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

Clovis, California, November 16, 2015

Testimony of Elvin Hollon

(Sixth Statement)

(Rebuttal)

In Support of Proposal 1 of California Dairies, Inc.,

Dairy Farmers of America, Inc., and Land O'Lakes, Inc.

Proposal to Establish a Federal Milk Marketing Order for the

State of California

Cooperatives' Exhibit 10

1

Exempt Plant and Producer Handler Language Modifications

The Cooperatives have a modification to their proposal which will extend exempt plant and producer handler status to small plants which process products other than fluid milk products or in addition to fluid milk products. After reviewing our initial proposal we have concluded there is a benefit to making this change. First, it addresses the matter of administrative convenience on the part of the Market Administrator by reducing (but not eliminating) the reporting requirements of pooling, pricing and audit over a small volume of milk at small non-Class I plants. Secondly, it reduces the issues of meeting more detailed reporting requirements by a group of small volume processors.

Additionally, it makes consistent the pool plant characteristics and the exempt plant characteristics. Proposal 1 requires inclusive pooling but allows that requirement to be relaxed on certain small producers who process and distribute Class I products. Extending this exemption to similarly situated dairy producers who manufacture products other than Class I products will make our proposal more equitable. It also addresses issues raised with regard to the impact of price level and small processors.

The language we are proposing will create an additional definition for an exempt plant and will be titled in Order 1051 as §1051.8A Additional Exempt Plants. The language for this section (all new language) is as follows:

§1051.8A Additional Exempt Plants.

The following plants shall also be exempt plants.

> *(a) A plant which uses milk to produce Class II, III or IV products (as defined in §1051.40) and that is exempt from the pricing and pooling provisions of any order provided that the operator of the plant files reports as prescribed by the market administrator to enable determination of the handler's exempt status; and*

This language makes it clear this section will apply to a plant that processes manufactured dairy products classified as Class II, Class III or Class IV.

(1) Is a plant that meets the requirements of §1051.7 (c) or (c1); and

(2) Does not process or distribute fluid milk products; and

(3) Uses 300,000 pounds of milk or less per month to produce products classified as Class II, Class III or IV.

Sub-paragraph (a) (1) establishes that these plants meet the requirements of §1051.(7) (c) and (c1). Sub-paragraph (a) (2) further identifies that plant under § (a) is a plant other than a distributing plant. Sub-paragraph (a) (3) establishes that the processing volume limitation allowed for this class of plant is 300,000 pounds or less per month and those products must be classified as Class II or Class III or Class IV.

We chose to increase the traditional size for an exempt plant to 300,000 pounds in order to give recognition to the fact that an exempt plant may process other than fluid milk products and to put a limit on the total pounds that may be exempted. This volume approximates the 315,000 pounds per month estimate of a dairy farm as a small business.

In order to account for a plant in a similar situation but which processes Class I products §1051.8A(b)   (b)
in addition to Class II, III or IV products we created §1051.8 (6). Plants in § (6) also meet the requirements of §1051.7(c) or (c1); but the section adds the additional qualifiers in paragraphs (1) through (4) that allow exempt status for a plant with 150,000 pounds or less of route disposition and sales of packaged fluid milk products to other plants and, if it chooses to manufacture other products, it may do so as long as the sum of the total distribution of packaged sales and milk used to manufacture other dairy products does not exceed 300,000 pounds.

(b) A plant which processes and distributes packaged fluid milk products and uses milk to produce Class II, III or IV products (as defined in §1051.40) and that is exempt from the pricing and pooling provisions of any order provided that the operator of the plant files reports as prescribed by the market administrator to enable determination of the handler's exempt status; and

> *(1) Is a plant that meets the requirements of §1051.7 (c) or (c1); and*
>
> *(2) Has route disposition and sales of packaged fluid milk products to other plants of 150,000 pounds or less during the month; and*
>
> *(3) Uses milk to produce Class II, Class III or Class IV products; and*
>
> *(4) Whose total pounds of usage under sections (2) and (3) above does not exceed 300,000 pounds.*

For the same reasons, we also chose to extend the producer-handler definition to a farm that may process its own milk into other than fluid milk products. The language in §1051.10 below accomplishes this change by retaining the framework of the existing producer-handler language and adding the provision that a producer-handler may also retain its status if it only processes Class II, Class III or Class IV products or processes these products in some combination with fluid milk products but the total pounds processed into all products cannot exceed 3,000,000 pounds.

§ 1051.10 Producer-handler.

Producer-handler means a person who:

> *(a) Operates a dairy farm and a <u>milk processing</u> ~~distributing~~ plant <u>for Class I, Class II , Class III or Class IV products</u> in which the milk used ~~from which there is route disposition in the marketing area, and from which total route disposition and packaged sales of fluid milk products to other plants~~ during the month does not exceed 3 million pounds;*

(b) Receives fluid milk from own farm production or milk that is fully subject to the pricing and pooling provisions of the order in this part or any other Federal order;

(c) Receives at its plant or acquires ~~for route disposition~~ no more than 150,000 pounds of <u>fluid milk or</u> fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handlers own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products;

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all ~~Class I~~ milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations <u>(for Class I, II , III and IV products)</u> are the producer-handlers own enterprise and at its own risk; and

(f) Any producer-handler with Class I route dispositions and/or transfers of packaged fluid milk products in the marketing area described in §1131.2 of this chapter shall be subject to payments into the Order 1131 producer settlement fund on such dispositions pursuant to §1000.76(a) and payments into the Order 1131 administrative fund provided such dispositions are less than three million pounds in the current month and such producer-handler had total Class I route dispositions and/or transfers of packaged fluid milk products from own farm production of three million pounds or more the previous month. If the producer-handler has Class I route dispositions and/or transfers of packaged fluid milk products into the marketing area described in §1131.2 of this chapter of three million pounds or more during the current month, such producer-handler shall be subject to the provisions described in §1131.7 of this chapter or §1000.76(a).

Bulk

(g) Transfers and diversions to producer-handlers which produce Class II, III, or IV products shall be classified in accordance with 1000.42(c)(3).