

April 16, 2009

By e-mail only to dana.coale@ams.usda.gov

Dana Coale
Deputy Administrator, USDA-AMS-Dairy Programs
1400 Independence Avenue, SW
Washington, DC 20050

Re: Docket No. AO-14-A78, et al.; DA-09-02; AMS-09-0007;
Requests for Information and Data Submitted by the American Independent Dairy Alliance

Dear Ms. Coale:

The American Independent Dairy Alliance (AIDA), proponents of proposals 23, 24, and 25 in the hearing docket above request that Dairy Programs provide the following data and information for introduction during the evidentiary phase of the hearing. If Dairy Programs needs additional clarification regarding any of these requests, please contact me. If Dairy Programs cannot provide the information requested, please so indicate and why such information is not available or cannot be provided.

1. We request that the market administrators' offices calculate the statistical uniform price for each of the federal orders for each month in 2008 assuming that the NMPF/IDFA proposal (Proposal 1) to eliminate the producer-handler exemption was in effect.
2. We request that the market administrators' office recalculate the statistical uniform price for each of the federal orders for each month in 2008 assuming that the NMPF/IDFA proposal (Proposal 2) to raise the limit for exempt plants to 450,000 pounds per month was in effect. To gauge the maximum impact on the uniform price, presume that all plants with volumes less than 450,000 pounds are fully exempted on such volumes.
3. We request that the market administrators' office recalculate the statistical uniform price for each of the federal orders for each month in 2008 assuming that both the NMPF/IDFA proposal to eliminate the producer-handler exemption and the proposal to raise the limit for exempt plants to 450,000 pounds per month (Proposals 1 and 2) were in effect.

The following information requests (Numbers 4-6) cover each of the same time periods identified on the chart posted on AMS website labeled "Information on Producer-Handlers Operating in Federal Milk Marketing Areas: Selected Time Periods." For your reference, a copy of that chart is appended to this letter. In

addition, we request that this chart be made an exhibit at the evidentiary hearing in Cincinnati.

4. Average volume of milk marketed per producer for the same time periods.
5. Class I volumes handled by average fluid handler for the same time periods.
6. Total volumes handled by the average manufacturing (non-Class I) handler for the same time periods.
7. In addition to the number of producer-handlers provided for the time periods on the attached chart, please provide the number of producer handlers in each marketing area for the month of December in 2005, 2006, and 2007.

The following information requests (Numbers 8-12) seek adequate notice of the standard of proof that Dairy Programs will apply to evaluate the case made for any of the pending proposals to change the current producer handler regulations.

8. Provide the definition of “disorderly marketing” or characteristics of “disorderly marketing conditions” that USDA will employ or utilize in determining whether it is appropriate to limit or eliminate the producer-handler definitions in each marketing area.
9. Define what specific economic factors and statistical measures USDA will utilize to determine whether producer-handlers are causing or contributing to “disorderly marketing” as defined by USDA. If a threshold impact of producer-handler activity on the statistical uniform price will be utilized, identify that threshold figure and state whether it will be applied to each marketing order uniformly.
10. For any threshold impact provided in response to Request 8, describe whether that impact will be applied to the gross impact of producer-handlers in a given marketing area or whether it will be applied to each individual producer-handler operation. If the impact will be applied to the gross impact of producer-handlers in a given marketing area, describe how Dairy Programs intends to “apportion” the impact among existing producer-handler operations.
11. State whether it is the policy of USDA that, “there has been no demonstration that such entities have an advantage as either producers or handlers so long as they are responsible for balancing their fluid milk needs and cannot transfer balancing costs, including the cost of disposing of reserve milk supplies, to other market participants.” See 64 Fed. Reg. 16026, 16135 (April 4, 1999).
12. State whether USDA believes that lacks the authority to regulate the size of producer-handler operations in any marketing area other than Arizona. See 64 Fed. Reg. 16135, 7 U.S.C. § 608c(5)(O).

The remaining requests in this letter are related to AIDA's proposal to adopt individual handler pools.

13. For each marketing area, identify those months in 2006, 2007, 2008, and 2009 in which milk was "depooled" by handlers, the volumes of milk depooled, and the estimated impact on the PPD or blend price received by pooled producers.
14. For each marketing area, provide for the months of January 2007, January 2008, and January 2009, the plant blend price for each handler in each marketing area, assuming the adoption of individual handler pooling. We understand that you may need to redact such information as is necessary to not provide confidential data about the handlers. We also request that for each month stated for each marketing area, the range of prices encompassing the middle 50% and middle 90% of priced milk be provided. For example, if there are a hypothetical ten handlers in a marketing area, then we would request that the plant blend prices for each of the ten plants be provided in a list. The plants should be rank ordered by the plant blend price. Then, using the volumes of each handler, the prices for the middle 50% of volume and middle 90% of pooled production should be reported. A chart with a proposed format for reporting this information is provided.
15. For each marketing area, provide for each month in 2008 and 2009 the range of mailbox prices received by FMMO producers.
16. For the months of January 2007, January 2008 and January 2009, provide in list form the mailbox prices received by each producer in each marketing area. The range of prices encompassing the middle 50% and middle 90% of mailbox prices is also requested. If statistical analyses of the mailbox prices have been performed by any of the market administrators offices, then please provide those analyses.

Please provide your responses by e-mail to Al Ricciardi (awr@ashrlaw.com), Ryan Miltner (ryan@miltnerlawfirm.com) and Nancy Bryson (nbryson@hollandhart.com). Questions regarding these requests should be directed to either Al Ricciardi or Ryan Miltner.

We appreciate your efforts in providing the information requested.

Very truly yours,

/s/

Ryan K. Miltner

Cc: Gino Tosi (by e-mail)

Information on Producer-Handlers Operating in Federal Milk Order Marketing Areas, Selected Time Periods

Time period	Orders reporting producer-handlers	Percentage of orders reporting producer-handlers 1/	Number of producer handlers	Sales by producer-handlers 2/	Percentage of sales by producer-handlers 3/	Average sales per producer-handler for the time period
	Number	Percent	Number	1,000 pounds	Percent	Pounds
Oct., 1959	38	51.4	348	12,057	1.2	34,645
Oct., 1964	38	50.7	387	24,197	1.7	62,525
Oct., 1969	42	63.6	421	42,554	2.1	100,654
Oct., 1974	40	66.7	333	40,956	1.7	122,990
Oct., 1980	26	55.3	287	41,917	1.6	146,052
Oct., 1987	22	51.2	175	34,951	1.3	199,719
Oct., 1992	19	47.5	137	51,268	1.9	374,219
Dec., 2001 4/	9	81.8	79	55,300	1.7	700,000
Dec., 2008 4/	10	100.0	40	56,883	1.5	1,422,080

1/ Information for the New York-New Jersey order was not available for the Oct., 1959 through Oct., 1974 time periods.

2/ Route sales of packaged fluid milk products in the marketing areas of the reporting orders.

3/ Proportion of total route sales of packaged fluid milk products in the marketing areas of the reporting orders from all sources.

4/ The data for this time period may be affected by the new category of nonpool plant -- exempt plant (volume status)-- that was instituted under Federal milk orders in January 2000. See "Producer-Handlers -- Description".

Handler	Plant Blend	Volume (Million Pounds)	Aggregate Volume	Percentage	Aggregate Percentage of Volume
A	13.54	3.4	3.4	3.03%	3.03%
B	13.75	1.2	4.6	1.07%	4.10%
C	13.79	2.5	7.1	2.23%	6.33%
D	14.1	10.8	17.9	9.63%	15.97%
E	14.15	7.3	25.2	6.51%	22.48%
F	14.21	12.1	37.3	10.79%	33.27%
G	14.35	32.3	69.6	28.81%	62.09%
H	14.76	11.1	80.7	9.90%	71.99%
I	14.78	6.3	87	5.62%	77.61%
J	15.02	25.1	112.1	22.39%	100.00%
Total Volume		112.1			
First Quartile		28.025	14.21		
Third Quartile		84.075	14.78		
5%		5.605	13.79		
95%		106.495	15.02		

Using this data, it would be said that the middle 50% of producers receive between 14.21 and 14.78 and the middle 90% receive between 13.79 and 15.02.