

United States Senate

WASHINGTON, DC 20510-3704

June 2, 2005

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

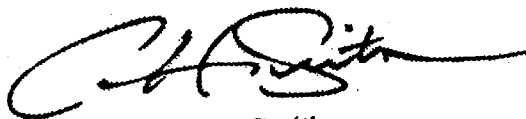
Mary Waters
Assistant Secretary for Congressional Relations
U.S. Department of Agriculture
213A Whitten Building
1400 Independence Avenue, SW
Washington, DC 20250

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.
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AMS



Mallorie's

Dairy, Inc.

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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