

Shatto Farms, Inc.

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

May 5, 2009

Re: Response to the petition of the National Milk Producers Federation and new proposal related to such issues

Dear Ms. Coale,

While we are dairy farmers and not lawyers or professionals, this is our attempt to do two things: 1) provide a letter sharing our opposition to the National Milk Producer Federations (NMPF's) petition requesting that all milk marketing orders be amended to: end the producer-handlers exemption. This amendment would put our small family business and others like us in financial jeopardy and possibly out of business, and 2) offer our own proposal related to such issues.

Change as suggested in NMPF's petition will negatively impact small family operations like ours as they will penalize us for taking the steps necessary to save our local family farm from bankruptcy. Their proposal will create new financial obstacles that will be impossible to overcome as we look to meet the goals of our business plan and ensure that our family farm is able to survive the infant years of its existence, not to mention remain something that my son and his family can enjoy for decades to come.

We are submitting our own proposal in response to the invitation for additional proposals. We are opposed to the elimination of the producer-handler exemption, however in the event the Department decides some change should occur we would propose:

- The producer-handler exemption be kept in place with a limit of the exemption to be set at 1 million lbs. per month as we believe a small producer under this limit is not disruptive to the market. A small family farm producing under this amount would be unable to survive the financial impact of the proposed new regulation based upon their profit margin.
- and
- If the producer-handler exemption is removed, we would propose the regulatory exemption for small distributing plants be increased to 1 million lbs. per month as small producers under this limit are not disruptive to the market.

Thank you for your willingness to read and consider our proposal related to this issue. Please feel free to contact us anytime at the farm via phone at (816) 930-3862 if you have questions.

Sincerely,

Leroy, Barbara, Matt and Jill Shatto

Proposal by Shatto Farms Inc. For Consideration If the Amendment Proposed by The NMPF to Delete the  
Producer-Handler Provision is Strongly Considered

Background

We are small business owners who own a family farm and an on-farm bottling facility that employs just over 20 terrific people in the Midwest. Our family has been in the dairy business for more than 70 years. For the majority of that time we sold our milk to a national cooperative. This method of making a living was no longer an option in the late 1990's as the price we were being paid for our milk did not cover the cost to produce it. We had no choice as it related to who we sold our milk to or the price we could get for our milk as DFA has a monopoly on the milk supply in our area. Having no competition vying for our milk we had to either go out of business or try something new to add value to our cows' milk.

In 2003, we took a risk; we built an on-the-farm bottling facility whereby we wanted to add value to our product and sell a farm fresh premium product directly to our neighbors. Today, we milk nearly 300 cows and sell that milk to our wonderful customers in the Kansas City area. We offer something that no other dairy offers in our area; we truly serve a niche market in a variety of ways. We offer milk in glass bottles, we offer flavors of milk ranging from orange dream and root beer to banana and strawberry, we also offer our customers the opportunity to purchase milk from local cows that they can come see, touch and milk. Becoming a producer handler has allowed us to survive and continue to do what we enjoy doing, farming.

With debt up to our ears and uncertainty related to the economy, we have been very cautious over the past 5 years attempting to keep our farm viable, while at the same time making improvements to our dairy facilities that were long ignored due to the fact that we lost money each year in the 90's.

In 2006, we were named the small business of the year for the State of Missouri and later named Small Business of the Year Runner-Up by the National Small Business Administration. These awards were directly in response to our effort to save our family farm and add value to the product that we had been selling to cooperatives for the past half-century.

We never anticipated becoming a producer-handler. We were forced to consider this as an option as we had to find a way to keep our farm viable. Now that we are a producer-handler and in the process of paying off past debt and making the improvements to our farm that were never an option in the past, the petitioners, are now wanting to change the rules and use the Government to keep us small guys from doing what we inherently set out to do, save our family farms and continue to do what we love, farm.

Response in Opposition to the NMPF Petition and Proposal

The National Milk Producers Federation petition submitted on January 30, 2009 makes it very clear that they are seeking to end the producer-handler exemption due to "large producer-handlers" that create market disruption, obtain a price advantage due to their "large size" and that cannot balance their own supply. The petition that was submitted would not only impact those "large producer-handlers" that they are referring to, but also those of us that milk 300 or so cows on our local family dairy farms. Thus, the petition would negatively impact those of us that do none of the above. I can factually state that our small dairy:

- Does not create market disruption
- Does not obtain any price advantage over any cooperative or similar sized producer-handlers and would not even do so if we produced 1 million lbs. per month
- Does not have a problem balancing supply with demand. We were told up front by the CO-OP that if we became a producer handler they would not be willing to balance our supply – this has never been an option and we would never ask for such assistance

- Does not compete with other organizations serving our area
  - Pricing is not comparable; our pricing is higher across the board
  - Product is not offered instead of another – offer only premium product as option
  - Do not want to become large just maintain and grow with our customer base for next generation
  - Boutique dairy that is in touch with our neighbors, who happen to be our customers.
- Does fill a niche not served by anyone else
  - Unique product selection – offer banana milk, root beer milk, orange dream milk, strawberry milk and chocolate milk
  - Offer a true farm to market alternative
  - Offer milk from cow to store in 24 hours or less
  - Offer customers the opportunity to come see the cows that their milk comes from
- Does not have the ability to absorb the cost of regulation associated with the NMPF's proposal

The facts above show both that we do not fit the description of “large producer-handlers” outlined in the NMPF's petition and that their petition will negatively impact small businesses across the country and more specifically our family dairy farm. We will do all we can to address each component of the aforementioned proposal and show how such a proposal will dramatically impact small family operations like ours. Due to this point, we feel it is necessary to submit our own proposal for consideration as there must be a way to work to ensure small family farms like ours are not impacted by this change and are allowed to survive. The State of Missouri, like other States, promotes value added agriculture as it is more sustainable and provides small regions of the State with high quality locally produced goods. Any action by the Department to support a petition like that of the NMPF's would negate any effort by states or local governments to grow their economy with the help of value added dairy producers.

Overall their proposal penalizes us and those like us for taking the steps to save our small family dairy farm and create an on-the-farm bottling facility. It changes the rules on the small guys like us, for no reason. It would make us pay into the pool to use the milk that comes from the cows that we own on our long standing family farm. The proposal will also keep small farms like ours, that are near the proposed production limit, from being able to expand to meet increased customer demand and from being able to grow to the point that is necessary in our business plan to make a profit that justifies being in business.

The rationale used in the aforementioned NMPF petition relies solely on dairy farm size and the economies of scale. That is misleading and unjust when considering actual costs related to production. A farm can reduce costs of production a great deal by not feeding their cows good feed, by neglecting to get their cows checked and treated by a veterinarian, and with other similar methods. Farms like ours, small family owned farms that are committed to selling the absolute best and freshest milk, take the time and put forth the effort to expend more money on their dairy operations to ensure their cows are happy and safe. We treat our cows as well as our family pet, and others like us do the same. We feed our cows the best possible feed (which typically is not the cheapest), we build the buildings and oversee them to ensure that our cows have a nice place to stay warm in the winter and cool in the summer, we also make sure we have good quality pasture space for them to roam and eat grass as they would like. All of these things are not necessary, but they represent a few of the ways we do business. They are what makes us different and what costs us more money in production. Costs such as these take us out of the “Milk Cost of Production by Size” graph that was referenced in the NMPF's proposal. Things like this reduce and eliminate the ability to suggest that a limit should be based upon some average economies of scale. Such a reliance does nothing other than negate the extra effort and extra thousands of dollars that are spent every year by us and others like us to ensure our cows are well taken care of and produce the best possible milk. I am confident to say that our cost per cwt. at our farm of more than 300 cows is well above the \$18 noted on the chart and likely much closer to the \$25 or \$30 level.

With this in mind, we are at a significant cost disadvantage compared to not only those dairies of a similar size, but also cooperatives of all sizes. We likely spend in direct costs 50-75 percent more per cwt. than the vast majority of cooperatives nationwide. Therefore, we have no financial ability to compete with these processors on price and have never attempted to do so. Thus, we believe that their proposal to eliminate the producer-

handler provision is unjust and flies in the face of its original intent to exempt producer-handlers that serve small niche markets not served by the large producers and those that do not impact the overall market. In fact, this proposal will eliminate many small dairies like our own and reduce one of the exact things that the USDA says is necessary for perfect competition to be met on the "spectrum of market structures", a large number of small producers. This is evidenced in a USDA PowerPoint presentation prepared by the Market Administrator's Office.

If the NMPP's petition is considered and enacted, the impact on the industry will be that a large number of producer-handlers, specifically those under 600 cows will be out of business. This would shift more sales to large, multi-state operations and cooperatives.

### Our Proposal

We do not believe there exists a disorderly market condition. Our proposal is to address the reduction in competition, negative impact on small business and overall over-regulation of the dairy industry if the NMPP's petition is considered strongly and put into effect.

If, and only if, the Department decides some change should occur we would propose:

- The producer-handler exemption be kept in place with a limit of the exemption to be set at 1 million lbs per month as we believe a small producer under this limit is not disruptive to the market and they would be unable to survive the financial impact of such regulation based upon their limited profit margin, and
- If the producer-handler exemption is removed, we would propose the regulatory exemption for small distributing plants be increased to 1 million lbs per month as small producers under this limit are not disruptive to the market.

The purpose of our proposal is to find a solution to ensure that small operations like ours are not unfairly burdened by regulation which was originally designed with large enterprises in mind and to continue to allow operations like ours to exist, provide products for niche markets, and continue to have the ability to work to offer a premium product instead of a product that is produced solely to limit costs.

If our proposal is enacted, those producer-handlers over 1 million <sup>lbs</sup> ~~cwt.~~ per month would be impacted. They would be forced to pay into the pool for milk for which they are currently shouldering the burden of production. This would be a substantial change and would likely create stress for those producer handlers. It is anticipated that such a regulation could be dealt with by operations of this size, unlike those smaller operations below 1 million <sup>lbs</sup> ~~cwt.~~ per month. Those producer-handlers under the 1 million <sup>lbs</sup> ~~cwt.~~ per month will not be impacted.

On the other hand when looking at the distribution plants that currently sell 150,000 – 1 million <sup>lbs</sup> ~~cwt.~~ per month they would be positively impacted as they would no longer be regulated and forced to pay into the pool.

Our proposal will assist smaller (under 1 million <sup>lbs</sup> ~~cwt.~~) distribution plants as it will expand their ability to grow and increase their net revenue. Producers overall will not be impacted. Consumers will maintain their ability to choose small, local producer-handlers when shopping at local markets.

The effects of our proposal on small business is much more appropriate and much more tolerable than the NMPP's proposal. Our proposal will allow small family operations the opportunity to stay in business and not be faced with burdensome regulation that was originally and still is in place with large businesses in mind. Our proposal realizes that price per cwt., when looking at producer-handlers, is not clear cut. It understands that these producer-handlers often have much greater costs per cwt. as they either choose to or are called to spend more money per cwt. to ensure that their cows are provided with the best possible environment, care and health. This also takes into consideration that small operators like ourselves have an additional built in cost of building

*RMSH*  
Approved  
Comments

a business based upon providing customers with the freshest milk possible, not allowing for that milk to be pooled and processed only a few times per week, not to mention the additional cost associated with family friendly practices of personally connecting to the consumer. All of these items that yield a niche product cost more money in the production, processing, and in the promotion of the products. Because of these additional costs, this proposal realizes a cap any smaller than 1 million cwt. is much too low and will result in the loss of many family operations that will be unable to pay the regulatory fee. /B.S

We stand in opposition to the NMPF's proposal of eliminating the Producer-Handler provision. We have outlined a number of reasons that farms like ours should not be treated like the "large producer-handlers" noted in the NMPF's petition. Regulation as proposed by the NMPF would effectively put us and others like us out of business.

If, and only if, strong consideration is given to the NFMP's petition or any other proposal that would effectively change the way producer handlers are treated we would like our proposal considered as an alternative.

Thank you for your time and consideration.

R.M. Shatto  
Approved.

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