



1400 Independence Avenue, SW.
Room 2968-S, STOP 0225
Washington, DC 20250-0225

September 9, 2015

Charles M. English, Jr.
Davis Wright Tremaine LLP
Suite 800
1919 Pennsylvania Avenue N.W.
Washington, D.C. 20006-3401

Dear Mr. English:

Thank you for your letter of August 17, 2015, requesting USDA reconsider including a modified proposal submitted on behalf of the Dairy Institute of California (DIC), as part of an upcoming hearing to promulgate a California Federal Milk Marketing Order (FMMO). As requested, USDA has completed a careful review of your request.

As you know, USDA received a proposal from the California dairy industry requesting the promulgation of a FMMO in February 2015. To make the FMMO promulgation process inclusive and transparent, USDA invited interested parties to submit alternatives to the original proposal. Following receipt of additional proposals by the established deadline of April 10, 2015, USDA held three outreach sessions throughout California to give proposal sponsors the opportunity to explain their proposals to the dairy industry and public. Proponents had until May 27, 2015, to submit modifications to their originally submitted proposals. Each of the proponents, including DIC, submitted minor revisions such as corrections to proposed order references and text. In addition, DIC also submitted what we consider to be an entirely new proposal related to dry whey pricing.

DIC's initial proposal establishes an "other solids" component of the Class III price relying on a "Western" dry whey survey price computed under the Dairy Product Mandatory Reporting Program administered by USDA. The additional proposal submitted abandons the Western survey idea entirely and instead relies on a Whey Protein Concentrate (WPC) 34 percent price. In a letter dated August 5, 2015, we indicated this modification to the original DIC proposal was, in fact, an entirely new proposal, and would not be published in the Notice of Hearing issued on July 27, 2015.

After reviewing DIC's submission and your request, we continue to consider DIC's modification to be a separate proposal that was not submitted by the April 10, 2015, deadline. As such, we are denying your request to have the proposal published in a Supplemental Notice of Hearing.

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The hearing will be administered by Administrative Law Judge. At the hearing, the DIC will have the opportunity to explain to the Judge why the WPC other solids pricing concept should be included in the hearing record.

Sincerely,

A handwritten signature in black ink, appearing to read "Dana H. Coale", written in a cursive style.

Dana H. Coale
Deputy Administrator
Agricultural Marketing Service
Dairy Program