

Before the United States Department of Agriculture

In the Matter of:)
)
Milk in the Northeast and Other)
Marketing Areas; Reconvening of) Docket No. AO-14 -A77 et al
Hearing on Proposed Amendments) DA 07-02
to Tentative Marketing Agreements)
and Orders)

*Consideration of Proposals to Amend
the Class III and IV Product Pricing Formulas
Applicable to all Federal Milk Marketing Orders*

Supplemental Information In Support of Motion for Continuance
of Hearing Regarding Proposal 18

Now comes the Maine Dairy Industry Association (MDIA), through its attorney, Daniel Smith, Esq., and presents this supplemental information in support of its Motion for a Continuance Regarding Proposal 18. The supplemental information identifies pertinent data that may be assembled without undue burden on the Department. Coupled with comment by interested persons, this data would provide a better developed record for the Secretary's consideration of MDIA's Proposal 18.

Preliminarily, MDIA wishes to clarify that its motion is intended to apply only to Proposal 18. It is not intended to cause a continuance or delay of the Department's consideration of the remainder of this matter, as inferred by the opposition submission of the International Dairy Foods Association. MDIA'S limited motion is solely for the purpose of allowing the Department to build a more complete record for the single Proposal 18. The Department's consideration of all other proposals would continue unaffected by MDIA's motion.

Supplemental Information

The Maine Dairy Industry Association (MDIA) offered detailed testimony in support of Proposal 18 at the Pittsburgh, PA session of the hearing, July 9-11, 2007 (tr. pp. 2593-2745), through its expert witness, Paul Christ. MDIA also briefed legal argument in favor of its proposal following the hearing.

As noted in the Brief, a number of questions arose at the hearing about data that were not available at the time but, if made available, could illuminate the proposal and its effects. With this general understanding, MDIA moved for a continuance of its Proposal to allow for review of the transcript, identification and assembly of pertinent data, and further comment by interested parties.

After review of the transcript, it is very apparent that having available this data and comment would indeed enhance the quality of information upon which the Secretary's consideration of Proposal No. 18 will rely, and allow for a more considered decision.

As also noted in the Brief, in contrast to practically all other issues addressed by this Hearing, there was much stated interest in Proposal 18 and little if any stated opposition. On balance, it would thereby appear worth at least some expenditure of the Department's resources to provide for a more developed record as here proposed.

Review of the transcript leads to the following list of information identified at the hearing that would be useful and assembled without undue difficulty:

1. **More complete definition of the "competitive price zone"**. Testimony in support of Proposal 18 identified the competitive price zone as the territory in which a significant amount of competition for producer milk took place. Mr. Christ chose to measure this by selecting counties in which the regulated purchasers of milk represented a Herfindahl index of .33 or less. A Herfindahl index is obtained by squaring the market shares of each of the participants in the market, in this case a county, and then summing them. For example, a Herfindahl index of .33 represents represents a minimum of three equal-sized competitors. Market shares were based on milk volume, not on the number of producers.

Data was available only for the Upper Midwest market at the time of the presentation. There was much interest during cross examination (tr. pp. 2646-

2648) as to the full extent of the proposed competitive price zone. Dairy Programs staff have access to the necessary, additional data, and it is requested that this analysis be done.

The data can be developed by combining all the Sources of Milk by State and County information for a single month collected by each market administrator. This information is usually collected in December and May, but for these purposes, all the data should apply to the same month.

From this information, the analyst would then identify the handlers from all markets buying milk in each county, calculate their respective market shares, square them and sum the results to determine the Herfindahl index.

The proposal described aggregating any contiguous counties with a Herfindahl index of .33 or less into 10 or more. This is an arbitrary number and is not necessary for identifying the territory in which a significant amount of competition exists.

2. **Proportion of producer milk, by state, encompassed in the competitive price zone.** There was significant concern raised at the hearing about whether the competitive price zone was representative of the national market for milk (tr. pp. 2691-2692, 2693-2695 and 2727-2729). There is no definitive way to determine this, but it is possible to calculate the proportion of the Federal Order supply of milk represented by the competitive price zone, both in total and by state. It is requested that once the competitive price zone has been determined in (1), above, that the milk included in the competitive price zone be divided by the total Federal Order milk supply in each state and in total.
3. **Variation in milk prices within the competitive price zone.** Concern was expressed during cross examination that competitive pay prices in the competitive price zone would not accurately reflect geographic differences in the value of manufacturing milk (tr. p. 2704). This concern was especially relevant to markets close to California.

While the variation that might exist were Proposal No. 18 adopted cannot be determined with certainty, the amount of producer price variation that exists today may be measured.

It is recommend that the market administrators compile average pay prices to producers by state, and deduct the current producer price differentials, to measure the residual manufacturing value of milk. Such prices would reflect current minimum prices to producers on the down side, but they would not reflect them on the up side. This would provide evidence of existing differences in the manufacturing value of milk in different parts of the country.

Conclusion

MDIA respectfully renews its Motion for a Continuance, to allow for assembly and consideration of the data identified in this Supplemental Submission. The information requested, coupled with additional comment by interested persons, can help the Secretary in deliberating the efficacy of using competitive pay prices instead of product formulas to establish the Basic Formula (Class III) Price. Based on the interest expressed at the Hearing, it is hoped that the Dairy Programs' staff has such interest in illuminating Proposal No. 18 on behalf of the Secretary.

Respectfully submitted

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