

**FTS USDA OFFICE OF COMMUNICATIONS**

**March 20, 2009  
7:30 am CT**

Coordinator: Welcome callers; thank you for standing by. Today's conference is being recorded, if you have any objection you may disconnect. Speakers have open lines. Participants will be on listen-only throughout today's conference. Now the information session will begin, you may begin.

Dana Coale: Thank you. I'd like to welcome everyone to USDA to participate in our pre-hearing information session. This is an opportunity for all of us to gain a better understanding of the proposals that have been submitted to the Department regarding the issue of producer/handlers and exempt plans.

We truly do appreciate everybody taking the time to either come physically here in Washington or to connect with us via the telephone. We are working to ensure that the process is as transparent and open and inviting to everyone as we can make it.

At this time the pre-hearing information session, again, is only to understand the proposals that are presented. The Department has not made a determination as to whether or not this proceeding will be conducted to a formal rule-making hearing at this point. We will be analyzing the information

presented following this session and then the Department will make a determination.

Before we get started today I will introduce myself. For those of you not in the room and those here who I'm not familiar with, my is Dana Coale and I am the Deputy Administrator of Dairy Programs within the Agricultural Marketing Service.

We have several other people from Dairy Programs who are assisting with the meeting today and they will be more than helpful if you need anything. These individuals are Erin Taylor and Richard Cherry in the back of the room and Kate Fisher in the front of the room.

We also have two individuals, if you have any questions that you would like to have asked they need to be funneled to Jack Rower and Cliff Carman. There'll be a detailed explanation of how this proceeding will be handled and the two gentlemen sitting at the front table on behalf of USDA will be making that explanation in a little bit.

These individuals are Gino Tosi with the Order Formulation branch in Dairy Programs and John Mengel, Chief Economist with Dairy Programs. I'd also like to take this time to thank Kerry and Mansey and Leslie.

These are individuals in our operations crew that are making all of the combinations of technology work. Leslie is the great voice that you're hearing through the ceiling for those of us here and through your phone lines for the rest of you. And Mansey and Kerry are in the room here so we do appreciate you helping us pull this off.

Real quickly I want to go through the order that we will be hearing from individuals today. We will start with the National Milk and IDFA proposal.

Then we will be hearing from, over the phone, Hatchland Farms, Homeland Creamery and Maple View Farms, Dunajski Dairy, the Wisconsin Department of Agriculture and Trade and Consumer Protection, Shatto Farms.

In person we will have the New England Producer-handler's Association. Via the phones then it will be Cooper's Hilltop Farm, Seven Doves Dairy and Creamery via phone, Mallorie's Dairy via phone. Then we will have in present the Pennsylvania Association of Milk Dealers, Select Milk Producers, Continental Dairy Products, the American Independent Dairy Alliance. W

We'll hear again from National Milk Producer's Federation and then via the phone we will have the New Hampshire Department of Agriculture and Weber's Farm Store.

At this time it's my pleasure to turn it over to Gino Tosi who will be conducting and leading this information session. One other thing before I forget for those of you on the phone line when it is your opportunity to speak you need to make certain that you speak very clearly into your phone line and for all of the individuals present here when you are asked to speak you need to make certain that your microphone is turned on and that it is very close to your mouth so that the people who are listening via the phone can hear clearly.

This entire session is being recorded, it's being Webcast and it will be available on our Internet site after the proceeding is over with if you wish to re-listen to any section of the information session. So with that, Gino, thank you.

Gino Tosi: Thank you Dana. I'd like to welcome everyone to our pre-hearing information session. We last had a session like this back in December of 2006 in preparation for the hearing that we held on the Class 3 and Class 4 pricing

formula. So those of you that attended that session have a pretty good idea how this session here will proceed.

I want to emphasize a few things: today is not a hearing. The purpose - thank you - the purpose of today's information session is to, one, help proponents prepare clear and concise arguments in support of or in opposition to proposals submitted to consider changes to the producer-handler and exempt plant provisions in all federal milk marketing orders.

Another purpose is that it provides all proponents the opportunity to clarify the intent and what they think the effects of the proposals if adopted would have. And importantly that we understand - the Department understands your proposal.

The information session will not be used to challenge the validity of proposals or argue the merits or lack thereof with the proposals. The proceedings on the information session here today are not subject to ex parte rules and what is said and what transpires here today will not become part of the official record in the event that we have a hearing and a formal rulemaking proceeding.

All proponents present today and those who are joining us by phone will have the opportunity to present a brief description of their proposal or proposals, each proponent will be asked questions as necessary to clarify the intent of their proposals and only Mr. Mengel and I may question the folks who are participating in the session.

And if anyone in the audience does have questions that they would like to have asked they may submit them to either Cliff Carman or Jack Rower and we'll determine if they're appropriate for the purposes of what we're trying to accomplish here in today's session.

The proposals that we're going to have presented to us today were requested in a notice published on Dairy Programs' Internet site on February the 6th 2009. And that notice originally set a deadline for additional proposals of March 9, 2009. On March 6 we also published on our Internet site that the deadline for additional proposals had been extended to March 16.

Following today's session proponents will have until Wednesday, March the 25th to revise proposals. Please submit those revisions in the same way that you sent in your proposals; we'd prefer that by email. And as a result of today if anyone desires to withdraw their proposal let us know that as well.

We ask that any requests for data to be prepared by the Department for possible use in a hearing be done as soon as possible. According to our rules of practice your request for data must be made at least 10 days prior to a hearing if we've given less than 15 days notice for the hearing.

If we're giving less than 15 days notice we ask that any request for data be submitted at least three days prior to the beginning of the hearing. And any requests for data after that date may not be able to be honored.

We've received many requests for data to date, for example we have published some of that data as we've been able to put together lists and things that some people have asked for already up on our Dairy Programs' Internet site. And any requests for data that's prepared for any group or individual will be made public.

And with that we can begin. I want to thank Roger Cryan and Bob Yonkers from IDFA and Roger Cryan from the National Milk Producers Federation. We would like to have the proposals presented here today in the order in which we received them. And both National Milk Producers and IDFA submitted proposals that were essentially identical.

And with that if Roger and Bob if you'd like to begin.

Roger Cryan: Thank you, Gino. My name is Roger Cryan. I'm the Vice President for Milk Marketing and Economics at the National Milk Producers Federation. NMPF represents dairy farm co-ops whose members are three-fifths of the country's 60,000 commercial dairy farmers and a similar share of US production including many, many small farmers.

In January NMPF and IDFA, the International Dairy Foods Association, jointly submitted two proposals to eliminate the producer-handler provision and to expand and qualify the size-based exempt plant provision in every federal milk marketing order.

Those two proposals would more fairly exempt small businesses and end an unjustified loophole for larger ones. We submitted an additional proposal, apparently I will speak about that later in the program since we're listed in the queue for additional proposals.

Regarding the elimination of the producer-handler provisions the special status of producer-handlers was intended to avoid the regulation of small farms that often bottled their own milk and it goes back to the 1930s. Today this provision is causing disorderly marketing due to its exploitation by some very large producer-handlers who compete explicitly on the basis of the pricing advantage that that special status gives them.

This advantage is up to 15 cents a gallon which is enough to compete - which is enough to affect competitive marketing in a federal milk marketing order. This exploitation of a small business provision by large businesses hurts more than anyone else the many small producers who serve federal order markets without the scale to exploit this provision themselves.

We also believe that the organization of the string of medium-sized producer-handlers could similarly disorder marketing. So our proposal - this proposal - it completely eliminates the producer-handler provisions which would require producer-handler plants to either qualify as exempt plants or to become fully or partially regulated distributing plants as appropriate and to participate in federal order pools.

We've requested data from the USDA that will help define the scale and nature of this program at the hearing.

Regarding the definition of the size-based plant exemption, which is an independent proposal submitted concurrently with the other one, today any plant with less than 150,000 pounds in monthly Class 1 sales is exempt from federal order regulations.

Given the growth in average farm sizes and the growing economies of size in milk processing it is reasonable to increase this limit. Our proposal would expand the current exemption for small plants to a total of 450,000 pounds of Class 1 sales per month and this would exempt, based on USDA's numbers, 30 to 35 plants that are now regulated or partially regulated as well as all but the 10 or 15 largest current producer-handlers based on USDA data.

Plants this small cannot and do not compete with large modern plants on price alone with or without the pricing advantage by producer-handler status. This proposal would also require that the plan only sell - sell only uniquely branded milk in order to maintain its exemption. That is to say they could sell only branded or uniquely associated with their own operation.

This is intended prospectively to preempt the business model for example in which an integrator acquires - sells milk - large milk from a string of such

smaller producer-handlers and sells them to large customers in order to exploit a pricing advantage.

We've proposed this concurrently with our proposal to eliminate the producer-handler provisions because the principle of raising the limit is sound and it stands alone but the coincidence of the two proposals, of the two changes, should help mitigate the regulatory impact of eliminating the producer-handler provision.

And before I begin answer questions - before Bob and I begin answering questions I would point out that this is tempered by the additional proposal which we are presenting later according to the agenda that Miss Cole has laid out.

Gino Tosi: Bob, did you have any statement that you'd like to make?

Bob Yonkers: No, Roger has made our preliminary statement for both of us.

Gino Tosi: Okay, thank you. Just to be clear for everyone your proposal seeks to eliminate the producer-handler provision in all federal milk marketing orders.

Roger Cryan: That's correct.

Gino Tosi: Okay.

Roger Cryan: The first proposal does.

Gino Tosi: The first proposal. Thank you. And with regard to the exempt plant provision you want to see that limit raised from 150,000 pounds per month of Class 1 sales or route distribution to 450,000 pounds per month?



Roger Cryan: That's correct. That's correct.

Gino Tosi: Those are the only questions I have. John, did you have anything?

((Crosstalk))

Gino Tosi: That's okay, right. You have any?

John Mengel: Yeah.

Gino Tosi: Okay.

John Mengel: Roger...

Gino Tosi: Okay.

John Mengel: Roger could you spend a little more time or could you explain again the unique branded aspect of this proposal.

Roger Cryan: The idea with that is that rather than a producer-handler for example bottling a brand that is (unintelligible) if there's a brand that a large chain store is selling and they go out and they acquire milk - bottled milk with their store brand so say Super Store Incorporated milk brand, that this isn't set up in a way that it - a simple juggling operation at the end of the, you know, next to the milking parlor can produce as low cost a, you know, just one particular type of milk to help supply a much larger chain.

That it's not done in a way that is aimed at low cost sales to undercut the price. The idea is that the producer-handler is undercutting price on a commodity type milk product then that producer handler is exploiting the producer-handler exemption in a way that wasn't really intended.

Bob Yonkers : If I could add, John, this is part of the size-based exemption not just for producer-handlers; it's any small handler that's below the threshold in our proposal; it's 450,000 pounds for any plant whether it's a producer-handler or not a producer-handler. But it's so a string of those could not be put together by a customer who could contract with a number of those smaller plants all to produce the same branded produced and therefore have a much larger volume than the size-based exempt limit is intended.

John Mengel: Thank you.

Gino Tosi: With that presentation - I'd just like to ask a couple more things - would both of your organizations be prepared in the event that we had a hearing to represent your proposal at that hearing?

Roger Cryan: Yes, National Milk would.

Bob Yonkers: And yes, I will be testing on behalf of IDFA if a hearing is held.

Gino Tosi: And you do realize that at a hearing everyone is subject to cross-examination especially by folks that may not agree with your positions?

Roger Cryan: Yeah, we've both done that before.

Bob Yonkers: Yeah, thank you, Gino.

Gino Tosi: Thank you, that's all I have. Is Mr. Hatch available by phone? Thank you, sorry. Mr. Hatch, can you hear us?

Coordinator: I'm looking for him right now, one moment please.

Gino Tosi: Okay.

Coordinator: Mr. Hatch, your line is open.

Howard Hatch: Okay, thank you.

Gino Tosi: Hello Mr. Hatch, this is Gino Tosi speaking. We've got a nice room full of people here that are waiting to hear about your proposal and if you would go ahead and tell us about your proposal. You don't have to justify it just be clear as to what it is and what you hope that it intends to accomplish and how you envision it working.

Howard Hatch: Okay thank you. Do you want me to basically read my proposal or...

Gino Tosi: Yes, sir.

Howard Hatch: I can give you a little bit of information and tell you - I'm not a public speaker and I've probably not been as nervous as this since 1966 when President Johnson sent me my draft notice and I went to Vietnam. So bear with me.

I don't think that the - there's disorderly marketing in the federal order number one caused by producer-handlers. And if this proposal goes through as presented we would have to cut our production in half and sell half the cows, half of our labor and it just wouldn't work out.

And some of the things that - well I'm trying to put things - we have a cost of production of a little over \$21 per hundred. And we don't send milk in at a - compete with anybody at a cheap price. Most of ours goes to the Boston area; it's delivered door to door and a lot of it in glass bottles.

But I guess I could shorten this up some. Starting out as a kid not born into a family that owned a farm we were always workers - or my family was always workers on farms. And I always wanted to milk cows; learned to milk by hand when I was five years old, pretty close to 60 years ago.

And in school I sometimes delivered milk in glass bottles and eggs on my way to school from my two cows and 50 hens we kept in a little barn. And I'm going to school, serving my time in Vietnam and coming home. I made the decision in Vietnam that if I got home safely, I wanted to try milking cows on my own and I did that for close to 30 years and never could seem to really get ahead and that's when we started with another person's prodding, we put in a small processing plant.

And we have grown - my children are involved with me and we have 23 employees. But - and it's - the bills are paid, there's no - we don't - I guess I don't even really have a savings account; everything I have is invested in the farm. I built this business with family involvement; I have one brother that's worked for me for 41 years. And I'm not ready to lose this because some big co-op doesn't like a little competition.

And I'm open to any questions that I haven't made myself clear on.

Gino Tosi: Mr. Hatch, as we understand your proposal to date you're asking that we set a 3,000 - excuse me 3 million pound limit per month on the amount of milk that you would distribute as Class 1 or fluid milk. And that your proposal deals specifically and only for the Northeast marketing area; is that correct?

Howard Hatch: Yes, I've visited a few farms. I don't see producer-handlers ever surpassing the 1,500 cow size operation. There are somewhere around - there's some 1,000 cow farms that sell their milk to co-ops. But a lot of them are hauling

their feed up to 50 miles one way. And I just don't see the ability for any of them to grow much larger than that.

And the population - when you get away from the cities in New England distribution is a problem; you've got to sell where the population is and distribution is. After the milk is processed getting it to market is another thing.

Gino Tosi: Okay. Mr. Hatch I know that you're currently not regulated in the sense that your operation does not - is not subject to the pooling and pricing under an order, in other words you don't pay into the pool. So if I understand your proposal correctly you would like to see the producer-handler provision retained. And that in the event that it needs to be changed to set a 3 million pound per month cap on your fluid milk sales?

Howard Hatch: Yes.

Gino Tosi: Okay. Now that's - that would be one feature of the producer-handler provision, there are other things that the - that are contained in the order - in the Northeast order about producer-handlers with respect to your ability to purchase milk from other entities other than what you don't produce yourself that basically you're doing everything at your own enterprise and risk.

Is it your proposal that those other features be kept the same?

Howard Hatch: Yes, I'd be willing to do that. We balance pretty much but when we - when we have to buy milk, if we're short, we have to buy from a pool plant and we most usually pay Class 1 price plus handling fees and component pricing. And if we have extra milk we're told where we can sell it and what price we have to get for it; those parts are very strict and we have to follow them.

Gino Tosi: Okay. And Mr. Hatch we don't expect that you would necessarily know how to construct the specific words or the language that we would put into the order. In that regard would you find it acceptable if Dairy Programs would construct that language that precisely represents what your proposal is?

Howard Hatch: Certainly.

Gino Tosi: Okay, thank you. I don't have any more questions for you Mr. Hatch. Please know it was a pleasure working with you.

Howard Hatch: Okay. Thank you.

John Mengel: Mr. Hatch...

Howard Hatch: Yes?

John Mengel: ...this is John Mengel.

Howard Hatch: Yes.

John Mengel: Do you bottle your milk all under your own label?

Howard Hatch: No. No, the door to door delivery people we deliver into Portsmouth, New Hampshire, that's our label, in Milton, Mass and south of Boston there are two door to door delivery companies. And these are companies that have been in busy for - one has been in business since 1891 delivering door to door and the other one since 1915.

And with the city growing they just can't keep their cows anymore and are gone. There - it just isn't everybody that bottles in glass and we filled a product for them. But they seem to want to carry on their name. And if we can

- I don't see an issue with - I like to have my name on my milk but if it isn't I have to look at the balance at the end of the month.

John Mengel: Okay thank you Mr. Hatch.

Howard Hatch: Okay.

Gino Tosi: Mr. Hatch, this is Gino Tosi again.

Howard Hatch: Yes.

Gino Tosi: Just to be thorough with you would you need any assistance from us here in the Department with regard to helping you present your proposal in the event we have a hearing?

Howard Hatch: I'd maybe like to have it gone over. I have a farmer lawyer that's - I think that's listening in this morning. And he told me if need be he would help me. So I think we've come to some agreement.

Gino Tosi: Okay. And also in the event that we do have a hearing and we would publish your proposal in a hearing notice would you be prepared to come to the hearing and present your proposal?

Howard Hatch: Yeah, I don't know if I really want to come to Washington but, yeah, I would.

Gino Tosi: Okay. And are you aware that when you come to a hearing that after you present your proposal there are going to be some folks that may not agree with your position and they would - we call it cross examination that they're going to ask your questions and all that. Do you understand that that would happen?

Howard Hatch: Yes and I would really look forward to that.

Gino Tosi: Okay. Okay. Well thank you Mr. Hatch.

Howard Hatch: Okay.

Gino Tosi: Did you want to invite your attorney there, Mr. Tensen, to say anything?

Howard Hatch: Only if he thinks that I haven't gotten my point across.

Gino Tosi: Okay, Mr. Tensen are you there?

Arend Tensen: Yes, this is Arend Tensen speaking. Can you hear me?

Gino Tosi: Yes sir.

Arend Tensen: Yes, no I think - I think that it was well stated and, you know, essentially what we're looking at is that 3 million pound exemption each month.

Gino Tosi: Okay.

Arend Tensen: And we would be glad to come testify and I would accompany him as well.

Gino Tosi: Okay.

Arend Tensen: It is a pleasure to represent a man like Howard Hatch.

Gino Tosi: Okay. And that's all the questions that I have for you Mr. Hatch. I just want to say it was a pleasure working with you getting things to at least this stage. And I know that I speak for everybody here we all wish you well.

Howard Hatch: Okay thank you. We'll be...



((Crosstalk))

Howard Hatch: ...the day we'll be listening to you on that Webcam.

Gino Tosi: Okay, I was just going to say we invite you to stay on the line for as long as you want to.

Howard Hatch: Okay. Thank you.

Gino Tosi: Okay thank you Mr. Hatch and thank you Mr. Tensen.

Arend Tensen: Thank you.

Gino Tosi: Yeah, bye. Next up is Homeland Creamery and Maple View Farms Milk Company. I think we're doing this by phone. Is Mr. Christopher Brown on the line? I'm sorry, excuse me, I apologize, Mr. Christopher Bowman?

Christopher Bowman: Yes sir.

Gino Tosi: How you doing Mr. Bowman?

Christopher Bowman: Doing very good.

Gino Tosi: Good. We got a roomful of people here. Have you been listening in so far?

Christopher Bowman: I have.

Gino Tosi: Okay. We'd like to let you start here by telling us about your proposal. You don't have to justify it just explain what it is, what you intend it to accomplish, how you envision it working if it were put in the milk orders.

Christopher Bowman: All right. I am a third-generation dairy farmer, six generation farm on the same land in Central North Carolina. And we are considered a producer-handler under the Appalachian Federal Order Number 5.

Several years ago we were a commercial dairy selling to our local cooperative. And because of the financial difficulties of maintaining a viable farming operation we investigated alternatives including bottling and marketing our own milk.

There is a growing market for the specialty dairy products in our state of 9 million people. And our plans and expectations have been met. As of present my current volume Class 1 sales is around 175,000 pounds per month. Our company opposes the proposal made by the National Milk Producers Federation to eliminate producer-handlers.

We feel this designation provides small businesses like ours with a viable and growing marketing opportunity. Our customers buy our milk because they know where it comes from. They know we're a family farm and we can show them the practices that we use. The alternative proposal by the National Milk Producers Federation is that of an exempt plant which requires no such business structure or strict control over production and would create confusion in the minds of consumers.

Therefore we believe the producer-handler designation has value to certain consumers and producers. And we propose the producer-handler designation be retained. However, we recognize the open-ended nature of this category and we propose a limit be placed on the size of a business that can be so categorized.

In recognition the economies of scaled milk production and farm bodily we propose a limit of 750,000 pounds of Class 1 sales per month in recognition of the fact that the specialty dairy product market opportunities are increasing to create additional opportunities for the small family dairy businesses. With further support increasing the limit of the size of the exempt plant sales to 750,000 pounds of Class 1 sales per month.

In summary we believe that these limits will permit specialty dairy operations to achieve reasonable economies of scale thereby proving - excuse me - providing consumers with products that they desire at a reasonable cost while at the same time preventing the kinds of disruptions in mainstream commodity markets that have been documented as a result from larger producer-distributors who compete directly with commodity milk products.

And we do propose the following: A non-pool plant means any milk received, manufacturing or processing plant other than a pool plant the following categories of non-pool plants are further defined as follows: A plant fully regulated under another federal order means the plant that is fully subject to the pricing and pooling provisions of a federal order.

Producer-handler plant means a plant operated by a producer-handler is defined under any federal order provided such a plant routes, disposition and packaged sales of fluid products to other plants of 750,000 or less during the month.

Partially regulated distributing plant means that a non-pooling plant that there is not a plant fully regulated under another federal order. A producer-handler plant or an exempt plant for which there is route disposition in the marketing area during the month.

Gino Tosi: Mr. Bowman?

Christopher Bowman: Yes, sir.

Gino Tosi: Appreciate that you're reading the full scope of the non-pool plant definition of the order but if we could just highlight that the changes in the definition that you'd like to see because we're also reading things that would stay the same.

Christopher Bowman: Okay. I've got four of those...

Gino Tosi: Okay.

Christopher Bowman: ...right here in summary. A plant that is operated by our government agency that has no route disposition in commercial channels; a plant that is operated by a duly accredited college or university disposing milk product only through an operation of its own facilities with no route disposition in commercial channels; a plant from which the total route disposition for individuals or institutions for charitable purposes without (repudiation); and a plant that in which all markets has route disposition and packaged sales of fluid milk products to other plants of 750,000 pounds or less during the month.

Gino Tosi: Okay thank you Mr. Bowman. A couple of questions just in summary; your proposal as we understand it would leave the current producer-handler provision in all orders as they currently read and that to accomplish the intent of setting a 750,000 pound limit on the distribution of Class 1 or fluid milk products that your proposal is to change that paragraph in the non-pool plant which describes producer-handlers as being a non-pool plant.

And in addition to setting that cap on producer-handlers you're also proposing that all plants that are currently defined as exempt plants also have their threshold raised then from what it currently is up to 750,000 pounds?

Christopher Bowman: Yes.

Gino Tosi: Did we accurately capture that?

Christopher Bowman: Yes sir.

Gino Tosi: Okay. I have no further questions right now. I have to ask - John, if you had any?

John Mengel: Mr. Bowman, are you an organic dairy farmer?

Christopher Bowman: No sir.

John Mengel: And what label do you distribute your milk under?

Christopher Bowman: Homeland Creamery.

John Mengel: All of it?

Christopher Bowman: All of it.

John Mengel: Thank you.

Gino Tosi: Mr. Bowman, this is Gino Tosi again. Would you need any assistance from us to present your proposal in the event we have a hearing?

Christopher Bowman: I do not think so.

Gino Tosi: Okay. And to the extent that your proposal might need a little massage here and there to have it fit the - how it would be reflected in the order would you trust the folks at Dairy Programs to do that provided that we accurately represent that?

Christopher Bowman: Yes sir.

Gino Tosi: Okay. And the two acid questions here: In the event that we have a hearing would you be prepared to come and present your proposal and defend it?

Christopher Bowman: Yes.

Gino Tosi: Okay. And when you come to a hearing there's going to be folks that may not agree with you and they'll probably cross examine you and ask you questions. Want to make you aware that you understand?

Christopher Bowman: I do understand that.

Gino Tosi: Okay. Well Mr. Bowman that's all I have. We invite you to stay on the line to listen for as long as you'd like.

Christopher Bowman: All right, thank you.

Gino Tosi: Okay thank you. Our next person up on the agenda here is - excuse me, Mr. Ted Dunajski?

Ted Dunajski: Dunajski.

Gino Tosi: Thank you, sir. I apologize for my poor pronunciation.

Ted Dunajski: No apologies necessary.

Gino Tosi: We welcome you and thank you for participating in this. Have you been listening?

Ted Dunajski: I have, I have.

Gino Tosi: Okay. Well would you like to present your proposal here?

Ted Dunajski: Yes if I could tell you a little about us. We're on a few acres of Peabody, Massachusetts which is 20 miles north of Boston. Truly not a farming community by any means but my grandparents settled here in around 1920. And went along with a lot of hard luck and so forth and between myself and my father which he preceded me quite a while ago I now run this business with my children, my daughter and my son.

And we have probably about five employees. It all started with one cow - with two cows that my grandfather decided to buy when he settled in here .And we've persevered and in the month of January 2008 - I mean 2009 I think we sold about 337 pounds of milk which is awful close to the proposal that - the limit.

And I fear that because I'm doing a lot more than what my grandparents thought we'd ever do here and if my children go on I would like to give them the opportunity to be able to do what the business - what they need to make a living.

I know no other business because I went to agricultural school and had no other job other than working here. And love this business. I don't think that we disrupt the market - as I put in my proposal producer-dealers produce less than 1% of all the milk market in the United States. And I wish these co-ops

would go out and get their own cows and share the risk of them and maybe they'd hold the prices a little higher because we think that they disrupt the market with some of the prices that they charge.

But the reason - I don't think we're disruptive, I think we're just running a business that we're in, same as Mr. Hatch and the Bowman's. But that's why I propose that the limit be at 2 million pounds not knowing what the future is and I know people like Mr. Hatch, 2 million would be a lot better. But that's why I picked the thing 2 million instead of 3 million pounds. I think the limit should be set. And that's about all I have to say.

Gino Tosi: Thank you sir. Just in summary then your proposal specifically want for just the Northeast Order?

Ted Dunajski: Well I think the different parts of the country are different. Here in the Northeast I know that we'll never make a million pounds. I doubt whether we'd make, I don't know if we'd make a half a million pounds here. But not having a clear crystal ball we've been very regulated over the past years, you know, since the 20s or the 30s. Producer-dealers have always been heavily regulated so if I'm going to ask for something I'd set it a little higher not knowing what the future is so that's why I asked for 2 million.

Gino Tosi: Okay and...

Ted Dunajski: I don't think - I think we're very proud to have our milk bottled under our own name and I kind of resent that we would have - that somebody would ask us not to put it in another name like Mr. Hatch is doing because these big plants they run multiple names. And I don't understand that. I think it's kind of ridiculous but anyway all our milk goes out under our own label and it's all in plastic. And we deliver it around to stores within probably a 20 mile radius of here.



Gino Tosi: Okay so just to be clear your proposal - you're speaking that you'd like to see a 2 million pound cap if you will...

Ted Dunajski: Yes.

Gino Tosi: ...on the Class 1 sales in a month...

Ted Dunajski: Yes.

Gino Tosi: ...for just the Northeast Order and you're not speaking about what it should be in any other Order?

Ted Dunajski: Not really.

Gino Tosi: Okay.

Ted Dunajski: I don't understand the other orders.

Gino Tosi: Okay, appreciate that. John, did you have any? Okay. Mr. Dunajski...

Ted Dunajski: You can call me Ted if it's easier for you.

Gino Tosi: Ted, I'm sorry.

Ted Dunajski: That's okay.

Gino Tosi: I'm sorry, I got an Italian name and it's hard for me to pronounce other names sometimes.

Ted Dunajski: You've got to forget that Js in there.

Gino Tosi: Yeah, but the nice thing is is both of our names end in vowels so...

Ted Dunajski: Yeah.

Gino Tosi: ...I feel like you're my brother.

Ted Dunajski: That's okay.

Gino Tosi: So would you need any assistance from us to - with regard to presenting your proposal in event that we do have a hearing?

Ted Dunajski: Probably would.

Gino Tosi: Okay.

Ted Dunajski: I appreciate the assistance I got to this point also.

Gino Tosi: Okay well thank you. I'm happy to hear that. Now the big questions if we have a hearing would you be prepared to come and testify and present your proposal?

Ted Dunajski: Not really but if it was necessary it would be a new adventure for me.

Gino Tosi: Okay. And, you know, we don't expect that you know how to write the, you know, the technicalities of how things get reflected in the marketing order. Would you trust us to write that for you so long as it accurately represents what you're proposing?

Ted Dunajski: Sure.

Gino Tosi: And then the other last question here is that when we have a hearing folks that don't agree with you probably cross examine you at the hearing.

Ted Dunajski: That would be fine.

Gino Tosi: I want you to be aware of that and do you understand what that would mean?

Ted Dunajski: Sure.

Gino Tosi: Okay. Well thank you Ted. We invite you to stick around.

Ted Dunajski: Thanks.

Gino Tosi: For as long as you feel like you want to.

Ted Dunajski: Sure.

Gino Tosi: Okay thank you so much.

Ted Dunajski: Thank you.

Gino Tosi: Next up on our agenda is the Wisconsin Department of Agriculture Trade and Consumer Protection. And is Mr. Will Hughes on the line?

Will Hughes: Yes I am.

Gino Tosi: Hello, Will, good morning to you.

Will Hughes: Good morning to you.

Gino Tosi: Good morning to you. We have a room - have you been listening in on the session so far?

Will Hughes: Yes part of it.

Gino Tosi: Okay well we have a pretty good attendance here. We have a room full of folks that are listening. And we're going to ask that you present your proposal now. You don't have to justify it; we ask that you, you know, present what it is that you'd like to see changed, tell us a little bit about what you hope that it will accomplish and how you envision it operating.

Will Hughes: Okay. Well the background is in the last five or six years we've put a extra effort in the state to revitalize our dairy industry. And as part of that there's been a lot of interest by producers to enter into some kind of value-added processing. Most of it is cheese; it's not all cows' milk.

But there's been- it depends on how you kind of - we think eight bottlers that have entered the business in the last six years some have exempt plant status, I'm not sure why that it is. Some of them are producer-handlers. They're not very big at this point in time. The largest is a Sassy cow dairy, which those who watch Wisconsin knows that's the largest and it has both organic and conventional milk. They have about 600 cows total that they're milking.

And we've - in our program we don't encourage people to get into the bottling business but we do help them if they want to get there. And as we've talked to these bottlers we wanted to not, you know, they're all growing; none of them are what I would call grabbing market share very fast, they're pretty niche oriented businesses.

And we think and they think putting - getting bound into the pooling - paying into the pool is really going to set them back considerably. We don't want to

see that happen; they don't want to see that happen. So without justifying things we've proposed a 2 million pound exemption for producer-handlers.

And, as producer-handlers have been defined traditionally, like to see that in all orders, that's a hard cap. And just because some of our producer-handlers are also exempt plants, I mean, I'm not sure if that's because they're mixing a little outside milk or what, I have not done the research on that, we thought aligning the plant - exempt plant provision in terms of the volume cap with the producer-handler cap was the way to go.

And that's about the background. We are actually having a conference call with these producer-handlers this - early afternoon. And that's where we're going to go through just basically what proposal has been put out there, how do we want to move forward with our proposal relative to the other ones and who's willing to come forward to present some testimony and so on.

And we at the Department of Agriculture will help facilitate that and guide that. And so we're just - the bottom line is we're just trying to - we don't see a lot of new entry coming in the bottling arena. And for those that are there they seem to want to have some room to grow, some of them are closer to others.

We have another one that's just starting an expansion who's an organic producer - producer-handler. And he'll start - the 450,000 pounds would be very limiting if not basically deal stoppers for them according to them. So that's what we're trying to do in our proposal is to give them some room to breathe. We don't think they affect the market place that materially to cause disorderly marketing.

Gino Tosi: Okay, thank you, Will. Just a recap what your proposal is then is that you want to see the producer-handler provision retained in all orders?

Will Hughes: Yes.

Gino Tosi: And with regard to the producer-handler definition that your proposal would place a 2 million pound limit on the amount of fluid milk products that they distribute in a month and still be considered a producer-handler and exempt them from pooling and pricing?

Will Hughes: Correct.

Gino Tosi: Okay and with regard to the exempt plant provision you're also recommending that that limit be increased up to 2 million pounds from what it currently is and - is that correct?

Will Hughes: Correct.

Gino Tosi: Okay. I don't have any other questions. John, did you have any?

John Mengel: Yeah, Will, this is John Mengel. Could you generalize how these producer-handlers distribute their milk?

Will Hughes: I would say it's more in the independent, a store or two store kind of retailer. They don't seem to get into what I would call large supermarket accounts although a few of them have tried and haven't succeeded. And they pretty much - I think one of them goes through a distributor, the rest are basically direct marketing themselves.

And it's, you know, they're servicing some restaurant accounts. So it's pretty, you know, the economies of that kind of marketing and distribution aren't very attractive. And I think the margins are more attractive on the organic, the cream line, bottled milk not on the gallon, half-gallon jugs.

But they do try to incorporate that in their mix so that they have a diversity of products to offer. And so it's, you know, they're all kind of different and they're all serving pretty local markets. You know, a few of them might get some milk into Chicago in some specialty retail stores but that would be about it. I don't know of anybody that's got any major chain distribution.

That's something we're going to talk about on our conference call today.

John Mengel: Okay, thank you.

Gino Tosi: Will, we've had a couple of questions from the Floor that we think are appropriate. When you were making your presentation here you said something about other people testifying at a hearing. It raises the question of is this proposal by the state of Wisconsin or are you doing it on behalf of producer-handlers or exempt plants - and/or exempt plants?

Will Hughes: Good question. The letter was kind of (weasel) worded in that regard. I don't mean to be slick about that. But, you know, these bottlers are spread all over the state; they're busier than heck. And trying to get them all on a phone call was pretty tricky. So we talked to them individually and so today will be the first day that we get them together. We wanted to get our foot in the door so we put the state's name on it.

And I kind of see it as a two-pronged front, one is that the state opens the door and facilitates kind of aggregating trying to get a consensus amongst our group here. And then to the extent that very particular information about businesses that would justify the proposal we'll probably ask them to, you know, be involved in the testimony and we'll help make that easy as possible for them like you were talking to the previous caller about.

Gino Tosi: Okay. Okay so in the event we have a hearing you will likely testify and that to the extent that you're helping folks in your state on this issue they'll join you then?

Will Hughes: Correct.

Gino Tosi: Would that be accurate?

Will Hughes: I think that's the way I see it.

Gino Tosi: Okay.

Will Hughes: I won't know for sure until this conference call today.

Gino Tosi: Okay, okay. Well that's all I have. For everybody that's on the line we had a question I think it's probably appropriate to just talk about the producer-handler definition and the exempt plant provision under Federal Milk Marketing Orders.

This question was asked by Dr. Jeff Benson from North Carolina State. He was asking if the producer-handler definitions are the same in all Orders. And the answer to that is no they're not exactly all the same. There are some themes of consistency that run through all the definitions, for example, to be considered a producer handler in all orders that they're entire operation is at their own enterprise and risk.

And that being said there are three - could characterize them as three different models of the definition. There are the three Southeastern Orders which would include Appalachia, the Southeast and Florida have a producer-handler definition that is similar to others. And its - probably its key difference is that



it does not allow any purchases from other sources by the producer-handler.  
Okay?

The Arizona and the Pacific Northwest producer-handler definition is probably, text-wise, the longest one that we have in all Federal Orders. And that was the result of a rulemaking that was extensive. And what - that's the first time that Department had set a limit on producer-handlers. That definition is lengthy and rather than drawing attention to every specific detail of it that it does place a cap on route distribution as a condition for being considered a producer-handler and there are many other conditions as well.

With respect to the exempt plant provision that is something that is uniform in all orders. And that limit currently is 150,000 pounds of Class 1 route sales per month. I just say that for the benefit of folks that may not have known that.

Mr. Hughes, would you trust us to construct the necessary order language that would represent your proposal?

Will Hughes: Sure would.

Gino Tosi: Okay. And would you need any assistance from us in the event that your proposal becomes part of a hearing?

Will Hughes: Yes I would want some consultation I believe.

Gino Tosi: Okay. Okay we ask that you do that as soon as possible. I'm pretty sure that you know that once a hearing notice is issued then ex parte we become subject to that. And about the only thing that we can talk about then are procedural matters.

Will Hughes: Very good.

Gino Tosi: Okay. And so you've already answered that you'd be willing to come to the hearing and you also understand that yourself and the other folks that may not agree with you will be allowed to cross examine you?

Will Hughes: Yes.

Gino Tosi: Okay and you understand what that means?

Will Hughes: Yes.

Gino Tosi: Okay. Thank you Mr. Hughes, that's all I have.

Will Hughes: Thank you.

Gino Tosi: Is Matt Shatto on the line?

Matt Shatto: Yes, sir.

Gino Tosi: Good morning, Matt.

Matt Shatto: Good morning, sir. How are you?

Gino Tosi: How are things in Missouri?

Matt Shatto: They're doing all right thank you.

Gino Tosi: Wonderful. Hey thank you for joining us. Have you been listening to the session so far?

Matt Shatto: Yes sir I have.

Gino Tosi: Okay. I'm going to ask that you present your proposal to everyone that's here and other folks who are on the line. And you don't have to justify anything just state what your proposal - what it is, what you hope it - what you intend it to accomplish and how you might envision it working.

Matt Shatto: Sure, will do. Actually it sounds like our story is very similar to other presenters so I won't go into great detail about that as it probably has little relevance to the overarching situation.

We do have a family dairy farm here outside of Kansas City, Missouri. My dad actually went to start bottling milk in June of 2003 after our family had been milking cows and selling it to a co-op for the past 70 years or so.

We made that change because the continued practice of that was no longer financially feasible so we either had to go out of business or do something new. So our bottling facility was something new that's on our farm. And we now milk our cows and provide our milk in glass bottles to the wonderful people of our community and in the Kansas City area.

Our specific letter related to this issue was two-fold; one in opposition to the initial proposal that would eliminate the producer-handler provision and increase the exempt plant provision. And it's primarily - we're primarily in opposition due the fact that we believe that the limit of - or actually the reduction of the producer-handler exemption or the elimination of such would be negative for everyone involved in this specific situation including our local family farm.

We believe that moving forward if the Department decides that some changes are necessary as it relates to this specific situation we would like to propose

that the producer-handler exemption be kept in place, if a limit is necessary on the exemption we would like to propose a 1 million pound limit per month. We would be supportive of amount higher than that but for the purpose of our proposal we are at 1 million pounds.

And then if for some reason the producer-handler exemption is removed and that's what the Department's position is we would propose that the regulatory exemption for the small distributing plants be increased to 1 million pounds per month versus the 450,000 pounds per month that's currently proposed.

The basis for our proposal is simply this, with the changes that are proposed in the original plan dairies like ours would be put out of business in a great respect like other participants have already stated, or it would create a situation where we would be capped and we would be unable to grow to meet the demands of our wonderful customers here in our specific area.

So with that said that's our proposal. I'd be happy to answer any questions.

Gino Tosi: Thank you, Matt. Really appreciate - that was a very concise statement. Just to summarize then, that essentially what you're asking us to do is to retain the producer-handler provision and set a cap of 1 million pounds of raw distribution in a month of fluid milk. And you would then also support or propose to increase the exempt plant limit from its current 150,000 pounds up to 1 million pounds per month.

Matt Shatto: That is correct. And I probably also state that our proposal in our opinion doesn't stand alone. If the Department feels like the proposal from IDFA and National Milk doesn't have the merits to move forward we would like to withdraw our petition at that specific point.

Gino Tosi: Please say that again please.

Matt Shatto: It doesn't stand alone. If the Department believes that the original proposal does not have the merit to move forward we would then obviously want to withdraw our proposal. We are only putting this proposal forward in response to the original proposal. We do not believe that there's currently any disorderly market conditions based upon the producer-handler provision.

Gino Tosi: Okay. Good, I understand now what you're saying. I don't have any other questions for you. Oh, excuse me, I do have one, to the extent that the current producer-handler provision in all the orders have other features to it you're not proposing to change any of those other features, you're just talking about setting a limit on route distribution?

Matt Shatto: That is correct; we would not propose any other changes.

Gino Tosi: Okay. And your proposal is for all orders then?

Matt Shatto: That is correct.

Gino Tosi: Okay. That's all the questions - one moment please. That's all the questions that I have right now. John? Okay. Matt, just a couple of things that - we don't expect you to know how to - how to write the exact words on how your proposal would be reflected in the - in an order, would you trust us to do that for you provided that it accurately represents what's your proposing?

Matt Shatto: Yes sir.

Gino Tosi: Okay. Would you need any other assistance from us in the event that we have a hearing?

Matt Shatto: You know, I think that opportunity would be appreciated. I don't know that I would have anything in mind at this point.

Gino Tosi: Okay, okay ask any of those types of things that you need, that you'd discuss those with us promptly because in the event that we issue a hearing notice once that happens we become subject to ex parte rules which means we are no longer able to speak with you about the merits or shortcomings of your proposal or anyone else's.

Matt Shatto: I understand. Thank you.

Gino Tosi: Okay and would you be prepared to come to a hearing and present and defend your proposal?

Matt Shatto: Yes sir.

Gino Tosi: Okay and that it'll likely happen that the folks that don't agree with you will ask you questions or cross examine you. Do you understand that that would happen?

Matt Shatto: Yes sir.

Gino Tosi: Okay and you understand what that means then?

Matt Shatto: Yes sir.

Gino Tosi: Okay. That's all I have. Thank you and we welcome you to stay on the line for as long as you would like to.

Matt Shatto: I appreciate the opportunity.

Gino Tosi: Okay. We have someone that's asking us to jump ahead of the list so is Mr. Carroll - is Marjorie Cooper on the line from Cooper's Hilltop Farm? She's on the line? Terri Graves from Seven Doves Dairy and Creamery, they're on the line?

Terri Graves: Yes I am.

Gino Tosi: Okay. Would any of you folks mind if we have someone that needs to get to a doctor's appointment soon - would you mind if we jumped ahead to them and then come back to you immediately following their presentation?

Terry Graves: That's fine.

Man: That's all right.

Gino Tosi: Okay. Okay with that is John Vetne on the line representing Mallorie's Dairy? Hello John? Must have run off to that doctor's appointment. Is he there? Oh, okay.

John Vetne: I'm here.

Gino Tosi: John, can you hear us?

John Vetne: I can hear you. Can you hear me?

Gino Tosi: Yes we can.

John Vetne: All right.

Gino Tosi: Yes we can. I guess we had to make sure you were connected in there. John, the folks that were preceding you had no objections to...

John Vetne: I heard that.

((Crosstalk))

John Vetne: I heard that and I appreciate that.

Gino Tosi: Okay. Well, John, if you'd like to present your proposal on behalf of Mallorie's and that you don't have to justify anything just tell us what your proposal is about, what you hope it will accomplish and how you envision operating it.

John Vetne: All right.

Gino Tosi: And then just to let you know here ahead of time that we've - I've had some people submit questions that most of them look very appropriate - that they have about your proposal.

John Vetne: All right.

Gino Tosi: So please begin.

John Vetne: All right for those people listening my name is John Vetne, I'm an attorney in Raymond, New Hampshire and I've been doing milk order work for over 30 years. And Mallorie's called in response to the National Milk and IDFA proposal. And like some of the other proposals the Mallorie's proposal is conditioned upon there being a hearing, it's not a standalone proposal if the Department decides not to hold a hearing on the NMPF/IDFA proposal then Mallorie's would withdraw its proposal.



The proposal assumes that the NMPF/IDFA proposal to eliminate producer-handlers from the Federal Milk Order system is on the table. And in the event that is on the table the specific alternative proposed by Mallorie's is to grandfather the production of existing producer-handlers as pool exempt milk in the future just as it has been in the past and in the same way it was been in the past for now over 70 years.

There is - there are many kinds of transactions in the Federal Order System that are not included in the pool. And this would apply a distributor's own farm production if it was previously pool exempt to be pool exempt in the future.

It would also, unlike some of the other proposals, allow these handlers to grow, to expand their production. But if they expand their production beyond the grandfathered amount or receive milk from any other sources that would be pooled and therefore as the existing plants grow and every plant that has survived, every farm that has survived has grown in the past decade, they would contribute to the pool just like anybody else.

The existing system works sort of like a very, very regressive tax. And any kind of cap would work as a very progressive tax if at one pound over the cap or one pound over the volume that can be purchased from someone else there is a radical shift from exempt to fully regulated.

That's very burdensome and the prospect of that there have been a lot of situations in the past where producer-handlers inadvertently didn't qualify. The current tax system, using that for an analogy is at least somewhat progressive, not as progressive as it used to be, but the burden on taxpayers increases as income increases.

And in a similar way this proposal above the exempt - the pool exempt limit would increase the contribution of the distributors to the pool above the exempt limit. And that fits very nicely with data presented by National Milk Producers in 2003 at the hearing in the Pacific Northwest showing how much more it costs for small plants to bottle, process and assemble milk than it does for very large plants.

As plants grow in size their economies of scale allow them to distribute at much lower costs. For a small plant to all of a sudden be assessed all of the same charges and costs when for 70 years they have not as many speakers have previously indicated threaten their existence and many would go out of business because the cost advantage for a large scale plant is so great.

So what the current exemption does is, in some cases, allow for them to compete on a level playing field to the extent that there is competition. That's what the proposal would do. It only - it only continues in the future the pool exemption for own farm production that producer-handlers have had in the past. They would not become fully regulated plants but the milk that those farms produce up to their production level from a recent base would continue to be pool exempt.

If that milk were sent to another plant it would be considered other source milk, down allocated so there's a huge financial incentive not to do that. If milk is received from another producer it would be fully pooled like any other milk.

So that's it. That's the nutshell. You say you have some questions? I'm not surprised. Are you there still?

Gino Tosi: Sorry, John, I forgot to turn my mic back on.

John Vetne: Did I put you to sleep?

Gino Tosi: No, no.

John Vetne: Okay.

Gino Tosi: Your proposal certainly covers a lot of ground. Let me see if I can summarize this. Well first let me ask, from the folks that - Mr. Beshore, to the extent that a lot of these questions do you feel satisfied that a good number of them have been answered?

Okay. Well, John, here we go.

John Vetne: Okay.

Gino Tosi: Okay. With regard to the exemption for own farm milk in your proposal would the volume sourced from the own farm solely or an exempt volume amount based on prior own farm production but irrespective of the current source?

John Vetne: I did not...

Gino Tosi: Excuse me, I'm sorry, I never did a very good job in Catholic school of reading out loud. Would your exemption for own farm milk in your proposal apply to the volumes of milk sourced from own farm solely or an exempt volume amount based on prior own farm production but irrespective of the current source?

John Vetne: I still did not understand the question.

Gino Tosi: Okay...

John Vetne: The proposal deals with plants that currently - distributing plants that are currently owned in common with farms. And that milk is not pooled. And that is the source to which the grandfathered exemption would apply in the future. Now if there is some other source implicit in the question I do not understand the question.

Gino Tosi: Okay I'm getting the nod that it's understood. Yeah, okay. Next question: Does your proposal provide for any restrictions with respect to the labels used by the producer-handler or exempt plant?

John Vetne: No absolutely no.

Gino Tosi: Okay. What requirements if any are there with respect to ongoing ownership or operation of the plant in order to retain the exempt milk volumes or exempt plant status?

John Vetne: There are fairly severe restrictions on an ownership that the ownership of the plant and of the farm be in common, they're limited by number of persons involved incorporating in essence the risk in both facilities in a closely held family group or small number of investors.

And that ownership would continue in the future maybe - perhaps not by the same person if it's a corporation and the shareholder sells its stock the corporation would continue. But the number of people involved it is patterned actually on very similar legislative exemption of owned farm production that the state of California has used since the 1960s when they converted from simply a pricing system to a pooling system involving quota and (over-base) milk.

They allowed existing plants that had owned farms to continue to pool exempt their milk while also allowing those plants to receive milk from others. That was the template for this proposal.

Gino Tosi: Thank you, John. The next question then is is that if owned farm milk is to be treated in a manner different from all other milk processed by the plant how are the volumes of owned farm milk allocated for utilization in pricing systems, for example would it be all Class 1 pro rata to total utilization and would anything be down allocated?

John Vetne: It's - I think the proposal was clear but I'll explain it. All of the milk from the owned farm production would be allocated to the plant or the handlers' various uses. For that purpose it would essentially be treated as what we used to call a plant-pool or handler-pool rather than a market-wide pool.

So if a handler has 70% Class 1 and 30% Class 3 the owned farm production would be allocated similarly, 70% Class 1 and 30% Class 3.

Gino Tosi: Okay. The next question then is if the status as - or grandfathering producer-handler owned farm milk - excuse me, let me start that over again. If the status as a grandfather producer-handler owned farm milk plant is lost for any reason in any given month may it be reestablished in a subsequent month?

John Vetne: No.

Gino Tosi: Okay. Is the ownership or physical location of the producer-handler plant or exempt plant subject to transfer, for example in the case of ownership or relocation for example in the case of a physical location?

John Vetne: The ownership is - the ownership is limited to - in the future to an ownership similar to that in place when the grandfathered exemption applies. This is not

intended to provide a unique asset that can be marketed like a share of stock. It is intended to preserve for the distributor farms in the future and protect their investment-backed expectations for the future.

The plants, a plant, yeah, a plant should be able to change location and farms should be able to change location, not location of a farm or a location of a plant that is being protected here it's the unity of the operation. There are many reasons why somebody might want to change the location of a farm or the location of a plant.

Gino Tosi: Okay. Last question now is the plant operating under this alternative proposal that you've submitted on behalf of Mallorie's freely able to purchase pool milk and thereby balancing its exempt supply?

John Vetne: That's really two questions. The plant would freely be able to purchase milk from producers which would be pooled. The second part of your question assumes facts not in evidence. Because the owned farm production would be allocated in exactly the same way as milk from any other source the owned farm milk would not get any preference to the Class 1 use.

In my prior example the owned farm milk would get 30% Class 3. That's the same way it would be for milk from other sources. And the plant would then be required to pay into the pool to the extent that the market-wide use is lower in Class 1 than that's plant use. But that is not a balancing function. The balancing is done by the plant already.

Gino Tosi: Those are all the other questions that we've received there, John, from the floor. I have no other questions. John, did you have any?

John Mengel: Yeah, John, this is John Mengel.

John Vetne: Hi John.

John Mengel: Hi. Just a point of clarification you lay out here how the exempt quantity would be established, right?

John Vetne: Yes.

John Mengel: Because there's two ways to do that. So once you've established that limit that limit can only be filled with owned farm production.

John Vetne: That's right. It's a production limit based on a prior period in which the producer-handler produced milk based on that producer-handler's investment-backed expectations for the past period; once the rule was in place that expectation would disappear for any future milk.

One cannot say that, you know, that five years from now that I have 2 million extra pounds of production and I expect it to receive my own plant planned on that; that would no longer be true. Did I answer your question John?

John Mengel: Okay. Well what if your production instead of increasing to 1 million pounds was cut in half. You would receive an exemption on just - still just the farm milk?

John Vetne: Just the farm milk, yes.

John Mengel: Okay.

John Vetne: Yes if you have an historical base of 2 million pounds and you lose a customer and, you know, and your - or you lose production you're exempt milk would only be that from your own farm.

John Mengel: But your limitation wouldn't change?

John Vetne: Your limitation would not change.

John Mengel: Okay but you...

John Vetne: That's true but that does mean - let me clarify - that does mean that a handler with exempt owned farm milk can exempt milk from any other source. The rule would still be that if milk came from any other source it would participate fully in the pool like everybody else's milk.

John Mengel: Okay thank you.

Gino Tosi: John, that's I think all that we have. Appreciate you taking the time to participate with us today.

John Vetne: Thank you.

Gino Tosi: Would you and/or Mallorie's Dairy be prepared to represent your proposal at a hearing if we include it in the hearing notice?

John Vetne: Yeah, yeah we know how to do that. But let me just say that for Mallorie's and there are other folks that support Mallorie's proposal in the West a hearing session at a Western location would be greatly appreciated just as a hearing session in the Northeast for the several New England interests would be very helpful.

Gino Tosi: Okay. And for your clients there and whoever presents the proposals at the hearing that they'd be subject to cross examination.



John Vetne: Well, you know, none of my clients have on retainer any expert economist like NMPF and IDFA. My clients are prepared to testify and explain what they do. They would rely on me to explain the proposal and how it would work in a regulatory sense.

Gino Tosi: Does that mean yes or no?

John Vetne: That means yes.

Gino Tosi: Okay.

John Vetne: But there will be more than one of us.

Gino Tosi: Okay good. Thank you. John, that's all I have.

John Vetne: I thank you and my dentist thanks you.

Gino Tosi: Okay. Okay enjoy.

John Vetne: Thank you.

Gino Tosi: Thank you. Going back now to the order in which we intended Mr. Carroll would you like to - Mr. John Carroll is here on behalf of the New England Producer-Handler's Association, the William J. Stearns and Sons and Mountain Dairy and Monument Farms.

Just touch it and when the green light comes on - there you go, you're on.

John Carroll: Am I on now?

Gino Tosi: Yes.

John Carroll: Okay.

Gino Tosi: Mr. Carroll can you just please present your proposal on behalf of your clients and tell us a little bit what it's about, what you hope it'll accomplish and how you see it operating.

John Carroll: First I'd like to thank the Department for this opportunity because I think it's been helpful for me to sit here and hear in advance of a hearing - is this close enough?

Gino Tosi: Too close.

John Carroll: A little too close? Too close? How's this? Okay. In advance of a hearing to hear the other viewpoints and to get an idea of what their mental processes have been. And so I do thank you for that and I think it's going to shorten a hearing - at least help to shorten a hearing and that's in everyone's interest if there is a hearing.

The clients that I represent in one case immigrated to the United States in the late 1600s, settled on the land that they're now using. They're the 10th generation on that farm. They have managed to do the best that they could to build a business that was local basically in nature and of course it expands as time goes on.

But they represent a concept that they think is very important, and that's involved ultimately in our thinking on this problem. And with your permission I have to make the following statements. That their position is that the Agricultural Adjustment Act does not grant full regulatory authority in the manner in which its been exercised in the past and - or being proposed in this hearing and they are not waving that claim in any way shape or manner.

And that also the regulatory - if you do concede that there is legal regulatory authority there is no disorder nor anything in all at any way indicating any need at the present time for change. And further that if they were to be regulated it would be disastrous to their businesses.

In addition over the years the Congress of the United States on more than one occasion has reached the subject and either in bills or elsewhere in our view has indicated that there should be an exemption preserved and it should be without restriction. And also Congress has also passed the Small Business Act which in our opinion almost dominates every consideration in this proceeding.

We are proposing everything that we propose hereafter subject to those exceptions. In other words that we shouldn't even have to have this problem. But if we have to face it it's our proposal that Order Number 1, which is the only order I'm retained for be amended to provide for a 3 million pound exemption for owned farm milk received at the farmer's plant, processed and sold as Class 1.

This 3 million pound exemption would have a minimal impact under regulatory program. It is needed to provide flexibility, reduce market administrator costs, protect the public from (oligarchal) monopoly, reduce administrative costs, allow producer-handlers to conduct proper business planning in the operation of their businesses, it is also in conformance with the Secretary's prior rulings in other markets. Order 1 statistics indicate that producer (unintelligible) less than or in the range of 1% of all Class 1 sales. There are no producer handlers who have 500 employees and they are therefore small businesses entitled to the Small Business Regulatory Act provisions.

They are also direct competitors at retail and retail wholesale of the proponents of the original proposals to restrict their business' competitive ability. They have no net monies of the size needed to make the payment; they have incurred costs that more than absorb any assessment resulting from the assessment.

It is the claim of the producer handlers that the secretary is being used for NI competitive purposes. This is also the claim of the producer/handlers that should they lose the exemption, they'll be forced out of business that the secretary lacks the authority to wreck such ruin on independent businessmen.

This proposal would conform Order 1 provisions to the findings of the secretary and Congressional policy that has the advantage of settling an otherwise unsettled condition so that one term planning can be made by producer handlers that has minimal or no effect on other parties.

I should mention in addition that we are reserving the right claim that under the Clayton and Anti-trust Acts, that any competitor that uses the government for the purpose of putting a restraining competition as liability for that purpose and they are not exempt from that motivation by the use of government in that regard. Under those circumstances, we have submitted a proposal, as I've said, for 3 million pounds. And I'll be glad to respond to any questions.

Gino Tosi: Thank you, Mr. Carroll. And we really appreciate your statement. For the purposes of including what you're proposing, in the event that we have a hearing, I take it from the letter you had sent us that - are you basically saying that, with regard to National Milk Producers' Federation, proposal has yet to be submitted - yet to presented, their second producer handler provision that - you basically join them in support of that proposal?

Man: If it's the 3 million pounds.

Man: Three million pounds.

Man: Three million pounds, we would accept that. Not because it's right but because it's the only way we can survive.

Gino Tosi: Okay. And with regard to that, you're only speaking with regard to the Northeast order?

Man: That's correct.

Gino Tosi: Okay. I have no other further questions, Mr. Carroll. John, did you have anything? Thank you sir, we appreciate you coming.

Next up is - I tell you what. Let's adjourn here for about ten minutes if we could - or seven or eight minutes here, let everybody take a little break. If we could all be back here at 10:25.

If I could ask everyone to please take your seats so that we can get started again please. Next on our agenda is Cooper's Hilltop Farm. And Marjorie Cooper - Marjorie, are you on the line? Marjorie Cooper, are you on the line? Hello?

Coordinator: This is the operator, her line is open. I imagine she stepped away.

Gino Tosi: Okay.

Coordinator: She might be back now, I see it moving.

Gino Tosi: Okay, we'll come back to her. Is Marjorie Cooper, are you on the line, please?

Marjorie Cooper: Yes, I am.

Gino Tosi: Okay, wonderful. Marjorie, I want to thank you for being patient today and participating with us. Have you been listening to the session so far?

Marjorie Cooper: Yes, I have.

Gino Tosi: Okay. Then would you please be kind enough now to present your proposal? And you don't have to justify anything. Just tell us what your proposal is, what you hope it intends to accomplish and how you envision it working.

Marjorie Cooper: Thank you. My family is very small. As I listen to the rest of you, we milk 50 cows here in central Massachusetts. We were part of a mill town providing, we were the farm providing for the mill workers at the base of the hill years ago.

Now our business is entirely cash and carry. Our customers come to us and they obviously come because they like the product. I can report that it's been a very good winter for local selling. I'm anxious to tell the vegetable and fruit people that the economy hasn't seemed to dampen the spirit of local selling.

I am also the secretary to the producer handler group. I look forward to seeing them in a few weeks for our annual meeting, although I did not what their proposal would be today.

As I'm familiar only with New England and I find that those of us in the farming business tend to find an area who wants to accept our supply. And I can envision up to a 3 million pound per month limit for a producer handler without upsetting the areas that other people, other companies wish to supply. I would limit this to the Federal Order 1.

Man: Thank you. As I understand, your proposal - also that you had proposal with regard to the - what we should consider exempt plant to increase their limit?

Marjorie Cooper: 450,000 was - as suggested...

Man: Okay.

Marjorie Cooper: In the first proposal was fine. And we do - those of us who are below those figures thoroughly appreciate being exempted from the pool system that most of us don't seem to need.

Gino Tosi: Okay. So if we were to do a hearing notice, then could we consider you to be supporting the National Milk and IDFA proposal with regard to the exempt plan?

Marjorie Cooper: The 450,000 a month.

Gino Tosi: Okay, thank you. And then to the extent that others have proposed - at least for the northeast, like Mr. Hatch, for example, was proposing a 3 million pound cap on producer handlers just for the northeast. Could we consider you joining him in that proposal as well?

Marjorie Cooper: Yes.

Gino Tosi: Okay. And I'd asked Mr. Hatch and, you know, we - none of us here expect that y'all have to try to represent your proposal in terms of how it would change the order language that describes things. Would you trust us to represent, you know, in that language, in our regulations that accomplishes the intent of your proposal?

Marjorie Cooper: Yes, I would.

Gino Tosi: Okay. And if we were to have a hearing, would you be willing come and represent your proposal at a hearing?

Marjorie Cooper: No.

Gino Tosi: Okay. Is it that you wouldn't be able to come or is it that you have doubts about your proposal?

Marjorie Cooper: No, I think others have presented the same proposal and it's - even with 50 cows and customers 12 hours a day, it's very complicated to leave for a few days.

Gino Tosi: Okay.

Marjorie Cooper: So I would trust that to the people at USDA and to the other people that I've heard this morning.

Gino Tosi: Okay. So then, with your permission, then I could consider you with respect to the 3 million pound limit in the northeast, include you as being, like, along with Mr. Hatch and his proposal and that to include you with National Milk Producers Federation and the International Dairy Foods - IDFA - as joining them in their proposal?

Marjorie Cooper: Correct.

Gino Tosi: One moment please. Maybe I need to ask a couple more questions there. Are you aware that in the National Milk proposal and the IDFA proposal, along with increasing the exempt plant limitation - one moment please. I'm back to you. We're trying to make sure that we understood something - I apologize for the delay.



With regard to the exempt plant proposal by National Milk, it includes more than just increasing the limit on route distribution.

Marjorie Cooper: Correct.

Gino Tosi: Are you in support of the features - the other features of their proposal, like, for example, the things being uniquely labeled, uniquely branded?

Marjorie Cooper: That I'm not - I'd rather not have an opinion on that. My family's never worked in that area.

Gino Tosi: Okay, okay. So we really can't consider you then as being fully joined to National Milk and IDFA's proposal on exempt...

Marjorie Cooper: No, I felt when you asked that that you were referring to the 450,000 pound exemption.

Gino Tosi: Okay. But are you aware that their proposal goes - it goes a little further than that?

Marjorie Cooper: Oh, yes, I've read it a few times.

Gino Tosi: Okay, okay. Well, I think I understand things better now. John, did you have any?

John: No, I have none.

Gino Tosi: Okay, no other questions. Okay, we really appreciate your petition there, Marjorie. And we invite you to stick around and listen to the rest of the hearing...

Marjorie Cooper: Thank you.

Gino Tosi: Session here today. I'd just like to say one thing; we're making very good progress going through these proposals. If we don't finish by 12:30, then what we would do is we would adjourn at 12:30 for one hour and then come back at 1:30, okay, just to let everybody know that now, okay?

If we could go to our next proposal. It would be from Seven Doves Dairy and Creamery. And Terri Graves is - Terri Graves, are you on the line, please?

Terri Graves: Yes, I am, thank you.

Gino Tosi: Well welcome to the pre-hearing information session.

Terri Graves: Well thank you for giving me this minute of time. I appreciate it.

Gino Tosi: You're out in Arkansas, aren't you?

Terri Graves: Yes, I am.

Gino Tosi: Okay.

Terri Graves: We're few in number.

Gino Tosi: All right. Have you been listening to the session so far?

Terri Graves: Yes, I have. It's very interesting.

Gino Tosi: Okay. Well good. Terri, if you would be kind enough to tell us about your proposal.

Terri Graves: Sure, yeah.

Gino Tosi: You don't have to justify anything. Just tell us what it is and what you hope it accomplishes and how you might envision it working.

Terri Graves: Well, it's very simple, very straightforward and won't take me but just a minute. My only concern is whenever we begin to change the rules and throughout long-standing programs that have thus far worked, that maybe some people might fall through the cracks. And that's my only concern in dealing with big business. We've been in business for a while. Sometimes little guys get squashed and cast aside, they fall through the cracks.

And I think it's lovely that there's so many successful creameries that want to grow bigger. And Heavens, I support them 100%, let them grow bigger. My only - one and only concern is that we do not forget little people like Cooper Hill and myself, a very tiny, you know, let's just be sure that we make room for them, that we don't put on them undue burdens that we could never in our wildest dreams bare.

I don't believe any of us are causing any disruption in the market. Any time a farm can survive at all in these tough times, you know, I don't think we need to burden them any further to increase the poundage to 450,000 live, I don't have a problem with that. I think that's a wonderful idea.

That is my only concern, is that we don't let us little dairy creameries just run by our own families fall through the cracks. Somebody somewhere be watching for us and say, well, we have to make allowances for them. And that's really my only concern. And I think you for your time, I thank you for letting me listen. I've learned so much.

Gino Tosi: Thank you, Terri. So if - tell me if I say this, if I've accurately characterized what you're saying, is that you don't have any specific proposal. You just have concerns that if we go out and do something, that we not hurt the...

Terri Graves: The small creameries. That's exactly right. I don't have any problem with any of the proposals thus far. I could support any of them. But my only concern is, when we begin changing the rules that somebody somewhere is watching out, that we don't hurt the little people without much of a voice. You know what I'm saying?

Gino Tosi: Yes, ma'am, I do.

Terri Graves: Okay, that's my only concern.

Gino Tosi: Okay. You seem to have important views. And you stated them very well. If we were to have a hearing, we sure would appreciate you coming and participating and saying your piece there.

Terri Graves: Well, if it would be possible I would. We're so small, to lose a member of the family is kind of like to handicap the rest of the family. I would love to come if it were possible. But I certainly couldn't say that it would be possible. You know, I have no grievances with any of the proposals that have thus far been put forth. I think I could easily support any of them.

Not that we are in need of any of the changes. We can exist with things as they are now. I only wanted to be certain that we weren't - that we didn't fall through the cracks and the exemption stayed in place to protect us. That's my only concern.

Gino Tosi: Terri, would - if you could tell us a little bit more about your operation? For example, you know, how many cows that you might have...

Terri Graves: Yeah.

Gino Tosi: And what your sales are kind of like?

Terri Graves: Yes, we rarely milk over 100 cows - we're very small. We're a little Jersey dairy located out in the middle of the National Forest, just a little private dwelling here in the middle of the forest. And we sold milk to ANPI Co-op for years and years. And then they became DFA Co-op and things got a little bit tougher on you if you were misplaced as we were, kind of set aside on their own and you begin to be threatened to be dropped and cut off and let fall by the wayside simply because of your location. Our rural route was hard to get to.

That's when we put in our own creamery, began to bottle our own milk. Simply so, you know, we could be safe. We would always have a market for our milk, we wouldn't have to worry about being cut off or dropped or disengaged by a larger co-op. You did make your own way in the world. If you were willing to work hard, you could get it done, you could still milk your cows, you could still stay in business, you could still sell your milk. And that's why we put in our own creamery, just to stay on the farm and to keep our cows and to continue life as we knew it. It's just a lot harder, it's just a lot more work involved.

These people that run these little creameries, the small ones like ours, you're really doing two or three jobs all of your own - your own family. We don't have any outside employees. It's just us. Heavens, I don't think we could afford any outside employees.

Man: Okay.

Terri Graves: But - or any lawyers either. But I applaud the people that have grown to such extent that they could afford such things. We really don't have a desire to do it. We just - and here I don't want to sound mean - but we mostly just have a desire to be left alone. We're just small, we just support our local community with milk and we love our customers and they love us. We don't - we just don't want to be pushed out of business because someone somewhere that we have no power over decided to make a rule that we didn't need to exist.

We've kind of been a little bit buffeted before by some of the major things out there. And we're just - we just want to send up a flag, you know, to say hey, don't forget us, don't shove us out. Just let us continue life as we know it. It's hard enough without any undue pressures put on us from outside. Is that about as clear as mud?

Man: No, ma'am, I think you've done a very good job of explaining. Who do you sell your milk to?

Terri Graves: Just our local grocery stores.

Man: Okay. And...

Terri Graves: It's only our own name.

Man: But see, if you're in Arkansas, you'd be part of the Southeast Order, is it?

Terri Graves: Yes.

Man: And in the Southeast Order, you're considered an exempt plant now?

Terri Graves: Yes.

Man: Because you're under 150,000 pounds of distribution?

Terri Graves: Yes, sir, that's right.

Man: Okay, okay. Terri, that's all I have for you. John? Well, Terri, we appreciate you taking the time to participate and especially for being so patient to wait your turn in line.

Terri Graves: Oh, I didn't mind. I enjoy listening.

Man: Okay. And we invite you to stick around until we are finished.

Terri Graves: Okay, well thank you very much for having me. I appreciate it.

Man: Okay, thank you.

Terri Graves: All right, good bye.

Man: Bye-bye. Next, Wendy Yoviene on behalf of the Pennsylvania Association of Milk Dealers. Wendy?

Wendy Yoviene: Good morning.

Gino Tosi: Good morning, Wendy. I know that you've been here all morning here with us. Would you please tell us about your proposal on behalf of Pennsylvania Association of Milk Dealers?

Wendy Yoviene: Sure. I represent the Pennsylvania Association of Milk Dealers. We're a milk processors doing business inside and outside the state of - the Commonwealth of Pennsylvania. We have large and small milk processors. Some of the small milk processors that are doing business in Order 1, for example, are smaller

than some of the volume limitations that are being considered for the producer handler exemption.

We have decided to adopt for ourselves and support the IDFA proposal that would eliminate the producer handler exemption and increase the exempt plan - exemption from 150,000 to 450,000 pounds. And the intent is folks shipping and marketing orders, everybody should have uniform minimum prices with the minimized exception.

Gino Tosi: Okay, thank you. Also, with regard to the IDFA and National Milk proposal on exempt plans, does your client have any position, for example, on the other requirements beyond the 450?

Wendy Yoviene: Yeah, we agree with the proposal.

Gino Tosi: The entire proposal?

Wendy Yoviene: Yes.

Gino Tosi: Okay.

Wendy Yoviene: The proposal presented so far. We're not in agreement with the National Milk proposal later.

Gino Tosi: The one we're going to hear in a few minutes.

Wendy Yoviene: Right.

Gino Tosi: Okay.

Wendy Yoviene: As of this time.



Gino Tosi: Okay. Wendy, I don't have any other questions other than, I guess, we'll - somebody representing the Association of Milk Dealers there from Pennsylvania.

Wendy Yoviene: Yeah, we're prepared to bring witnesses, especially witnesses among the smaller processing membership who can testify about the implications for them if this producer handler model proliferates in and around Pennsylvania.

Man: Okay. And they would understand about cross examination and all that...

Wendy Yoviene: They're quite accustomed to it.

Gino Tosi: Okay.

Wendy Yoviene: They're - they do it regularly before the Milk Marketing Board.

Gino Tosi: Okay. So if we were to do a hearing notice, would you agree then that we could - with respect to the National Milk and IDFA proposals to include the Pennsylvania Association of Milk Dealers as being part of the same proposal?

Wendy Yoviene: Yes.

Gino Tosi: Okay, thank you.

Wendy Yoviene: Thank you.

Gino Tosi: Mr. Ben Yale, please, on behalf of Select Milk Producers and Continental Dairy Producers. Good morning, Ben. Thank you for coming all the way from....

Ben Yale: Now that is the brighter green light.

Gino Tosi: Okay. Thanks for coming...

Ben Yale: Yes.

Gino Tosi: All the way down from the great state of Ohio.

Ben Yale: It's great. It's Continental Dairy Products, Inc, not Producers.

Gino Tosi: Excuse me, I stand corrected.

Ben Yale: No, it's a mistake that's commonly made. So our proposal, while we support prospectively National Milk Producer Federation and IDFA's proposal on realigning exempt plants and producer handlers to 450,000, we feel that it's inappropriate to regulate existing - particularly small family farms - operations who have been around in some cases decades, sometimes longer than the Federal Orders themselves.

And that there ought to be some grandfathering provision that is done. We have made two proposals as alternates - alternate, one or the other, as far as grandfathering. The first one is essentially identical to that that John Vetne presented on behalf of Mallorie's, with one exception. And that is that, as John explained, once you're out, you're out. We would allow some kind of safeguard for those events that might occur that, for example, a plant fire or some other (unintelligible) event that would cause them not to be able to operate for a month or two, that they should be able to come back. I don't think you should have that automatic (unintelligible).

Other than that, it's identical to John Vetne's proposal from Mallorie's Dairy. And essentially what we're doing there is that we're taking the volume of

milk that is now currently exempt from federal orders from those producer handlers and maintaining the exemption for that volume of milk and grandfathering that in.

Because at this point, we don't believe that that's disruptive. And therefore, by maintaining that volume, more or less, that that would maintain a - the order would maintain and we would also be able to maintain the value and the wealth that these small operations are required. We don't think it's right for the federal order to harm that.

Now in the event that there's some complexities and some policies who's associated with this grandfathering and among those is the idea that you can actually give some vested rights to somebody for the past into the future. And to make sure that there is some kind of grandfathering available, we then proposed the adoption on a nationwide basis of what is exactly now in the pacific northwest, the exact same language.

We feel that it ought to be uniform throughout the country. The 3 million, which also appears, by the way, in the first proposal, we believe that that's a number that Congress has given to the dairy in several ways. I mean, it was in the Milk Regulatory Act, Equity Act. It was in the Dairy Promotion for Dairy Products, the 3 million. It is by law required in the Arizona order. This would give us uniformity throughout so that rather than having different numbers.

So that's how the 3 million comes. And it also - for the ones that we're aware of and the marketing areas we're at, it also would cover existing PDs as of their production and what they were selling at the time that this proposal came out.

There's a couple things though that I wanted to point out though. And that is that in looking at this, the small business, the Regulatory Flexibility Act, the

focus on these individuals to determine whether small business applies or not has to be on the plant's side and not on the producer's side. It's not a competition between producers. It's a competition between plants.

And even at 3 million pounds, it's a very small plant in conjunction with the rest of this going on (unintelligible). So other than that, unless there's some questions, that's pretty well what our proposal is.

Gino Tosi: Thank you, Ben. I did receive some questions that were very similar - that are very similar to the questions that we asked of John Vetne on his proposals, since there's a very strong similarity with the exception of that one feature that you just...

Ben Yale: Right, right. It's identical language except for that one feature.

Gino Tosi: Okay. And in that regard, if we were to have a hearing in the hearing notice, you'd want that - your proposal presented separately from Mr. Vetne's?

Ben Yale: So long as that exemption would be available for people to testify for or against. That one provision, yes. I mean, we don't mind joining with John on that. It's, you know, that could be accomplished as a single proposal. It might aid it but we just want to make sure people are aware that that's our position for that exemption.

Gino Tosi: Okay, okay. And your alternative proposal then would make the producer handler provision identical in all marketing orders and it would follow almost exactly like it is in the Arizona Pacific Northwest?

Ben Yale: The Pacific Northwest language was taken out and made - yes, it's identical to the Pacific Northwest with the 3 million cap.

Gino Tosi: Yeah. We did have a question here, a new question regarding your alternative Number 1 that's like Mr. Vetne's proposal. Would you please explain how a new producer handler would be regulated under your proposal in Alternative 1?

Ben Yale: A new one that did not exist with any - was not operating plant, didn't have production based during that two year period that we allowed them to come up with a base, so to speak, would either be under 450,000 and be exempted of if they were over 450,000 they'd be regulated. That's the way I understand the proposal.

Gino Tosi: Okay.

Ben Yale: For any new ones. This is - all we're trying to do, if you're going to change the rules of the game, that's fine. But I think because of the investment that these families have in these operations, we need to be able to protect them.

And so for those in existence that we're protecting, it's not - then everybody knows what the rules are in the future and they can make their business plans accordingly. But some of these people are heavily invested in their - based on a long-standing policy and it shouldn't be harmed.

Man: One moment, Ben. Okay. We have another question for you, Ben. One moment, I'm still not understanding something. One moment, please. Exemption on behavior is still to be determined. We want to back up a little bit. This is a question that we asked of Mr. Vetne.

Ben Yale: Okay.

Man: If on-farm milk is to be treated in a manner different from all other milk processed by the plant, how are the volumes of on-farm milk allocated for

utilization and pricing purposes? For example, all Class 1 pro-rated of total utilization down allocated?

Ben Yale: Well, if their production is less than 3 million and they're using only on-farm production, then it would be as an individual handler pool and they would pay themselves. There would be no minimum prices to pay to any market-wide pool.

If they had excess of their base, whatever that is, it may be 500,000 pounds - whatever it is. I mean, this is probably where John and I would disagree. I would up allocate any milk that they had in excess of the cap and down allocated what their own farm production so that the excess would all be on their own farm rather than prorated. So there is that difference.

Gino Tosi: Ben, I have a clarification here. The 3 million pounds, you said this is like the Pacific Northwest. And so we're talking about 3 million pounds of sales or 3 million pounds of farm production?

Ben Yale: The second alternative is the Pacific Northwest, which is 3 million pounds of milk distribution in the marketing area. It's identical. And that way it also drives with the requirements under the MREA for the Arizona order so that we're all the same.

Gino Tosi: Okay.

Ben Yale: The same definition. No twist there.

Gino Tosi: Okay.

Ben Yale: The other one is intended differently - I mean, the second one creates a grandfather in the sense that we believe that, I mean, there's all these small

ones would be brought into it. We just don't think that there's a real business plan that could make any long-term, you know, growth in that area in that period of time that we need to be worried about.

But the other one, the first alternative, just basically isolates the production that's now exempt and keeps it out of the pool. And allows everything else to be brought in. And in that case, it's based on production at the farm as opposed to the milk that's being processed.

Gino Tosi: Okay.

Ben Yale: Does that explain the difference?

Gino Tosi: Yes. I hope I can represent this question properly. Someone is observing that your proposal and Mr. Vetne's proposal differs in the sense that - I'm not sure if it's yours or Mr. Vetne's that talks about going back and looking at two year's worth of business or farm production to establish whatever this base is, if you will.

Ben Yale: Right.

Gino Tosi: I think yours is being looked at as that it doesn't speak to that issue.

Ben Yale: Well, I thought it did. And it maybe one in which there's a clerical. I thought I had John's identical with the exception of the automatic loss of the exemption upon, you know, losing it for a month or something. So to the degree that there's any differences there, I don't believe there should be unless John added something after he sent me his draft.

Gino Tosi: Okay.

Ben Yale: So that may be and I need to clarify that. I wasn't aware of that.

Gino Tosi: Okay. If you would...

Ben Yale: I will.

Gino Tosi: I sure would appreciate it.

Ben Yale: I will clarify that. But the idea is that you look at their production during three months in that two year period. If they have the production and they have the bottling as of the first of the year, so that we got a kind of a clear cut off, then they can be exempt for that amount of milk so long as it's fundamentally owned by the same family, same ownership. And that would be the exemption - very limited.

Gino Tosi: Okay. Good, I think everyone is satisfied now.

Ben Yale: Okay. Well then they can adopt and go along with our proposal then.

Gino Tosi: Okay. I have no further questions. John, did you have any more?

John Mengel: On the base period then, your proposal actually says January '07 through February of '08.

Ben Yale: It should be through '09.

John Mengel: Okay.

Ben Yale: It should be through '09. Thank you. It's a two-year period there.



Gino Tosi: Then I don't have any other questions. I think most other people in the room are satisfied. The other questions, I don't think I need to ask about you appearing at the hearing and cross examination.

Ben Yale: Well I mean, if you want to help me, I'd be happy for the help.

Gino Tosi: Okay, okay.

Ben Yale: I might need it - all right, thank you.

Gino Tosi: Thank you, Ben, appreciate it. Okay, next, if many of you feel free to come forward on behalf of the American Independent Dairy Alliance, Nancy Bryson, Ryan Miltner, Al Ricardi, Sally Keefe - I don't know if I'm saying that properly - and Warren Taylor of Snowville Creamery. You're all welcome to sit up here together if you feel like you want to.

Okay, well I know both have you have been here for the entire session. So if - be kind enough to - I know you have three proposals. If you could - let's go through one and when we're done with that one, we'll go to the second one and then go to the third one.

Al Ricardi: Actually, you know, this is Al Ricardi speaking on behalf of the American Independent Dairy Alliance. Allow me at least initially to talk about our position with regard to the two proposals that actually bring us here, which are made by IDFA and National Milk.

We set forth in (unintelligible) in our request for denial as well as our alternative proposals the reasons why there is no need, no basis and as Mr. Carroll also stated, no legal authority to eliminate the producer handler exemption.

Our group is comprised currently of six producer handlers throughout the country as well as one exempt plant who has the business plan to become a producer handler. These businesses have adopted the producer handler model, have based their growth, their sales, their very existence on the producer handler model. They create absolutely no disorder.

In fact, they are innovators in the orders that they represent and provide a salutary basis for customers and others, whether it be for unique products, types of products, a specific type of milk and a transparency that's necessary throughout this system and throughout the country.

We reiterate what Ms. Graves said; they worked hard in effort to make it and make their way in the world. And to have large organizations attempt to regulate them out of existence when there is no factual or legal basis to do it is unfair. To do it in a national hearing when there is no necessity for one, as we know from what just recently occurred in the department, we terminated a hearing where we had a complete factual record in Order 5 and 7 because there was no factual basis to even limit it to 3 million pounds. So why at this point we would have a need for a hearing at all obviously on behalf of our coalition, we say there is no basis.

However, to the extent that the department determines, for whatever reason, to hold one, then we have alternative proposals that Mr. Miltner will speak to.

Man: Gino, did you want to - we have three proposals as you noted. Let's start off with the one where you're talking about exempt owned farm milk production...

Man: Sure.

Man: With down allocation.

Man: Sure. The purpose of exempting owned farm production would be to permit any handler who also operates a farm of their own to exempt that production from their pool obligations. We would view that scenario - view the regulation operating and that they would down allocate the owned farm production so producer milk would go to the highest value used. But it wouldn't limit the application of the exemption to farms and plants that use exclusively owned farm production.

It's similar to the operation of the - what I'll call the California-type model that John Vetne spoke to, except in this case, you would down allocate all the owned farm milk and it would not be limited.

Gino Tosi: Let me make sure that - I want to make sure that I understand it. Maybe I'm speaking on be - asking a question that maybe other people are thinking about as well. Let me give you a hypothetical situation. Let's say we have somebody, for example, who's currently regulated, meaning that they're subject to pooling and pricing. And this handler supplies a significant portion of milk that they distribute as Class 1 with their own farm. And they also buy milk from other dairy farmers, okay.

If I understand this proposal correctly, the amount of milk that they're producing on their own farm is going to be treated differently from the milk that they're buying from dairy farmers. And to the extent that we can characterize that as producer milk, for example, and that gets distributed on route. That's going to be the highest priority first is the milk from other producers and then - and only then does the on-farm production come into play. And then the idea about down allocation and all.

Man: That's correct.

Gino Tosi: Okay. That's the only question that I had. John? Okay, thank you. Let's go to the - your second proposal. It says here, to exempt all milk sold by producer handlers at retail.

Man: Sure. This proposal operates, I suppose, in conjunction with the National Milk proposal which we obviously have opposed. It would add on to each of the producer handler provisions for each marketing order in explicit exemption for all route distributions by producer handlers to retail. And we've defined those as to retail channels that are controlled and owned by the producer handler home delivery or direct consumers. I suppose we could have some discussions about more specifically defining what that is.

But our intent is the producer handler would control the flow from the farm to the plant directly to the ultimate consumer's hands. And if that's the case, then those sales would be exempted under any scenario, even if a cap were to be applied.

John Mengel: Okay. We had a situation earlier, I think it was Mr. Hatch, that did some private labeling for home distribution. That wouldn't be exempted then, under your proposal. Is that correct?

Man: Why wouldn't it? I think it would be, at least our intent would be. If you're delivering it through the home delivery (unintelligible).

John Mengel: Yeah.

Man: If you are - if you're delivering through the home or you're delivering to a route runner where you control the account, that would be exempt.

John Mengel: Well this is a - I'm not sure that the producer handler in this case controlled the account because he was doing private labels for an independent distributor. Would that be exempt in this case or not?

Gino Tosi: I guess that's one of those factual gray areas. Our intent would be that if the producer handler controls the project in the sale to the retail account or to the - I'm sorry - to the ultimate consumer, that it not be exempted. And I guess where you draw the line as to whether a sale to a distributor who sells to the home is direct to retail or direct to the consumer or not. I guess that's just a fact by - it's a fact intensive case-by-case scenario. I mean, I can think of instances where the home delivery driver isn't actually an independent contractor, okay, who services the account.

But they're supplying only milk from a single plant. I think in that case, it would be our intent that that be an exempt sale. But if I'm selling in bulk to someone who's selling under their own name, I think that's a little further removed.

John Mengel: Okay. Ryan, we need to back up here toward your first proposal again.

Ryan Miltner: Okay.

John Mengel: Well, we had a question from the floor here that we think is appropriate to ask. How would your first proposal there to exempt on-farm production, how does that play out with respect to the MREA, for example, for the Arizona order?

Man: Hang on a second and I'll let Ryan answer that and I'll give my answer too. You know, the real issue at this point, as to whether or not USDA has any legal authority to do anything with regard to the changing of the definition of the producer handler exemption as mandated under the MREA. And so even if

you hold a national hearing, you have a real question as to whether or not there's real change that can be effected without any kind of Congressional change allowing it. But I'll let Ryan answer.

Ryan Miltner: None of the members of our alliance operate in that marketing area. And so I have not thought to prove that specifically. And I don't have the language in front of me. I don't know if - I don't - it is a different entity, Mr. English. And I don't know just - I don't know if anybody has the language of the act I could look at it and give you a quick thought. But I will say that the purpose of our - the way that our proposed regulatory language was drafted, it eliminates the designation of somebody as a producer handler.

And it says a handler would get an exemption for on-farm production so that somebody who would otherwise be a regulated handler and I'm going to give an example of another farm operation that might fall into what we conceived here, (Shamrock Farms) operates a plant and has some on-farm production. We would anticipate that an operation like that would also be exempted on their own farm volume.

So I guess I don't - I'm not giving a legal opinion, of course. But we believe that it could be reconciled, the MREA and our proposal.

Man: Okay. (Al), the statement that you made there. I want to make sure that I understand your position. If I understood what you said correctly, in light of the fact that we have the MREA right now and to the extent that it's reflected in the orders, you're of the opinion because that's there that the department would not have the authority to make any changes to the producer handler provision as they are currently provided for in all the orders. Is that what you're saying?

Al Ricardi: No, first of all, I'm not going to give a legal opinion to you, you know. But I'm just stating that there's a question as to whether or not because the MREA was mandated by Congress upon the USDA without change. Whether USDA can change, modify, do anything with regard to that definition in Order 131. It's not obviously because it doesn't impact any other orders that's only specifically mandated for that order.

So you know, what the department can do outside of Order 131, I don't know. And whether the department in fact can change Order 131, obviously the department has to make that decision.

Gino Tosi: Okay. That's all I have. John? Okay, let's go to your third proposal.

Man: Sure.

Gino Tosi: Your third proposal regarding individual handler pooling.

Man: The purpose behind our third proposal to adopt individual handler pooling across all federal orders is premised on the general statement that a producer handler operates as a de facto individual in their pool. And one of the arguments by those that have seek to limit or eliminate producer handler is that there is an inequity in operating an individual handler pool within the context of a market-wide pool.

The American Independent Dairy Alliance doesn't agree with that premise. But our third proposal looks at the same argument from the other side, which says, instead of eliminating viable businesses to correct this supposed inequity, we can more through individual handler pools for all handlers and achieve equity in that manner.

We intend that each handler operate and pay its supplying producers a plant blend price. It would operate as similarly as possible to other individual handler pools that the department has administered in the past. I acknowledge that the regulatory language that we submitted, while it may technically achieve a good deal of that leaves some issues that need to be addressed and should be addressed in the context of a hearing on the issue.

For instance, the need for pool qualification and to the extent that it's needed at all, what that should be is something that needs to be examined. The extent to which it is appropriate and to which the department has the authority which we believe they do, to impose minimum prices on manufacturing plants without Class 1 route dispositions to achieve a fair plant blend price for the producers supplying those plants needs to be discussed. But the intent of the proposal is to allow every handler in the federal order system to operate on an individual handler pool basis.

Gino Tosi: Okay, the question that I have then, if we were to ship from market-wide pooling to individual handler pooling, then there is no exemption from pooling and pricing to any handler.

Man: That would be our intent.

Gino Tosi: Okay. And producers, for example, who - let's say there's a cheese plant and hypothetically just assume that all their milk is Class 3. That handler would pay their producers the Class 3 price.

Man: That's correct. At least the Class 3 price.

Gino Tosi: And then if we had another handler that, let's say, for example, 90% Class 1, they would have, for example, different utilization value for the milk. They would pay that plant utilization value.



Man: That would be their minimum.

Gino Tosi: Okay, I understand.

Man: And we're talking minimums as we've discussed on other hearings, the federal orders set minimum prices.

John Mengel: I guess I have a question. The milk order program is approved milk program. So what responsibility or what rights do we have to even regulate any manufacturing plants under that - solely manufacturing plants under that objective?

Man: Well I think, John, there are - I can give you a couple of practical reasons that I think you can. And then I'm going to offer a shoot-from-the-hip legal thought. Obviously all Grade A milk produced in the country can be used in any of the classes. And so to the extent the department determines that operating on an individual handler pool basis and applying minimum prices to manufacturing plants makes milk move in it's most economic manner, that has a direct impact on what milk moves to a Class 1 plant and insures an orderly flow of milk to it's most appropriate use.

So I think it's all intertwined. And I also think - and this is my off-the-top-of-my-head opinion, that the AMAA is a pretty broad act, talking about the regulation of milk and milk products. One of the purposes is to ensure orderly marketing of milk and proper returns to producers in the aggregate. So you know, maybe that specific issue is one more appropriate for briefing.

But I believe that it could be constructed in such a way that the authority of the department is not a significant issue.

Man: Yeah, we're kind of crossing the threshold here. We don't want to be argumentative. We just appreciate hearing what your proposal - what you think it'll accomplish and how you imagine working. And you've done all of those things certainly.

Man: Thank you. And I understand the alliance understands that especially the individual handler pool proposal may at first flush appear broader than the scope of producer handlers. But in our letter to the division, we explained why there are larger benefits to the program by looking at this as an alternative. And we've explained why it is in fact related to producer handlers because of the identical operation, if not extreme similarities between producer handlers and individual handler pools.

And of course, our first best outcome for our group is that the department decides that there's not sufficient basis to go forward with the hearing. But if you do, the real tragedy here would be if anything were adopted that placed any producer handler or exempt plant at risk of making business changes or going out of business and then at some point in the near future the department were to make a broader - or take a broader look at the entire federal order program, which would have made unnecessary damage to a viable business by not looking at the whole picture now.

So we're not trying to open up the whole program to review. What we're saying is this proposal, the individual handler pool proposal, is one that is related to producer handlers, would eliminate all or certainly - I think I can (unintelligible) eliminate all of the issues related to producer handlers that those that have taken issue with them have brought up. And that is our intent with that proposal is to broaden the scope of the discussion to really solve the problem instead of tinkering around the edges and harming businesses.

Man: One more question, Ryan. One of the things in looking at, for example, on your individual (unintelligible) polling proposal. You had provided, for example, like one set of - in your proposal one set of things that you would say, this is how it would work for all the orders. But for example, four of our orders for the ten orders have skim milk and butterfat pricing.

Ryan Miltner: Right.

Man: And as we try to apply what you said here to all orders, that doesn't address the changes for those types of orders, like, for example, Florida, Southeast, Appalachia. For example, there's no PPDs in those orders - Arizona.

Ryan Miltner: We have a blend price in those orders. But the method I believe in which value of handler milk and calculation of the prices can be done a plant basis pretty similarly to the method which I outlined. And I think it was Order 1's language that I used when we drafted that language.

And if you look at the regulatory language - and I'm simplifying only a little bit. We simply took the language for calculating the PPD for the pool and made some changes that permits the market administrator calculated on a plant-by-plant basis. I would think that you could do the same with the calculation order's blend price for a skim butterfat order.

I mean, is there more that you would need?

Man: Well, the other thing, you had mentioned before that, you know, this is your submission, that you realized that perhaps there were other things. You know, you gave it your best shot and to construct order language for the changes that would need to take place in the order language. You said that there would probably need to be more and we're just asking, is it your intention to share that with us as a revision?

Ryan Miltner: Unless there's a specific request that was not our intent. Because really, what we're looking at, I think, at that point are conforming changes to deal with unnecessary or extraneous provisions in the orders.

Man: And you know, I think that's right. We are looking to conforming changes. On the other hand, you've announced at the front end of this that the amendments to proposals would be due by the 25th of this month to the extent that there are specific issues - excuse me - that the department feels need to be addressed because we haven't addressed them or there's the question with regard to regulatory language. We'll obviously try to do our best to try to do that by the 25th.

Gino Tosi: And to the extent, for example, that we see something that isn't quite technically correct, you would trust us to represent that so long as we're continuing to accurately represent that we're going to - that your proposal is to move to individual handler pooling?

Man: We would trust you to represent the intent of our proposals.

Gino Tosi: Okay.

Man: And to the extent, I mean, we've been to enough hearings that we understand that there are always minor changes and clarifications presented in testimony, especially if they're within the spirit and intent of what was published. And that we felt - we feel that we could address those issues then.

Man: Yeah.

Gino Tosi: Thank you for your patience again. Part of why we're asking some of these things - and we feel like we've been consistent in asking it of everyone else -

until recently, when we've received proposals from people - and if I could just characterize your individual handler pool proposal as a conceptual proposal. We used to be able to publish that. And we could go to a hearing and everyone in the industry understands what that means and that we're going to consider the merits of the idea of moving from individual handler pooling to - excuse me - from market-wide pooling to individual handler pooling.

And that we would work out the language details as part of that hearing process. And if the department decides to adopt it, then we work out the kinks, if you will, and what the regulatory language needs to say.

One of the things that's different now is that federal registers requiring us to, along with saying conceptually what the proposal is, is to do the best job that we possibly can on how the regulatory language would need to be amended. And that's made the process extremely more tedious. And I know that that's not your concern but that's just - just by way of explanation here, some of the other things that cause us to ask some of these other questions.

Man: And we appreciate that, Gino. And well, unless you want a response to that, I don't need to, I guess.

Man: No, I have nothing. I just - I know - I appreciate both you are, you know, very professional and understanding (unintelligible) the regulatory language that it be accurate and all that as best as we can. And to the extent that you can help us help you, we'll do likewise. Thank you.

Gino Tosi: We're making very good progress. If Ryan - excuse me - I'm sorry - Roger Cryan, Kevin Brosch and Dana Brooks from National Milk Producers Federation come forward again, please? Oh, Roger, okay.

Thanks again, Roger. You want to tell us again about your, I guess this would be your third proposal?

Roger Cryan: This is our third proposal. Discussion of our previous proposal to eliminate the producer handler provision led to concerns - legitimate concerns that there are impacts on certain existing small businesses would outweigh their benefit to the market. We've heard a lot of discussion about that today. And we had that discussion previously.

So just as NMPF concluded that there's good reason to expand the current exemptions for small plants, there's also good reason not to fully regulate existing smaller producer handlers who's impact on the market is limited. And for whom such regulation could be an unbearable burden.

Our additional proposal would allow plants that are operated by producer - that were operated by producer handlers in 2008 to be defined as exempt plants, provided that they met many of the same requirements that they now meet to maintain the producer handler status and that they meet - and that they limit their Class 1 sales to 3 million pounds of uniquely branded milk or less.

This remains consistent with our earlier petition, which we continue to support in full. And the dual objectives of that petition were to limit the disruptive impact of large existing producer handlers and to prevent their disruptive impact of a proliferation of new middle-sized producer handlers, allowing existing producer handlers to maintain and exemption up to 3 million pounds per month we think we allow those objectives to be achieved without an undue regulatory impact on these smaller existing operations.

So it involves small business operation fairness consideration for the source of clients and farms that aren't of the size to deal with those things. We are open

to other alternative definitions of the grandfathering and hope that the scope of the hearing will allow for that.

I'd also like to point out that there seems to be some confusion - at least by one or two of the speakers - about the - what uniquely branded - uniquely labeled - I'm sorry - uniquely branded would mean for these plants. It would require - we wouldn't see that as requiring a plant to have only one label. A plant could have as many labels as it wanted as long as it wasn't bottling under any labels or any brands that were also being bottled by other plants.

It doesn't - it wouldn't have to be the name plant. It would just have to be a brand that is not being used by another plant as well. I think that should clarify some of the confusion by one or two of the earlier speakers. And that's - I'm prepared to answer any questions. I'd like to point out that the other names you cited for National Milk were on the list. We were asked for a list of everyone who would attend for the purposes of security but I'm the only speaker.

Gino Tosi: Thanks, Roger. It's just - if they wanted to come up with you, that would have been fine too.

Roger Cryan: Thank you.

Gino Tosi: Well, thank you. I don't have any questions. I think your third proposal there is very, very clear.

Roger Cryan: Thank you.

Gino Tosi: Thank you. John? Thank you, Roger.

Roger Cryan: Thanks.

Gino Tosi: Next up is the New Hampshire Department of Agriculture, Markets and Food together with the Vermont Agency of Agriculture, Food and Markets. And I - it's my understanding that Byron Moyer...

Byron Moyer: That is correct.

Gino Tosi: Okay, welcome there, Mr. Moyer. Have you been listening to the session so far?

Byron Moyer: No, sir, I just got on.

Gino Tosi: Okay. Let me tell you who's here. We have a room full of people - pretty full, anyhow, that have come to present proposals in the way that you're going to do yours by phone here. And we're going to ask you to present your proposal. You don't have to justify anything, you just need to make clear what your proposal is, what you hope that it will accomplish and how you're envisioning it operating in the orders that were adopted.

And with saying that, please go ahead and begin your presentation.

Byron Moyer: Thank you. First off, let me state that I just got on this call. And I have just seen the proposal for the first time minutes ago. What the joint proposal from the New Hampshire Department of Agriculture and the Vermont Department of Agriculture is, is to adopt the producer handler definition as currently used in the Pacific Northwest, 3 million pounds per month as the definition throughout the federal order system.

The thought process behind this is we recognize that there are certain, very large producer handler who may enjoy a competitive advantage to typical Class 1 processors. But that there are smaller Class 1 handlers that due to their



size, don't necessarily enjoy a competitive advantage over larger Class 1 handlers. And the agencies feel that the 3 million pound per month limit is appropriate and that at or below this limit, while there may be some economies that scale on the firm side, there would not necessarily be those economies that scale on the processing side. Three million pounds per month is you're basically talking about 100,000 pounds of milk a day. And that is a very, very small food milk processing plant.

And that above this number, perhaps there are some economies - some competitive advantages that need to be spoken to.

Gino Tosi: Thank you, Mr. Moyer. Let me make sure that I understood what you said. It's my understanding, based on what you just said, are you asking that all federal orders, with respect to the producer handler provision, be as it currently exists for Arizona and Pacific Northwest? Because it - I understand, I think you're making it pretty clear that you want to see a cap on 3 million pounds of Class 1 sales. But in the Arizona and Pacific Northwest orders, there's a whole bunch more, you know, that's said about it.

People have to apply to the market administrator to be a producer handler, market administrator has to be satisfied on a number of issues. For example, it - just in terms of text, regulatory text, it's - they are the longest producer handler provisions and they're extremely detailed. And if I could characterize the rest of them, like the one you have currently up in the Northeast, it's much more brief.

But there are some common threads that run through the producer handler definition, probably the most important one is, is that the producer handler's operation is done exclusively at their enterprise and risk. And in the Northeast, there's a provision to allow a producer handler to purchase some additional milk.

Byron Moyer: I'm just - in reading this, it says to ensure unity throughout the federal system. The 3 million pound per month limit within the producer handler definition from the Pacific Northwest should be imposed in all orders for defining a producer handler.

I believe the intent of the commissioners was to speak solely to the size definition of producer handlers and not necessarily address and not necessarily suggest that the other producer handler requirements as exist in the Arizona order and Pacific Northwest order be incorporated on a national basis. I think the intent is only to speak to size.

Gino Tosi: Okay, thank you. That's a whole lot more specific for our purposes. You're not asking that they not all be made like Arizona and Pacific Northwest. But the most important theme here is that the setting of a route distribution limit...

Byron Moyer: Correct.

Gino Tosi: And that you're supporting 3 million pounds in all orders.

Byron Moyer: Correct.

Gino Tosi: Okay. And in that regard, you wouldn't see you need to change anything right now in Pacific Northwest and Arizona because they already have a 3 million pound cap?

Byron Moyer: Correct.

Gino Tosi: Okay. That's all I have. John? Okay, Mr. Moyer, thank you and that's all we have. And we appreciate you joining us and taking the time to present your proposal. We only have one more person, one more proposal to consider. And

we welcome you to stay on the line to hear it if you're interested. It's not required, though.

Next up is Mr. Kenneth Heiman of Weber's Farm Store. Mr. Heiman, are you with us?

Kenneth Heiman: Yes, I am, sir.

Gino Tosi: Okay, thank you for joining us today. Have you been listening to the session pretty much this morning?

Kenneth Heiman: Actually all the way through, sir.

Gino Tosi: Oh, wonderful. So then I guess you know that we're giving you a chance here to present your proposal. You don't have to justify it. You can just tell us about, you know, what it is, what you hope that it accomplishes and how you might envision it operating if it were adopted for the milk marketing orders.

Kenneth Heiman: Very simply, we have been a producer handler for more than 50 years. We are in our fifth generation of farming. The other part of the whole thing has to do with the fact that I do believe that the 450,000, it was originally proposed was not a number that could be lived with. The number that we chose in our proposal was 2 million pounds based on the future of what may become the farm of - as well now as what could be in the future with the idea that 1,000 cows at a minimum 24,000 a milk per year is going to give you 2 million pounds.

The longevity of the whole idea was that really, in Order 30 which is what we are in, we are in Wisconsin. In Order 30, the only thing that's really impacted is four-tenths of 1% by that. We only have five producer handlers in this order. I realize that I can only address this order because I do not necessarily

understand the other orders as far as the Pacific Northwest or other areas of the country.

I'd be very happy to work with the 3 million that had been proposed - just giving us that much more room. We do bottle everything under our name. We only use our explicit name. We do not bottle for other people. But I guess in all essence, that becomes our entire proposal, is the fact that we were looking for a larger base and not feeling this 450,000 was adequate. Hello?

Man: Yes, I'm thinking of a question here.

Kenneth Heiman: Okay.

Man: One moment please.

Kenneth Heiman: All right.

John Mengel: Yes, Mr. Heiman, this is John Mengel. The question I have is, is this 2 million pounds applied just to producer handlers? You would retain the producer handler provisions and apply a 2 million pound cap to it?

Kenneth Heiman: Yeah, anything over and above that, sir, would go as being paid for under Class 1.

John Mengel: Okay. So it does not apply to the exempt plant definition? Just to the...

Kenneth Heiman: No, I - we - I understand the producer handler definition. I do not necessarily understand the exemption that was attached to exempt plants. Being at the fact that we've been at it for so many years, producer handler, we understand. And some of the other plant exemptions, I'm not sure I do understand.

John Mengel: Okay, thank you.

Gino Tosi: Mr. Heiman, this is Gino Tosi again. Your proposal, you're just proposing this for the upper Midwest order, Order 30?

Kenneth Heiman: It's the only order that I truly understand. And I, you know, if it were adopted on other orders, I believe I've heard this morning the Pacific Northwest has 3 million pounds. If something were to come all the way through that were 3 million, undoubtedly that's higher. I have no problem whatsoever with that.

Gino Tosi: Okay. So if we were to have a hearing, how would you like us to represent your proposal? At 2 million pounds or at 3?

Kenneth Heiman: I guess in all honesty, I have no problem with the 2 million pounds.

Gino Tosi: Okay. And in that regard, you're just saying that's an appropriate number, just for the upper Midwest then?

Kenneth Heiman: It's an appropriate number for the minimum in the Midwest, yes.

Gino Tosi: Okay. So if we were to represent your proposal in a hearing notice, we would say, for example, Weber's Farm Store is proposing a 2 million pound route distribution limit for producer handlers in the upper Midwest order?

Kenneth Heiman: Yes, sir.

Gino Tosi: Okay. And Mr. Heiman, I know that, you know, we don't expect you to know the ins and outs of how to construct all this regulatory language. Would you trust us here in the department to do that for you, provided that we accurately represent what your intent is?

Kenneth Heiman: I'm sure that you could do that far better than I could.

Gino Tosi: Okay, okay. If we were to have a hearing, would you be willing to come and present your proposal at the hearing?

Kenneth Heiman: Absolutely.

Gino Tosi: Okay. And would - could you hear my questions before, about being cross examined by - probably most by the folks that don't agree with you?

Kenneth Heiman: Undoubtedly that would be just fine.

Gino Tosi: Okay. Good, hold on. We might have one more question. One moment. This two million pound exemption for producer handlers; do you mean that to be, somebody could still be a producer handler, provided he doesn't distribute more than 2 million or anything above 2 million gets regulated?

Kenneth Heiman: Everything about 2...

Gino Tosi: I'm sorry, I didn't say that correctly. Did I say that correctly? Okay. So in other words, you know, one you can look at as a hard cap. The other is a soft cap, if you will.

Kenneth Heiman: I guess if you refer to it as a soft cap as being 2 million is non-regulated and everything above that is considered Class 1 priced, yes.

Gino Tosi: Okay. So any producer handler is free and clear then on the first 2 million pounds and it's only that which is above 2 million that becomes...

Kenneth Heiman: Regulated.

Gino Tosi: Regulated and pooled and priced then.

Kenneth Heiman: Right.

Gino Tosi: Okay, good. Now we really understand it. Thank you. I had missed that characterization there, that little detail and somebody else caught. We appreciate that. Mr. Heiman, I don't think we have any other questions. You're welcome to stick around as we go over some closing remarks.

It's my understanding that we've addressed every proposal that we've received. There were about 27 of them. I want to commend everybody's participation here. Everybody played by the rules. There was very - almost no argument amongst people. And I hope that everyone feels a little bit more comfortable, that we all understand what other people's ideals are and what they have in mind.

Just to review a few last things, just as reminders again. Following today's session, you'll have until next Wednesday, March 25, to provide any provisions to your proposals. And please submit those in the same way that you submitted your initial by close of business March 25.

And again, if you need any special data that you would like the department prepare, please get that into us as soon as possible. And again, according to our rules of practice, your data request must be made at least 10 days prior to a hearing if we have a hearing notice that gives at least 15 days notice. If it turns out that it's less than 15 days, we ask that that data request be submitted at least three days prior so that we have the time to pull that information together for you.

And any information request that we do provide, we're going to make public to everybody. And to date, those data requests that we have received and to

the extent that we've been able to satisfy them, they are up on our AMS Dairy Program's Web site.

And that's all I have. And I thank everybody for putting up with me for the last four hours. Thank you. Any questions? Yes, sir.

You're asking when we will - if we're going to issue a hearing notice, when will that notice be issued? Well, we always try. I can tell you what we try for. We always try to give about 30 days notice. However, the rules say that we have to give at least three for an emergency hearing. And at least 14 days for - is it 15 - 15 days for normal. We try to give as much notice as we possibly can.

One of the things that's different here is that this will be our first proceeding under which we're under the Congressionally mandated deadlines for doing certain things. So that's become a factor in how this problem gets driven.

I would imagine probably May at the soonest - early May at the soonest. If that's the decision; there's still a lot of decision making that needs to be made in light of things that we've learned here today. And you know, not only to decide if we should have a hearing but which of these proposals are appropriate for that hearing and which may not be. So there's still a lot more work when we leave here today that we're going to go back and do. Any other questions? Well thank you, I guess we can adjourn. And hope to see you all again soon. Thank you.

END