New Hampshire Department of Agriculture, Markets and Food	Vermont Agency of Agriculture, Food and Markets
PO Box 2042, 25 Capital Street, Concord, NH 03302	116 State Street, Montpelier, VT 05620
603-271-3551	802-828-2416

Dana Coale
Deputy Administrator
USDA/AMS/Dairy Programs
STOP-0231-Room 2971
1400 Independence Ave., SW,
Washington, DC 20250-0225.

March 16, 2009

Dear Deputy Administrator Coale,

This proposal is in response to the Invitation to Submit Proposals for Consideration at a Public Hearing that May Be Held to Discuss Elimination of the Producer-Handler Provision and Revision of the Exempt Plant Provision in All Federal Milk Marketing Orders. This proposal is provided jointly by the Vermont Agency of Agriculture, Food and Markets and the New Hampshire Department of Agriculture, Markets and Food and we would like to propose an alternative approach regarding the Producer-Handler Provision and Revision of the Exempt Plant Provision in All Federal Marketing Orders.

It is clear that the production of milk by dairy farmers has a different cost of production across this country due to availability of feed, climate and access to open land. These differing costs of production affect producer/handlers and the margins they can achieve. The Northeast Milk Marketing Area has a greater cost of production than many areas of the United States and producer handlers would need to be extremely large to garner the economies of scale found by producers in the west and far western states (Arizona and Pacific Northwest Markets).

Milk processing facilities also gain cost efficiencies as they grow in size. Many producer handlers are small in scale and do not garner cost efficiencies in their processing facilities.

The Pacific Northwest and Arizona –Las Vegas Marketing orders define a producer handler as follows:

Producer/handler means a person who operates a dairy farm and a distributing plant from which there is route disposition within the marketing area during the month not to exceed 3 million pounds and who the market administrator has designated a producer-handler after determining that all of the requirements of this section have been met.

To insure unity throughout the Federal Order System, the 3 million pound per month limit within the producer/handler definition from the Pacific Northwest should be imposed in all orders for defining a producer handler. This size limitation is in affect in the Pacific Northwest Order and the Arizona-Las Vegas order and there is no disruption to the orderly marketing of milk. The current number of producer handlers represents a very small percentage of the total milk volume in the federal order system according to data presented by NMPF and IDFA from the Milk Market Administrator. Allowing for a 3 million pound exemption for producer handlers does not represent a large milk volume within the federal order system and should not disrupt orderly marketing of milk.

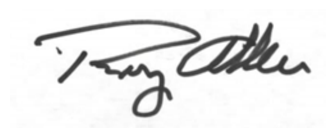
Cost of production for dairy farms and efficiency of scale for dairy processing should also be taken into account. Dairy farms do lower costs of production as they grow in size and the same is true for processing facilities. The limit of 3 million pounds per month (1000 – 1500 cow farm) does not insure a cost of production that is covered by the Class I or Statistical Uniform price in all Federal Orders. Furthermore a limitation of 3 million pounds per month or 348,000 gallons is considered a very small processing facility that would not garner economies of scale. These issues indicate that producer/handlers at 3 million per month or less do not have a cost advantage over larger milk processing facilities that purchase all of their milk.

The full proposal is outlined below. We appreciate this opportunity to submit proposal. If you have any further questions, please feel free to contact us.

Sincerely,

Lorraine S. Merrill

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



Roger Allbee
Secretary
Vermont Agency of
Agriculture, Food and Markets

Proposal by the New Hampshire Department of Agriculture, Markets and Food and the Vermont Agency of Agriculture, Food and Markets in response to the Invitation to Submit Proposals for Consideration at a Public Hearing that May Be Held to Discuss Elimination of the Producer-Handler Provision and Revision of the Exempt Plant Provision in All Federal Milk Marketing Orders

The New Hampshire Department of Agriculture, Markets and Food and the Vermont Agency of Agriculture, Food and Markets would like to submit a proposal in regards to the status of producer handlers within the Federal Order System. Orderly marketing is important through the Federal Order System and the current exemption for producer/handlers in some orders but not in all orders based on size is a concern. Federal Orders across the country should have equitable regulations to meet the needs of the farmers and handlers within the order. The New Hampshire Department of Agriculture, Markets and Food and the Vermont Agency of Agriculture, Food and Markets propose to adopt the definition and limitations for producer handlers from the Pacific Northwest and Arizona- Las Vegas marketing orders.

The National Milk Producer Federation and the International Dairy Foods Association proposes to eliminate the producer handler exemption under all Federal Orders due to claims of disorderly marketing from perceived raw milk price advantage enjoyed by producer handlers. The New Hampshire Department of Agriculture and the Vermont Agency of Agriculture would like to propose that there is very little price advantage for producer/handlers in the majority of federal order as shown by USDA derived cost of production information, plant efficiency study and the amount of milk processed and distributed by producer handlers. There are economies of scale for dairy farms as well as milk processors and the limit of 3 million pounds of milk per month imposed within the Pacific Northwest and Arizona-Las Vegas order for producer handlers recognizes this scale. Producer handlers producing and processing over 3 million pounds per month would be more apt to enjoy the raw milk price advantage due to lower cost of production on the dairy farm as well as the processing facility.

The New Hampshire Department of Agriculture and Vermont Agency of Agriculture propose to enact Section 1124.10 from the PART 1124 - MILK IN THE PACIFIC NORTHWEST MARKETING AREA, Subpart - Order Regulating Handling – defining producer/handlers for all Federal Orders.

Provide Equity Across all Federal Orders for Producer/Handlers

To insure unity throughout the Federal Order System, the 3 million pound per month limit within the producer/handler definition from the Pacific Northwest should be imposed in all orders for defining a producer/handler. This size limitation is in affect in the Pacific Northwest Order and the Arizona-Las Vegas order and there is no disruption to the orderly marketing of milk. The current number of producer/handlers represents a very small percentage of the total milk volume in the federal order system according to data presented by NMPF and IDFA from the Milk Market Administrator. Allowing for a 3 million pound exemption for producer/handlers does not represent a large milk volume within the federal order system and should not disrupt orderly marketing of milk.

Cost of production for dairy farms and efficiency of scale for dairy processing should also be taken into account. Dairy farms lower costs of production as they grow in size and the same is true for processing facilities. The limit of 3 million pounds per month (1000 – 1500 cow farm) does not insure a cost of production that is covered by the Class I or Statistical Uniform price in all Federal Orders. Furthermore, a

limitation of 3 million pounds per month or 348,000 gallons is considered a very small processing facility that would not garner economies of scale. These issues indicate that producer/handlers at 3 million per month or less do not have a cost advantage over larger milk processing facilities that purchase all of their milk due to cost of production on the dairy farm as well as processing facilities cost efficiencies.
The table below shows USDA Cost of Production data available for some of the states within the federal orders along with the Class I and Statistical Uniform price for those federal orders for calendar year 2006 and 2007.

	2006		2006		2007		2007	
USDA COP	Operating	Total	Class I	SUP	operating	total	Class I	SUP
Northeast VT, NY, PA	$ 12.91	$ 22.68	$ 15.13	$ 13.53	$ 15.56	$ 25.76	$ 21.39	$ 19.92
Appalachian - VA, TN, KY	$ 14.61	$ 28.32	$ 14.98	$ 13.99	$ 16.57	$ 30.41	$ 21.19	$ 20.36
Southeast - GA, MO, TN	$ 13.43	$ 25.90	$ 14.98	$ 13.90	$ 15.70	$ 28.63	$ 21.20	$ 20.09
Florida	$ 13.15	$ 19.95	$ 15.88	$ 15.23	$ 14.57	$ 21.44	$ 22.01	$ 21.29
Mideast - OH, MI, IN	$ 11.47	$ 20.12	$ 13.75	$ 12.40	$ 12.93	$ 21.57	$ 20.12	$ 18.75
Upper Midwest - MN, WI, IL	$ 11.50	$ 21.12	$ 13.55	$ 12.04	$ 12.72	$ 22.77	$ 19.94	$ 18.41
Central -IA, IL	$ 11.60	$ 21.56	$ 13.88	$ 12.26	$ 13.24	$ 23.82	$ 20.12	$ 18.67
Southwest - NM, TX	$ 9.63	$ 13.97	$ 14.88	$ 13.16	$ 11.92	$ 16.49	$ 21.09	$ 19.35
Arizona – Las Vegas – CA	$ 10.47	$ 14.45	$ 14.10	$ 13.71	$ 11.90	$ 16.00	$ 20.47	$ 18.95
Pacific Northwest - WA, OR, ID	$ 11.60	$ 18.50	$ 13.65	$ 11.95	$ 13.24	$ 20.43	$ 20.04	$ 18.62

USDA Cost of Production and Federal Order Pricing

In 2006, a very low price year, the Class I price was greater than the operating costs as reported by USDA in all Federal Orders. However the Class I price was less than the total cost of production as reported by USDA in all but one order – the Southwest order. The fact that the Class I price is lower than the total cost of production calls into question the raw milk price advantage of producer/handlers.

In 2006, a very low milk price year, Statistical Uniform price was greater than the operating costs in all but the Appalachian order. However, the Statistical Uniform price was never greater than the total cost of production recorded by USDA. A producer/handler must manage the farm as well as the processing facility. If producer handlers were required to take part in the pooling and payment provisions of the federal order – the statistical uniform price would not meet the cost of production for the majority of farms. Therefore there is not raw milk price advantage.

Calendar year 2007 was a record setting year for milk prices but cost of production rose as well. In all Federal Orders the Statistical Uniform Price was greater than the operating costs reported by USDA. As seen in 2006, the Statistical Uniform price was lower than the total cost of production reported by USDA except for two Federal Orders - Southwest and Arizona-Las Vegas. In high price years, in certain federal orders there may be a raw milk price advantage but prices fluctuate. It is interesting to point out that the order that has a 3 million pound per month limit on producer/handlers is the order that during high price years appears to have a raw milk price advantage.

In 2007, the Class I price exceeded operating costs in all Federal Orders. The Class I price exceeded the total cost of production in 4 of the 11 federal orders – the majority of the federal orders have total costs of production higher than the Class I price even in high price years.

There are advantages of scale for cost of production – larger farms have lower costs of production. According to the publication "Profits, Costs and Changing Structure of Dairy Farming", USDA ERS – ERR-47 2002, published in 2007"farms with a 1,000 or more cows realized average costs 15.4% below those in the next smaller class (500 – 999 cows) and 24% below farms with 200 – 499 cows". A size requirement of 3 million pounds per day represents dairy farms milking 1,000 to 1,500 cows dependent on production per cow. According to USDA ERS these farms do have a lower cost of production. Reducing the cost of production numbers provided by USDA by 15.4% does not insure that the Class I or Statistical Uniform price would cover total cost of production in all Federal Orders.

In the low price year of 2006, the Class I and Statistical Uniform price did not cover the total cost of production, reduced by 15.4% as shown by USDA, in 7 out of the 10 Federal Orders. In low cost years, there is very little price advantage if Class I and Statistical Uniform Price prices do not cover the cost of production. The numbers change for high price years with 5 Federal Orders showing Class I and Statistical Uniform prices above total costs of production and 5 Federal Orders below. Table below shows this data.

			Operating	total				operating	total
Cost of Production	2006		Reduce	reduce		2007	2007	reduce	reduce
	Class I	SUP	15.40%	15.40%		Class I	SUP	15.40%	15.40%
Northeast VT, NY, PA	$15.13	$13.53	$10.92	**$19.19**		$21.39	$19.92	$13.16	**$21.79**
Appalachian - VA, TN, KY	$14.98	$13.99	$12.36	**$23.96**		$21.19	$20.36	$14.02	**$25.73**
Southeast - GA, MO, TN	$14.98	$13.90	$11.36	**$21.91**		$21.20	$20.09	$13.28	**$24.22**
Florida	$15.88	$15.23	$11.12	**$16.88**		$22.01	$21.29	$12.33	$18.14
Mideast - OH, MI, IN	$13.75	$12.40	$9.70	**$17.02**		$20.12	$18.75	$10.94	$18.25
Upper Midwest - MN, WI, IL	$13.55	$12.04	$9.73	**$17.87**		$19.94	$18.41	$10.76	**$19.26**
Central -IA, IL	$13.88	$12.26	$9.81	**$18.24**		$20.12	$18.67	$11.20	**$20.15**
Southwest - NM, TX	$14.88	$13.16	$8.15	$11.82		$21.09	$19.35	$10.08	$13.95
Arizona - Las Vegas - CA	$14.10	$13.71	$8.86	$12.22		$20.47	$18.95	$10.07	$13.54
Pacific Northwest - WA, OR, ID	$13.65	$11.95	$9.81	$15.65		$20.04	$18.62	$11.20	$17.28

USDA Cost of Production reduced by 15.4% and Federal Order Prices

A 3 million pound limit for producer/handlers across the federal order system would allow dairy farmers who choose to process their own milk some advantage of economy of scale on the farm but does not insure a milk price versus cost of production advantage in all years or in all Federal Orders. Without a raw milk price advantage there should be no threat of disorderly marketing.

Processing efficiency must also be taken into account. A limit of 3 million pounds of milk per month translates into 348,000 gallons of milk per month or 87,000 gallons processed per week. In a Journal of Dairy Science article; 85:984-991 – Fluid Milk Processing Costs: Current State and Comparisons by T.J. Dalton, G. K. Criner and J. Halloran; 2002; four state of the art models were used in the comparison: one processing 335,000 gallons per week, one processing 400,000 per week, one blow molding bottles at 400,000 gallons per week and one blow molding bottles and processing 600,000 gallons per week. These models that are state of the art are all 3 to 4 times larger than the producer/handler limit proposed at 87,000 gallons per week.

This article concludes that there are clear economies of scale associated with processing size. To reduce per-unit production costs, a higher volume of milk must be processed to distribute the fixed production investment over more products. The volume under the potential restriction of 87,000 gallons per week would not allow for the potential reduction in per unit costs providing any cost advantage to the producer/handler with this limit.

Furthermore, the article cited changes in the industry from 1993 to 2000. A plant processing 400,000 gallons of milk in 1993 would need to grow to process 600,000 gallons per week in 2000 to be able to gain the economies of scale sufficient to offset technology and industry cost increases. Once again a limit of 87,000 gallons per week does not provide any cost efficiency to a processor.

Based on this study on processing volumes and efficiencies, the production limit of 87,000 gallons per week or 348,000 gallons of milk per month for producer/handlers would not result in a cost benefit.

Currently the volume of milk marketed by producer handlers is a small percentage of the total milk distributed within the federal order system. The table below shows estimated volumes from producer/handlers using Federal Order data provided in the National Milk Producer Federation proposal.

Order	Total Volume million pounds	Volume Class I million pounds	Percentage Class I	Producer handler estimated percentage of Class I pounds
Northeast (Boston) 1	23,040	10,496	46%	n/a
Appalachian (Charlotte) 5	5,865	4,120	70%	n/a
Southeast (Atlanta) 7	7,521	4,772	63%	n/a
Florida (Tampa) 6	3,207	2,604	81%	n/a
Mideast (Cleveland) 33	16,268	6,571	40%	n/a
Sub Total	39,633	21,992	55%	80.4 million or 0.37%
Upper Midwest (Chicago) 30	26,490	4,508	17%	n/a
Central (Kansas City) 32	11,193	4,345	39%	n/a
Southwest (Dallas) 126	9,990	4,161	42%	n/a
Arizona – Las Vegas (Phoenix) 131	3,799	1,392.5	37%	n/a
Pacific Northwest (Seattle) 124	7,093	2,256	32%	n/a
Sub Total	58,565	16,663	28%	58.8 million pounds or 0.35%
All Market Total/Average	114,408	45,266	40%	444 million or 0.98%

Federal Order Data

Estimates were made by multiplying the number of producer/handlers listed by size by the higher end of the range in pounds and for those indicated as over 2 million pounds per month – by multiplying by 3 million pounds per month. Comparing these estimates to totals to Class I pounds in the federal order the volume represents less than 1%. More investigation of individual federal orders producer/handlers and pounds would be needed. In aggregate, the two federal orders which limit producer handlers to 3 million pounds have the smallest percentage on aggregate of Class I volume than the other data. Limiting producer handlers to 3 million pounds would not adversely affect the marketing of milk within the federal order.

There is an overriding concern that affects consumers more than the orderly marketing of milk and that is of a limited number of fluid milk processors limiting choice and the growing demand for local and regional products. Producer/handlers provide consumers choice within the marketplace against the much larger competitors that are national in scope. The growing demand for locally produced products allows for niche marketing by producer handlers that is more difficult for larger competitors.

The purpose of this proposal is to provide equity throughout the Federal Order system by having all orders adapt the definition for producer/handlers that includes a limit of 3 million pounds per month. It is important to clarify the definition of producer/handler for volume and requirements.

Currently the Federal Orders have differing requirements for producer/handlers across the country. The definition of a producer/handler in the Pacific Northwest and the Arizona-Las Vegas order have a limit of 3 million pounds per month as part of the definition of a producer/handler. It is the position of the New Hampshire Department of Agriculture and the Vermont Agency of Agriculture that all federal orders adapt this limitation within the definition of producer/handler.

The expected impact on the industry from this proposal is a level playing field throughout the Federal Order system for producer/handlers. Currently producer handlers represent a small volume of Class I milk and implementing this limitation would keep the volume for producer/handlers at a low percentage thus not disrupting orderly marketing. Producer/handlers that choose to continue to grow beyond the 3 million pounds per month would take full part in the regulations of the Federal Order. This limitation would allow for smaller and mid size producer/handlers to continue to provide consumer choice and locally produced products that are experiencing increased consumer demand without a corresponding price advantage due to farm costs of production and limitations on plant efficiency.

The New Hampshire Department of Agriculture and the Vermont Agency of Agriculture believe that the affect on small business will be a better definition of producer/handler size and will allow for better business planning.

The New Hampshire Department of Agriculture and the Vermont Agency of Agriculture believe that the proposed change will not affect cost within the federal order for milk processors. The limit of 3 million pounds for producer/handler is already in place in the Pacific Northwest and Arizona orders and there has been little information of the affect of this limitation affecting prices in this region. Producer/handlers provide a valuable product to consumers allowing for choice and the market for local or regional products. The small size of the current producer/handlers should not affect the marketplace adversely and the limitation on producer/handler of 3 million pounds should keep that volume low.

No pre-hearing information session is needed.