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Via email only to Gino.Tosi@usda.gov and amsdairycomments@usda.gov

Gino Tosi
Senior Specialist
USDA, AMS-Dairy Programs

Re: Additional Regulatory Language from American Independent Dairy Alliance

Dear Mr. Tosi:

In response to the pre-hearing information session held Friday March 20, 2009, The American Independent Dairy Alliance is submitting the attached additional regulatory language related to two of its proposals.

First, we attach alternative regulatory language intended to treat handlers with own-farm production as partially regulated distributing plants. This language is submitted in conjunction with our alternative proposal to exempt all own-farm production from the calculation of handler's minimum payment obligations. This proposal is submitted in addition to, and not as a replacement for our earlier proposal. The attached regulatory language would be added to 7 C.F.R §1000.76. Under this scenario, a handler with own-farm production would be eligible to treat the receipts of milk from its own-farm as having satisfied all requirements for payments made by partially regulated distributing plants. The handler would be obligated to provide proof satisfactory to the market administrator that the packaged fluid milk products from the plant are not sold or marketed below the handler's costs. There would not be any volume limitation or grandfather provision associated with this regulatory alternative.

We believe that this language proposes a minimally burdensome alternative to the elimination to the producer-handler exemption, and a more workable, but essentially similar method of achieving what we intended to accomplish by exempting own-farm production for all handlers. It would allow current producer-handlers to continue in their operations, treat handlers with own-farm production as all other partially regulated handlers, and is consistent with the Secretary's authority under the AMAA.

Second, we attach additional language related to our proposal to adopt individual handler pools in all marketing areas. This parallels the language already submitted to the Department on March 16, 2009. This language speaks directly to the computation of individual handler pool blend pricing for those marketing orders that operate on a skim-butterfat basis. These proposed regulations are offered in attempt to supplement the language already submitted by the AIDA. The intent is to provide possible regulatory language for inclusion in any federal register notice to be sufficient to meet the requirements you referred to in the pre-hearing information session. Regardless of the draft language employed, we believe the intent of our proposals related to individual handler pools is sufficiently clear to include it for hearing.

If you have any questions about these additional submissions please contact me.

Very truly yours,
The Miltner Law Firm, LLC

/s/Ryan K. Miltner

Attachments

cc: Dana Coale

AMERICAN INDEPENDENT DAIRY ALLIANCE

**PROPOSED REGULATORY LANGUAGE REGARDING
TREATMENT OF HANDLERS WITH OWN FARM PRODUCTION
AS PARTIALLY-REGULATED DISTRIBUTING PLANTS**

Add an additional paragraph (e) to 7 C.F.R. § 1000.76(e) “Payments by a handler operating a partially regulated distributing plant”

(e) Any handler may elect partially regulated distributing plant status for any pool plant with respect to receipts of milk from a dairy farm owned and operated by the handler (hereinafter “own farm production”), subject to the following conditions:

(1) the handler provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce own farm milk, and the processing and packaging operations, are the plant operator’s own enterprise and at its own risk;

(2) packaged fluid milk products distributed from the plant are not sold or marketed below the handler’s costs, provided:

(i) handler’s costs shall be Class I prices plus costs of manufacturing, processing, handling, marketing and delivery,

(ii) the Deputy Administrator, Dairy Programs, may issue rules and procedures for determining handler’s costs, or to evaluate any complaint by any person that a handler subject to this subsection (e) is marketing packaged fluid milk products below cost.

(3) The volume of own farm production of milk (or of milk components in own farm production) shall be deemed to be received and paid for by the handler at a price equal to the distributing plant’s value of milk computed pursuant to paragraph (b)(1) of this section, and shall not be included in the volume of milk or milk components that are subject to payments to or from the producer settlement fund pursuant to sections _____.71 or _____.72 of any order.

AMERICAN INDEPENDENT DAIRY ALLIANCE

ADDITIONAL
PROPOSED REGULATORY LANGUAGE REGARDING
INDIVIDUAL HANDLER POOLS
(SKIM-BUTTERFAT ORDER EXAMPLE)

§ 1005.61 Computation of Uniform Prices

On or before the 11th day of each month, the market administrator shall compute a uniform butterfat price, a uniform skim milk price, and a uniform price for producer milk receipts reported for the prior month for each handler required to file a report prescribed by § 1005.30 and for the order in aggregate. ~~The report of any handler who has not made payments required pursuant to § 1005.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations.~~

For the order in aggregate, the uniform price shall be calculated as in the following manner:

(a) Uniform butterfat price. The uniform butterfat price per pound , rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1005.60(e) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(b) Uniform skim milk price. The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Combine into one total the values computed pursuant to § 1005.60 for all handlers;

(2) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1005.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (a)(1) and (a)(2) of this section by the butterfat price computed in paragraph (a) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

- (i) The total skim pounds of producer milk; and
- (ii) The total skim pounds for which a value is computed pursuant to § 1005.60(e); and
- (6) Subtract not less than 4 cents and not more than 5 cents.
- (c) Uniform price. The uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:
 - (1) Multiply the uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and
 - (2) Multiply the uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

For each handler, the handler's uniform price shall be calculated as in the following manner:

(d) Handler's uniform butterfat price. The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by:

(1) Multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices;

(2) Adding the butterfat value calculated in § 1005.60(e) for other source milk allocated to Class I pursuant to § 1000.43(d) and the steps of § 1000.44(b) that correspond to § 1000.44(a)(3)(i) and § 1000.44(a)(8) by the Class I price; and

(3) Dividing the sum of paragraphs (a)(1) and (a)(2) of this section by the sum of the pounds of butterfat in producer milk and other source milk reported by the handler used to calculate the values in paragraphs (a)(1) and (a)(2) of this section.

(e) Handler's uniform skim milk price. The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Begin with the handler's values computed pursuant to § 1005.60;

(2) Add or subtract an amount equal to location adjustments computed pursuant to § 1005.75;

(3) Subtract the value of the total pounds of butterfat for the handler. The butterfat value shall be computed by multiplying the sum of the pounds of butterfat in producer milk and other source milk used to calculate the values in paragraphs (d)(1) and (d)(2) of this section by the butterfat price computed in paragraph (a) of this section;

(4) Divide the resulting amount by the sum of the following for the handler:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1005.60(e); and

(5) Subtract not less than 4 cents and not more than 5 cents.

(f) Handler's uniform price. The handler's uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the handler's uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the handler's uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

§ 1005.62 Announcement of Producer Prices

Unchanged.

§ 1005.70 Producer Settlement Fund

Deleted.

§ 1005.71 Payments to the Producer Settlement Fund

Deleted.

§ 1005.72 Payments from the Producer Settlement Fund

Deleted.

§ 1005.73 Payments to producers and to cooperative associations

(a) Each handler that is not paying a cooperative association for producer milk shall pay each producer as follows:

(1) Partial payment. For each producer who has not discontinued shipments as of the 23rd day of the month, payment shall be made so that it is received by the producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month at not less than 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1005.75 and proper deductions authorized in writing by the producer.

(2) Final payment. For milk received during the month, a payment computed as follows shall be made so that it is received by each producer one day after the payment date required in § 1005.72:

(i) Multiply the hundredweight of producer skim milk received times the handler's uniform skim milk price for the month; |

(ii) Multiply the pounds of butterfat received times the handler's uniform butterfat price for the month; |

(iii) Multiply the hundredweight of producer milk received times the plant location adjustment pursuant to § 1005.75; and

(iv) Add the amounts computed in paragraph (a)(2)(i), (ii), and (iii) of this section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) One day before partial and final payments are due pursuant to paragraph (a) of this section, each handler shall pay a cooperative association for milk received as follows:

(1) Partial payment to a cooperative association for bulk milk received directly from producers' farms. For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk

received multiplied by 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1005.75.

(2) Partial payment to a cooperative association for milk transferred from its pool plant. For bulk fluid milk products and bulk fluid cream products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available for skim milk and butterfat at the receiving plant's location.

(3) Final payment to a cooperative association for milk transferred from its pool plant. For bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment shall be the classified value of such milk as determined by multiplying the pounds of skim milk and butterfat assigned to each class pursuant to § 1000.44 by the class prices for the month at the receiving plant's location, and subtracting from this sum the partial payment made pursuant to paragraph (b)(2) of this section.

(4) Final payment to a cooperative association for bulk milk received directly from producers' farms. For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

~~(c) If a handler has not received full payment from the market administrator pursuant to § 1005.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.~~

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made ~~to the producer settlement fund~~ in trust to the market administrator, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment ~~from the producer settlement fund~~ to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association described in § 1000.9(a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

- (1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;
- (2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;
- (3) The total pounds of butterfat in the producer's milk;
- (4) The minimum rate or rates at which payment to the producer is required pursuant to the order in this part;
- (5) The rate used in making payment if the rate is other than the applicable minimum rate;
- (6) The amount, or rate per hundredweight, and nature of each deduction claimed by the handler; and
- (7) The net amount of payment to the producer or cooperative association.