



**BEFORE THE UNITED STATES DEPARTMENT
OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE**

In the Matter of Milk in California;
Notice of Hearing on a Proposal to
Establish a Federal Milk Marketing
Order

7 CFR Part 1051
Docket No.: AO-15-0071;
AMS-DA-14-0095

Fresno, California, November 2015

Testimony of Gino Tosi

In Support of Proposal 3 of California Producer-Handlers Association,

Proposal to Establish a Federal Milk Marketing Order for the

State of California

California Producer Handler Association
Language Proposal

My name is Gino Tosi. I am appearing today on behalf of the California Producer-Handler Association (CPHA) in support of their proposal, published in the Hearing Notice as Proposal 3. In this regard, I am only testifying in limited scope that the proposed Federal order language that is presented in Exhibit A would accomplish the intent of the CPHA to preserve their exempt quota treatment along with preservation of the rest of the quota system.

It is my opinion that, in the event the Department issues a Federal milk marketing order (FMMO) for the State of California, these proposed order language amendments to the Cooperative's proposal would accomplish the intent of Proposal 3. As already testified to by Msrs. Richard Shehadey and Frank Otis, the intent of Proposal 3 is to retain intact fully that aspect of the current feature of California's State marketing order quota system as it affects current exempt quota holders. Others have testified on the need to retain the current California quota system in all its scope and features.

The proposed order language is modeled after the order language by the Cooperatives proposal for a California FMMO. It deviates from the Dairy Institute's (DI) proposed order language in ways that I will discuss during my testimony. In this regard, in the event the Department issues a FMMO that resembles the features of the DI proposal, then inclusion of similar language to allow for the definition of "exempt quota" holders and a deduction from the pool calculations would accomplish the same result. Neither the Cooperative's or DI's proposals provide for the continuation of exempt quota in a Federal order for California ~~in~~ their own respective proposed language.

Background:

I retired from Dairy Programs with 31 years of Federal service in November, 2010. I currently live in Berea, Ohio, a suburb of Cleveland where I was raised and the town in which Baldwin-Wallace University is located. I hold a Bachelor of Science and a Master of Science degree in Agricultural Economics from The Ohio State University. I am a veteran and a member of the VFW. I began my service with the US Department of Agriculture, first as temporary loan officer with the Farmer's Home Administration immediately after graduate school. While in graduate school I was recruited by the Foreign Agricultural Service (FAS) as an economist to work in Washington DC. During my service in FAS I worked on credit

and food assistance programs for countries in Latin America; the then US-Canadian Free Trade Agreement; and foreign market development programs for US dairy, livestock, and animal genetics.

Over 20 years of my Federal service was in the Order Formulation and Enforcement Branch of Dairy Programs. During my years in Dairy Programs I participated in a broad range of events and actions affecting literally all aspects of Federal milk marketing orders (FMMOs). I consider the most noteworthy to include the 43-day National Hearing held in six cities in 1990 [the first major event that considered a number of changes to how the FMMO system operates]; separate rulemaking proceedings of several marketing orders before Federal order reform; when specific FMMO decisions became the subject of law suits, I assisted attorneys of the Justice Department by writing portions of briefs explaining FMMO policy and how requirements of the Agricultural Marketing Agreement Act are incorporated into FMMO provisions. [In helping prepare Justice Department attorneys, I consider my most notable experience was in the successful defense of the Federal milk order system in the mid-1990s brought about ^{by} ~~my~~ interests in the Upper Midwest]; the four-year reform effort resulting in the current Federal milk order system of, among other things, larger consolidated milk marketing orders; explaining program features and rulemaking decisions on Capitol Hill to congressional staffs; the invitation by and participation with the Justice Department as a program expert in what is now commonly referred to as the "Hillside Dairy" case that went before the Supreme Court of the United States; ~~and from which the Court found certain features of the California milk order system to be in violation of the commerce clause of the constitution;~~ I was the primary author of nearly every Federal order decision during the 10-year period since implementation of the then 11 consolidated orders (now 10 orders) in 2000 until my retirement in November 2010. Some of the decisions that I authored were not published and brought to final implementing actions until after my retirement.

I am now employed by the Cuyahoga Community College as an instructor where I teach basic mathematics and economics. I also volunteer as a teaching assistant for GED classes for people seeking to earn their high school diploma in Cleveland's inner city and English as a second Language (ESL) for new immigrants. I have assisted my daughter in opening two (2) retail restaurant/stores in New York City and her bakery located in Brooklyn, NY. I am currently assisting in evaluating

possible bankruptcy actions. I have done other volunteer work helping to feed needy families in the greater Cleveland area.

Proposal 3 Specifics:

As shown in Exhibit A, Proposal 3 order language would first amend **Section 1051.17 CDFA, quota premium, quota nonfat solids and non-quota milk** of the Cooperative's proposal for establishing a FMMO for the State of California. In this regard, Proposal 3 adds two subsections/paragraphs: (e) and (f). These two paragraphs reference current California State order provisions and language that affect exempt quota holders and make these features a part of the proposed FMMO.

The Dairy Institute's (DI) proposal is structured differently in minor ways in this feature of a FMMO for California. Rather than having a separate Section 1051.17 (which in their proposal is "reserved") they do nevertheless bring into their proposed FMMO for California basically the same references to the quota system provided for in the State order. In this regard DI brings these features into their **Section 1051.11 California quota program and producer quota**. In the event that the Department adopts the DI proposed order, then it is my opinion that this Section of the DI proposal be amended by adding two (2) new paragraphs identical to that already specified sub-paragraphs (e) and (f) of the Section 1051.17.

Because the California State order provides that exempt quota holders essentially receive the difference between the Class I price and the plant blend price, it is necessary to subtract that which is exempt quota from the Class I value of milk ~~of~~ *in the Cooperatives?* **Section 1051.60 Handler's value of milk**. In this regard, this is accomplished by amending paragraph (a) (1) of this section by inserting the words "*less that portion of milk that is exempt quota as defined in Section 1051.17 (e) and (f)*" as hi-lighted in Exhibit A. Additionally, Paragraph (a) (2) of Section 1051.60 would need to be amended by inserting the words "*less that portion of milk that is exempt quota as defined in Section 1051.17 (e) and (f)*". ↘

The DI proposed order language differs from that of the Cooperatives in how the Class I value for milk is determined in their Section 1051.60. This is detailed in Section 1051.60 (a). While the two competing proposals differ in this regard, they

both nevertheless describe how the order will arrive at the Class I milk value in determining a handler's value of milk. I make no judgment and have no opinion on which of the two competing proposals is superior. I do note that in order to accomplish the intent of Proposal 3, then ~~Section 1051.60~~ of the DI proposal would similarly need to be amended to provide for deducting that portion of milk that is exempt quota as defined in the California State order.

Now that exempt quota is defined as part of the proposed order, it becomes necessary to require this identification in handler reports as specified in **Section 1051.31 Producer delivery and payroll reports**. Please note that Exhibit A re-describes the exact order language for this section as in the Cooperative's proposal. Because this sections directs payments to producers and cooperative associations to that described in Section 1051.73(f) and that this Proposal 3 proposes to amend Section 1051.73 as noted in Exhibit A, reiteration of the Cooperative's proposed order language is provided only for clarity in following all of the links that are needed to accomplish the intent of continuing to ensure that exempt quota is retained in a new California FMMO.

Finally, Section 1051.73 of the Cooperative's proposed order language ~~this Proposal 3 of CPHA~~ would similarly need to be amended by adding a new subparagraph (4) (a), [or in the event that this format may no longer be acceptable in the latest drafting guidelines of the Federal Register – then a new sub-paragraph (9)], with the words: "*The pounds of exempt quota nonfat solids as defined in Section 1051.17(f).*"

As with differences in Section 1051.60 of the Cooperative and DI proposals, their respective Section 1051.73 differ in how payments are specified in payments to producers and cooperative associations. Nevertheless the DI proposal would need to be amended in a similar manner. Specifically the pounds of exempt quota nonfat solids as defined in Section 1051.17(f) could likewise be made a part of DI proposed Section 1051.11.

This concludes my testimony in support of Proposal 3 for the California Producer-Handler Association.

Exhibit A

Proposed Federal order language of Proposal 3 by the CPHA

§ 1051.17 CDFA, quota premium, quota nonfat solids, ^{exempt quota,} and non-quota milk.

- (a) CDFA refers to the California Department of Food and Agriculture, which is the agency of the State of California responsible for administration of the California dairy producer milk quota program as established in the California Food and Agriculture Code.
- (b) *Quota premium* means the value established pursuant to the California Food and Agriculture Code. *Quota premium* and *quota premium value* mean the value per pound of nonfat solids, as adjusted by the regional quota adjusters, where and as applicable.
- (c) *Quota nonfat solids* means the pounds of nonfat solids of a producer, as determined and reported by CDFA, which qualify for the quota premium.
- (d) *Non-quota milk* means pool milk not eligible for the quota premium.

~~(e) Exempt quota means the value established pursuant to the California Food and Agriculture Code in §§ 62708, 62708.1, 62708.5, and 62722. Exempt quota and exempt quota premium value mean the value per pound of nonfat solids as calculated under California Food and Agriculture Code in §§ 62708, 62708.1, 62708.5, and 62722.~~

~~(f) Exempt quota nonfat solids means the pounds of nonfat solids of a producer, as determined and reported by CDFA, which qualifies for exemption from the pool as provided by the California Food and Agriculture Code in §§ 62708, 62708.1, 62708.5, and 62722.~~

(e) *Exempt quota means the volume of skim milk and butterfat established by ^{the} CDFA*

§ 1051.31 Producer delivery and payroll reports.

- (a) On or before the 6th day after the end of each month, each handler that operates a pool plant pursuant to § 1051.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer deliveries for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1051.73(f); and any other information deemed necessary by the Market Administrator.

(b) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1051.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1051.73(f) and any other information deemed necessary by the Market Administrator.

(c) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1051.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (i) of this section and subtracting from that total amount the values computed in paragraphs (i) and (j) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

- (1) Multiply the pounds of skim milk in Class I, ^{skim} less that portion of milk that is exempt quota as defined in § 1051.17(e) and (f), by the Class I skim milk price; and ^{reported by CDFA}
- (2) Add an amount obtained by multiplying the pounds of butterfat in Class I, ^{butterfat} less that portion of milk that is exempt quota as defined in § 1051.17(e) and (f), by the Class I butterfat price; ^{reported by CDFA}
- (3) Deduct for each pound of milk solids-non-fat in nonfat dry milk used for fortifying Class I products during the current month a maximum charge equal to the current Class I solids not fat price [the Class I skim milk price in

the \$2.10 zone divided by 9], less the current Class IV solids not fat price established in § 1051.53. In no case shall the deduction be less than zero cents (\$0.00) nor more than nineteen and eighty-five hundredths cents (\$0.1985); and

(4) Deduct for each pound of milk solids-not-fat in condensed skim milk used for fortifying Class I products during the current month a maximum charge equal to the current Class I solids not fat price [the Class I skim milk price in the \$2.10 zone divided by 9], less the current Class II solids not fat price established in § 1051.53. In no case shall the deduction be less than zero cents (\$0.00) nor more than nine and eighty-seven hundredths cents (\$0.0987).

(b) Class II value.

(1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II by the Class II butterfat price.

(c) Class III value.

(1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value.

(1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding step of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(f) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month and by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b).

- (g) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from plants regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.
- (h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.
- (i) For reconstituted milk made from receipts of nonfluid milk products, multiply \$1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).
- (j) Compute the amount of credits applicable pursuant to § 1051.55.

§ 1051.73 Payments to producers and to cooperative associations.

...

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

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The pounds of quota nonfat solids in the produce's milk;

~~(4.a) The pounds of exempt quota nonfat solids, as defined in § 1051.17(f).~~

(5) The minimum rate or rates at which payment to the producer is required pursuant to the order in this part;

(6) The rate used in making payment if the rate is other than the applicable minimum rate;

(7) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(8) The net amount of payment to the producer or cooperative association.