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Hearing Clerk
STOP 9200 – Rm. 1083
U.S. Department of Agriculture
1400 Independent Avenue, SW
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Re: *Agricultural Marketing Service, 7 CFR Parts 1124 and 1131*
[Docket No. AO-368-A32, AO-271-A37; DA-03-04B]

Dear Clerk:

We write this letter to oppose the Department of Agriculture's recommendation that it modify the producer-handler definitions of the Pacific Northwest Milk Marketing Order to limit producer-handler status to those entities with route disposition of fluid milk products of less than 3 million pounds per month. We believe that the reasoning behind the rules change as set out at 70 FR 19635 et seq. does not comport with the requirements contained in the Agricultural Marketing Agreement Act of 1937 [AMAA], 7 USC 601-674.

The finding of the committee reviewing the proposed changes concludes that producer-handlers with more than 3 million pounds of route disposition per month in the Pacific Northwest Region were "the primary source of disruption to the orderly marketing of milk." 70 FR 19654. As a result of this conclusion, the committee found that "this disorder is evidenced by significantly inequitable minimum prices that handlers pay and reduced blend prices that dairy farmers receive under the terms of each area's marketing order. Accordingly, producer-handler status under the Pacific Northwest * * * [order] should end when a producer-handler exceeds 3 million pounds per month of in-area Class I route disposition." *Id.*

While it is true that market disorder is a major concern of the AMAA, the AMAA requires that the Department of Agriculture take additional factors into consideration when establishing rules and regulations touching upon the marketing of agriculture commodities. 7 USC 601-674.

First, the AMAA requires that one justification for intervening in the market to regulate an agricultural commodity, such as milk, is to ensure that the value of "agricultural assets" is preserved. 7 USC 601. The proposed changes to 7 CFR 1124 have the potential to destroy the value of agricultural assets built up over time and through hard work and sizeable capital investment by producer-handlers. These

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investments were made by producer-handlers conducting themselves within the current regulatory scheme created by the Department of Agriculture and which the new regulations threaten to upset.

Second, the AMAA only envisions market disorder as one of several reasons to intervene in the market. 7 USC 602. There are other factors that the Department should take into account when making any regulatory decision. One of these additional factors is consumer protection. 7 USC 602(2).

The AMAA, in fact, envisions consumer protection in a number of ways. First, the statute requires the Department of Agriculture to correct any outrageous or overly high prices in order to protect consumer pocketbooks, but also requires that the Department of Agriculture make these corrections by "gradual" methods in order to balance consumer protection against marketing needs. 7 USC 602(2)(a). During testimony before the committee, many producer-handlers stated that a large portion of their sales came from niche markets that are underserved by fully regulated handlers. *See*, for example, 70 FR 19648 and 19650. The sudden imposition of the 3 million pound per month limit on producer-handlers has a great likelihood of disrupting supplies to consumers in these niche markets. Therefore, the planned rule change by the Department of Agriculture contradicts this statutory directive.

The proposed rule will, in effect, raise the minimum price the producer-handlers exceeding 3 million pounds per month must charge their customers. That is, they will be required to charge the federally-established blend price even where a lower price would maintain them as profitable enterprises. This result arguably goes against the provision in the AMAA located at 7 USC 602(2)(b). This provision states that the Department of Agriculture cannot authorize any "action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish * * *." While the proposed rule does not raise prices above the federal blend price, it does bring producers who were selling milk below the price up to that price. By raising the price of all milk, this prejudices consumers who, prior to the implementation of the rule, would have been able to secure their milk at a lower price.

By ignoring consumer economic factors that the Department is required by the AMAA statute to consider, the Department of Agriculture shows that it is more interested in assisting conglomerates and industrial dairy cooperatives – such as the Kroger companies and the Dairy Farmers of America (DFA) and its political lobbyists – to seize an ever greater market share than they already have. The DFA has, in fact, been implicated in market manipulations of cheese prices in a December 30, 2004 Chicago Tribune story written by Andrew Martin. If such accusations are true, supporting the DFA and its unfair market manipulations by removing producer-handlers who can act as a counterweight to that manipulation gravely prejudices consumer financial rights.

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In fact, in several regional markets a monopsony of a pooled producer cooperative will result if the proposed rule is put into force. *See* 70 FR 19648 to 19649. A market where a single buyer controls the disposition of the entire milk supply is a much more disorderly market than one in which there are a handful of producer-handlers, and is likely to result in higher prices to consumers. By encouraging the formation of regional monopsonies, the Department of Agriculture violates the requirements of 7 USC 601 and 602 that it abate market disorder.

In fact, contrary to the Department of Agriculture finding that producer-handlers are a disruptive force in the milk market, producer-handlers are an increasingly small market force. For instance, the number of producer-handlers in the Pacific Northwest market order has declined from 73 in 1997 to 11 in the year 2000. *See* 70 FR 19649. This rapid and catastrophic decline in the number of producer-handlers shows starkly that producer-handlers do not have any unfair or overwhelming market advantage as compared to pooled producers that are currently subject to Department of Agriculture regulation.

In conclusion, neither the testimony presented at the hearing in support of these rules changes nor the statutory authority for making these rules supports the finding of the Department of Agriculture that producer-handlers that exceed more than 3 million pounds of milk production per month are somehow disruptive to the overall milk market and therefore should be subject to increased regulation.

The proposed rules changes are unstatutory and inequitable.

Sincerely,



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