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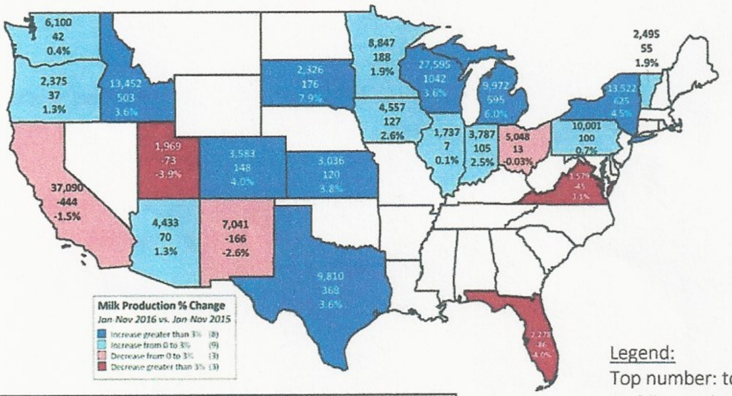
January 19, 2017

Dear

The Northeast has been experiencing some very difficult milk marketing conditions for a number of years now. Favorable milk production conditions have resulted in increased production per cow on farms of all sizes. This increase in supply has occurred at a time when the entire industry is challenged by changing consumer demands. Today's consumer is seeking milk and dairy products in different forms, requiring different types of processing plants, and less milk in fluid products.

YTD U.S. milk production

Jan-Nov 2016 vs. Jan-Nov 2015 (million pounds)



Source: USDA National Agricultural Statistics Service

Legend:
Top number: total production in millions of pounds
Middle number: change in production in millions of pounds
Bottom number: percent of change

Northeast Production Trends

The combined production of New York, Pennsylvania, and Vermont during the first 11 months of 2016 is up 780 million pounds over the same time period in 2015. This means 39 more tankers of milk need to be marketed daily, taxing an already stressed balancing system.

While our customers are working to respond to these changing demands, they are also negatively impacted. As a result, we have, and continue to experience a decline in processing capacity in the Northeast. Over the past few years, numerous plants have closed resulting in farms having to seek a different milk market. While there has been some new processing capacity in the market, the lost volume far exceeds the volume of new capacity added to the region.

The end result of all these changes is that during certain times of the year, the marketplace simply does not have enough plant capacity to handle all of the milk. And, significantly more milk is processed at discounted returns, and in some cases handled with no return at all. It is well documented that with many of the plant closures

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some independent farms have struggled to find a market in the Northeast. These dynamics combined have led to handling / service charge decreases and increased balancing costs throughout the Northeast. Therefore, the premiums cooperatives are able to pay farmers have been steadily reduced across the Northeast area. Cooperatives that market milk through DMS have been sharing in the lost market revenues.

As an independent producer marketing your milk through Dairy Marketing Services, LLC (DMS) you may be aware that with current Federal Order regulations, you cannot be paid less than the blend price announced by the market administrator for milk that is pooled on the Order. As such, there is no mechanism in place to account for the lost revenues and increased cost of securing a home for your milk in this marketplace.

In an effort to create fairness and treat both cooperative members and independents in an equitable manner, we will have to make some adjustments to your price effective with April 2017 milk deliveries. In order to account for the lost revenues and market balancing of your milk, we will de-pool portions, or all, of your milk supplies. The de-pooled milk will not qualify for the Federal Order 1 blend price and will be subject to the returns we can get from the marketplace – generally a manufacturing price. To minimize the impact of this de-pooling on your milk price, we have made a request to Federal Order 1 and the Pennsylvania Milk Marketing Board (PMMB), and have had discussions with the applicable state regulatory agencies, to temporarily relax the interpretation of pooling rules for the Order so we would have maximum flexibility in pooling all milk.

You may want to explore other marketing options and can leave the DMS marketing system if you wish. There are independents and other cooperative marketing options available to you throughout the Northeast.

Alternatively, you can join a cooperative within the DMS milk marketing system. DMS currently has a number of cooperatives that market milk. You can work with these local cooperatives to secure a market.

Rest assured, if you decide to stay in the system as a DMS independent producer, we will continue to market your milk supplies and work to get you the best possible price subject to the prevailing marketing conditions. Throughout the years, we have appreciated our relationship with you, and will do everything we can to help secure a fair and equitable price for all farmers in our system.

If you have questions or seek additional information, please feel free to call Jay Spenard at 1-888-589-6455.

Sincerely,

BKeating

Brad Keating
President and Chief Executive Officer

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STATE OF CALIFORNIA

DEPARTMENT OF FOOD AND AGRICULTURE

DAIRY MARKETING BRANCH

CONSOLIDATED PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE STABILIZATION AND MARKETING PLANS FOR MARKET MILK FOR THE NORTHERN AND SOUTHERN CALIFORNIA MARKETING AREAS

CALIFORNIA DEPARTMENT OF FOOD & AGRICULTURE

DEPARTMENT AUDITORIUM

1220 N STREET

SACRAMENTO, CALIFORNIA

JUNE 1, 2012

9:00 A.M.

ACCELERATED BUSINESS GROUP

(916) 851-5976

been in place for more than nine years directly to a Class III-based price. Another large private company modified its end product pricing formula significantly. Our internal analysis of how the new formula would have worked, if in place since calendar year 2000, shows a greater than 95 percent correlation with the Class III price.

This would mean conservatively 75 (sic) percent or more of the nation's cheese production has a base price that is or tracks closely with the Class III price. There is no other milk price that would represent a better benchmark for the CDFA 4b price than the Federal Order Class III price.

Depooling in the Federal Order System. A frequent reason given for allowing the 4b price to significantly fall below the Class III price is that Federal Order plants are either non-pool plants or are allowed at times to depool from the Order. Depooling is a term describing the action of removing milk from an Order's pricing pool and not paying in any value nor collecting any from the month's pooled returns. It occurs in the system for several reasons. And I want to add at this point, I am not aware of any depooling decisions that were made to clear the market. They were made for income enhancing reasons but not to -- not to clear a market of distressed milk.

Four primary reasons. Number one: Producer quality. If a producer loses Grade A quality standards the

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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, September 22, 2015

Testimony of Elvin Hollon
(Second statement)

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 5

II. Proposed Pooling Compared to Other Orders: The Commonality and Uniqueness of Pooling Provisions in FMMOs.

The FMMO system has shown that it is capable of creative, innovative and necessary solutions to unique and changing marketing conditions over time, in different regions of the country and at the system-wide level when necessary. The proposed pooling provisions will make the California FMMO different from any existing Order but they are necessary in order for the California FMMO to operate in an orderly manner.

Pooling standards are common and necessary in all Orders but they differ in their exact specifications in each Order as they establish the terms of trade necessary to fit the unique marketing characteristics of a given marketplace. For example, the Southeastern Orders have a high number of touch base days per month while the Upper Midwest Order has "once per ever," so long as the farm does not get pooled on another Order. Several Orders prevent pooling a diversion of a producer's milk "until" that producer has "touched base" while other Orders prevent pooling a diversion "unless" there has been a touch base delivery. The result of this language is very different for the pooling handler. The Northeast, Central, Mideast and Upper Midwest Orders have special pooling provisions which apply solely to milk supplies located outside the marketing area.

While the pooling terms of each Order stand on their own and are developed to meet the needs of the particular Order, there is consensus in the industry that completely unrestrained depooling destabilizes the marketplace, is not orderly and should not be allowed. So, the question becomes, what are the correct provisions for the particular Order? For the proposed California FMMO, the answer is the pooling provisions we have proposed. Limitations on depooling currently vary from Order to Order in the system. All Orders have addressed the issue

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Northeast dairy farmers opposing a proposed settlement agreement in a seven-year-old antitrust lawsuit have "opted out" of that agreement and are pursuing their own legal action.

The group of more than 125 dairy farmers retained legal representation for a separate lawsuit against Dairy Farmers of America (DFA) and its marketing arm, Dairy Marketing Services (DMS), according to Mike Eby, a Pennsylvania dairy farmer.

The original class-action lawsuit (*Allen v. Dairy Farmers of America, Inc.*, No. 5:09-CV-230) was filed in 2009. It alleged Dean Foods, DFA and DMS were involved in anti-competitive milk marketing conduct within Federal Milk Marketing Order (FMMO) 1.

Dean Foods agreed to a $30 million settlement in 2011, which was approved.

DFA reached a $50 million settlement agreement in late 2014. However, in April 2015, Judge Christina Reiss of the U.S. District Court for the District of Vermont rejected that agreement after a majority of dairy farmers testifying at a "fairness hearing" expressed opposition.

Without admitting wrongdoing, DFA and DMS negotiated a revised $50 million settlement agreement with plaintiff attorneys and court-appointed farmer representatives early this year. The agreement is preliminary until approved by the court.

Read: Northeast antitrust lawsuit settlement agreement revised

Judge Reiss set an April 29 deadline to accept comments on the latest agreement and will hold a fairness hearing on May 13. If approved, individual farmer shares depend on the amount of raw Grade A milk produced in and pooled on FMMO Order 1 from Jan. 1, 2002 to Dec. 31, 2014. It is estimated the average payment per farmer would be about $4,000, if 8,000 dairy farmers filed claims.

Farmers who opt out of the settlement sacrificed their share of the payment if it is approved, but retain any legal claims to pursue further litigation.

According to Eby, both the agreement's financial payment and requirements steering DFA and DMS marketing practices are inadequate. Instead of being bound to the terms of the settlement in the event it is approved, the farmers opted out by a April 22 deadline and will now pursue a separate lawsuit.

"Not only are we seeking greater compensation, but we feel this option gives us the best hope DFA and DMS will be forced to answer to the antitrust allegations in the case and not simply buy their way out," Eby said. "We hope Judge Reiss will deny the current proposed settlement and proceed to trial, but we are unwilling to stake the future viability of our farms on the hope that the current settlement will not be approved."

Eby is chairman of the National Dairy Producers Organization (NDPO). He emphasized NDPO has not endorsed the separate lawsuit, but the organization's official position is to work in opposition of the current settlement agreement. A recent NDPO newsletter said the group will charter a bus to help members attend the May 13 fairness hearing in Burlington, Vermont.

Eby said farmers already joining the effort have dairy herds ranging in size from 30 to 2,000 cows. He invited other

Northeast dairy farmers who officially opted out of the settlement agreement by April 22 to join their legal action with a goal of proceeding to a jury trial. The group is represented by Boston trial attorneys Nystrom, Beckman and Paris LLP.

The pending agreement and upcoming fairness hearing have generated campaigns on both sides, urging fellow dairy farmers to either accept or reject the settlement.

In a letter to *Progressive Dairyman,* Vermont dairy farmer Alice Allen, one of the original plaintiffs, urged acceptance.

Read: Northeast antitrust lawsuit plaintiff urges settlement, by Alice H. Allen

In another letter to *Progressive Dairyman*, Jacob Ricker, a NDPO member, expressed opposition.

Read: Letter: Northeast antitrust lawsuit settlement agreement falls short

New Jersey dairy farmers Peter and Marilyn Southway of Springhouse Dairy in Fredon, N.J., also urged approval. The Southways, independent dairy producers marketing milk through DMS, were among court-appointed farmer representatives tasked with negotiating a new settlement. They also asked farmers in support of the settlement agreement to attend the fairness hearing. *PD*

- **Dave Natzke**
- *Editor*
- Progressive Dairyman
- Email Dave Natzke

included the names of farmers, ranchers and sometimes other family members, home addresses and GPS coordinates, home telephone numbers and personal emails.

In its ruling, the Eighth Circuit appeals court recognized farm families usually live on the farms they own, noting that EPA's disclosures could facilitate unwanted contact and harassment by the FOIA requestors and others.

Northeast antitrust lawsuit settled ...

U.S. District Court Judge Christina Reiss approved a $50 million settlement agreement in a seven-year-old Northeast dairy antitrust lawsuit, spawning two new potential lawsuits related to the case.

The class-action lawsuit (Allen v. Dairy Farmers of America Inc., No. 5:09-CV-230) was initially filed in 2009. It alleged Dean Foods, dairy cooperative Dairy Farmers of America (DFA) and its marketing arm, Dairy Marketing Services (DMS) were involved in anti-competitive milk marketing conduct within Federal Milk Marketing Order (FMMO) 1.

Dean Foods agreed to a $30 million settlement in 2011. The June 7 ruling by Judge Reiss, in the U.S. District Court for the District of Vermont, finalizes a $50 million on-again, off-again settlement with DFA/DMS.

DFA agreed to the settlement without admitting wrongdoing.

Under the DFA/DFS settlement, which was subject to an April 29 "fairness hearing," DFA will pay about 8,860 dairy farmers an average of about $4,000. The settlement creates dairy advisory council and farmer ombudsman positions to oversee future dairy farmer interests.

... but another headed to court

About 115 Northeast dairy farmers filed a new lawsuit against DFA and DMS, alleging violations of U.S. antitrust laws.

The plaintiff dairy farmers were among about 9,000 dairy farmers involved in Allen et al. v. DFA, but opted out of the settlement agreement.

The new complaint, filed Oct. 26 in the U.S. District Court of Vermont, summarizes previously alleged monopoly/monopsony activities in the northeast U.S. It further alleges DFA's "acquisition appetite remains unsatiated" with the addition of multiple Northeast dairy processing facilities since the original antitrust lawsuit was filed in 2009.

The new lawsuit also alleges that DFA pressured members to accept the settlement.

Parmesan cheese lawsuits filed

Multiple class-action lawsuits were filed on behalf of consumers over revelations some grated Parmesan cheese products may contain higher-than-acceptable levels of cellulose fiber. Lawsuits naming Wal-Mart Stores Inc. and/or Kraft Heinz Foods Co. have been filed in federal courts in Illinois, New York, Missouri and California.

The FDA allows the plant-based fiber at levels of 2 percent to 4 percent in grated cheese as an additive to prevent clumping. However, Bloomberg News purchased and tested several major varieties of grated Parmesan cheese, finding cellulose levels of 0.3 percent to 7.8 percent.

Continued on page 38