BEFORE THE UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

In the Matter of	:	
	:	**Docket Nos.:**
Milk In the Pacific Northwest and	:	**AO-368-832,**
	:	**AO-271-837,**
Arizona - Las Vegas	:	**DA-03-04**
	:	
Marketing Areas	:	

BRIEF FOR DAIRY FARMERS OF AMERICA, INC. (DFA)

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I. INTRODUCTION AND OVERVIEW

This post-hearing brief is filed on behalf of Dairy Farmers of America, Inc., (DFA) with respect to the proposals to amend the Arizona – Las Vegas (Order 131) and the Pacific Northwest (Order 124) marketing orders. The proposals were the subject of public hearings held in Phoenix, Arizona, September 23-25, 2003; Seattle, Washington, November 17-20, 2003; and Alexandria, Virginia, January 20-24, 2004. The primary issue in the hearing is whether the provisions for exemption of producer-handlers from the pricing and pooling provisions of the orders should be amended. The hearing also considered whether Order 131 should be amended to prohibit simultaneous pooling on a state and federal marketwide pool.

With respect to the producer-handler issues, this brief will first summarize the record by way of proposed findings of fact. Then legal issues presented by the proposals and the hearing will be discussed. The details and mechanics of the proposed amendatory order language will be reviewed.

Finally, the proposal to amend Order 131 to prevent "double dipping" on state and federal order pools will also be discussed.

II. SUMMARY OF DFA POSITION

The producer-handler exemption on federal milk orders is a regulation which was born of expediency. It is not required by the AMAA and under current marketing conditions in Orders 124 and 131 should be reformed so that it is applicable only to entities distributing less than 3 million pounds of fluid milk products (Class I utilization) per month. This requested action will more than generously allow the original intention of the provision – to exempt small dairies which do not impact the pool in a significant way – to continue while restoring the integrity of the marketwide pool for both producers and handlers.

The producer-handler exemption is, as no party disputes, a deviation from the basic federal order principles of uniform minimum prices for producers and uniform minimum class prices for handlers. Orderly marketing in federal milk order markets can only be maintained if any exceptions granted to uniformity are limited and justified so that overall orderly marketing throughout the market orders is preserved. This record establishes that orderly marketing conditions in the marketwide pools in Orders 124 and 131 have been compromised by large producer-handlers. On the producer side, large producer-handlers in the two Orders have captured a significant share of the Class I sales, reducing returns to all producers while retaining substantial Class I proceeds for each producer-handler on an individual handler "pool" basis. In Order 124 the three largest producer-handlers, which average nearly 5 million pounds of Class I sales each per month, are larger in size than more than one-third of the fully regulated distributing plants. Two regulated handlers in Order 124 which recently ceased operations attibute their demise in part to the competition from producer-handlers(s) who were not subject to federal order minimum class prices. In Order 131, Sarah Farms has captured more that 15

million pounds of Class I sales per month with prices to large customers which cannot be matched by fully regulated handlers paying Class prices for their milk. The degradation of the Order 131 uniform price has cost pool producers millions of dollars. In both Orders there are marketing conditions at both the handler level and the producer level caused by these large producer-handlers which must be considered disorderly by any definition.

The producer-handler exemption in both Orders should be reformed to limit it to entities with less than 3 million pounds of Class I sales per month. The record demonstrates that producer-handlers which are smaller than 3 million pounds per month have higher per unit operating costs at the plant level and, therefore, are not capable of major disruptions in the Class I market place. Producer-handlers with volumes up to 3 million pounds per month are generally not disruptive competitive forces in either Order 124 or 131, at this time. Consequently, so long as they meet the operational requirements of the Order their exempt status should remain.

There are a number of compelling reasons why three million pounds is an appropriate level at which to "cap" the producer-handler exemption: (1) It is the level applicable in the Fluid Milk Promotion Act of 1990, 7 U.S.C. 6401– 6417, and, therefore, it embodies a determination by Congress that fluid milk handlers at that level are important participants in the Class I marketplace nationally. (2) Data with respect to volumes of sales from stores indicates that at the 3 million pound per month level, a handler could supply sufficient stores in a metropolitan area to be a substantial factor in the retail market place. (3) At a level of 3 million pounds production, handler plant economies of scale are sufficient that the handler side of a producer-handler can be competitive with fully regulated handlers. The smallest producer-handlers have unit processing costs disadvantages which are sufficient to offset the advantage gained from being exempt from

pooling. However, those dis-economies of scale are overcome at or about the 3 million pound per month level as Carl Herbein's data and academic studies indicate. (4) A 3 million pound per month producer has substantial economies of scale on the production side which give him a cost advantage on the producer side which, if the producer-handler is exempt from pooling, can be used as a competitive weapon in the fluid milk sales marketplace. The record clearly establishes that producer-handlers with Class I sales above 3 million pounds should not be exempt from pricing and pooling in Orders 124 and 131.

Order 131 should also be amended to prohibit the simultaneous pooling on the order of milk which is pooled on a state order marketwide pool. This abuse has been corrected in several other orders and needs to be corrected in Order 131 particularly because of its proximity to California.

III. PROPOSED FINDINGS OF FACT

A. Regulatory Background and Current Context

1. The origins of the producer-handler exemption.

1. The current producer-handler exemption began as a matter of expediency, not principle, and after 70 years market conditions demand its modification. (Cryan, Tr. 889)

2. The Federal Milk Marketing Order Program has its origins in the Agricultural Adjustment Act of 1933, which generally authorized the Secretary to enter into agreements with producers and to licensed handlers in order to restore normal economic conditions in the marketing of milk and milk products. The Department of Agriculture combined these powers to implement marketing agreements enforced by licensing in numerous markets across the country in 1933 and 1934. These licenses are the direct antecedents of the modern Milk Marketing Orders. (Cryan, Tr. 890)

3. The present exemption of the producer-handler traces its beginnings to Kansas City in the early 1930s. USDA Marketing Research Report No.14, dated May 1952, entitled Early Development of Milk Marketing Plans in Kansas City, Missouri, area, gives a detailed history of the events of that time. Official notice was taken of this publication. (Hearing Exh. 27, 27a)

4. In the Kansas City market, producer-handlers sold 50 percent of the milk and cream consumed when the market's license was instituted in 1935. (Cryan, Tr. 890)

5. That license was intended to regulate these producer-handlers. However, the Market Administrator encountered considerable resistence from a substantial number of producer-handlers who generally failed to submit reports and 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-compilers. (Cryan, Tr. 890)

6. Successive amendments to the marketing agreement were made to lessen the burden on producer-handlers, but since no effective enforcement accompanied even these changes, non-compliance among producers handlers continued to grow. (Cryan, Tr. 892)

7. In July 1935, the Department abandoned its attempts to regulate producer-handlers beyond reporting requirements. 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. (Cryan, Tr. 892)

8. When the United States Supreme Court in May 1935, invalidated the National Industrial Recovery Act for its excessive delegation of Congressional authority to the executive branch. In so doing, the Supreme Court called into question the validity of the marketing agreement and licensing provisions of the Agricultural Adjustment Act of 1933, which gave the President and the Secretary of Agriculture similarly broad powers over agriculture. (Cryan, Tr. 893)

9. In August in 1935, for this reason, Congress amended the Agricultural Adjustment Act to codify the previous practices of the USDA, re-establishing the licensing of handlers through issuance of Federal Milk Marketing Orders. (Cryan, Tr. 893)

10. These 1935 amendments include 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 be equal to value of the milk purchased by such handler at prices fixed by the USDA. Thus, the regulation of producer-handlers was specifically authorized and this language has been retained to the present day as part of a continuous system

of milk market regulation. (Cryan, Tr. 893)

11. All of the producer distributors of 1935 were small operations, and none of them sold milk across state lines. There was a strong belief -- supported by the narrow interpretation of "interstate commerce" by the Supreme Court -- which made it unlikely the Administration could enforce Federal Order regulations upon producer-handlers whose operations were not "interstate commerce."

12. This was an issue that had a legitimate bearing on the Secretary's decisions made in 1935. However, that changed just a year later, in 1936, when the Supreme Court reversed its position and decided that interstate commerce included anyone who may affect interstate commerce, whether an actual participant or not. By that time, however, the preferential exemption for producer-handlers had been put into place. (Cryan, Tr. 893)

13. The early difficulties in regulating producer-handlers gave way over the years to indifference about their regulation because of their generally shrinking numbers and small size. Even today, in many markets most producer-handlers fall under the 150,000-pound size exemption. (See Hearing Exh. 33F; Attachment 1) It is the large producer-handlers, however, who have changed the landscape with respect to use of this privileged status in the marketplace. (Cryan, Tr. 893)

2. General overview of changes in milk markets since the existing exemptions were established.

14. Producer and handler sizes have changed dramatically over the years and that has had an effect of the structure of dairy markets, both handler and farm level. Modes of transportation have changed, bulk tanks at the farm level and bulk trucks, as opposed to cans, have changed the

structure of those markets. Changes in packaging and equipment at the plant level, additional capital required to efficiently package product as required by consumers had an impact on the marketplace. Consumer buying habits have changed, including changes related to the growth of supermarkets and one-stop shopping and other similar changes have effected the structure of those markets. (Van Dam, 2942)

15. The evolution of the dairy industry, fewer but much larger dairies, has taken the actuality of producer-handlers far beyond what the "founding fathers" of Federal Orders envisioned when they provided for an exemption from pooling for mom and pop dairies that bottled the little milk they produced and sold it to their neighbors. (Tillison, Tr. 364)

16. Real life data supports the contention that small producer-handlers do not in the final analysis have any advantage over the regulated handler and smaller producer-handlers have shown attrition in some areas. Large producer-handlers, however, do have advantages over regulated handlers and are not leaving the business. (Van Dam, Tr. 2874)

17. Large producer-handlers are a major factor in both Order 124 and Order 131 Class I markets. (Tillison, Tr. 364)

18. USDA Market Administrator data shows that in May 2001, 373 out of 66,021 producers are larger than the 2.5 million pounds of milk production, accounting for only six tenths of one percent of the total of the population of federal order producers.[1] (Hollon, Tr. 1043; Hearing Exh. 32, p. 15)

19. In 2002, there were 380 dairy farms with over 2,000 cows, compared to only 235 just

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[1] This data is from "Producer Structure in Federal Milk Orders, May 2001", a publication of AMS Dairy Programs. Official Notice was taken of this document.

4 years earlier when counts were first taken. A 2,000-cow dairy produces roughly 3,000,000 pounds of milk per month. The average farm in this category, according to national statistics, produced 5.6 million pounds per month in 2002, compared to 4.7 million pounds in 1998. (Cryan, Tr. 894)

20. These 380 farms now produce fully fifteen (15%) percent of the U.S. milk supply, a market condition that was well beyond the regulators' expectations when the producer-handler exemption was adopted in a de facto way in the 1930's. Producer-handlers of this size are large enough to exploit both the producer-handler raw price advantage *and* economies of scale in fluid milk processing. Their share of production means that they could capture a large share of the Class I sales in an individual market or, in the worst case, nationwide if this loophole is left unremedied. (Cryan, Tr. 894)

21. Regulatory risk is something that's in any regulated business. And any participant worth it's salt understands that regulatory risk is present. There is "regulatory risk" in Federal milk order changes for dairy farmers who are not producer-handlers, as well as for producer-handlers. An example of it might be that prior to Federal Order Reform, in 2000, some producers had 50 percent Class I utilization for years and years, in some areas, Utah being an example. Producers made investments on the basis of that regulatory climate to their dairy farms. They brought families into the farms on that basis. But the regulations changed with federal order reform. (Van Dam, Tr. 2938)

22. The proponents' proposals are designed to require regulation only of producer-handlers which disrupt the market to an extent that is damaging to the operation of Federal Orders and, therefore, to all producers' interests. (By proponents best estimate (drawn from

Market Administrator data and proponents' sales intelligence and not disputed), if the 3 million pound limit were adopted throughout the federal order system, fewer than 10 current producer-handlers would be affected.) (Hollon, Tr. 2838–2849)

23. Up until current times, there were very few instances of a producer-handler who came into a market and grew substantially within that market, taking away what has been considered the traditional dairy market from the regulated handlers, which leads to disruption of markets. In the absence of rapid growth of producer-handlers and the potential rapid growth of producer-handlers, they were not a disruptive force. On this record, both the actual and the potential growth is of concern, and if such growth is not checked, there will be substantial shifts of business away from regulated handlers to unregulated producer-handlers. That would be contrary to what Congress intended when the AMAA was passed in the first place. (Hitchell, Tr. 239)

B. Current Marketing Conditions: the Need for Changes in Producer-Handler Regulation.

1. Producer-handlers are major and disruptive competitive factor in sales of fluid milk products in both Order 131 and Order 124 today.

2. In Order 131 it is the view of UDA, the cooperative representing the large majority of producers, that the purposes of the USDA Milk Order program are not being served. Specifically, the requirement that orders provide for the sharing among producers of the returns from all sales by requiring that payments for milk be pooled and that a uniform, average price be paid to the individual dairy farmers or their cooperative associations is not applied to producer-

handlers. As a result, a single producer operating as a single handler, Sarah Farms, has been permitted to avoid the requirement applicable to all handlers that make payments for milk be pooled. (Boyle, Tr. 145)

3. The exclusion of Sarah Farms' milk from the Order 131 pool from January 2000 to July 2003 resulted in an estimated reduction in the uniform price of 10-14 cents per hundredweight for a total loss to the pool during that period of approximately $11,586,000, according to data prepared by the Market Administrator for Order 131. (Boyle, Tr. 148)

4. The exemption from pooling of fifteen to eighteen million pounds of Class I sales from pricing and pooling operates to the clear and unjustified advantage of Sarah Farms and to the clear detriment of other producers in the market. This inequity and threat to market stability requires that Sarah Farms be subject to regulation under the Order. (Boyle, Tr. 148)

5. According to USDA records, Sarah Farms, during most months, is the only producer-handler in Order 131. It grew from raw milk production of less than 5 million pounds of raw milk in 1994 to approximately 15 millions pounds per month in 2002. (Muirfield, Tr. 168-169).

6. Large producer-handlers in Order 124 include Edaleen Dairy, Smith Brothers Farms, and Mallories Dairy. (Exh. 33E; Attachment 1)

7. In May 2003, the three largest producer-handlers in the Pacific Northwest averaged 4.7 million pounds of Class I route disposition per month. There were 6 fully regulated handlers accounting at Class I prices which were smaller, on average, than the 3 largest producer-handlers in the Order. Those six fully regulated plants had average Class I sales of 3.96 million pound in May 2003. (Hollon Tr. 2472; Hearing Exh. 33F-G; Attachment 1)

8. In both Order 131 and Order 124, producer-handlers are processors in the Class I

market and are entering into direct competition with regulated handlers. The producer-handlers enjoy a competitive advantage by avoiding the minimum pooling and pricing provisions of the Federal Orders. (Hitchell, Tr. 214; Vander Pol, Tr. 476; Arbuthnot, Tr. 413)

9. The producer-handler advantage flows through to retail markets where customers of producer-handlers enjoy the benefits of these avoided costs. (Hitchell, Tr. 215)

10. A disorderly market in Class I retail sales results from this inequity where customers of producer-handlers compete with retail outlets supplied by regulated handlers. (Hitchell, Tr. 215)

11. In Order 131, the Costco stores are supplied by Sarah Farms at prices which cannot be matched by regulated handlers selling at a profit. (Herbein, Tr. 775–787). Similarly, the prices offered by Sarah Farms to other customers would require Shamrock Farms to sell at prices below full costs and at or below direct costs. (Krueger, Tr. 556)

12. Retail supermarket stores do business in one of the most competitive environments in the American economy. Within that environment, fluid milk is one of the essential categories that determine the supermarket retailer's ability to effectively compete in the marketplace. (Hitchell, Tr. 216)

13. The regulated price of raw milk is 70 percent of the cost of a gallon of fluid milk marketed at the retail outlets of Kroger, one of the nation's major supermarket chains. The inequity resulting from granting the producer-handler exemption to firms producing more than 3,000,000 pounds of milk per month disrupts the competitive balance of the marketplace and should be eliminated. (Hitchell, Tr. 217)

14. In Order 124, Vita-Milk lost a distributing company customer to Edaleen and the sales staff of Vita-Milk reported that the Edaleen price was eleven to twelve cents per gallon below Vita-Milk's best net price to distributors. The customer explained that the lower price offered by the Edaleen was the reason for switching the account from Vita-Milk to Edaleen. (Vander Pol, Tr. 470)

15. In an effort to regain this distributor customer, Vita-Milk offered a price of $1.75 per gallon which equaled the price of production through the bottling phase, but did not include delivery, marketing, office or other administrative and overhead costs. The Vita-Milk sales staff learned from its former customer that Edaleen was offering it milk at $1.65 per gallon. (Vander Pol, Tr. 470-471) The producer-handler price advantage in Order 124 averaged from $.14 to $.16 cents per gallon from 2000 through 2003. (Hollon, Tr.1008, Hearing Exh. 33 A2; Attachment 1)

16. Vita-Milk lost business in half-pint sales to Edaleen in the school lunch program market in the Puget Sound area. Part of the reason this business was lost was that producer-handlers bidding on school lunch contracts could offer fixed price contracts for extended periods of time, which Vita-Milk as a regulated handler subject to changing Order prices could not offer. (Vander Pol, Tr. 472-473)

17. Before Vita-Milk closed in August 2003, there had been four generations of family involved in the business. (Vander Pol, Tr. 477)

18. In Order 124 there was cherry-picking of the market in sizes of milk containers sold by producer-handlers. Producer-handlers would sell their milk mostly in gallon containers. Regulated handlers were then left with the less-profitable market for milk in small containers such as half-gallons and pints. (Arbuthnot, Tr. 444) Mallories Dairy produces primarily gallon

containers and no quart, pint or half-pint containers; pool handlers must provide Mallories' customers with primary supplies of half gallons and all smaller containers. (Flanagan, Tr. 2361–68) Mallories also private labels for Thriftway stores in the same private label which pool handlers also provide for Thriftway. This allows Thriftway to balance Mallories' supplies with pool-sourced milk. (Flanagan, Tr. 2398–99)

19. Producer-handlers were able to offer prices to customers of Vita-Milk that were below Vita-Milk's costs. Vander Pol attributes this price differential in part to the inequity in pricing resulting from the producer-handler exemption. (Vander Pol, Tr. 469)

20. Producer-handlers are able to offer long term fixed price contracts simply because they do not have to account to the federal order pool for changes in regulated minimum prices when there is a change in the Order price. (Vander Pol, Tr. 471; Van Dam Tr. 1511)

21. Ten or twenty years ago, Edaleen Dairy was not a competitive threat to regulated handler Sunshine Dairy Foods of Portland, Oregon in Order 124. (Arbuthnot, Tr. 411)

22. With the rise of boutique coffee stores in the area, Sunshine came to highly covet such stores as customers. At one point Sunshine sold 200,000 pounds of milk to Starbucks representing ten percent of Sunshine's total fluid milk volume. Sunshine lost this account to Edaleen and was told by its former customer that the change to Edaleen was "all economics." The switch from Sunshine to Edaleen, according to the Starbucks buyer would save Starbucks "hundreds of thousands per year." Sunshine could not meet this price competition. (Arbuthnot, Tr. 412)

23. Disorderly marketing affecting producers and their cooperatives can occur in either the market for raw milk or in the market for bottled milk. NDA producers own 3 bottling plants

in the Pacific Northwest market, and they compete with individual producers who do business as producer-handlers. When NDA producers compete in the wholesale market, there is the classic situation of competition among producers for the Class I market, albeit a competition in the form of bottled milk versus bulk milk. Even though it is cooperative producers who own a plant, competing with the individual producer-handlers who own a plant, it is still competition among producers for the Class I market. (Van Dam, Tr. 3169)

24. A retailer can purchase from a producer-handler until that producer-handler can no longer supply the milk needed by such retailer for a given period, then that retailer can turn to the regulated handler to get its remaining supply needs. In such a case the burden has been placed upon the regulated market to provide the balancing for that product and the producer-handler is a free rider on the pool. (Albright, Tr. 2514)

25. Unless the issue of the producer exemption from regulation and pool participation is addressed as set forth in Proposals 1, 2 and 3, competitive pressures will impact what producers in surrounding markets receive for Class I milk. (Tillison, Tr. 366)

26. Producer-handlers are a major factor in both Order 124 and Order 131 Class I markets. Unless some limitation is put on their size, given the growing size of dairies, new producer-handlers will further negatively impact the competitive balance in the Federal Orders which, in turn, can negatively impact producers and processors in areas regulated by state milk Marketing Orders.[2] (Tillison, Tr. 364) The Alliance of Western Milk Producers urges USDA to

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[2] Even in California where no Federal Order controls, the California State Order requires that California Class I prices be in reasonable relationship to Class I prices in the surrounding market. (Tillison, Tr. 365)

make changes to Order 124 and 131 as in Proposals 3 and 4. The maintenance of orderly marketing requires that these actions be taken. (Tillison, Tr. 367)

27. This disorderly market situation needs to be remedied in the same way as was competition between handler pools. That is, by regulations which put all producers into a marketwide pool to create a level playing field. The traditional approach to this disorderly marketing of bulk milk has been to bring producers, and we propose that this include producer-handlers, into the marketwide pool. At the same time, this addresses the problem of the non-uniform pricing among handlers, which the exemption for producer-handlers creates for regulated bottling plants. (Van Dam, Tr. 1370)

C. The Need for Revised Regulations: The Advantages of Large Producer-Handlers

1. The fundamental producer-handler advantage.

1. Federal Milk Orders achieve their objectives by doing four things: (a) classify milk according to how it is used; (b) setting different prices for each class of milk, which is a form of price discrimination; (c) pooling the proceeds from all uses of milk to all producers; (d) verifying the accuracy of reports of milk receipts and utilization; and (e) set and enforce uniform minimum class prices among handlers. The critical features of these activities that ensure the effectiveness and equity of Federal Milk Orders is that they be applied universally and uniformly. Without universality and uniformity some participants in the market will enjoy competitive advantages over other participants that arise from regulatory laxity rather from business acumen. (Christ, Tr. 1593)

2. If the producer-handler views his milk production activities and his milk processing and marketing activities as a single, integrated enterprise, his profitability depends on all of his

costs and all of his revenues. Nevertheless, the combination of these two activities and the presence of regulatory exemption gives the producer-handler a significant, competitive advantage over his rival producers and handlers. This advantage is the difference between the local Class I price and the local blend price. (Christ, Tr. 1595; Hitchell Tr. 239)

3. A producer-handler, by avoiding Federal Order regulation as a distributing plant, can pay, effectively, a uniform price for milk at the plant. As the market price for producer milk on the market, the uniform price is the appropriate transfer price for analysis of vertical integration. Its regulated competitors pay the Class I price for the same milk. Pooled producers receive the uniform price. This analysis applies in all Federal Order markets; the price advantage that a producer-handler has in each market is equal to the Class I price minus the uniform price. (Cryan, Tr. 895; Hollon, Tr. 1028–1029; Hitchell, Tr. 239)

4. For very small producer-handler plants, the producer-handler price advantage (of not having to pay into the pool) is, nevertheless, outweighed by the high per-unit processing cost. Thus, this cost-saving can be neither the primary basis for a small producer-handler's business, nor a disruptive force on the market. Consequently, even if there is no principled justification for the small producer-handler plant, it has little impact on the market. (Herbein, Tr. 765–766; Hollon, Tr. 1033–1034; Cryan, Tr. 895–96)

5. As producer-handlers become larger, however, their price advantage can become the primary basis for their existence. A large producer-handler can now enter into the bottling business, even with uneconomic processing costs, purely to exploit this regulatory exemption. (Cryan, Tr. 896; Exh. 26, tables 3-6)

6. The competitive advantage that the producer-handler has, which amounts to the difference between the Class I and blend price, is not limited to any one market. The advantage exists in Orders 124, 131, and in all other Federal Orders. (Van Dam, Tr. 1483; Cryan, Exh. 26, Tables 2–6; Cryan, Tr. 902–04)

2. Economies of scale in fluid milk processing and the producer-handler advantage

7. Fluid milk bottling plants, regardless of regulatory status, have increasing economies of scale, that is to say, they have decreases in cost per gallon as the capacity of the plant increases. This fundamental economic principle as applied to the dairy industry 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 nearer the bottom of the production range than near the top. (Herbein, Tr. 766; Cryan, Tr. 895)

8. The data show that as plant volumes increase the cost of processing decreases on a per-unit basis. The change in cost per unit is greatest at low end of the volume spectrum. Herbein's table Exhibit 25, shows that at the 2,000,000 pound-per-month size, a producer-handler can be fully competitive with regulated pool plants on a cost of processing and packaging basis. At this point, a competitive interaction between these handlers in the marketplace will be determined by their respective cost of raw milk. (Herbein, Tr. 765-766)

9. Carl Herbein's cost studies detail the range of processing costs by size of plant. Herbein's data indicate that a typical small producer-handler with volume of 100,000 lbs per month in Order 131 will have processing costs on a per hundred weight basis of $11.71. In Order 124, that number is $12.55. For a larger plant at the 2,000,000 pound per month level for

Order 131 the cost is $7. 31 and in Order 124 it is $7.80. For a plant with 5,000,000 pounds per month, the cost per hundred weight is $6.88 in Order 131 and $7.33 in Order 124. The per hundred weight cost at 12,000,000 pounds Class I monthly is $6.45 and the Order 131 area; in the Order 124 area it is $6.87. In the 18,000,000 pound per month category, we have a $5.54 cost per hundred weight in Order 131 and in Order 124 $5.91. In the largest group the 30,000,000 pounds per month producer-handler, the cost in Order 131 is $5.32 and in Order 124, it is $5.67. (Herbein, Tr. 773; Hearing Exh. 25, Attachment 3)

10. Efficient cost effective packaging also makes a difference and varies with the plant volume. When the plant has a volume of 12,000,000 pounds or less it is not economically feasible to blow-mold bottles, and these companies purchase their bottles. The cost for purchased bottles at this time is 14.2 cents. (Herbein, Tr. 772)

11. When a handler blow-molds bottles, it is much more efficient and the bottles are made on the site of the handling plant. This production change causes the cost per bottle to drop to 11.3 cents. This amounts to almost 3 cents per gallon in cost savings at the 12,000,000 pound per month production level. That difference in cost is very significant in the dairy industry. (Herbein, Tr. 772-73)

12. The plant processing costs reflected in the Herbein data are actual costs. The numbers are not produced by theoretical engineering studies; the costs have been extracted from the annual financial statements for the plants that are in the various cost sizes. (Herbein, Tr. 765)

13. High volume processing plants also have a cost advantage in the area of shrinkage. Analyzing shrinkage for the smallest handler group to the largest handler group, the shrinkage on a per-gallon basis decreases because of the increased efficiency in the dairy plants as they get

larger. Reduction in shrink typically results from larger production runs, and less changeover in product mix (going from 1 percent to skim milk and back to chocolate milk and things of that sort). (Herbein, Tr. 773)

14. Herbein Exhibit 25E which is entitled "Comparative Analysis of Return to Producer-handlers and Regulated Distributing Plants Supplying a Warehouse Store." It was prepared on the basis of the actual average retail price of a gallon of fluid milk which was $3.29 charged by Sam's Club and Costco in the Phoenix area during January through July 2003. (Herbein, Tr. 775–76)

15. When warehouse stores sell at known typical markups in the range of 8 percent to 14 percent, a return near the break even point is reached for the regulated handler without realizing any profit. By contrast, for a handler that is not required to pay the Class I price (the producer-handler which does not account to the pool at the minimum Class I price), the return over the uniform price which all other producers in the Order get ranges from a minimum of $1.04 per hundred weight to $2.18 per hundred weight. (Herbein, Tr. 779-782)

16. The data reflect that for a regulated handler plant at each of the various sizes studied by Herbein, there would be a loss in selling to a warehouse customer at the Phoenix prices determined through the analysis of price and cost data. At a 2,000,000 pound per month level the handler would experience loss of $.475 per two-gallon unit with a loss per hundred weight of $2.76. In case of a 5,000,000 pound per month handler, it would experience a loss of $2.53 per hundred weight, or 43.5 cents per two gallons. With respect to a 12,000,000 per month plant, there would be a loss per two-gallon container of 36.1 cents for every two gallons or 21.5 per hundredweight. For a 18,000,000 pound per month plant, there is a loss per two-gallon container

of $.2105 and a $1.25 per hundred weight. Within the 30,000,000 pound per month group, the results are a loss on each two-gallon package of $.177 and a hundred weight basis $1.03. In all of these cases the amount of the loss is significant and too large to make it feasible for the handlers cited to serve the warehouse store account profitably. (Herbein, Tr. 784–85)

17. The producer-handler's cost advantage on Class I milk enables it to serve these stores quite profitably at an into-store price that cannot be matched by pool plants. (Herbein, Tr. 785–787; Krueger Tr. 3097–3099) This is a classic example of disorderly marketing in unequal raw product costs among handlers.

18. This analysis could be repeated for any type of customer which the producer-handler chooses to serve and the result would be the same. (Herbein, Tr. 768)

19. The conclusion of the Herbein study is that it is not possible for regulated handlers of various sizes with various monthly outputs to successfully service an account of this type in competition with a large producer-handler. (Herbein, Tr. 785–86)

20. 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 allowed to exempt 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 the market. (Hollon, Tr. 1058)

21. More importantly, such large producer-handlers could proliferate across a large market, causing even greater disruption in the aggregate. This could thoroughly undermine the pooling of market values. (Hollon Tr. 1057–1058; Hitchell, Tr. 239)

3. Economies of scale in milk production at the producer level

22. The large producer-handler also has advantages on the producer side. Farms with

over 3,000,000 pounds of monthly production now produce about 15 percent of the U.S. milk supply, which is equal to about 40 percent of U.S. fluid (Class I) milk sales. These shares are steadily increasing. The ability of such farms to exploit the producer-handler exemption threatens both regulated producers and the regulated handlers currently supplying the U.S. markets. (Cryan, Tr. 894, 898; Hollon, Tr. 1244)

23. The larger dairy operation has the ability to market tanker load quantities of milk every day, which is a clear, competitive advantage from a milk marketing standpoint, over the typically-sized producer-handler that might produce 1/10 of a tanker load per day. The larger dairy operation is in a much more favorable position to consider the application of on-farm milk concentration technologies, reverse osmosis, and ultra-filtration as another means of effectively matching their milk production more closely with their local market needs, while having the flexibility to move concentrated milk to more distant markets in a cost effective manner. (Smith, Tr. 1276–77)

24. The larger, more specialized operations have a much lower risk exposure in most situations to the risk associated with farming or cropping operations, and are typically forward contracting both forages and concentrates and byproduct feeds often a year in advance, thereby having much more control over the variability of the input costs than the diversified operations, usually the smaller dairies that are producing their forage and even some of their grain. (Smith, Tr. 1277)

25. The capital intensiveness of the dairy farming business represents a challenge for all dairy producers. However, the corresponding economies of size in milk production are real and certainly favor the larger operation - the larger dairy operations that are in a position to make the

level of investment needed to capture these economies while still maintaining a high level of operation efficiency. (Smith, Tr. 1278)

26. The management structure of larger dairy operations certainly provides a capacity for these operations to leverage this more specialized management expertise throughout the business from operations, dairy, and processing, through to the marketing of a quality, finished product. In addition to capturing the economies of size at the milk production level, handlers 3 million and above can capture economies of size associated with the larger processing capacities. (Smith, Tr. 1277-78)

27. The ability of producer-handlers producing and marketing milk in excess of the proposed 3,000,000 pounds per month limit before becoming regulated should not present a large economic disincentive for those producer-handlers that will be effected. (Smith, Tr. 1278)

28. If disposing of milk and components surplus to its fluid milk market is a financial loss problem for a producer-handler, there are certainly a number of techniques by which a 3,000,000 pound plus producer can match components with the known component demands of the fluid milk market. (Smith, Tr. 1280-83)

29. In the case of a fluid marketer where the butterfat requirement of the marketplace is probably closer to that of a 2 percent cow, which we haven't genetically bred yet, there are abilities to manage those components, particularly as it relates to fat, in worrying less about fat depression, and in fact, having the ability to feed a less expensive ration because the energenics of producing fat are such that you don't get something for nothing. The feed inputs required to produce fat are less costly if you are producing lower levels of fat. The sires for lower-butterfat producing cattle are typically less expensive than for higher butterfat progeny. While the typical

response to managing for lower butterfat is incredulity ("Why would we do that?), if surplus butterfat is a loss/cost factor, a large herd can mange to reduce or eliminate the loss. (Smith, Tr. 1283–84)

30. There are techniques that allow the large farm operator to tailor more closely the output of its production unit to the demands of its own fluid milk market. We have plants that are matching their production on a regular basis to what they feel is the most profitable mix of resources, so there is no question about it. The ability to milk a group of cows, the more efficient cows three times a day, as an example, and the rest of the herd two times a day is a fairly common practice. There are some logistics issues and practical issues of how to implement these techniques, but they are certainly done and done quite successfully. (Smith, Tr. 1287)

31. USDA calculates the average cost of production difference per hundredweight between industrial-scale dairy operations (over 500 cows) and small dairies (less than 50 cows) to be an incredible $5.35 per cwt ($15.81 v. $10.46); the difference for medium dairy operations with 50 to 199 cows and industrial scale operations is $3.01 per cwt ($13.47 v. 10.46). (Exh. 34; Attachment 4)

4. <u>The nature of competition between unregulated producer-handlers and regulated handlers and pooled producers</u>.

32. The current Federal Order regulations provide the unregulated producer-handler with the significant cost advantage that cannot be matched by handlers that are regulated. The type and size of producer-handler that has developed utilizing these cost advantages is not at all comparable to the small producer-handler with a retail outlet located at the farm. (Herbein, Tr. 768)

33. Today's largest producer-handlers are vertically integrated, competitive forces in the fluid milk industry; serving large wholesale customers. The elimination of the unfair economic advantage of the large producer-handler, while protecting the integrity of the small producer-handler, is easily accomplished by providing the specific control points requested by the proponents. (Herbein, Tr. 768)

34. In Order 131, the price that is being offered to customers by the exempt, large scale producer-handler is lower than what regulated handlers are able to offer within the current skewed pricing system. (Krueger, Tr. 535)

35. A large producer-handler can service a major warehouse store with fluid milk and obtain a substantially above market premium over the uniform producer price by avoiding the pool obligation on its Class I usage. However, the handler paying the Class I price for its raw milk supply will have little or no margin, even under the specific cost assumptions Herbein has utilized. (Herbein, Tr. 767)

36. An exempt plant, and in particular, the producer-handler plant, enjoys a significant and competitive advantage over other producers and other handlers in the market. As a producer, the exempt producer-handler can receive more than the blend price for his milk depending on his internal transfer price between his plant and his milk production activity. As a handler, the exempt producer-handler can pay less than the Class I price for his milk supply. (Christ, Tr. 1594)

37. Sarah Farms makes price changes to customers directly in line with changes in the Federal Order price to the milk. The experience of Shamrock Foods Company ("Shamrock") from dealing with the same customers, and specifically the same individuals, in accounts that are

served by both Shamrock and Sarah Farms is that Sarah Farms follows the Federal Market Order on a month-to-month basis and the changes in pricing under milk to the customer, the same as a federally regulated handler typically would. (Krueger, Tr. 625)

38. The phrase used in referring to prices "to the mil" refers to a tenth of a cent. The reality of the price challenge or situation Shamrock faces in its business is that it is not able to get whole cents for the products that it sells. So, all pricing is out at least to the tenth of a cent. When the Order changes, then the exact change to the tenth of a cent is what is reflected on an up-or-down basis. Sarah Farms' moves with the Federal Order prices to the mil. (Krueger, Tr. 627–28)

39. A large unregulated fluid milk plant is operating in Western Arizona and selling all or nearly all of its packaged fluid milk direct to a customer in California. Since that plant began selling milk in Southern California in early June, it has expanded its sales from the San Diego market northward. Dean Foods' Swiss Dairy lost the business in that market on the basis of price, a price that could be based upon the fact that while Swiss Dairy pays regulated prices in California, the Arizona operation does not. This serious disruption has substantially undermined both the minimum uniform prices paid to dairy farmers in California and the competitive market for fluid milk processors. (Yates, Tr. 660)

40. This plant is smaller than the Sarah Farms operation in Arizona. It could be inferred that the Sarah Farms operation in Arizona by virtue of its size has an even more drastic effect in creating a disorderly market. (Krueger, Tr. 570)

41. Sarah Farms is a significant competitor with Shamrock in the private label business. (Krueger, Tr. 438)

42. The customers benchmark everyone of several components with every one of the other processors that handle their business nationally. Feedback received by Shamrock is that it is at a lower cost, as a processor, to those customers than any other processor that serves them in the United States. (Krueger, Tr. 561)

43. Shamrock has lost business to Sarah Farms. The customer feedback in every instance is that the reason for changing suppliers has been price. The only reason for business loss to Sarah Farms has been price. Based upon what both of the customers told Shamrock and Shamrock's own investigation, it has concluded that the pricing offered by Sarah Farms to these customers is typically 6 to 8 cents per gallon below the Shamrock price which works out to approximately 70 to 93 cents per hundred weight. (Krueger, Tr. 562–64)

44. Based upon the information supplied to Shamrock by these national customers with regards to the cost structure of Shamrock, based on the fact that Shamrock charges such national customers only the direct cost of raw milk packaging, plant processing, and distribution, the reason its prices are higher than Sarah Farms is the price Shamrock pays for raw milk. (Krueger, Tr. 562–66)

45. Kroger attributes Sarah Farms' growth from over 8,000,000 pounds in 1997 to 17,000,000 in 2003 to the raw cost advantage it has. If Sarah Farms is permitted to continue to grow the business left unchecked by regulation, its cost advantage will likely lead to the kind of growth that is seen in the estimates made in Ex. 22. This growth has now provided for a second plant which Sarah Farms has used to exploit an exempt opportunity to ship Class I sales into California. (Hitchell, Tr. 214–218)

46. The cost advantage that Sarah Farms has as we have observed it in the Order is an incredibly powerful tool. They have not completely, but to a great extent have, harvested most of the low-hanging fruit in Arizona. There are still some attractive customers left, but given the kind of cost advantage that Sarah Farms has, there is no question that if something is not changed, and by that either change the regulation to eliminate the disparity in raw milk cost or change in terms of ourselves or others becoming competitive entities in an unregulated marketplace–they will end up with all the business that they want to have. (Krueger, Tr. 572–73)

47. Of the 203 small business producers of NDA the changes in regulations would effect them in two ways. First, it would improve their income by the 2.8 cents or 4 cents, per hundredweight, whatever that number is, that would be paid into the pool and would directly impact it. However, the larger issue is the continued existence of the Federal Order system. The much greater potential impact is the loss or undermining of the Federal Order system. That would have a major impact on the NDA small business members. (Van Dam, Tr. 1476)

48. To the extent that producer-handlers are competing in the marketplace with a different cost structure because they are exempt from uniform pricing, that fact contributes to the highly competitive environment in for NDA and all other cooperatives and producers in Order 124. (Van Dam, Tr. 1488)

49. A monthly volume of 3 million pounds of fluid milk products allows a handler to supply 2.5 trailer loads of gallon jugs (or a similar volume in other containers) to one or more accounts per day. This volume is a level which can cause significant competitive reaction in the milk marketplace. (Hollon, Tr. 1029–1032)

50. A 3 million pound producer-handler could serve 74 smaller grocery stores, in the lower 25% of grocery stores in size; or 18 stores of average size for the top 75% of grocery staores in size. (Hollon, Tr. 1031) Theses are volumes which could put significant pressure on marketwide prices in any federal order market. (Hollon, Tr. 1030–32)

5. Reserve needs and balancing requirements do not negate the producer-handler advantage.

51. Balancing is an important cost for the fluid milk market. Significant reserves of milk are needed to ensure that sufficient milk is available for Class I use at all times. Each plant needs an operating reserve that covers unavoidable Class II, Class III, and Class IV uses, such as shrinkage and a disposition of cream arising out of standardizing Class I milk. In addition, a reserve is needed to cover seasonal variations in Class I sales and milk production. (Christ, Tr. 1601)

52. In an average market, the minimum average of these kinds of reserves is about 15 percent. The actual size of the reserves in a particular market depends on how much milk is pooled and how many Class I sales are regulated. In 2002, the Class I utilization of producer milk in the Arizona - Las Vegas market was 31.85 percent, meaning that 68.15 percent of the pooled milk was reserved. (Christ, Tr.1601)

53. Reserve milk must be disposed of in lower valued uses. This is one of the reasons for classifying pricing and pooling in Federal Milk Orders. The processing and the process of pooling ensures that all producers share in the lower value of reserved milk. Producer-handlers do not share the cost of disposing of the market wide reserve, but they do incur the cost of disposing of their own reserve. However, their reserve is likely to be much smaller than the

marketwide reserve, and they may have opportunities to get higher prices than can be obtained for the marketwide reserve. (Christ, Tr. 1601)

54. Close to 50 percent of the surplus milk of producer-handlers in Order 124 goes to Class II usages according to the Market Administrator's data. Specifically with respect to butter fat the percent is more like 75 or 80 percent. To the extent that pool milk is displaced from Class II utilization in the Order, that pool milk is likely to be automatically diverted to the cooperative plants. This extra milk that is forced into the lowest possible Class use, usually Class IV, in the current market. (Van Dam, Tr. 1392)

55. Producer-handler milk which is not pool milk, when it goes back into Class II use, produces a dead-weight loss to the pool of about 70 cents per hundredweight. (Van Dam, Tr. 1392)

56. The producer-handler has a high degree of control over both the volume and variation in monthly milk production. For example, if he operates both the farm associated with a producer-handler enterprise and another pool farm, he can shift back and forth to tailor his producer-handler milk supply to his Class I needs. A pooled producer can control his own milk production, but he cannot control the volume or monthly variation of other producers in the marketwide pool. Therefore, a producer-handler is likely to experience an even smaller reserve than the minimum average of 15 percent mentioned previously. (Christ, Tr. 1602)

57. Also, a producer-handler may be able to sell his reserve in a non-pool Class I market while a regulated handler cannot. So, the producer-handler may be able to get higher returns for whatever reserve milk he has than can a regulated handler. Whatever costs a producer-handler does incur in balancing his milk supply against his Class I sales are no different in kind than the

cost incurred by pool participants, but they are likely to be much smaller in degree. (Christ, Tr. 1602-1603)

6. Conclusion: The exemption is unjustified in all respects in today's markets.

58. The producer-handler exemption violates the principles of producer equity upon which the Federal Orders rest. In the best case, which is vertical integration of efficient milk production with efficient milk processing, the producer-handler exemption robs the producer pool to pay producer-handlers. (Cryan Tr. 896-897; Christ, Tr. 1595–1596)

59. In the worst case, which is the uneconomic reorganization of farms into producer-handlers, the exemption also creates deadweight losses in the market whose whole cost is born by pooled producers. (Cryan, Tr. 896–897; Christ, Tr. 1593)

60. There is no valid argument that justifies the exemption from pooling of a producer who is among the largest 3 percent of all producers in the entire marketing area. The exemption from classified pricing of any handler who operates a bottling plant that is as large and efficient as the plant's regulated handlers is equally unjustifiable. (Van Dam, Tr. 1340)

61. The fact that the cows and the plant are owned by the same entity does not make the current exemption fair to regulated handlers or to pool producers. Fundamental milk pricing theory and the law hold high the concept of the uniform handler prices. It simply cannot be argued that this exists when one type of competitor, the producer-handler, has a competitively sized plant that is not subject to classified pricing. (Van Dam, Tr. 1340, 1361)

62. Historically there have only been a few types of firms that have been exempted from the pooling and producing provisions of milk orders. These included: (a) institutional milk processing plants such as those operated by governmental institutions and universities; (b) small

plants for which the administrative costs of regulation exceed the regulatory benefit; (c) plants located in Clarke County, Nevada; and (d) producer-handlers. Only plants in Clarke County, Nevada, have a legal right to be exempted from regulation. The exemption of the other three types of plants had been permitted for administrative convenience or to achieve a modest social objective. (Christ, Tr. 1593)

63. The Kansas City producer-handlers of times past were not a disruptive force causing disorderly marketing conditions. Furthermore, the producer-handlers in the Kansas City Order were small enough that none of them would be affected by the proposed rule change by virtue of the fact that they were well below the 3,000,000 pound exemption threshold. (Albright, Tr. 2521)

64. Shamrock Foods Company expressed support for the proposed rule changes in the hope of achieving a level playing field in which Shamrock can successfully compete with producer-handlers on price. The current market structure resulting from the producer-handler exemption does not allow for such equality. There is gross inequity in the current situation that does not allow regulated handlers paying Order price to effectively compete against a producer-handler that is exempt from Order pricing. (Krueger, Tr. 535)

65. If the gross competitive disparities created by large producer-handlers are not addressed, what is at stake is the entire Federal Order system and the orderliness of markets that allows producers and handles of all sizes to compete on an equal basis. The entire dairy industry is thus at a critical juncture where decisions concerning the producer-handler exemption must be made that will determine how the production and marketing of milk will be done in the United States in the future. (Krueger, Tr. 535)

66. Disorderly markets throughout the Federal Order system will arise or worsen if the producer-handler exemption remains unchanged. To prevent that outcome, the playing field should be leveled by correcting the current inequity that allows a single entity of substantial size in Order 131 to be exempt while everyone else is required to participate in a system that is failing them. (Krueger, Tr. 535)

67. There is widespread concern among regulated producers and handlers that the producer-handler exemption, if it is allowed to exist unchecked as it is at present, will lead to the disintegration of the entire Federal Order system and consequently, to chaotic milk markets across the United States. (Muirfield, Tr. 172)

68. Dairy farmer members of the United Dairymen of Arizona, and in fact others, marketing under other Federal Orders fear that continued, unlimited federal exemption for producer-handlers from pricing and pooling threatens the effective operation of the Federal Orders and the loss of the benefit provided to dairy farmers. (Muirfield, Tr. 172)

69. The outcome of allowing the current regulatory inequity to stand unchanged is that customers will demand to buy milk at costs similar to what Sarah Farms has been able to make available to their competitors and their will have to be an expansion of unregulated suppliers to satisfy those customer needs. So, whether the expansion comes from further expansion by Sarah Farms which would be the most likely scenario, or whether it is another entity, Shamrock or someone else, that would determine that the system has failed. Regulated distributing plants will not be able to survive in the system; they will not be able to compete effectively if the producer-handler exemption is not changed. Alternatively, they will have to become exempt from the system, by becoming a producer-handler, in order to continue to survive. (Krueger, Tr. 536)

D. Issues Raised by Producer-Handlers in Defense.

1. The producer-handler opponents do not contend that because producer-handlers have inefficiencies, therefore they deserve some kind of regulatory break to deal with those inefficiencies. Their position is that producer-handlers are no more or less efficient than other handlers. Their primary argument is that they do not purchase milk from anyone. They are engaged in handling their own milk, produced on their own farm, and are taking the full risk of being both the owner of the farm and the owner of the plant. (Brandsma, Tr. 2534)

2. According to Brandsma, this risk cannot be overstated (although they made no attempt to quantify it, or measure it). If an entity is only a producer and one milk plant can no longer process its milk, that entity can deliver that milk to anther handler and have no economic responsibility for the future success or viability of the milk plant. (Brandsma, Tr. 2535)

3. Similarly, if a handler is operating a milk plant and the producer cannot supply milk, that handler is not out anything. That regulated handler would be able to acquire that milk from some other source, and have no legal or economic obligation to take care of the producer or continue to provide the producer a market or otherwise deal with its production. (Brandsma, Tr. 2535)

4. If an entity is operating a plant as a producer-handler and some health or environmental issue arises that makes the milk from its farms unavailable, the producer side of the operation may be able to purchase milk from other sources at a price. Nevertheless, that producer-handler would have a continuing obligation to keep the plant operating and profitable, but also available to the milk that is produced at the farm level of that producer-handler. (Brandsma, Tr. 2535)

5. The producer-handler which must go to other sources of supply can have a "double cost." It has the cost of milk that it purchases from the outside supplier but in addition it has the cost of producing the milk that is rejected from its own farm. (Brandsma, Tr. 2536)

6. If a producer-handler is operating at the farm level and if that producer-handler loses a sale at the plant, it still has the milk production coming from its farm which is has to pay for even though it does not have a market for that product. A regulated handler does not have that risk, but can change its production as it wishes based upon its sales. (Brandsma, Tr. 2536)

7. The reason that there is risk to both the farm and the plant is because a producer-handler is a single economic entity, a producer-handler does not "lose money" at the plant or at the farm. At the end of the day, the entire business either loses or makes money. Cost accounting does not change that reality. (Brandsma, Tr. 2536)

8. The proposal of creating assessments that producer-handlers would have to pay into a pool entails a cost that is going to be borne by the whole enterprise, so when the Secretary would require such a producer-handler to make payments into the producer pool, based upon its own production that it is marketing, it would be an imposition on that producer as much as it would be on the handler. (Brandsma, Tr. 2536)

9. Opponents contend that for the producer-handler, the blend price is a meaningless number. That figure has no bearing whatsoever in terms of the costs of operating for a producer-handler at the farm level or the price at which it sells its milk at the handler level. The only relevance in this hearing is that a producer-handler would pay into the pool the difference Class I and the blend price, would necessarily be a reduced price because the producer-handler would not sell its milk on the basis of a blend price. (Brandsma, Tr. 2537)

10. Edaleen Dairy's efforts are to sell milk at the highest price the market will bear, and it does not intentionally sell milk at less than Class price. During the last several years, plants that are regulated have only had to pay the Class I price for their milk. In some cases that price has been lower than the cost of production. When that happens, the producer-handler is placed at a distinctive disadvantage, producer-handlers contend. (Brandsma, Tr. 2537)

11. The opponent producer-handlers contend that the suggestion that the producer-handler can make a profit by receiving the blend price for its milk is inaccurate. Edaleen contends that it is not infrequent that the cost of producing milk exceeds the blend price received by producers. (Brandsma, Tr. 2539)

12. Producer-handlers have been stressed to sell at competitive prices, which did not meet their production cost. If producer-handlers were required to pay additional funds into the pool these expenditures would be nothing but pure losses, assessments that would drive them out of business, Brandsma asserted for Edaleen. However, no financial data was provided for the hearing to support this assertion. (Brandsma, Tr. 2540)

13. It is doubtful that any of the cooperative proponents would testify that their members have been consistently profitable, receiving blend prices. Edaleen asserts that the cost of production squeeze has been so great in recent years that handlers paying minimum prices have had a cost advantage over producer-handlers. (Brandsma, Tr. 2540)

14. Producer-handlers argue that it would be premature to enact regulations dealing with marketing conditions that do not currently exist. If and when a large producer would decide to enter the market as a producer-handler, the marketing conditions could be reviewed at that time.

(Brandsma, Tr. 2542) The fact is, however, that the large producer-handlers are in the market now; and the disorder has been shown; so the time is now for appropriate reform.

15. The proposed limitation of 3,000,000 pounds means that if a producer-handler has 3,000,001 pounds of production, he becomes fully priced under the Order. The penalty associated with this assessment resulting from pool participation means that producer-handlers will take substantial steps to avoid reaching that level, including keeping their sales substantially below 3,000,000 pounds, to avoid an accidental occurrence. (Brandsma, Tr. 2540)

16. The Brandsma family has invested time, capital, and effort to develop their business on the longstanding policy and regulations of the Department. However this is equally true of all regulated producers and handlers, whether they are family owned or not. (Brandsma, Tr. 2549)

17. A producer-handler such as Edaleen Dairy has to bear the risk of having to maintain its own supply of milk, largely independent of outside sources. Brandsma makes the bold claim that Edaleen Dairy would be destroyed if these unreasonable and unnecessary changes were made to the Order, but provides no substantiating evidence. (Brandsma, Tr. 2549)

18. Another problem with a cap, according to the producer-handlers, is that what may be reasonable today may not be reasonable tomorrow. The size of customers that Edaleen is dealing with is rapidly changing, and for the dairy to be in business in the future, it would have to handle larger and larger units or go out of business. (Brandsma, Tr. 2549)

19. None of the producer-handler opponents qualify as small businesses with respect to their farming operations.

20. Edaleen uses sales to Alaska as a balancing technique. Edaleen sells milk to Alaska in 50,000-pound tankers. It pasteurizes the raw milk and sells it to Mantanuska Maid Dairy. If

Edaleen bottled it in cartons and sent it up there, it could still be a producer-handler, but if it were to sell raw milk it would "lose." (Brandsma, Tr. 2551–2552)

21. Edaleen refused to provide any specific data for the hearing record on its product volumes, uses or costs of production or operation. (Brandsma, Tr. 2557)

22. Edaleen changes prices for a number of reasons. These might include their costs at any particular time, whether the costs are feed costs or increased costs in packaging, the Class I price, and other market conditions out there. (Brandsma, Tr. 2567–68) Edaleen did not provide any pricing list, pricing history, or concrete pricing information for the hearing record.

23. When Edaleen's competitors' minimum price goes up, then Edaleen considers raising its own prices, and, when the minimum price under the Federal Order comes down, then Edaleen's prices come down under pressure as well. (Brandsma, Tr. 2568)

24. Brandsma admits that in the exhibits he has offered (Exh. 52), each table was not prepared in a way that shows the applicable cost for the size farm that Edaleen Dairy is. Upon questioning, he says there was no reason for that in particular. When asked wouldn't that be the right number to use, his answer is that he is not aware of exactly what number was used on the table. (Brandsma, Tr. 2570) Brandsma acknowledges that Edaleen's production is greater than 3,000,000 pounds of milk per month and that there are some economies of scale enjoyed by Edaleen that are not available to pool producers producing less than 3,000,000 pounds per month. (Brandsma, Tr. 2570-2571)

25. One of the primary justifications given for the current exemption is that the producer-handler must bear the full cost of balancing his milk supply without burdening the pool producers. Federal Order theory then permits the exemption as long as the producer-handler

does not shift a balancing burden to the regulated producer and to the plants in pool. The reasoning is that since the producer-handler does not share its Class I proceed with other producers, then in all fairness he should not then be allowed to shift to those producers any of the cost of balancing his own milk supply. (Van Dam, Tr. 1352)

26. NDA contends, and the evidence submitted shows, that the way producer-handlers market today, most do and almost always will use the pool to balance their milk supply. This goes beyond the obvious fact that by selling to distributors or to stores that carry milk from regulated handlers, the regulated market is there to fulfill any shortage they may have. (Van Dam, Tr. 1352)

27. To the extent a producer-handler's milk is sold anywhere but to a manufacturing plant, it will always displace a sale that would otherwise have been made by a pooled producer or his cooperative. Even though the producer-handler's sale to a bottling plant will be down allocated to Class IV or Class III, it still backs out pooled milk from that plant into the pool balancing plants, contradicting the principle that a producer-handler balances his own supply. (Van Dam, Tr. 1354)

28. Current rules allow the sale of producer-handler milk to regulated handlers, even though the rest of the pool balances that sale. (Van Dam, Tr. 1354)

29. The down allocation rules do not fully protect the pooled producers. If the bottler buys enough from a producer-handler that some is allocated to Class II, this removes Class II differential dollars from the marketwide pool. And if some is allocated to Class I, the pool receives only the difference between Class I and the blend price, not the full Class I differential.

30. Loss of Class I sales to the pool. Classified pricing was introduced into law to protect dairy farmers from the effects of unstable and mostly low milk prices caused by milk handlers fighting for market share with low prices. In the past there was price competition that was dubbed "the milk wars." Classified pricing did not stabilize the prices, but caused the second war over who would get to serve the markets with the highest valued Class I milk.

31. To correct the abuses that occurred, the pooling and equal distribution of the premium generated was added to the marketing plants. And except for an occasional hiccup, the concept worked well to achieve the stated objectives. (Van Dam, Tr. 1355-1356.)

32. Smith Brothers Dairy claims it would suffer if Proposal 1 or Proposal 2 were to be adopted. Smith Brothers currently ships surplus milk to a processor in Alaska, and the adoption of either proposal, even without a production cap, would adversely effect Smith Brothers' ability to balance its milk supply. (Koester, Tr. 1772)

33. Smith Brothers has sought to distinguish itself in the marketplace by differentiating its products. One quality of Smith Brothers' milk is that it is guaranteed to be BST-free. It believes that there is an advantage in being able to control the quality of Smith Brothers bottled milk beginning with raw milk production. (Koester, Tr. 1774)

34. In Smith Brothers' view it is faced with another challenge to its continued existence by the proposals in the hearing. It's primary defense is simply the rhetorical case: It contends that: there has been no significant change in marketing conditions since Order Reform, and there is no evidence of disorderly marketing. Yet, it argues that the proponents are seeking to shut Smith Brothers' doors, while talking about equal treatment, fairness among producers, and unfair competition which is simply not borne out by the facts. Smith Brothers simply argues that in

reality, this hearing is an attempt by largest players in dairy industry to relegate Smith Brothers to the low end of the marketplace. (Koester, Tr. 1776)

35. Smith Brothers does not, it argues, enjoy an advantage equal to the difference between Class I price and the blend price. It argues that its milk is "acquired" at whatever its cost of production is. Its cost of production often exceeds the Order 124 blend price and in times of weak prices, it exceeds the Class I price. Likewise, Smith Brothers points out, a producer-handler has its own blend of uses because not all producer-handler milk is used in Class I products. (Koester, Tr. 1785)

36. Smith Brothers contends that its blend price must also take into account the unique and significant balancing costs of producer-handlers. Producer-handlers sell surplus milk for less than Class price. Typically, they may be paid the Class III price, less $1.50 per hundredweight. In addition to the cost of balancing, producer-handlers have expenses in transportation that other producers do not bear. Smith Brothers however presented no information or data for the record of what its production or balancing costs are. (Koester, Tr. 1785)

37. The producer-handlers argue that they bear huge amounts of risks. In the event there are problems at their processing facility, a stoppage in production can mean the loss of raw milk that cannot be replaced by purchase from another farm. Likewise, problems on the farm, such as herd health issues, are not only a loss to a producer, it can mean a loss of milk to the plant that cannot be replaced. The result can be lost customers. (Koester, Tr. 1785)

38. Managing the timing of deliveries to the plant is also critical, or the producer-handler must incur additional cleaning costs and difficult scheduling. These demands, in addition to increasing operating costs, effectively self-regulate the size of producer-handlers. At the farm

level, producer-handlers are required to carefully maintain the level of their herd. Fluctuations pose the risk of causing large pool plant purchases which require producer-handlers to lose exempt status, or ultimately have large surpluses, which must be disposed of, often at a substantial loss. (Koester, Tr. 1785)

39. These balancing demands are claimed to be unique to producer-handlers and require producer-handlers to find novel ways to remain competitive. One of the Order 124 producer-handler solutions has been to ship milk to Matanuska Maid in Alaska. Alaska is an allegedly "under-serviced market"; by sales there, Order 124 producer-handlers balance their supply and provide a supply of Class I milk in Alaska.

40. Smith Brothers does not do a lot of gallons of milk, but instead mostly half-gallons so it does not enjoy the high volume gallon market through warehouse stores that some producer-handlers have. (Koester, Tr. 1791)

41. The percentage of Smith Brothers' wasted milk varies from month to month at a monthly rate of approximately 2-3 percent. Smith Brothers presently has no surplus milk to dispose. (Koester, Tr. 1871)

42. The production of Smith Brothers Farm is close to 25,000 gallons per day. (Koester, Tr. 1874) That equates to 6,450,000 pounds in a 30 day month.

43. Most successful producer-handlers are located in states that border unregulated areas, but Smith Brothers does not know if that results from a price advantage of the producer-handlers (Koester, Tr. 1878)

44. Some of the economic conditions that will limit the size of a producer-handler are raising its own cows and producing its own milk. Depending on what the climate is for selling

milk in the area where the producer-handler is located, if it can get a fair price or a price that it can make money on would be a difference. The producer-handlers have the risk of the investment of having the dairy cows and the farm and the plant and the trucks for distribution. The producer-handlers, therefore, take a lot of risk. (Koester, Tr. 1880)

45. Mallories provides only selected size containers to its cusotmers and also packages in the same private label as regulated handlers. In Both instances, the pool handlers must balance the needs of Mallories' customers. (Flanagan, Tr. 2361–2364, 2398–2400)

46. A producer-handler could lose a customer because the customer, such as Starbucks, could grow to a size which could not be totally serviced by a single producer-handler. This does not in any way account for the fact that such a customer can go to regulated handlers or other producer-handlers to buy any shortfall of milk coming from a primary producer-handler supplier. (Koester, Tr. 1881-1882) Similarly, any handler could lose a customer to a larger competitor because of the customer's volume demands or the advantages of scale of the alternative supplier. There is nothing unique to producer-handler marketing challenges when it comes to customer size versus handler size.

47. Larger production plants do deliver substantially lower processing costs. National retailers, with their controlled consolidation and demand, are demanding more from their suppliers and they are getting it. Larger fluid processors today have enormous advantages over small producer-handlers in terms of scale, geographic coverage, and product breadth. (Morrison, Tr. 892)

48. The producer-handlers contend that large fluid processors having substantial non-plant cost advantages over producer-handlers today. If fluid processors do have a threat today, it may lie in the area of captive dairies. (Koester, Tr. 1893)

49. Opponents' witness Morrison contended that Mr. Herbein's conclusions do not at all reflect the realty of today's fluid milk marketplace. For example, Mr. Herbein states "at the 2 million pound per month size, a producer-handler can be fully competitive with regulated pool plants on a cost of processing and packaging basis" concluding that at this point, the interaction between these handlers in the marketplace will be determined by the respective costs of raw milk. (Morrison, Tr. 1894) .

50. Morrison relied on the Cornell study of fluid milk plant operations. In that study various aspects of fluid milk processing costs were surveyed and a detailed report was issued. From a plant volume standpoint, the average plant in the study was running at 75 percent of capacity averaging 27 million pounds a month. Indeed, the smallest plant in the study was processing 12 million pounds a month, and the largest was in excess of 50 million pounds per month. Morrison's concluded that to suggest that a producer-handler could somehow be cost competitive with this set of producers while only running 3 million pounds a month is simply not realistic. (Morrison, Tr. 1896) However, the Cornell study was not intended to be and was not representative of the average size of regulated distributing plants in federal orders today, or when it was done. May 2003 federal order data showed that the average 7(a) plant in Order 124, for instance, was 10.9 million in that month. (Hollon, Hearing Exh. 33-G; Attachment 1 to this brief)

51. Morrison asserted that the scale of processing plants in the fluid milk business continues to grow, and smaller less efficient plants continue to be sold, shut down or folded into larger, more efficient plants. Captive operations with a limited number of SKUs (normally just gallons and half-gallons, with one or two labels) set the cost curve from which other processors must compete. (Morrison, Tr. 1899) However, Morrison ignored the evidence of the current size of fully regulated distributing plants in the federal order system. Using May 2003 data, fully one-third of such plants have average volumes of 3.7 million pounds per month; the middle one-third have average volumes of 11.4 million systemwide, 9.7 million in Order 124. (Hollon, Hearing Exh. 33-G, Attachment 1).

52. Morrison contended that the plant costs represented by Mr. Herbein are extraordinarily high; but his conclusions were based on misapplication of federal order prices and misuse of the Herbein data. (Morrison, Tr. 1901) Eventually Morrison acknowledged that Herbein's numbers represented "fair processing costs." (Morrison, Tr. 1930)

53. The plants and plant costs for varying sizes of plants as indicated in the Herbein study would not in the opinion of Mr. Morrison, be able to operate profitably. (Morrison, Tr. 1896) However, Herbein's data was drawn from actual operating data from Herbein client firms. Morrison's analysis was blatantly flawed. (Morrison, Tr. 1919–1930)

54. In Edaleen's view, arguments can be made refuting the data and conclusions made by Dr. Smith regarding ways that farmers could vary the production of their herd in a given month or even in shorter time spans. (Heerspink, Tr. 1977-1978) But no data supplied was supplied by Edaleen.

55. There have been times when Edaleen had to forego business opportunities because of an inability to expand production to meet the needs of the potential customer. (Heerspink, Tr. 1982-1883)

56. Despite the fact that Edaleen increased capacity in an effort to meet the account demands of Starbucks, that business was eventually lost to Safeway. (Heerspink, Tr. 1984)

57. The percentage of sales which Edaleen lost with the termination of the Starbucks account was approximately 25 percent of its sales volume. (Heerspink, Tr. 1885)

58. When accounts are terminated and Edaleen loses business, the resulting surplus is disposed either by finding an additional Class I customers or selling it to a regulated handler. (Heerspink, Tr. 1987)

59. In spite of all their contentions about risk from loss of customers and risk and cost of surplus, none of the producer-handler opponents placed into evidence any evidence of their actual Class I utilization over any period of time. The best evidence of the possible cost of surplus balancing for producer-handlers is Hollon's calculations on Exhibit 33C1-C4. (Attachment 1) Hollon's assumptions were shown to be extremely conservative, in view of the Market Administrator data which showed much less Class III and IV surplus disposal than Hollon assumed. (Hearing Exh. 7, Table 6; Attachment 1)

60. All of the producer-handler opponents had the opportunity to refute with specific data from their own operations the calculations of Elvin Hollon on Exh. 33C and none of them did so. Koester for Smith Farms provided no cost data relating to surplus disposal, while acknowledging a "surplus" of only 2 or 3 percent. Neither Heerspink nor Brandsma for Edaleen provided any cost data relating to surplus disposal. Edaleen is operating at essentially full capacity. Mallories

provided no data regarding surplus disposal costs and testified that it is operating at an optimal level of efficiency. Hettinga for Sarah Farms produced no data relating to its cost of surplus.

61. A necessary conclusion with respect to the cost of surplus disposal from the record is that it is less than Hollon's conservative estimate, probably considerably less.

E. <u>The Proposed Regulations and Their Rationale</u>

1. There is a need for a cap on the size of producer-handlers to eliminate the regulatory inequity that currently exists. The 3 million pound threshold cap is appropriate for several reasons. (1) The first is that it is the threshold that Congress has identified for participation in the National Fluid Milk Promotion Board advertising program[3]. (2) Second is that in the markets in Order 131 and 124, 3,000,000 million pounds per month is a significant factor in the market. A producer with that volume would be a significant market player in either market with perhaps 3-plus percent market share. (3) From an operating standpoint, 3,000,000 pounds per month is a threshold at which there is a pretty efficient plant operation. Everything is incremental from that point on and the operator is fully able to exploit the difference between being regulated at Class prices and being unregulated. (4) At the producer level, the 3,000,000 pound per month producer, milking 1800 or so cows, has significant economies of scale and utilization of capital allowing substantially lower cost of production per unit than smaller farms. (5) Furthermore, a 3 million pound per month fluid milk plant can supply sufficient stores of small and medium size to materially impact the market for fluid milk in any federal milk order metropolitan market. (Hollon, Tr. 2844–2849)

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[3] See 7 U.S.C. 6402C(4).

2. Regulation of producer-handlers with output less than 3 million pounds is not necessary at this time because such producer-handlers do not show sufficiently significant economies of scale to be disruptions in the marketplace.

3. The proponents chose the 3 million threshold because that is a point at which a documented and demonstrated transition occurs showing economies of scale. The number should not be too low because smaller producer-handlers will not be competitive factors. Likewise, if the cap is substantially higher, the limitation would not be effective in avoiding disruptive and disorderly marketing conditions.

4. The 3 million pound limit, to be consistent with the proponents' theories, could be occasionally revisited, but the primary concern is the efficiency of the plant and innovations in technology could even lead to a reduction in the plant size needed for a competitively efficient operation.

5. The public policy considerations to support small business overwhelmingly argue for insuring that the producer-handler exemption does not injure the 933 pooled producers [in Order 124] who are, predominantly small businesses. While the potentially regulated producer-handlers also are within the definition of small business, many of the smaller regulated plants are also small businesses. (Van Dam, Tr. 1346)

6. The suggestion that the producer-handler exemption should continue because these businesses provide jobs for Hispanic workers is a misleading one on several counts: (1) nearly all fully regulated dairy farms and dairy processing plants in the Pacific Northwest hire Hispanic

workers. Producer-handlers are not doing anything unique or innovative in this respect. (2) The producer part of the producer-handlers' operations who would be subject to the regulation are in every case among the largest and most efficient dairy farms in the Federal Order 124 area.

7. Whatever the result may be with the producer-handler bottling plants in the event of regulation, there is no reason to believe that the producer portion of these enterprises are at any risk whatsoever. Consequently, the Hispanics working on these dairy farms would continue to have their jobs under any scenario.

8. In addition to the 3 million pound per month limitation on fluid milk product disposition, the language of the proposals, which tracks the existing order language in 124 and/or 131, is intended to require: (1) sole ownership, enterpirse, and risk by the producer-handler; (2) no sharing of ownership, enterprise, risk or operations with other regulated handlers or producers; (3) operating independently of the federal order pools, so that no balancing off the pools is possible; and (4) a prohibition of balancing via Class I sales into non-order markets.

9. Both orders should provide, as does Order 131 at present, a ban on the supply by producer-handlers of same size and same label containers as supplied by any other handler. This is essential to prevent producer-handlers or their customers from using pool sources to balalnce the producer-handler supplies.

10. The proposed order language would allow more than 99% of producers in the federal order system to choose to be producer-handlers if they meet the structural and operating criteria of independent ownership, operation and risk.

IV. ARGUMENT

A. The Authority to Regulate Producer-Handlers under the AMAA is Clear.

The Agricultural Marketing Agreement Act of 1937, as amended, (the "AMAA") provides clear and plain authority for the full regulation of producer-handlers in federal milk marketing orders. Indeed, the authority is so direct, and the precedents so firmly established, that arguments made here by the producer-handlers are legally frivolous.

7 U.S.C. § 608c(5)(C), which provides the authorization for marketwide pooling of classified use values among producers, expressly authorizes pooling producer-handlers, as follows:

> In order to accomplish the purposes set forth in paragraphs (A) [uniform handler prices] and (B) [uniform producer prices] of this subsection, 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 the prices fixed in accordance with paragraph (A) of this subsection. (emphasis supplied)

Producer-handlers have challenged this authority on multiple occasions, beginning decades ago. The challenges have been uniformly unsuccessful. In Acme Breweries v. Brannan, 109 F.Supp. 116 (N.D.Cal. 1952), the plaintiff brewery processed its own hops and challenged the authority of the Secretary of Agriculture's hops marketing order to regulate the terms of its use of its own-grown hops. The court rebuffed the challenge, pointing out that as a processor Acme was part of the stream of commerce in agricultural commodities which the AMAA was intended to regulate. It was not being regulated in its capacity as a producer; but as a processor and that was fully authorized by Congress.

In Ideal Farms v. Benson, 288 F.2d 608 (3rd Cir. 1961), the producer-handlers in the New York – New Jersey market launched an all out legal attack on tightened regulations under Order 2 which held them accountable under the order for milk produced on their own farms, contending then (as the objecting witnesses, such as Dr. Knutson, do now) that they do not "purchase" their own milk and, therefore, there is no authority to regulate those transactions. The court disagreed, pointing out:

> Were we to accept appellants' construction of the word "purchased" they would avoid the intent of the Act to achieve a fair division of the more profitable fluid milk market among all producers and they would avoid the necessity of sharing the burden of surplus milk.

288 F.2d at 213. The Act is the same today as it was in 1961, and the attempts to avoid sharing the benefits and burdens of the milk marketplace are also the same today. The legal conclusion must be the same as well.

In addition to the undisturbed court precedents, the Judicial Officer of the Department has also clearly and in great detail explained the Secretary's authority to fully regulate producer-handlers in a series of decisions including, In re Independent Milk Producer-Distributors' Association, 20 Agric. Dec. 1 (1961); In re Jacob Tanis, 17 Agric. Dec. 1091 (1958); In re Sunflower Dairy, 15 Agric. Dec. 1 (1956).

The Secretary's authority to adopt Proposals 1, 2, and 3, to reform the regulation of producer-handlers in Orders 124 and 131 is unquestionable.

B. <u>The Proposals to Regulate Large Producer-Handlers Would Not Have Any Disparate Impact on Small Businesses or Minorities.</u>

The producer-handler opponents of reform have attempted to raise concerns relating to the impact of the proposals on small businesses, women, or minorities. (Koester, Tr. 1773, 1780; Heerspink, Tr. 1974) There is no basis either in the law or in the record for any such concerns or objections.

Initially, we would note, as does the hearing notice, that these considerations are subject to the mandates and authority of the governing statute, in this case, the AMAA. The hearing notice states that concerning small businesses the Regulatory Flexibility Act "seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses." (emphasis added) In other words, the Secretary must first act within the authority conferred by the particular program involved and within that authority make appropriate efforts to recognize the interests of small businesses. The considerations of impact of these rules with respect to minority and women are based upon executive orders and do not rise even to the level of mandate that is embodied in the Regulatory Flexibility Act. Consequently, the Secretary's first and primary obligation is to carry out the mandate of the AMAA to preserve orderly marketing conditions in these milk markets.

There is absolutely nothing in this hearing record from which the Secretary could conclude that adoption of proposals 1, 2, and 3 would have a disparate adverse impact upon small businesses, women or minorities. The evidence with respect to each of these subjects can be briefly summarized. (Hollon, Tr. 2762; Heerspink, Tr. 2009)

The opponents have pointed out in some cases that they are small businesses and that they employ women and minorities. However, on both cross examination of the opponents and through direct testimony of proponent witnesses it has been clearly established that producer-handlers are not unique in this regard and the same employment patterns exist among regulated producers and handlers.

- Rob Heerspink of Edaleen Dairy testified that of its 35 employees approximately two thirds are of "minority backgrounds." (Tr. 1974) On cross examination the point was made that having minority employees is not unique to Edaleen and that in the larger farms it is very common for there to be Hispanic or other minority employees. (Tr. 2009)
- Alexis Koester of Smith Brothers Farms mentioned in her prepared statement that approximately one third of its 100 employees are Hispanic whose livelihood depends on the continued existence of Smith Brothers, although she did not specify its continued existence as an exempt producer-handler. (Tr. 1773) Witnesses brought forth by the proponents also testified to the presence of women and minorities in the dairy industry.
- William Van Dam of the Northwest Dairy Association testified that there is no reason to exempt the producer-handler plants based on their size or their being a small business. Hypothetically, if a producer-handler were bought by the largest employer in the Northwest, Microsoft, the producer-handler would still be a small business. (Tr. 1365)
- Elvin Hollon of DFA testified that the issue of ownership and operation in businesses by minorities has been raised, with the implication that somehow proposals 1 to 3 would have a uniquely negative impact on those population groups. Furthermore, the implication is that minority and women owners who are involved in the ownership and

operation of producer-handlers are or should be a privileged subclass should be rejected. DFA members in the Pacific Northwest are 43% female and their employees are about 50% Hispanic. Current producer-handler regulations adversely impact all DFA members and their employees. (Hollon, Tr. 2762)

- The inference that the producer-handler exemption should continue because these businesses provide jobs for Hispanic workers is a misleading on several counts: (1) Nearly all full dairy farms and dairy processing plants in the Pacific Northwest hire Hispanic workers, whether such plants are regulated or not. Producer-handlers are not doing anything unique or innovative in this respect. (2) The producer part of the producer-handlers' operations who would be subject to the regulation are in every case among largest and most efficient dairy farms in Federal Order 124 area. (Van Dam, Tr. 2868–69)
- Keith Muirfield, of United Dairymen of Arizona compiled a study of dairy demographics in Arizona and explained it in his testimony. (Tr. 2975-2978; Exhibit 67) The non-producer-handler segments of the Arizona Dairy industry employ large numbers of Hispanic and minority workers and service the Hispanic community.

In summary, opponents' attempt to cloak their cause in the guise of small business, women, or minority protection should be rejected.

C. The Secretary Is Empowered by the AMAA to Maintain and Prevent Potential Threats to Orderly Marketing

Throughout the course of their over-extended cross-examination of proponents' witnesses, Counsel for the producer-handlers and their witnesses challenged proponents to produce evidence of disorderly marketing that would warrant action by the Secretary to amend the existing producer-handler provisions of Order 131 and 124. Implied in their questions was the assumption that the Secretary was powerless to act absent a showing of market chaos or disorder.

The producer-handler witnesses and their Counsel disclose a basic misconception of what the hearing record must show to warrant exercise of the Secretary's regulatory powers. Section 608c(3) of the AMAA provides:

> Whenever the Secretary...has reason to believe that the issuance of an order [amendment] will tend to effectuate the declared policy of [the Act]...he shall give notice and opportunity for a hearing upon a proposed [amendment].

The issuance of a notice of hearing on Proposals 1-4 constitutes a two-fold determination by the Secretary that (1) the Proposals are ones that lawfully may be adopted, (2) there is "reason to believe" they may promote the AMAA's "declared policy." That policy declaration appears in Section 2(1) of the AMAA. It provides that the Secretary should exercise the regulatory powers conferred by the Act "to establish and maintain...orderly marketing conditions." (Underline added.)

There is nothing in the AMAA that requires the Secretary to wait before exercising her regulatory powers until chaotic or disorderly marketing conditions are shown to exist in the

Order 131 and 124 marketing areas. In In re Independent Milk Producer-Distributors, 20 Agric. Dec. 1, 24-25 (1961), the Secretary's Judicial Officer explained:

> The Secretary can regulate to cope with potential threats to a then-existing orderly market. The Secretary need not stand powerless or shut his eyes to possible disruptive factors or eventualities in a regulated market.
>
> ...
>
> [P]etitioners attack some of the testimony advanced at the...amendment hearing because such evidence does not demonstrate present disorderly marketing conditions which affect order minimum prices to producers. As indicated above, potential threats to order objectives may form a basis for regulation and evidence indicating such possibility is sufficient to support regulation to maintain orderly conditions.
> (Underline in original.)

In the recent Tentative Decision on Proposed Amendments to Order 135, 68 Fed. Reg. 49375 (August 18, 2003), the Secretary deleted from the Order the proprietary bult tank handler provision which, as the Secretary found, caused "disorderly marketing conditions because the order is unable to establish minimum prices that are uniform among regulated handlers, a requirement of Section 608c(5) of the AMAA," (68 Fed. Reg. at 49383). The record evidence here is clear beyond dispute that the exemption of producer-handlers from the minimum pricing provisions of Order 131 and 124 threatens not only orderly marketing, but a breakdown of the order system unless capped by the limits of Proposals 1 and 3. (See e.g., Tillison, Tr. 383-384, 389; Marsh, Tr. 329; Krueger, Tr. 5788-9; Yates, Tr. 656-7; Cryan, Tr. 898, 931-32; Van Dam, Tr. 1359, 1369; Christ, Tr. 1603; Hollon, Tr. 1025, 1110, 1143, 1197.)

D. The Opponents' Unsupported Assertions and Failure to Produce or Reveal Key Information about Their Operations Reinforces the Strength of Proponents' Case.

In evaluating the record of this rule making, the Department's action must be based on substantial evidence contained in the record considered as a whole. In ascertaining the presence or absence of substantial evidence, the agency "is obliged to search the entire record, or those parts to which the parties refer [it], to determine whether on the basis of all the testimony and exhibits before the agency it could fairly and reasonably find the facts [it acts upon]." Braniff Airways, Inc. v. C.A.B., 379 F.2d 453, 462 (D.C. Cir 1967). See generally, Universal Camera Corp v. N.L.R.B., 340 U.S. 474, 488 (1951). Substantial evidence requires that all evidence be weighed on its own behalf and "in light of contrary evidence that may also appear" in the record. Braniff Airways, Inc. v. C.A.B., supra, 379 F.2d at 463.

Considering the record as a whole means consideration of what has not been produced as well as what has been brought forward. When a party to an administrative proceeding "has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him." International Union (UAW) v. N.L.R.B., 459 F.2d 1329, 1336 (1972). Furthermore, any failure to produce evidence "not only strengthens the probative force of its absence, but of itself is clothed with a certain probative force." International Union, supra, 459 F.2d at 1336.

Throughout the course of the hearing, opponents have made various claims to costs or burdens of producer-handler status which allegedly offset the clear and certain benefit of exemption from minimum class prices. (Koester, Tr. 1785-1786, 1802-1803, 1832, 1842, 1859; Heerspink, Tr. 1989; Hettinga, Tr. 2618, 2622, 2624-2625, 2629, 2632, 2635) In their attempts

to skirt these issues, however, not only did opponents not produce evidence that could have potentially validated their bare assertions, but they repeatedly refused to answer questions posed by proponents directed specifically to determine the veracity and accuracy of their claims. (Koester, Tr. 1787, 1788, 1792, 1795, 1801-1802, 1803, 1811, 1837, 1842, 1874, 1876; Heerspink, Tr. 2030-2068; Hettinga, Tr. 2655, 2656, 2665, 2672, 2694, 2696, 2701, 2708, 2710, 2712, 2715-2716) The Secretary must evaluate this record both in light of what has been said, and what has been deliberately left unstated.

The opponents' case against regulation of large producer-handlers was in substantial part an elaborate hide-the-pea shell game. They attacked proponents' testimony as not being based upon direct information about their operations; then they refused to provide evidence of their own operations; and finally have argued that the proponents have failed to make out a case. Both settled principles of law and administrative practice compel findings in support of the proposed regulation of large producer-handlers on this record.

The opponents initially attacked proponents expert testimony on the basis that the witnesses relied on economic data and analysis from sources other than producers and handlers located in Order 124 and Order 131. The claim was implicitly made that the proponents' economic data and analysis, therefore, cannot possibly be applicable to producer-handler activity in these two Orders. Secondly, the opponents repeatedly draw attention to the fact that proponents' economic experts did not use data obtained from and specifically pertaining to the four producer-handler opponents. Both of these contentions lack merit.

An example of opponents' use of this first tactic, or perhaps more accurately rhetorical device, is contained in a colloquy between Elvin Hollon and counsel for the 131 Order producer-handler. In his direct testimony Mr. Hollon made the following observations.

> One rationale for not regulating producer-handlers is that they have costs that absorb any potential gain from not paying regulated prices. This argument has been offered extensively at previous hearings. The cost argument seems to be premised on two points, that operation costs and balancing costs to producers are greater than for regulated handlers, and that this justifies ignoring what would otherwise be a significant, competitive advantage. (Hollon, Tr. 1032-1033)
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> ***
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> The exhibit [Exh. 33C 1–4] computes a producer-handler blend, a full description of the table was given when the exhibit was introduced, taking into account the producer butter fat, pricing the handler components sold to class one at the uniform component prices, and the volume to be balanced at the lower of the class three or four, and comparing the resulted values to the announced uniform test – uniform price at test. (Hollon, Tr. 1036-1037)
>
> ***
>
> A regulated handler has premium charges reflecting the cost of balancing. Additionally, most producer/handlers have their processing plant very near or at the farm supply so they do not have the cost to assemble and transport milk to the market. Furthermore, a portion of the producer/handler's balancing costs can be shifted to the entire pool when they sell surplus to regulated handlers, and when the retail outlets they serve order additional or reduced orders of package product. (Hollon, Tr. 1037)
>
> ***
>
> To summarize this point, the producer/handler has balancing costs. They are a given in the milk business, but from our example, the difference between producer/handler uniform price, which takes into account his utilization and the market-wide uniform price, is minimal when compared to the advantage gained by not – gained from not paying the class price. Secondly, the costs he may have are offset by the very tangible premiums paid by regulated handlers, and the real, but difficult to estimate savings of pushing surplus back to the market-wide pools' regular suppliers by selling surplus to regulated handlers and balancing by the retail customers. (Hollon, Tr. 1039)

> Also, the producer/handler has operational costs, but only the very small, but more typically sized producer/handler has costs that are above the range of the market. The larger sized producer/handler has operational costs that are lower than the average sized Federal Order regulated plant. No valid argument can be made that an exemption from the regulated price is warranted from either of these two arguments. (Hollon, Tr. 1039)

In an effort to impeach Mr. Hollon's testimony, counsel for Sarah Farms invoked his usual litany of rhetorical questions to demonstrate, as was done with Mr. Herbein, that Mr. Hollon does not know directly Sarah Farms' costs. At the same time, neither counsel, nor his client, offered any affirmative evidence to prove Sarah Farms' costs. (Herbein, Tr. 816, 831-832, 1165-1166) Opponents counsel thus "confirms" that the proponents do not have direct knowledge of the individual participating producer-handlers' costs, precisely because the producer-handlers have chosen to keep that information confidential and not provide it for the record.

But in addition, opponents try to undermine data regarding producer-handler costs compiled by valid economic research methods and accounting analysis, which data is both overwhelming and confirmed by simple common sense, on the grounds that the data is not from producers and handlers in Order 124 or Order 131. (Tr. 816, 831-832, 858-860) If all economic analysis were useless unless it used data from a specific nation, state or market, economic analysis and its predictive application would be useless unless the research supporting every economic model were replicated, that is repeated, in every specific country, state or market to which an economic model is applied. This position adopted by the opponents is in conflict with fundamental principles of research in economics and other social sciences and is simply wrong.

The opponents base their contention that the producer-handler exemption should apply to operations with production greater than 3 million pounds per month by insisting that producer-handlers are burdened with two unusual costs that regulated producers do not incur: (a) extraordinary risk; and (b) extraordinary balancing costs. There is no basis for either of these claims that exempt producer-handlers face extraordinary risk and that they have extraordinary balancing costs, so it is not surprising that opponents have not produced any evidence to support the claims.

Rather than coming forward with evidence in support of their assertions, opponents have made every effort to stonewall proponents' attempts to test the truth of these two critical claims. All the while, opponents repeat mechanically these claims as if their veracity can be established by mere repetition.

In her prepared statement, Alexis Koester, the President of Smith Brothers Farms, makes the bald assertion:

> Producer/handlers bear *huge amounts of risk* in the event there are problems at their processing facility. A stoppage in production can mean the loss of raw milk that cannot be replaced by a purchase from another farm. Likewise, problems on the farm, such as herd health issues are not only a loss to the producer, they can mean the loss of milk to the plant tht cannot be replaced. The result can be lost customers. (Koester, Tr. 1785) (emphasis added)

Koester goes on to state:

> Managing the timing of deliveries to the plant is also critical, or we must incur additional cleaning costs and difficult scheduling.
>
> ***
>
> At the farm level, we are required to carefully maintain the level of our herd. Fluctuations pose the risk of causing large pool plant

> purchases which would require us to lose our [exempt] status, or alternately have large surpluses which must be disposed of, often at a substantial loss.
>
> ***
>
> These *balancing costs are unique to producer/handlers* and have required us to find novel ways to be competitive. (Koester, Tr. 1785-1786) (emphasis added)

The proponents of the suggested reforms fully acknowledge that exempt producer-handlers have risks being in business and have balancing costs. But those realities of the dairy industry are by no means unique to exempt producer-handlers, and regulated handlers and pooled producers face the very same risks and costs.

Opponents do not offer a shred of evidence to support their repeated assertions that they face "huge amounts of risk" in connection with supplying their processing plants or "balancing demands" that are "unique".

The participating exempt producer-handlers not only failed to present evidence in support their claims of both their "huge risk" and "unique balancing costs", but when proponents' asked specific questions about opponents' balancing and other costs, the universal response was an absolute refusal to provide any such evidence to support the very factual assertions upon which their opposition to the proposed reforms is based. (Koester, Tr. 1787, 1792,1795, 1797, 1801-1802, 1803, 1869, 1875, 1876)

In similar fashion, the manager of the production facility of Edaleen Dairy, Rob Heerspink, testified that Edaleen has difficult balancing issues in that there are times when a customer may want more milk than Edaleen can produce and still hold on to the producer-handler exemption. And there are times when it has surplus milk, which must be disposed of to outlets that are not part of Edaleen's core customer group. (Heerspink, Tr. 1987)

Despite being a co-owner of Edaleen Dairy and serving in an important management capacity as production manager of the farms, Mr. Heerspink claimed to have no familiarity with the needs of Edaleen's processing plant. The needs of the Edaleen plant must be satisfied by the milk produced under Heerspink's management at the farm. The long list of gaps in Heerspink's knowledge of the processing side of Edaleen's business include: the average blended butterfat level of milk produced at the farm (Tr. 2003); whether selling excess cream is or is not profitable for the operation (Tr. 2004); where Edaleen sells excess cream (Tr. 2004); whether the revenue received for selling excess cream separately is higher or lower than selling it as part of packaged fluid milk (Tr. 2001–2005); anything about Edaleen's cream pricing or sales ability (Tr. 2032); the manner by which Edaleen disposes of surplus cream (Tr. 2032); whether Edaleen has additional balancing costs because of the need to dispose of cream (Tr. 2032); whether if one or both of Edaleen's farms were spun off and pooled, that farm could survive economically over the long-term on the Pacific Northwest order blend price (Tr. 2034); and the percentage of fluid milk sold by Edaleen at the Class I price.

In addition to the information that Heerspink did not know regarding Edaleen's business, a great deal of information about Edaleen's operation was considered proprietary by Mr. Heerspink and he refused to provid such information. Facts withheld by Heerspink as propriety included: the number of cows Edaleen is milking (Tr. 2008); whether annual average milk production per cow is more than 21,000 pounds (Tr. 2003); whether Edaleen's cost of production per hundredweight is above the regional average as published in a trade letter received and read by Heerspink (Tr. 2013); whether more than 70 percent of Edaleen's fluid milk is sold at the Class I price (Tr. 2017); Edaleen's hauling costs between the dairy and the processing plant, a

distance of one mile (Tr. 2031); and whether Edaleen sold some milk at lowered prices after losing the Starbucks account (Tr. 2053).

Heerspink maintained throughout his cross examination that Edaleen has higher transportation costs by virtue of being a producer-handler. (Tr. 2067) When asked whether Edaleen has any other costs that are high as a result of its election to be a producer-handler, his response was "At this point, I'm going to decline to answer that." (Tr. 2068) He said flatly that if Edaleen became regulated it would be required to pay "close to a million dollars [per year] into the producer fund" and acknowledged that making pool payments is the basis of his concern and the reason he and Edaleen are opposing the proposed reforms. (Tr. 2069)

The founder and co-owner of Sarah Farms, Hein Hettinga, was both direct and defiant in refusing to give information within his control that would serve to prove or disprove the opponents' claims of unique risks and balancing costs. He refused to answer more than fifteen times, often with the direct coaching of his attorney, the proponents' questions regarding risks and balancing costs, claiming the information requested is proprietary. In numerous instances counsel for Mr. Hettinga himself asserted that Hettinga's likely answer would reveal proprietary information before the witness had an opportunity to speak. (Ricciardi, Tr. 2655, 2662, 2664, 2710, 2715, 2736) Proponents' counsel questioned Hettinga regarding a statement that was both prepared and read into the record by counsel and "adopted" by Hettinga, who frequently and freely admitted on cross examination that he did not understand his "adopted" statement. (Tr. 2703, 2728-2730)

Specific information withheld by Hettinga pertained, among other things, to the sources of the milk that Sarah Farms sells as an exempt producer-handler and outlets through which

Sarah Farms sells milk as an exempt producer-handler. These questions address head on the opponents' claims of unusual risk and unique balancing costs. In a moment of unrestrained candor, Hettinga said outright "I don't want to tell you what I'm doing, as far as with Sarah Farms, which is my business." (Hettinga, Tr. 2729). Proponents' counsel asked Hettinga whether he was "unaware that sharing is the essence of a federal market order" and Hettinga replied "or a socialist party". (Hettinga, Tr. 2744)

In their direct testimony, opponents freely admit that the worst case consequence from having too little milk at their plants or too much milk on their farms is to possibly lose their privileged status as exempt producer-handlers. (Koester, Tr. 1786) In other words, the "huge risks" and the "unique balancing costs" add up to the fact that the exempt producer-handler would have to suffer the indignity, and certainly the dollar cost, of regulation like all other regulated handlers and pooled producers within the relevant Order.[4] The producer-handlers have been rather successful in managing these extraordinary risks since the record does not reflect that they have ever either become pooled or suffered extraordinary losses to avoid pooling

The exempt producer-handlers prefer that the regulations remain unchanged to protect their advantages, rather than be treated like all the other producers and handlers in the Order and competing on a level playing field. The position adopted by the exempt producer-handlers is as

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[4] When this "risk" is analyzed a bit more, it may be clear why it hasn't been quantified by opponents. Becoming pooled (because of the need to purchase surplus supplies in excess of 150.000 pounds), would at worst lead to the loss of 1/12 of the annual benefit of the producer-handler exemption. This might reduce the advantage from $1.50 per cwt to $1.35. On the other side of the equation, the pool (blend price) is a safety net which is always available to the producer-handlers if they have extraordinary losses of Class I sales and, thus, low utilization. Of course, there is no evidence of anything of the sort ever occurring.

understandable from their perspective as it is grossly unfair and disruptive to the rest of the market players, the pool producers and regulated handlers.

Opponents' tactic of repeatedly asserting that they are rightfully exempt from regulation based on two factual assertions, that they face extraordinary business risk and incur high balancing costs, while at the same time stonewalling information that would clearly prove or disprove these very contentions must be evaluated on the basis of a fundamental rule of evidence: A finder of fact may draw an adverse inference when a factual claim made with respect to a person or party asserting a factual claim that has within its control evidence that is probative of such claim, either in the affirmative or the negative, and refuses to produce such evidence. See 2 J. Wigmore, Evidence § 285 (Chadbourn Rev. 1979). The "adverse inference" rule is a venerable rule of evidence which "is based on the belief that a party will introduce all relevant evidence which is favorable to him on his own initiative." International Union (UAW) v. NLRB, 459 F.2d. 1329, 1345 (D.C. Cir 1972) (emphasis in original). The rule, which traces its origins as far back as 1722 (see 2 J. Wigmore, Evidence § 285 (Chadbourn Rev. 1979)), is nevertheless, "more a product of common sense than of the common law." International Union, 459 F.2d at 1335.

The rule specifically impacts the evaluation of "substantial evidence" in a hearing record for purposes of agency action pursuant to 5 U.S.C. § 706. The facts and circumstances in this proceeding are akin to those in which the courts have held that an adverse inference is applicable. In International Union, the employer testified to innocent reasons for firing union employees, but refused to produce the company's records regarding the actions. The Circuit Court held that an adverse inference was applicable and, therefore, the record would not support a finding that the

testimony (without the records) was sufficient to support the employer's case. The same logic should be applied here to weigh the objecting producer-handlers' attacks on proponents' arguments and evidence where the objective data within their control which would corroborate (or contradict) their exhortations was never introduced for the record.

Much of Mr. Herbein's testimony in Alexandria was based on Ex. 68, the pro forma statement of effects of regulating producer-handlers above 3 million pounds in Order 124. Herbein was repeatedly questioned by counsel for the Order 124 producer-handlers with respect to what he did or did not study and what his numbers do and do not represent, persistently emphasizing the refrain that Mr. Herbein did not know actual participating producer-handler production costs (because those costs are solely within the control of the objecting producer-handlers who refused to make them available for the hearing). Because opponents' had within their control the evidence to contradict Herbein's testimony if it was not correct, but did not come forward with that evidence, the Department must accept Herbein's conclusions that the large Order 124 producer-handlers could withstand regulation.

More generally, proponents presented extensive expert testimony indicating that exempt producer-handlers do not have unusually high business risk or unique balancing costs. In addition, proponents presented evidence of a more general and theoretical nature; and expert economic and cost accounting testimony in support of the proposed cap on producer-handler size.

In opposition, the producer-handlers, who have within their control all of the evidence relating to size of operation, costs of operation, costs of balancing, costs of production, etc., placed into evidence NO data with respect to any of these issues. (The only "data" offered by

producer-handlers in the opposition case were: (1) estimated annual pool payments (Smith Bros; Edaleen; and Mallories); and (2) number of minority and female employees and/or owners (Smith Brothers). On the basis of this record, the Department must accept proponents' evidence and disregard the arguments of opponents.

Although one of the opponents' primary arguments in support of the producer-handler exemption is the claim that producer-handlers have extraordinarily high balancing costs, when the record is reviewed in full it is clear that they never produced a shred of evidence to support this oft-repeated claim. Rather than produce evidence, opponents instead continually ranted that the proponents do not know the costs of the four participating producer-handlers which the producer-handlers themselves refuse to make available. The Department should find on this record that there are no extraordinary balancing costs for large producer-handlers which can justify their avoidance of regulation.

In evaluating this entire record, the Department must draw the appropriate inferences from the producer-handlers' failure to produce the records within their control. Those inferences are that if produced the evidence would support the positions of the proponents on the issues of economic impact. Drawing such inferences is compelled by established principles of law applicable to administrative proceedings. This failure to produce data exclusively within their control should lead the Secretary to find that all of these contentions of the opponents have not been substantiated:

(1) That balancing costs of producer-handlers are such that they materially impact the advantage which they otherwise have in not being required to pay class prices for their milk;

(2) That they do not have a raw product cost advantage of the difference between the Class I price and the blend price versus regulated handlers;

(3) That regulation would likely put them out of business;

(4) That their cost of production is substantially greater than any other average producers in the market; and

(5) that they do not sell at prices which are not capable of matching (except by sales at a loss) by regulated handlers.

V. OPERATION OF PROPOSALS TO REFORM THE PRODUCER-HANDLER REGULATION.

The proposed amendments to the producer-handler language in both Orders 124 and 131 make a single major change to the language provisions, the 3 million pound volume limitation, and a number of lesser, but nevertheless important, language changes. We will discuss the several changes in turn.

1. The three (3) million pound Class I distribution limit. The most important change in reform of the producer-handler exemption is to limit it in size/volume. The limit is not upon total production at the farm level; it is upon "total route dispostion and transfers in the form of packaged fluid milk products" during the month. The limitation is not upon disposition within the marketing area; it is upon total disposition so that a large producer-handler could not evade the size limitation by splitting its volume into two marketing areas, or one federal order area and unregulated areas. This volume limit allows more than 99% of dairy farmers, at their current size, in the federal order system to be exempt producer-handlers if they so choose. It denies that privilege and exemption to the very few largest producers.

2. Burden of proving entitlement. There is limited language change suggested in the provision which is intended to make clear that the burden of coming forth with evidence to establish entitlement to the exemption is upon the exempt party, the producer-handler, and it is not the Market Administrator's obligation to ferret out information to support a party's exemption.

3. Other Class I "surplus" utilization. The proposed language (a) (4) would ban Class I disposition of "surplus" bulk milk from the producer-handler's farm via pooling on state order

marketwide pools or sales to non-pool distributing plants. This record has shown there is a significant trade by producer-handlers in both orders in sales of bulk milk to non-pool distributing plants serving Alaska and California. This practice should be prohibited if the producer-handler is to be a self-contained Class I facility for the federal order market, and exempt for pooling on that market.

4. Cross-ownership of production or distributing facilities is prohibited. Proposals 1, 2, and 3, part (b)(2), would ban a producer-handlers' ownership of other milk production or fluid milk processing facilities. Consequently, Dean Foods could not directly or indirectly become a producer-handler in any federal order. Nor could Kroger. Likewise, smaller producer-handlers could not own and operate dairy farms which are pooled on a federal order. The intention of the proposed language is to create a bright line: Either all facilities are in [the regulatory sytsem]; or all facilities are out. We view this as an important prophylactic regulation which insulates the producer-handler exemption from the regulated federal order system.

5. Sales in conjunction with pool handlers. Producer-handlers in Order 124 should be subject to the same limitation which presently applies in Order 131 and prohibits producer-handlers from distributing products in containers and with labels that are the same as regulated handlers. This tactic clearly allows producer-handlers to balance with pool supplies and potentially avoid any surplus disposal of their own. (Hitchell, Tr. 221; Flanagan, Tr. 1298–1299) This language should apply chain-wide to all stores using the particular private label. (Hollon, Tr. 2754)

6. Period of disqualification. If a producer-handler violates *operating* limitations in the regulations, for instance goes over the 3 million pound limit in any one month, it should only be

disqualified from the exemption in that month. However, disqualification for lack of conformity to the *structural* requirements of the exemption – ownership interests by a regulated handler in a producer-handler, for instance – should disqualify the producer-handler until it reapplies and receives designation from the Market Administrator.

7. Market Administrator's role. In general, the Market Administrators will have an important role in administering the exemption. We have attempted to provide language which will provide clear guidance to the MAs while keeping the burden on the would-be exempt producer-handler to establish its exemption.

VI. DUAL-POOLING ON A STATE ORDER AND THE FEDERAL ORDER 131 POOL SHOULD BE PROHIBITED.

Proposal 4, which would prohibit simultaneous pooling of milk on federal order 131 and a state order with a marketwide pool should be adopted. This proposal has previously been adopted in several other federal orders including Orders 30, 124, and 33, among others. The Secretary has found, in essence, that double-pooling is a disorderly marketing condition per se. DFA concurs with that finding. It applies to this record as well as to the records of the other proceedings[5]. Indeed, with the proximity of California, and the demonstrated propensity of Sarah Farms to balance off one or both pools, and ride one or both pools, adoption of the proposal is critical to re-establish a regulatory context in Order 131 which is equitable for all concerned. Proposal 4 should therefore be adopted. (Hollon, Tr. 2763–64)

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[5] Official Notice of the Secretary's decisions in those orders was requested, and taken. Tr. 2765.

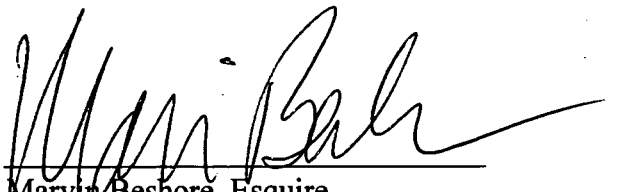
VII. CONCLUSION

The Secretary has the opportunity, and the obligation, in this proceeding to intervene in a situation which, if not interdicted, will lead to the disintegration of the entire federal order system. The exemption from federal order pooling for producer-handlers must be limited, with a volume maximum, in order that orderly marketing be restored in Orders 124 and 131. There is no question in the minds of industry members that gargantuan producer-handler operations will spread in these orders, and spring up throughout the system if regulatory limits are not established. Indeed, the economic incentive, as demonstrated by Sarah Farms, is so great that other handlers will be compelled, for their own survival, to follow suit or exit the business. The circumstances are compelling; the need is urgent; and the consequences of failing to act are terminal for federal orders under the AMAA.

DFA respectfully urges the Secretary to adopt Proposals 1, 2, 3, and 4.

Respectfully Submitted,

Date: August 2, 2004

By: 

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August 2, 2004

Via First Class 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 Pacific Northwest and Arizona - Las Vegas Marketing Area
Docket Nos. AO-368-832, AO-271-837 and DA-03-04

Dear Ms. Dawson:

Enclosed are four copies of "Brief for Dairy Farmers of America, Inc. (DFA)" for the above captioned case.

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

Very truly yours,

Marvin Beshore

MB:ch
Enclosures

cc: Gino Tosi, USDA (Via email and FedEx)
Jack Rower, USDA (Via email and FedEx)
Sydne Berde, Esquire (Via email and First Class Mail)
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Charles English, Esquire (Via email and First Class Mail)
Benjamin F. Yale, Esquire (Via email and First Class Mail)
Elvin Hollon, DFA, Inc. (Via email and First Class Mail)
Dr. Roger Cryan, NMPF (Via email and First Class Mail)

Attachment 1

Attachments to Brief and Proposed Findings For Dairy Farmers of America, Inc. (DFA)

INDEX

Exhibits of Dairy Farmers of America

Milk in the Pacific Northwest and Arizona – Las Vegas Marketing Areas

Docket Number AO-368-A32, AO-271-A37; DA-03-04

Exhibit 1 Table A1

Comparison of Class I and Blend Price Federal Order 1131

CY 2000 - 2003

	Class I Price	Blend Price	Difference	Difference
	Per Hundredweight			Per Gallon
Jan-00	$ 13.25	$ 11.25	$ 2.00	$ 0.172
Feb	$ 13.06	$ 11.09	$ 1.97	$ 0.169
Mar	$ 13.19	$ 11.28	$ 1.91	$ 0.165
Apr	$ 13.28	$ 11.44	$ 1.84	$ 0.158
May	$ 13.83	$ 11.79	$ 2.04	$ 0.176
Jun	$ 14.05	$ 12.10	$ 1.95	$ 0.168
Jul	$ 14.81	$ 12.32	$ 2.49	$ 0.215
Aug	$ 14.30	$ 12.20	$ 2.10	$ 0.181
Sep	$ 14.19	$ 12.32	$ 1.87	$ 0.161
Oct	$ 14.24	$ 11.99	$ 2.25	$ 0.194
Nov	$ 14.17	$ 11.84	$ 2.33	$ 0.201
Dec	$ 14.48	$ 12.40	$ 2.08	$ 0.179
Average	$ 13.90	$ 11.84	$ 2.07	$ 0.178

Jan-01	$ 16.34	$ 12.37	$ 3.97	$ 0.342
Feb	$ 14.29	$ 12.48	$ 1.81	$ 0.156
Mar	$ 15.00	$ 13.38	$ 1.62	$ 0.140
Apr	$ 15.79	$ 14.07	$ 1.72	$ 0.148
May	$ 16.56	$ 15.11	$ 1.45	$ 0.125
Jun	$ 17.34	$ 15.88	$ 1.46	$ 0.125
Jul	$ 17.69	$ 16.08	$ 1.61	$ 0.139
Aug	$ 17.75	$ 16.39	$ 1.36	$ 0.117
Sep	$ 17.91	$ 16.70	$ 1.21	$ 0.104
Oct	$ 18.28	$ 15.01	$ 3.27	$ 0.282
Nov	$ 18.11	$ 13.73	$ 4.38	$ 0.377
Dec	$ 14.33	$ 12.71	$ 1.62	$ 0.140
Average	$ 16.62	$ 14.49	$ 2.12	$ 0.183

Exhibit 1 Table A1

Comparison of Class I and Blend Price Federal Order 1131

CY 2000 - 2003

	Class I Price	Blend Price	Difference	Difference
	Per Hundredweight			Per Gallon
Jan-02	$ 14.31	$ 12.81	$ 1.50	$ 0.129
Feb	$ 14.30	$ 12.46	$ 1.84	$ 0.158
Mar	$ 13.97	$ 11.91	$ 2.06	$ 0.177
Apr	$ 13.82	$ 11.79	$ 2.03	$ 0.175
May	$ 13.61	$ 11.51	$ 2.10	$ 0.181
Jun	$ 13.38	$ 11.22	$ 2.16	$ 0.186
Jul	$ 12.97	$ 10.87	$ 2.10	$ 0.181
Aug	$ 12.83	$ 11.04	$ 1.79	$ 0.154
Sep	$ 12.81	$ 11.03	$ 1.78	$ 0.153
Oct	$ 12.50	$ 11.38	$ 1.12	$ 0.096
Nov	$ 12.95	$ 11.14	$ 1.81	$ 0.156
Dec	$ 12.87	$ 11.07	$ 1.80	$ 0.155
Average	$ 13.36	$ 11.52	$ 1.84	$ 0.159
Jan-03	$ 12.91	$ 10.97	$ 1.94	$ 0.167
Feb	$ 12.58	$ 10.63	$ 1.95	$ 0.168
Mar	$ 12.16	$ 10.29	$ 1.87	$ 0.161
Apr	$ 11.99	$ 10.34	$ 1.65	$ 0.142
May	$ 12.06	$ 10.45	$ 1.61	$ 0.139
Jun	$ 12.09	$ 10.47	$ 1.62	$ 0.139
Jul	$ 12.12	$ 11.53	$ 0.59	$ 0.051
Aug	$ 13.32	$ 12.94	$ 0.38	$ 0.033
Sep	$ 16.06	$ 13.98	$ 2.08	$ 0.179
Oct	$ 16.62	$ 14.31	$ 2.31	$ 0.199
Average	$ 13.19	$ 11.59	$ 1.60	$ 0.138

Exhibit 1 Table A2

Comparison of Class I and Blend Price Federal Order 1124

CY 2000 - 2003

	Class I Price	Blend Price	Difference	Difference
	Per Hundredweight			Per Gallon
Jan-00	$ 12.80	$ 11.11	$ 1.69	$ 0.145
Feb	$ 12.61	$ 11.06	$ 1.55	$ 0.133
Mar	$ 12.74	$ 11.17	$ 1.57	$ 0.135
Apr	$ 12.83	$ 11.31	$ 1.52	$ 0.131
May	$ 13.38	$ 11.70	$ 1.68	$ 0.144
Jun	$ 13.60	$ 11.91	$ 1.69	$ 0.145
Jul	$ 14.36	$ 12.19	$ 2.17	$ 0.187
Aug	$ 13.85	$ 11.94	$ 1.91	$ 0.165
Sep	$ 13.74	$ 12.11	$ 1.63	$ 0.140
Oct	$ 13.79	$ 11.79	$ 2.00	$ 0.172
Nov	$ 13.72	$ 11.80	$ 1.92	$ 0.165
Dec	$ 14.03	$ 12.27	$ 1.76	$ 0.151
Average	$ 13.45	$ 11.70	$ 1.76	$ 0.151

Jan-01	$ 15.89	$ 12.34	$ 3.55	$ 0.306
Feb	$ 13.84	$ 12.35	$ 1.49	$ 0.128
Mar	$ 14.55	$ 13.34	$ 1.21	$ 0.105
Apr	$ 15.34	$ 14.05	$ 1.29	$ 0.111
May	$ 16.11	$ 15.12	$ 0.99	$ 0.086
Jun	$ 16.89	$ 15.78	$ 1.11	$ 0.095
Jul	$ 17.24	$ 15.80	$ 1.44	$ 0.124
Aug	$ 17.30	$ 15.99	$ 1.31	$ 0.113
Sep	$ 17.46	$ 16.34	$ 1.12	$ 0.097
Oct	$ 17.83	$ 14.38	$ 3.45	$ 0.297
Nov	$ 17.66	$ 13.30	$ 4.36	$ 0.375
Dec	$ 13.88	$ 12.35	$ 1.53	$ 0.132
Average	$ 16.17	$ 14.26	$ 1.90	$ 0.164

Exhibit 1 Table A2

Comparison of Class I and Blend Price Federal Order 1124

CY 2000 - 2003

	Class I Price	Blend Price	Difference	Difference
	Per Hundredweight			Per Gallon
Jan-02	$ 13.86	$ 12.53	$ 1.33	$ 0.115
Feb	$ 13.85	$ 12.14	$ 1.71	$ 0.147
Mar	$ 13.52	$ 11.73	$ 1.79	$ 0.154
Apr	$ 13.37	$ 11.64	$ 1.73	$ 0.149
May	$ 13.16	$ 11.35	$ 1.81	$ 0.156
Jun	$ 12.93	$ 11.00	$ 1.93	$ 0.166
Jul	$ 12.52	$ 10.66	$ 1.86	$ 0.160
Aug	$ 12.38	$ 10.66	$ 1.72	$ 0.148
Sep	$ 12.36	$ 10.66	$ 1.70	$ 0.146
Oct	$ 12.05	$ 10.94	$ 1.11	$ 0.095
Nov	$ 12.50	$ 10.84	$ 1.66	$ 0.143
Dec	$ 12.42	$ 10.81	$ 1.61	$ 0.139
Average	$ 12.91	$ 11.25	$ 1.66	$ 0.143

Jan-03	$ 12.46	$ 10.76	$ 1.70	$ 0.147
Feb	$ 12.13	$ 10.44	$ 1.69	$ 0.146
Mar	$ 11.71	$ 10.13	$ 1.58	$ 0.136
Apr	$ 11.54	$ 10.21	$ 1.33	$ 0.115
May	$ 11.61	$ 10.38	$ 1.23	$ 0.106
Jun	$ 11.64	$ 10.37	$ 1.27	$ 0.109
Jul	$ 11.67	$ 10.93	$ 0.74	$ 0.064
Aug	$ 12.87	$ 11.66	$ 1.21	$ 0.104
Sep	$ 15.61	$ 12.54	$ 3.07	$ 0.264
Oct	$ 16.17	$ 13.05	$ 3.12	$ 0.269
Nov				
Dec				
Average	$ 12.74	$ 11.05	$ 1.69	$ 0.146

Exhibit 1 Table B

Ability to Service Retail Accounts by Size of Processor

Processing Rate

Pounds / Month	30,000,000	25,000,000	20,000,000	15,000,000	10,000,000	5,000,000	4,000,000	3,000,000	2,000,000	1,000,000	800,000	600,000	400,000	200,000	100,000
Pounds / Day	1,000,000	833,333	666,667	500,000	333,333	166,667	133,333	100,000	66,667	33,333	26,667	20,000	13,333	6,667	3,333
Gallons / Day	116,144	96,787	77,429	58,072	38,715	19,357	15,486	11,614	7,743	3,871	3,097	2,323	1,549	774	387
Trailer Lds/Day	25.8	21.5	17.2	12.9	8.6	4.3	3.4	2.6	1.7	0.9	0.7	0.5	0.3	0.2	0.1

Gallons / Trailer 4,500

Gallon Weight 8.61

Source: Industry estimates (gallons / trailer) and ERS Agriculture Handbook 697 June 1992 page 28 (gallon weight)

Gallon of milk is standardized at 3.5%BF and 8.64 SNF

Exhibit 1 Table C1

Estimate of the Impact of Balancing Surplus Milk for an Producer Handler with 90% Class I Utilization Order 131

	B'fat Producer Milk	B'fat Class I	Uniform Skim Price	Uniform B'fat Price	Class III Price	Class IV Price	Class III Skim Price	Class III B'Fat Price	CIV Skim Price	CIV B'fat Price	Lower	Lower
Jan-00	3.72%	1.95%	$ 8.22	$ 0.9483	$ 10.05	$ 10.73	$ 7.02	$ 0.9366	$ 7.72	$ 0.9366	$ 7.0200	$ 0.9366
Feb	3.65%	1.93%	$ 8.02	$ 0.9586	$ 9.54	$ 10.80	$ 6.41	$ 0.9588	$ 7.71	$ 0.9588	$ 6.4100	$ 0.9588
Mar	3.63%	1.94%	$ 8.00	$ 1.0157	$ 9.54	$ 11.00	$ 6.19	$ 1.0191	$ 7.70	$ 1.0191	$ 6.1900	$ 1.0191
Apr	3.54%	1.90%	$ 7.79	$ 1.1197	$ 9.41	$ 11.38	$ 5.63	$ 1.1352	$ 7.68	$ 1.1352	$ 5.6300	$ 1.1352
May	3.51%	1.92%	$ 7.61	$ 1.2699	$ 9.37	$ 11.91	$ 5.05	$ 1.2854	$ 7.68	$ 1.2854	$ 5.0500	$ 1.2854
Jun	3.55%	1.95%	$ 7.51	$ 1.3860	$ 9.46	$ 12.38	$ 4.68	$ 1.4128	$ 7.70	$ 1.4128	$ 4.6800	$ 1.4128
Jul	3.57%	2.01%	$ 8.05	$ 1.3008	$ 10.66	$ 11.87	$ 6.44	$ 1.2691	$ 7.70	$ 1.2691	$ 6.4400	$ 1.2691
Aug	3.56%	1.95%	$ 8.01	$ 1.2763	$ 10.13	$ 11.87	$ 5.91	$ 1.2659	$ 7.71	$ 1.2659	$ 5.9100	$ 1.2659
Sep	3.56%	1.93%	$ 8.15	$ 1.2738	$ 10.76	$ 11.94	$ 6.54	$ 1.2707	$ 7.76	$ 1.2707	$ 6.5400	$ 1.2707
Oct	3.67%	1.97%	$ 7.88	$ 1.2522	$ 10.02	$ 11.81	$ 5.87	$ 1.2444	$ 7.73	$ 1.2444	$ 5.8700	$ 1.2444
Nov	3.82%	2.07%	$ 6.78	$ 1.5135	$ 8.57	$ 13.00	$ 3.17	$ 1.5746	$ 7.76	$ 1.5745	$ 3.1700	$ 1.5745
Dec	3.73%	2.11%	$ 7.05	$ 1.5991	$ 9.37	$ 13.27	$ 3.71	$ 1.6534	$ 7.75	$ 1.6534	$ 3.7100	$ 1.6534
Jan-01	3.71%	1.94%	$ 7.80	$ 1.3826	$ 9.99	$ 12.13	$ 5.68	$ 1.2896	$ 7.89	$ 1.2896	$ 5.6800	$ 1.2896
Feb	3.65%	1.94%	$ 7.75	$ 1.4290	$ 10.27	$ 12.70	$ 5.34	$ 1.4626	$ 7.86	$ 1.4626	$ 5.3400	$ 1.4626
Mar	3.60%	2.01%	$ 7.83	$ 1.6454	$ 11.42	$ 13.46	$ 5.73	$ 1.6820	$ 7.85	$ 1.6820	$ 5.7300	$ 1.6820
Apr	3.55%	1.96%	$ 7.66	$ 1.9086	$ 12.06	$ 14.41	$ 5.43	$ 1.9483	$ 7.87	$ 1.9483	$ 5.4300	$ 1.9483
May	3.54%	1.95%	$ 8.09	$ 2.0873	$ 13.83	$ 15.04	$ 6.65	$ 2.1191	$ 7.90	$ 2.1191	$ 6.6500	$ 2.1191
Jun	3.54%	2.02%	$ 8.49	$ 2.1961	$ 15.02	$ 15.33	$ 7.55	$ 2.2089	$ 7.87	$ 2.2089	$ 7.5500	$ 2.2089
Jul	3.54%	2.00%	$ 8.69	$ 2.1971	$ 15.46	$ 14.81	$ 8.08	$ 2.1883	$ 7.41	$ 2.1883	$ 7.4100	$ 2.1883
Aug	3.57%	2.00%	$ 8.69	$ 2.2879	$ 15.55	$ 15.06	$ 7.78	$ 2.2976	$ 7.27	$ 2.2976	$ 7.2700	$ 2.2976
Sep	3.61%	1.95%	$ 8.56	$ 2.4122	$ 15.90	$ 15.59	$ 7.61	$ 2.4449	$ 7.29	$ 2.4449	$ 7.2900	$ 2.4449
Oct	3.63%	1.95%	$ 8.95	$ 1.8198	$ 14.60	$ 12.77	$ 9.14	$ 1.6526	$ 7.24	$ 1.6526	$ 7.2400	$ 1.6526
Nov	3.68%	2.08%	$ 8.66	$ 1.5363	$ 11.31	$ 11.97	$ 6.46	$ 1.4500	$ 7.15	$ 1.4500	$ 6.4600	$ 1.4500
Dec	3.79%	2.11%	$ 7.94	$ 1.4415	$ 11.80	$ 11.79	$ 7.03	$ 1.4322	$ 7.02	$ 1.4322	$ 7.0200	$ 1.4322
Jan-02	3.73%	1.93%	$ 7.93	$ 1.4742	$ 11.87	$ 11.93	$ 6.92	$ 1.4846	$ 6.98	$ 1.4846	$ 6.9200	$ 1.4846
Feb	3.66%	1.92%	$ 7.82	$ 1.4030	$ 11.63	$ 11.54	$ 7.04	$ 1.3817	$ 6.95	$ 1.3817	$ 6.9500	$ 1.3817
Mar	3.59%	1.98%	$ 7.38	$ 1.3683	$ 10.65	$ 11.42	$ 6.09	$ 1.3638	$ 6.89	$ 1.3638	$ 6.0900	$ 1.3638
Apr	3.56%	1.96%	$ 7.48	$ 1.3071	$ 10.85	$ 11.09	$ 6.57	$ 1.2890	$ 6.82	$ 1.2890	$ 6.5700	$ 1.2890
May	3.56%	1.99%	$ 7.64	$ 1.1807	$ 10.82	$ 10.57	$ 7.07	$ 1.1433	$ 6.81	$ 1.1433	$ 6.8100	$ 1.1433
Jun	3.59%	2.07%	$ 7.52	$ 1.1326	$ 10.09	$ 10.52	$ 6.39	$ 1.1211	$ 6.84	$ 1.1211	$ 6.3900	$ 1.1211
Jul	3.59%	2.08%	$ 7.24	$ 1.1085	$ 9.33	$ 10.45	$ 5.70	$ 1.0929	$ 6.87	$ 1.0929	$ 5.7000	$ 1.0929
Aug	3.59%	1.96%	$ 7.51	$ 1.0828	$ 9.54	$ 10.41	$ 6.00	$ 1.0701	$ 6.91	$ 1.0701	$ 6.0000	$ 1.0701
Sep	3.64%	1.96%	$ 7.70	$ 1.0296	$ 9.92	$ 10.22	$ 6.62	$ 1.0099	$ 6.93	$ 1.0099	$ 6.6200	$ 1.0099
Oct	3.66%	2.02%	$ 7.94	$ 1.0626	$ 10.72	$ 10.50	$ 7.22	$ 1.0726	$ 6.99	$ 1.0726	$ 6.9900	$ 1.0726
Nov	3.70%	2.06%	$ 7.60	$ 1.0884	$ 9.84	$ 10.58	$ 6.23	$ 1.0923	$ 7.00	$ 1.0923	$ 6.2300	$ 1.0923
Dec	3.70%	2.11%	$ 7.20	$ 1.1767	$ 9.74	$ 10.49	$ 5.77	$ 1.1922	$ 6.55	$ 1.1922	$ 5.7700	$ 1.1922
Jan-03	3.63%	1.94%	$ 7.05	$ 1.1891	$ 9.78	$ 10.07	$ 5.83	$ 1.1856	$ 6.13	$ 1.1856	$ 5.8300	$ 1.1856
Feb	3.58%	1.95%	$ 6.83	$ 1.1551	$ 9.66	$ 9.81	$ 5.89	$ 1.1373	$ 6.04	$ 1.1373	$ 5.8900	$ 1.1373
Mar	3.58%	1.96%	$ 6.49	$ 1.1493	$ 9.11	$ 9.79	$ 5.28	$ 1.1459	$ 5.99	$ 1.1459	$ 5.2800	$ 1.1459
Apr	3.57%	1.98%	$ 6.54	$ 1.1508	$ 9.41	$ 9.73	$ 5.58	$ 1.1503	$ 5.91	$ 1.1503	$ 5.5800	$ 1.1503
May	3.54%	2.00%	$ 6.64	$ 1.1561	$ 9.71	$ 9.74	$ 5.89	$ 1.1512	$ 5.92	$ 1.1512	$ 5.8900	$ 1.1512
Jun	3.54%	2.04%	$ 6.63	$ 1.1622	$ 9.75	$ 9.76	$ 5.91	$ 1.1576	$ 5.92	$ 1.1576	$ 5.9100	$ 1.1576
Jul	3.56%	2.10%	$ 7.59	$ 1.2026	$ 11.78	$ 9.95	$ 7.83	$ 1.2055	$ 5.94	$ 1.2055	$ 5.9400	$ 1.2055
Aug	3.54%	2.01%	$ 8.89	$ 1.2448	$ 13.80	$ 10.14	$ 9.76	$ 1.2514	$ 5.97	$ 1.2514	$ 5.9700	$ 1.2514
Sep	3.57%	2.01%	$ 9.98	$ 1.2431	$ 14.30	$ 10.05	$ 10.39	$ 1.2218	$ 5.98	$ 1.2218	$ 5.9800	$ 1.2218
Oct												
Nov												
Dec												

90% Class I Use
10% Class IV Use
10,000,000 Producer Milk

	Pounds Skim Milk	Pounds B'fat	Supply To Class I	Pounds Cl Skim	Pounds Cl B'fat	Pounds ClV Skim	Pounds ClV B'fat	Value Cl Skim	Value Cl B'Fat	Value Lowest Skim	Value Lowest B'fat	Gross Value @ Test	PH Blend @ Test	Uniform Price @ Test	Difference Per Cwt		
Jan-00	9,628,000	372,000	9,000,000	8,824,500	175,500	803,500	196,500	$ 725,374	166,427	$ 56,406	$ 184,042	$ 1,132,248	$ 11.32	$ 11.44	$ (0.12)		
Feb	9,635,000	365,000	9,000,000	8,826,300	173,700	808,700	191,300	$ 707,869	166,509	$ 51,838	$ 183,418	$ 1,109,634	$ 11.10	$ 11.30	$ (0.20)		
Mar	9,637,000	363,000	9,000,000	8,825,400	174,600	811,600	188,400	$ 706,032	177,341	$ 50,238	$ 191,998	$ 1,125,610	$ 11.26	$ 11.40	$ (0.14)		
Apr	9,646,000	354,000	9,000,000	8,829,000	171,000	817,000	183,000	$ 687,779	191,469	$ 45,997	$ 207,742	$ 1,132,987	$ 11.33	$ 11.50	$ (0.17)		
May	9,649,000	351,000	9,000,000	8,827,200	172,800	821,800	178,200	$ 671,750	219,439	$ 41,501	$ 229,058	$ 1,161,748	$ 11.62	$ 11.75	$ (0.13)		
Jun	9,645,000	355,000	9,000,000	8,824,500	175,500	820,500	179,500	$ 662,720	243,243	$ 38,399	$ 253,598	$ 1,197,960	$ 11.98	$ 11.97	$ 0.01		
Jul	9,643,000	357,000	9,000,000	8,819,100	180,900	823,900	176,100	$ 709,938	235,315	$ 53,059	$ 223,489	$ 1,221,800	$ 12.22	$ 12.14	$ 0.08		
Aug	9,644,000	356,000	9,000,000	8,824,500	175,500	819,500	180,500	$ 706,842	223,991	$ 48,432	$ 228,495	$ 1,207,761	$ 12.08	$ 12.04	$ 0.04		
Sep	9,644,000	356,000	9,000,000	8,826,300	173,700	817,700	182,300	$ 719,343	221,259	$ 53,478	$ 231,649	$ 1,225,729	$ 12.26	$ 12.37	$ (0.11)		
Oct	9,633,000	367,000	9,000,000	8,822,700	177,300	810,300	189,700	$ 695,229	222,015	$ 47,565	$ 236,063	$ 1,200,871	$ 12.01	$ 12.16	$ (0.15)		
Nov	9,618,000	382,000	9,000,000	8,813,700	186,300	804,300	195,700	$ 597,569	281,965	$ 25,496	$ 308,130	$ 1,213,160	$ 12.13	$ 12.28	$ (0.15)		
Dec	9,627,000	373,000	9,000,000	8,810,100	189,900	816,900	183,100	$ 621,112	303,669	$ 30,307	$ 302,738	$ 1,257,826	$ 12.58	$ 12.78	$ (0.20)	$(0.10)	$(0.009)
Jan-01	9,629,000	371,000	9,000,000	8,825,400	174,600	803,600	196,400	$ 688,381	241,402	$ 45,644	$ 253,277	$ 1,228,705	$ 12.29	$ 12.69	$ (0.40)		
Feb	9,635,000	365,000	9,000,000	8,825,400	174,600	809,600	190,400	$ 683,969	249,503	$ 43,233	$ 278,479	$ 1,255,184	$ 12.55	$ 12.76	$ (0.21)		
Mar	9,640,000	360,000	9,000,000	8,819,100	180,900	820,900	179,100	$ 690,536	297,653	$ 47,038	$ 301,246	$ 1,336,472	$ 13.36	$ 13.70	$ (0.34)		
Apr	9,645,000	355,000	9,000,000	8,823,600	176,400	821,400	178,600	$ 675,888	336,677	$ 44,602	$ 347,966	$ 1,405,133	$ 14.05	$ 14.43	$ (0.38)		
May	9,646,000	354,000	9,000,000	8,824,500	175,500	821,500	178,500	$ 713,902	366,321	$ 54,630	$ 378,259	$ 1,513,112	$ 15.13	$ 15.32	$ (0.19)		
Jun	9,646,000	354,000	9,000,000	8,818,200	181,800	827,800	172,200	$ 748,665	399,251	$ 62,499	$ 380,373	$ 1,590,788	$ 15.91	$ 15.90	$ 0.01		
Jul	9,646,000	354,000	9,000,000	8,820,000	180,000	826,000	174,000	$ 766,458	395,478	$ 61,207	$ 380,764	$ 1,603,907	$ 16.04	$ 15.90	$ 0.14		
Aug	9,643,000	357,000	9,000,000	8,820,000	180,000	823,000	177,000	$ 766,458	411,822	$ 59,832	$ 406,675	$ 1,644,787	$ 16.45	$ 16.17	$ 0.28		
Sep	9,639,000	361,000	9,000,000	8,824,500	175,500	814,500	185,500	$ 755,377	423,341	$ 59,377	$ 453,529	$ 1,691,624	$ 16.92	$ 16.75	$ 0.17		
Oct	9,637,000	363,000	9,000,000	8,824,500	175,500	812,500	187,500	$ 789,793	319,375	$ 58,825	$ 309,863	$ 1,477,855	$ 14.78	$ 15.04	$ (0.26)		
Nov	9,632,000	368,000	9,000,000	8,812,800	187,200	819,200	180,800	$ 763,188	287,595	$ 52,920	$ 262,160	$ 1,365,864	$ 13.66	$ 13.86	$ (0.20)		
Dec	9,621,000	379,000	9,000,000	8,810,100	189,900	810,900	189,100	$ 699,522	273,741	$ 56,925	$ 270,829	$ 1,301,017	$ 13.01	$ 12.98	$ 0.03	$(0.11)	$(0.010)
Jan-02	9,627,000	373,000	9,000,000	8,826,300	173,700	800,700	199,300	$ 699,926	256,069	$ 55,408	$ 295,881	$ 1,307,283	$ 13.07	$ 13.14	$ (0.07)		
Feb	9,634,000	366,000	9,000,000	8,827,200	172,800	806,800	193,200	$ 690,287	242,438	$ 56,073	$ 266,944	$ 1,255,742	$ 12.56	$ 12.67	$ (0.11)		
Mar	9,641,000	359,000	9,000,000	8,821,800	178,200	819,200	180,800	$ 651,049	243,831	$ 49,889	$ 246,575	$ 1,191,344	$ 11.91	$ 12.03	$ (0.12)		
Apr	9,644,000	356,000	9,000,000	8,823,600	176,400	820,400	179,600	$ 660,005	230,572	$ 53,900	$ 231,504	$ 1,175,982	$ 11.76	$ 11.86	$ (0.10)		
May	9,644,000	356,000	9,000,000	8,820,900	179,100	823,100	176,900	$ 673,917	211,463	$ 56,053	$ 202,250	$ 1,143,683	$ 11.44	$ 11.57	$ (0.13)		
Jun	9,641,000	359,000	9,000,000	8,813,700	186,300	827,300	172,700	$ 662,790	211,003	$ 52,864	$ 193,614	$ 1,120,272	$ 11.20	$ 11.31	$ (0.11)		
Jul	9,641,000	359,000	9,000,000	8,812,800	187,200	828,200	171,800	$ 638,047	207,511	$ 47,207	$ 187,760	$ 1,080,526	$ 10.81	$ 10.96	$ (0.15)		
Aug	9,641,000	359,000	9,000,000	8,823,600	176,400	817,400	182,600	$ 662,652	191,006	$ 49,044	$ 195,400	$ 1,098,103	$ 10.98	$ 11.13	$ (0.15)		
Sep	9,636,000	364,000	9,000,000	8,823,600	176,400	812,400	187,600	$ 679,417	181,621	$ 53,781	$ 189,457	$ 1,104,277	$ 11.04	$ 11.17	$ (0.13)		
Oct	9,634,000	366,000	9,000,000	8,818,200	181,800	815,800	184,200	$ 700,165	193,181	$ 57,024	$ 197,573	$ 1,147,943	$ 11.48	$ 11.54	$ (0.06)		
Nov	9,630,000	370,000	9,000,000	8,814,600	185,400	815,400	184,600	$ 669,910	201,789	$ 50,799	$ 201,639	$ 1,124,137	$ 11.24	$ 11.34	$ (0.10)		
Dec	9,630,000	370,000	9,000,000	8,810,100	189,900	819,900	180,100	$ 634,327	223,455	$ 47,308	$ 214,715	$ 1,119,806	$ 11.20	$ 11.28	$ (0.08)	$(0.11)	$(0.009)
Jan-03	9,637,000	363,000	9,000,000	8,825,400	174,600	811,600	188,400	$ 622,191	207,617	$ 47,316	$ 223,367	$ 1,100,491	$ 11.00	$ 11.11	$ (0.11)		
Feb	9,642,000	358,000	9,000,000	8,824,500	175,500	817,500	182,500	$ 602,713	202,720	$ 48,151	$ 207,557	$ 1,061,141	$ 10.61	$ 10.72	$ (0.11)		
Mar	9,642,000	358,000	9,000,000	8,823,600	176,400	818,400	181,600	$ 572,652	202,737	$ 43,212	$ 208,095	$ 1,026,695	$ 10.27	$ 10.38	$ (0.11)		
Apr	9,643,000	357,000	9,000,000	8,821,800	178,200	821,200	178,800	$ 576,946	205,073	$ 45,823	$ 205,674	$ 1,033,515	$ 10.34	$ 10.42	$ (0.08)		
May	9,646,000	354,000	9,000,000	8,820,000	180,000	826,000	174,000	$ 585,648	208,098	$ 48,651	$ 200,309	$ 1,042,706	$ 10.43	$ 10.50	$ (0.07)		
Jun	9,646,000	354,000	9,000,000	8,816,400	183,600	829,600	170,400	$ 584,527	213,380	$ 49,029	$ 197,255	$ 1,044,192	$ 10.44	$ 10.51	$ (0.07)		
Jul	9,644,000	356,000	9,000,000	8,811,000	189,000	833,000	167,000	$ 668,755	227,291	$ 49,480	$ 201,319	$ 1,146,845	$ 11.47	$ 11.60	$ (0.13)		
Aug	9,646,000	354,000	9,000,000	8,819,100	180,900	826,900	173,100	$ 784,018	225,184	$ 49,366	$ 216,617	$ 1,275,186	$ 12.75	$ 12.99	$ (0.24)		
Sep	9,643,000	357,000	9,000,000	8,819,100	180,900	823,900	176,100	$ 880,146	224,877	$ 49,269	$ 215,159	$ 1,369,451	$ 13.69	$ 14.06	$ (0.37)		
Oct																	
Nov																	
Dec																$(0.14)	$(0.012)

Exhibit 1 Table2

Estimate of the Impact of Balancing Surplus Milk for an Producer Handler with 80% Class I Utilization Order 131

	B'fat Producer Milk	B'fat Class I	Uniform Skim Price	Uniform B'fat Price	Class III Price	Class IV Price	Class III Skim Price	Class III B'Fat Price	CIV Skim Price	CIV B'fat Price	Lower	Lower
Jan-00	3.72%	1.95%	$ 8.22	$ 0.9483	$ 10.05	$ 10.73	$ 7.02	$ 0.9366	$ 7.72	$ 0.9366	$ 7.0200	$ 0.9366
Feb	3.65%	1.93%	$ 8.02	$ 0.9586	$ 9.54	$ 10.80	$ 6.41	$ 0.9588	$ 7.71	$ 0.9588	$ 6.4100	$ 0.9588
Mar	3.63%	1.94%	$ 8.00	$ 1.0157	$ 9.54	$ 11.00	$ 6.19	$ 1.0191	$ 7.70	$ 1.0191	$ 6.1900	$ 1.0191
Apr	3.54%	1.90%	$ 7.79	$ 1.1197	$ 9.41	$ 11.38	$ 5.63	$ 1.1352	$ 7.68	$ 1.1352	$ 5.6300	$ 1.1352
May	3.51%	1.92%	$ 7.61	$ 1.2699	$ 9.37	$ 11.91	$ 5.05	$ 1.2854	$ 7.68	$ 1.2854	$ 5.0500	$ 1.2854
Jun	3.55%	1.95%	$ 7.51	$ 1.3860	$ 9.46	$ 12.38	$ 4.68	$ 1.4128	$ 7.70	$ 1.4128	$ 4.6800	$ 1.4128
Jul	3.57%	2.01%	$ 8.05	$ 1.3008	$ 10.66	$ 11.87	$ 6.44	$ 1.2691	$ 7.70	$ 1.2691	$ 6.4400	$ 1.2691
Aug	3.56%	1.95%	$ 8.01	$ 1.2763	$ 10.13	$ 11.87	$ 5.91	$ 1.2659	$ 7.71	$ 1.2659	$ 5.9100	$ 1.2659
Sep	3.56%	1.93%	$ 8.15	$ 1.2738	$ 10.76	$ 11.94	$ 6.54	$ 1.2707	$ 7.76	$ 1.2707	$ 6.5400	$ 1.2707
Oct	3.67%	1.97%	$ 7.88	$ 1.2522	$ 10.02	$ 11.81	$ 5.87	$ 1.2444	$ 7.73	$ 1.2444	$ 5.8700	$ 1.2444
Nov	3.82%	2.07%	$ 6.78	$ 1.5135	$ 8.57	$ 13.00	$ 3.17	$ 1.5746	$ 7.76	$ 1.5745	$ 3.1700	$ 1.5745
Dec	3.73%	2.11%	$ 7.05	$ 1.5991	$ 9.37	$ 13.27	$ 3.71	$ 1.6534	$ 7.75	$ 1.6534	$ 3.7100	$ 1.6534
Jan-01	3.71%	1.94%	$ 7.80	$ 1.3826	$ 9.99	$ 12.13	$ 5.68	$ 1.2896	$ 7.89	$ 1.2896	$ 5.6800	$ 1.2896
Feb	3.65%	1.94%	$ 7.75	$ 1.4290	$ 10.27	$ 12.70	$ 5.34	$ 1.4626	$ 7.86	$ 1.4626	$ 5.3400	$ 1.4626
Mar	3.60%	2.01%	$ 7.83	$ 1.6454	$ 11.42	$ 13.46	$ 5.73	$ 1.6820	$ 7.85	$ 1.6820	$ 5.7300	$ 1.6820
Apr	3.55%	1.96%	$ 7.66	$ 1.9086	$ 12.06	$ 14.41	$ 5.43	$ 1.9483	$ 7.87	$ 1.9483	$ 5.4300	$ 1.9483
May	3.54%	1.95%	$ 8.09	$ 2.0873	$ 13.83	$ 15.04	$ 6.65	$ 2.1191	$ 7.90	$ 2.1191	$ 6.6500	$ 2.1191
Jun	3.54%	2.02%	$ 8.49	$ 2.1961	$ 15.02	$ 15.33	$ 7.55	$ 2.2089	$ 7.87	$ 2.2089	$ 7.5500	$ 2.2089
Jul	3.54%	2.00%	$ 8.69	$ 2.1971	$ 15.46	$ 14.81	$ 8.08	$ 2.1883	$ 7.41	$ 2.1883	$ 7.4100	$ 2.1883
Aug	3.57%	2.00%	$ 8.69	$ 2.2879	$ 15.55	$ 15.06	$ 7.78	$ 2.2976	$ 7.27	$ 2.2976	$ 7.2700	$ 2.2976
Sep	3.61%	1.95%	$ 8.56	$ 2.4122	$ 15.90	$ 15.59	$ 7.61	$ 2.4449	$ 7.29	$ 2.4449	$ 7.2900	$ 2.4449
Oct	3.63%	1.95%	$ 8.95	$ 1.8198	$ 14.60	$ 12.77	$ 9.14	$ 1.6526	$ 7.24	$ 1.6526	$ 7.2400	$ 1.6526
Nov	3.68%	2.08%	$ 8.66	$ 1.5363	$ 11.31	$ 11.97	$ 6.46	$ 1.4500	$ 7.15	$ 1.4500	$ 6.4600	$ 1.4500
Dec	3.79%	2.11%	$ 7.94	$ 1.4415	$ 11.80	$ 11.79	$ 7.03	$ 1.4322	$ 7.02	$ 1.4322	$ 7.0200	$ 1.4322
Jan-02	3.73%	1.93%	$ 7.93	$ 1.4742	$ 11.87	$ 11.93	$ 6.92	$ 1.4846	$ 6.98	$ 1.4846	$ 6.9200	$ 1.4846
Feb	3.66%	1.92%	$ 7.82	$ 1.4030	$ 11.63	$ 11.54	$ 7.04	$ 1.3817	$ 6.95	$ 1.3817	$ 6.9500	$ 1.3817
Mar	3.59%	1.98%	$ 7.38	$ 1.3683	$ 10.65	$ 11.42	$ 6.09	$ 1.3638	$ 6.89	$ 1.3638	$ 6.0900	$ 1.3638
Apr	3.56%	1.96%	$ 7.48	$ 1.3071	$ 10.85	$ 11.09	$ 6.57	$ 1.2890	$ 6.82	$ 1.2890	$ 6.5700	$ 1.2890
May	3.56%	1.99%	$ 7.64	$ 1.1807	$ 10.82	$ 10.57	$ 7.07	$ 1.1433	$ 6.81	$ 1.1433	$ 6.8100	$ 1.1433
Jun	3.59%	2.07%	$ 7.52	$ 1.1326	$ 10.09	$ 10.52	$ 6.39	$ 1.1211	$ 6.84	$ 1.1211	$ 6.3900	$ 1.1211
Jul	3.59%	2.08%	$ 7.24	$ 1.1085	$ 9.33	$ 10.45	$ 5.70	$ 1.0929	$ 6.87	$ 1.0929	$ 5.7000	$ 1.0929
Aug	3.59%	1.96%	$ 7.51	$ 1.0828	$ 9.54	$ 10.41	$ 6.00	$ 1.0701	$ 6.91	$ 1.0701	$ 6.0000	$ 1.0701
Sep	3.64%	1.96%	$ 7.70	$ 1.0296	$ 9.92	$ 10.22	$ 6.62	$ 1.0099	$ 6.93	$ 1.0099	$ 6.6200	$ 1.0099
Oct	3.66%	2.02%	$ 7.94	$ 1.0626	$ 10.72	$ 10.50	$ 7.22	$ 1.0726	$ 6.99	$ 1.0726	$ 6.9900	$ 1.0726
Nov	3.70%	2.06%	$ 7.60	$ 1.0884	$ 9.84	$ 10.58	$ 6.23	$ 1.0923	$ 7.00	$ 1.0923	$ 6.2300	$ 1.0923
Dec	3.70%	2.11%	$ 7.20	$ 1.1767	$ 9.74	$ 10.49	$ 5.77	$ 1.1922	$ 6.55	$ 1.1922	$ 5.7700	$ 1.1922
Jan-03	3.63%	1.94%	$ 7.05	$ 1.1891	$ 9.78	$ 10.07	$ 5.83	$ 1.1856	$ 6.13	$ 1.1856	$ 5.8300	$ 1.1856
Feb	3.58%	1.95%	$ 6.83	$ 1.1551	$ 9.66	$ 9.81	$ 5.89	$ 1.1373	$ 6.04	$ 1.1373	$ 5.8900	$ 1.1373
Mar	3.58%	1.96%	$ 6.49	$ 1.1493	$ 9.11	$ 9.79	$ 5.28	$ 1.1459	$ 5.99	$ 1.1459	$ 5.2800	$ 1.1459
Apr	3.57%	1.98%	$ 6.54	$ 1.1508	$ 9.41	$ 9.73	$ 5.58	$ 1.1503	$ 5.91	$ 1.1503	$ 5.5800	$ 1.1503
May	3.54%	2.00%	$ 6.64	$ 1.1561	$ 9.71	$ 9.74	$ 5.89	$ 1.1512	$ 5.92	$ 1.1512	$ 5.8900	$ 1.1512
Jun	3.54%	2.04%	$ 6.63	$ 1.1622	$ 9.75	$ 9.76	$ 5.91	$ 1.1576	$ 5.92	$ 1.1576	$ 5.9100	$ 1.1576
Jul	3.56%	2.10%	$ 7.59	$ 1.2026	$ 11.78	$ 9.95	$ 7.83	$ 1.2055	$ 5.94	$ 1.2055	$ 5.9400	$ 1.2055
Aug	3.54%	2.01%	$ 8.89	$ 1.2448	$ 13.80	$ 10.14	$ 9.76	$ 1.2514	$ 5.97	$ 1.2514	$ 5.9700	$ 1.2514
Sep	3.57%	2.01%	$ 9.98	$ 1.2431	$ 14.30	$ 10.05	$ 10.39	$ 1.2218	$ 5.98	$ 1.2218	$ 5.9800	$ 1.2218
Oct												
Nov												
Dec												

80% Class I Use
20% Class IV Use
10,000,000 Producer Milk

	Pounds Skim Milk	Pounds B'fat	Supply To Class I	Pounds Cl Skim	Pounds Cl B'fat	Pounds ClV Skim	Pounds ClV B'fat	Value Cl Skim	Value Cl B'Fat	Value Lowest Skim	Value Lowest B'fat	Gross Value @ Test	PH Blend @ Test	Uniform Price @ Test	Difference Per Cwt		
Jan-00	9,628,000	372,000	8,000,000	7,844,000	156,000	1,784,000	216,000	$ 644,777	147,935	$ 125,237	$ 202,306	$ 1,120,254	$ 11.20	$ 11.44	$ (0.24)		
Feb	9,635,000	365,000	8,000,000	7,845,600	154,400	1,789,400	210,600	$ 629,217	148,008	$ 114,701	$ 201,923	$ 1,093,849	$ 10.94	$ 11.30	$ (0.36)		
Mar	9,637,000	363,000	8,000,000	7,844,800	155,200	1,792,200	207,800	$ 627,584	157,637	$ 110,937	$ 211,769	$ 1,107,927	$ 11.08	$ 11.40	$ (0.32)		
Apr	9,646,000	354,000	8,000,000	7,848,000	152,000	1,798,000	202,000	$ 611,359	170,194	$ 101,227	$ 229,310	$ 1,112,091	$ 11.12	$ 11.50	$ (0.38)		
May	9,649,000	351,000	8,000,000	7,846,400	153,600	1,802,600	197,400	$ 597,111	195,057	$ 91,031	$ 253,738	$ 1,136,937	$ 11.37	$ 11.75	$ (0.38)		
Jun	9,645,000	355,000	8,000,000	7,844,000	156,000	1,801,000	199,000	$ 589,084	216,216	$ 84,287	$ 281,147	$ 1,170,734	$ 11.71	$ 11.97	$ (0.26)		
Jul	9,643,000	357,000	8,000,000	7,839,200	160,800	1,803,800	196,200	$ 631,056	209,169	$ 116,165	$ 248,997	$ 1,205,386	$ 12.05	$ 12.14	$ (0.09)		
Aug	9,644,000	356,000	8,000,000	7,844,000	156,000	1,800,000	200,000	$ 628,304	199,103	$ 106,380	$ 253,180	$ 1,186,967	$ 11.87	$ 12.04	$ (0.17)		
Sep	9,644,000	356,000	8,000,000	7,845,600	154,400	1,798,400	201,600	$ 639,416	196,675	$ 117,615	$ 256,173	$ 1,209,880	$ 12.10	$ 12.37	$ (0.27)		
Oct	9,633,000	367,000	8,000,000	7,842,400	157,600	1,790,600	209,400	$ 617,981	197,347	$ 105,108	$ 260,577	$ 1,181,013	$ 11.81	$ 12.16	$ (0.35)		
Nov	9,618,000	382,000	8,000,000	7,834,400	165,600	1,783,600	216,400	$ 531,172	250,636	$ 56,540	$ 340,722	$ 1,179,070	$ 11.79	$ 12.28	$ (0.49)		
Dec	9,627,000	373,000	8,000,000	7,831,200	168,800	1,795,800	204,200	$ 552,100	269,928	$ 66,624	$ 337,624	$ 1,226,276	$ 12.26	$ 12.78	$ (0.52)	$ (0.32)	$ (0.027)
Jan-01	9,629,000	371,000	8,000,000	7,844,800	155,200	1,784,200	215,800	$ 611,894	214,580	$ 101,343	$ 278,296	$ 1,206,112	$ 12.06	$ 12.69	$ (0.63)		
Feb	9,635,000	365,000	8,000,000	7,844,800	155,200	1,790,200	209,800	$ 607,972	221,781	$ 95,597	$ 306,853	$ 1,232,203	$ 12.32	$ 12.76	$ (0.44)		
Mar	9,640,000	360,000	8,000,000	7,839,200	160,800	1,800,800	199,200	$ 613,809	264,580	$ 103,186	$ 335,054	$ 1,316,630	$ 13.17	$ 13.70	$ (0.53)		
Apr	9,645,000	355,000	8,000,000	7,843,200	156,800	1,801,800	198,200	$ 600,789	299,268	$ 97,838	$ 386,153	$ 1,384,048	$ 13.84	$ 14.43	$ (0.59)		
May	9,646,000	354,000	8,000,000	7,844,000	156,000	1,802,000	198,000	$ 634,580	325,619	$ 119,833	$ 419,582	$ 1,499,613	$ 15.00	$ 15.32	$ (0.32)		
Jun	9,646,000	354,000	8,000,000	7,838,400	161,600	1,807,600	192,400	$ 665,480	354,890	$ 136,474	$ 424,992	$ 1,581,836	$ 15.82	$ 15.90	$ (0.08)		
Jul	9,646,000	354,000	8,000,000	7,840,000	160,000	1,806,000	194,000	$ 681,296	351,536	$ 133,825	$ 424,530	$ 1,591,187	$ 15.91	$ 15.90	$ 0.01		
Aug	9,643,000	357,000	8,000,000	7,840,000	160,000	1,803,000	197,000	$ 681,296	366,064	$ 131,078	$ 452,627	$ 1,631,065	$ 16.31	$ 16.17	$ 0.14		
Sep	9,639,000	361,000	8,000,000	7,844,000	156,000	1,795,000	205,000	$ 671,446	376,303	$ 130,856	$ 501,205	$ 1,679,810	$ 16.80	$ 16.75	$ 0.05		
Oct	9,637,000	363,000	8,000,000	7,844,000	156,000	1,793,000	207,000	$ 702,038	283,889	$ 129,813	$ 342,088	$ 1,457,828	$ 14.58	$ 15.04	$ (0.46)		
Nov	9,632,000	368,000	8,000,000	7,833,600	166,400	1,798,400	201,600	$ 678,390	255,640	$ 116,177	$ 292,320	$ 1,342,527	$ 13.43	$ 13.86	$ (0.43)		
Dec	9,621,000	379,000	8,000,000	7,831,200	168,800	1,789,800	210,200	$ 621,797	243,325	$ 125,644	$ 301,048	$ 1,291,815	$ 12.92	$ 12.98	$ (0.06)	$ (0.28)	$ (0.024)
Jan-02	9,627,000	373,000	8,000,000	7,845,600	154,400	1,781,400	218,600	$ 622,156	227,616	$ 123,273	$ 324,534	$ 1,297,579	$ 12.98	$ 13.14	$ (0.16)		
Feb	9,634,000	366,000	8,000,000	7,846,400	153,600	1,787,600	212,400	$ 613,588	215,501	$ 124,238	$ 293,473	$ 1,246,801	$ 12.47	$ 12.67	$ (0.20)		
Mar	9,641,000	359,000	8,000,000	7,841,600	158,400	1,799,400	200,600	$ 578,710	216,739	$ 109,583	$ 273,578	$ 1,178,611	$ 11.79	$ 12.03	$ (0.24)		
Apr	9,644,000	356,000	8,000,000	7,843,200	156,800	1,800,800	199,200	$ 586,671	204,953	$ 118,313	$ 256,769	$ 1,166,706	$ 11.67	$ 11.86	$ (0.19)		
May	9,644,000	356,000	8,000,000	7,840,800	159,200	1,803,200	196,800	$ 599,037	187,967	$ 122,798	$ 225,001	$ 1,134,804	$ 11.35	$ 11.57	$ (0.22)		
Jun	9,641,000	359,000	8,000,000	7,834,400	165,600	1,806,600	193,400	$ 589,147	187,559	$ 115,442	$ 216,821	$ 1,108,968	$ 11.09	$ 11.31	$ (0.22)		
Jul	9,641,000	359,000	8,000,000	7,833,600	166,400	1,807,400	192,600	$ 567,153	184,454	$ 103,022	$ 210,493	$ 1,065,121	$ 10.65	$ 10.96	$ (0.31)		
Aug	9,641,000	359,000	8,000,000	7,843,200	156,800	1,797,800	202,200	$ 589,024	169,783	$ 107,868	$ 216,374	$ 1,083,050	$ 10.83	$ 11.13	$ (0.30)		
Sep	9,636,000	364,000	8,000,000	7,843,200	156,800	1,792,800	207,200	$ 603,926	161,441	$ 118,683	$ 209,251	$ 1,093,302	$ 10.93	$ 11.17	$ (0.24)		
Oct	9,634,000	366,000	8,000,000	7,838,400	161,600	1,795,600	204,400	$ 622,369	171,716	$ 125,512	$ 219,239	$ 1,138,837	$ 11.39	$ 11.54	$ (0.15)		
Nov	9,630,000	370,000	8,000,000	7,835,200	164,800	1,794,800	205,200	$ 595,475	179,368	$ 111,816	$ 224,140	$ 1,110,800	$ 11.11	$ 11.34	$ (0.23)		
Dec	9,630,000	370,000	8,000,000	7,831,200	168,800	1,798,800	201,200	$ 563,846	198,627	$ 103,791	$ 239,871	$ 1,106,135	$ 11.06	$ 11.28	$ (0.22)	$ (0.22)	$ (0.019)
Jan-03	9,637,000	363,000	8,000,000	7,844,800	155,200	1,792,200	207,800	$ 553,058	184,548	$ 104,485	$ 246,368	$ 1,088,460	$ 10.88	$ 11.11	$ (0.23)		
Feb	9,642,000	358,000	8,000,000	7,844,000	156,000	1,796,000	202,000	$ 535,745	180,196	$ 105,902	$ 229,735	$ 1,051,578	$ 10.52	$ 10.72	$ (0.20)		
Mar	9,642,000	358,000	8,000,000	7,843,200	156,800	1,798,800	201,200	$ 509,024	180,210	$ 94,977	$ 230,555	$ 1,014,766	$ 10.15	$ 10.38	$ (0.23)		
Apr	9,643,000	357,000	8,000,000	7,841,600	158,400	1,801,400	198,600	$ 512,841	182,287	$ 100,518	$ 228,450	$ 1,024,095	$ 10.24	$ 10.42	$ (0.18)		
May	9,646,000	354,000	8,000,000	7,840,000	160,000	1,806,000	194,000	$ 520,576	184,976	$ 106,373	$ 223,333	$ 1,035,258	$ 10.35	$ 10.50	$ (0.15)		
Jun	9,646,000	354,000	8,000,000	7,836,800	163,200	1,809,200	190,800	$ 519,580	189,671	$ 106,924	$ 220,870	$ 1,037,045	$ 10.37	$ 10.51	$ (0.14)		
Jul	9,644,000	356,000	8,000,000	7,832,000	168,000	1,812,000	188,000	$ 594,449	202,037	$ 107,633	$ 226,634	$ 1,130,752	$ 11.31	$ 11.60	$ (0.29)		
Aug	9,646,000	354,000	8,000,000	7,839,200	160,800	1,806,800	193,200	$ 696,905	200,164	$ 107,866	$ 241,770	$ 1,246,705	$ 12.47	$ 12.99	$ (0.52)		
Sep	9,643,000	357,000	8,000,000	7,839,200	160,800	1,803,800	196,200	$ 782,352	199,890	$ 107,867	$ 239,717	$ 1,329,827	$ 13.30	$ 14.06	$ (0.76)		
Oct																	
Nov																	
Dec																$ (0.30)	$ (0.026)

Exhibit 1 Table C3

Estimate of the Impact of Balancing Surplus Milk for an Producer Handler with 90% Class I Utilization Order 124

	B'fat Producer Mlk	B'fat Class I	Uniform Skim Price	Uniform B'fat Price	Class III Price	Class IV Price	Class III Protein	Class III Other S	Class III Skim Price	Class III B'Fat Price	CIV NF Solids	CIV Skim Price	CIV B'fat Price	Lower	Lower
Jan-00	3.71%	1.75%	$ 8.22	$ 0.9470	$ 10.05	$ 10.73	$ 2.1677	$ 0.0503	$ 7.02	$ 0.9366	$ 0.8574	$ 7.72	$ 0.9366	$ 7.0200	$ 0.9366
Feb	3.70%	1.71%	$ 8.05	$ 0.9585	$ 9.54	$ 10.80	$ 1.9849	$ 0.0432	$ 6.41	$ 0.9588	$ 0.8565	$ 7.71	$ 0.9588	$ 6.4100	$ 0.9588
Mar	3.68%	1.74%	$ 7.96	$ 1.0159	$ 9.54	$ 11.00	$ 1.9166	$ 0.0424	$ 6.19	$ 1.0191	$ 0.8553	$ 7.70	$ 1.0191	$ 6.1900	$ 1.0191
Apr	3.64%	1.71%	$ 7.70	$ 1.1211	$ 9.41	$ 11.38	$ 1.7399	$ 0.0408	$ 5.63	$ 1.1352	$ 0.8537	$ 7.68	$ 1.1352	$ 5.6300	$ 1.1352
May	3.58%	1.71%	$ 7.48	$ 1.2676	$ 9.37	$ 11.91	$ 1.5514	$ 0.0403	$ 5.05	$ 1.2854	$ 0.8530	$ 7.68	$ 1.2854	$ 5.0500	$ 1.2854
Jun	3.57%	1.80%	$ 7.29	$ 1.3835	$ 9.46	$ 12.38	$ 1.4278	$ 0.0438	$ 4.68	$ 1.4128	$ 0.8556	$ 7.70	$ 1.4128	$ 4.6800	$ 1.4128
Jul	3.55%	1.81%	$ 7.82	$ 1.2952	$ 10.66	$ 11.87	$ 1.9726	$ 0.0557	$ 6.44	$ 1.2691	$ 0.8561	$ 7.70	$ 1.2691	$ 6.4400	$ 1.2691
Aug	3.57%	1.82%	$ 7.77	$ 1.2736	$ 10.13	$ 11.87	$ 1.7952	$ 0.0577	$ 5.91	$ 1.2659	$ 0.8567	$ 7.71	$ 1.2659	$ 5.9100	$ 1.2659
Sep	3.62%	1.76%	$ 8.06	$ 1.2728	$ 10.76	$ 11.94	$ 2.0137	$ 0.0502	$ 6.54	$ 1.2707	$ 0.8624	$ 7.76	$ 1.2707	$ 6.5400	$ 1.2707
Oct	3.68%	1.84%	$ 7.88	$ 1.2501	$ 10.02	$ 11.81	$ 1.8028	$ 0.0471	$ 5.87	$ 1.2444	$ 0.8585	$ 7.73	$ 1.2444	$ 5.8700	$ 1.2444
Nov	3.73%	1.91%	$ 6.87	$ 1.5196	$ 8.57	$ 13.00	$ 0.9149	$ 0.0565	$ 3.17	$ 1.5746	$ 0.8617	$ 7.76	$ 1.5745	$ 3.1700	$ 1.5745
Dec	3.76%	1.96%	$ 7.03	$ 1.6012	$ 9.37	$ 13.27	$ 1.0378	$ 0.0829	$ 3.71	$ 1.6534	$ 0.8616	$ 7.75	$ 1.6534	$ 3.7100	$ 1.6534
Jan-01	3.72%	1.73%	$ 7.88	$ 1.3710	$ 9.99	$ 12.13	$ 1.6181	$ 0.1120	$ 5.68	$ 0.9366	$ 0.8765	$ 7.89	$ 1.2896	$ 5.6800	$ 1.2896
Feb	3.72%	1.71%	$ 7.71	$ 1.4332	$ 10.27	$ 12.70	$ 1.4951	$ 0.1199	$ 5.34	$ 0.9588	$ 0.8737	$ 7.86	$ 1.4626	$ 5.3400	$ 1.4626
Mar	3.68%	1.75%	$ 7.93	$ 1.6490	$ 11.42	$ 13.46	$ 1.6498	$ 0.1039	$ 5.73	$ 1.0191	$ 0.8727	$ 7.85	$ 1.6820	$ 5.7300	$ 1.6820
Apr	3.66%	1.71%	$ 7.71	$ 1.9107	$ 12.06	$ 14.41	$ 1.5443	$ 0.1081	$ 5.43	$ 1.1352	$ 0.8745	$ 7.87	$ 1.9483	$ 5.4300	$ 1.9483
May	3.58%	1.75%	$ 8.10	$ 2.0916	$ 13.83	$ 15.04	$ 1.9108	$ 0.1229	$ 6.65	$ 1.2854	$ 0.8780	$ 7.90	$ 2.1191	$ 6.6500	$ 2.1191
Jun	3.55%	1.80%	$ 8.39	$ 2.1986	$ 15.02	$ 15.33	$ 2.1670	$ 0.1409	$ 7.55	$ 1.4128	$ 0.8748	$ 7.87	$ 2.2089	$ 7.5500	$ 2.2089
Jul	3.56%	1.80%	$ 8.38	$ 2.1951	$ 15.46	$ 14.81	$ 2.3175	$ 0.1510	$ 8.08	$ 1.2691	$ 0.8234	$ 7.41	$ 2.1883	$ 7.4100	$ 2.1883
Aug	3.58%	1.79%	$ 8.27	$ 2.2908	$ 15.55	$ 15.06	$ 2.2188	$ 0.1535	$ 7.78	$ 1.2659	$ 0.8073	$ 7.27	$ 2.2976	$ 7.2700	$ 2.2976
Sep	3.62%	1.78%	$ 8.30	$ 2.4215	$ 15.90	$ 15.59	$ 2.1647	$ 0.1520	$ 7.61	$ 1.2707	$ 0.8097	$ 7.29	$ 2.4449	$ 7.2900	$ 2.4449
Oct	3.70%	1.83%	$ 8.70	$ 1.7994	$ 14.60	$ 12.77	$ 2.6664	$ 0.1482	$ 9.14	$ 1.2444	$ 0.8041	$ 7.24	$ 1.6526	$ 7.2400	$ 1.6526
Nov	3.74%	1.88%	$ 8.50	$ 1.5165	$ 11.31	$ 11.97	$ 1.8045	$ 0.1470	$ 6.46	$ 1.5745	$ 0.7949	$ 7.15	$ 1.4500	$ 6.4600	$ 1.4500
Dec	3.78%	1.91%	$ 7.85	$ 1.4390	$ 11.80	$ 11.79	$ 1.9782	$ 0.1517	$ 7.03	$ 1.6534	$ 0.7799	$ 7.02	$ 1.4322	$ 7.0200	$ 1.4322
Jan-02	3.72%	1.72%	$ 7.82	$ 1.4757	$ 11.87	$ 11.93	$ 1.9660	$ 0.1392	$ 6.92	$ 1.4846	$ 0.7761	$ 6.98	$ 1.4846	$ 6.9200	$ 1.4846
Feb	3.69%	1.79%	$ 7.66	$ 1.3991	$ 11.63	$ 11.54	$ 2.0884	$ 0.0965	$ 7.04	$ 1.3817	$ 0.7721	$ 6.95	$ 1.3817	$ 6.9500	$ 1.3817
Mar	3.72%	1.76%	$ 7.35	$ 1.3670	$ 10.65	$ 11.42	$ 1.8342	$ 0.0688	$ 6.09	$ 1.3638	$ 0.7660	$ 6.89	$ 1.3638	$ 6.0900	$ 1.3638
Apr	3.67%	1.76%	$ 7.44	$ 1.3032	$ 10.85	$ 11.09	$ 2.0109	$ 0.0566	$ 6.57	$ 1.2890	$ 0.7575	$ 6.82	$ 1.2890	$ 6.5700	$ 1.2890
May	3.61%	1.75%	$ 7.57	$ 1.1716	$ 10.82	$ 10.57	$ 2.2097	$ 0.0371	$ 7.07	$ 1.1433	$ 0.7572	$ 6.81	$ 1.1433	$ 6.8100	$ 1.1433
Jun	3.58%	1.80%	$ 7.28	$ 1.1285	$ 10.09	$ 10.52	$ 2.0148	$ 0.0247	$ 6.39	$ 1.1211	$ 0.7605	$ 6.84	$ 1.1211	$ 6.3900	$ 1.1211
Jul	3.57%	1.82%	$ 7.01	$ 1.1032	$ 9.33	$ 10.45	$ 1.8095	$ 0.0150	$ 5.70	$ 1.0929	$ 0.7633	$ 6.87	$ 1.0929	$ 5.7000	$ 1.0929
Aug	3.60%	1.84%	$ 7.18	$ 1.0781	$ 9.54	$ 10.41	$ 1.9021	$ 0.0177	$ 6.00	$ 1.0701	$ 0.7674	$ 6.91	$ 1.0701	$ 6.0000	$ 1.0701
Sep	3.66%	1.79%	$ 7.49	$ 1.0228	$ 9.92	$ 10.22	$ 2.0646	$ 0.0367	$ 6.62	$ 1.0099	$ 0.7696	$ 6.93	$ 1.0099	$ 6.6200	$ 1.0099
Oct	3.75%	1.82%	$ 7.80	$ 1.0651	$ 10.72	$ 10.50	$ 2.1839	$ 0.0755	$ 7.22	$ 1.0726	$ 0.7765	$ 6.99	$ 1.0726	$ 6.9900	$ 1.0726
Nov	3.77%	1.92%	$ 7.55	$ 1.0887	$ 9.84	$ 10.58	$ 1.8469	$ 0.0850	$ 6.23	$ 1.0923	$ 0.7777	$ 7.00	$ 1.0923	$ 6.2300	$ 1.0923
Dec	3.74%	1.93%	$ 7.11	$ 1.1799	$ 9.74	$ 10.49	$ 1.7506	$ 0.0584	$ 5.77	$ 1.1922	$ 0.7282	$ 6.55	$ 1.1922	$ 5.7700	$ 1.1922
Jan-03	3.71%	1.75%	$ 6.93	$ 1.1883	$ 9.78	$ 10.07	$ 1.8164	$ 0.0339	$ 5.83	$ 1.1856	$ 0.6807	$ 6.13	$ 1.1856	$ 5.8300	$ 1.1856
Feb	3.69%	1.75%	$ 6.72	$ 1.1513	$ 9.66	$ 9.81	$ 1.8538	$ 0.0240	$ 5.89	$ 1.1373	$ 0.6711	$ 6.04	$ 1.1373	$ 5.8900	$ 1.1373
Mar	3.68%	1.76%	$ 6.41	$ 1.1482	$ 9.11	$ 9.79	$ 1.6648	$ 0.0206	$ 5.28	$ 1.1459	$ 0.6651	$ 5.99	$ 1.1459	$ 5.2800	$ 1.1459
Apr	3.65%	1.81%	$ 6.46	$ 1.1503	$ 9.41	$ 9.73	$ 1.8006	$ (0.0008)	$ 5.58	$ 1.1503	$ 0.6564	$ 5.91	$ 1.1503	$ 5.5800	$ 1.1503
May	3.62%	1.78%	$ 6.58	$ 1.1542	$ 9.71	$ 9.74	$ 1.9275	$ (0.0144)	$ 5.89	$ 1.1512	$ 0.6574	$ 5.92	$ 1.1512	$ 5.8900	$ 1.1512
Jun	3.57%	1.84%	$ 6.52	$ 1.1603	$ 9.75	$ 9.76	$ 1.9434	$ (0.0200)	$ 5.91	$ 1.1576	$ 0.6574	$ 5.92	$ 1.1576	$ 5.9100	$ 1.1576
Jul	3.54%	1.81%	$ 6.87	$ 1.2016	$ 11.78	$ 9.95	$ 2.5480	$ (0.0124)	$ 7.83	$ 1.2055	$ 0.6605	$ 5.94	$ 1.2055	$ 5.9400	$ 1.2055
Aug			$ 7.53	$ 1.2431											
Sep															
Oct															
Nov															
Dec															

90% Class I Use
10% Class IV Use
10,000,000 Producer Milk

	Pounds Skim Milk	Pounds B'fat	Supply To Class I	Pounds Cl Skim	Pounds Cl B'fat	Pounds CIV Skim	Pounds CIV B'fat	Value Cl Skim	Value Cl B'Fat	Value Lowest Skim	Value Lowest B'fat	Gross Value @ Test	PH Blend @ Test	Uniform Pri @ Test	Difference Per Cwt		
Jan-00	9,629,000	371,000	9,000,000	8,842,500	157,500	786,500	213,500	$ 726,854	149,153	$ 55,212	$ 199,964	$ 1,131,182	$ 11.31	$ 11.44	(0.13)		
Feb	9,630,000	370,000	9,000,000	8,846,100	153,900	783,900	216,100	$ 712,111	147,513	$ 50,248	$ 207,197	$ 1,117,069	$ 11.17	$ 11.30	(0.13)		
Mar	9,632,000	368,000	9,000,000	8,843,400	156,600	788,600	211,400	$ 703,935	159,090	$ 48,814	$ 215,438	$ 1,127,277	$ 11.27	$ 11.40	(0.13)		
Apr	9,636,000	364,000	9,000,000	8,846,100	153,900	789,900	210,100	$ 681,150	172,537	$ 44,471	$ 238,506	$ 1,136,664	$ 11.37	$ 11.50	(0.13)		
May	9,642,000	358,000	9,000,000	8,846,100	153,900	795,900	204,100	$ 661,688	195,084	$ 40,193	$ 262,350	$ 1,159,315	$ 11.59	$ 11.75	(0.16)		
Jun	9,643,000	357,000	9,000,000	8,838,000	162,000	805,000	195,000	$ 644,290	224,127	$ 37,674	$ 275,496	$ 1,181,587	$ 11.82	$ 11.97	(0.15)		
Jul	9,645,000	355,000	9,000,000	8,837,100	162,900	807,900	192,100	$ 691,061	210,988	$ 52,029	$ 243,794	$ 1,197,872	$ 11.98	$ 12.14	(0.16)		
Aug	9,643,000	357,000	9,000,000	8,836,200	163,800	806,800	193,200	$ 686,573	208,616	$ 47,682	$ 244,572	$ 1,187,442	$ 11.87	$ 12.04	(0.17)		
Sep	9,638,000	362,000	9,000,000	8,841,600	158,400	796,400	203,600	$ 712,633	201,612	$ 52,085	$ 258,715	$ 1,225,044	$ 12.25	$ 12.37	(0.12)		
Oct	9,634,000	366,000	9,000,000	8,834,400	165,600	799,600	200,400	$ 696,151	207,017	$ 46,937	$ 249,378	$ 1,199,482	$ 11.99	$ 12.16	(0.17)		
Nov	9,627,000	373,000	9,000,000	8,828,100	171,900	798,900	201,100	$ 606,490	261,219	$ 25,325	$ 316,632	$ 1,209,667	$ 12.10	$ 12.28	(0.18)		
Dec	9,624,000	376,000	9,000,000	8,823,600	176,400	800,400	199,600	$ 620,299	282,452	$ 29,695	$ 330,019	$ 1,262,464	$ 12.62	$ 12.78	(0.16)	(0.15)	(0.013)
Jan-01	9,628,000	372,000	9,000,000	8,844,300	155,700	783,700	216,300	$ 696,931	213,465	$ 44,514	$ 278,940	$ 1,233,850	$ 12.34	$ 12.69	(0.35)		
Feb	9,628,000	372,000	9,000,000	8,846,100	153,900	781,900	218,100	$ 682,034	220,569	$ 41,753	$ 318,993	$ 1,263,350	$ 12.63	$ 12.76	(0.13)		
Mar	9,632,000	368,000	9,000,000	8,842,500	157,500	789,500	210,500	$ 701,210	259,718	$ 45,238	$ 354,061	$ 1,360,227	$ 13.60	$ 13.70	(0.10)		
Apr	9,634,000	366,000	9,000,000	8,846,100	153,900	787,900	212,100	$ 682,034	294,057	$ 42,783	$ 413,234	$ 1,432,108	$ 14.32	$ 14.43	(0.11)		
May	9,641,000	359,000	9,000,000	8,842,500	157,500	798,500	201,500	$ 716,243	329,427	$ 53,100	$ 426,999	$ 1,525,768	$ 15.26	$ 15.32	(0.06)		
Jun	9,645,000	355,000	9,000,000	8,838,000	162,000	807,000	193,000	$ 741,508	356,173	$ 60,929	$ 426,318	$ 1,584,928	$ 15.85	$ 15.90	(0.05)		
Jul	9,644,000	356,000	9,000,000	8,838,000	162,000	806,000	194,000	$ 740,624	355,606	$ 59,725	$ 424,530	$ 1,580,485	$ 15.80	$ 15.90	(0.10)		
Aug	9,642,000	358,000	9,000,000	8,838,900	161,100	803,100	196,900	$ 730,977	369,048	$ 58,385	$ 452,397	$ 1,610,808	$ 16.11	$ 16.17	(0.06)		
Sep	9,638,000	362,000	9,000,000	8,839,800	160,200	798,200	201,800	$ 733,703	387,924	$ 58,189	$ 493,381	$ 1,673,197	$ 16.73	$ 16.75	(0.02)		
Oct	9,630,000	370,000	9,000,000	8,835,300	164,700	794,700	205,300	$ 768,671	296,361	$ 57,536	$ 339,279	$ 1,461,847	$ 14.62	$ 15.04	(0.42)		
Nov	9,626,000	374,000	9,000,000	8,830,800	169,200	795,200	204,800	$ 750,618	256,592	$ 51,370	$ 296,960	$ 1,355,540	$ 13.56	$ 13.86	(0.30)		
Dec	9,622,000	378,000	9,000,000	8,828,100	171,900	793,900	206,100	$ 693,006	247,364	$ 55,732	$ 295,176	$ 1,291,278	$ 12.91	$ 12.98	(0.07)	(0.15)	(0.013)
Jan-02	9,628,000	372,000	9,000,000	8,845,200	154,800	782,800	217,200	$ 691,695	228,438	$ 54,170	$ 322,455	$ 1,296,758	$ 12.97	$ 13.02	(0.05)		
Feb	9,631,000	369,000	9,000,000	8,838,900	161,100	792,100	207,900	$ 677,060	225,395	$ 55,051	$ 287,255	$ 1,244,761	$ 12.45	$ 12.54	(0.09)		
Mar	9,628,000	372,000	9,000,000	8,841,600	158,400	786,400	213,600	$ 649,858	216,533	$ 47,892	$ 291,308	$ 1,205,590	$ 12.06	$ 12.16	(0.10)		
Apr	9,633,000	367,000	9,000,000	8,841,600	158,400	791,400	208,600	$ 657,815	206,427	$ 51,995	$ 268,885	$ 1,185,122	$ 11.85	$ 11.95	(0.10)		
May	9,639,000	361,000	9,000,000	8,842,500	157,500	796,500	203,500	$ 669,377	184,527	$ 54,242	$ 232,662	$ 1,140,807	$ 11.41	$ 11.53	(0.12)		
Jun	9,642,000	358,000	9,000,000	8,838,000	162,000	804,000	196,000	$ 643,406	182,817	$ 51,376	$ 219,736	$ 1,097,335	$ 10.97	$ 11.06	(0.09)		
Jul	9,643,000	357,000	9,000,000	8,836,200	163,800	806,800	193,200	$ 619,418	180,704	$ 45,988	$ 211,148	$ 1,057,258	$ 10.57	$ 10.70	(0.13)		
Aug	9,640,000	360,000	9,000,000	8,834,400	165,600	805,600	194,400	$ 634,310	178,533	$ 48,336	$ 208,027	$ 1,069,207	$ 10.69	$ 10.80	(0.11)		
Sep	9,634,000	366,000	9,000,000	8,838,900	161,100	795,100	204,900	$ 662,034	164,773	$ 52,636	$ 206,929	$ 1,086,371	$ 10.86	$ 10.97	(0.11)		
Oct	9,625,000	375,000	9,000,000	8,836,200	163,800	788,800	211,200	$ 689,224	174,463	$ 55,137	$ 226,533	$ 1,145,357	$ 11.45	$ 11.50	(0.05)		
Nov	9,623,000	377,000	9,000,000	8,827,200	172,800	795,800	204,200	$ 666,454	188,127	$ 49,578	$ 223,048	$ 1,127,207	$ 11.27	$ 11.37	(0.10)		
Dec	9,626,000	374,000	9,000,000	8,826,300	173,700	799,700	200,300	$ 627,550	204,949	$ 46,143	$ 238,798	$ 1,117,439	$ 11.17	$ 11.26	(0.09)	(0.09)	(0.008)
Jan-03	9,629,000	371,000	9,000,000	8,842,500	157,500	786,500	213,500	$ 612,785	187,157	$ 45,853	$ 253,126	$ 1,098,921	$ 10.99	$ 11.08	(0.09)		
Feb	9,631,000	369,000	9,000,000	8,842,500	157,500	788,500	211,500	$ 594,216	181,330	$ 46,443	$ 240,539	$ 1,062,527	$ 10.63	$ 10.71	(0.08)		
Mar	9,632,000	368,000	9,000,000	8,841,600	158,400	790,400	209,600	$ 566,747	181,875	$ 41,733	$ 240,181	$ 1,030,535	$ 10.31	$ 10.40	(0.09)		
Apr	9,635,000	365,000	9,000,000	8,837,100	162,900	797,900	202,100	$ 570,877	187,384	$ 44,523	$ 232,476	$ 1,035,259	$ 10.35	$ 10.42	(0.07)		
May	9,638,000	362,000	9,000,000	8,839,800	160,200	798,200	201,800	$ 581,659	184,903	$ 47,014	$ 232,312	$ 1,045,888	$ 10.46	$ 10.52	(0.06)		
Jun	9,643,000	357,000	9,000,000	8,834,400	165,600	808,600	191,400	$ 576,003	192,146	$ 47,788	$ 221,565	$ 1,037,501	$ 10.38	$ 10.42	(0.04)		
Jul	9,646,000	354,000	9,000,000	8,837,100	162,900	808,900	191,100	$ 607,109	195,741	$ 48,049	$ 230,371	$ 1,081,269	$ 10.81	$ 10.87	(0.06)		
Aug																	
Sep																	
Oct																	
Nov																	
Dec																(0.07)	(0.006)

Exhibit 1 Table C4

Estimate of the Impact of Balancing Surplus Milk for an Producer Handler with 80% Class I Utilization Order 124

	B'fat Producer Mill	B'fat Class I	Uniform Skim Price	Uniform B'fat Price	Class III Price	Class IV Price	Class III Protein	Class III Other S	Class III Skim Price	Class III B'Fat Price	CIV NF Solids	CIV Skim Price	CIV B'fat Price	Lower	Lower
Jan-00	3.71%	1.75%	$ 8.22	$ 0.9470	$ 10.05	$ 10.73	$ 2.1677	$ 0.0503	$ 7.02	$ 0.9366	$ 0.8574	$ 7.72	$ 0.9366	$ 7.0200	$ 0.9366
Feb	3.70%	1.71%	$ 8.05	$ 0.9585	$ 9.54	$ 10.80	$ 1.9849	$ 0.0432	$ 6.41	$ 0.9588	$ 0.8565	$ 7.71	$ 0.9588	$ 6.4100	$ 0.9588
Mar	3.68%	1.74%	$ 7.96	$ 1.0159	$ 9.54	$ 11.00	$ 1.9166	$ 0.0424	$ 6.19	$ 1.0191	$ 0.8553	$ 7.70	$ 1.0191	$ 6.1900	$ 1.0191
Apr	3.64%	1.71%	$ 7.70	$ 1.1211	$ 9.41	$ 11.38	$ 1.7399	$ 0.0408	$ 5.63	$ 1.1352	$ 0.8537	$ 7.68	$ 1.1352	$ 5.6300	$ 1.1352
May	3.58%	1.71%	$ 7.48	$ 1.2676	$ 9.37	$ 11.91	$ 1.5514	$ 0.0403	$ 5.05	$ 1.2854	$ 0.8530	$ 7.68	$ 1.2854	$ 5.0500	$ 1.2854
Jun	3.57%	1.80%	$ 7.29	$ 1.3835	$ 9.46	$ 12.38	$ 1.4278	$ 0.0438	$ 4.68	$ 1.4128	$ 0.8556	$ 7.70	$ 1.4128	$ 4.6800	$ 1.4128
Jul	3.55%	1.81%	$ 7.62	$ 1.2952	$ 10.66	$ 11.87	$ 1.9726	$ 0.0557	$ 6.44	$ 1.2691	$ 0.8561	$ 7.70	$ 1.2691	$ 6.4400	$ 1.2691
Aug	3.57%	1.82%	$ 7.77	$ 1.2736	$ 10.13	$ 11.87	$ 1.7952	$ 0.0577	$ 5.91	$ 1.2659	$ 0.8567	$ 7.71	$ 1.2659	$ 5.9100	$ 1.2659
Sep	3.62%	1.76%	$ 8.06	$ 1.2728	$ 10.76	$ 11.94	$ 2.0137	$ 0.0502	$ 6.54	$ 1.2707	$ 0.8624	$ 7.76	$ 1.2707	$ 6.5400	$ 1.2707
Oct	3.66%	1.84%	$ 7.88	$ 1.2501	$ 10.02	$ 11.81	$ 1.8028	$ 0.0471	$ 5.87	$ 1.2444	$ 0.8585	$ 7.73	$ 1.2444	$ 5.8700	$ 1.2444
Nov	3.73%	1.91%	$ 6.87	$ 1.5196	$ 8.57	$ 13.00	$ 0.9149	$ 0.0565	$ 3.17	$ 1.5746	$ 0.8617	$ 7.76	$ 1.5745	$ 3.1700	$ 1.5745
Dec	3.76%	1.96%	$ 7.03	$ 1.6012	$ 9.37	$ 13.27	$ 1.0378	$ 0.0829	$ 3.71	$ 1.6534	$ 0.8616	$ 7.75	$ 1.6534	$ 3.7100	$ 1.6534
Jan-01	3.72%	1.73%	$ 7.88	$ 1.3710	$ 9.99	$ 12.13	$ 1.6181	$ 0.1120	$ 5.68	$ 0.9366	$ 0.8765	$ 7.89	$ 1.2896	$ 5.6800	$ 1.2896
Feb	3.72%	1.71%	$ 7.71	$ 1.4332	$ 10.27	$ 12.70	$ 1.4951	$ 0.1199	$ 5.34	$ 0.9588	$ 0.8737	$ 7.86	$ 1.4626	$ 5.3400	$ 1.4626
Mar	3.68%	1.75%	$ 7.93	$ 1.6490	$ 11.42	$ 13.46	$ 1.6498	$ 0.1039	$ 5.73	$ 1.0191	$ 0.8727	$ 7.85	$ 1.6820	$ 5.7300	$ 1.6820
Apr	3.66%	1.71%	$ 7.71	$ 1.9107	$ 12.06	$ 14.41	$ 1.5443	$ 0.1081	$ 5.43	$ 1.1352	$ 0.8745	$ 7.87	$ 1.9483	$ 5.4300	$ 1.9483
May	3.59%	1.75%	$ 8.10	$ 2.0916	$ 13.83	$ 15.04	$ 1.9108	$ 0.1229	$ 6.65	$ 1.2854	$ 0.8780	$ 7.90	$ 2.1191	$ 6.6500	$ 2.1191
Jun	3.55%	1.80%	$ 8.39	$ 2.1986	$ 15.02	$ 15.33	$ 2.1670	$ 0.1409	$ 7.55	$ 1.4128	$ 0.8748	$ 7.87	$ 2.2089	$ 7.5500	$ 2.2089
Jul	3.56%	1.80%	$ 8.38	$ 2.1951	$ 15.46	$ 14.81	$ 2.3175	$ 0.1510	$ 8.08	$ 1.2691	$ 0.8234	$ 7.41	$ 2.1883	$ 7.4100	$ 2.1883
Aug	3.58%	1.79%	$ 8.27	$ 2.2908	$ 15.55	$ 15.06	$ 2.2188	$ 0.1535	$ 7.78	$ 1.2659	$ 0.8073	$ 7.27	$ 2.2976	$ 7.2700	$ 2.2976
Sep	3.62%	1.78%	$ 8.30	$ 2.4215	$ 15.90	$ 15.59	$ 2.1647	$ 0.1520	$ 7.61	$ 1.2707	$ 0.8097	$ 7.29	$ 2.4449	$ 7.2900	$ 2.4449
Oct	3.70%	1.83%	$ 8.70	$ 1.7994	$ 14.60	$ 12.77	$ 2.6664	$ 0.1482	$ 9.14	$ 1.2444	$ 0.8041	$ 7.24	$ 1.6526	$ 7.2400	$ 1.6526
Nov	3.74%	1.88%	$ 8.50	$ 1.5165	$ 11.31	$ 11.97	$ 1.8045	$ 0.1470	$ 6.46	$ 1.5745	$ 0.7949	$ 7.15	$ 1.4500	$ 6.4600	$ 1.4500
Dec	3.78%	1.91%	$ 7.85	$ 1.4390	$ 11.80	$ 11.79	$ 1.9782	$ 0.1517	$ 7.03	$ 1.6534	$ 0.7799	$ 7.02	$ 1.4322	$ 7.0200	$ 1.4322
Jan-02	3.72%	1.72%	$ 7.82	$ 1.4757	$ 11.87	$ 11.93	$ 1.9660	$ 0.1392	$ 6.92	$ 1.4846	$ 0.7761	$ 6.98	$ 1.4846	$ 6.9200	$ 1.4846
Feb	3.69%	1.79%	$ 7.66	$ 1.3991	$ 11.63	$ 11.54	$ 2.0884	$ 0.0965	$ 7.04	$ 1.3817	$ 0.7721	$ 6.95	$ 1.3817	$ 6.9500	$ 1.3817
Mar	3.72%	1.76%	$ 7.35	$ 1.3670	$ 10.65	$ 11.42	$ 1.8342	$ 0.0688	$ 6.09	$ 1.3638	$ 0.7660	$ 6.89	$ 1.3638	$ 6.0900	$ 1.3638
Apr	3.67%	1.76%	$ 7.44	$ 1.3032	$ 10.85	$ 11.09	$ 2.0109	$ 0.0566	$ 6.57	$ 1.2890	$ 0.7575	$ 6.82	$ 1.2890	$ 6.5700	$ 1.2890
May	3.61%	1.75%	$ 7.57	$ 1.1716	$ 10.82	$ 10.57	$ 2.2097	$ 0.0371	$ 7.07	$ 1.1433	$ 0.7572	$ 6.81	$ 1.1433	$ 6.8100	$ 1.1433
Jun	3.58%	1.80%	$ 7.28	$ 1.1285	$ 10.09	$ 10.52	$ 2.0148	$ 0.0247	$ 6.39	$ 1.1211	$ 0.7605	$ 6.84	$ 1.1211	$ 6.3900	$ 1.1211
Jul	3.57%	1.82%	$ 7.01	$ 1.1032	$ 9.33	$ 10.45	$ 1.8095	$ 0.0150	$ 5.70	$ 1.0929	$ 0.7633	$ 6.87	$ 1.0929	$ 5.7000	$ 1.0929
Aug	3.60%	1.84%	$ 7.18	$ 1.0781	$ 9.54	$ 10.41	$ 1.9021	$ 0.0177	$ 6.00	$ 1.0701	$ 0.7674	$ 6.91	$ 1.0701	$ 6.0000	$ 1.0701
Sep	3.66%	1.79%	$ 7.49	$ 1.0228	$ 9.92	$ 10.22	$ 2.0646	$ 0.0367	$ 6.62	$ 1.0099	$ 0.7696	$ 6.93	$ 1.0099	$ 6.6200	$ 1.0099
Oct	3.75%	1.82%	$ 7.80	$ 1.0651	$ 10.72	$ 10.50	$ 2.1839	$ 0.0755	$ 7.22	$ 1.0726	$ 0.7765	$ 6.99	$ 1.0726	$ 6.9900	$ 1.0726
Nov	3.77%	1.92%	$ 7.55	$ 1.0887	$ 9.84	$ 10.58	$ 1.8469	$ 0.0850	$ 6.23	$ 1.0923	$ 0.7777	$ 7.00	$ 1.0923	$ 6.2300	$ 1.0923
Dec	3.74%	1.93%	$ 7.11	$ 1.1799	$ 9.74	$ 10.49	$ 1.7506	$ 0.0584	$ 5.77	$ 1.1922	$ 0.7282	$ 6.55	$ 1.1922	$ 5.7700	$ 1.1922
Jan-03	3.71%	1.75%	$ 6.93	$ 1.1883	$ 9.78	$ 10.07	$ 1.8164	$ 0.0339	$ 5.83	$ 1.1856	$ 0.6807	$ 6.13	$ 1.1856	$ 5.8300	$ 1.1856
Feb	3.69%	1.75%	$ 6.72	$ 1.1513	$ 9.66	$ 9.81	$ 1.8538	$ 0.0240	$ 5.89	$ 1.1373	$ 0.6711	$ 6.04	$ 1.1373	$ 5.8900	$ 1.1373
Mar	3.68%	1.76%	$ 6.41	$ 1.1482	$ 9.11	$ 9.79	$ 1.6648	$ 0.0206	$ 5.28	$ 1.1459	$ 0.6651	$ 5.99	$ 1.1459	$ 5.2800	$ 1.1459
Apr	3.65%	1.81%	$ 6.46	$ 1.1503	$ 9.41	$ 9.73	$ 1.8006	$ (0.0008)	$ 5.58	$ 1.1503	$ 0.6564	$ 5.91	$ 1.1503	$ 5.5800	$ 1.1503
May	3.62%	1.78%	$ 6.58	$ 1.1542	$ 9.71	$ 9.74	$ 1.9275	$ (0.0144)	$ 5.89	$ 1.1512	$ 0.6574	$ 5.92	$ 1.1512	$ 5.8900	$ 1.1512
Jun	3.57%	1.84%	$ 6.52	$ 1.1603	$ 9.75	$ 9.76	$ 1.9434	$ (0.0200)	$ 5.91	$ 1.1576	$ 0.6574	$ 5.92	$ 1.1576	$ 5.9100	$ 1.1576
Jul	3.54%	1.81%	$ 6.87	$ 1.2016	$ 11.78	$ 9.95	$ 2.5480	$ (0.0124)	$ 7.83	$ 1.2055	$ 0.6605	$ 5.94	$ 1.2055	$ 5.9400	$ 1.2055
Aug			$ 7.53	$ 1.2431											
Sep															
Oct															
Nov															
Dec															

80% Class I Use
20% Class IV Use
10,000,000 Producer Milk

	Pounds Skim Milk	Pounds B'fat	Supply To Class I	Pounds Cl Skim	Pounds Cl B'fat	Pounds ClV Skim	Pounds ClV B'fat	Value Cl Skim	Value Cl B'Fat	Value Lowest Skim	Value Lowest B'fat	Gross Value @ Test	PH Blend @ Test	Uniform Price Difference @ Test	Uniform Price Difference Per Cwt		
Jan-00	9,629,000	371,000	8,000,000	7,860,000	140,000	1,769,000	231,000	$ 646,092	132,580	$ 124,184	$ 216,355	$ 1,119,210	$ 11.19	$ 11.44	(0.25)		
Feb	9,630,000	370,000	8,000,000	7,863,200	136,800	1,766,800	233,200	$ 632,988	131,123	$ 113,252	$ 223,592	$ 1,100,954	$ 11.01	$ 11.30	(0.29)		
Mar	9,632,000	368,000	8,000,000	7,860,800	139,200	1,771,200	228,800	$ 625,720	141,413	$ 109,637	$ 233,170	$ 1,109,940	$ 11.10	$ 11.40	(0.30)		
Apr	9,636,000	364,000	8,000,000	7,863,200	136,800	1,772,800	227,200	$ 605,466	153,366	$ 99,809	$ 257,917	$ 1,116,559	$ 11.17	$ 11.50	(0.33)		
May	9,642,000	358,000	8,000,000	7,863,200	136,800	1,778,800	221,200	$ 588,167	173,408	$ 89,829	$ 284,330	$ 1,135,735	$ 11.36	$ 11.75	(0.39)		
Jun	9,643,000	357,000	8,000,000	7,856,000	144,000	1,787,000	213,000	$ 572,702	199,224	$ 83,632	$ 300,926	$ 1,156,484	$ 11.56	$ 11.97	(0.41)		
Jul	9,645,000	355,000	8,000,000	7,855,200	144,800	1,789,800	210,200	$ 614,277	187,545	$ 115,263	$ 266,765	$ 1,183,850	$ 11.84	$ 12.14	(0.30)		
Aug	9,643,000	357,000	8,000,000	7,854,400	145,600	1,788,600	211,400	$ 610,287	185,436	$ 105,706	$ 267,611	$ 1,169,041	$ 11.69	$ 12.04	(0.35)		
Sep	9,638,000	362,000	8,000,000	7,859,200	140,800	1,778,800	221,200	$ 633,452	179,210	$ 116,334	$ 281,079	$ 1,210,074	$ 12.10	$ 12.37	(0.27)		
Oct	9,634,000	366,000	8,000,000	7,852,800	147,200	1,781,200	218,800	$ 618,801	184,015	$ 104,556	$ 272,275	$ 1,179,647	$ 11.80	$ 12.16	(0.36)		
Nov	9,627,000	373,000	8,000,000	7,847,200	152,800	1,779,800	220,200	$ 539,103	232,195	$ 56,420	$ 346,705	$ 1,174,422	$ 11.74	$ 12.28	(0.54)		
Dec	9,624,000	376,000	8,000,000	7,843,200	156,800	1,780,800	219,200	$ 551,377	251,068	$ 66,068	$ 362,425	$ 1,230,938	$ 12.31	$ 12.78	(0.47)	####	#####
Jan-01	9,628,000	372,000	8,000,000	7,861,600	138,400	1,766,400	233,600	$ 619,494	189,746	$ 100,332	$ 301,251	$ 1,210,823	$ 12.11	$ 12.69	(0.58)		
Feb	9,628,000	372,000	8,000,000	7,863,200	136,800	1,764,800	235,200	$ 606,253	196,062	$ 94,240	$ 344,004	$ 1,240,558	$ 12.41	$ 12.76	(0.35)		
Mar	9,632,000	368,000	8,000,000	7,860,000	140,000	1,772,000	228,000	$ 623,298	230,860	$ 101,536	$ 383,496	$ 1,339,190	$ 13.39	$ 13.70	(0.31)		
Apr	9,634,000	366,000	8,000,000	7,863,200	136,800	1,770,800	229,200	$ 606,253	261,384	$ 96,154	$ 446,550	$ 1,410,341	$ 14.10	$ 14.43	(0.33)		
May	9,641,000	359,000	8,000,000	7,860,000	140,000	1,781,000	219,000	$ 636,660	292,824	$ 118,437	$ 464,083	$ 1,512,003	$ 15.12	$ 15.32	(0.20)		
Jun	9,645,000	355,000	8,000,000	7,856,000	144,000	1,789,000	211,000	$ 659,118	316,598	$ 135,070	$ 466,078	$ 1,576,864	$ 15.77	$ 15.90	(0.13)		
Jul	9,644,000	356,000	8,000,000	7,856,000	144,000	1,788,000	212,000	$ 658,333	316,094	$ 132,491	$ 463,920	$ 1,570,838	$ 15.71	$ 15.90	(0.19)		
Aug	9,642,000	358,000	8,000,000	7,856,800	143,200	1,785,200	214,800	$ 649,757	328,043	$ 129,784	$ 493,524	$ 1,601,108	$ 16.01	$ 16.17	(0.16)		
Sep	9,638,000	362,000	8,000,000	7,857,600	142,400	1,780,400	219,600	$ 652,181	344,822	$ 129,791	$ 536,900	$ 1,663,694	$ 16.64	$ 16.75	(0.11)		
Oct	9,630,000	370,000	8,000,000	7,853,600	146,400	1,776,400	223,600	$ 683,263	263,432	$ 128,611	$ 369,521	$ 1,444,828	$ 14.45	$ 15.04	(0.59)		
Nov	9,626,000	374,000	8,000,000	7,849,600	150,400	1,776,400	223,600	$ 667,216	228,082	$ 114,755	$ 324,220	$ 1,334,273	$ 13.34	$ 13.86	(0.52)		
Dec	9,622,000	378,000	8,000,000	7,847,200	152,800	1,774,800	225,200	$ 616,005	219,879	$ 124,591	$ 322,531	$ 1,283,007	$ 12.83	$ 12.98	(0.15)	####	#####
Jan-02	9,628,000	372,000	8,000,000	7,862,400	137,600	1,765,600	234,400	$ 614,840	203,056	$ 122,180	$ 347,990	$ 1,288,066	$ 12.88	$ 13.02	(0.14)		
Feb	9,631,000	369,000	8,000,000	7,856,800	143,200	1,774,200	225,800	$ 601,831	200,351	$ 123,307	$ 311,988	$ 1,237,477	$ 12.37	$ 12.54	(0.17)		
Mar	9,628,000	372,000	8,000,000	7,859,200	140,800	1,768,800	231,200	$ 577,651	192,474	$ 107,720	$ 315,311	$ 1,193,155	$ 11.93	$ 12.16	(0.23)		
Apr	9,633,000	367,000	8,000,000	7,859,200	140,800	1,773,800	226,200	$ 584,724	183,491	$ 116,539	$ 291,572	$ 1,176,326	$ 11.76	$ 11.95	(0.19)		
May	9,639,000	361,000	8,000,000	7,860,000	140,000	1,779,000	221,000	$ 595,002	164,024	$ 121,150	$ 252,669	$ 1,132,845	$ 11.33	$ 11.53	(0.20)		
Jun	9,642,000	358,000	8,000,000	7,856,000	144,000	1,786,000	214,000	$ 571,917	162,504	$ 114,125	$ 239,915	$ 1,088,462	$ 10.88	$ 11.06	(0.18)		
Jul	9,643,000	357,000	8,000,000	7,854,400	145,600	1,788,600	211,400	$ 550,593	160,626	$ 101,950	$ 231,039	$ 1,044,209	$ 10.44	$ 10.70	(0.26)		
Aug	9,640,000	360,000	8,000,000	7,852,800	147,200	1,787,200	212,800	$ 563,831	158,696	$ 107,232	$ 227,717	$ 1,057,477	$ 10.57	$ 10.80	(0.23)		
Sep	9,634,000	366,000	8,000,000	7,856,800	143,200	1,777,200	222,800	$ 588,474	146,465	$ 117,651	$ 225,006	$ 1,077,596	$ 10.78	$ 10.97	(0.19)		
Oct	9,625,000	375,000	8,000,000	7,854,400	145,600	1,770,600	229,400	$ 612,643	155,079	$ 123,765	$ 246,054	$ 1,137,541	$ 11.38	$ 11.50	(0.12)		
Nov	9,623,000	377,000	8,000,000	7,846,400	153,600	1,776,600	223,400	$ 592,403	167,224	$ 110,682	$ 244,020	$ 1,114,330	$ 11.14	$ 11.37	(0.23)		
Dec	9,626,000	374,000	8,000,000	7,845,600	154,400	1,780,400	219,600	$ 557,822	182,177	$ 102,729	$ 261,807	$ 1,104,535	$ 11.05	$ 11.26	(0.21)	####	#####
Jan-03	9,629,000	371,000	8,000,000	7,860,000	140,000	1,769,000	231,000	$ 544,698	166,362	$ 103,133	$ 273,874	$ 1,088,066	$ 10.88	$ 11.08	(0.20)		
Feb	9,631,000	369,000	8,000,000	7,860,000	140,000	1,771,000	229,000	$ 528,192	161,182	$ 104,312	$ 260,442	$ 1,054,128	$ 10.54	$ 10.71	(0.17)		
Mar	9,632,000	368,000	8,000,000	7,859,200	140,800	1,772,800	227,200	$ 503,775	161,667	$ 93,604	$ 260,348	$ 1,019,394	$ 10.19	$ 10.40	(0.21)		
Apr	9,635,000	365,000	8,000,000	7,855,200	144,800	1,779,800	220,200	$ 507,446	166,563	$ 99,313	$ 253,296	$ 1,026,618	$ 10.27	$ 10.42	(0.15)		
May	9,638,000	362,000	8,000,000	7,857,600	142,400	1,780,400	219,600	$ 517,030	164,358	$ 104,866	$ 252,804	$ 1,039,057	$ 10.39	$ 10.52	(0.13)		
Jun	9,643,000	357,000	8,000,000	7,852,800	147,200	1,790,200	209,800	$ 512,003	170,796	$ 105,801	$ 242,864	$ 1,031,464	$ 10.31	$ 10.42	(0.11)		
Jul	9,646,000	354,000	8,000,000	7,855,200	144,800	1,790,800	209,200	$ 539,652	173,992	$ 106,374	$ 252,191	$ 1,072,208	$ 10.72	$ 10.87	(0.15)		
Aug																	
Sep																	
Oct																	
Nov																	
Dec																####	#####

Exhibit 1 Table D

Data Relative to Producer Handlers in Federal Order 131

	Producer Handler	City	State	E - Exempt PH - Producer Handler	Plant Size Pounds / Month
1	Sarah Farms	Yuma	AZ	PH	20,000,000
2	Sunrise Dairy	Taylor	AZ	PH	200,000
3	Freeman Dairy	Chandler	AZ	E	60,000

Source: DFA competitive estimates

Exhibit 1 Table E

Data Relative to Producer Handlers in Federal Order 124

	Producer Handler	City	State	E - Exempt PH - Producer Handler	Plant Size Pounds / Month
1	Lochmead Dairy	Junction City	OR	PH	1,200,000
2	Mallories Dairy	Silverton	OR	PH	4,500,000
3	Noris Farms	Scio	OR	PH	350,000
4	Country Charm Dairy	Arlington	WA	PH	1,200,000
5	Country Morning Farms	Othello	WA	PH	2,000,000
6	Edaleen Dairy	Lynden	WA	PH	6,000,000
7	Faith Dairy	Tacoma	WA	PH	400,000
8	Norman Brook Farm	North Bend	WA	PH	300,000
9	Smith Brothers Farms	Kent	WA	PH	6,500,000
10	Springfield Creamery	Eugene	OR	E	
11	Washington State Univ	Pullman	WA	E	

Source: DFA competitive estimates

Exhibit 1 Table F

Recap of Producer Handler and Exempt Plants Data All Federal Orders May 2003

		Number of Producer Handlers in the Market	Percentage of Markets Class I Held by all PH in the Market	Average Monthly Class I Volume for all PH in the Market	Average Monthly Class I Volume for the Median Sized PH in the Market
Federal Order	1	45	0.81%	180,729	115,559
Federal Order	5	Restricted	Restricted	Restricted	Restricted
Federal Order	6 & 7	9	0.07%	47,855	50,000
Federal Order	30	8	0.10%	46,843	Restricted
Federal Order	32	15	2.45%	923,051	124,862
Federal Order	33	Restricted	Restricted	Restricted	Restricted
Federal Order	124	9	9.21%	2,204,516	Restricted
Federal Order	126	7	0.86%	415,588	Restricted
Federal Order	131	2	Restricted	Restricted	Restricted
Federal Order	135	6	1.64%	295,462	Restricted

Source: Requested of Market Administrators

Exhibit 1 Table F

Recap of Producer Handler and Exempt Plants Data All Federal Orders May 2003

		Average Monthly Class I Volume for Smallest 1/3 Grouping of PH in the Market	Average Monthly Class I Volume for Middle 1/3 Grouping of PH in the Market	Average Monthly Class I Volume for Largest 1/3 Grouping of PH in the Market	Percentage of Markets Class I Volume Held by Smallest Group in the Market	Percentage of Markets Class I Volume Held by Middle Group in the Market	Percentage of Markets Class I Volume Held by Largest Group in the Market
Federal Order	1	29,073	111,136	401,976	0.04%	0.17%	0.60%
Federal Order	5	Restricted	Restricted	Restricted	Restricted	Restricted	Restricted
Federal Order	6 & 7	22,928	44,558	76,080	0.01%	0.02%	0.04%
Federal Order	30	Restricted	Restricted	Restricted	Restricted	Restricted	Restricted
Federal Order	32	37,225	135,237	2,596,692	0.05%	0.17%	2.23%
Federal Order	33	Restricted	Restricted	Restricted	Restricted	Restricted	Restricted
Federal Order	124	356,441	1,542,404	4,714,702	1%	2%	7%
Federal Order	126	118,620		811,545	0.14%	Small & Med combined	0.72%
Federal Order	131	Restricted	Restricted	Restricted	Restricted	Restricted	Restricted
Federal Order	135	115,580	N/A	475,343	0.3%	Small & Med combined	1%

Exhibit 1 Table G

Recap of 7(a) Plant Data All Federal Orders May 2003

		Number of 7(a) Plants in the Market	Percentage of Markets Class I Held by all 7(a) Plants	Average Monthly Class I Volume for all 7(a) Plants in the Market	Average Monthly Class I Volume for Median Sized 7(a) in the Market
Federal Order	1	62	89.50%	14,440,800	9,265,661
Federal Order	5	24	99.74%	15,197,826	13,021,316
Federal Order	6 & 7	42	84.35%	13,021,822	11,639,369
Federal Order	30	24	96.14%	14,430,071	11,009,192
Federal Order	32	32	85.07%	12,272,237	10,425,125
Federal Order	33	43	91.40%	12,741,037	11,161,730
Federal Order	124	18	90.73%	10,858,125	Restricted
Federal Order	126	21	99.47%	16,072,917	Restricted
Federal Order	131	3	Restricted	29,595,104	Restricted
Federal Order	135	9	82.40%	9,867,493	Restricted

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Source: Requested of Market Administrators

Exhibit 1 Tab G

Recap of 7(a) Plant Data All Federal Orders May 2003

		Average Monthly Class I Volume for Smallest 1/3 Grouping of 7(a) Plants in the Market	Average Monthly Class I Volume for Middle 1/3 Grouping of 7(a) Plants in the Market	Average Monthly Class I Volume for Largest 1/3 Grouping of 7(a) Plants in the Market	Percentage of Markets Class I Volume Held by Smallest Group in the Market	Percentage of Markets Class I Volume Held by Middle Group in the Market	Percentage of Markets Class I Volume Held by Largest Group in the Market
Federal Order	1	1,725,688	10,862,227	31,549,168	3.60%	22.80%	63.10%
Federal Order	5	5,925,323	13,498,616	26,169,539	12.96%	29.53%	57.25%
Federal Order	6 & 7	4,873,965	11,922,714	22,268,788	10.52%	25.74%	48.08%
Federal Order	30	2,215,835	11,259,258	29,815,120	4.92%	25.00%	66.21%
Federal Order	32	6,776,918	10,766,296	19,984,623	17.38%	27.32%	40.37%
Federal Order	33	2,537,301	12,294,858	24,119,791	6.35%	28.72%	56.33%
Federal Order	124	3,961,785	9,703,746	18,908,845	11.03%	27.03%	52.67%
Federal Order	126	4,299,245	14,200,182	29,719,325	8.87%	29.29%	61.31%
Federal Order	131	Restricted	Restricted	Restricted	Restricted	Restricted	Restricted
Federal Order	135	1,036,723	7,867,006	20,698,748	2.89%	21.90%	57.61%

@93 3.7

93 @ 11.4

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Attachment 2

FEDERAL ORDER 131 ESTIMATED BLEND PRICE CALCULATION
POSSIBLE EFFECT OF AN ADDITIONAL 18,000,000 POUNDS OF PRODUCER MILK IN CLASS I
AT MARKET AVERAGE CLASS I BUTTERFAT TEST AND $2.10 CLASS I LOCATION ADJUSTMENT

2000	Pooled Blend	Assumed Blend	Dif.
January	$11.25	$11.37	($0.12)
February	$11.09	$11.22	($0.13)
March	$11.28	$11.39	($0.11)
April	$11.44	$11.55	($0.11)
May	$11.79	$11.92	($0.13)
June	$12.10	$12.25	($0.15)
July	$12.32	$12.47	($0.15)
August	$12.20	$12.34	($0.14)
September	$12.32	$12.46	($0.14)
October	$11.99	$12.15	($0.16)
November	$11.84	$12.04	($0.20)
December	$12.40	$12.57	($0.17)
Average	**$11.84**	**$11.98**	**($0.14)**

2001	Pooled Blend	Assumed Blend	Dif.
January	$12.37	$12.57	($0.20)
February	$12.48	$12.63	($0.15)
March	$13.31	$13.45	($0.14)
April	$14.07	$14.20	($0.13)
May	$15.11	$15.22	($0.11)
June	$15.88	$15.99	($0.11)
July	$16.08	$16.20	($0.12)
August	$16.39	$16.50	($0.11)
September	$16.70	$16.82	($0.12)
October	$15.01	$15.16	($0.15)
November	$13.73	$14.02	($0.29)
December	$12.71	$12.82	($0.11)
Average	**$14.49**	**$14.63**	**($0.14)**

2002	Pooled Blend	Assumed Blend	Dif.
January	$12.81	$12.91	($0.10)
February	$12.46	$12.57	($0.11)
March	$11.91	$12.03	($0.12)
April	$11.79	$11.91	($0.12)
May	$11.51	$11.62	($0.11)
June	$11.22	$11.36	($0.14)
July	$10.87	$11.01	($0.14)
August	$11.04	$11.17	($0.13)
September	$11.03	$11.16	($0.13)
October	$11.38	$11.47	($0.09)
November	$11.14	$11.28	($0.14)
December	$11.07	$11.19	($0.12)
Average	**$11.52**	**$11.64**	**($0.12)**

2003	Pooled Blend	Assumed Blend	Dif.
January	$10.97	$11.09	($0.12)
February	$10.63	$10.76	($0.13)
March	$10.29	$10.40	($0.11)
April	$10.34	$10.44	($0.10)
May	$10.45	$10.55	($0.10)
June	$10.47	$10.57	($0.10)
July	$11.53	$11.58	($0.05)
Average	**$10.67**	**$10.77**	**($0.10)**

Prepared by the office of the market administrator Federal order 131 at the request of Sydney Berde / United Dairymen of Arizona

This table was prepared by adding to the announced blend price computation an additional 18,000,000 pounds of Class I milk at the market average Class I butterfat test for the month and a location adjustment of $2.10. This table is for informational purposes only and does not reflect an actual blend price computation.

Exhibit #: C-7
Wit: _____
Date: _____
Cropper & Assoc., Ltd.
E. Cropper # 50491

Attachment 3

Cost Structure of Fluid Milk Plants of Various Sizes

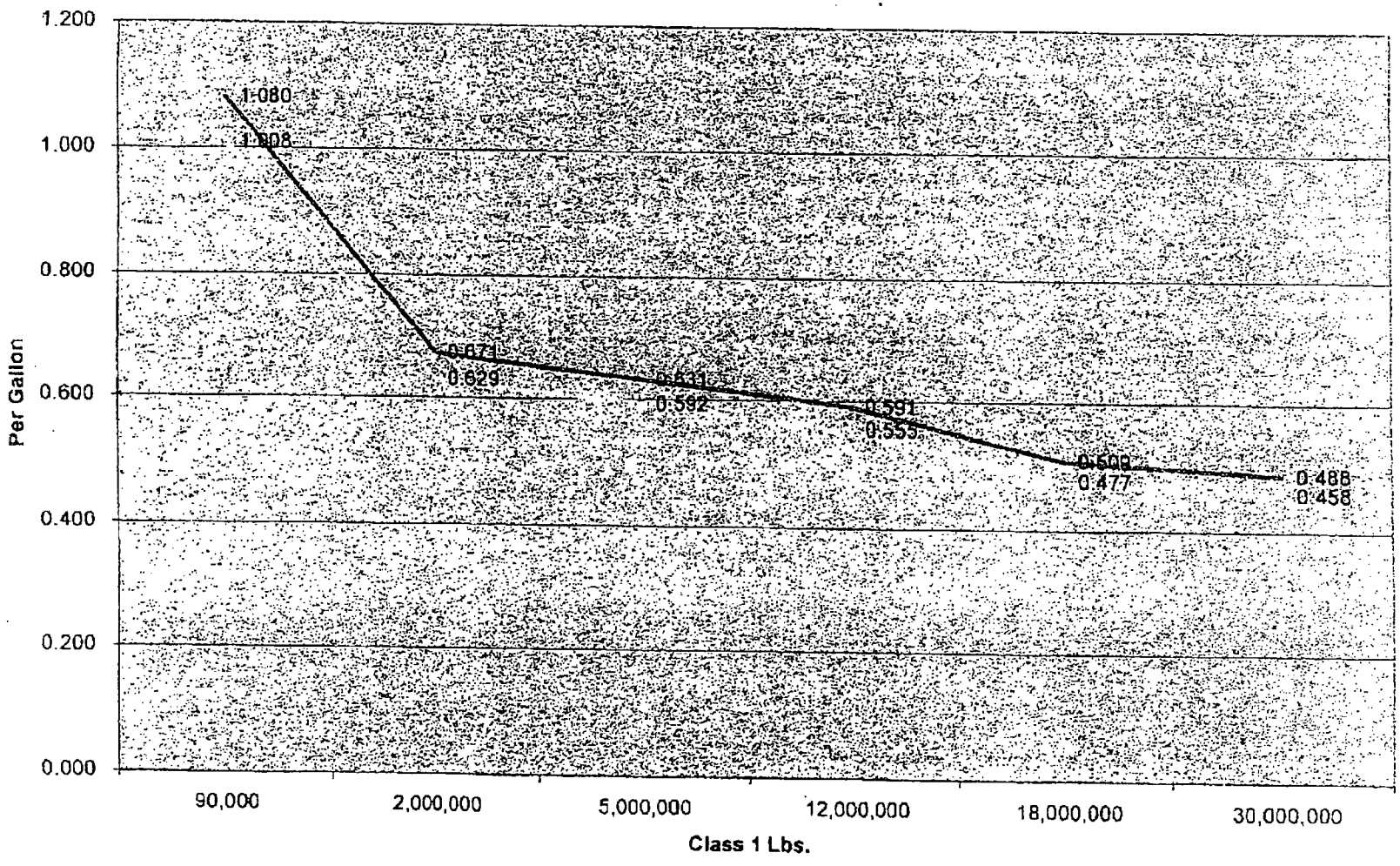
		Producer Handler- A		B		C	
		131	124	131	124	131	124
Monthly Volume	Class 1 Lbs.	90,000	90,000	2,000,000	2,000,000	5,000,000	5,000,000
Convert to Gallons		10,465	10,465	232,600	232,600	581,400	581,400
Gallons Per Day	(6 Days/WK)	400	400	8,900	8,900	22,400	22,400
Container Source		Purchase	Purchase	Purchase	Purchase	Purchase	Purchase
Cost Per Gallon							
Plant Processing Costs		0.806	0.878	0.466	0.508	0.432	0.471
Packaging Costs (Container)		0.160	0.160	0.142	0.142	0.142	0.142
Shrink		0.042	0.042	0.021	0.021	0.018	0.018
Per Gallon		1.008	1.080	0.629	0.671	0.592	0.631
Per CWT		11.71	12.55	7.31	7.80	6.88	7.33

Cost Structure of Fluid Milk Plants of Various Sizes

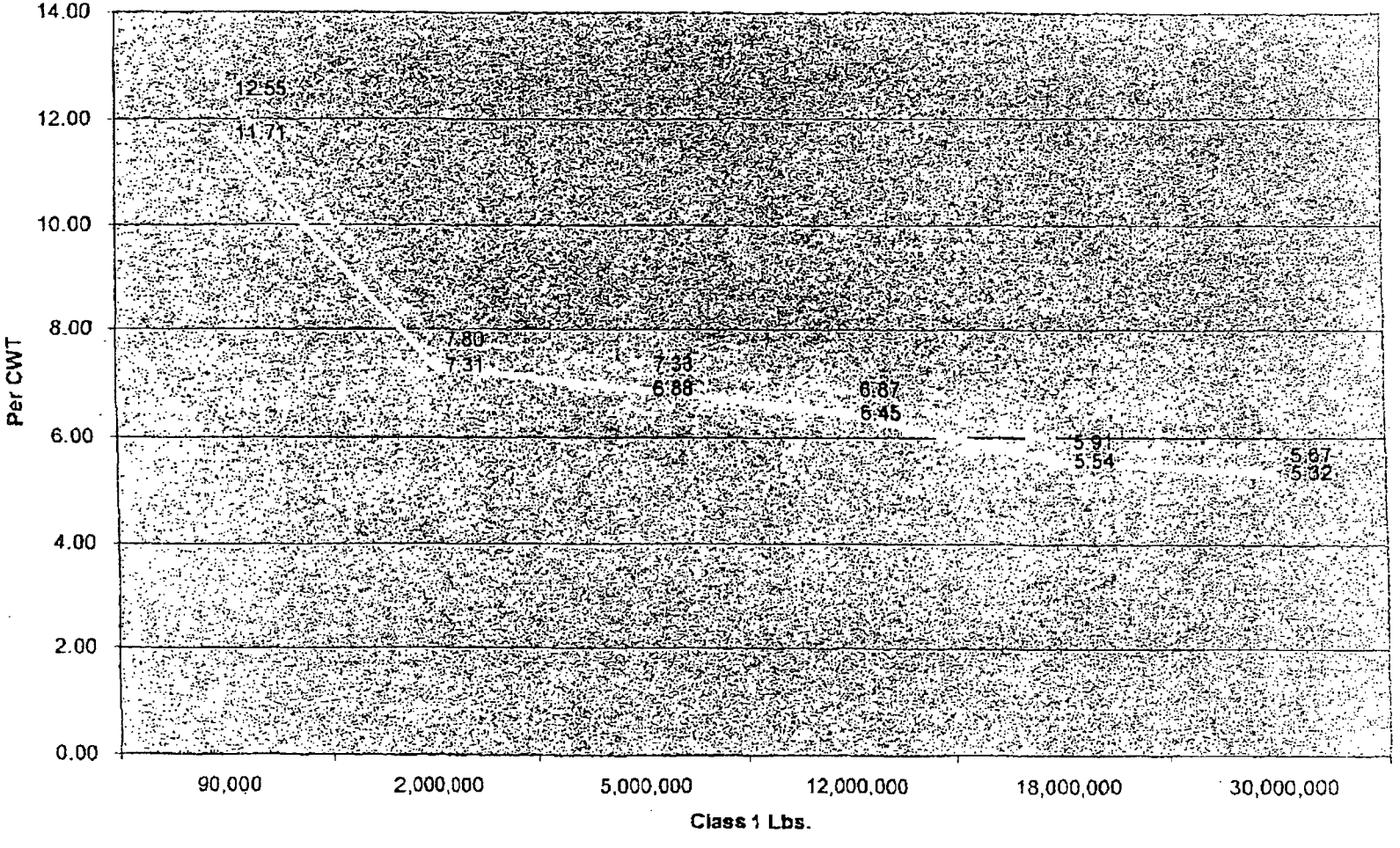
		D		E		F	
		131	**124**	**131**	**124**	**131**	**124**
Monthly Volume	Class 1 Lbs.	12,000,000	12,000,000	18,000,000	18,000,000	30,000,000	30,000,000
Convert to Gallons		1,395,300	1,395,300	2,093,000	2,093,000	3,488,400	3,488,400
Gallons Per Day	(6 Days/WK)	53,700	53,700	80,500	80,500	134,200	134,200
Container Source		Purchase	Purchase	Blow-Mold	Blow-Mold	Blow-mold	Blow-mold
Cost Per Gallon							
Plant Processing Costs		0.398	0.434	0.350	0.382	0.335	0.365
Packaging Costs (Container)		0.142	0.142	0.113	0.113	0.113	0.113
Shrink		0.015	0.015	0.014	0.014	0.010	0.010
Per Gallon		0.555	0.591	0.477	0.509	0.458	0.488
Per CWT		6.45	6.87	5.54	5.91	5.32	5.67

Exhibit 6

Cost Structure of Fluid Milk Plants



Cost Structure of Fluid Milk Plants



Comparative Analysis of Return to Producer Handlers and Regulated Distributing Plants Supplying a Warehouse Store

January to June 2003.		Reduced Fat 2% - 2 Gallon Package
Average retail (out of store prices)		$3.2900
Warehouse store markup at	8%	0.2632
Warehouse store markup at	14%	0.4606
	14%	**8%**
PRICE paid to dairy supplier	2.8294	3.0268
Dairy Supplier Costs:		
Plant	0.4302	0.4302
Packaging	0.3480	0.3480
Distribution	0.2960	0.2960
Shrinkage	0.0290	0.0290
Milk PEP	0.0340	0.0340
TOTAL COST	1.1372	1.1372
VALUE OF RAW MILK	1.6922	1.8896
Convert to one gallon	$0.8461	$0.9448
Convert to CWT	$ 9.83	$ 10.97
Analysis of Implied Return per CWT:		
Class I cost - FO 131	10.53	10.53
FO 131 - Uniform Price	8.79	8.79
Compare to Class I (under)	(0.70)	0.44
Compare to Uniform Price	1.04	2.18

EXHIBIT E

Warehouse Store By Producer Handler - A

January to June 2003	Product Butterfat Test	2 GALLON Package Reduced Fat 2.00%
Price Paid to Dairy Supplier	2 Gallons	3.027
Cost Per 2 Gal Box		
Plant Cost		1.612
Packaging Cost		0.432
Distribution Cost		0.296
Shrinkage Cost		0.084
Raw Milk		1.836
Total Cost		4.260
(Loss) per 2 gallons		$ (1.233)
(Loss) per CWT		$ (7.16)

EXHIBIT F

Warehouse Store By Pool Distributing Plant - B

January to June 2003	Product Butterfat Test	*2 GALLON Package* Reduced Fat 2.00%
Price Paid to Dairy Supplier	2 Gallons	3.027
Cost Per 2 Gal Box		
Plant Cost		0.932
Packaging Cost		0.396
Distribution Cost		0.296
Shrinkage Cost		0.042
Raw Milk		1.836
Total Cost		3.502
(Loss) per 2 gallons		$ (0.475)
(Loss) per CWT		$ (2.76)

EXHIBIT G

Warehouse Store By Pool Distributing Plant - C

January to June 2003	Product Butterfat Test	*2 GALLON Package* Reduced Fat 2.00%
Price Paid to Dairy Supplier	2 Gallons	3.027
Cost Per 2 Gal Box		
Plant Cost		0.864
Distribution Cost		0.296
Packaging Cost		0.396
Shrinkage Cost		0.036
Milk Pep		0.034
Raw Milk		1.836
Total Cost		3.462
(Loss) per 2 gallons		$ (0.435)
(Loss) per CWT		$ (2.53)

EXHIBIT H

Warehouse Store By Pool Distributing Plant - D

January to June 2003	Product	*2 GALLON Package*
	Butterfat Test	Reduced Fat 2.00%
Price Paid to Dairy Supplier	2 Gallons	3.027
Cost Per 2 Gal Box		
Plant Cost		0.796
Packaging Cost		0.396
Distribution Cost		0.296
Shrinkage Cost		0.030
Milk Pep		0.034
Raw Milk		1.836
Total Cost		3.388
(Loss) per 2 gallons		$ (0.361)
(Loss) per CWT		$ (2.10)

EXHIBIT 1

Warehouse Store By Pool Distributing Plant - E

January to June 2003	Product Butterfat Test	*2 GALLON Package* Reduced Fat 2.00%
Price Paid to Dairy Supplier	2 Gallons	3.027
Cost Per 2 Gal Box		
Plant Cost		0.700
Packaging Cost		0.348
Distribution Cost		0.296
Shrinkage Cost		0.028
Milk Pep		0.034
Raw Milk		1.836
Total Cost		3.242
(Loss) per 2 gallons		$ (0.215)
(Loss) per CWT		$ (1.25)

Exhibit 7

Warehouse Store By Pool Distributing Plant - F

January to June 2003	Product	*2 GALLON Package*
	Butterfat Test	Reduced Fat 2.00%
Price Paid to Dairy Supplier	2 Gallons	3.027
Cost Per 2 Gal Box		
Plant Cost		0.670
Packaging Cost		0.348
Distribution Cost		0.296
Shrinkage Cost		0.020
Milk Pep		0.034
Raw Milk		1.836
Total Cost		3.204
(Loss) per 2 gallons		$ (0.177)
(Loss) per CWT		$ (1.03)

Exhibit K

Attachment 4

The best a business can do is to make some estimate of the range of possible future costs and expected returns and the relative chances of earning a high or low profit on the particular investment(s). The producer-handler faces this complex of operational and investment decisions as they position their businesses for the future, the same as does any business.

Characteristics of US Dairy Operations – Operating and Total Costs

The following figures from a recent USDA-ERS publication (*McElroy, et. Al., 2002. Agricultural Income and Finance Outlook. USDA-Economic Research Service. AIS-79. Sept. 26, 2002*) depict the average estimated operating and full cost of production by size of business. These average cost and relationships reinforce the well-known economies of size characteristic of the US dairy farming sector.

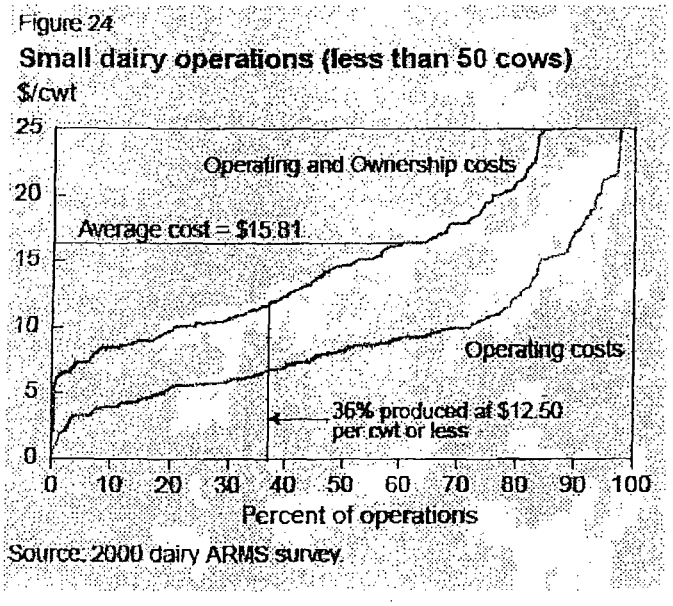
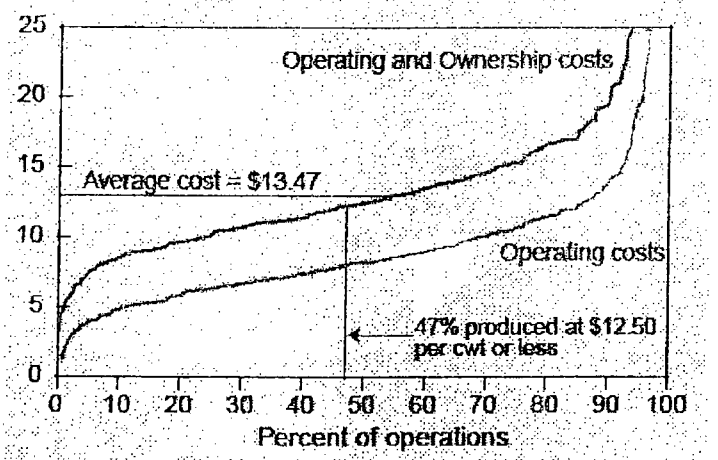


Figure 25

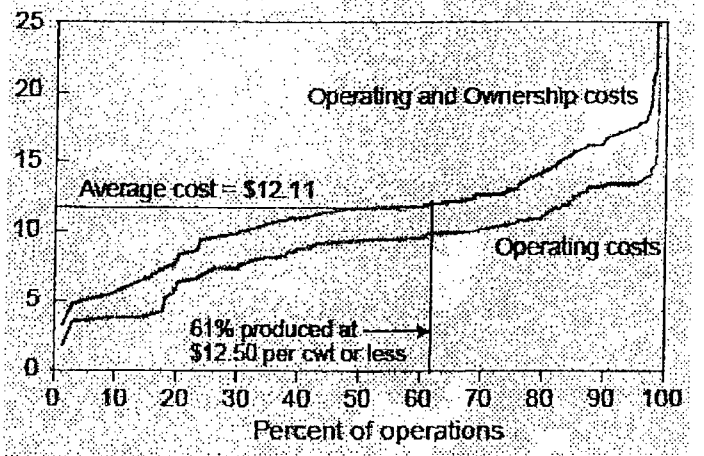
Medium dairy operations (50-199 cows)



Source: 2000 dairy ARMS survey.

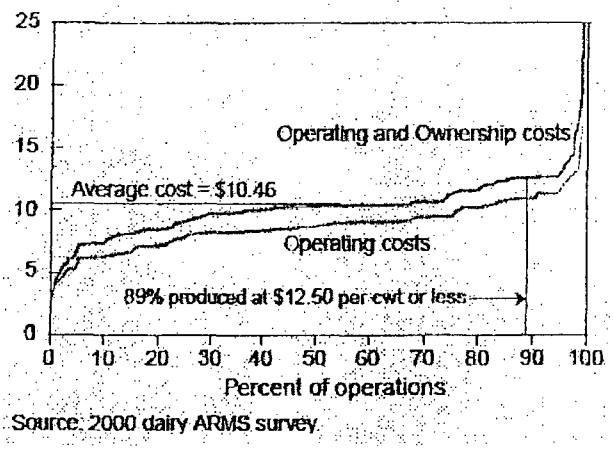
Figure 26

Large dairy operations (200-499 cows)



Source: 2000 dairy ARMS survey.

Figure 27
Industrial-scale dairy operations (500 cows or more)



Source: 2000 dairy ARMS survey

The well managed smaller-sized operations can be very cost competitive with larger sized dairies in relationship to operating costs or operating efficiencies as depicted in the four figures above (Figures 24-27, from McElroy, et. al., 2002). Note in particular that the percent of farms with operating costs below say $10/cwt are reasonably similar across herd size ranges. However, the advantage is typically reduced when ownership costs and other fixed costs are added to arrive at total economic costs of production (operating and ownership costs, see figures, above). Therefore, the short-run survivability of many dairy farm businesses is achievable while not being concerned with capital replacement costs, which of course are real costs and must also be accounted for when planning for the longer-term viability and sustainability of the business. In the short-run, a focus on improving operational efficiencies (eg. operating expense ratio) will help improve operating profits. However, a dairy business with high capital investments per cow or pound of milk produced will negatively impact the ability of the business to grow, which is characteristic of many average-size dairy operations in the US. Many dairy farm businesses are over-capitalized and/or have invested in lower-return assets that dramatically impact the ability of the business to produce competitive returns. Taking a critical look at both the operating efficiency and capital efficiency of any business are important to the future success and sustainability of the business. Businesses with Return on Assets (ROA) greater than the average cost of capital have the opportunity to use leverage (debt capital) effectively to enhance the opportunity for the business to grow, which is a characteristic challenge for many average-sized dairy businesses across the US.

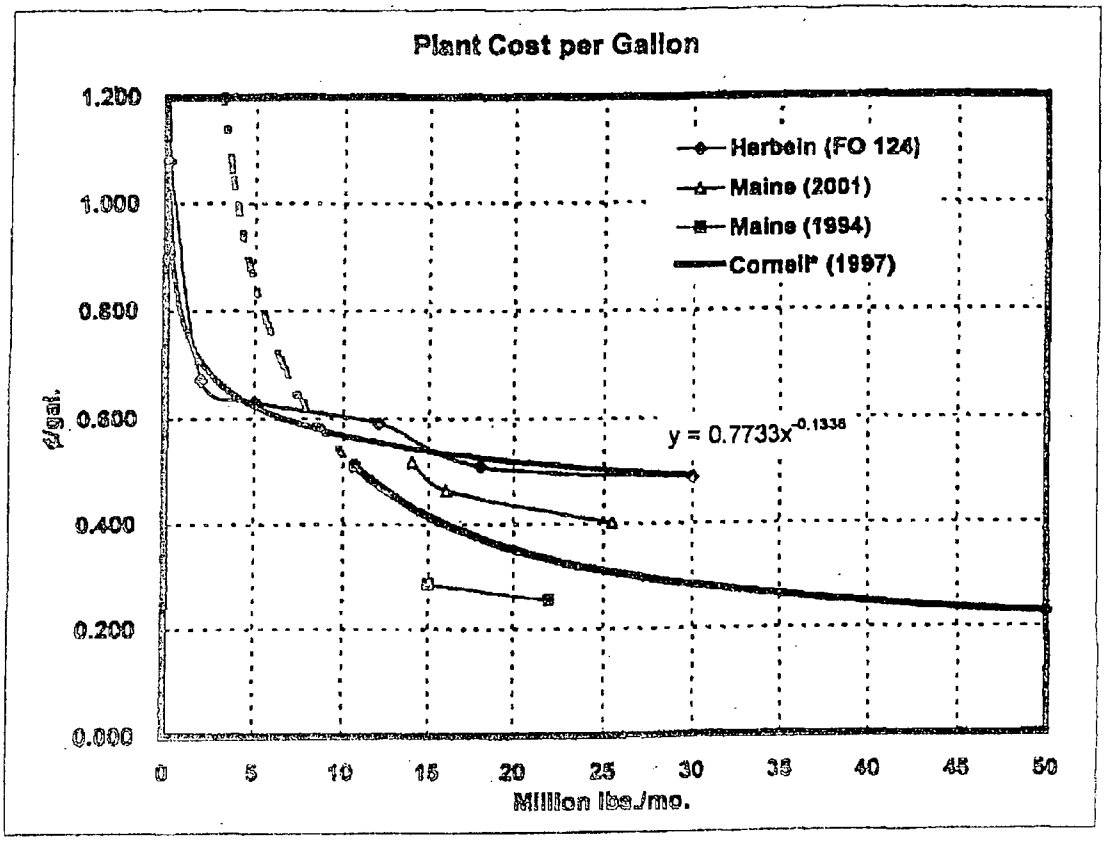
Attachment 5

NMPF: Table 1

Processing Costs of Fluid Milk Plants by Size

September 23, 2003

Monthly Volume (mil. lbs.)	0.09	2.0	5.0	12.0	18.0	30.0
Herbein (FO 124)	1.080	0.671	0.631	0.591	0.509	0.488
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 1A
Calculating Plant Cost Equation from Cornell results
September 23, 2003

Elasticity of plant costs/gal. with respect to plant volume, direct & indirect: -0.81

Within range of study					
Plant volume, mil. gal./mo.	13.3	20.5	27.7	39.55	51.4
Plant costs, $/gal.	0.330	0.232	0.182	0.136	0.110
Cost of producing gallon jug	0.088	0.088	0.088	0.088	0.088
Plant dep., $/gal.	0.029	0.029	0.029	0.029	0.029
Total plant costs, $/gal.	**0.447**	**0.349**	**0.299**	**0.253**	**0.227**

The mean "plant cost" per gallon in the study (18.2¢) was assigned to the mean plant size in the study (27.7 million lbs./mo.). Plant costs were then estimated using the study's elasticity of plant cost per gal. with respect to plant volume. Packaging and depreciation costs are taken as constant.

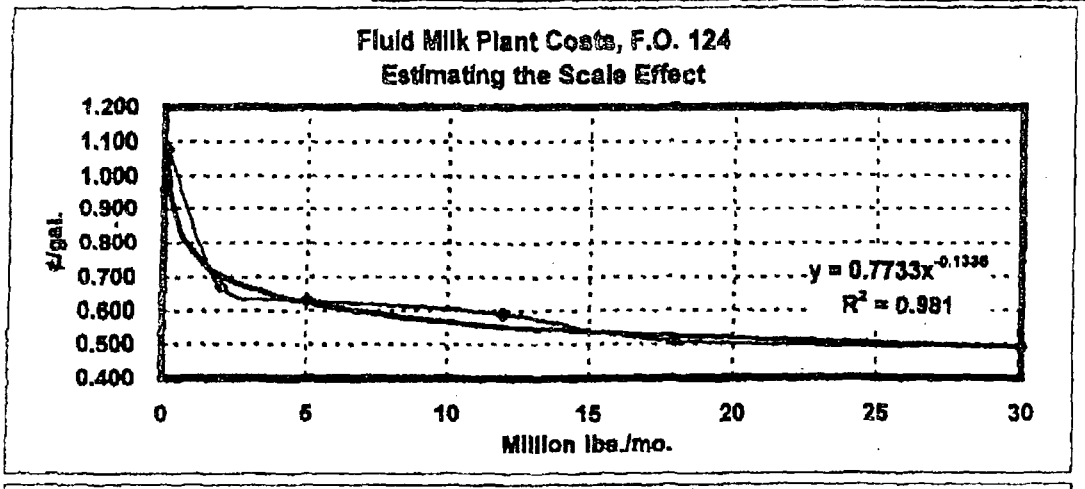
Cornell equation for "plant costs":
lnCOST = B0 + B1*lnGAL + ...
Equals:
COST = (e^B0)*(GAL^B1)
One point is: eB= **2.682131**
0.182 = 2.682131 * 27.7^(-0.81) B= 0.986612

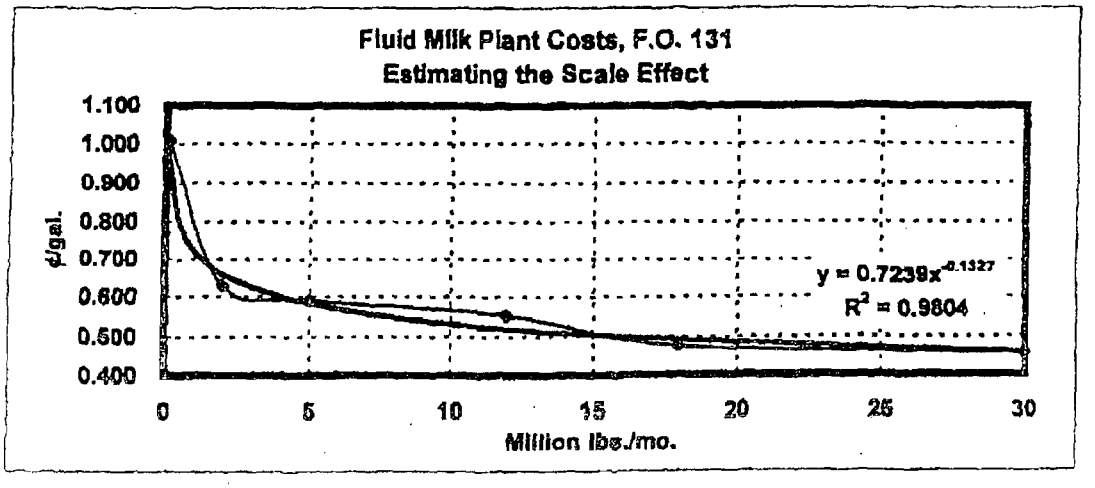
NMPF: Table 1B

Calculating Plant Cost Equation from Herbein Survey

September 23, 2003

Monthly Volume (mil. lbs.)	0.09	2.0	5.0	12.0	18.0	30.0
Herbein (FO 124)	1.080	0.671	0.631	0.591	0.509	0.468
Monthly Volume (mil. lbs.)	0.09	2.0	5.0	12.0	18.0	30.0
Herbein (FO 131)	1.008	0.629	0.592	0.555	0.477	0.458





Estimated Costs of Average Distributing Plants

Avg. pool dist. plants	Mil. lbs. /mo., avg.	Cornell	Herbein (fitted)	
AZ-LV	26.7	0.305	0.466	=0.7553*(plant size^-0.1457)
Pac NW	9.7	0.543	0.535	=0.7239*(plant size^-0.1327)

NMPF: Table 2

Selected Annual Price and Pool Statistics for Federal Milk Order Marketing Areas, 2002

September 23, 2002

														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	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

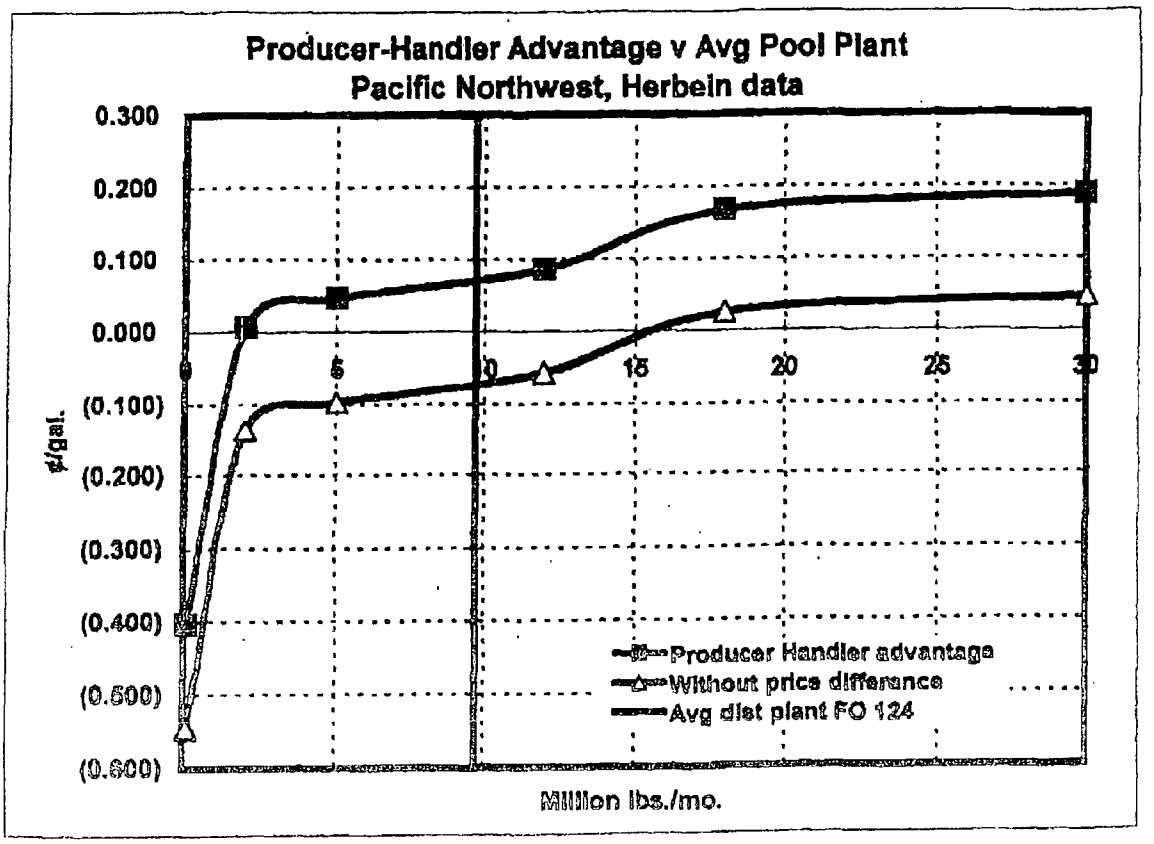
Relative to Average Pool Distributing Plant

Pacific Northwest Market

September 23, 2003

Herbein

Producer Handler						
Monthly Volume (mil. lbs.)	0.09	2.0	5.0	12.0	18.0	30.0
Plant cost	1.080	0.671	0.631	0.591	0.509	0.488
Price advantage (Class I - blend)	0.143	0.143	0.143	0.143	0.143	0.143
Plant cost - price advantage	0.937	0.528	0.488	0.448	0.366	0.345
Average Pool Distributing Plant						
Monthly Volume (mil. lbs.)	9.7	9.7	9.7	9.7	9.7	9.7
Plant cost (26.7 mil. lbs./mo.)	0.534	0.534	0.534	0.534	0.534	0.534
Producer Handler advantage	**(0.403)**	**0.006**	**0.046**	**0.086**	**0.168**	**0.189**
Without price difference	**(0.546)**	**(0.137)**	**(0.097)**	**(0.057)**	**0.025**	**0.046**



NMPF: Table 4

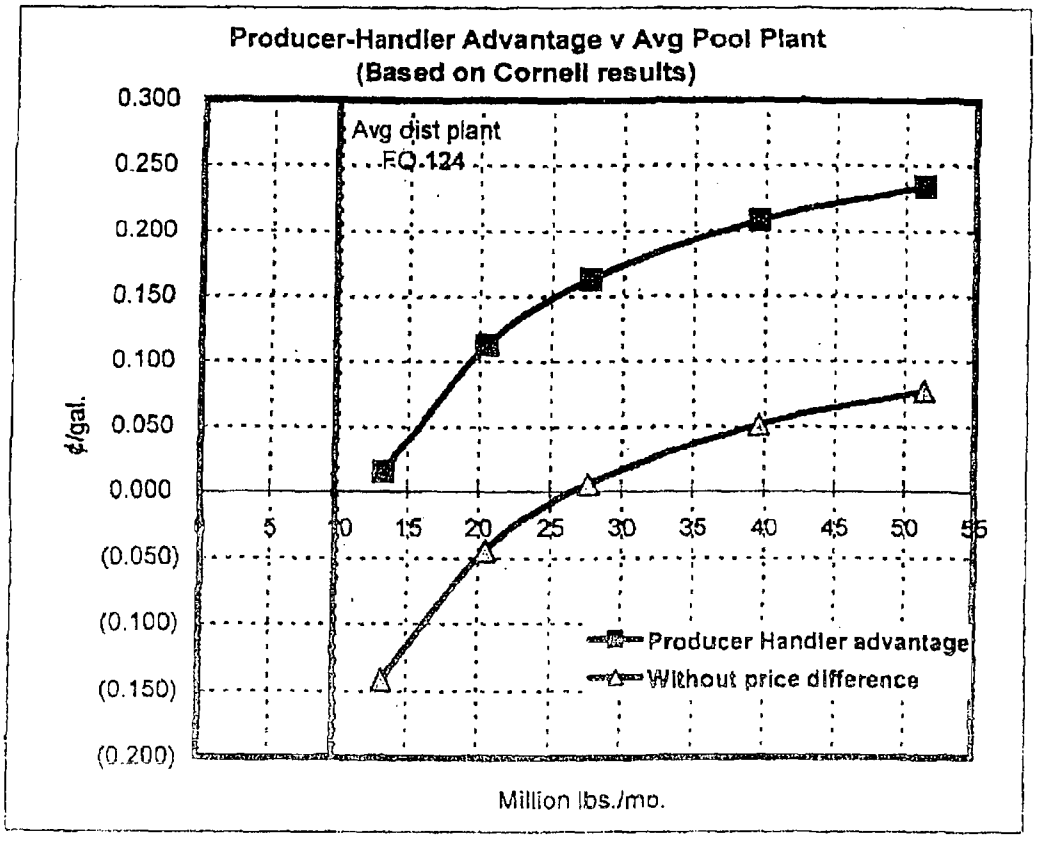
Cost Advantage of Producer-Handlers of Various Sizes

Relative to Average Pool Distributing Plant

Pacific Northwest Market

September 23, 2003

Cornell*					
Producer Handler					
Monthly Volume (mil. lbs.)	13.3	20.5	27.7	39.6	51.4
Plant cost	0.447	0.349	0.299	0.253	0.227
Price advantage (Class I - blend)	0.157	0.157	0.157	0.157	0.157
Plant cost - price advantage	0.290	0.192	0.142	0.096	0.070
Average Pool Distributing Plant					
Monthly Volume (mil. lbs.)	9.7	9.7	9.7	9.7	9.7
Pool plant cost (26.7 mil. lbs./mo.)	0.305	0.305	0.305	0.305	0.305
Producer Handler advantage	**0.015**	**0.113**	**0.163**	**0.209**	**0.235**
Without price difference	**(0.142)**	**(0.044)**	**0.006**	**0.052**	**0.078**



NMPF: Table 5

Cost Advantage of Producer-Handlers of Various Sizes

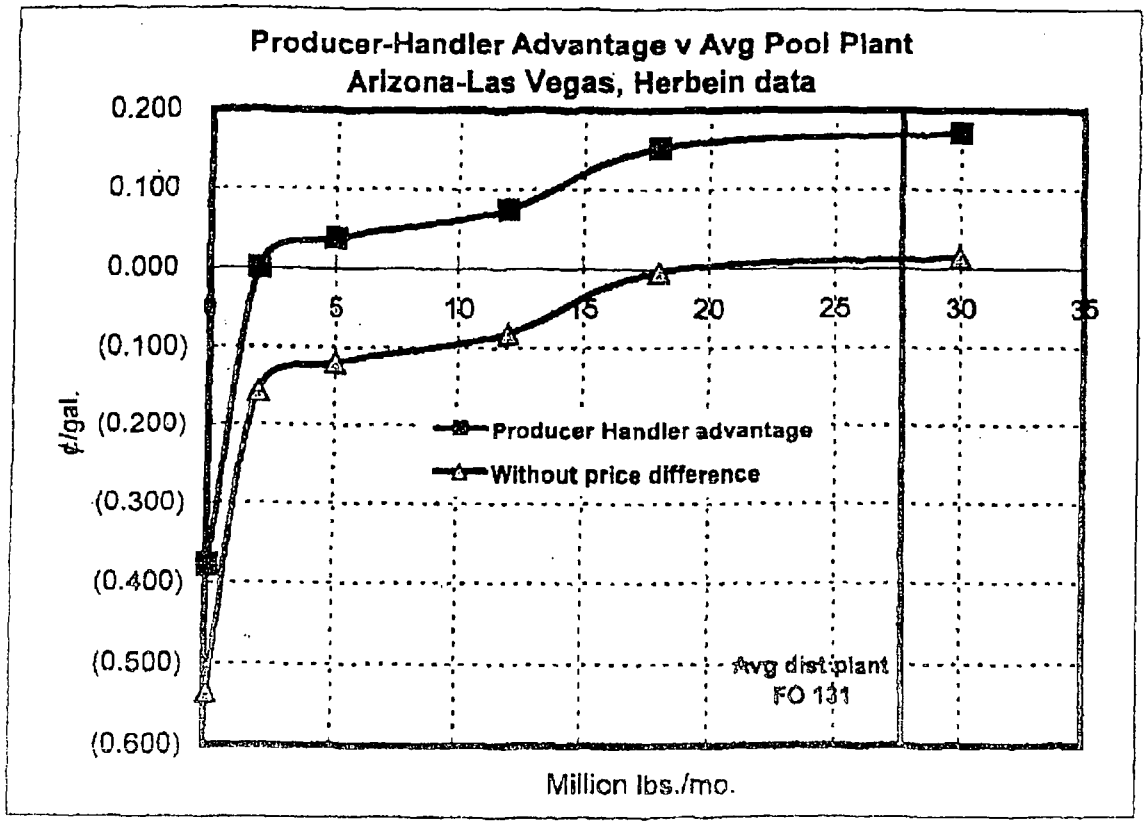
Relative to Average Pool Distributing Plant

Arizona - Las Vegas Market

September 23, 2003

Herbein

Producer Handler						
Monthly Volume (mil. lbs.)	0.09	2.0	5.0	12.0	18.0	30.0
Plant cost	1.008	0.629	0.592	0.555	0.477	0.458
Price advantage (Class I - blend)	0.157	0.157	0.157	0.157	0.157	0.157
Plant cost - price advantage	0.851	0.472	0.435	0.398	0.320	0.301
Average Pool Distributing Plant						
Monthly Volume (mil. lbs.)	26.7	26.7	26.7	26.7	26.7	26.7
Plant cost (26.7 mil. lbs./mo.)	0.473	0.473	0.473	0.473	0.473	0.473
Producer Handler advantage	**(0.378)**	**0.001**	**0.038**	**0.075**	**0.153**	**0.172**
Without price difference	**(0.535)**	**(0.156)**	**(0.119)**	**(0.082)**	**(0.004)**	**0.015**



NMPF: Table 6

Cost Advantage of Producer-Handlers of Various Sizes

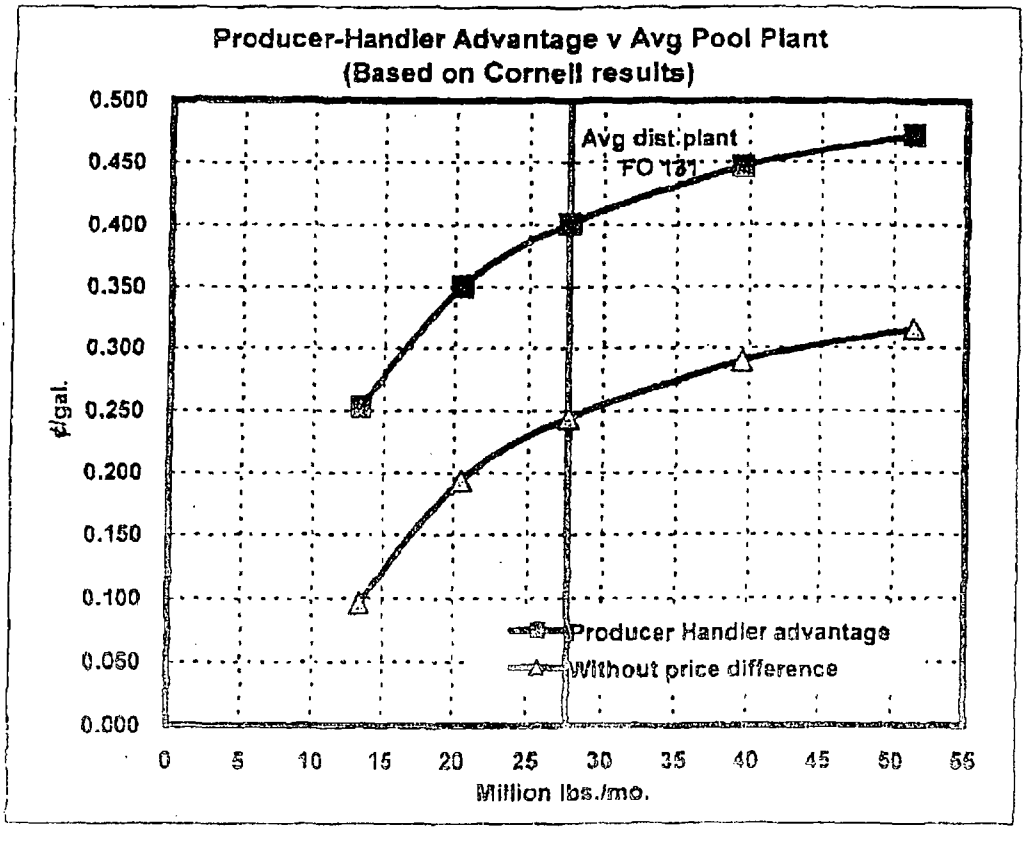
Relative to Average Pool Distributing Plant

Arizona - Las Vegas Market

September 23, 2003

Cornell*

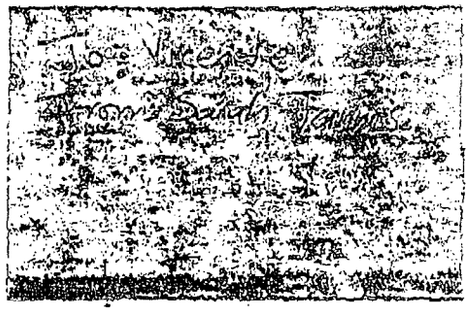
Producer Handler					
Monthly Volume (mil. lbs.)	13.3	20.5	27.7	39.6	51.4
Plant cost	0.447	0.349	0.299	0.253	0.227
Price advantage (Class I - blend)	0.157	0.157	0.157	0.157	0.157
Plant cost - price advantage	0.290	0.192	0.142	0.096	0.070
Average Pool Distributing Plant					
Monthly Volume (mil. lbs.)	26.7	26.7	26.7	26.7	26.7
Pool plant cost (26.7 mil. lbs./mo.)	0.543	0.543	0.543	0.543	0.543
Producer Handler advantage	**0.253**	**0.351**	**0.401**	**0.447**	**0.473**
Without price difference	**0.096**	**0.194**	**0.244**	**0.290**	**0.316**



Attachment 6

Sarah Farms
2751 E. Palo Verde St.
Yuma, AZ 85365
(928) 726-3976

Ex. 63



December 24, 2003

Veteran's Market
Daniel Sayler
570 West Mariposa Road
Nogales, AZ 85621

Dear Mr. Sayler:

The Federal Milk Market Class I price for January 2004 will be $14.40 per cwt. Veterans market milk pricing for the month of January 2004 will be as follows:

83961 00001	Sarah Farms Whole gallons	$1.73 per unit
83961 00002	Sarah Farms 2% gallons	$1.60 per unit
83961 00003	Sarah Farms 1% gallons	$1.49 per unit
83961 00004	Sarah Farms Skim gallons	$1.39 per unit
83961 00021	Sarah Farms Whole ½ gallons	$1.06 per unit
83961 00022	Sarah Farms 2% ½ gallons	$0.98 per unit
83961 00023	Sarah Farms 1% ½ gallons	$0.96 per unit
83961 00024	Sarah Farms Skim ½ gallons	$0.88 per unit
83961 00031	Sarah Farms Whole quarts	$0.58 per unit
83961 00032	Sarah Farms 2% quarts	$0.58 per unit
83961 00033	Sarah Farms 1% quarts	$0.58 per unit
83961 00034	Sarah Farms Skim quarts	$0.58 per unit
83961 00050	Sarah Farms Drinking Water	$0.35 per unit
83961 00101	Sarah Farms Sour Cream 16 oz	$21.45 per case (24/cs)
83961 00102	Sarah Farms Sour Cream 32 oz	$14.72 per case (8/cs)

If you should have any questions, please do not hesitate to call.

Thank you,

Jim Gardner
General Manager

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Attachment 7

Sarah Farms G. Volume
Estimated by Account
Monthly Estimates

Foot Notes	Accounts	1997	1998	1999	2000	2001	2002	2003
1	Southwest	433,333	458,333	465,000	465,000	465,000	0	0
2	Food City	276,666	301,666	310,000	329,000	710,000	1,108,333	1,108,333
3	Independents	55,416	58,333	60,000	60,000	60,000	60,000	60,000
	Del Sol & King's (Yuma area)	13,333	14,166	15,000	15,000	15,000	20,416	20,416
4	Mercado	98,333	108,000	108,500	108,500	0	0	0
5	Wal-Mart	0	0	72,000	211,000	0	0	0
6	Ross Swiss/Stern Produce	83,333	91,666	100,000	100,000	150,000	68,750	68,750
7	Super K	0	0	0	0	50,000	20,000	20,000
8	Deco Foods	0	0	0	0	0	75,000	82,500
9	Food 4 Less	0	0	70,000	0	0	0	0
10	Costco	0	0	0	0	0	308,333	308,333
11	Sams Club	0	0	0	0	0	250,000	250,000
12	Bashas	0	0					85,000
	Gallon Totals	960,414	1,032,164	1,200,500	1,288,500	1,450,000	1,910,832	2,003,332

1- Southwest had 33 stores by 2001. Southwest when into bankruptcy in late 2001 early 2002. Food City purchased 19 locations. Safeway purchased 2 locations. Garrett's purchased 1 location. The remaining stores closed.

2- Food City merged their Mercado stores into Food City's in 2001 for a total of 21stores. In 2001 Food City grew to 30 stores. In 2002 Food City purchased 19 Southwest stores and opened 2 additional stores for a total of 51 stores.

3- The major customers in this group are: Factor Sales, Villa Dist., Veterans Mkt., The Grocery Store.

4- Mercados converted into Food City's in 2001.

5- Sarah Farms served Wal-Mart from 1999 thru 2000. Adhor Farms served them in 2001. Shamrock served them from 2002 to present.

6- Stern Produce distributes for both Ross Swiss and Sarah Farms products. Sarah Farms is co-packing the Ross Swiss label in AZ. Ross Swiss customers are: Super K's and Big K's, Sprouts, Great Southwest Dist and other small accounts. In 2002 Ross Swiss lost a great deal of volume due to K-Mart closings and Targets and other small accounts going to Shamrock. Targets and other small accounts moved their busines Shamrock because of service and quality issues.

7- Super K closed 3 Super centers and 10 Big K's in 2002.

8- Deco Foods started to purchase gallons, 1/2 gallons and 5 gal bags from Sarah in January of 2002. Cream of Weber was the previous supplier.

9- Shamrock had the business from 1997 to 1998. Sarah Farms had the business in 1999. Shamrock got the business back in 2000 due to service and quality issues that Sarah Farms had.

10- Costco moved their business to Sarah Farms from Safeway in 2002. This transition to Sarah Farms started on 11/1/01.

11- Sam's Club moved their business to Sarah Farms from Shamrock which had 2 stores and Safeway had 10 stores. This transition to Sarah Farms started on 11/1/01.

12- Sarah Farms started to serve 8 Bashas stores in Tucson with Bashas private label gallons on 6/1/03.

Exhibit #: 22
Wit: _____
Date: _____
Cropper & Assoc., Ltd.
C. Cropper # 50491

Attachment 8

Table 6: Utilization of Surplus Milk by Producer-Handlers 1/
Pacific Northwest Order
January 2000 through July 2003

	Class I		Class II		Class III/IV		Total	
Year/Month	Pounds	Butterfat	Pounds	Butterfat	Pounds	Butterfat	Pounds	Butterfat
2000								
January	**Restricted**		2,665,317	336,181	1,812,895	131,676	4,478,212	467,857
February	626,478	22,455	2,346,376	329,427	1,748,224	117,123	4,721,078	469,005
March	926,940	33,053	2,438,771	352,500	1,622,451	129,444	4,988,162	514,997
April	1,196,360	41,811	2,462,552	287,287	1,742,890	126,797	5,401,802	455,895
May	676,170	23,627	2,714,919	344,163	1,978,459	135,592	5,369,548	503,382
June	1,210,905	41,696	2,653,514	325,519	1,434,627	111,647	5,299,046	478,862
July	1,735,248	60,105	2,964,810	339,576	1,411,310	93,352	6,111,368	493,033
August	1,422,582	49,396	2,465,276	358,544	676,703	62,549	4,564,561	470,489
September	686,735	22,875	2,045,789	310,863	730,815	99,101	3,463,339	432,839
October	721,812	24,140	2,090,035	317,945	593,296	91,571	3,405,143	433,656
November	705,596	23,053	1,984,852	289,486	735,034	104,662	3,425,482	417,201
December	1,178,173	38,893	2,143,263	308,589	1,040,992	87,579	4,362,428	435,061
Total	**11,086,999**	**381,104**	**28,975,474**	**3,900,080**	**15,527,696**	**1,291,093**	**55,590,169**	**5,572,277**
2001								
January	1,135,560	38,325	2,565,949	336,681	961,468	92,898	4,662,977	467,904
February	1,691,507	57,902	2,237,045	302,419	949,146	72,442	4,877,698	432,763
March	1,592,067	54,024	2,441,961	342,515	914,960	92,885	4,948,988	489,424
April	1,736,080	46,496	2,273,923	307,603	1,142,957	99,818	5,152,960	453,917
May	1,914,660	44,098	2,462,796	354,436	1,720,138	110,558	6,097,594	509,092
June	2,009,290	54,889	2,371,929	327,215	1,254,846	68,236	5,636,065	450,340
July	2,708,520	75,718	2,518,986	333,209	1,009,286	74,116	6,236,792	483,043
August	1,785,340	55,997	2,559,572	352,751	781,892	66,972	5,126,804	475,720
September	398,680	13,366	1,950,936	351,058	273,252	36,778	2,622,868	401,202
October	474,700	15,858	1,872,608	380,122	391,146	44,211	2,738,454	440,191
November	768,060	25,962	2,036,190	363,786	237,321	40,618	3,041,571	430,366
December	1,253,681	42,558	1,902,353	325,903	444,510	63,570	3,600,544	432,031
Total	**17,468,145**	**525,193**	**27,194,248**	**4,077,698**	**10,080,922**	**863,102**	**54,743,315**	**5,465,993**

Prepared by:
Market Administrator's Office
Seattl ashington

Table 6: Utilization of Surplus Milk by Producer-Handlers 1/
Pacific Northwest Order
January 2000 through July 2003

	Class I		Class II		Class III/IV		Total	
Year/Month	Pounds	Butterfat	Pounds	Butterfat	Pounds	Butterfat	Pounds	Butterfat
2002								
January	1,594,362	55,372	1,944,880	386,293	371,959	32,403	3,911,201	474,068
February	1,596,287	47,432	1,817,715	329,735	**Restricted**		3,414,002	377,167
March	1,901,680	55,022	2,018,996	390,530	**Restricted**		3,920,676	445,552
April	2,476,013	62,304	2,159,735	401,356	413,650	34,131	5,049,398	497,791
May	2,370,171	80,729	2,228,481	452,203	**Restricted**		4,598,652	532,932
June	2,889,807	89,799	2,608,511	371,493	589,860	20,562	6,088,178	481,854
July	4,123,641	117,117	2,573,297	359,598	886,632	31,232	7,583,570	507,947
August	3,608,740	105,786	2,503,254	344,771	965,040	44,169	7,077,034	494,726
September	1,169,080	29,475	2,633,547	366,023	814,220	41,064	4,616,847	436,562
October	1,229,469	30,438	2,868,499	428,009	681,760	41,701	4,779,728	500,148
November	853,000	24,089	2,778,613	373,980	458,520	36,653	4,090,133	434,722
December	1,364,800	33,729	3,610,618	404,661	758,448	47,576	5,733,866	485,966
Total	**25,177,050**	**731,292**	**29,746,146**	**4,608,652**	**5,940,089**	**329,491**	**60,863,285**	**5,669,435**
2003								
January	1,859,980	35,423	3,370,796	445,308	1,117,628	58,731	6,348,404	539,462
February	1,117,240	12,609	2,827,702	364,109	2,430,696	97,721	6,375,638	474,439
March	1,961,473	42,209	3,564,190	430,848	949,357	43,836	6,475,020	516,893
April	1,487,020	27,170	3,552,991	438,636	1,431,380	58,829	6,471,391	524,635
May	1,312,120	15,269	3,919,016	479,236	527,680	14,629	5,758,816	509,134
June	873,400	17,498	3,709,634	398,515	2,272,300	77,451	6,855,334	493,464
July	1,362,802	33,200	3,905,686	433,961	2,144,660	67,186	7,413,148	534,347
August								
September								
October								
November								
December								
Total	**9,974,035**	**183,378**	**24,850,015**	**2,990,613**	**10,873,701**	**418,383**	**45,697,751**	**3,592,374**

1/ Surplus milk in this table is defined as milk not packaged as a Class I fluid milk product at a producer-handler's plant.

Prepared by:
Market Administrator's Office
Seattle, Washington
September 2003

Attachment 9

REGULATED HANDLER

Ex. 65

FEDERAL ORDER -124

PRO FORMA INCOME STATEMENT

Twelve Month Period Ended December 31, 2003

REVENUE:			
Class I sales	$ 9,904,000 [1]	$ 13,205,000 [2]	$ 16,506,000
Class III/IV sales	704,000	938,000	1,173,000
TOTAL REVENUE	10,608,000	14,143,000	17,679,000
OPERATING EXPENSES:			
Cost of raw milk - Class I	4,275,000	5,700,000	7,124,000
Cost of Class III or IV	704,000	938,000	1,173,000
Containers	698,000	931,000	1,164,000
Plant and overhead	2,316,000	3,089,000	3,861,000
Shrink	89,000	119,000	149,000
Delivery	1,832,000	2,442,000	3,052,000
TOTAL OPERATING EXPENSES	9,914,000	13,219,000	16,523,000
NET INCOME BEFORE TAXES	$ 694,000	$ 924,000	$ 1,156,000

1 Regulated handler that processes 3,525,000 pounds of Class I per month

2 Regulated handler that processes 4,700,000 pounds of Class I per month

3 Regulated handler that processes 5,875,000 pounds of Class I per month

REGULATED HANDLER

FEDERAL ORDER - 124

STATEMENT OF ASSUMPTIONS

Twelve Month Period Ended December 31, 2003

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1. Sales were determined by using the average retail prices from USDA's published "Retail prices for 2 % milk, average of three outlets, selected cities by months, 2003" for the first seven months of 2003 for Seattle, Washington and Portland, Oregon. This average sale price was reduced by 40% to reflect the reduction to wholesale and store "specials" and distributor discounts.

2. This Pro Forma assumes that 85.5% of the regulated handler's sales would be at Class I and 14.5% would be at the lower of Class III or Class IV. This information was extracted from the sworn testimony of witnesses in the Federal Order hearing.

3. Operating costs for containers, plant and shrink were extracted from Plant C, Ex. 25A of the Herbein testimony at this proceeding.

4. Raw milk costs are reflected at Class I price for the Class I portion and the the lower of Class III or Class IV price is reflected for the remainder.

5. Delivery costs are reflected at 37.24 cents per gallon which reflects an average delivery cost for serving all types of customers using data from the Herbein & Co. proprietary database. Additionally, to the extent that customers pick-up at the dock of a producer/handler's plant, additional discounts are generally given to that customer.

Attachment 10

Ex. 67

Arizona Dairy Demographics

Females (nonhispanic) 442* **Hispanics: F 66*** **M 1879**

PLANTS

	Total Employees	Females (exc. hispanic females)	Hispanics
UDA (1/13/04 - Anson White)	176	28	2 F / 36 M
TOLLESON (1/14/04 - Melinda Moon)	114	30	53 M
SAFEWAY Milk Plant & Ice Cream Plant (1/19/04 - Carolyn Lee)	129	20	8 F / 33 M
SHAMROCK (1/14/04 - M. Krueger's Asst., Rachel)	1607	266	54 F / 319 M

DAIRIES

Owners

UDA - Number of Members	88	
Number of Hispanic Members	2	
Number of Memberships which include females	80	(78 nonHisp., 2 Hisp.)
(Arizona a community property state; spouses automatically entitled to half the property)		
Non-UDA Dairies	22	
Number of Hispanic owners	Unknown	
Number which include females	20	
(If the same percentage as that of UDA membership is used)		

Employees: 1436 Hispanic workers on Arizona dairies

Calculation:

# of dairies in AZ (Dairy Control Office, AZ DoA, 1/14/04)	126
Average herd size (Bulletin, Arizona Agricultural Statistics Service, 2002 p. 16: Jan 1, 2003 Number of milk cows total 150,000)	1200
Total cows in Arizona	151,200
Employees on AZ Dairies (1 employee per 100 milking cows)	1512
95% Hispanic labor force on dairies Formula from Tom Fuhrmann, DVM, Dairy consultant and Matt Van Baale, Ph.D., U of A Dairy Extension Specialist	1436

* Note: Figures don't include wives of male plant employees, nor wives of male dairy employees, so the number of females impacted could be significantly larger.

Attachment 11

Order Language

The three proponents offer the following language, and comments on our intentions for the language, to support the changes we wish to make to the producer handler definition. This language and comments are intended for both the Pacific Northwest and Arizona – Las Vegas Marketing Areas.

As a part of this commentary we will make some modification to our original submission. Wording noted with a ~~strikethrough, indicates language we wish to delete from our original submission.~~ Wording noted by bold text and underline indicates language we wish to insert into our original submission. Additionally wording noted by bold text, larger type and a double underline represents modifications to our language that we wish to make now.

Amend the Producer-handler definition of the Arizona-Las Vegas milk marketing order by revising § 1131.10 to read as follows:

§ 1131.10 Producer-handler.

Producer-handler means a person who operates a dairy farm(s) and a distributing plant(s) from which there is route ~~distribution within the marketing area during the month not~~

disposition in the marketing area and the total route disposition and transfers in the form of packaged fluid milk products to other distributing plants during the month does not exceed 3 million pounds and who provides proof satisfactory to the Market Administrator that it ~~the market administrator has designated a producer-handler after determining that all of the requirements of this section have been met~~ meets all of the requirements of this section for designation.

(a) Requirements for designation. Designation of any person as a producer-handler by the market administrator shall be contingent upon meeting all the conditions set forth in paragraphs (a)(1) through ~~(5)~~ (6) of this section. Following the cancellation of a previous producer-handler designation, a person seeking to have their producer-handler designation reinstated must demonstrate that these conditions have been met for the preceding month.

(1) The care and management of the dairy animals and the other resources and facilities designated in paragraph (b)(1) of this section necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) are under the complete and exclusive control~~, ownership~~ and management of the producer-handler and are operated as the producer-handler's own enterprise and its ~~own~~ sole risk.

(2) The plant operation designated in paragraph (b)(2) of this section at which the producer-handler processes and packages, and

from which it distributes, its own milk production is under the complete and exclusive control, ~~ownership~~ and management of the producer-handler and is operated as the producer-handler's own enterprise and at its sole risk.

(3) ~~The plant operation designated in paragraph (b)(2) of this section at which the producer-handler processes and packages, and from which it~~ **The producer-handler neither receives at its designated milk production resources and facilities, nor receives, handles, processes, or** distributes at or through any of its designated milk handling, processing, or distributing resources and facilities other source milk products for reconstitution into fluid milk products or fluid milk derived from any source other than:

(i) Its designated milk production resources and facilities (own farm production);

(ii) Pool handlers and plants regulated under any Federal order within the limitation specified in paragraph (c)(2) of this section; or

(iii) Nonfat milk solids which are used to fortify fluid milk products.

(4) The producer-handler is neither directly nor indirectly associated with the business control or management of, nor has a financial interest in, another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(5) No milk produced by the herd(s) or on the farm(s) that supply milk to the producer-handler's plant operation is:

(i) Subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing program under the authority of a State government maintaining marketwide pooling of returns, or

(ii) Marketed in any part ~~as Class I milk to the non-pool distributing plant of any other handler~~ **to a non-pool distributing plant.**

(6) The producer-handler does not distribute fluid milk products to a wholesale customer who is served by a plant described in § 1131.7(a), (b), or (e), or a handler described in § 1000.8(c) that supplied the same product in the same-sized package with a similar label to a wholesale customer during the month.

(b) Designation of resources and facilities. Designation of a person as a producer-handler shall include the determination of what shall constitute **the person's** milk production, handling, processing, and distribution resources and facilities, all of which shall be considered an integrated operation~~, under the sole and exclusive ownership of the producer-handler~~.

(1) Milk production resources and facilities shall include all resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for

the production of milk ~~which are solely owned, operated, and~~ which the producer-handler has designated as a source of milk supply for the producer-handler's plant operation. ~~However, for purposes of this paragraph, any such milk production resources and facilities which do not constitute an actual or potential source of milk supply for the producer-handler's operation shall not be considered a part of the producer-handler's milk production resources and facilities.~~

(2) Milk handling, processing, and distribution resources and facilities shall include all resources and facilities (including store outlets) used for handling, processing, and distributing fluid milk products which are solely **or partially** owned by, and directly **or indirectly** operated or controlled by the producer-handler or in which the producer-handler in any way has an interest, including any contractual arrangement, or over which the producer-handler directly or indirectly exercises any degree of management **or** control.

(3) All designations shall remain in effect until canceled pursuant to paragraph (c) of this section.

(c) Cancellation. The designation as a producer-handler shall be canceled upon determination by the market administrator that any of the requirements of paragraph (a)(1) through ~~(5)~~ (6) of this section are not ~~continuing to be~~ met, or under any of the conditions described in paragraphs (c)(1), (2) or (3) of this section. Cancellation of a producer-handler's status pursuant to this paragraph shall be effective on the first day of the month ~~following~~

~~the month~~ in which the ~~requirements were not met or the conditions for cancellation occurred~~ **conditions were not met**.

(1) Milk from the milk production resources and facilities of the producer-handler, designated in paragraph (b)(1) of this section, is delivered in the name of another person as producer milk to another handler.

(2) The producer-handler handles fluid milk products derived from sources other than the milk production facilities and resources designated in paragraph (b)(1) of this section, except that it may receive at its plant, or acquire for route disposition, fluid milk products from fully regulated plants and handlers under any Federal order if such receipts do not exceed 150,000 pounds monthly. This limitation shall not apply if the producer-handler's own-farm production is less than 150,000 pounds during the month.

(3) Milk from the milk production resources and facilities of the producer-handler is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing plan operating under the authority of a State government.

(d) Loss of producer-handler status. Not withstanding paragraph (a) of this section, loss of producer-handler status for exceeding the limits in (c) (2) or for having more than three million pounds of total route disposition and transfers in the form of packaged fluid milk products to other

distributing plants during the month shall only be effective in the months where the limits are exceeded.

~~(d)~~ (e) Public announcement. The market administrator shall publicly announce:

(1) The name, plant location(s), and farm location(s) of persons designated as producer-handlers;

(2) The names of those persons whose designations have been cancelled; and

(3) The effective dates of producer-handler status or loss of producer-handler status for each. ~~Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from any producer-handler.~~

~~(e)~~ (f) Burden of establishing and maintaining producer-handler status. The burden rests upon the handler who is designated as a producer-handler to establish **by proof satisfactory to the Market Administrator** through records required pursuant to §1000.27 that the requirements set forth in paragraph (a) of this section have been ~~and are continuing to be~~ met, and that the conditions set forth in paragraph (c) of this section for cancellation of the designation do not exist.

MARVIN BESHORE
Attorney at Law
130 STATE STREET, P.O. BOX 946
HARRISBURG, PA 17108-0946
Email: mbeshore@mblawfirm.com

Telephone: (717) 236-0781 Fax: (717) 236-0791

August 2, 2004

Via First Class 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 Pacific Northwest and Arizona - Las Vegas Marketing Area
Docket Nos. AO-368-832, AO-271-837 and DA-03-04

Dear Ms. Dawson:

Enclosed are four copies of "Brief for Dairy Farmers of America, Inc. (DFA)" for the above captioned case.

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

Very truly yours,

Marvin Beshore

MB:ch
Enclosures

cc: Gino Tosi, USDA (Via email and FedEx)
Jack Rower, USDA (Via email and FedEx)
Sydne Berde, Esquire (Via email and First Class Mail)
Ryan K. Miltner, Esquire (Via email and First Class Mail)
Douglas Marshall, Esquire (Via email and First Class Mail)
Al Ricciardi, Esquire (Via email and First Class Mail)
Sharlene Deskins, Esquire (Via email and First Class Mail)
Charles English, Esquire (Via email and First Class Mail)
Benjamin F. Yale, Esquire (Via email and First Class Mail)
Elvin Hollon, DFA, Inc. (Via email and First Class Mail)
Dr. Roger Cryan, NMPF (Via email and First Class Mail)