

John H. Vetne

Attorney at Law

11 Red Sox Lane
Raymond, N.H. 03077-4266

Telephone (603) 895-4849
cell (978) 618-8192
fax (603) 895-4849

johnvetne@comcast.ne

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Dana H. Coale, Deputy Administrator
Dairy Programs, AMS, USDA
USDA-AMS-Dairy Programs
STOP 0231 - Room 2971
1400 Independence Avenue, SW
Washington, D.C. 20250-0225

Via E-Mail Only: amsdairycomments@usda.gov
dana.coale.@usda.gov; gino.tosi@ams.usda.gov,
Kate.Fisher@ams.usda.gov

RE: Alternative Proposal in Response to "Invitation to Submit Proposals..." from AMS Dairy Programs, February 6, 2009, and prehearing information session of March 20, 2009

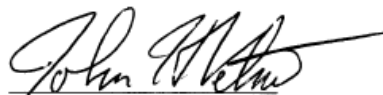
Dear Deputy Administrator Coale:

On behalf of Mallorie's Dairy, Inc., a producer-handler located in Silverton, Oregon, attached is a modified alternative proposal on producer-handler issues, responding to requests for a national hearing, pursuant to 7 C.F.R. §§ 900.3 and 900.22, by NMPF and IDFA, and your invitation of February 6, 2009. Country Morning Farms (Othello, Washington), and Nature's Dairy (Roswell, NM), join with Mallorie's Dairy as co-proponents of this proposal.

In response to questions raised during the information session, and by interested persons in telephone and email dialogue, the proposal is modified slightly to provide a maximum pool-exempt volume of Class I milk at 3 million pounds per 30-day month, with allowance for up to 10% additional own-farm production for non-Class I balancing.

Additionally, Mallorie's requests that the proposal be included in any notice of hearing that would affect producer-handler qualification conditions, whether or not NMPF's proposals to eliminate producer-handlers entirely are included in a notice of hearing.

Very truly yours,



Ec: Charles Flanagan, Malorie's Dairy
Gerald Gilbert, Country Morning Farms
Jeff Sapp, Nature's Dairy
Interested parties.

Alternative Proposal by Mallorie's Dairy, Inc. (Silverton, Oregon),
Country Morning Farms (Othello, Washington), and Nature's Dairy (Roswell, NM).

I Add a new section 1000.10 to 7 C.F.R. 1000, General Provisions of Federal Milk Marketing Orders, or a new section _____.10 to each individual milk marketing order, as follows:

xxxx.10 Pool-exempt own-farm production of Distributing Plants.

Any handler operating a plant subject to regulation as a pool distributing plant, as defined in section _____.7 of any milk marketing order, or as a partially regulated distributing plant under any milk marketing order, may make a one-time election to exempt the handler's own farm milk production from the volume of producer milk receipts eligible to participate in the market-wide pool as "producer milk," and otherwise subject to producer-settlement fund payment obligations under sections _____.71 and _____.72 of the milk marketing order, or section 1000.76(b) of the General Provisions. Such election and exemption shall be subject to the following conditions and limitations:

- (a) Volume limitation for pool-exempt own-farm milk production. The volume of own-farm milk production that a distributing plant handler may elect to exempt under this section shall, for any month, be the lesser of -
 - (1) A monthly volume based on the daily average milk production marketed from the handler's own farm(s) during any three consecutive months of production, as designated by the handler and subject to verification by the market administrator, from January 2007 through February 2009, or
 - (2) A daily average production of 110,000 pounds times the number of days in the month to which the exemption may apply, provided that the volume of packaged fluid milk products distributed on routes from such pool-exempt production shall in no event exceed a daily average of 100,000 pounds.Own-farm production of the handler in excess of the exempt volume shall be subject to producer-settlement fund payment obligations in the same manner as milk produced by any dairy farmer.
- (b) Limitations based upon prior operations of handlers eligible elect exemption for own-farm milk production. Handlers with own farm production are not eligible to elect pool exemption for such production under this section unless the handler operated a distributing plant supplied with milk from his own farm(s) during at least three consecutive months during the 24-month period immediately preceding the effective date of this section, and the distributing plant was either (i) a producer-handler plant, (ii) an exempt plant, or (iii) a non-pool plant during those months.
- (c) Limitations based upon common ownership in the handler's plant and farm facilities. As used in this section, "own farm" means any dairy farm(s) of the handler that is owned by the same person or persons who own and operate the handler plant facility, and their ownership in the farm(s) is at least 95 percent identical with their ownership in the handler. Additionally,
 - (1) Owners of the handler and associated producer shall not exceed 10 individual persons or owners of equitable interest in the handler or producer business entity,
 - (2) For purposes of this section, ownership held by members of a family shall be considered single ownership by one person. Members of a family for purposes

of such single ownership include only: a spouse, a former spouse, and persons of lineal consanguinity of the first or second degree or collateral consanguinity to the fourth degree, and their spouses (or former spouses), and includes an adopted child the same as a natural child and kindred of the half blood equally with those of the whole blood of the owner(s).

- (3) Property pledged or hypothecated in any manner to others shall nevertheless be considered "owned" if equitable ownership with management and control remain with the persons operating the plant and associated dairy farm(s).
- (d) Date upon which, and manner in which, the one-time election must be exercised. The market administrator shall provide timely notice in writing to handlers with own farm production who are or may be eligible to elect a pool exemption for such production under this section. The election for pool-exempt own farm production shall be exercised by an eligible handler by giving notice of election in writing to the market administrator, which notice shall contain facts upon which the handler claims to qualify under this section , on or before –
 - (1) Thirty days after the effective date of this provision, or
 - (2) For a handler with own farm production on the effective date of this provision, but without route disposition in any federal milk marketing area for twelve months preceding the effective date, thirty days following first route disposition in the marketing area, or fifteen days after notice by the market administrator, whichever is later.
- (e) Applicability of minimum classified prices to handlers with pool-exempt own farm milk. Exemption from payment obligations in §§ _____.71 and _____.72 for own farm milk under this section shall not constitute an exemption for own farm milk from compliance with minimum classified priced price obligations. For payment purposes, the handler will be deemed to have paid to its own farm a price for pool-exempt own farm milk equal to its butterfat and skim milk (or skim components) value, as provided by calculations for "handler's value of milk" in §____.60 of the marketing order.
- (f) Waiver or loss of eligibility for pool-exempt own farm production. The own farm production of any handler
 - (1) who has failed to make the election provided by this section,
 - (2) who, after making the election, fails to conform with any limitation or requirement for such exemption, or
 - (3) who has given notice in writing to the market administrator that it no longer wishes to exempt its own-farm production from the pool,shall be regulated, pooled, and priced in the same manner as milk produced by any dairy farm not eligible for pool exemption, and the handler shall not thereafter be eligible to exercise the exemption provided herein.

II. Amend section _____.60 of each order by adding a new subsection to the end thereof to read as follows (this would be new section 1124.60(j) in the Pacific Northwest Order):

(__) For purposes of calculating the producer price differential in section _____.61, or a handler's obligation to or from the producer settlement fund in sections 71, 72, and 76, the value and volume of pool-exempt own-farm milk of the handler qualified for exemption pursuant to section _____.10 shall not be included as part of the "total value" of milk, "total hundredweight"

of producer milk, or “total pounds” of milk components wherever those terms (or equivalent terms) are used in or incorporated by sections 61 and 71 through 76.

III. Amend 7 C.F.R. § 1000.14 (Other source milk) by adding a new subsection (d) thereto, to read as follows:

(d) Receipts of fluid milk products and bulk fluid cream products from any dairy farm eligible to market pool-exempt own-farm milk pursuant to § _____.10, except with respect to such receipts by the distributing plant owned in common with the farm as described in § _____.10.