



United States
Department of
Agriculture

Agricultural
Marketing
Service

1400 Independence Ave., SW.
Stop 0225, Room 2968-South Building
Washington, DC 20250-0225

February 11, 2004

Mr. Benjamin F. Yale
Yale Law Office, L.P.
Post Office Box 100
Waynesfield, Ohio 45896-0100

Dear Mr. Yale:

This is in response to your letter of January 16, 2004, on behalf of Dairy Producers of New Mexico. In your letter you request that the exemption from Federal order pricing of plants located in Clark County, Nevada, be terminated. You go on to state that it is your view that the exemption provided by P.L. 106-78 does not exempt Clark County from the Arizona-Las Vegas Order as P.L. 106-113 supercedes that language.

As you note in your letter, P.L. 106-78 is codified at 7 U.S.C. section 608c(11). In other words, the Agricultural Marketing Agreement Act of 1937, as amended, was in fact amended by P.L. 106-78 by inserting at the end of section 8c(11) the following: "The price of milk paid by a handler at a plant operating in Clark County, Nevada, shall not be subject to any order issued under this section."

On the other hand, P.L. 106-113 ordered the Secretary to "price fluid milk under the Federal milk marketing orders using the Class I price differentials identified as Option 1A..." Those differentials are not codified. Rather they are set forth in the orders that are the result of the authority granted by the 1937 Act. For this reason, I cannot agree with your conclusion that the Clark County exemption is not in accordance with the law.

Sincerely,

A handwritten signature in cursive script that reads "Richard M. McKee".

Richard M. McKee
Deputy Administrator
Dairy Programs