

# Yale Law Office, LP

## ATTORNEYS AT LAW

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Benjamin F. Yale\*  
Kristine H. Reed†  
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February 16, 2005

The Honorable Mike Johanns  
Secretary, United States Department of Agriculture  
1400 Pennsylvania Ave., SW  
Washington, DC 20250

**Re: *Milk in the Arizona Las-Vegas and Pacific Northwest Marketing Areas,***  
***Docket No. AO-368-A32; AO-271-A37; DA-03-04***

Dear Mr. Secretary:

This letter is submitted on behalf of Mallorie's Dairy, Smith Brothers Farms, Edaleen Dairy, and Sarah Farms. These organizations are producer-handlers who produce more than 3 million pounds of milk per month and, therefore, their status is the subject of the above referenced rulemaking proceeding.

As counsel for these producer-handlers, we have become increasingly concerned about the integrity of this hearing process. Since December of 2004, we have received repeated statements from individuals, primarily from the State of California, who claim that they already know the result of this hearing from persons within USDA. Specifically, these people have stated, without equivocation, that the Department will impose a "hard" three million pound cap on producer-handlers, and the decision will be implemented on an expedited basis without opportunity for comment.

At first, we viewed the statements as "guesses" or "wishful thinking." These repeated assertions, however, come from individuals whose position in the industry is such that their comments are usually based in fact and should be taken seriously.

If these statements are not true, then future events will expose their falsity. If true, however, these statements strongly suggest that someone within the Department violated the prohibition on *ex parte* communication. See 7 C.F.R. § 900.16(a). If so, there has been a serious interference with the rule making process.



The Honorable Mike Johanns  
February 16, 2005

Page 2 of 3

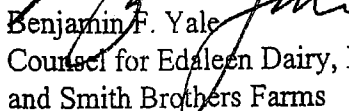
The rule making process in Federal Milk Marketing Order proceedings must be impartial and free of the taint of any personal bias or prejudice concerning any interested party. It is critical to the rule making process that the Department and all those involved as officials in the hearing remain free from even the appearance of impropriety. The recent rash of rumors and other innuendo regarding a predetermined outcome based upon political expediency and "backroom" deals does little to foster public confidence in a fair and impartial process within the Department. Rather, these recent events call into question the reliability of the entire structure of the Federal Milk Marketing Order system.

In addition, we have obtained a copy of a February 11, 2005 letter from National Milk Producers Federation and International Dairy Foods Association directed to you and copied to others in the Department. The letter, as it suggests that the evidence presented at the hearing proves or disproves any matter at issue and as it demands action by the Department, constitutes *ex parte* communication in violation of 7 C.F.R. § 900.16 (b). The attempt by NMPF and IDFA to argue the evidence before the Department and influence the speed of the decision making process is patently improper. It also raises the question as to whether there have been other, less public, efforts to influence the Department in this process.

Our decades long experience with the Department has shown its staff to be nothing less than professional people of integrity. Thus these recent events not only concern us but surprise us. However, given the serious business risks facing our clients in this hearing, we felt it necessary to bring this to your attention so that the integrity of this process can be guaranteed in appearance and reality. Furthermore, as the Department is aware, a competitive retail dairy market will react to statements that significant regulatory changes are imminent. Indeed, such statements can have the effect of influencing current pricing in the dairy industry.

On behalf of our clients, we ask that the Department immediately commence an investigation to assure all hearing participants that the process itself is free from improper communication. We are simultaneously directing a request under the Freedom of Information Act to the USDA FOIA Officer because we intent to employ every tool at our disposal to ensure that this hearing is conducted fairly and without improper influence.

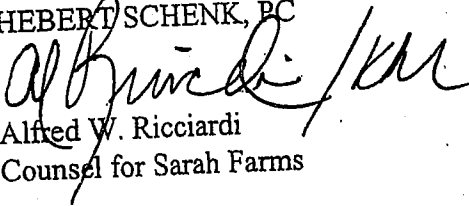
Sincerely yours,  
YALE LAW OFFICE, LP

  
Benjamin F. Yale  
Counsel for Edaleen Dairy, Mallorie's Dairy  
and Smith Brothers Farms

The Honorable Mike Johanns  
February 16, 2005

Page 3 of 3

HEBERTSCHENK, PC

  
Alfred W. Ricciardi  
Counsel for Sarah Farms

cc: Undersecretary William T. Hawks  
Office of the AMS Director  
Deputy Administrator Dana Coale  
Sharlene Deskins, Esq.  
Marvin Beshore, Esq.  
Charles English, Esq.  
Northwest Dairy Association  
United Dairymen of Arizona  
Elvin Hollon, DFA  
Roger Cryan, NMPF  
Constance Tipton, IDFA



United States  
Department of  
Agriculture

Agricultural  
Marketing  
Service

1400 Independence Avenue, SW  
Washington, DC  
20250

3/3/05

Benjamin Yale, Esq.  
Yale Law Office, LP  
Post Office Box 100  
Waynesfield, Ohio 45896-0100

Dear Mr. Yale:

Thank you for your letter of February 16, 2005, to Secretary Johanns, on behalf of Mallorie's Dairy, Smith Brothers Farms, Edaleen Dairy, and Sarah Farms, regarding the integrity of the Federal milk marketing order hearing process. You expressed concern over certain persons claiming to know the result of the series of hearings held regarding producer-handlers in the Arizona Las-Vegas and Pacific Northwest marketing areas. The Secretary has asked me to respond on his behalf.

Since your allegation of *ex parte* communications does not cite specific occurrences, we do not believe it provides a sufficient basis to warrant an investigation of *ex parte* violations. In addition, a review of records responsive to your Freedom of Information Act (FOIA) request, regarding Department of Agriculture (USDA) communications about the producer-handler hearing, revealed one letter which is being filed with the Office of the Hearing Clerk. This letter will be provided to you as part of the FOIA response.

As you know, USDA employees involved in the decision process are prohibited under the rules of *ex parte* communications from discussing the merits of any issues addressed at the hearing. Only after the issuance of a final decision may a USDA employee discuss any issues addressed at the hearing with the public.

Maintaining the integrity of the hearing process is of utmost importance to USDA and we will continue to ensure that *ex parte* communication prohibitions are not violated in any Federal milk order decisional process.

Thank you for your interest in the Federal milk marketing order program.

Sincerely,

/s/  
Kenneth C. Clayton  
Acting Administrator

IDENTICAL LETTER SENT TO:

Mr. Alfred W. Ricciardi  
Counsel for Sarah Farms  
4727 N. 24<sup>th</sup> St., Suite 100  
Phoenix AZ 85016-4858

/  
|  
|

RAÚL M. GRIJALVA  
7TH DISTRICT  
ARIZONA

1440 LONGWORTH HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-0307  
PHONE: (202) 225-2435  
FAX: (202) 225-1541  
www.house.gov/grijalva



**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-0307**

COMMITTEES:  
RESOURCES  
EDUCATION AND THE WORKFORCE  
APPOINTMENTS:  
DEMOCRATIC CAUCUS ENVIRONMENTAL  
TASK FORCE CHAIR  
DEMOCRATIC PRIVATE CALENDAR OBJECTOR

June 10, 2005

The Honorable Michael O. Johanns  
Secretary of Agriculture  
United States Department of Agriculture  
1400 Independence Avenue SW  
Room 200-A  
Washington, DC 20250

35-4283205  
AMS

**Re: Agricultural Marketing Service, 7 CFR Parts 1124 and 1131 [Docket No. AO-368-A32, AO-271-A37; DA-03-04B]**

Dear Secretary Johanns:

I am writing in opposition to the proposed amendments to U.S. Department of Agriculture regulatory orders that would affect producer-handlers in the Pacific Northwest and Arizona-Las Vegas market areas. As a Representative from Arizona, I am particularly concerned about the impact the amendments would have on a family-owned dairy in my state, on its employees and distributors and on thousands of customers who currently depend on them for dairy products. In a larger sense, I believe the proposed amendments would reduce competition, harm consumers and set a bad precedent for national dairy policy.

I understand that the "pooling and pricing" regulations were established in the 1930s to protect small dairy farms from being exploited by large processors which could potentially buy their raw milk at below-cost prices. At the same time it was established by Congress that "producer-handlers" - those dairy operations that process and market milk from their own cows on their own farms - would be exempted from the pooling and pricing provisions. It didn't make sense for producer-handlers to pay into a pool subsidizing other producers when they do not buy milk from any other dairy farms. It still doesn't.

Some have expressed concerns that producer-handlers have a competitive advantage because they are not "fully regulated." In fact, producer-handlers bear the risks of producing, processing and marketing their products - risks that fully regulated producers and processors do not bear. In addition, the three million pound-per-month threshold is really quite low, affecting those who are not in any position to "distort the market." In Arizona, this arbitrary ceiling would penalize any producer-handler responsible for 1% of the market or more.

As a case study, I'd like to focus on Sarah Farms, based in Yuma, Arizona, within my district. This 10 year-old family-owned dairy processes and markets milk from two local Yuma plants. Currently, Sarah Farms employs 124 people, providing health care to its employees. Sarah Farms also gives to the community by donating to the Yuma Community Food Bank.

810 E. 22ND STREET, SUITE 102  
TUCSON, AZ 85713  
PHONE: (520) 622-6788  
FAX: (520) 622-0198

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1455 S. FOURTH AVENUE, SUITE 4  
YUMA, AZ 85364  
PHONE: (928) 343-7933  
FAX: (928) 343-7949

Sarah Farms markets about six million pounds of milk a month, mostly Class 1 liquid milk products. Under the proposed amendments, it would have to essentially sell its milk into the pool at lower "blended" prices and buy it back at the higher Class 1 price. This paper transaction would cost the dairy more than \$2 million a year, essentially wiping out its profits.

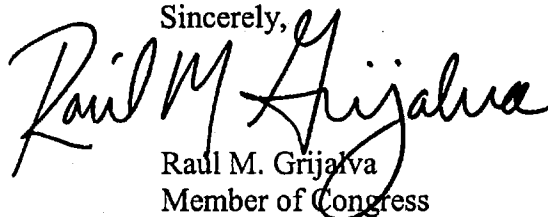
I believe this regulatory change does not make sense. It also sends a mixed message to our rural businesses: "We will help you," we are telling them, "but don't become too successful or we'll have to shut you down."

The regulatory change would be achieved at the expense of the last remaining independent family-owned dairies like Sarah Farms. In addition, by further consolidating the market, it will also drive up prices and eliminate choice for consumers. This is all-around bad public policy.

Please reject the proposed amendments - **Agricultural Marketing Service, 7 CFR Parts 1124 and 1131 [Docket No. AO-368-A32, AO-271-A37; DA-03-04B].**

Thank you for your consideration in this important matter.

Sincerely,

A handwritten signature in black ink that reads "Raul M. Grijalva". The signature is written in a cursive, flowing style.

Raul M. Grijalva  
Member of Congress

RMG:ck

Cc: Hearing Clerk

June 22, 2005

The Honorable Raul M. Grijalva  
U.S. House of Representatives  
1440 Longworth House Office Building  
Washington, D.C. 20515-0307

Dear Congressman Grijalva:

Thank you for your letter of June 10, 2005, expressing your opposition to findings made by the Department of Agriculture (USDA) concerning the regulatory status of certain producer-handlers in the Pacific Northwest and Arizona-Las Vegas milk marketing areas.

USDA appreciates the importance of the issues discussed in your letter regarding the regulatory status of producer-handlers in Federal milk marketing orders. The comment period on the recommended decision closed on June 13, 2005. Please be assured that we will consider your comments carefully before a final decision is issued.

Thank you for your interest in the Federal milk marketing order program.

Sincerely,



Mike Johanns  
Secretary



**Congress of the United States**

**Washington, D.C. 20515**

March 24, 2005

The Honorable Mike Johanns  
Secretary of Agriculture  
1400 Independence Avenue, SW  
Washington, DC 20250

Dear Mr. Secretary:

We are writing in regard to the ongoing rulemaking process in the Pacific Northwest and Arizona-Las Vegas Milk Marketing Orders. USDA began the hearing process to consider changes to the producer-handler provisions of these orders in September, 2003. The hearing process concluded in August, 2004, and as of yet, no decision has been published by your department.

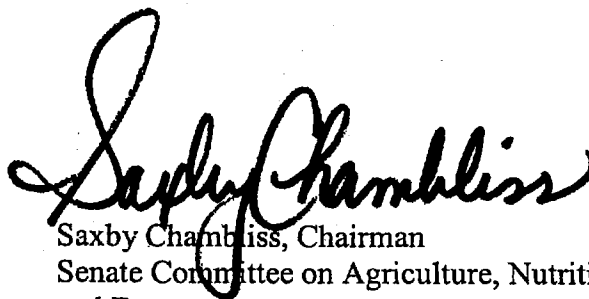
We would like to urge you to take the necessary steps to facilitate the timely release of the decision under this rulemaking.

Thank you in advance for your assistance on this issue,

Best Regards,



Bob Goodlatte, Chairman  
House Committee on Agriculture



Saxby Chambliss, Chairman  
Senate Committee on Agriculture, Nutrition  
and Forestry

**35-4277329**  
**AMS**

APR 18 2005

The Honorable Bob Goodlatte  
Chairman, House Committee on Agriculture  
2240 Rayburn House Office Building  
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of March 24, 2005, to Secretary Johanns, cosigned by Senator Saxby Chambliss, Chairman, Senate Committee on Agriculture, Nutrition and Forestry. In your letter, you requested that the Secretary facilitate the timely publication of a decision regarding producer-handler provisions in the Arizona-Las Vegas and Pacific Northwest Federal milk marketing orders. The Secretary has asked me to respond on his behalf.

We at the Department of Agriculture appreciate the importance of the issue discussed at the hearing relating to the regulatory exemption for producer-handlers in the Arizona-Las Vegas and Pacific Northwest Federal milk marketing orders. A recommended decision on the producer-handler issue was published on April 13, 2005, in the Federal Register. A copy of your letter, together with this response, will be forwarded to the Office of the Hearing Clerk for inclusion in the docket of this proceeding.

Thank you for your interest in the Federal milk marketing order program.

Sincerely,

15/

Bill Hawks  
Under Secretary  
Marketing and Regulatory Programs

APR 18 2005

The Honorable Saxby Chambliss  
Chairman, Senate Committee on Agriculture  
Nutrition and Forestry  
416 Russell Senate Office Building  
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your letter of March 24, 2005, to Secretary Johanns, cosigned by Representative Bob Goodlatte, Chairman, House Committee on Agriculture. In your letter, you requested that the Secretary facilitate the timely publication of a decision regarding producer-handler provisions in the Arizona-Las Vegas and Pacific Northwest Federal milk marketing orders. The Secretary has asked me to respond on his behalf.

We at the Department of Agriculture appreciate the importance of the issue discussed at the hearing relating to the regulatory exemption for producer-handlers in the Arizona-Las Vegas and Pacific Northwest Federal milk marketing orders. A recommended decision on the producer-handler issue was published on April 13, 2005, in the Federal Register. A copy of your letter, together with this response, will be forwarded to the Office of the Hearing Clerk for inclusion in the docket of this proceeding.

Thank you for your interest in the Federal milk marketing order program.

Sincerely,

/s/

Bill Hawks  
Under Secretary  
Marketing and Regulatory Programs

Identical letter sent to:

The Honorable Bob Goodlatte  
Chairman, House Committee on Agriculture  
2240 Rayburn House Office Building  
Washington, D.C. 20515

# United States Senate

WASHINGTON, DC 20510

July 28, 2005

35-4286123  
AMS

The Honorable Mike Johanns  
U.S. Department of Agriculture  
1400 Independence Avenue, SW  
Washington, DC 20250-9200

Re: 7 CFR Parts 1124 and 1131 [Docket No. AO-368-A32, AO-271-A37; DA-03-04B]

Dear Secretary Johanns:

We are writing to express concerns over the amendments to the U.S. Department of Agriculture regulatory orders noted above. We believe it would be prudent to review the amendments and consider raising the milk production exemption limit for producer-handler dairies from the proposed 3 million pounds of fluid milk to 7.5 million pounds of fluid milk.

Some dairy processors have expressed concerns that producer-handlers have a competitive advantage because they are not "fully regulated." In the Northwest, the arbitrary ceiling of 3 million pounds of fluid milk would penalize any producer-handler responsible for less than 1% of the market. It is estimated that a producer-handler could sell their milk for 10-15 cents less per gallon than large processors. However, the producer-handler assumes all of the risks of production, processing, and marketing without the benefit of economy by scale.

We support a level playing field, but not a rule that selectively eliminates family owned and operated producer-handler dairies. The producer-handler has historically filled a niche market for small and independent groceries. This has not changed. We simply want to protect the small producer-handler and at the same time support the milk pool that benefits many small dairy producers.

We urge you to reconsider these amendments.

Sincerely,



Ron Wyden  
U.S. Senate



Gordon H. Smith  
U.S. Senator

AUG 18 2005

The Honorable Gordon H. Smith  
United States Senate  
404 Russell Senate Office Building  
Washington, D.C. 20510

Dear Senator Smith:

Thank you for your letter of July 28, 2005, to Secretary Johanns, cosigned by Senator Ron Wyden, expressing your opposition to findings made by the Department of Agriculture (USDA) concerning the regulatory status of certain producer-handlers in the Pacific Northwest and Arizona-Las Vegas milk marketing areas. The Secretary has asked me to respond on his behalf.

USDA appreciates the importance of the issues discussed in your letter regarding the regulatory status of producer-handlers in Federal milk marketing orders. The comment period on the recommended decision closed on June 13, 2005. Please be assured that we will consider your comments carefully before a final decision is issued.

Thank you for your interest in the Federal milk marketing order program.

Sincerely,

/s/

Bill Hawks  
Under Secretary  
Marketing and Regulatory Programs

AUG 18 2005

The Honorable Ron Wyden  
United States Senate  
230 Dirksen Senate Office Building  
Washington, D.C. 20510-3703

Dear Senator Wyden:

Thank you for your letter of July 28, 2005, to Secretary Johanns, cosigned by Senator Gordon H. Smith, expressing your opposition to findings made by the Department of Agriculture (USDA) concerning the regulatory status of certain producer-handlers in the Pacific Northwest and Arizona-Las Vegas milk marketing areas. The Secretary has asked me to respond on his behalf.

USDA appreciates the importance of the issues discussed in your letter regarding the regulatory status of producer-handlers in Federal milk marketing orders. The comment period on the recommended decision closed on June 13, 2005. Please be assured that we will consider your comments carefully before a final decision is issued.

Thank you for your interest in the Federal milk marketing order program.

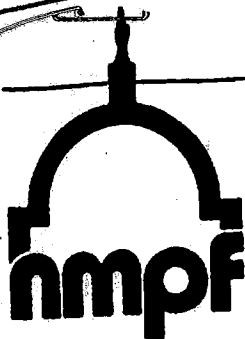
Sincerely,

/s/

Bill Hawks  
Under Secretary  
Marketing and Regulatory Programs

IDENTICAL LETTER SENT TO:

The Honorable Gordon H. Smith  
United States Senate  
404 Russell Senate Office Building  
Washington, DC 20510



# National Milk Producers Federation

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

June 23, 2005

## 35-4284113 AMS

Secretary of Agriculture Mike Johanns  
1400 Independence Ave, SW  
Washington, DC 20250

Dear Secretary Johanns,

The National Milk Producers Federation Board of Directors, representing dairy producers and their cooperatives that account for 75% of all the milk produced in the U.S., urges you to support prompt implementation of the USDA recommended decision regarding producer-handlers.

This decision was published in the Federal Register of April 13, 2005, Docket Nos. AO-368-A32, AO-271-A37. The recommended decision would limit the dairy producer-handler exemption to those producer-handlers with less than 3 million pounds of fluid milk products per month within the marketing area.

*The current, unlimited producer-handler exemption violates the principle of producer equity upon which the federal market order system rests. Evidence in the hearing record demonstrates that the current exemption skews the system to afford a few larger producer-handlers a significant and unwarranted price advantage over other producers.*

The decision is fair—it proposes to treat the “farm side” of the producer-handler’s business exactly as all farms are treated, and treat the “processor side” of their operations the same as all other plants are treated. Farms with over 3 million pounds of monthly production now produce more than 20% of the U.S. milk supply, which is more than half of U.S. fluid milk sales. The number of dairy farms of this size is increasing every year. The current exemption allows for the spread of these mega size producer-handlers and the undermining of viable market order systems that provide equity and orderly marketing for both small and large producers.

*We urge you to support the recommended decision as published by USDA. Dairy producers and their cooperatives support the implementation of this decision as soon as possible.*

Sincerely,  
National Milk Producers Federation

Jerry Kozak, President/Chief Executive Officer

Charles Beckendorf, Chairman

www.nmpf.org

Agri-Mark, Inc.  
Arkansas Dairy Cooperative Association  
Associated Milk Producers, Inc.  
California Dairies, Inc.  
Case-Clay Creamery, Inc.  
Continental Dairy Products, Inc.  
Cooperative Milk Producers Assn.  
Dairy Farmers of America, Inc.  
Dairymen's Marketing Cooperative, Inc.  
Dairycoop Cooperative Inc.  
Ellsworth Cooperative Creamery  
Farmers Cooperative Creamery  
First District Association  
Foremost Farms USA  
Just Jersey Cooperative, Inc.  
Land O'Lakes, Inc.  
Lone Star Milk Producers, Inc.  
Manitowoc Milk Producers Coop.  
MD & VA Milk Producers Cooperative Association, Inc.  
Michigan Milk Producers Assn.  
Mid-West Dairymen's Company  
Niagara Milk Cooperative, Inc.  
Northwest Dairy Association  
Prairie Farms Dairy, Inc.  
St. Albans Cooperative Creamery, Inc.  
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  
Upland Farms Cooperative Inc.  
Zia Milk Producers

JUL 22 2005

Mr. Jerry Kozak  
President and Chief Executive Officer  
National Milk Producers Federation  
2101 Wilson Boulevard  
Arlington, Virginia 22201

Dear Mr. Kozak:

Thank you for the June 23, 2005, letter signed by the Board of Directors of the National Milk Producers Federation, that urged prompt implementation of the recommended decision regarding a limit on the dairy producer-handler exemption within the Arizona-Las Vegas and Pacific Northwest marketing areas. You indicated that dairy producers and their cooperatives support implementation of this decision.

The Department of Agriculture appreciates the importance of the issues discussed in your letter regarding the regulatory status of producer-handlers in Federal milk marketing orders. Although the comment period on the recommended decision closed on June 13, 2005, the Board's letter will be made part of the public record. We have received many comments that will be considered thoroughly before a final decision is issued.

Thank you for your interest in the Federal milk marketing order program.

Sincerely,

/s/

Mike Johanns  
Secretary

/057



**United States Senate**

**President Pro Tempore**

Washington, DC 20510

(202) 224-3004

(202) 224-2384 (Fax)

Committees:

Chairman

Commerce, Science, and Transportation

Appropriations

Governmental Affairs

Rules and Administration

Library of Congress

**Ted Stevens**

Alaska

June 9, 2005

**35-4283560**

**AMS**

Mike Johanns

Secretary

United States Department of Agriculture

14<sup>th</sup> Street & Independence Avenue SW

Washington, DC 20250

Dear Mr. *Secretary*

It recently came to my attention that the Department of Agriculture announced a proposed rule change to the Pacific Northwest and Arizona-Las Vegas Federal milk market orders which would subject "producer-handlers" who put more than three million pounds of milk on the market per month to the pooling and pricing provisions of the Pacific Northwest and Arizona-Las Vegas milk marketing orders.

I understand the concern raised at various public hearings that allowing producer-handlers to be exempt from these milk marketing orders results in their obtaining unfair competitive advantage. However, before the Department implements any change, I urge you to address the impacts it would have on milk deficit states, such as Alaska. It is my concern that the proposed regulation would greatly increase the cost of milk in these states.

I appreciate your attention to this matter.

With best wishes,

Cordially,

*Ted Stevens*  
TED STEVENS

cc: Hearing Clerk, United States Department of Agriculture

Anchorage  
(907) 271-5915

Fairbanks  
(907) 456-0261

Juneau  
(907) 586-7400

Wasilla  
(907) 376-7665

Kenai  
(907) 283-5808

Ketchikan  
(907) 225-6880

Bethel  
(907) 543-1000

JUL 13 2005

The Honorable Ted Stevens  
United States Senate  
522 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Stevens:

Thank you for your letter of June 9, 2005, in which you asked Secretary Johanns to consider the impact on milk prices in milk deficit States before deciding to cap the sales of producer-handlers in the Pacific Northwest and Arizona-Las Vegas milk marketing area. You expressed concern that such a cap could increase the price of dairy products. The Secretary has asked me to respond on his behalf.

The Department of Agriculture appreciates the importance of the issues discussed in your letter regarding the regulatory status of producer-handlers in Federal milk marketing orders. The comment period on the recommended decision closed on June 13. We have received many comments, along with yours, which will be considered thoroughly before a final decision is issued.

Thank you for your interest in the Federal milk marketing order program.

Sincerely,

/s/

Bill Hawks  
Under Secretary  
Marketing and Regulatory Programs

G. REICHERT  
DISTRICT, WASHINGTON  
COMMITTEE ON  
TRANSPORTATION  
COMMITTEE ON  
HOMELAND SECURITY  
COMMITTEE ON SCIENCE



**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-4708**

WASHINGTON OFFICE:  
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WASHINGTON, DC 20515-4708  
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FAX: (202) 225-4282

DISTRICT OFFICE:  
2737 78TH AVE., SE, SUITE 202  
MERCER ISLAND, WA 98040  
(206) 275-3438  
(206) 275-3437

June 10, 2005

Secretary Mike Johanns  
United States Department of Agriculture  
1400 Independence Avenue, SW  
STOP 9200-Room 1083  
Washington, DC 20250-9200

**35-4282958**  
**AMS**

Dear Secretary Johanns:

I am writing in opposition to the proposed amendments to U.S. Department of Agriculture regulatory orders that would affect producer-handlers in the Pacific Northwest and Arizona-Las Vegas market areas. As a United States Representative from Washington State, I am particularly concerned about the impact the amendments would have on two family-owned dairies in my state, on their employees and distributors and on thousands of customers who currently depend on them for dairy products. In a larger sense, I believe the amendments would reduce competition, harm consumers and set bad precedents for national dairy policy.

I understand that the "pooling and pricing" regulations were established in the 1930's to protect small dairy farms from being exploited by large processors which could potentially buy their raw milk at below-cost prices. At the same time it was established by Congress that "producer-handlers" – those dairy operations that process and market milk from their own cows on their own farms – would be exempted from the pooling and pricing provisions. It didn't make sense for producer-handlers to pay into a pool subsidizing other producers when they do not buy milk from any other dairy farms. It still doesn't.

Some have expressed concerns that producer-handlers have a competitive advantage because they are not "fully regulated." In fact, producer-handlers bear the risks of producing, processing *and* marketing their products – risks that fully regulated producers and processors do not bear. In addition, the three million pound-per-month threshold is really quite low, affecting those who are not in any position to "distort the market."

As a case study, I'd like to focus on Smith Brothers Farms, based in Kent, Washington, within my district. This 85-year-old family-owned dairy processes and markets milk from its own farm. This company delivers to 40,000 homes and 14 local school districts, as well as a few larger customers, such as Tully's Coffee, Matanuska Maid dairy in Alaska, and PCC Natural Markets. In providing fresh hormone-free milk for home delivery it fills a niche market that has been abandoned by the large processors.

Smith Brothers markets about six million pounds of milk a month, mostly Class 1 liquid milk products. Under the proposed amendments, it would have to essentially sell its milk into the pool at lower "blended" prices and buy it back at the higher Class 1 price. This paper transaction would cost the dairy more than \$1 million a year, essentially wiping out any profits.

I believe this regulatory change does not make sense and would be achieved at the expense of the last remaining independent family-owned dairies. In addition, by further consolidating the market, it will also drive up prices and eliminate choice for consumers. This is all-around bad policy.

Please reject the proposed amendments **Agricultural Marketing Service, 7 CFR Parts 1124 and 1131 [Docket No. AO-368-A32, AO-271-A37; DA-03-04B].**

Sincerely,

A handwritten signature in black ink that reads "D. Reichert". The signature is written in a cursive style with a long horizontal stroke at the end.

David G. Reichert  
Member of Congress

JUL 7 2005

The Honorable David G. Reichert  
U.S. House of Representatives  
1223 Longworth House Office Building  
Washington, D.C. 20515-4708

Dear Congressman Reichert:

Thank you for your letter of June 10, 2005, to Secretary Johanns, expressing your opposition to findings made by the Department of Agriculture (USDA) concerning the regulatory status of certain producer-handlers in the Pacific Northwest and Arizona-Las Vegas milk marketing areas. The Secretary has asked me to respond on his behalf.

USDA appreciates the importance of the issues discussed in your letter regarding the regulatory status of producer-handlers in Federal milk marketing orders. The comment period on the recommended decision closed on June 13, 2005. Please be assured that we will consider your comments carefully before a final decision is issued.

Thank you for your interest in the Federal milk marketing order program.

Sincerely,

/s/

Bill Hawks  
Under Secretary  
Marketing and Regulatory Programs

GORDON H. SMITH  
OREGON

COMMITTEE:  
FINANCE

COMMERCE, SCIENCE, AND TRANSPORTATION  
ENERGY AND NATURAL RESOURCES  
RULES AND ADMINISTRATION  
INDIAN AFFAIRS  
SPECIAL COMMITTEE ON AGING

# United States Senate

WASHINGTON, DC 20510-3704

May 25, 2005

05-4282468  
AMS

Mary Waters, Assistant Secretary  
for Congressional Relations  
U.S. Department of Agriculture  
213A Whitten Building, 1400 Independence Avenue S.W.  
Washington, DC 20250

Dear Assistant Secretary Waters:

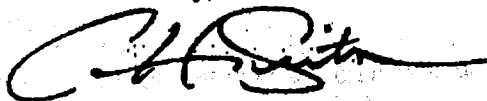
Please find enclosed a copy of a letter I recently received from Mr. Orville Roth, Chairman of Roth IGA Supermarkets, regarding his concerns with a proposed USDA rule imposing a huge tax on four independent family farms in the Pacific Northwest and Arizona to subsidize large dairy cooperatives and major producers.

Because I want to do everything possible to be responsive to the concerns and requests of my constituents, I would be grateful if you would give Mr. Roth's thoughts every possible consideration within the confines of the reviewing process.

If you wish to respond to this letter, please contact my Portland office at 121 SW Salmon Street, Suite 1250, Portland, OR 97204.

Thank you for your attention to this matter.

Sincerely,



Gordon H. Smith  
United States Senator

GHS:gs  
Enclosure

# Roth's

**Your Family Markets**

4895 Indian School Road, N.E. Salem, Oregon 97305  
Phone (503) 393-7684 FAX (503) 393-4456

May 18, 2005

The Honorable Gordon Smith  
United States Senate  
One World Trade Center  
121 SW Salmon St., Suite 1250  
Portland, OR 97204

Dear Senator Smith:

It has come to our attention that the United States Department of Agriculture (USDA) has proposed a rule that we believe would unfairly restrict the operation of family-owned dairies that produce and process their own milk products.

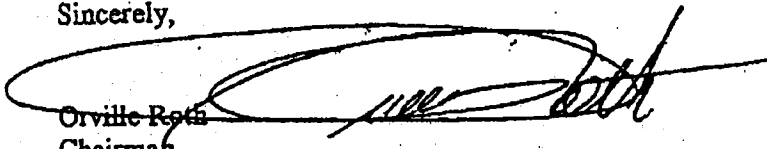
In a recommendation issued on April 13, 2005, USDA sided with large, powerful dairy interests including Dairy Farmers of America (the largest dairy cooperative in the nation) and Dean Foods (the largest milk processor in the nation). Here's what they plan: Tax four independent family farms located in the Pacific Northwest and Arizona over one million dollars each per year and give that money to others in the dairy industry. Consumers get stuck with higher prices while the big guys increase their profits.

Roth's has done business with Mallorie's Dairy of Silverton for over 42 years. Mallorie's has successfully competed with the large national dairy cooperatives for over 50 years. This proposed ruling would be a devastating, if not fatal, blow to a long-time Oregon family-owned enterprise.

The open period for comments ends on June 13, 2005. We are very troubled that USDA would enact rules that increase the price of milk to the consumer and that limit competition in the marketplace. Oregon prides itself on a state which supports small businesses, and we find this proposed ruling to be alarming.

Anything you can do to help our local dairy would be appreciated.

Sincerely,

  
Orville Roth  
Chairman

Silverton • Woodburn • McMinnville • Lebanon • Independence • Keizer • Stayton  
Salem (Lancaster, Vista, Sunnyslope, West Salem and Hayesville Center)



United States  
Department of  
Agriculture

Agricultural  
Marketing  
Service

1400 Independence Ave., SW  
Washington, DC  
20250

**JUL 24 2005**

The Honorable Gordon H. Smith  
United States Senate  
121 SW Salmon Street, Suite 1250  
Portland, Oregon 97204

Dear Senator Smith:

Thank you for your letter of May 25, 2005, to the Assistant Secretary for Congressional Relations. I have been asked to respond on behalf of the Assistant Secretary. In your letter, you requested that the Department of Agriculture (USDA) give consideration to comments sent in by your constituent, Mr. Orville Roth, of Roth IGA Supermarkets concerning the recommended decision on producer-handlers in the Arizona-Las Vegas and Pacific Northwest Federal milk marketing orders.

USDA appreciates the importance of the issues discussed in Mr. Roth's letter regarding the regulatory exemption of producer-handlers in Federal milk marketing orders. The comment period on the recommended decision closed on June 13. We have received many comments from other interested persons which will be considered thoroughly, along with Mr. Roth's comments, before a final decision is issued.

Thank you for your interest in the Federal milk marketing order program.

Sincerely,

/s/

Kenneth C. Clayton  
Acting Administrator  
Agricultural Marketing Service



LISA MURKOWSKI  
ALASKA  
MAJORITY DEPUTY WHIP

COMMITTEES:  
ENERGY AND NATURAL RESOURCES  
CHAIRMAN, SUBCOMMITTEE ON  
WATER AND POWER  
FOREIGN RELATIONS  
CHAIRMAN, SUBCOMMITTEE ON  
EAST ASIAN AND PACIFIC AFFAIRS  
ENVIRONMENT AND PUBLIC WORKS  
INDIAN AFFAIRS

# United States Senate

WASHINGTON, DC 20510-0203  
(202) 224-8888  
(202) 224-5301 FAX

510 L STREET, SUITE 550  
ANCHORAGE, AK 99501-1858  
(907) 271-3788

101 12TH AVENUE, BOX 7  
FAIRMANS, AK 99701-8278  
(907) 456-0233

P.O. Box 21847  
JUNEAU, AK 99802-1647  
(907) 586-7400

120 TRADING BAY ROAD, SUITE 360  
KENAI, AK 99501-7718  
(907) 283-6866

540 WATER STREET, SUITE 101  
KETCHIKAN, AK 99901-6378  
(907) 225-0880

851 EAST WESTPOINT DRIVE, SUITE 307  
WASILLA, AK 99554-7142  
(907) 376-7885

P.O. Box 1030  
311 WILLOW STREET, BUILDING 3  
BETHEL, AK 99559-1030  
(907) 543-1839

June 13, 2005

The Honorable Mike Johanns  
Secretary  
United States Department of Agriculture  
1400 Independence Avenue, SW  
Washington, DC 20250

35-4282934  
AMS

Dear Mr. Secretary:

I have been informed that the U.S. Department of Agriculture has announced a decision that recommends amendments to the Pacific Northwest and Arizona-Las Vegas federal milk marketing orders. Specifically, the recommended amendments include a cap of three million pounds on milk that is placed on the market by producer-handlers located in both milk marketing orders. Under the recommended amendments, if that cap is exceeded, it would subject a producer-handler to the pooling and pricing provisions of the appropriate milk marketing order noted above.

I understand that there are those who feel that producer-handlers located in either milk marketing order have a competitive advantage over other dairy producers. However, I strongly urge you to consider the effect such a change would have on milk deficit states, such as Alaska. It is very possible that this change could increase the price of dairy products in such states.

Sincerely,



Lisa Murkowski  
United States Senator

cc: Hearing Clerk, United States Department of Agriculture

June 17, 2005

The Honorable Lisa Murkowski  
United States Senate  
709 Hart Senate Building  
Washington, D.C. 20510

Dear Senator Murkowski:

Thank you for your letter of June 13, 2005, in which you asked Secretary Johanns to consider the impact on milk prices in milk deficit states before deciding to cap the sales of producer-handlers in the Pacific Northwest and Arizona-Las Vegas milk marketing area. You expressed concern that such a cap could increase the price of dairy products. The Secretary has asked me to respond on his behalf.

The Department of Agriculture appreciates the importance of the issues discussed in your letter regarding the regulatory status of producer-handlers in Federal milk marketing orders. The comment period on the recommended decision closed on June 13. We have received many comments, along with yours, which will be considered thoroughly before a final decision is issued.

Thank you for your interest in the Federal milk marketing order program.

Sincerely,

/s/

Bill Hawks  
Under Secretary  
Marketing and Regulatory Programs

June 4th, 2005

Honorable Michael Johanns  
Secretary of Agriculture  
1400 Independence Avenue Southwest  
Washington, District of Columbia  
20250

03-4283054  
AMS

Dear Mr. Secretary:

Our family have been customers of Smith Brothers Farms in Kent, Washington, for many years. They are a small independent dairy whose milk comes from their own cows. They provide a superior product at a competitive price and we are very satisfied with their service. We have no relationship with Smith Brothers Farms other than as their customers.

We understand that your Department proposes to assess Smith Brothers Farms for payments into a pool of funds created in the 1930s, supposedly to protect dairy farmers from having to sell to dairies at prices they considered too low. There is no reason for Smith Brothers Farms to be drawn into such a scheme. As stated, they process their own milk from their own cows. Such an assessment would confer no benefit on Smith Brothers Farms and would result in a price rise to its customers.

On the larger issue, why is the government meddling in the economics of the dairy industry at all? Its program is a relic of the 1930s, when numerous gurus proposed to remedy the supposed ills of the market economy. They gave us Mussolini's stato corporativo, Hitler's volksgemeinschaft, Stalin's kolkhozes and compulsory 'professional unions', and the NRA of Roosevelt II. Experience taught that such schemes reduce production, create scarcity and increase prices. The NRA was merely a licensed conspiracy to force prices higher than their market level.

It is curious that a proposal to further hamper the market economy should emanate from an administration committed to economic liberty. I urge you to reconsider this entire program and to endeavor to disentangle the dairy industry (and agriculture in general) from government, rather than increasing the latter's interference with people's business.

As consumers, we object to an assessment against Smith Brothers Farms for support of a program which is in neither their interest or that of their customers, and which would be tantamount to a fine imposed on them for conducting a successful independent business. Please let us know when hearings on this matter will be conducted in this area so that consumers may be heard.

Very truly yours

cc: Smith Brothers Farms

  
James J. Mason

1209 South Sunset Drive  
Tacoma, Washington

98465



United States  
Department of  
Agriculture

Agricultural  
Marketing  
Service

1400 Independence Ave., SW  
Washington, DC  
20250-0225

**JUN 22 2005**

Mr. James L. Mason  
1209 South Sunset Drive  
Tacoma, Washington 98465

Dear Mr. Mason:

Thank you for your letter of June 4, 2005, in which you asked the Secretary to consider the impact on milk prices and consumers before deciding the regulatory status of certain producer-handlers in the Pacific Northwest milk marketing area. You expressed concern that the proposed change in the regulatory status of some of these producer-handlers could increase the price of dairy products that they sell to consumers. The Secretary has asked me to respond on his behalf.

The Department of Agriculture appreciates the importance of the issues discussed in your letter regarding the regulatory status of producer-handlers in Federal milk marketing orders. The comment period on the recommended decision closed on June 13, 2005. We have received many comments, along with yours, which will be considered carefully before a final decision is issued.

Thank you for your interest in the Federal milk marketing order program.

Sincerely,

A handwritten signature in black ink, appearing to be "JRM" or similar initials.

John R. Mengel  
Acting Deputy Administrator  
Dairy Programs

# United States Senate

WASHINGTON, DC 20510-3704

June 2, 2005

FINANCE  
COMMERCE, SCIENCE, AND TRANSPORTATION  
ENERGY AND NATURAL RESOURCES  
RULES AND ADMINISTRATION  
INDIAN AFFAIRS  
SPECIAL COMMITTEE ON AGING

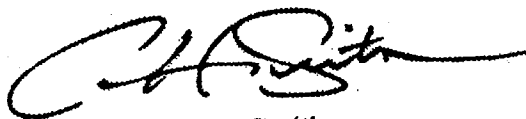
Mary Waters  
Assistant Secretary for Congressional Relations  
U.S. Department of Agriculture  
213A Whitten Building  
1400 Independence Avenue, SW  
Washington, DC 20250

Dear Ms. Waters:

Enclosed please find a copy of a letter I recently received from Mr. Richard W. Mallorie, President, Mallorie's Dairy Inc. regarding proposed regulatory changes to the Agricultural Marketing Service. Because I want to do everything possible to be responsive to the concerns and requests of my constituents, I would be grateful if you would give Mr. Mallorie's thoughts every possible consideration within the confines of the reviewing process.

Thank you in advance for your attention to this request.

Sincerely,



Gordon H. Smith  
United States Senator

GHS:jsr  
Enclosure

Copy w/o enc:

Richard W. Mallorie  
President  
Mallorie's Dairy Inc.  
PO Box 720  
Silverton, OR 97381

05-4282286  
AMS



# Mallorie's

Dairy, Inc.

P.O. Box 720 • Silverton, Oregon 97381 • Phone (503) 873-5346 • Fax (503) 873-2278

May 25, 2005

The Honorable Gordon Smith  
United States Senate  
404 Russell Senate Office Building  
Washington, D.C. 20510

Dear Senator Smith:

I am writing to enlist your help in opposing proposed amendments to U.S. Department of Agriculture regulatory rules that would have dire impacts on our 50-year-old family-owned business and negative impacts on the choice and price available to dairy consumers in the Northwest and beyond. As a Senator who has spoken out forcefully on behalf of small businesses in Oregon, your voice is needed on this important decision.

The proposed regulatory change (Agricultural Marketing Service, 7 CFR Parts 1124 and 1131 - Docket No. AO-368-A32, AO-271-A37; DA-03-04B) would affect "producer-handler" dairy operations that, like Mallorie's Dairy, process and market milk from their own dairy cows on their own farms. Although aimed at the producer-handlers in the Pacific Northwest and Arizona-Las Vegas areas, the proposed rule change would set a national precedent and have national implications. Its result, if approved, would be to further consolidate the industry, raise prices and limit choice for consumers.

#### Limiting Competition to Benefit the Big Players

The proposed regulatory change is not about health, food safety, quality, or environment; it is about money and limiting competition. It would require those producer-handlers who sell more than three million pounds of bottled milk on the market per month to pay substantial amounts of money into a pool of funds intended to subsidize other producers. (Three million pounds per month sounds like a lot, but many processors market much more than that. In the Northwest market alone, a total of 600 million pounds of dairy products are produced a month, making three million pounds only one 200th of the total.)

As you probably are aware, the federal funding pool, along with the price regulation that supports it was created in the 1930s as a way to protect small dairy farmers from exploitation by centralized processors who might buy their raw milk at unfair prices. It was also intended to insure an adequate supply of safe bottled milk to consumers. After all, cows can't be turned on and off to suit the market, so excess production would hurt small dairy farms that would be at the mercy of a few industrial processors. Likewise, milk shortages would harm consumers.

Since Mallorie's and other producer-handlers process only their own milk from their own cows, the USDA does not have the authority to regulate us for business

transactions in which we are not involved. We already carry the risk from production, processing and marketing. For this reason, we have always been exempt from this "pooling and pricing" regulation. Congress has upheld this exemption repeatedly since the 1960s. Never has Congress indicated the intent to regulate producer-handlers or even that the statute provides authority for USDA to do so.

The uniqueness of Mallorie's Dairy and other producer-handlers has not changed. The only reason for imposing the regulation on us now is to prevent any of us from providing competition to the large special interests in the modern dairy industry.

#### Who's Behind the Regulatory Move?

Two of the largest players in the dairy industry are among those backing the change that would penalize Mallorie's and other producer-handlers. These are Dean Foods, the largest dairy processor in the nation, and Dairy Farmers of America, the nation's largest raw-milk marketer. Dean Foods controls about 35 percent of the fluid milk processed in the U.S. In some markets, it controls as much as 80 percent. Dean Foods markets its milk under the 30 different brands of the local and regional dairies it has bought up. With 120 plants, the food giant employs 29,000 people.

Dairy Farmers of America (DFA) controls the sale of one-third or more of America's raw milk and is by far the most powerful of the nation's dairy cooperatives.

Dean Foods and DFA joined with other large interests in backing the regulatory change that would radically redefine the way the four affected producer-handlers in the Pacific Northwest and Arizona do business. All three of the affected dairies in Washington and Oregon - Smith Brothers (Kent, Washington), Edaleen Dairy (Lynden, Washington) and Mallorie's Dairy (Silverton, Oregon) - are small, family-owned enterprises serving niche markets.

#### Unique Products and Services

Mallorie's Dairy has been a family-owned dairy since 1954, and provides pure, fresh, artificial-growth-hormone free milk to independent grocery stores and distributors throughout western, central, and southern Oregon.

Producer-handlers fill niches that are not filled by the large processors. For example, because Mallorie's processes our own milk, from our own cows, we control the whole process and the identity of the milk. We also provide reasonably priced dairy products to countless small businesses too small to be worth the time of the large processors.

#### Unique Risks

The large dairy interests that have backed the regulatory change at the USDA have maintained that it is a matter of "leveling the playing field." But that is simply not true. Producer-handlers like Mallorie's face risks that stand-alone dairy farms and processors don't face.

Mallorie's must process all the milk that comes from our farm and we sell only bottled fluid milk. If we have a surplus of milk and don't want it to go to waste, we must sell it for whatever we can get for it, even if that's well below our costs.

Most other dairy farms belong to large cooperatives through which they can sell all the raw milk that they produce at a price fixed by the USDA. They are guaranteed a certain price no matter what is happening in the market.

Likewise, large processors can regulate how much milk they buy, depending on demand, and they generally make a broad range of products, from cheese to dried milk to whey products.

### A Valued Tradition

Even though we face unique risks, we feel that our business is valuable because of the unique services and products we provide our customers. We provide jobs for 85 employees, as well two independent distributors who also deliver our milk. We have the satisfaction of knowing that we are working in a family business with a 50-year tradition of dairying, and that we offer only the freshest, purest milk to our customers. We are a positive force in our community, and a valued partner in the dairy industry as a whole.

Without small producer-handlers like Mallorie's, consumers would have reduced choices. If Mallorie's were forced to pay into the subsidy pool, this new cost would be greater than our annual profits. To stay in business, Mallorie's would be forced to make drastic changes. We could downsize to stay below the three million pound cap by laying off employees and dropping customers. We could either sell our milk to the large processors, or sell our farm and become exclusively a processor. Or we can try to continue to operate as we always have, pay the pooling charge and try to raise prices to our customers. We would not like to choose any of these options because we believe that all are harmful to our customers, depriving them of the products and services they value.

### One More Step in Consolidation, Limiting Choice

Although proponents of the regulatory change have argued that produce-handlers have a competitive advantage, the USDA's own reports show that their numbers in the Northwest have declined from 73 in 1975 to 11 in 2000 (including those who do not sell more than three million pounds per month). Despite proponent claims that producer-handlers pose a risk to the Federal Order, Market Administrator data confirms that during the five-year period from 2000 through 2004 producer handler Class I sales (fluid milk) decreased by 14 percent. Also, the nine producer-handlers in the Pacific Northwest control only 4% of the market. Nationwide the number of producer-handlers has dropped from over 450 in the 1960's to less than 60 today. This data clearly shows that rather than being a predator in the Federal Order, producer-handlers are an endangered species!

Meanwhile, the large producers and processors have consolidated and become progressively bigger. Four regional cooperatives merged to form DFA in 1997. In 2001, the merger of Dean Foods with Suiza Foods brought it to its current colossal size.

With more consolidation among the big players and fewer independent dairies to fill niche markets, consumers are facing less choice and higher prices. The last remaining independent, family-owned dairy farms are under direct attack.

Senator, we need your help to keep this tradition alive.



The proposed USDA amendments were based on a public hearing begun September 23, 2003, in Tempe, Arizona, reconvened in Seattle on November 17, 2003, and concluded in Alexandria, Virginia on January 23, 2004. They were published in the Federal Register on April 13, 2005, beginning a comment period that ends June 13.

We respectfully request that your office make official comment to the USDA opposing the amendments (Agricultural Marketing Service, 7 CFR Parts 1124 and 1131 - Docket No. AO-368-A32, AO-271-A37; DA-03-04B) before June 13, 2005. In addition, a direct message sent from your office to the Agriculture Secretary expressing your strong concerns about this issue would be extremely helpful. We know this is asking a lot, given your busy schedule, but this is an issue not only of basic fairness but a major anti-consumer move on the part of big agribusiness.

We would be happy to provide you with more information or to discuss this issue further in person, should you want to do so. Thank you in advance for your efforts.

Sincerely,



Richard W. Mallorie,  
President

Cc: District Office



United States  
Department of  
Agriculture

Agricultural  
Marketing  
Service

1400 Independence Ave., SW  
Washington, DC  
20250

*June 14, 2005*

The Honorable Gordon Smith  
United States Senate  
404 Russell Senate Office Building  
Washington, D.C. 20510

Dear Senator Smith:

Thank you for your letter of June 2, 2005, to the Assistant Secretary for Congressional Relations, Congressional Relations asked me to respond on their behalf. In your letter, you requested that the Department of Agriculture (USDA) give consideration to comments sent in by Mr. Mallorie concerning the recommended decision on producer-handlers in the Arizona-Las Vegas and Pacific Northwest Federal milk marketing orders.

USDA appreciates the importance of the issues discussed in Mr. Mallories letter regarding the regulatory exemption of producer-handlers in Federal milk marketing orders. The comment period on the recommended decision closed on June 13. We have received many comments from other interested persons including other comments from Mr. Mallorie. His comments, together with his letter to you, will be considered thoroughly before a final decision is issued.

Thank you for your interest in the Federal milk marketing order program.

Sincerely,

*/s/*

Kenneth C. Clayton  
Acting Administrator