Exhibit 59

Federal Order Hearing, February 25, 2004
NMPF Statement in support of limiting
the producer-handler exemption to 3 million pounds

Introduction

My name is Roger Cryan. I have been Director of Economic Research for the National Milk Producers Federation for four years. Prior to that, I was economist in the Atlanta Milk Market Administrator's office. I have a Ph.D. in agricultural economics from the University of Florida.

The National Milk Producers Federation is the voice of America's dairy farmers, representing over three-quarters of America's 70,000 commercial dairy farmers through their membership in NMPF's 34 member cooperative associations.

The Federation agrees with those parts of proposals 5 and 7 that would limit the producer-handler exemption to 3 million pounds and states its support for those proposed provisions that would do so, in any Federal Orders emerging from this hearing. NMPF is participating in this hearing because the producer-handler issue is one of national scope. NMPF supports such a limit in every market, in order to address both current and potential future market disruption arising from the distortions of the producer-handler exemption.

The current producer-handler exemption began as a matter of expediency, not principle, and after 70 years conditions demand its modification. Changes in technology and the growth of the largest dairy farms offer a new model of producer-handler. Large producers can now capture sufficient economies of scale in processing their own-farm milk in order to exploit the artificial raw milk price advantage offered to exempted producer-handlers - an advantage of as much as 16¢ per gallon. Such a producer-handler can, by itself, disrupt the orderly marketing of milk in a market. More importantly, such large producer-handlers could proliferate across a market, causing even greater disruption in aggregate. This could thoroughly undermine the pooling of market values.

Original Basis for the Current Producer-Handler Exemption

The Federal milk marketing order program has its origins in the Agricultural Adjustment Act of 1933, which generally authorized the Secretary of Agriculture to enter into agreements with producers and to license handlers, in order to "restore normal economic conditions in the marketing of" milk and milk products. The Department combined these powers to implement marketing agreements enforced by licensing in numerous markets. These licenses are the direct antecedents of the modern milk marketing orders.

Although many markets were supplied primarily by handlers who procured milk from producers and cooperative associations, in the Kansas City market producer-handlers sold 50% of the milk and cream consumed when the market's license was instituted in 1935. This license was to regulate them. However, the market administrator encountered considerable resistance from a substantial number of these producer-handlers, who generally failed to submit reports and who refused to make payments to the equalization fund when they did submit reports. Most of the rest followed suit when the market administrator failed to enforce these requirements on non-compliers.

Successive amendments to the marketing agreement were made to lessen the burden on producer-handlers, but since no effective enforcement accompanied even these, non-compliance among producer-handlers continued to grow. In July 1935, unable or unwilling to surmount the practical difficulties of enforcement, the department abandoned its attempts to regulate producer-handlers beyond reporting requirements. *That is, producer-handlers were exempted from regulation as a matter of administrative expediency.* This is the status that producer-handlers of all sizes enjoy today in all Federal order markets.

In May 1935 the Supreme Court invalidated the National Industrial Recovery Act for its excessive delegation of Congressional authority to the executive branch. The marketing agreement and licensing provisions of the Agricultural Adjustment Act of 1933 gave the President and Secretary of Agriculture similarly broad and ambiguous powers over agriculture. In August of 1935, for this reason, Congress amended this Act to codify the previous practices of the USDA, re-establishing the licensing of handlers as Federal milk marketing orders. Significantly, these 1935 amendments included language "providing a method for making adjustments in payments, as among handlers (including producers who are also handlers) to the end that the total sums paid by each handler shall equal the value of the milk purchased by him at prices fixed" by USDA. In other words, the regulation of producer-handlers was specifically authorized. This language has been retained to the present day, as part of a continuous system of milk market regulation; for example, the recent creation of the Central Federal Milk Marketing Order incorporated the Greater Kansas City Order, which had been continuously in force since its December 1936 establishment as a successor to the license diseussed above.

Sources:

Federal Milk Market Order Statistics Annual Summaries for 1999 & 2002. USDA/AMS.
Early Developments of Milk Marketing Plans in the Kansas City, Missouri, Area. 1952; USDA.

A Changing Industry

The early difficulties in regulating producer-handlers gave way over the years to indifference about their regulation, due to their shrinking numbers and small size. Even today, in many markets, most potential producer-handlers fall under the 150,000 pound size exemption, so that only in the Arizona-Las Vegas marketing area does a large share of the fluid milk market belong to handlers exempted as producer-handlers. Until recently, the substantial growth in the scale and efficiency of large fluid milk processors meant that even the largest farms were unable to take advantage of the scale economies; with relatively high unit costs, producer-handlers did not proliferate, and in fact, they declined in number and volume processed.

In 2002, however, there were 380 dairy farms with over 2000 cows, compared to only 235 just four years earlier, when they were first counted. A 2000-cow dairy produces roughly 3 million pounds per month. The average farm in this category produced 5.6 million pounds per month in 2002 (compared to 4.7 million in 1998). These 380 farms now produce 15% of the U.S. milk supply. They are large enough to exploit both the producer-handler raw milk price advantage and economies of scale in fluid milk processing. Their share of production means they could capture a large share

of the Class I sales in an individual market or nationally, if many of them adopted this model.

Sources:

Milk Production. USDA/NASS, February 2003.

Dairy Market Statistics, 2002 Annual Summary. USDA/AMS, 2003.

The Cost Advantage of Producer-Handlers.

Fluid milk bottling plants have increasing economies of scale. That is, they have decreasing costs per gallon as their size increases. This has been consistently demonstrated in industry and academic studies. These economies of scale flatten out, so that the advantages of increasing plant size are greater near the bottom of the range than near the top.

Table 1 and the attached graph show results from several studies, including two studies in Maine, a nationwide study conducted by Cornell University, and the numbers presented by Mr. Herbein in Exhibit ____. Table 1A shows how a line and equation were constructed from the results of the Cornell study. Table 1B shows the line and equation fitted to the Herbein cost estimates for both markets, and the estimated costs for the average sized Class I plants in both markets according to both estimations.

A producer-handler, by avoiding Federal order regulation as a distributing plant, can pay, effectively, the uniform price for milk at the plant. (As the market price for producer milk on the market, this is the appropriate transfer price for analysis of vertical integration.) Its regulated competitors pay the Class I price for the same milk. Table 2 shows selected statistics for all Federal order markets, including a calculation of the price advantage that a producer-handler has in each market, equal to the Class I price minus the uniform price. (The difference between the Class I price and the uniform price at the base point will be the same across the market, since both are adjusted by the same location differential.)

This price advantage is greatly outweighed by the high processing costs of very small plants, and so is neither the primary basis for a small producer-handler's business nor a disruptive force on the market. Even if there is no principled justification for the small producer-handler plant, it has little impact on the market.

Uneconomic re-organization.

However, as producer-handlers become larger, their price advantage can become the primary basis for their existence. A large producer-handler can now enter the bottling business, even with uneconomic processing costs, purely to exploit this regulatory exemption.

Tables 3 ~~through 6~~ 4 show the advantage or disadvantage that regulated plants and producer-handers of various sizes have compared to an average sized plant in each market. We believe that this shows quite clearly the perverse incentive that this antiquated exemption offers to the establishment of uneconomic processing plants. (The numbers deriving from the Cornell results cannot give us results at the low levels we are discussing, since the smallest plant in their study was 13.3 million pounds. These numbers are included to demonstrate their consistency in general principle.)

Producer Equity.

Such an exemption violates the principles of producer equity upon which the Federal orders rest. In the best case (vertical integration of efficient milk production with efficient milk processing) the exemption robs the producer pool to pay producer-handlers. In the worst case (uneconomic reorganization of farms into producer-handlers) the exemption also creates deadweight losses in the market whose whole cost is borne by pooled producers.

Orderly Marketing.

Such an exemption also threatens orderly marketing. As stated above, farms with over 3 million pounds of monthly production now produce about 15% of the U.S. milk supply, equal to about 40% of U.S. fluid milk sales. These numbers are steadily increasing. The ability of such farms to exploit such an exemption threatens both the producers and the handlers currently supplying U.S. markets.

Further, such producer-handlers, even if they bottle all of their milk and buy or sell no more, can now sell to wholesalers or retailers at an advantageous price. Such wholesalers or retailers can either balance their own supplies of milk, at the expense of pooled market participants; or they can raise and lower their prices seasonally, so that consumers will balance their supply at other stores, also at the expense of pooled market participants.

Regular home delivery once provided an argument that a producer-handler could balance its own supply; it is the only marketing channel that is consistent enough to make this claim. However, home delivery has declined from 30% of fluid milk sales in 1963 to less than one half of one percent in 1997. (*Federal Milk Order Market Statistics for January and February 1999.* USDA/AMS.)

The conclusion must be that no producer-handler plant can truly balance its own supply.

The Need for a Limit

There is no justification for the producer-handler exemption generally; but the Federal order objective of orderly marketing demands an end to the exemption for large plants. However, a recognized difficulty in limiting the producer-handler exemption (as opposed to the simplicity of eliminating it) is determining the appropriate level for that limit. The analysis discussed above offers one approach, and its results suggest a limit in the neighborhood of 3 million pounds.

Three million pounds is also the limit recently set by Congress as the limit for exemption from payment of the Fluid Milk Promotion assessment (7 USC 6402). There are some similarities between the Federal milk marketing orders and the order under which the fluid promotion program operates. Both make certain individual fluid milk marketing responsibilities into common ones. The Fluid Milk Promotion threshold of 3 million pounds is implicitly a level above which the individual handler's responsibility to the market as a whole is great enough to require a contribution to the common mission. Also, the Supreme Court has explicitly identified promotion programs as necessarily an integral part of large schemes of regulation; and in that sense, these orders are part of the same program, administered by the same agency.

In a dynamic dairy market, any attempt to fix a limit too finely may be self-defeating. Technologies change, market prices and rates of Class I utilization change, and there is a risk of setting a limit that is too high, leading to uneconomic investment that may be lost when the limit is re-adjusted.

NMPF believes that the limit should be set at the same level in all markets, concludes that 3 million pounds is the appropriate level, and supports the proposals to set the limit at that level in any market or markets emerging from this proceeding.

National Milk Producers Federation requests that the following be given official notice:

Erba, Eric, Richard D. Aplin, and Mark W. Stephenson. *An Analysis of Processing and Distribution Productivity and Costs in 35 Fluid Milk Plants*. Research Bulletin 97-03.

Cornell Program on Dairy Markets and Policy. February 1997. Available at:
http://cpdmp.cornell.edu/CPDMP/Pages/Publications/Pubs/RB9703.pdf

Dalton, T.J., G.K. Criner, and J. Halloran. *Fluid Milk Processing Costs: Current State and Comparisons*. Journal of Dairy Science Volume 85, No. 4 (April 2002) pp. 984-991. Available at:
http://jds.fass.org/cgi/reprint/85/4/984.pdf

Dairy Market Statistics, Annual Summary 2002. Published annually by USDA, AMS.

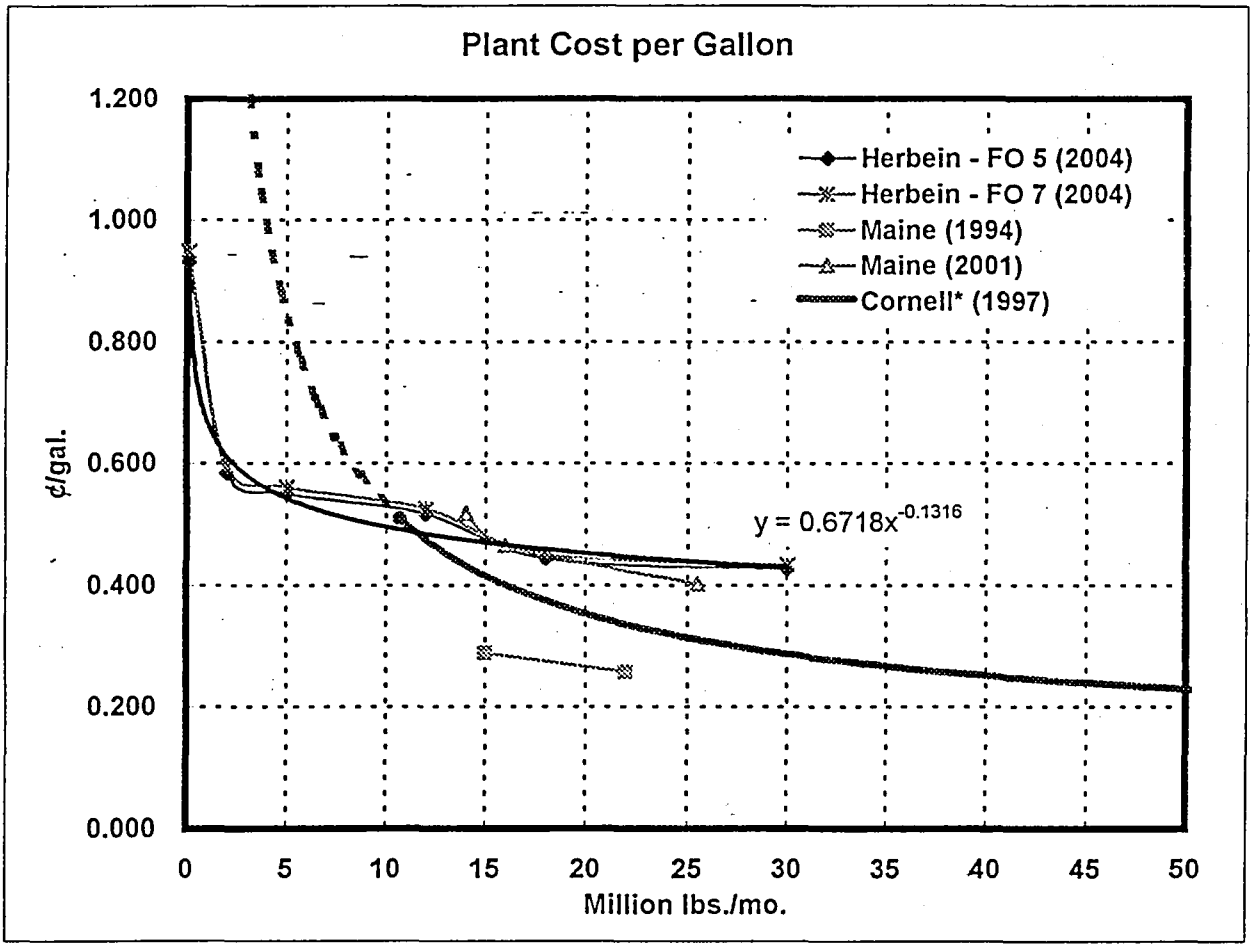
Federal Milk Marketing Order Statistics, Annual Summary, 1999 & 2002. Published annually by USDA, Agricultural Marketing Service.

Milk Production, February 2003. Published monthly by USDA National Agricultural Statistics Service.

Early Development of Milk Marketing Plans in the Kansas City, Missouri, Area. Marketing Research Report No. 14. USDA Production and Marketing Administration, Dairy Branch. Washington, D.C. May 1952.

NMPF: Table 1
Processing Costs of Fluid Milk Plants by Size
February 25, 2004

Monthly Volume (mil. lbs.)	0.09	2.0	5.0	12.0	18.0	30.0
Herbein - FO 5 (2004)	0.932	0.585	0.551	0.517	0.444	0.426
Monthly Volume (mil. lbs.)	0.09	2.0	5.0	12.0	18.0	30.0
Herbein - FO 7 (2004)	0.950	0.595	0.561	0.526	0.452	0.434
Monthly Volume (mil. lbs.)		13.3	20.5	27.7	39.6	51.4
Cornell* (1997)		0.447	0.349	0.299	0.253	0.227
Monthly Volume (mil. lbs.)				14.0	16.0	25.5
Maine (2001)				0.518	0.465	0.402
Monthly Volume (mil. lbs.)				15.0	22.0	
Maine (1994)				0.289	0.257	



NMPF: Table 2
Selected Annual Price and Pool Statistics for Federal Milk Order Marketing Areas, 2002
February 25, 2004

														Pkg'd disp., pool plants	
FMMA	Base point	FO	Prod Milk (mil. lbs.)	Cl I PM (mil. lbs.)	Cl I %	Cl II %	Cl III %	Cl IV %	Uniform price	Class I price	Diff. $/cwt.	Diff. $/gal.	Dist. plants	Million lbs. per year, all plants	Million lbs. per mo. per plant
Northeast	(Boston)	1	24,358	10,695	42	17	31	10	12.65	14.25	1.60	0.138	64	10,546.3	13.7
Appalachian	***(Charlotte)***	***5***	***6,706***	***4,449***	***67***	***14***	***8***	***11***	***13.25***	***14.11***	***0.86***	***0.074***	***24***	***4,354.6***	***15.1***
Southeast	***(Atlanta)***	***7***	***7,927***	***4,767***	***60***	***10***	***21***	***9***	***13.05***	***14.11***	***1.06***	***0.091***	***30***	***4,746.2***	***13.2***
Florida	(Tampa)	6	2,693	2,395	89	7	2	2	14.63	15.04	0.41	0.035	12	2,516.1	17.5
Mideast	(Cleveland)	33	17,739	6,553	37	13	46	4	11.58	13.00	1.42	0.122	45	6,462.2	12.0
Upper Midwest	(Chicago)	30	20,307	4,094	20	3	76	1	10.98	12.81	1.83	0.158	27	4,116.8	12.7
Central	(Kansas City)	32	18,670	4,866	26	6	63	5	11.24	13.00	1.76	0.152	32	4,807.9	12.5
Southwest	(Dallas)	126	9,714	4,056	42	11	34	13	12.39	14.01	1.62	0.140	21	4,075.5	16.2
Arizona-Las Vegas	(Phoenix)	131	3,027	964	32	4	38	26	11.54	13.36	1.82	0.157	3	960.6	26.7
Western	(Salt Lake City)	135	5,552	1,091	20	7	59	14	11.09	12.87	1.78	0.153	12	1,059.8	7.4
Pacific Northwest	(Seattle)	124	7,824	2,114	27	6	36	31	11.24	12.90	1.66	0.143	18	2,086.5	9.7
All Market Average or Total			**125,546**	**46,043**	**37**	**10**	**44**	**9**	**11.91**	**13.69**	**1.78**	**0.153**	**288**	**45,732.5**	**13.2**

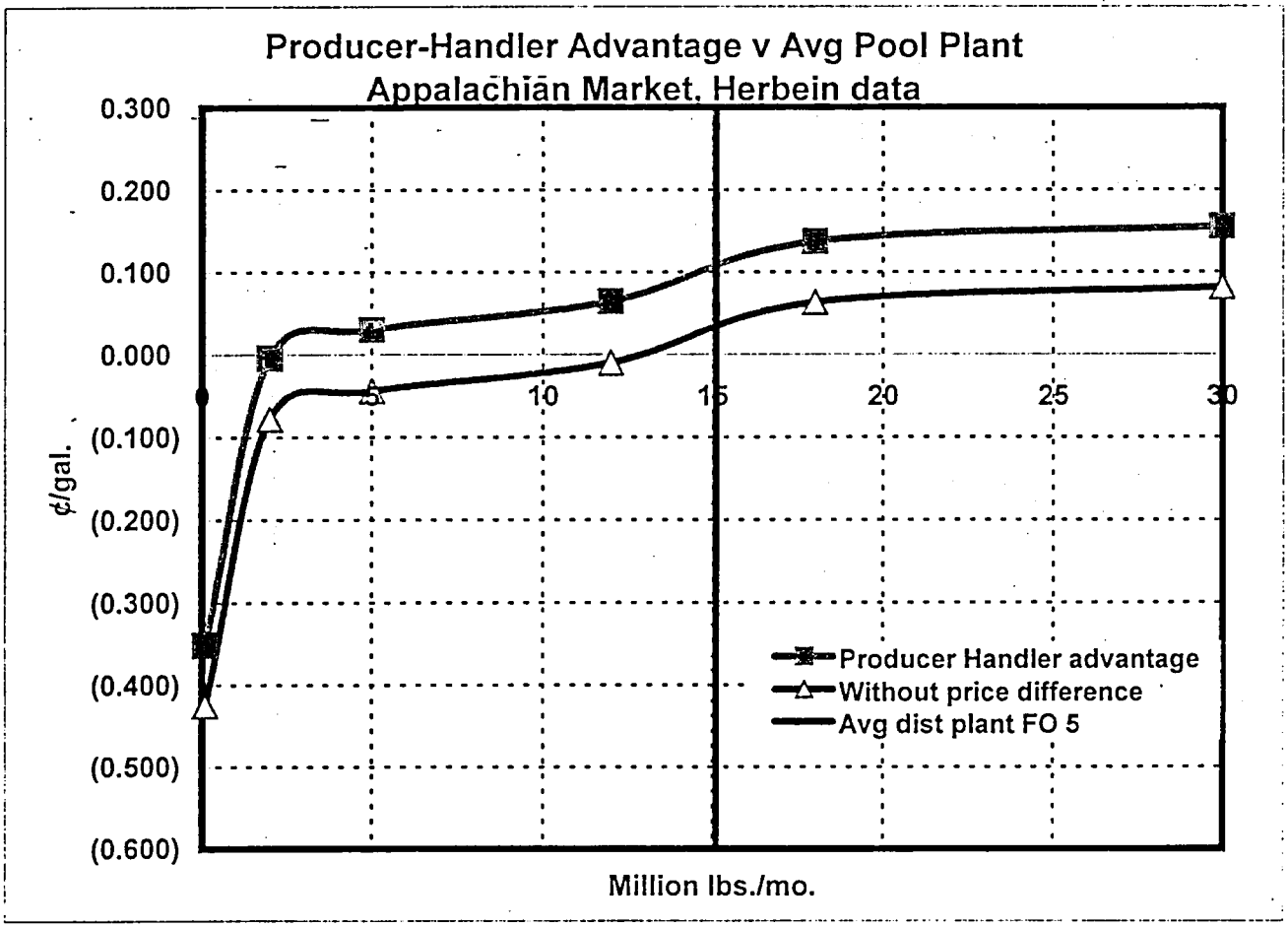
Source: Dairy Market Statistics, Annual Summary, 2002

Source: FMMOS, Ann'l Summ., 2002

NMPF: Table 3
Cost Advantage of Producer-Handlers of Various Sizes
Relative to Average Pool Distributing Plant
Appalachian Market
February 25, 2004

Herbein

Producer Handler						
Monthly Volume (mil. lbs.)	0.09	2.0	5.0	12.0	18.0	30.0
Plant cost	0.932	0.585	0.551	0.517	0.444	0.426
Price advantage (Class I - blend)	0.074	0.074	0.074	0.074	0.074	0.074
Plant cost - price advantage	0.858	0.511	0.477	0.443	0.370	0.352
Average Pool Distributing Plant						
Monthly Volume (mil. lbs.)	15.1	15.1	15.1	15.1	15.1	15.1
Plant cost (15.1 mil. lbs./mo.)	0.507	0.507	0.507	0.507	0.507	0.507
Producer Handler advantage	**(0.351)**	**(0.004)**	**0.030**	**0.064**	**0.137**	**0.155**
Without price difference	**(0.425)**	**(0.078)**	**(0.044)**	**(0.010)**	**0.063**	**0.081**



NMPF: Table 4

Cost Advantage of Producer-Handlers of Various Sizes

Relative to Average Pool Distributing Plant

Southeast Market

February 25, 2004

Herbein

Producer Handler						
Monthly Volume (mil. lbs.)	0.09	2.0	5.0	12.0	18.0	30.0
Plant cost	0.950	0.595	0.561	0.526	0.452	0.434
Price advantage (Class I - blend)	0.091	0.091	0.091	0.091	0.091	0.091
Plant cost - price advantage	0.859	0.504	0.470	0.435	0.361	0.343
Average Pool Distributing Plant						
Monthly Volume (mil. lbs.)	13.2	13.2	13.2	13.2	13.2	13.2
Plant cost (13.2 mil. lbs./mo.)	0.517	0.517	0.517	0.517	0.517	0.517
Producer Handler advantage	**(0.342)**	**0.013**	**0.047**	**0.082**	**0.156**	**0.174**
Without price difference	**(0.433)**	**(0.078)**	**(0.044)**	**(0.009)**	**0.065**	**0.083**