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

1. Explain the proposal. What is the disorderly marketing condition that the proposal is intended to address?

The NMPF and IDFA would have us believe that 545 dairy operators milking 2,000 cows each are going into the milk handling business with the evidence provided. We must be reminded that with current FMMO CFR 7 regulation, these 545 producers handling 4,000,000 lbs. of milk or more each per month would be fully regulated under the current FMMO order system language. With this in mind every 2,000 cow operator would pay into the pool, rather be levied the same for the producer settlement fund depending on the percentage of each class of milk utilized within each portion of the Federal Order. This is not disruptive or disorderly marketing as suggested by the NMPF and the IDFA.

We need to recognize that from 2001 to 2007 we have lost 48 handlers in the FMMO system. With this trend I doubt that the suggested 545 dairy operations becoming handlers would really happen.

No producer will ever be able to engage in a private dairy enterprise, ever, if the USDA adopts the proposal to eliminate the producer-handler from CFR 7. As a consultant for many producers, and if in the event I could take over an operation, I would like to have the option to create my own product from my own cows within my own calculated risk, in accordance with the current FMMO order language.

2. What is the purpose of the proposal?

The NMPF and the IDFA in reality seem as if they want to monopolize the whole FMMO system and with that totally eliminate the efforts of any individual producer the right or permission to engage in handling milk. This proposal also includes the organic milk handler as well as the artisan farmstead cheese producer. These NMPF and the IDFA associations operate outside of the FMMO system in the States of California, Idaho, and Utah representing their own bearing (disorderly marketing) on this proposal before the USDA.

3. Describe the current Federal order requirements or industry practices relative to the proposal.

The playing field was leveled in 2005 with the producer –handler limited to 3 million pounds of in route distribution in any given month (71 FR 9430). This law was adopted throughout the FMMO system. It is unjust for the NMPF and the IDFA to suggest from the 1937 evidence that the current small plant operators, the producer-handlers, throughout the FMMO do not report their activities correctly. The producer-handler and

all Class I handlers are all levied the same in the FMMO system. The pricing for milk is justified in its current form from the percentages or farm shipments utilized in their various classes in any given month. The pricing or differential is due to more utilization in lower classes of milk, consumption from the consumer, not the producer-handler. If one were to milk 10,000 cows or more in any given FMMO order as a producer-handler, one would have to give back some of those Class I dollars in the form of the producer settlement fund, which in turn reverts to the pool, which in turn reverts back to my neighboring dairy farm producer's revenue.

4. Describe the expected impact on the industry, including on producers and handlers, and on consumers. Explain/Quantify.

If the USDA rules in favor of this proposal it will be catastrophic. There will be no competition in the market place as the proponents will privatize Class I milk sales. The NMPF and IDFA control over 95% of the nation's milk supply. Furthermore, the order language allows the members of the NMPF and the IDFA to dump milk rather than divert 80% in the lowest priced class for the month they choose twice per year. This to me is disorderly and disruptive marketing.

Long range I think that with adoption of this proposal the actual farm producers will never know what they will be getting for their true Class I price as announced by the USDA. Handlers will not have a choice where to compete, locate and receive bottled milk. Consumers will be treated unjustly not having a choice whereas to buy their milk at a competitive price.

5. What are the expected effects on small businesses as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612)? Explain/Quantify.

The NMPF and IDFA will monopolize the market. No small business would ever be able to engage in manufacturing milk. A small grocery store chain would be at the mercy of these organized large scale operations and would not be able to compete for product with any other handler operation. I think that this would stop any one individual from trying to create anything innovative for dairy products or producing milk in general.

6. How would the proposal increase or decrease costs to producers, handlers, others in the marketing chain, consumers, the Market Administrator offices and/or the Secretary? Explain/Quantify?

The evidence given to the USDA from the NMPF suggests that 80% of the Class I milk is at risk in the total FMMO CFR 7 system, and the evidence also states that 10- 15 plants are disorderly marketing milk for the same. Which is it? 10 milk plants or 15? The evidence (last page) provided by the NMPF indicates only 6 plants with some farm milk supply between 3,000,000 to 20,000,000 lbs. of production monthly. The evidence does not indicate if they are producer-handlers or not. On an annual basis with 828,000,000 lbs. of production with these 6 plants (averaged) and with 45,102,000,000 in total regulated supply equates to 1.83% of the total regulated FMMO system of production from the evidence supplied from the NMPF.

It is the over order dollars in specified markets for Class I milk that go straight to the co-op associations represented by the NMPA and the IDFA that never get to the producer that is at stake here. The announced Federal USDA price is what every producer or producer-handler adheres to in the FMMO CFR 7 system. The co-op announced price in major cities published in the dairy marketing news from the AMS/USDA is how these large players pay each other in their scheme of marketing. The difference of the two prices is your true differential brought on by the NMPF and the IDFA. It is not the producer-handler. Those over order dollars or payouts from grocery stores and what the consumer pays is your true differential, and is what the NMPF and the IDFA do not want anyone to come to understand. With those extra dollars of income the co-ops pay themselves, and with that extra revenue, those over order dollars never get to the producer.

It is my opinion that if the NMPF and the IDFA get away with this manipulation of any free enterprise interfering, in their over order pricing, that the eventual scheme of the NMPF and the IDFA would be to eliminate the FMMO and create a coup for the Secretary of the USDA.

7. Would a pre-hearing information session be helpful to explain the proposal?

Yes. Let's make this a roundtable listening session. Why? The 2005 case adopted for regulation for the producer-handler to have a limit of 3,000,000 of duty free milk in the FMMO system was based on hypothetical evidence to begin with. This is what the NMPF and their constituents wanted as a safe harbor from the possibility of disorderly marketing. Over half of the private label milk marketed in the 124 order has vacated or expired from the Pacific Northwest market order from that ruling.

As for regards to the current proposal before us from the proponents to abolish the producer-handler, upper limit the exemption status, and unique packaging, the evidence presented before us, seems to be somewhat distorted from the NMPF. The current regulation provides for 3,000,000 lbs of in route distribution in any one month from a producer handler representing 98,360 lbs of daily production for a 30.5 day month, which represents 1405 milk cows producing 70 lbs of milk each per day. The NMPF suggests that 10-15, 2,000 cow dairies threatens 25% of the total FMMO Class I market, which seems to be somehow distorted from the fact that the total US herd is over 9,000,000 cows and that 30,000 cows is only .0033% of the total US capability for production. In another area of convoluted evidence Roger Cryan from the NMPF shows regulated milk production at 45.102 billion lbs. of production for 2007. The information I have from the ERS/USDA indicates 55.086 billion lbs. of production for all of 2007. Why do we have 10 billion lbs. of production difference represented as evidence by the NMPF?

Sincerely,


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Table 30--Measures of Growth in Federal Milk Order Markets, Selected Years, 1947-2007

Year	Number of markets 1/	Population of Federal milk marketing areas	Number of handlers 1/	Number of producers 2/	Receipts of producer milk 3/	Producer milk used in Class I	Percentage of producer milk used in Class I	Prices at 3.5% butterfat content 2/		Receipts as percentage of milk sold to plants and dealers		Daily deliveries of milk per producer	Gross value of receipts of producer milk 4/	
								Class I	Blend	Fluid grade	All milk		Per producer	All producers
Number	1,000	Number	Million pounds	Percent	Dol. per cwt.		Percent		Pounds	Dollars	1,000 dol.			
1947	29	---	991	135,830	14,980	9,808	65.5	4.65	4.34	---	21	302	5,024	682,407
1950	39	---	1,101	156,584	18,660	11,000	58.9	4.51	3.93	41	25	326	4,914	769,442
1955	63	46,963	1,483	188,611	28,948	18,032	62.3	4.67	4.08	51	32	420	6,510	1,227,815
1960	80	88,818	2,259	189,816	44,812	28,758	64.2	4.88	4.47	64	43	648	10,482	1,989,615
1965	73	102,351	1,891	158,077	54,444	34,561	63.5	4.93	4.31	70	48	944	15,300	2,418,526
1970	62	125,721	1,588	143,411	65,104	40,063	61.5	6.74	5.95	79	59	1,244	27,636	3,963,311
1975	56	150,666	1,315	123,855	69,249	40,106	57.9	9.36	8.64	78	63	1,532	49,233	6,097,768
1980	47	164,908	1,091	117,490	83,998	41,034	48.9	13.77	12.86	80	67	1,954	93,685	11,007,001
1985	44	176,440	884	116,765	97,762	42,201	43.2	13.88	12.61	80	70	2,294	107,871	12,595,522
1990	42	195,841	753	100,397	102,396	43,783	42.8	15.55	13.78	77	70	2,796	142,324	14,289,567
1991	40	198,409	722	100,267	103,252	45,033	43.6	13.30	12.11	76	71	2,821	121,479	12,180,354
1992	40	200,530	698	97,803	107,947	44,914	41.6	14.57	13.12	77	73	3,017	146,452	14,323,698
1993	38	199,604	675	92,934	103,979	44,805	43.1	14.19	12.89	73	69	3,073	145,350	13,507,974
1994	38	201,561	629	91,397	107,811	44,866	41.6	14.75	13.16	75	71	3,232	156,253	14,281,193
1995	33	207,548	571	88,717	108,548	45,004	41.5	14.19	12.79	75	71	3,350	157,754	13,995,454
1996	32	209,599	570	82,947	104,501	45,479	43.5	16.19	14.64	72	69	3,442	187,713	15,570,261
1997	31	208,379	570	78,422	105,224	44,917	42.7	14.36	13.10	71	69	3,676	178,424	13,992,366
1998	31	210,484	522	72,402	99,223	44,968	45.3	16.14	14.92	66	64	3,755	202,770	14,681,340
1999	31	212,118	487	69,008	104,479	45,216	43.3	16.24	14.09	67	65	4,148	216,794	14,960,544
2000	11	228,899	346	69,590	116,920	45,989	39.3	14.24	12.11	72	70	4,590	207,913	14,468,892
2001	11	231,487	350	66,423	120,223	45,887	38.2	16.96	14.90	75	73	4,959	275,642	18,308,968
2002	11	234,256	338	63,856	125,546	46,043	36.7	13.69	11.91	77	76	5,387	239,520	15,294,802
2003	11	236,180	331	58,110	110,581	45,843	41.5	14.10	12.12	67	65	5,178	242,066	14,066,672
2004	10	234,825	306	52,341	103,048	44,939	43.6	17.56	15.74	62	61	5,352	324,119	16,965,368
2005	10	238,428	302	53,036	114,682	44,570	38.9	17.13	15.07	66	65	5,904	334,626	17,747,577
2006	10	239,142	314	52,725	120,618	45,304	37.6	14.59	12.86	68	67	6,264	303,429	15,998,288
2007	10	241,000	312	49,782	114,407	45,226	39.5	20.81	19.19	63	62	6,297	452,097	22,507,219

1/ End of year. The number of markets peaked at 83 in 1962. The number of handlers peaked at 2,314 in 1961.

2/ Average for year. The number of producers peaked at 192,947 in 1961.

3/ Beginning in 1989, due to disadvantageous price situations in some markets, handlers elected not to pool milk that normally would have been associated with the order. This has reduced, sometimes substantially, the volume of producer milk receipts reported for some markets. This can also affect significantly the comparability of other "Measures of Growth" based on this statistic.

4/ Based on blend (uniform) price adjusted for the butterfat content, and in later years, other milk components of producer milk.

Table 31--Announced Cooperative Class I Prices in Selected Cities in Federal Milk Orders, 2007, with Comparisons 1/

City	Annual Average			City	Annual Average		
	Announced Cooperative Class I Price	Federal Order Class I Price	Difference		Announced Cooperative Class I Price	Federal Order Class I Price	Difference
	Dollars per hundredweight, 3.5 % butterfat				Dollars per hundredweight, 3.5% butterfat		
Atlanta, GA	23.94	21.24	2.70	Minneapolis, MN	21.57	19.84	1.74
Baltimore, MD	23.02	21.14	1.88	New Orleans, LA	24.16	21.74	2.42
Boston, MA	22.89	21.39	1.50	Oklahoma City, OK	21.63	20.74	0.89
Charlotte, NC	23.72	21.24	2.48	Omaha, NE	21.47	19.99	1.48
Chicago, IL	22.15	19.94	2.21	Philadelphia, PA	23.52	21.19	2.34
Cincinnati, OH	22.35	20.34	2.01	Phoenix, AZ	20.89	20.49	0.40
Cleveland, OH	22.15	20.14	2.01	Pittsburgh, PA	22.80	20.24	2.56
Dallas, TX	22.39	21.14	1.26	St. Louis, MO	21.81	20.14	1.67
Denver, CO	21.68	20.69	0.99	Seattle, WA	20.71	20.04	0.67
Des Moines, IA	21.72	19.94	1.78	Springfield, MO	21.23	20.34	0.89
Detroit, MI	21.79	19.94	1.85	Washington, D.C.	23.02	21.14	1.88
Hartford, CT	22.79	21.29	1.50				
Houston, TX	22.99	21.74	1.26				
Indianapolis, IN	22.15	20.14	2.01				
Kansas City, MO	21.41	20.14	1.27	2007 all-city average	22.48	20.67	1.81
Louisville, KY	22.82	20.34	2.48				
Memphis, TN	23.36	20.94	2.42				
Miami, FL	26.12	22.44	3.68	2006 all-city average	16.24	14.41	1.83
Milwaukee, WI	22.10	19.89	2.21				

1/ These figures are simple averages of monthly prices. The cooperative prices are Class I prices announced for the beginning of the month by cooperative associations in various city markets. The information relates to the major cooperative in each of the city markets and does not apply to all of the Class I sales in these city markets. These data are common market knowledge in the sense that the information represents basic Class I price announcements by the cooperative sent to all handlers who buy milk from them. These announced over-order prices include charges for various services performed by the cooperative. Announced prices may not include handling or service charges applicable to milk from supply plants. In some instances, the announced over-order prices may not include all credits that may be allowed. These prices have not been verified as having been actually paid by handlers.

Table 32--Annual Price and Pool Statistics for Federal Milk Order Marketing Areas, 2007

Federal Milk Order Marketing Area <u>1/</u>	Order Number	Receipts of Producer Milk		Utilization of Producer Milk in Class I			Utilization of Producer Milk in Other Classes			Uniform Price <u>3/</u>	Class I Price
		Total <u>2/</u>	Change from prev. year	Total	Change from prev. year	Percent	Class II	Class III	Class IV		
		Mil. lbs.	Percent	Mil. lbs.	Percent		Percent			\$ per cwt., 3.5 % butterfat	
Northeast (Boston)	001	23,039.9	1.6	10,495.8	-0.5	46	21	24	9	19.92	21.39
Appalachian (Charlotte)	005	5,865.0	-6.1	4,120.1	-0.4	70	17	5	8	20.36	21.19
Southeast (Atlanta)	007	7,520.6	-6.6	4,772.4	0.0	63	12	20	5	20.09	21.20
Florida (Tampa)	006	3,206.5	2.6	2,603.5	-0.9	81	9	5	5	21.29	22.01
Mideast (Cleveland)	033	16,267.7	-5.4	6,571.3	-0.5	40	18	35	7	18.75	20.12
Upper Midwest (Chicago)	030	26,489.9	-1.4	4,508.0	-0.4	17	5	76	2	18.41	19.94
Central (Kansas City)	032	11,192.6	-19.6	4,345.1	-0.6	39	17	32	12	18.67	20.12
Southwest (Dallas)	126	9,990.3	-13.9	4,160.6	-1.3	41	12	35	12	19.35	21.09
Arizona (Phoenix)	131	3,798.9	12.3	1,392.5	9.7	37	9	28	26	18.95	20.47
Pacific Northwest (Seattle)	124	7,036.0	-7.1	2,256.4	1.0	32	7	30	31	18.62	20.04
All Market Average or Total		114,407.5	-5.1	45,225.8	-0.2	40	13	38	9	19.19	20.81

1/ Names in parentheses are the major city in the principal pricing point of the market.

2/ Due to a disadvantageous relationship between intraorder class prices and location adjusted statistical uniform prices in some markets in some months, handlers elected not to pool milk that normally would have been associated with these markets. For 2007, the estimated not-pooled volume of milk was 8.6 billion pounds of milk and occurred in all orders except Order 006 and 131. For 2006, this volume was 2.5 billion pounds and occurred in Order Nos. 033, 030, 032, 126, and 124. These not-pooled volumes affect the relative proportions of producer milk used in the various classes.

3/ Statistical uniform price for component pricing orders (Class III price plus producer price differential). For other orders, uniform skim milk price times 0.965 plus uniform butterfat price times 3.5.

TABLE 29—Summary of Packaged Sales of Total Fluid Milk Products in Federal Milk Order Marketing Areas, California, and Total U.S., by Month, 2007 ^{1/}

Month	Fluid milk sales by marketing area											Estimated Total U.S. ^{2/}
	Northeast	Appalachian	Southeast	Florida	Midwest	Upper Midwest	Central	Southwest	Arizona	Pacific Northwest	California	
	Million pounds											
Jan	826	327	461	259	554	394	422	405	110	190	561	4,903
Feb	746	286	406	238	499	359	374	346	97	166	505	4,371
Mar	837	316	445	264	550	387	406	379	106	184	569	4,831
Apr	766	293	422	248	500	364	385	366	100	175	532	4,511
May	801	303	422	236	509	378	383	367	100	181	550	4,599
Jun	756	283	399	227	474	344	361	342	94	170	525	4,321
Jul	739	285	395	225	475	341	358	336	92	168	509	4,263
Aug	773	314	446	237	508	369	397	369	102	175	538	4,594
Sep	770	292	412	224	499	363	380	359	97	171	544	4,467
Oct	830	316	449	245	538	394	415	389	107	186	570	4,824
Nov	808	312	437	246	525	383	405	378	102	183	532	4,686
Dec	832	303	428	251	530	381	406	368	99	184	556	4,716
Total ^{3/}	9,484	3,631	5,123	2,899	6,160	4,458	4,692	4,402	1,206	2,133	6,492	55,086

^{1/} These figures are based on the consumption of fluid milk products in Federal milk order marketing areas and California, which represents approximately 92% of total fluid milk sales in the United States. An estimate of total U.S. fluid milk sales is derived by interpolating the remaining 8% of sales from the Federal milk order and California data. The procedure used for estimating U.S. fluid milk sales by the Agricultural Marketing Service is different from that used by the Economic Research Service (ERS) of USDA. Consequently, the annual figures here may differ from the annual figures published by ERS. Fluid milk products include: plain, flavored, and organic whole milk, plain, flavored, and organic fat-reduced milk, buttermilk, eggnog, and miscellaneous fluid milk products. ^{2/} Estimated total includes the remaining 8% outside of Federal milk orders and California. ^{3/} May not add due to rounding.