BEFORE THE UNITED STATES DEPARTMENT OF AGRICULTURE AGRICULTURAL MARKETING SERVICE

In the Matter of	:	**Docket Nos.:**
	:	
Milk In The Northeast	:	**AO- 14-A76, et al;**
	:	
Marketing Area, et al	:	**DA-07-01**

POST-HEARING BRIEF FOR THE ASSOCIATION OF DAIRY COOPERATIVES IN THE NORTHEAST (ADCNE) AND DAIRY FARMERS OF AMERICA, INC. (DFA).

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I. INTRODUCTION AND SUMMARY OF ISSUES AND POSITION

This brief is submitted on behalf of the Association of Dairy Cooperatives in the Northeast ("ADCNE") and Dairy Farmers of America, Inc. ("DFA"). It addresses the proposals from the hearing which was held December 11-15, 2006 in Pittsburgh, Pennsylvania, to consider proposed amendments to all federal milk marketing orders.

This proceeding presents the question whether federal milk order minimum price provisions will recognize increased costs in the production and marketing of milk by dairy farmers, as well as the costs of manufacturing milk by processors (which costs have been addressed in the "make allowance" proceeding, No. AO-14-A74, et al; DA-06-01). The proposals advanced by the National Milk Producers Federation identify the production and marketing costs which are embedded in the current price provisions and propose updating those cost factors to current costs. In addition the NMPF proposals would restate and simplify the formulas for Class I and II pricing.

This hearing record documents, without contradiction, the current, brutal cost-price squeeze on dairy farms supplying the federal order system. Individual producers from all regions of the country testified, disclosing their personal financial circumstances which uniformly reflected extreme financial stress. In addition, the aggregate data on cost of milk production assembled by the USDA's ERS documents the increase – since current federal order base prices were established – in the basic feed and non-feed costs of producing milk. Furthermore, regional data from the Northeast Farm Credit system corroborates these cost increases. Cooperative marketers further substantiated the increase in marketing costs.

The opposition to the proposals came from two camps: (1) Class I and II milk processors who routinely[1] espoused their economic interests as buyers of milk in having the lowest possible price for their inputs; and (2) the upper midwest regional coalition of cooperatives and industry interests who, when it comes to Class I prices, perceive a bias in the federal order system tilted against their region.

This hearing presents the Department with an important opportunity to recognize discrete and well-documented increases in producer costs of production and marketing Class I milk for the federal order system. If acted upon on an expedited basis, the price changes can offset for dairy farmers the necessary increases in make allowances which will be reducing prices for all milk in the federal order system. A review and analysis of the evidence at the hearing demonstrates that the carefully prepared and presented National Milk Producer Federation ("NMPF") proposals are appropriate and should be adopted. ADCNE and DFA [2] urge the expedited adoption of the NMPF proposals, 1 through 5, as presented.

II. BACKGROUND: PROPONENTS, PARTICIPANTS, AND PROPOSALS

A. Proponent and other parties supporting the proposals

1. The Association of Dairy Cooperatives in the Northeast (ADCNE) consists of the following Capper-Volstead cooperatives: Agri-Mark, Inc., Dairy Farmers of America, Inc.,

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[1] "Routinely" is an appropriate description of the IDFA/MIF position. Their witness was unable to identify any certain circumstance when the Association supported higher prices for dairy farmers, (Tr. 1302)(unless one counts support of "Option 1B" prices in 1998 which lowered prices generally, while raising a few specific locations).

[2] DFA takes no position on Proposal 5 to the extent it would increase the price of Class II butterfat.

Dairylea Cooperative Inc., Land O' Lakes, Inc., Maryland and Virginia Milk Producers Cooperative Association, Inc., O-AT-KA Milk Products Cooperative, Inc., St. Albans Cooperative Creamery, Inc., and Upstate Niagara Cooperative, Inc. These organizations represent more than 65 % of the milk pooled in the Federal Order No. 1.

2. The National Milk Producers Federation (NMPF) is the voice of America's dairy farmers, representing through their cooperatives more than 70% of producers in the nation. NMPF is the proponent of Proposals 1 through 5.

3. Dairy Farmers of America, Inc., (DFA) is a Capper-Volstead cooperative association of 11,500 dairy farms producing milk in forty-nine (49) states. DFA regularly markets milk on nine of the ten federal milk orders.

B. Other participants

4. An upper midwest coalition including Alto Dairy Cooperative, Associated Milk Producers , Inc., Bongards Cooperative Creamery, Burnett Dairy Cooperative, Ellsworth Dairy Cooperative, FamilyDairies USA, First District Association, Manitowoc Milk Producers Association, Mid-West Dairy Coalition, Mid-West Dairymens Cooperative, Milwaukee Cooperative Milk Producers, Prairie Farms Dairy, Inc., Wisconsin Farm Bureau, and Wisconsin Department of Agriculture, Trade and Consumer Protection, all organizations primarily from Minnesota and Wisconsin, appeared in opposition to the proposals.

5. The International Dairy Foods Association (IDFA), and its affiliates, the Milk Industry Foundation (MIF), the National Cheese Institute (NCI) and the International Ice Cream Association (IICA) are the national trade associations whose members include a majority of proprietary processors of class I and II milk in the federal milk order system. Ten witnesses from IDFA members or on behalf of IDFA appeared and testified in opposition to the NMPF

proposals.

6. Select Milk Producers, Inc., and Continental Milk Products, Inc., are Capper-Volstead cooperatives exclusively composed of very large farms. These cooperatives are members of NMPF.

7. Lanco-Pennland Cooperative, Inc., is a Capper-Volstead cooperative of some 800 primarily smaller dairy farms in Pennsylvania, Maryland and West Virginia. Many of Lanco-Pennland's members are Amish dairy farms.

C. Proposals 1– 5: Summary and overview

Proposal 1: This proposal would add $.77 to the Class I milk price in the federal order system by updating the cost-based elements of the national minimum Class I milk price. (Exh. 5, p.1) The elements of cost updating, based upon the cost factors identified in the FAIR Act rulemakings, are: (1) maintaining Grade A status – $.15; (2) increased Class I marketing costs, including transportation cost – $.23; and (3) an increase in the competitive factor premium – $.39. The language of Proposal 1 would eliminate direct reference to the advanced Class III and IV skim milk price.

Proposals 2 and 3: These proposals would simplify the calculation of the cheese-based skim milk price and the butter-powder-based skim milk price which are each alternatively used in setting the Class I skim milk price.

Proposal 4: This proposal would simplify the calculation of the Class II skim milk price by removing two redundant and offsetting expressions of the nonfat dry milk make allowance.

Proposal 5: This proposal would calculate the Class II butterfat price similarly to the minimum Class I butterfat price, making the Class II butterfat price equal to the minimum Class I butterfat value.

III. THE NMPF PROPOSALS ARE WELL DOCUMENTED, WELL CRAFTED, AND SHOULD BE ADOPTED.

A. The AMAA requires consideration of producer costs in the pricing system .

While the Agricultural Marketing Agreement Act (AMAA) is not a "price support" program, as has been emphasized by a number of participants in the hearing, it positively requires that producer costs be taken into account in the price formulation process. This mandate is in Section 8c(18) of the Act, 7 U.S.C. § 608c(18) which provides:

> (18) Milk prices
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> The Secretary of Agriculture, prior to prescribing any term in any marketing agreement or order, or amendment thereto, relating to milk or its products, if such term is to fix minimum prices to be paid to producers or associations of producers, or prior to modifying the price fixed in any such term, shall ascertain the parity prices of such commodities. The prices which it is declared to be the policy of Congress to establish in section 602 of this title shall, for the purposes of such agreement, order, or amendment, be adjusted to reflect the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk or its products in the marketing area to which the contemplated marketing agreement, order, or amendment relates. Whenever the Secretary finds, upon the basis of the evidence adduced at the hearing required by section 608b of this title or this section, as the case may be, that the parity prices of such commodities are not reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk and its products in the marketing area to which the contemplated agreement, order, or amendment relates, **he shall fix such prices as he finds will reflect such factors, insure a sufficient quantity of pure and wholesome milk to meet current needs and further to assure a level of farm income adequate to maintain productive capacity sufficient to meet anticipated future needs, and be in the public interest.** Thereafter, as the Secretary finds necessary on account of changed circumstances, he shall, after due notice and opportunity for hearing, make adjustments in such prices. (Emphasis added)

Court decisions have recognized that the Secretary is obligated in appropriate circumstances to consider, and explain how he has considered, the statutory criteria of Section 8c(18). See, e.g., *St. Albans Cooperative Creamery v. Glickman*, 68 F.Supp.2d 380 (D. Vt. 1999). The AMAA does not establish a rigid prescription for recognition of producer costs, however and there remains a broad latitude in the manner of the Secretary's evaluation and use of these criteria. See, e.g., *Minnesota Milk Producers Association v. Glickman*, 153 F.3d 632 (8th Cir. 1998). However, dairy farmer welfare is the primary object of the statutory program and cannot be overlooked. *Block v. Community Nutrition Institute*, 467 U.S. 340 (1984).

The NMPF proposals are premised upon a reaffirmation of the use of producer Class I production and marketing costs which the Secretary has utilized in the past and which are embedded in the current prices. The NMPF proposals do not seek to create new policy in any way, simply to apply existing policy to updated facts.

B. The Class I price mover(s) are the appropriate mechanism for recognition of producer costs of production and marketing and should be updated.

The Secretary has determined, as most recently formulated in the FAIR Act (so called federal order reform) proceedings, that there should be a classified price system for milk orders; and that the difference in price between the lower manufactured uses (Class III and IV) and the higher fluid consumption use (Class I) should reflect at minimum the costs involved in, and competitive values reflected in, producing for, and marketing for, the highest use class. Those values are the basic values establishing the higher classified value in the Class I price.

In 1998, the Department identified the build-up of the basic $1.60 value in the Class I differential surface (adopted and implemented by Congress in 1999) to be threefold:

(1) Maintaining Grade A status for marketing milk for the Class I market –

"approximately $.40 per hundredweight." 63 Fed. Reg. at 4908 (January 30, 1998). The Secretary expressly noted in a footnote that the $.40 was the "value associated with Class I milk. The amount actually returned to a producer is dependent upon a marketing order's Class I utilization and is reflected in the blend price. . . . [I]n the proposed Upper Midwest order approximately $.06/hundredweight[3] would be returned to producers to cover the costs associated with maintaining Grade A milk supplies." Id. at n.28.

(2) The additional "marketing costs incurred in supplying the Class I market . . . approximately $.60 per hundredweight." Id.

(3) An "additional competitive factor" reflecting about "two thirds of the actual competitive costs incurred by fluid plants to simply compete with manufacturing plants for a supply of milk" in the sum of $.60 per hundredweight was factored in. Id. at 4909.

As Dr. Cryan testified, the NMPF proposal, specifically proposal 1, adopts those principles and builds upon them by updating the basic value of Class I in the federal order system to current costs for production and marketing of Class I milk.

C. The evidence of increased costs at the producer level was overwhelming and establishes the urgency for order amendments.

There was substantial, indeed overwhelming, testimony corroborating Dr. Cryan's testimony regarding increases in the cost structure at the dairy farm level of the federal order system. The testimony came from dairy farmers, as well as from their representatives, and public officials.

Dennis Wolff, Secretary of Agriculture for the Commonwealth of Pennsylvania testified

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[3] $.06 is derived by applying the Order's anticipated Class I utilization of 15% to the $.40 cost of "maintaining Grade A milk supplies."

that agriculture is the number one industry with dairy farming accounting for 42% of the Commonwealth's agricultural output. Pennsylvania has 8,600 dairy farms with an annual milk production of 10.6 billion pounds. In the past ten years, the Commonwealth has lost 2,000 dairy farms and 75,000 dairy cows. The cost of production in 2005 in the Northeast was $17.47 per hundredweight. The projected milk price at the farm for 2006 was $12.60. The proposals in the hearing would increase the price by 73 cents (per the hearing notice) and $.77 per Dr. Cryan's testimony and would add about 35 cents to the producer's milk check in the Northeast, perhaps 50 cents in the states to the South. Secretary Wolff testified that farmers' cost cutting efforts including cutting employees, cutting employees' hours, reducing benefits, reducing insurance programs, increasing credit lines, and delaying plant improvements cannot bring costs in line with current prices. (Tr. 299 - 303)

Ken Dibbell, of New York State, testified that the cost of production for New York for 2006 has been determined by ERS to be $23.08, nearly $10 more than the farm gate pay price. Net economic return to farmers has been negative every year except one or two since 1980. The number of farms in New York has declined from 19,000 in 1980 to fewer than 6,000 in 2006. The decrease in the number of farms in Mr. Dibbell's opinion is disastrous for rural economies. The economic ripple effects that would result from higher returns to the farmers would be of significant benefit to the local rural economies, so it is not just the farmers who feel the effects of low milk prices. The 77 cent increase will help, but not fix the problem of costs of $23.08 per hundred weight when mail box prices are in the range of $11.92 and $12.51. (Tr 305-316)

William Beeman and his wife operate an 80 cow farm in Kinsley, Pennsylvania. He testified on behalf of the 2,400 members of ADCNE and NMPF member Dairylea Cooperative Inc. in support of both the Class I and the Class II proposal. Beeman requested that the

proposals be adopted on an emergency basis. From 2000 to present there were high blend prices in 2001, 2004, and strong prices in 2005. In the other years of that period milk prices have been very low. In 2006 Dairylea farmers are losing money and going further into debt to run their farms. The 2006 economic squeeze is different from 2002–03 in that input prices are at an all time high, and interest rates are up as, are insurance prices. Therefore the 2006 down cycle is worse than any that came before. Feed prices will be much increased in 2007. Beeman does not expect input prices for 2007 to decline to any significant degree. The projected increase in prices in 2007 (in comparison with 2006) will not be large enough to cover increased costs in 2007 and make up for 2006 losses. The situation is compounded by the increased Federal Order make allowance which will cause a projected loss in revenue to Dairylea members of $12.4 million.

Scott Herring of Northeast Farm Credit testified from his base of knowledge of dairy farm economics in the northeast. In his view, milk order prices must be updated to benefit dairy farmers. Mr. Herring was representing several farm credit associations, COBank, Northeast Regional Council, Farm Credit of Western New York, First Pioneer Farm Credit, Yankee Farm Credit and Farm Credit of Maine, the latter four being the credit associations which collectively serve the eight states of the Northeast. He is CEO of Farm Credit of Western New York, a position he has held since 1998. A 2006 profile published in the Northeast Dairy Farm Summary documents the current financial circumstances for 529 farms surveyed. The farms are above average in size and productivity with average farm size of 232 cows, 577 crop acres, five workers, and an average of 21,593 pounds of milk marketed per cow per year. The farms' average milk price was $16.12 in 2005. The average $590,000 of debt was 72 percent of net worth.

Mr. Herring's data showed the substantial cost increase in 2006 with estimated annual

results as follows: labor, resource, utility expenses amount to 55% of the total cash expenditures in 2005 and 2006, and 54% of the total expenses since 1990. Greater milk production per cow has helped offset the long term trend of rising input costs. Over just the three years from 2003 to 2006 cost inflation has been 18%. For 2007 and 2008, he expects continued substantial upward pressure on labor, utility and resource costs that will be at a rate higher than the general inflation rate. Labor costs will rise as will interest rates and energy cost, despite some recent downturn in the latter. Milk hauling costs are up 63% from the baseline period of 1996, reflecting a steep increase in every farmer's cost of getting his milk to market to obtain the FOB plant federal order milk price. These costs pass back to the producer who has no power to increase milk prices accordingly. Cost increases in the last three years have been 23% in the labor, resource and utility cost category.

Tim Hood an elected Director of NMPF member Michigan Milk Producers Association, operates with family members a 400 cow farm in Michigan. His testimony is aimed at how the current system impacts himself and his family. Rising costs in the past year and a half have been difficult to manage. Fuel costs have hit the farmer directly and through all the fuel surcharges and rate increases passed through to them by various suppliers. Hauling costs are up 20% in the past year. The fuel price increases are not part of a normal milk cycle downturn but rather appear to be here to stay. His cooperative has voted to approve the tentative final decision that will increase the Class III and IV make allowances, even though the impact will be to take income from dairy farmer milk checks because on the positive side it will assure that balancing facilities will continue to exist in local markets and there will be a market for all the milk produced. It is unfair for dairy farmers to expect less money from processors of Class I and II milk. Mr. Hood asks the question which the Department must answer in this proceeding: if the system can

change the Class II and IV make allowances because costs have increased, why can cost recognition not be done for suppliers of Class I and II?

Paul Rovey, from Glendale, Arizona, comes from a family farming tradition going back to 1912 in AZ. He is a member of NMPF member United Dairymen of Arizona and serves as its Vice President. UDA produces roughly 75% of the milk produced in the state. Herd size of members is approximately 1,500 and they regularly rank in the top three states nationally in production per cow. The most recent milk price valley has been particularly deep and extended, more so than in "normal" milk price cycles. Urban sprawl has pushed farms further from market areas, thus increasing hauling costs. Rovey favors the proposals of NMPF because they can help account for the Class III and Class IV price decreases with adjustments on Class I and Class II.

Steve Mathees operates a family farm in southern Minnesota with his son, son-in-law, and his brother. He is a member-owner of DFA and sells all of his milk through DFA. As a Director of DFA he sees that plants for all dairy products are experiencing the same margin pressures that were outlined in the recent make allowance hearings. If the NMPF proposals are not accepted, he expects that the producers in his geographic area will have their prices lowered unfairly as the make allowance changes will reduce not only the Class III and Class IV prices, but also the Class I and Class II prices. The proposed changes would positively affect all dairy farmers in an Order. As a farmer, he faces many of the same cost pressures as does a manufacturer. In Mathees's region the proposals would have a positive effect on the blend prices for Federal Orders 30 and 32.

Ricky Williams operates a family dairy farm in southeast Georgia with 600 cows. His family also operates a milk hauling business that delivers milk from farms in Georgia and Florida and delivers to plants in Florida, South Carolina and Georgia. He is a member/owner of DFA

and his farm markets all its milk through DFA. He states that adoption of the proposals would have a positive effect on his farm and others in Georgia and in the Southeast. Demand for milk in the Southeast is increasing with population and the milk supply and number of farms is decreasing. The natural consequences of make allowances being increased in the Class III and IV price formulas will lower Class I and Class II prices in the Southeast, which makes no sense to Williams. His farm faces the same kind of cost increases handlers face.

Max Smith is speaking on behalf of his own family farms and other similar farms in South Central Pennsylvania. Since the year 2000, he has found it "harder and harder" to turn a profit and, except for a short time in 2003 and 2004, merely breaking even or suffering a net loss has been commonplace. On his family farm, they milk more cows, produce more milk and work longer hours, but receive the same price they were paid in the 1970's. Comparing 2006 expenses to 2005 expenses, fuel was up 25%, labor was up 15%, insurance up 8%, bedding costs up 40%, property taxes up 9%, cost increases that on the average equal $1.10 per hundredweight. Feed costs are up. In the three months preceding the hearing, corn increased from $2.60 per bushel to over $4.00. Soy bean meal and other protein sources are up also. If feed prices remain as they are now, the increase in feed costs to produce milk will be $.63 per hundred weight over August 2006 costs, resulting in a major impact on producer costs in 2007. From Smith's vantage point, dairy farmers in the Northeast are at a crossroads where they can either plan for 2007 and beyond or turn the Northeast into a massive housing development.

Thomas Pittman, Director of Milk Accounting and Economic Analysis for Southeast Milk, Inc., a Capper-Volstead cooperative with 321 dairy producers located in Florida, Georgia, Alabama, South Carolina, Louisiana and Tennessee, marketing over 2.85 billion pounds of milk annually in the Florida and the Southeast Milk Marketing Orders, testified in support of the

NMPF proposals. He pointed out that when make allowances for Class III and IV are implemented and used in the price formulas, producers who supply the fluid milk market will incur a reduction in income. He pointed out that costs to producers in the milk deficit markets are especially high. Balancing costs have increased with rising fuel prices. Urban sprawl and declining producer numbers create larger procurement areas and increased hauling costs. Fluid handlers have higher standards than the current Pasteurized Milk Ordinance requires; and the producer gets no credit for meeting higher quality standards than the PMO minimum. Pittman requested that the Department move on an emergency basis in adopting the proposals.

Elvin Hollon for Dairy Farmers of America testified that the central issue of the hearing is whether the pricing formulas adequately reflect the cost of producing and marketing that milk to its intended use. As an expert, he testified from his knowledge of DFA's national membership base that the dairy industry is under tremendous stress at the farm level. DFA has seen 830 farms cease dairy operations nationwide through the first ten months of 2006. In January of 2006, DFA expected the current proposals to be part of a group of proposals, heard in one proceeding. The costs in the federal order price formulas have not been revised for years and the data that supported them are years old. A change in the make allowances is the only way that manufacturers can recover increased costs. Under the current mechanisms, when Class III and IV prices are lowered, prices of Class I and II products are lowered at the same time. Proposals 1–5 direct handlers to look for a better way than make allowances for cost recovery. DFA markets fluid milk in every Federal Order except Order 1131. DFA has supported transportation credits in numerous recent hearings in various Orders. Increases in the volume of supplemental milk and increased transport costs of supplemental milk have been two significant instances of increased cost. In the Southeast, fewer farms and declining milk volumes mean increased mileages necessary to service markets. Increased diesel prices have increased the cost of serving

fluid milk markets throughout the nation. This phenomenon is consistent in all markets. Farms are now farther from population centers necessitating increased costs to service the processor. Order blend prices will decline by approximately $.20 per cwt from the make allowance change. The current crush of increased costs and the February institution of a price reduction is a difficult combination for the dairy producer side of the industry to stomach.

Bob Wellington of Agri-Mark testified on behalf of the ADCNE cooperatives in suppoort of the NMPF proposals and with respect to marketing conditions in Order 1, the largest federal order market, representing 24% of Class I volumes, and 35% of Class II volumes in the federal order system in 2005. ADCNE recognizes that cost adjustments in Class III and IV make allowances were necessary to maintain local outlets for producer milk; but finds it is now critically important to make necessary and appropriate adjustments to the price formulas to account for increased costs on dairy farms. All of the factors recognized in the manufacturing make allowance changes also impact farm costs: energy inflation is a particularly pervasive cost element at the farm level impacting the costs of all purchased inputs, including utilities, fuel, fertilizer and other costs. Both the Northeast Farm Credit data presented by Mr. Herring and the ERS data analyzed by Roger Cryan are valuable documentation of the cost increases at the farm level. The Secretary must recognize these farm-level costs in the basic Class I price mover.

The cost of servicing Class I accounts has increased in multiple respects since the 1996–98 cost base period. Federal order prices are FOB plant prices and the farm to plant hauling cost in the northeast has increased more than 60% since the 1996 base period, from $.54 to $.87 per cwt. according to Northeast Farm Credit data. In addition, this number does not reflect the full cost of farm to plant hauling because some portion of those costs are underwritten by cooperatives in many cases. The cost of farm to plant hauling has increased not only because

of fuel costs, but also because of plant consolidations. These consolidations have allowed handlers to capture economies of scale, but lead to additional expense of their suppliers who have longer average farm to plant hauls. Furthermore, balancing expenses and the overhead associated with servicing Class I and II markets has increased since the 1996 period when the current costs were embedded in the Class I mover.

In summary, the testimony of (1) individual farmers, (2) Dr. Cryan as the chief proponent witness who marshalled the evidence in support of all aspects of the proposals, and (3) the other cooperative witnesses, documented the not-disputed[4] fact of increased costs of producing and marketing milk for Class I uses in the federal order system. The issues for decision are whether the costs should be recognized in the federal orders and, if so, how.

D. Proposals 1– 5 should be adopted as proposed.

The NMPF proposals, broken out in 5 parts in the hearing notice, would reflect the increased costs of producing and marketing milk for Class I (and, to a lesser extent, Class II) in the federal order system and, at the same time, simplify and rationalize the price formulas for milk in both classes by doing the following:

1. Increase the basic, minimum value of Class I skim milk by $.77 per hundredweight, uniformly in all orders by implementing a new set of language for the Class I mover.

2. Restate and simplify the formulae for the cheese-based skim milk price mover and the butter and powder based skim milk price mover used in setting the Class I price.

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[4] We say these costs are "not disputed" because the fact of the cost increases such as fuel, feed costs, labor, etc. was not disputed by any witness. The debate of opponents is over the magnitude of the costs in some cases, or the nature of the costs (i.e. whether they relate to maintaining a Grade A milk supply) in some respects. But, the argument is mostly over whether any producer costs should be reflected in federal order prices. The processor opponents say "no" because they will have to pay the price; the producer opponents say "no" because of their perception that they will not get enough of the price raise.

3. Make those Class I mover formulae freestanding calculations of a Class I mover which would not change involuntarily with future changes in Class III and IV make allowances.

4. Simplify the calculation of the Class II skim milk price.

5. Increase the Class II butterfat price to the level of the minimum Class I butterfat price.

We leave the technical elaboration of the algebraic formulae to the more than capable discourse of Dr. Roger Cryan, in his prepared testimony, Exhibit 5, with its attachment, in his cross-examination, and in his post-hearing brief. The proposals in both their form and content represent (1) important and significant enhancements to the federal order prices for dairy farmers; and (2) important and useful simplifications and rationalizations of the Class I price movers and their relationship to the minimum Class III and IV prices. We will attempt to address in this brief issues and questions which were raised with respect to the proposals.

IV. EMERGENCY CONSIDERATION AND ACTION IS APPROPRIATE

There is substantial testimony in support of the need for emergency adoption of these proposals from all of the dairy farmer supporting witnesses. The economic need for any price relief for dairy farmers could not be more clear. The imperative on the operating statements, and in the check books, of farmers is at least as great as, if not greater than, the economic imperative in the operating statements of the plant operators manufacturing Class III and IV products. Dairy producers are entitled to the same treatment as plant operators.

The cooperatives filing this brief must point out that with NMPF we expected that the issues addressed in this hearing would have been addressed in the proceeding which has resulted in the increased make allowances for Class III and IV milk. Had the proceedings been unified the timing would also have been unified. We now appreciate the Secretary's providing this opportunity to have the producer cost issues addressed in this proceeding. The need for

expedited action is simple and direct as heard in the testimony of the dairy farmers who are experiencing the financial vise of 2006–2007 economics.

V. THE OPPOSITION ARGUMENTS ARE NOT PERSUASIVE.

A. The "adequacy" of supply argument and other general policy arguments are without merit.

1. The adequacy of supply argument.

A key mantra, if not the central thesis, of the opposition to Proposal 1 was the assertion embedded in the lead issue of cross-examination of Dr. Cryan, see Tr. 67 et seq. "[By Mr. Rosenbaum]: Dr. Cryan I'd like to start by asking you some questions related to the adequacy of the milk supply . . ." The point was elaborated by the expert witnesses: Dr. Yonkers: "There is no need to make these changes to ensure . . . a sufficient quantity of pure and wholesome milk." (Yonkers, Tr. 1225; Exh. 45, p.3); and Dr. Knutson: "[A]n adequate supply of milk has existed and currently exists under the federal order program." (Knutson, Tr. 1140; Exh. 44, p.8). Other witnesses made the same contention in various formulations. See Lee; Gulden; Tonak; Galloway; McCully; Kinser. Consideration of this argument and the evidence related to it will demonstrate not only (1) that it misses the mark – no primary contention was made by Dr. Cryan or other proponent witnesses about an inadequate supply of Class I milk – but also, ironically, (2) that there may well be an "adequacy" problem with the level of current Class I prices in the federal order system.

First, proponents simply made no contention in their case-in-chief that adoption of the proposal was necessary "to attract a sufficient quantity of pure and wholesome milk" to the order system. Dr. Cryan very clearly premised his case upon "disorderly marketing conditions", rather than supply adequacy. (See Exh. 5, p.4) So, since supply "adequacy" was not a premise upon

which the NMPF proposal was based, it was not a point which opponents needed to address in an attempt to refute the case. Thus, the opponents' argument is of the "straw man" variety of debating tactics — where the advocate erects an otherwise non-existent obstacle (the "straw" man) in order to demonstrate success in knocking it down. So, Dr. Cryan was asked whether the 35% Class I utilization in the federal order system didn't show that higher Class I prices were unnecessary since more than enough milk for Class I uses is in the system. (Tr. 69) The abstract answer to this question is, of course, that with 35% utilization there is sufficient milk in the national system to meet aggregate Class I needs. But, Dr. Cryan cut to the heart of the matter when he was asked the "adequacy" question for about the third time (this time by Mr. Yale) testifying: "I'm saying the fact that there is more milk produced than is bottled doesn't necessarily mean that there is adequate supply in the context of fluid milk marketing." The record documents the wisdom and insight of this testimony.

Present federal order prices are so out of contact with the value that is required to make milk available for Class I uses in the system that **so far as the record discloses there are no Class I milk supplies anywhere, at any time, in the system delivered for current Class prices.** Dr. Yonkers could offer no examples of any such transactions. (Tr. 1304.) Dr. Knutson could offer no examples of any such transactions. (Tr. 1184–85 "I would guess — I would speculate there probably is none.") No witnesses asked were aware of any such sales; and no witnesses offered any such testimony. Furthermore, the record reflects that the routine over-order values for Class I supplies throughout the federal order system are significantly above $1.00 per cwt; and more than $2.00 per cwt in many markets. This is even true, in fact particularly true, in markets with very high shipping requirements, such as Orders 5 and 7. In those Orders, producers are obligated to deliver a very high proportions of their milk to Class I

plants in order to participate in the pool; yet there is no milk available and delivered at minimum order prices.

The pertinent question with respect to Class I supplies and federal order prices then is: How can it be said that the minimum federal order Class I prices are "bringing forth an adequate supply of fresh fluid milk" when absolutely no milk anywhere in the system is delivered at class values for fluid use? Class I premiums are not a regional or seasonal phenomenon in the federal order system today; they are institutionalized at substantial levels, due in no substantial part to the inadequacy of the minimum order prices to approach the economic value necessary to get those milk supplies to the demand points in the marketplace.

We would respectfully suggest that this record positively documents that current federal order Class I prices are inadequate to attract milk supplies to Class I plants. The costs embedded in producing and delivering milk to the Class I market need to be updated as the proposal requests, just as the costs of operating manufacturing plants have been updated in the make allowance decision.

2. The reduction of Class I (and II) consumption arguments.

A second major policy argument in opposition to the NMPF proposal made by many witnesses was that higher minimum prices will mean lower consumption of Class I (and Class II) products, and therefore lead to lower utilization of milk for Class I and "disorderly marketing." This argument is made, again, by among others the national experts, Drs. Knutson (Exh. 44, p.7 #22) and Yonkers (Exh. 45, at pp. 13–15). We have two comments in response to this contention.

First, in any regulated price system, the textbook observation or argument is always

present that **any** increase in a regulated minimum price – *ceteris paribus,*[5] all other things being equal -- will result in some reduction in consumption. Thus, if that economic truism is sufficient, as a matter of policy, to defeat any increase in minimum regulated prices, this hearing should never have been called. The proponents cannot repeal or refute the textbook laws of supply and demand as applied to hypothetical facts. However, the discussion cannot end there because the AMAA provides for minimum classified prices and consideration of producer costs[6] as well as market supplies and demands. Consequently, the Secretary's duty is to weigh any impact on market demand of minimum price increases in the context of all relevant factors including orderly marketing conditions and producer incomes.

In that analysis, the following factors, among others, are pertinent: (1) Even assuming some decrease in Class I consumption, producer income will increase in the aggregate since the demand for fluid milk is relatively inelastic; (2) as discussed in more detail elsewhere, there are unquestioned increases in the producer costs embedded in the basic Class I price; (3) orderly marketing in the system requires that reasonable compensation for costs of Class I milk be embodied in the basic Class I price/value which is shared by all producers in the pool; (4) the $.77 change in the Class I price level is modest, just over 5% at $15.00 Class I milk, and less than 4% at $20.00 milk, the first price level change since 2000; (5) there is no way to know how or if the producer price change will be transmitted to the consumer level where consumer prices are notoriously not-directly-correlated with producer pricing; and (6) in a dynamic marketplace, all other factors are not equal and general inflation, consumer income, costs of other beverages,

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[5] See Tr. 515 where use of this Latin phrase was introduced in the colloquy among economists, Drs. Gould and Cryan.

[6] See 7 U.S.C. § 608c(18).

and costs of other consumer commodities will factor into the total demand equation. Of these factors, the lack of direct relationship between producer pricing and retail fluid milk product pricing makes all of the assumptions about reduced consumption speculative, at best. In sum, the countervailing factors which the Secretary must consider are such that the argued reduction in consumption does not suggest rejection of the proposal.

3. The opposition to "decoupling" argument.

Several witnesses (Tonak, McCully,and Kinser, perhaps others) testified in opposition to what they label as "decoupling" Class I prices from manufacturing milk prices. This objectionable aspect of the proposals was described by Dr. Cryan, on cross-examination, as follows:

> The beauty of it is that it encourages a balanced consideration of I and II in sequence with a Class III and IV change , so that there's not just a kind of a – there's not an automatic and one-sided impact on the Class I and II prices when there is a make allowance change. It offers the Department the opportunity to take that kind of balanced step -by-step approach to updating prices. That 's an important part of what we're proposing. (Tr. 150–151)

In other words, the changes in the wording of the Class I mover simply create the clearer opportunity for the Department in the future to consider Class III and IV make allowances without automatically impacting Class I and II prices. It is not that the prices cannot be addressed in one proceeding; the point is that they are not lock-step-linked by default. This language change does not itself change any prices or values.

The concern of opponents was identified by Mr. Tonak:

> [O]nce you decouple , it becomes much easier to try to institute Class I and Class II price floors at times of relatively low milk prices, and it puts us on a very slippery slope of completely separating the reality of the market place as revealed in Class III and IV prices and what the Class I and II prices are established as.

(Tr. 787)

In other words, the concern of producers with a higher proportion of Class III and IV milk usage is that Class I prices can be considered separately. We think that this is the very point. It should be possible for the Department to readily consider Class I prices independently of Class III and IV prices. This record clearly establishes that there are costs embedded in servicing the Class I market which are not intrinsically part of servicing Class III and IV markets. Ironically, pooling means that all producers share in the costs and benefits of the Class I market. What the producers of Class III and IV lose in the NMPF proposal is the necessary reduction in Class I revenues when Class III and IV make allowances are increased. In other words, the Class III and IV suppliers are fine with sharing in the Class I market through the pool; but they are not satisfied with pooling the III and IV values – they want the III and IV values to be pooled and to limit, by regulation, Class I values. The NMPF proposals are a well thought through improvement in the design of federal order class prices and should be adopted to simply provide what Dr. Cryan described as the "beauty" of more flexibility in future rulemakings.

B. Arguments addressed to the "details" of the proposals.

Dr. Cryan provided detailed support of the NMPF proposals with cost-justification of all the factors included in the $.77 request. We will discuss the primary objections addressed to each of those topics in turn:

1. <u>Costs of maintaining a Grade A milk supply ($.15)</u>. Dr. Cryan cited USDA ERS cost of production data to suggest that the $.40 per cwt figure associated with "maintaining Grade A milk supplies" should be increased by $.15. The degree of cost increased reflected in the ERS price series was corroborated by the separate data series of Scott Herring from Northeast Farm Credit. These separate data sets established that there has been an increase in the basic cost

of maintaining supplies of milk for the fluid market. The 38% magnitude of increase from the ERS data is certainly a reasonable estimate of the cost increases in non-feed production costs. The challenges to this increment of the proposals were primarily misdirected at assuming that this was a measure of the conversion costs from production of Grade B to Grade A milk, rather than a measure of the cost of maintaining the Grade A supply as stated by the Department in 1998. The arguments that there is little Grade B milk or insufficient evidence of the current cost of conversion simply miss the point: the cost of maintaining Grade A production has increased and the increase should be reflected in the system prices. As pointed out at p. 7 above, the Department expressly noted in the 1998 Proposed Rule that in the upper midwest the $.40 was expected to yield about $.06 on all milk.[7]

It is most interesting to note that the publication cited and selectively quoted by Dr. Yonkers (Frank, Peterson, and Hughes, April 1977 "Class I Differential: Cost of Production Justification" University of Wisconsin-Madison, Department of Agricultural Economics) found that the difference in the cost of production between Grade A and Grade B farms was $.23 to $.32 in 1974 and $.38 to $.47 in 1975.[8] This certainly supports the fundamental rationale of the Department that there is a bedrock cost of maintaining a fluid eligible supply of milk which is in excess of the cost of milk produced solely for eligibility for manufacturing. With or without current conversions the cost of Grade A maintenance is embedded in the cost of being a federal order Grade A producer and should continue to be reflected, at an updated level, in the minimum Class I value.

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[7] An amount which is incidentally akin to the costs cited by Mr. Tonak.

[8] These authors also noted, as did Mr. Tonak, the non-pecuniary, but important "cost" to Grade A farmers of enduring multiple health inspections yearly. The value of this factor alone could be $.20 or more to many producers.

2. Marketing costs for the fluid market, including transportation ($.23). The 1998 decision cited "marketing costs incurred in supplying the Class I market" including balancing costs and the costs of "transportation to more distant processing plants." 63 Fed. Reg. at 4908. The proposed additional $.23 in this cost account is modest and minimal. As Bob Wellington noted, in the northeast the cost of hauling from farm to plant alone has increased $.33 on average since 1996. We think the additional cost of farm to plant transportation alone can justify this $.23 figure and more. This would not even take into account the necessity of every producer to support balancing expenses pro-rata to his Class I deliveries. The record is replete with references to the increased costs of supplying the declining number of Class I plants from milksheds which are further from the market. Certainly, even in Wisconsin, with its sharply contracted number of Class I plants, the necessary cost to any producer who shares in the Class I supply has increased since 1996.

3. The additional competitive factor ($.39). The Department attributed $.60 of the basic Class I price in 1998 to a portion of the prevailing over order premiums in the upper midwest which were a "competitive cost" necessary to get milk to the Class I plant. 63 Fed. Reg. at 4909. That competitive cost, measured today by over-order premium values as in 1998, has increased by more than the $.39 proposed by Dr. Cryan, which is a modest amount. In 2006 the average premium in Minneapolis was $1.79 (Dairy Market News, January 12, 2007, p. 11), $.60 more than the $1.19 cited in 1998. The Milwaukee price was $2.36, versus the $1.79 cited in 1998, an increase of $.56. Systemwide in 2006, the simple average reported by Dairy Market News was $1.83. Plainly the competitive value required to attract milk to Class I plants in 2006 is greater than in 1998; and it has increased more than the $.39 requested in Dr. Cryan's proposal.

C. The perceived self-interest of one region should not override or dictate national policy.

A substantial portion of the hearing record was devoted to contentions with respect to the impact of the proposals on the Upper Midwest dairy industry. The opponent Upper Midwest producer interests[9] eschewed what would admittedly be an immediately positive impact on minimum producer prices because of (1) the perceived long term negative impact on Class III and IV prices and upper midwest blend prices; and (2) the fact that producers in higher Class I utilization markets would experience greater minimum price increases on average. Neither of these arguments should defeat the proposed updating of the national base for class I and II prices in the federal order system.

The latter contention – that some regions will benefit more than the Upper Midwest from the NMPF proposals – should not give the Secretary great pause for the reasons so well articulated by Bob Wellington, the witness for ADCNE:

> [C]hanges in the Class I and II movers do not have the same impact on all produces and all regions. Regional impact differences occur with all, or nearly all, dairy programs. For instance , the MILC program has had a significantly greater regional impact in the upper midwest than in many other regions of the country. Likewise , the changes in make allowances will impact each order, and different producer groups , somewhat differently . But in each case, the MILC program and the make allowance change s, the policies are correct policies , in spite of differences in regional impact . The same applies to these proposals . They are proper and justified changes in the federal order price formulas and should not be stymied by regional interests.

(Tr. 630–31) Each producer in each order in the federal order system will receive a benefit from the adoption of proposals 1 to 5 in accordance with that producer's share of Class I proceeds in

[9] The Department will note that there are substantial Upper Midwest producer interests in support of the NMPF proposal, including, among others, DFA, Land O'Lakes, and NFO.

his order. In turn, that blend price will be impacted pro-rata to its Class I use for the costs embedded in supplying the Class I market. That is consistent with the federal order system and federal order principles, under the AMAA as enacted and applied. The fact that some, or even many, of these costs, such as transportation expense are not unique to Class I markets does not change the principle. The federal order classified price system embodies costs and values relating to the Class I market, with pooling of those values on a regional basis. National pooling of Class I is not presently part of the Congressionally mandated mission of the AMAA. As Bob Wellington pointed out, other programs (such as MILC) disproportionately benefit the Upper Midwest. These proposals benefit the Upper Midwest and all regions.

The long-run argument which the Upper Midwest makes – that gains in the short run will be surpassed by losses in the long run – was rejected by Dr. Cryan who contended that the long run results from the USDA (or any other) econometric model did not fully factor in trends in the international markets for manufactured dairy products. (Tr. 51; Exh. 5, p. 20) It was Dr. Cryan's opinion that the NMPF proposal would benefit all regions, both in the short and long term. His contention with respect to international market influences on manufactured product prices is certainly a serious and weighty one and there is no indication that the Upper Midwest witnesses took this into account.

We would offer another factor in the long run equation which is not part of the Upper Midwest calculus. In the national market for manufactured dairy products, marginal production (not immediately demanded in the marketplace) goes into butter and nonfat dry milk, not cheese. There is abundant evidence of this including sales of product to the CCC in the downturn of

2002–03. The ratio of CCC NFDM sales to cheese sales was over 40 to 1 during those years.[10] There was almost no butter or cheese sold to the government in that cycle; the market was supported by production of NFDM, made outside the upper midwest. During the 2002–03 years less than 5% of NFDM sales to the CCC were from the "Central" region, and that may not have been from the upper midwest. Production of NFDM is almost non-existent in the upper midwest; it is concentrated in other regions. The Upper Midwest's Class IV utilization is among the lowest in the federal order system, averaging just over 5% for the years of 2000–05.

This data demonstrates that marginal production and sales in the federal order system are allocated to NFDM production in regions outside the upper midwest which continues to produce cheese for the commercial marketplace. Thus, the additional Class IV production in the system impacts the blend prices and pools of other regions more than the upper midwest. The upper midwest's regional competitive advantage shows in mailbox prices which are above the federal order system national average in spite of much lower than average Class I utilization. The upper midwest mailbox prices have consistently exceeded the northeast over the 2000–2005 period, even though the northeast's Class I utilization is at least twice that of the upper midwest.

Our point is that the simplistic application of the academic equation: "higher class I prices yield more milk, lower class III and IV prices and, therefore, a net loss to the upper midwest given its low class I utilization" may not be reflective of the way the markets would actually play out. Unfortunately the record is burdened with the deeply embedded opinion of a segment of the upper midwest dairy industry: That the federal order system is structured in a way which

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[10] In citing this data we assume that the FMOS Annuals since 1996 and Dairy Market Statistics, Annuals for the same period have been officially noticed, or will be. We would add a request for Dairy Market News weeklies for the current period since the last annual Dairy Market Statistics Annual publication.

nefariously discriminates against the upper midwest as a region. The conclusion of the opinion drives the economic rationale expressed with respect to the NMPF proposals, rather than the economic analysis leading to the conclusion.

The parties submitting this brief – the ADCNE cooperatives of the northeast and DFA, nationally – have much in common in terms of farm size, structure and operation with the upper midwest industry, and indeed are a part of it (DFA and Land O'Lakes). We empathize with the concerns expressed, but must urge the Secretary to reject the recommendation to refuse to adopt an urgently needed enhancement to the basic price structure of the federal order system.

D. The concerns with Class II pricing.

1. The price for Class II skim milk..

The NMPF proposal restates the formulation of the Class II skim milk price while maintaining the current cost-substitution relationship between Class II condensed and nonfat dry milk powder as ingredients in Class II products. The result is an increase in the Class II skim milk price of $.17, reflecting the slightly increased costs of condensing and rehydrating nonfat solids. Dr. Cryan expressed the basis and rationale for the proposal in his testimony and exhibits. See Exh. 5, pp. 14-16, 32) The critical points are that the competitive relationship between Class IV dry solids and Class II wet solids is retained, while current costs of processing are utilized.

The basic point of the need to retain the competitive relationship between Class IV and II was confirmed by Tim Galloway of the Galloway Company, a major processor of sweetened condensed milk products. He stated that the costs of condensing were the same for a Class IV and a Class II operation (Tr. 899) and argued that in at least some cases there is effectively no rehydration expense because powder is placed directly into a wet vat processing a Class II product. Galloway wants the Class II price tied directly to the Class IV skim price, rather than

the powder price; and directly to the Class IV condensing expense, rather than the condensing expense determined by Dr. Cryan and his panel. Galloway's concerns are, at bottom, to retain a status quo system with which he is satisfied. Dr. Cryan's methodology for deriving the Class II skim price is truer to the competitive relationship as described by the Order Reform rulemaking decision(s) and confirmed by the Cryan panel and Mr. Galloway.

The competition for Class II use is not between Class IV skim and Class II skim: it is between NFDM and Class II solids. To use NFDM in Class II, the NFDM must be purchased and the solids rehydrated. The Class II processor will avoid the cost of condensing if it uses NFDM, but incur the cost of hydration of the dry solids. Therefore, Dr. Cryan's equation: NFDM value less cost of condensing plus cost of hydration matches precisely the competitive scenario. The current equation of Class IV skim + $.70 estimates the $.70 competitive difference which it is precisely identified and measured in Dr. Cryan's analysis. Thus, the NMPF proposal is a superior expression of the competitive relationship between Class II condensed and NFDM.

Should a cost for rehydrating be used in the calculation? The answer must be "yes." NFDM simply does not become a Class II product ingredient without rehydration. There may be differing scenarios of rehydration; and some processors are undoubtedly more efficient than others. But, even in the Galloway scenario of adding NFDM to a vat, there is labor and handling involved in getting the solids into the product. Dr. Cryan's use of $.01 per pound rehydration expense was at the low side of the data range of his panel. It is a reasonable, justified, and necessary cost of using NFDM as a Class II ingredient and therefore an appropriate factor in the Class II skim price equation.

The expressed generalized competitive concerns of Class II processors, e.g. Nestle and Kraft, that any increase in the Class II price would lead to substitution of ingredients and/or loss

of sales must be evaluated in the context of the fact that no data was provided and no documentation marshalled to support the ostensible concerns. We would ask the Department to evaluate the concerns on the basis of the information made available. Galloway markets its Class II product from Neenah, Wisconsin, to Georgia, Florida, Pennsylvania and California. (Tr. 895) The cost **just to transport** the product from Neenah to Georgia is $2500 per 48,000 pound tanker, or $5.21 per hundred weight. (Tr. 896–97) The Class II price increase of the NMPF proposal is $.17 per hundredweight, a cost which is plainly a minuscule amount of the delivered value of the finished product. A similar analysis could be done with a 56 oz. container of Edy's Grand Ice Cream (Stroud,) or Breakstone cottage cheese (McCully) or other witnesses if any product-specific information were made available for the record; but there was none.

The bottom line for the Class II skim analysis is this: The NMPF proposal is intended to do exactly what was done in the 1998 and 1999 decisions – price Class II skim at a level which is competitive with the substitute use of Class IV dry solids. The reformulated language and the proposal do just that and should be adopted.

2. The price for Class II butterfat[11].

NMPF's proposal for Class II butterfat increases the price to the minimum value of butterfat for Class I uses, an increase of about 1.6 cents per pound. This recognizes the added value of Class II butterfat, used predominately at Class I plants. See e.g., Galloway Tr. 901 (all class I plants in Wisconsin use their excess cream in Class II products processed in their distributing plants). As Dr. Cryan testified, this butterfat should carry at a minimum the costs of producers reflected in the minimum Class I value. The producer costs, discussed above with

[11] DFA takes no position on this issue of the proposed increase in the price of Class II butterfat.

respect to the Class I price, are incurred in delivering butterfat for Class II uses, which are high demand uses of butterfat in the federal order system.

The opponents of the proposed Class II butterfat price talked a lot about substitution of Class IV fat products in Class II uses, but there was precious little evidence presented that such substitution was truly feasible or likely for the $.016 price increase. Dr. Cryan offered several reasons why such substitution would not likely occur: First, in California, where the price spread from Class IV fat to Class II fat is over $.03 per pound, there has not been wide substitution of Class IV fat in Class II products. Consequently, it must be expected that processors in the federal order system would follow the same practices and use patterns. Furthermore, while processor witnesses freely commented upon the "feasibility" of using anhydrous milkfat in Class II products, none were prepared to say they had used it. The single experienced Class II processor who was willing to discuss the feasibility of such substitution, Mr. Pittman of Southeast Milk, testified that the proposed price increment would not make the substitution desirable. It can be conceded that current resellers of cream, such as Mr. Miller of Queensboro Farms in New York, may have lower margins on such sales if they pay more for the fat to their dairy farmers. But, the volume involved is surely not something that will threaten any productive capacity at the plant level, and the higher minimum price of cream on the farm may well move the cream market up allowing the re-sellers to maintain their margin.

Demand for, and use of, milk and butterfat for Class II products in the federal order system has been very good, increasing 15% from 1997 to 2005 on a system wide basis from use of 13 billion pounds in 1997 to 15 billion in 2005. (FMOS Annual Summaries, Table 19, 1997 and 2005). Over the same time period, when producer prices are about flat, consumer prices for core Class II products like ice cream have increased from an average of $2.93 for a half-gallon in

1997 to $3.87 for a half-gallon in 2006. (CPI-U, Bureau of Labor Statistics, price series published in Dairy Market News) So, consumer prices have increased substantially, sales have increased, and producer prices have remained the same. Without substantial, credible evidence that the modest increase in Class II butterfat cost will materially impact the market for its use, the NMPF proposal which simply requires the undisputed producer cost increases to be recognized in the Class II butterfat price should be adopted.

VI. CONCLUSION

On the basis of the full hearing record, the meticulous and detailed testimony of Dr. Cryan, the supporting testimony of the dairy farmers from Arizona to Minnesota to Georgia to Pennsylvania, and the documented imperative need to update the federal order prices in this period of extreme cost-price squeeze at the farm level, the NMPF proposals should be adopted on an emergency basis in all respects.

Respectfully submitted.

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