in Part 1000

§ 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 provided the producer handler in all markets has route disposition and packaged sales of fluid milk products of 2 million pounds or less during the month.

(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 2 million pounds or less during the month.