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April 28, 1998

The Honorable Dan Glickman  
 Secretary of Agriculture  
 U.S. Department of Agriculture  
 Room 2020 South Building  
 14th & Independence Ave., S.W.  
 Washington, D.C. 20250



Re: Proposed Rule on Federal Milk Marketing Order Reform  
 and Consolidation, 63 FR 4802 (Jan. 30, 1998)

Dear Secretary Glickman:

These comments on the above-referenced Proposed Rule for reforming the nation's milk markets are submitted on behalf Dairy Farmers of America, Inc. ("DFA"). DFA's principal objection to the Proposed Rule is the Department's decision to pull back from its May 1997 proposal by leaving much of central/western Pennsylvania out of the coverage of the federal milk marketing order system. What the Department decided in May 1997 was the correct decision. All of Pennsylvania should be covered in the Department's final rule.

The Department's January proposal to change course on the coverage of central/western Pennsylvania is wrong for three reasons. First, it fails to treat similarly situated dairy farmers similarly. Second, it fails to reasonably require those who primarily benefit from the federal milk marketing order system to equitably and fairly share its costs. Finally, it fails to let the producers who would be subject to the coverage of orders that cover all of Pennsylvania vote in a referendum as to whether they desire federal regulation of their milk or not. Instead the Department seeks to decide for these Pennsylvania milk producers what is in their own best interests. We submit, the Department should entrust Pennsylvania producers with the decision as to whether or not the entire state should be federally regulated.

Dairy Farmers of America is the largest United States dairy cooperative with approximately 22,000 member farms. DFA was formed in 1997 by the merger of Mid-America Dairymen Inc., the southern region of Associated Milk Producers Inc., Milk Marketing Inc. ("MMI"), and Western Dairymen Cooperative Inc. DFA's 22,000 member farms produce approximately 22 percent of the United States milk supply. DFA sells milk, cheese, butter, and other products to wholesale and retail customers worldwide.

EXHIBIT

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Rather than repeat arguments that MMI, one of the entities merged to become DFA, has already made, those prior submissions are attached hereto and incorporated by reference herein. A is the "**Petition to Eliminate All Unregulated Market Areas in Pennsylvania**" delivered to Secretary Glickman on October 30, 1997 signed by over 600 Pennsylvania dairy producers urging the Secretary to implement the federal milk market reform proposed by the Department on May 20, 1997 that included the entire state of Pennsylvania under federal regulation. The Petition states:

The current existence of several unregulated market areas [in Pennsylvania] is unfair and inequitable to the majority of Pennsylvania's dairy farmers. It benefits only a **selected few** producers at the expense of the majority.

Exhibit A (attached)(emphasis in original). Exhibit B is an October 30, 1997 letter (plus attachments) sent to Secretary Glickman by counsel for MMI discussing the need to have the final rule include the entire state of Pennsylvania under federal regulation. Exhibit C is MMI's November 7, 1997 letter (plus attachments) sent to Richard McKee concerning the same subject matter.

I. The Proposed Rule Does Not Treat Similarly-Situated Dairy Producers Similarly

No government program should be set up or operated so that it favors one group of similarly situated people over another group of similarly situated people. As the milk marketing system has developed in the midwest and northeast, however, that is precisely what has come to pass. Certain Pennsylvania handlers to date have been able to avoid being federally regulated while they continue to enjoy all the fruits that federal regulation brings to the domestic dairy market. Not only have these processors been free riders benefitting from the sacrifices and burdens being borne by others, they have used their competitive advantages in competing with regulated handlers for supply and for customers. In doing so, they have gained a clear economic benefit for themselves at the direct expense of the regulated handlers with whom they compete.

The single most dramatic failure in the Department's voluminous Proposed Rule is the exclusion of central/western Pennsylvania from the coverage of the federal milk marketing order ("FMMO") system. Why did the Department see fit to pull this part of the state back out after it had included it under the proposed regulation in May? This glaring lack of inclusion results in an FMMO that fails to treat similarly-situated producers similarly. While the Department suggests that the existence of the Pennsylvania Milk Marketing Board ("PMMB") argues against federal regulation of central Pennsylvania, logic suggests that deference to state regulation should either occur with respect to the whole state (such as is the case with Maine and Virginia) or not at all;

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piecemeal regulation results from regulating parts of Pennsylvania but not major portions of the state.

If you are a producer selling your milk to a processor located in central Pennsylvania (an unregulated area) you do not have to pool your milk receipts with other federally regulated producers in your order area. If you produce Grade A milk for the Class I market, you are entitled to receive a non-blended payment for your milk and can receive the full Class I price. If you are a Pennsylvania producer that sells milk in the Class I market to a regulated processor, on the other hand, you receive only the blend price on all milk pooled under the order. As a consequence these central/western Pennsylvania producers are able to take advantage of their unregulated status and thereby reap the full price stabilization and price floor benefits of the FMMO system without having to pay any of the system's costs. The Department should not tolerate the continuation of this highly inequitable free-rider situation in central/western Pennsylvania. The Proposed Rule would produce very modest income gains for a small and specially-protected class of Pennsylvania producers at the high cost of placing competing handlers and competing producers on a highly unequal and inequitable competitive footing.

Elsewhere in the Proposed Rule the Department has seen fit to eliminate such inequities wherever it has found them.

For example, in justification of its decision to include previously unregulated areas of northern New York and Vermont in the consolidated Northeast order area the Department notes that this expansion of regulation to these currently unregulated areas "will assure that distributing plant operators that are currently fully regulated would be placed on an equal competitive footing with handlers currently unregulated, while having no negative affect on the producers who would be affected." (emphasis added.) Similarly, the Department decided without comment to add six currently unregulated counties on the northwest corner of Indiana, parts or all of five unregulated counties and counties in Michigan, and parts or all of nine unregulated counties in Ohio to the Mideast Order area. Likewise it has added without substantive comment five unregulated counties in Nebraska to the Central order area. The Department proposes to add 49 currently unregulated counties in Texas to the Southwest order area. The list goes on. The Department's actions suggest that it understands that a federal order system that has substantial pockets of unregulated territory would be counter to the important stabilization goals of the law. In addition, the Department clearly recognizes and is not comfortable with the substantial inequalities created by having a pocket of no federal regulation surrounded by federally regulated territory. If equity and fairness and ease of administration all favored the additions of these unregulated territories to various federal orders, then why not central/western Pennsylvania?

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II. The Proposed Rule Fails to Require That All That Benefit From Federal Regulation Pay Their Fair Share of its Costs

Dairy farmers in central Pennsylvania benefit from the stabilization and price benefits of the FMMO system just as producers across the country do. The question is who is paying their fair share of the cost of implementing this system. The Department's May answer was all who benefit. Now that answer has become all who benefit except those in central Pennsylvania.

The Department has stated that it did not include central/western Pennsylvania in the Proposed Order because: (1) the purposes of federal law are fulfilled by the state regulatory body; (2) handlers' costs would be largely unaffected even if this part of Pennsylvania were regulated; and (3) producer returns would likely fall. None of these justifications is valid. As we have noted previously, since central Pennsylvania is not an island, the likely reason for the stability of Pennsylvania milk markets is the federal milk order regulation, not the actions of any state board. Why should Pennsylvania producers that benefit from federal regulation not pay their fair share to operate the system? Moreover inclusion of central/western Pennsylvania would impact certain handlers' costs dramatically because they would no longer be competing on an unequal playing field. Finally whatever reduction of return to the Pennsylvania producer occurs as a result, this outcome simply reflects that these Pennsylvania producers will be paying their fair share of the costs of operating the system for the first time while most other producers have been paying their fair share all along. While the Department gave full weight to a petition filed by some 115 persons that opposed the expansion of the federal regulation to central/western Pennsylvania, it failed to even mention the fact that 611 dairy farmers from Pennsylvania had signed and submitted to USDA a petition requesting inclusion of the entire state in the federal market order regulation. A copy of that petition is attached as Exhibit A.

Under the Proposed Rule, unregulated handlers located in central/western Pennsylvania compete for sales and supply with handlers that are currently regulated, which places unregulated handlers at a competitive advantage. Including these currently unregulated areas in the consolidated orders will help to level the playing field among Pennsylvania handlers. In fact, the Department has noted that the two primary factors for determining marketing areas are (1) where handlers compete for sales of fluid milk products and (2) where handlers compete for milk supplies. [May 20 USDA Revised Preliminary Report at 11-12.] These factors suggest that a marketing area should include within its borders all handlers that compete against each other for sales and for supplies. These factors as well as principles of equity and fairness virtually require that central/western Pennsylvania be included in the consolidated marketing areas.

Furthermore, the existence of state regulation through the PMMB does not obviate the need for federal regulation of the entire state. The PMMB exists in large measure to mandate a so-called

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"Pennsylvania premium" for all Class I milk supplied by independent producers to Pennsylvania processors. This core function will survive the regulation of the unregulated areas just as it has survived side by side with the federal orders in those parts of the state that have been federally regulated for years. In short, the "Pennsylvania premium" will not be eliminated by the expansion of the federal order in Pennsylvania. Similarly, the existence of the PMMB, with its separate goals and functions, provides no factual basis for the assertion that expansion of the federal orders is unnecessary because the PMMB exists. The PMMB is not responsible for the stable milk market Pennsylvania currently enjoys. Rather, the stability and success of the Pennsylvania dairy industry can be attributed to the availability of a reserve supply of milk encouraged by the federal marketing order system. The PMMB's pricing requirements do not create this reserve; the federal system does.

Few have articulated the unfairness of keeping central/western Pennsylvania out of federal regulation better than Wilmur Stone and Alvan Stone, the owners of Stone Brothers Farms of Jonestown, Pennsylvania, a dairy farm that ships its milk to a Class I fluid plant in Middle Atlantic Area 4. A copy of their March 9, 1998 letter, already submitted to Richard McKee, is attached as Exhibit D. It states:

I feel it is grossly unfair for my milk price to be a pool blend price which supplements those of producers shipping to Class II and Class III plants while producers shipping to unregulated plants are not forced to provide the same price support. . . . [It also creates] a competitive disadvantage to Pennsylvania Class I pool plants competing with Pennsylvania Class I unregulated plants.

Obviously the Department saw this inequitable situation and decided in May of 1997 to end it. While it decided to proceed with resolving similar coverage inequities across the country, it now underplays the Pennsylvania inequities while overplaying the financial impact on the vast minority of Pennsylvania dairy farms. Further demonstration of the widespread perception of these inequities in Pennsylvania comes from the March 18, 1998 letter submitted by Harrisburg Dairies to Richard McKee. A copy of this letter is attached as Exhibit E. Harrisburg Dairies notes the "**unfair competitive advantage** that is created when processors in Pennsylvania remain unregulated and free to pursue lucrative business transactions via the loopholes in the federal order system and the PMMB's inability to regulate inter-state sales." (emphasis in original.)

Just because certain producers to date have been able to avoid paying their fair share for the benefits they have received from federal regulation, that is no justification for not requiring that they pay their fair share now. Inclusion of all of Pennsylvania will not result in a significant or widespread income drop for Pennsylvania producers.

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III. Dairy Farmers Should Decide By Referendum Whether Currently Unregulated Parts of Pennsylvania Should Become Part of the Federal Order Systems

As a fundamental matter, the decision to include unregulated parts of Pennsylvania in the federal order system should be decided by those affected in a referendum, not by the Secretary. By including all of Pennsylvania under the coverage of the Final Rule, the Secretary will be letting those affected in Pennsylvania decide for themselves whether the addition of this currently unregulated area is something that a majority supports.

The Department's abrupt and ill-conceived pullback from the decision it made in May 1997 to include all of Pennsylvania in the FMMO system cannot stand. Over 600 Pennsylvania dairy farmers signed and submitted a petition to the Dairy Division applauding the Department's determination to make the system much more fair and equitable. While the Proposed Rule continues to include many previously unregulated areas in the reformed and consolidated FMMO system (parts of New Hampshire, Vermont, Arizona, Virginia to name a few), the Department has now turned back to the inequitable status quo to instead propose that central Pennsylvania remain outside the system.

Conclusion

For all of these reasons, Dairy Farmers of America, Inc. respectfully requests that the Department's correct preliminary decision of May 1997 to include unregulated portions of western/central Pennsylvania in the Mideast and Northeast Milk Marketing Areas be reinstated in the Final Rule. To do otherwise would impose the costs on the system on a class of milk producers much smaller than those who receive the primary benefits. To do otherwise would permit raw political power to prevail over what is fundamentally right and fair. We therefore urge you in the strongest possible terms to keep on the path you correctly decided to take on May 20 and regulate central/western Pennsylvania under the Mideast and the Northeast milk marketing areas.

Sincerely,  
McLEOD, WATKINSON & MILLER

By: Richard T. Rossier  
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