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May 16, 2003

Mr. Richard McKee  
Deputy Administrator  
USDA/AMS/ Dairy Programs  
Stop 0225  
Room 2968-S  
1400 Independence Avenue, SW  
Washington DC 20250

RE: Proposals for changes in Producer Handler Definition

Dear Mr. McKee:

This letter, on behalf of Select Milk Producers, Inc. and Continental Dairy Products, Inc. is in response to a request for proposals regarding the producer handler definition in the Arizona-Las Vegas Milk Marketing Area. United Dairymen of Arizona has proposed a comprehensive redefinition of producer handler as well as changes in pooling standards. This letter only addresses the producer handler definition.

Select Milk Producers, Inc. is a New Mexico milk marketing cooperative with members in New Mexico, Texas and Kansas. Its members' milk primarily serves the Southwest Milk Marketing Area but does, from time to time, serve other marketing areas such as the Southeast and Florida Milk Marketing Orders.

Continental Dairy Products, Inc. is an Ohio milk marketing cooperative with members in Michigan, Indiana, and Ohio. Its members' milk primarily serves the Mideast Milk Marketing but has also supplied milk to the Appalachia and Southeast Milk Marketing Areas.

UDA has submitted two proposals for amendments to the Arizona- Las Vegas Marketing Area. One would limit producer handlers and the other deals with the definition of producer milk. UDA is concerned about the size of a producer handler located in Yuma, Arizona who has sales in the Arizona marketing area. But for its exemption as a producer handler that plant would be fully regulated under that order. As such it would be required to account to the producer settlement fund at minimum class prices and its producers would receive a uniform price. UDA's concern, of course, is that being exempt, the plant does not contribute to a higher uniform price. Handlers in the market also perceive that the producer handler has a competitive price advantage due to its integration and exemption from the minimum price requirements.

Page 2

Mr. Richard McKee

Deputy Administrator

May 16, 2003

Re: Proposal for Producer Handler Definition

Select and Continental do understand the concerns, but they do not, and cannot, support limiting producer handlers on account of size or otherwise limiting their ability to grow. The producer handler is one of the last independent opportunities for producers to market their milk profitably. Removing this option places producers at the mercy of the ever growing power of ever larger processors and cooperatives.

The government permits the vertical integration of food retailers with bottlers and cooperatives with manufacturing plants and does not require they pay money into the pool for that right. It has allowed the merger and concentration of cooperatives into just a few. Bottling is now handled by fewer and fewer independent bottlers and more and more by larger bottlers. Producers should have the same opportunities to grow and integrate as other participants in the dairy industry.

The AMAA does not permit the regulation of producer handlers. All that USDA can do is insure that a producer handler does not benefit from the pooling of excess milk or otherwise ride the system. This creates a natural stop to the growth of a producer handler. At some point it will have more milk than it can market and the losses of the excess milk will undermine the entire entity as a producer handler. History tells us this.

There are those who argue that Congress did not intend to exempt large producer handlers when it passed the AMAA. Nothing in the legislative record says such a thing. It is hard to imagine that Congress, or even the industry participants, even imagined an industry where a dairy cooperatives would operate in all of the dairy states, bottled milk would be shipped in a national market, a single bottler would control 20 or 25% of the bottled milk sales nationwide, or large national and regional food chains would integrate into bottling. Everything is relative. As producers have grown in size, producer handlers will grow as well.

Additionally, Select and Continental oppose limiting the size of producer handlers because it is, in essence, limiting the size of a *producer*. Select and Continental have always opposed and will continue to oppose regulations that use the size of a producer to determine that producers rights to benefits under the FMMO or other dairy programs. The benefit of producer handler status is akin to the producer benefit of participating in the uniform blend price. As the Secretary cannot limit producers' participation in the uniform blend based on amount of production, it cannot limit the benefit of producer handler status. It would not be in the interests of Select and Continental's members to argue the law so as to give the Secretary authority to establish size as a producer benefit criteria.

Select and Continental do not wish to sound unconcerned with producers and cooperatives in Arizona, but the UDA proposal ignores the central problem that Arizona is facing— the adjacent California state pricing and pooling system. This mix of oil and water cannot be homogenized. This situation has contributed in part to the development of the producer handler. But that is not the only problem facing Arizona. Each month milk comes from California (generally the Imperial Valley) into Arizona. At a thirty percent utilization there is no need for that milk, but the uniform price of Arizona is higher than the overbase price producers receive in California and, by regulation, Arizona is an attractive market.

At the same time, sizable amounts of milk are moving from Arizona into California. The exact amounts are not published, but it is estimated that approximately 15% of California's class 1 milk comes from out of state. The vast majority of that is from Arizona. The class 1 price that is higher than the Arizona uniform price attracts that milk— another regulatory upsetting of

Page 3

Mr. Richard McKee

Deputy Administrator

May 16, 2003

Re: Proposal for Producer Handler Definition

common sense economics.

All of these inefficient movements of milk and lack of plant equity create a disorderly marketing condition against which the producer handler situation pales. The Secretary can address much of that problem.

It is apparent that the marketing area of Arizona is part of a larger marketing area that includes portions of Southern California. Using the USDA's methodology for determining marketing areas—finding shared milksheds and markets— counties should be added to the marketing area. This will lessen the ability of a producer handler to grow in that area, reduce the disparity between segments of the dairy pricing between Arizona-Las Vegas and the California state order, and thus will create more orderly marketing conditions.

Proposal 1.

Modify 1131.02 by adding the following language:

CALIFORNIA COUNTIES

Imperial, Los Angeles, Santa Barbara, San Bernardino, San Diego, Orange,  
Riverside, and Ventura.

If you have any questions, feel free to contact me.

Sincerely yours

Benjamin F. Yale

xc: James Daugherty  
William Wise  
Select Milk Producers, Inc.  
Continental Dairy Products, Inc.  
Sydney Berde