

February 17, 2006

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Via Email (Joyce.Dawson@usda.gov) and US Mail

Joyce A. Dawson, Hearing Clerk
United States Department of Agriculture
Room 1081, South Building
1400 Independence Avenue, S.W.
Washington, D.C. 20250-9200

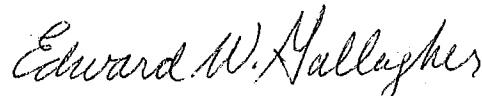
In Re: Milk in the Northeast Milk Marketing Area, et al
Docket Nos.: AO-14-A74;DA-06-01

Dear Ms. Dawson:

Enclosed are four copies of Post Hearing Brief submitted on behalf of Dairylea Cooperative Inc. and Dairy Farmers of America for the above captioned matter.

If you have any questions, please do not hesitate to call. Thank you for your cooperation.

Very truly yours,



Edward W. Gallagher
Vice President
Dairylea Cooperative Inc.

Enclosures

cc: Honorable Peter M. Davenport (via email - Davenport@usda.gov)
Dana Coale (via email - Dana.Coale@usda.gov)
Gino Tosi (via email - Gino.Tosi@usda.gov)
Jack Rower (via email - Jack.Rower@usda.gov)
Sharlene Deskins, Esquire (via email - Sharlene.Deskins@usda.gov)

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**Before the United States Department of Agriculture
Agricultural Marketing Service**

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In the Matter of

**Milk in the Northeast and
Other Marketing Areas**

**Docket Nos.: AO-14-A74 et al:
DA-06-01**

**Post Hearing Brief Submitted on Behalf of
Dairylea Cooperative Inc. and Dairy Farmers of America**

Introduction

Dairylea Cooperative Inc. (Dairylea) and Dairy Farmers of America (DFA) submit this brief in response to the Federal Order make allowance hearing held in Alexandria, VA from January 24-27, 2006. Dairylea markets 5.4 billion pounds of milk on behalf of 2,400 members in the Northeastern U.S. Its members are pooled on Federal Orders 1, 5 and 33. Dairy Farmers of America markets 36 billion pounds of milk on behalf of 13,000 dairy farmers. It has members pooled in each of the Federal Orders.

Dairylea and DFA are members of the National Milk Producers Federation (NMPF) and the Association of Dairy Cooperatives of the Northeast (ADCNE). During the hearing, Dairylea and DFA participated via both Marvin Beshore's representation of ADCNE, Roger Cryan's representation for NMPF and the direct testimony of Elvin Hollon of DFA.

Action Requested

Dairylea and DFA are supportive of:

- 1) Holding Class I and II prices harmless to changes in the Class III and IV make allowances,

- 2) Adjusting Class III and IV make allowances as testified to by NMPF – which includes the adoption of an energy index to update the make allowances, and
- 3) Implementing these changes on an emergency basis.

Support Contingent on Class I and II Pricing Relief

Dairylea's and DFA's support for changes to Class III and IV make allowances is solely contingent on such changes not impacting the calculation of Class I and II prices. This means that the current make allowances be preserved in the advance pricing formulas and that the calculation of the Class II butterfat price use the current make allowances.

Remedies to Class I and II Issues

Dairylea and DFA strongly object to the exclusion of testimony relative to the make allowances used in calculating Class I and II prices. The exclusion of this aspect prevents dairy farmers, who are also facing increased costs since 2000 and earlier, from the same remedy as manufacturers are requesting. It also allows Class I and II processors the opportunity for windfall gains via lower Class prices due to higher cheese, butter and powder manufacturing costs.

Dairylea and DFA request that one of the following occur:

- 1) NMPF's testimony relative to the Class I and II issues be included in the hearing record and a part of the make allowance decision; or,
- 2) USDA immediately reopen the hearing to take evidence relative to the make allowances to be used in determining Class I and II prices; or,
- 3) USDA grant DFA's, Dairylea's et al request for a new hearing, on an emergency and expedited basis, to take evidence relative to the Class I and II formulas' make allowances.

Pricing Circularity On a Small Portion of Milk

Milk production cost data published by USDA's Economic Research Service shows that total operating costs rose by \$1.00 per hundredweight (10.7 percent) from 2000 to 2004 and the total cost increased by \$1.81 per hundredweight (10.0 percent) over that same time period.¹ This occurred as the average herd size increased and the average output per cow increased, as well.

Dairy farmers, either on their own or through their dairy marketing cooperatives, have been unsuccessful in passing these higher costs along to manufacturers and processors in the form of negotiated over-order premiums.

Approximately 87 percent of the butter produced in the U.S. is not included in the National Agricultural Statistical Service's *Dairy Products Prices*² survey and is outside of the circular pricing issue that is the primary concern of the make allowance hearing. For Cheddar cheese production, almost two-thirds is outside of the pricing survey. Fully 100 percent of the mozzarella, provolone, Swiss, colby, monterey and other types of non-Cheddar cheeses are outside of the circularity of the pricing survey. Likewise, 100 percent of beverage milk and all Class II products are outside of the survey. Of the 176 billion pounds of milk purchased by milk plants during 2005, about 17 billion pounds (9.5 percent) was made into products and included in the pricing survey.³ The other 159 billion pounds of milk was made into a product where the manufacturer or processor

¹ See www.ers.usda.gov/Data/CostsAndReturns/testpick.htm. Data is contained in the Milk Commodity and U.S. Region menus under "Recent historic costs and returns, U.S. and ERS farm resource regions, new format and regions." Dairylea and DFA respectfully request that official notice of this be taken, if it has not already been noticed for the hearing record.

² Dairylea and DFA respectfully request that official notice of *Dairy Products Prices* publications be taken, if it has not already been noticed for the hearing record. Additionally, it is requested that official notice be taken of the USDA, NASS publications *Dairy Products* and *Milk Production*, if it has not already been noticed for the hearing record.

³ Product pounds showing up in *Dairy Product Prices* for the 52 weeks of 2005 were converted to milk equivalent using both milk fat and solids equivalencies for each product of butter, cheese and non fat dry milk per the conversions factors contained on the last page of USDA's *Dairy Market News* publication. For each product, the milk fat and solids equivalencies were added together and divided by 2. The resulting milk equivalent pounds were summed and totaled about 17 billion pounds. Whey was omitted from the calculation. It is requested that official notice be taken, of USDA's *Dairy Market News* publication, if it has not already been noticed for the hearing.

could increase its sales price to cover higher production costs – without increasing the Class price of the milk.

Dairylea and DFA recognize and appreciate the difficulty that manufacturers and processors have in passing higher production costs along to their customers. Dairylea's and DFA's marketing teams face these same challenges every single day.

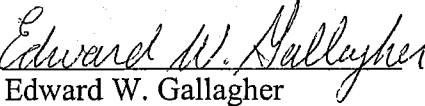
Dairylea and DFA believe that dairy farmers should have the same opportunity for cost of production relief under Federal Orders in a similar manner to the preponderance of manufacturers and processors whose milk purchases fall outside of the circular nature of the pricing survey. It is due to higher farm production costs that Dairylea and DFA urge USDA to implement changes, that in so doing, holds Class I and II prices harmless from any changes to Class III and IV make allowances. By doing so, a portion of the higher production costs faced by dairy farmers will be recognized in the process.

Modification of Support in the ADCNE and NMPF Positions

The inclusion of Dairylea and DFA in the ADCNE brief, and any reference of support in the NMPF brief, relative to supporting the adjustment of make allowances is contingent on Class I and II prices being held harmless to Class III and IV make allowance changes. If Class I and II prices are not held harmless, Dairylea and DFA withdraw support from the ADCNE and NMPF positions relative to Class III and IV make allowances.

Respectfully submitted.

Date: February 17, 2006

By: 
Edward W. Gallagher
Vice President
Dairylea Cooperative Inc.
5001 Brittonfield Parkway
Syracuse, NY 13221

Gallagher, Ed - Regulatory Policy

From: Gallagher, Ed - Regulatory Policy
Sent: Monday, February 20, 2006 12:03 PM
To: 'Joyce.Dawson@usda.gov'
Cc: 'Davenport@usda.gov'; 'Dana.Coale@usda.gov'; 'Gino.Tosi@usda.gov';
'Jack.Rower@usda.gov'; 'Sharlene.Deskins@usda.gov'
Subject: Resending Make Allowance Brief



Document.pdf (764
KB)

Attached is the Dairylea and DFA brief relative to the Make Allowance hearing. This brief was sent on Friday at 4:10 pm but was rejected by your server. Included is documentation showing the time it was emailed and the attempts to deliver to you. Also included is a fax cover letter sent to Gino Tosi this morning. I will be overnighting all of this, including the original letter - which didn't get mailed on Friday due to complications on our end - to Ms. Dawson.

-----Original Message-----

From: Gallagher, Ed - Regulatory Poli [mailto:Ed.Gallagher@dairylea.com]
Sent: Monday, February 20, 2006 11:44 AM
To: Gallagher, Ed - Regulatory Policy
Subject:

Please open the attached document.
This document was sent to you using an HP Digital Sender.

Sent by: Gallagher, Ed - Regulatory Poli
<Ed.Gallagher@dairylea.com>
Number of pages: 21
Document type: B/W Document
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Dairylea

Cooperative Inc. ☐

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P.O. Box 4844
Syracuse, NY 13221
1-800-654-8838
www.dairylea.com

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FAX

Urgent RECEIVED

TO: Gino Tosi

DATE: 2/20/06

FROM: Ed Gallagher

PAGES:

FAX #: 202-690-0552

CC:

RE: Make Allowance

NOTES: Gino, please respond when you receive this. I can be reached at 1-800-654-8838, ext 5658. Attached in the Dairylea & DEA brief I emailed on Friday. The USDA server rejected it during the time period that our email system allows. I have included copies of the emails that I received notifying me of the problem, I have also copied & sent to you the cover sheet of the original email that I sent - at 4:10 pm on Friday.

Gino, it need to know if there is any problem including our brief. *

Thanks for your immediate attention.

Ed

Dairylea Cooperative Inc.

Agri-Services Agency • Risk Management Services • Eagle Dairy Direct
Agri-Financial Services • Dairy One • Empire Livestock Marketing
Agri-Edge Development • Agri-Invest

Gallagher, Ed - Regulatory Policy

From: postmaster@dl-gfi.dairydata.local
Sent: Friday, February 17, 2006 5:53 PM
To: Gallagher, Ed - Regulatory Policy
Subject: Delivery Status Notification (Delay)



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(982 B)



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This is an automatically generated Delivery Status Notification.

THIS IS A WARNING MESSAGE ONLY.

YOU DO NOT NEED TO RESEND YOUR MESSAGE.

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Gallagher, Ed - Regulatory Policy

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To: Joyce.Dawson@usda.gov; Davenport@usda.gov; Dana.Coale@usda.gov;
Gino.Tosi@usda.gov; Jack.Rower@usda.gov; Sharlene.Deskins@usda.gov
Sent: Friday, February 17, 2006 6:33 PM
Subject: Undeliverable: Brief of Dairylea Cooperative and DFA RE: Make Allowance Hearing

Your message did not reach some or all of the intended recipients.

Subject: Brief of Dairylea Cooperative and DFA RE: Make Allowance Hearing
Sent: 2/17/2006 4:10 PM

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