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March 13, 2009

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

VIA FAX & E-MAIL & OVERNIGHT MAIL

RE: Invitation to Submit New Proposals at Public Hearing Concerning Producer-Handlers of Milk

Dear Deputy Administrator:

Enclosed please find a Proposal for inclusion in any Notice of Hearing resulting from the Proposal of the National Milk Producers Federation and International Dairy Foods Association.

It has come to our attention that the National Milk Producers Federation will amend its Proposal to provide for a 3,000,000 pound exemption for Producer-Handlers.

This Proposal is submitted without waiver of our claim that the Secretary lacks regulatory authority over own farm milk processed by the farmer and sold for the first time from a plant. It is our claim that such authority is lacking generally and on the facts obtaining.

It is further submitted without waiver of our Claim, that without a meaningful exemption, Producer-Handlers are unable to pay the assessment without having severe financial penalty of a size that would force Producer-Handlers out of business, facing unpaid debts and loss of opportunity to market farm milk.

It is further submitted without wavier of our claim that under the Small Business Act the economic ruin attempted by competitors use of government to put a competitor out of business is violative of law and in particular the Small Business Regulatory Act (5 USC Sec. 601) and the Sherman and Clayton Act Anti-Trust Provisions.

The Galleries, Syracuse, NY 13202; Telephone (315) 474-5356; Fax (315) 474-5451

Very Truly Yours,

John Benjamin Carroll, P.C.
JBC/mds
Enc.

**UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE**

**PROPOSAL OF THE NEW ENGLAND PRODUCER-HANDLERS
ASSOCIATION INC; WILLARD J. STEARNS & SONS d/b/a MOUNTAIN**

The Galleries, Syracuse, NY 13202; Telephone (315) 474-5356; Fax (315) 474-5451

**DAIRY, STORRS, CONNECTICUT; MONUMENT FARMS, INC.,
WEYBRIDGE, VERMONT AND VARIOUS OTHER PRODUCER-
HANDLERS AND EXEMPT HANDLERS:**

Subject to the reservations and non-waivers contained in the letter accompanying this Proposal the above Proponents propose as an alternate Proposal to the pending Proposals that:

**ORDER NO. 1 BE AMENDED TO PROVIDE FOR A 3,000,000 POUND
EXEMPTION FOR OWN FARM MILK RECEIVED AT THE FARMER'S PLANT,
PROCESSED AND SOLD AS CLASS I.**

The 3,000,000 pound exemption would have minimal impact on the Regulatory program. It is needed to provide flexibility, reduce market administrators cost, protect the public from oligarchical monopoly, reduce administrative cost, allow Producer Handlers to conduct proper business planning in the operation of their business, it is also in conformance with the Secretary's prior rulings in other markets.

Order No. 1 statistics indicate that Producer-Handler milk is less than 1% of all class I sales. There are no Producer-Handlers who have 500 employees and they are therefore a small business entitled to the Small Business Regulatory Act protections. They are also direct competitors at retail of the Proponents of the original proposal to restrict their business competitive ability. They have no net monies of the size needed to make payment. They have incurred costs that more than absorb any assessment resulting from assessment. It is the claim of the Producer-Handlers that the Secretary is being used for anti-competitive purposes. It is also the claim of the Producer-Handlers that should they lose the exemption, they would be forced out of business; that the Secretary lacks authority to wreck such ruin on an independent business man.

This proposal would conform Order No. 1 to provisions to previous volume findings of the Secretary and to Congressional Policy. It has the advantage of settling an otherwise unsettled condition, so that long term planning can be made by Producer-Handlers. It has minimal or no effect on other parties.

The above proposal has the advantage of reducing, if not eliminating, market administrator time and the Secretary's time and cost.