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UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

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In re: Milk in California

[AO]

Docket No. 15-0071

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**REPLY BRIEF OF SELECT MILK PRODUCERS, INC.**

For its Reply to the various post-hearing briefs, Select Milk Producers, Inc. (“Select”), with its somewhat unique perspective as a national cooperative that has no California members, offers additional argument on the following discrete issues: (1) whether a showing of “disorderly marketing” is required; (2) whether questionable, indirect impacts on other milk marketing areas should be a bar to the adoption of a California FMMO; (3) whether the Cooperative’s modification establishing an “out-of-state adjuster” resolves industry concerns about a trade barrier; and (4) whether a single manufacturing price formula should be maintained by the Department.

- 1. The Cooperatives' brief accurately represents the statutory pronouncement and no showing of "disorderly marketing" is required.**

The Cooperative Proponents pay critical attention to the statutory charge to the Secretary set forth in the AMAA. While much time was devoted during the hearing to the indefinable concept of "disorderly marketing," it is clear that the language of the AMAA does not define the term, nor does the term even appear in the Act. The Cooperatives' discussion of 7 U.S.C. § 602 explains the actual statutory charge:

The Cooperatives have requested issuance of an order for the enhancement of producer prices and to "establish and maintain ... orderly marketing conditions" and "an orderly flow of the supply" of milk to market. 7 U.S.C. § 602(1-4). Under the express terms of the AMAA, the Cooperatives need only show that the order will effectuate these goals.

Cooperative Brief at 5-6.

This is not to say that circumstances of market disorder (however they might be identified whenever they do occur) do not call for action on the part of the Secretary. But the statutory language does provide greater context and clarity as to the question of whether an affirmative finding of "disorder" is required to establish an Order. The text of the statute confirms that there is no such requirement. Accordingly, if the Department finds that adoption of a

California FMMO will improve upon the orderliness of the California milk market, then the order will tend to effectuate the terms of the Act and should be adopted.

This finding—that the proposed order will tend to effectuate the terms of the Act—is statutorily set forth at 7 U.S.C. § 608c(4). Similarly, in the event of handlers’ refusal to consent, the required finding of the Secretary that the proposed Order is the only practical means of advancing the interests of producers is set out at 7 U.S.C. § 608c(9)(B). Both of these findings are discretionary acts of the Secretary, a fact that the Dairy Institute’s witness agrees with (at least as to the only practical means finding). *Vetne, Tr.* At 5131.

**2. The predicted impacts on other federal milk marketing orders are questionable, indirect, and not a bar to the adoption of a California FMMO.**

Several post-hearing briefs question what the impact in other federal milk marketing areas will be if a California FMMO is adopted. Some even call for the Secretary to deny the adoption of the Cooperatives’ proposal if its adoption will result in increased production in California or create a ripple effect that reduces prices in other marketing areas. Select implores the

Secretary to reject these calls even though it is a cooperative whose members are located entirely outside of California.

Simple microeconomics tells us that increased producer prices in California will drive some incremental milk production, and that increases in milk production will result in lower prices, all other variables being held constant. The regional markets for milk are interrelated, and the market for dairy products is national. That is a reality that cannot be avoided.

But the preliminary economic analysis, while useful for comparing how various proposals look side-by-side, must be recognized for what it is—a tool for measuring proposals against each other in an otherwise static scenario. It also must be recognized for what it is not—a prediction of the future.

The preliminary economic analysis and its underlying model are faced with the same limitations as any other modeling tool. We know from the hearing record that the data underlying the baseline is from 2013. We also know that the dairy industry in California experienced significant losses of milk production and farm numbers following 2013. The model does not entirely reflect those losses. We also know that the model works on an

annual, not monthly basis, which removes a certain level of granularity that would be useful in more closely examining the impact of the proposals.

Finally, the baseline projections upon which the economic analysis is based are far from wholly accurate. As with any predictive tool, actual real-world results deviate substantially from what the baseline projections might be. For example, consider the baseline projections for the all-milk price in recent USDA Outlook reports. In 2005, the all-milk price for 2006 was predicted at \$14.75 and \$15.05 for 2007. The actual all-milk prices were significantly worse and better, \$12.88 and \$19.13, respectively. Similarly, in 2011, the 2012 and 2013 all-milk prices were projected at \$16.95 and \$17.10 but the actual prices were \$18.52 and \$20.05.<sup>1</sup>

Looking just one year out from the projections, the actual all-milk price differed by -\$1.87, \$4.08, \$1.57, and \$2.95. With these actual results differing to such an extent from the projections, it would be folly for the Department to rely on modeled impacts of a few cents to drive the decision in this hearing one way or the other.

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<sup>1</sup> <http://www.ers.usda.gov/publications/oce-usda-agricultural-projections.aspx>;  
[http://future.aae.wisc.edu/data/annual\\_values/by\\_area/10?tab=prices](http://future.aae.wisc.edu/data/annual_values/by_area/10?tab=prices)

Perhaps more importantly, the Department must recognize that the impact on the other marketing areas is merely ancillary. Every amendment to a federal order will have rippling effects through the system. While it is clear that at some point the impacts on other marketing areas would rise to the level where an amendment would be inappropriate, that simply is not the case here.

It is also worth noting that what producers in other marketing areas are really objecting to is providing California producers exactly the same pricing formulas that are enjoyed in the other FMMO areas. In spite of these ancillary impacts on the other marketing areas, it should be recognized as somewhat disingenuous for other FMMO participants to refuse to extend the same minimum price protections they enjoy to producers in other markets.

**3. The Cooperatives' modification to Proposal One removes a potential trade barrier to out-of-state producers.**

In its opening brief, Select explained that the payment of a non-quota blend raised serious concerns about the treatment of out-of-state milk such that it rose to the level of being a trade barrier. Select suggested that, "The solution to this inequity can be remedied by providing a mechanism for the payment of a uniform price to out-of-state producers pooled on the California

Order before calculating the payment to California quota holders.” Select Brief at 17-18.

The Cooperatives’ modification to Proposal One resolves Select’s concerns. *See*, Cooperative Brief at 147-148. The modification to Proposal One establishes a payment mechanism that pays out-of-state producers a blend price “undiminished by quota payments.” Select notes that the result of this proposed “out-of-state adjuster” could also be achieved by paying out-of-state producers before calculating a California pool. The result, however, should be the same. Select supports any mechanism the Department might adopt that will achieve this necessary result for out-of-state milk.

Select also believes that the proposed out-of-state adjuster adequately resolves the similar concerns raised in the briefs of other hearing participants.

**4. The Department should maintain a single manufacturing price formula.**

Even if there were reliable evidence regarding why processing costs and impacts, the Secretary has a long-standing policy regarding the manufacturing price formulas: they are national in scope and reflect the national market for manufactured products. A change of this magnitude to a

policy as important as a single manufacturing price formula applicable across all federal orders should be undertaken only in the context of a national hearing.

**5. Conclusion.**

Select supports the Cooperative Proponents on their arguments that, (1) No finding of disorderly marketing is required; (2) the questionable and indirect impacts on other FMMOs should not bar the adoption of a California FMMO; (3) paying out of state producers a blend price “undiminished by quota payments” resolves the trade barrier concern; and (4) the Department should maintain a single manufacturing price formula.

Respectfully Submitted,



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