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UNITED STATES DEPARTMENT OF AGRICULTURE  
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Re: Proposal to Establish a Federal Milk  
Marketing Order for California

Docket No. AO-15-0071;  
AMS-DA-14-0095

Hearing in Fresno, California,  
September – November 2015

Post-Hearing Reply Brief for Hilmar Cheese Company

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## REPLY BRIEF FOR HILMAR CHEESE CO.

### *I. Reply to Cooperatives' Claim that Producer Support for Their Proposal is Evidence of Need for Federal Regulatory Intervention.*

Leading up to the Fresno hearing, proponent cooperatives laid an attractive foundation for political support of FMMO promulgation in California. Proponents promised California milk producers a substantial increase in income if USDA were to replace CDFRA as the milk price regulator. Producers were repeatedly told that if a California FMMO had been in effect since 2010, they would have earned over \$1.5 billion more than they earned under CDFRA pricing.<sup>1</sup> This message was reinforced in August 2015 by USDA's Preliminary Regulatory Impact Analysis of the cooperative's proposal, which reported an estimated market-wide milk revenue increase of \$700 million per year, or \$1.03/cwt., under the proposal, if adopted. Ex. 5, p. 14. The message was again featured as a primary pillar of support in proponents' post-hearing brief. The package presented, unique in USDA's 80 years of FMMO promulgation, was that all milk producers would be winners.

Producer support at the hearing for the pay raise promised by cooperatives was predictable and pervasive. The producer response, in turn, was touted in the cooperative proponents' post-hearing brief as compelling substantive evidence for the proposal: "The near unanimity of California producers on their petition for an FMMO may be the strongest evidence of its necessity." Co-op Brief at 15.

But milk producer approval or support "does not constitute evidence that the order" is justified. *Borden, Inc. v Butz*, 544 F.2d 312, 319 fn.5 (7<sup>th</sup> Cir. 1976). "It is the Secretary, not the farmers, who is responsible for administering the statute and initiating orders." *Zuber v Allen*, 396 U.S. 168, 196 (1969).

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<sup>1</sup> Cooperative proponent's letter-Petition for a California FMMO, February 3, 2015, p. 2; Hollon, Tr. 796, 839; McBride, Tr. 1262; Goule, Tr. 1978; Rob Vandenneuvel, Tr. 2044; Post-Hearing Brief filed March 31, 2016, for California Dairies, Inc., Dairy Farmers of America, and Land O'Lakes, Inc. ("Co-op Brief") at 1, 18.

II. *Reply to Co-ops' Claim that They Were Rebuffed by CDFA in Efforts to Secure National Values, as Employed by USDA, for Classified Milk Uses.*

Cooperatives' second asserted pillar of support for federal intervention is that they made repeated efforts to persuade CDFA to adopt FMMO milk price levels, and were rebuffed in these efforts.<sup>2</sup> The Cooperatives' Brief (p. 1) starts with the 'pay raise' and 'rebuffed efforts' pillars:

The failure of California regulations to establish minimum prices for California producers which reflect national values for classified milk uses has cost California dairy farmers a California discount of more than \$1.5 billion dollars since 2010.\*\*\* After trying to restore order to the system through other methods, and being *repeatedly rebuffed at each* attempt, California dairy producers have now invoked their Congressionally granted right to petition the Secretary of Agriculture ("Secretary") to intervene and issue an FMMO covering California. A California FMMO is necessary in order for California dairy producers to obtain the full nationally defined value for all uses of milk produced in the state. (*Italics supplied*)

The assertion of cooperative efforts and of CDFA rejection, however, is not supported by any proposed findings or any record references in the cooperatives' brief or its separate Proposed Findings of Fact.<sup>3</sup>

And it is impossible to reconcile these briefing assertions with record evidence of the cooperative proponents' consistent support for CDFA's classified milk pricing determinations, with the singular exception (since 2011) on how whey product revenue should be incorporated by CDFA in the class 4b milk price – and even then, the “California price for milk used for cheese ought to be \$0.70/cwt. less than the federal price,” as CDI witness Dr. Eric Erba admitted in May 2013.<sup>4</sup>

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<sup>2</sup> Co-op brief at 1, 4.

<sup>3</sup> Perhaps in tepid support of these assertions, the co-op brief, on pages 9 and 21, pastes conclusory hearing testimony from Mr. Hollon : “In recent years, however, U.S. milk markets have become more regional and national in scope, and FMMO regulations have evolved with those developments, while regulations in California have not responded to the shifts taking place in the national marketplace. (Exh. 19, p. 5.)”

<sup>4</sup> Ex. 53 (.pdf p. 9 of 21), Transcript of testimony of Eric Erba, May 20, 2013, p. 56, CDFA hearing on proposed amendments to milk stabilization and marketing plans.

Except for the whey value component of the class 4b price, Dr. Erba testified in May 2013 that a “reasonably close” and “acceptable level of price difference between California prices and federal order prices is demonstrated” by the other CDFFA classified milk prices, as follows (Ex. 53, pdf pp. 7-8 of 21):

- CDFFA class 4a -- \$0.27 less than FMMO Class IV;
- CDFFA class 3 -- \$0.70 less than FMMO Class II;
- CDFFA Southern California class 2 -- \$0.42 less than FMMO Class II;
- CDFFA Northern California class 1 -- \$0.34 less than FMMO PNW Class I;
- CDFFA Southern California class 1 -- \$0.52 less than FMMO Az. Class I.

In June 2015, Dr. Erba reaffirmed in CDFFA testimony that, “an acceptable level of price difference exists for most of the classes of milk when comparing California milk prices to federal order milk prices,” except for whey in the class 4b price. Ex 45, pdf pp. 5-6 of 18.

And except for the class 4b whey component in the past few years, Exhibits 36, 37, 44, 45, 46, 46, 52 and 53 reveal that since at least 2005 to 2015, the proponent cooperatives have expressly and repeatedly advocated and supported CDFFA class 4a and 4b milk prices lower than corresponding FMMO prices.<sup>5</sup> The

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<sup>5</sup> In June 2006, Land O'Lakes representative, Tom Wegner, asked CDFFA to increase make allowances for class 4b cheese and whey, and for class 4a butter; to update the cheese and butter f.o.b. California plant adjuster based on product price surveys; and to eliminate whey products in the class 4b price if the whey make allowances was not substantially increased. Ex. 36 (pdf pp. 11-12), transcript of testimony of Tom Wegner, Tr. pp. 238-39, 245-46. Land O'Lakes complained that California plants were not competitive with FMMO plants under CDFFA pricing, particularly because FMMO handlers can depool plants and milk supplies, resulting in “a significant advantage over California cheese plants.” *Id.*, Tr. 244-45.

In October 2007, Land O'Lakes, by Tom Wegner, again asked CDFFA to increase the class 4b cheese and whey make allowances, increase the class 4a NFDM make allowance, and update the cheese and butter f.o.b. California plant adjusters based on product price surveys Ex. 37 .pdf pp. 4-5 (Tr. pp. 104-05). Mr. Wegner noted that returns on investment under CDFFA make allowances were much better for 4a butter/powder plants than for cheese, and if that did not improve, Land O'Lakes would shift investment from cheese plants to butter/nfdm. *Id.*, (Tr. pp. 116, 122).

positions taken by the cooperatives were based on (1) the value of manufactured milk products to California plants, as measured by product prices for cheese, powder and butter received by California plants, (2) manufacturing costs actually incurred by California plants, as determined by CDFA audits of such costs, and (3) California product yields from raw milk. In each case, the minimum milk price result advocated by proponents to CDFA was lower than the corresponding FMMO classified price.

These California-specific economic factors, embraced the proponent cooperatives in the past, drive the California milk and dairy products market and serve as the foundation of CDFA's end-product milk pricing.<sup>6</sup>

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(fn 5, continued.).

In a November 2009 post-hearing brief to CDFA, CDI explained why California class 4a and 4b prices should not be raised to FMMO Class III and IV levels:

“Another question was asked as to why the Class 4a and 4b price should not be raised to be equal to the federal class III and class IV prices. While the questions were not asked of me. I would like to amplify the explanation provided in my testimony. First, Class 4a and 4b are market-clearing classes of milk and process 75% of the milk produced in California. The products from these plants compete in national and international markets where price is a dominant consideration for buyers. The California dairy industry is wholly dependent on the continued operation of its manufacturing facilities. To burden these plants with higher minimum prices that cannot be extracted from the market, even for a brief period, would have potentially devastating consequences.”

Letter of November 11, 2009, from Eric Erba to David Ikari, Branch Chief, Dairy Marketing Branch, CDFA, Ex. 44.

In June 2011, CDI's Eric Erba urged CDFA to increase the Class 4a make allowance, and update the butter f.o.b. California adjuster to reflect the survey price value of butter to California plants. Ex. 46, .pdf pp. 4-8 (Tr. 11-15). Land O'Lakes submitted a similar proposal to increase the cheese make allowance and update the cheese f.o.b. California plant adjuster based on product price surveys. Ex. 46. Tr. 18.

In June 2014, CDI petitioned CDFA to increase the class 4a make allowances for NFDm and butter, thereby lowering the class 4a price. Ex. 52.

In May 2013, and again in June 2015, CDI's Eric Erba confirmed that CDFA's class prices, lower than FMMO prices, were reasonable, except for that part of the class 4b price based on whey byproduct revenue. Ex. 53 (.pdf pp. 7-8 of 21), Ex 45 (.pdf pp. 5-6 of 18).

<sup>6</sup> CDFA, Final Hearing Panel Report based on hearing of June 3, 2015, page 12, available at <https://www.cdfa.ca.gov/dairy/uploader/docs/Panel%20Report%20Final%207.15.pdf> (official notice was requested by the Dairy Institute on March 31, 2016).

As explained by the CDFA hearing panel last summer, these factors are expressly included in statutory directives of the California Milk Stabilization Act:

When establishing prices for Class 2, 3, 4a, and 4b milk, Section 62076 states that the Secretary “shall take into consideration any relevant economic factors” that include, but are not limited to the value of the various products manufactured from milk (Section 62076(a)), the price of other milk used for the same purposes in the respective classes listed above (Section 62076(b)), and the value of manufacturing milk while “giving consideration to any relevant factors including, but not limited to, product prices, product yields, and manufacturing costs of Class 4a or Class 4b” (Section 62076(c)).<sup>7</sup>

These factors, of course, are essentially identical to factors employed by USDA in constructing FMMO Class III and IV price formulas. But cooperative proponents now repudiate their past economic, policy and price level application of these factors in California. The co-op proponents ask USDA similarly to repudiate the carefully constructed regulatory conclusions of CDFA dairy experts who have decades of intimate knowledge of changing supply, demand, and marketing conditions of the California market for milk and dairy products.<sup>8</sup>

### *III. Reply Review of AMAA Statutory and Constitutional Pricing Framework.*

Co-op proponents request USDA to “find” that their proposal for class and component prices in Section 1051.50 “is essentially unopposed,” and should be adopted. (Co-op proposed finding 32, Co-op Appendix to Brief at pdf pp. 141-42). In their brief, however, co-op proponents devote pages 59 – 93 to the notion that California’s classified milk prices should now be based on USDA’s 1999 FMMO reform “pricing grid” decision – a proceeding which expressly did not include the federal agency’s examination of “market supply and demand for milk and its products in the [California] marketing area,” as required by the AMAA, 7 U.S.C. §608c(18). But nowhere in their 157-page brief, nor in their 156-page Appendix, do

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<sup>7</sup> CDFA, Final Hearing Panel Report based on hearing of June 3, 2015 (App. B), p. 33.

<sup>8</sup> CDFA Dairy Marketing Branch Chief, Don Shippelhouse, who was on the June 3, 2013, hearing panel, has served in CDFA’s milk programs for 25 years. Tr. 2601-02.

cooperative proponents make any reference to §608c(18) or reconcile their proposal with this AMAA pricing standard.

USDA should recall, as revealed in its own milk price control decisions for eight decades, that §608c(18) was adopted by Congress in 1937 as a “standard for the guidance of the Secretary in fixing milk prices in an order issued for *a particular marketing area*.” Congress recognized that the “effectiveness” of federal milk orders “depends upon their adaptability to *conditions affecting each marketing area* and upon their adjustment from time to time to meet changing conditions.” S.Rep. No. 565, 75th Cong., 1st Sess. (1937) (italics supplied).<sup>9</sup> Cooperative proponents, in contrast, assert that USDA should not adapt a California FMMO to conditions in the California marketing area that have changed since FMMO reform (and were not examined in the course of FMMO reform),<sup>10</sup> but USDA should rather adopt the 1999 FMMO reform pricing grid for California without adapting the FMMO milk order

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<sup>9</sup> A copy of the 1937 Senate Report discussing §608c(18) is appended to this brief.

The Congressional expectation under §608c(18) that USDA would adapt price control to “each marketing area” and make regular adjustments to minimum milk prices and milk price formulas as conditions change has been reinforced by milk marketing legal scholars, courts, and the agency. Neil Brooks (Assistant General Counsel, USDA), *The Pricing of Milk Under Federal Marketing Orders*, 26 GEO. WASH. L. REV. 181 (1958) at 198 (“The pricing of milk is affected by circumstances of great variety and constant change.”); *Lansing Dairy, Inc. v. Espy*, 39 F. 3d 1339, 1351-53 (6<sup>th</sup> Cir. 1994) (quoting from 1937 Senate and House Reports on §608c(18)); USDA, *Marketing, The Yearbook of Agriculture – 1954*, p 359 “The pricing of fluid milk is a difficult problem in most market areas. The general nature of the problem is much the same, but conditions in the individual markets change constantly. Pricing must therefore be a continuous process if marketing is to be orderly.”

The yearbook is available online at <https://archive.org/details/yoa1954> .

<sup>10</sup> Under the April 4, 1996, Farm Bill, which required FMMO reform and authorized California’s inclusion in the system of FMMO marketing orders, USDA was required to issue a proposed rule by April 1998 and a final rule by April 1999. 7 U.S.C. § 7253. To meet these deadlines, USDA’s Dairy Division Director’s letter of May 2, 1996, invited all interested persons to submit proposals by July 1996, if feasible. See archived access link <https://web.archive.org/web/19970709121827/http://www.ams.usda.gov/dairy/reform.htm> for USDA’s 1996 - 1997 FMMO Reform letters and committee reports. By the time of the recommended decision in January 1988, it was clear that California would not be included in the FMMO system due to lack of interest by the California dairy industry. 63 Fed. Reg. 4801, 4831 (Jan. 30, 1998). The §608c(18) examination of supply and demand for California milk and dairy products was not needed during FMMO reform, but is imperative now.



system to changes that may be needed with California as part of the system, changes that were unnecessary to consider in the 1999 FMMO reform decision with California outside of the system.

The most important principle of statutory guidance, regulatory policy, and constitutional law in this process is an ultimate determination that regulated raw milk price controls under any FMMO for California will allow milk product manufacturers to “make a profit” under FMMO policy, 64 Fed. Reg. 16026, 16094 - 95 (April 2, 1999), or a reasonable return on investment under federal constitutional law as evolved since the Supreme Court’s 1934 decision in *Nebbia v. New York*, 291 U.S. 502 (1934).<sup>11</sup> Thus, constitutional law and FMMO policy converge in the simple return on investment pricing standard. They converge likewise in reliance on *Nebbia* as the source of legal standards and authority for government milk price control.<sup>12</sup>

*IV. Reply to the Co-ops’ Claim that the Current FMMO Class III and IV Prices Should Be Adopted for a New California FMMO.*

Although cooperative proponents hope to shoot the moon by increasing all classified milk prices in a California marketing area to 1999 FMMO “pricing grid”

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<sup>11</sup> E.g., *Permian Basin Area Rate Cases*, 390 US 747, 769-70 (1968) (citing *Nebbia*); *Guaranty Nat. Ins. Co. v. Gates*, 916 F. 2d 508, 523- 515 (9th Cir. 1990) (citing *Nebbia*); *Calfarm Ins. Co. v. Deukmejian*, 771 P. 2d 1247 (1989) (insurance rate control, citing *Nebbia*), and other authorities discussed on pp. 33-37 of Hilmar’s opening brief.

<sup>12</sup> S.Rep. No. 565 (1937), attached, explains that Congress relied on *Nebbia* as assurance that the AMAA’s milk price control authority was lawful: “The peculiar nature of milk as a commodity and the power of requesting prices of this commodity have been set forth by the Supreme Court in its decision in the case of *Nebbia v. New York* (1934), 291 U. S. 502.”

There is little doubt that, in their reply brief, cooperative proponents will seek to discredit the applicability, to milk order price control, of constitutional standards for ratemaking and price control of markets discussed in Hilmar’s opening brief. As a policy matter, it should make little difference, since the constitutional standard is measured by the regulatory result, not by the procedure or statute or criteria employed by the regulators. If a reasonable profit or return on investment is the result of FMMO price control, as USDA has explained it should be, that result also satisfies the constitutional standard.

The primary strategic reason for cooperatives to disavow the constitutional standard, therefore, is to advocate for an FMMO price control result that provides unreasonably low or negative returns on investment to California dairy product manufacturers.

levels, Hilmar Cheese Company's primary focus (like that of the co-ops) is on the proposed pricing structure for Class III and IV milk used to produce cheese and whey byproducts, milk powder and butter. The cooperatives advance three principal notions in support of their proposal for Class III and IV prices in a California marketing order, and in response to evidence presented by the Dairy Institute of California, Hilmar Cheese Company, and other California dairy product manufacturers. The cooperative proponents argue:

1. That there is no variable geographical "locational value" of milk used to produce manufactured dairy products. Rather, "locational value" of milk used for manufacturing purposes is only a theory, and the location value theory has been rejected by "USDA policy declaring that the market for milk products is national." Co-op Brief at 85-87, 156.
2. That USDA's FMMO pricing policies are not concerned with whether surplus milk production will clear the local market, but rather whether milk products produced by surplus milk will clear the national dairy products market. Co-op Brief at 90-92.
3. That "California plants can afford to pay the same minimum price for Class III milk as applies in the rest of the FMMO system." *Id.*, at 82-89.

These claims are readily disproved by record evidence and/or by USDA's economic analysis and policy declarations over the course of decades.

*A. Regional location variation in the value of milk products, and therefore in the value of milk used to produce dairy products, is overwhelmingly demonstrated by facts, and has never been rejected by USDA.*

Hilmar Cheese Company's opening brief explained that USDA has long recognized that the value of producer milk and milk products varies by location; that the geographic price variability is a function of supply, demand and transportation costs. Regional variation in cheese product values is demonstrated by observed government-surveys of product prices since 1997. Hilmar Brief at 6-13, proposed findings 1 – 18. Regional variation in cheese product values is a fact that cheese manufacturers must deal with in marketing and pricing decisions every

day, as they seek to sell products to buyers who can secure cheese from many sources, but are unwilling to pay more for cheese delivered from distant plants. Geographic variability in the value of milk for Class III and Class IV use, applying the same functions of supply, demand and transportation costs, was included in the USDSS most-efficient marketing solution model leading up to FMMO reform, just as the USDSS model did for Class I milk.

The USDSS model results, revealing a national price surface for milk used to make cheese during FMMO reform deliberations, showed an optimal (least cost) difference of about \$0.30/cwt. in the Class III value of milk in the Upper Midwest over the milk value for cheese use in California. More recent results, as explained in Dr. Stephenson's hearing testimony and Exhibit 133, reveal a \$0.70/cwt. optimal difference in the Class III milk value.

The co-op brief asserts that the 1993-95 "*data*" revealed by the USDSS model on Class III and IV pricing was "rejected" by USDA in the course of FMMO reform, and should be rejected now "for the same reasons the USDA *rejected the data* previously." Co-op brief at 86, n.29, and 156 (italics supplied). Proponent cooperatives' brief characterized record evidence of lower location value of milk for cheese in California as "theoretical" and mere "argument," inconsistent with "long established USDA policy" – an argument to which USDA "should pay no heed." Co-op brief at 85-87, 156. With this foundation, proponent cooperatives assert that the "concept" of "regional pricing of milk used for manufacturing purposes...was specifically rejected during Federal Order Reform." Co-op Brief at 86.

The discussion of regional pricing for Class III/IV milk in the final FMMO reform decision reveals that USDA accepted (not rejected) the fact of regional product price differences, and accepted (not rejected) USDSS price surface data on regional values. That discussion also reveals that USDA acknowledged "some justification for regional pricing," but declined to do so for reasons of practicality and need – unavailable commodity price data, and component pricing would eliminate some regional concerns in FMMO markets. Because of the Co-op proponents' gross mischaracterization of the content of the final FMMO reform

decision on regional pricing for Class III/IV uses, and on the USDSS model data, the relevant and un-redacted text from the decision is reproduced in the note below.<sup>13</sup>

The need for and benefit of regional Class III/IV pricing in the FMMO Reform decision, of course, did not include a system of FMMO markets that included supply and demand analysis for milk and dairy products in the State of California. 64 Fed. Reg. at 16044. With California excluded from the regulated milk marketing system, but with lower California dairy product prices included in the FMMO Class III and IV product price surveys, the resulting FMMO prices based on 1993 – 98 observed price and USDSS data were apparently perceived to be low enough that manufacturing plants in all consolidated FMMO markets could operate with a reasonable margin, as they had previously done under then-existing MW/BPF and Class IV-A pricing. See Hilmar’s opening brief at 29-39.

But with a California milk marketing order as part of the FMMO system, and with growth of dairy product production in the West outside of California since 1998, the 1999 conclusions of need for regional Class III/IV pricing (or a lower national Class III base price) should be reexamined.<sup>14</sup> After all, the addition of

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<sup>13</sup> “Several comments were received suggesting that regional BFP replacement prices be used rather than a national BFP replacement. The commenters explained that cheese, butter, and nonfat dry milk have different values in different regions of the country, and that the Cornell study described a price surface for milk used in manufactured products across the United States. Therefore, they concluded, the replacement BFP also should be determined regionally. This decision replaces the current BFP with a national Class III price and a national Class IV price. Although there may be some justification for regional pricing, there are two principal reasons for using national pricing. First, pricing milk on the basis of the pounds of components contained in the milk eliminates some of the regional differences in milk prices. Second, regional commodity price data, and for that matter regional competitive pay price data, are unavailable. Resulting attempts to estimate regional differences, with the ensuing regional differences of opinion, would yield minimal benefits.” 64 Fed. Reg. at 16100.

<sup>14</sup> USDA’s own staff BFP Committee report observed that the use of a uniform national BFP “does not preclude the possibility of regional adjustments to the BFP.” Basic Formula Price Committee, AMS, USDA, *A Preliminary Report On Alternatives to the Basic Formula Price* (April 1997), at p. 7. The BFP Committee also reaffirmed that: “Sound economics also implies that *minimum prices for milk* used in manufactured products *will be market-clearing*.” Id at 8, italics supplied. The BFP Committee Report is available online at <https://web.archive.org/web/19970709133050/http://www.ams.usda.gov/dairy/dybfprep.pdf>

California to the FMMO system would increase cheese production from FMMO-priced Class III milk by about 30%, increase butter production from Class IV milk by about 50%, and increase NFDM production from Class IV milk by about 60%. And the availability of regional commodity price data should no longer be an obstacle, as it was deemed to be in 1999. The advent of mandatory reporting of dairy product prices since FMMO reform now allows USDA to gather sales price information on any dairy product, in any region of the country, where such price information is “used to establish minimum prices for Class III or Class IV milk under a Federal milk marketing order.” 7 U.S.C. §1637b.

*B. USDA’s FMMO surplus, Class III/IV, milk pricing policies have always been concerned with whether surplus milk production will clear the local market at established, regulated prices.*

Proponent cooperatives next disparage Dr. Bill Schiek’s testimony. As paraphrased in the Co-op brief, Dr. Schiek testified “that the relevant market for determining the milk price is the ‘local market,’ not the national market since ‘[t]he markets for finished dairy products clear nationally, but the market for milk clears locally.” Co-op Brief at 90. Proponent cooperatives continue: “The milk-markets-clear-locally assertion, repeated numerous times in the hearing, has no basis as a price policy premise in any USDA decisions;” and the only relevant market-clearing prices are the “national market-clearing product prices.” *Id.*, 90-91.

Apart from the unavoidable statutory fact, that the relevant market for USDA milk pricing is the local marketing area (5 U.S.C. §608c(18), and S.Rep. No. 565, attached), USDA has frequently stressed the importance of clearing the local milk market by surplus milk prices that are market-clearing for the milk market.

The final FMMO reform decision emphasized:

The importance of using minimum prices that are *market-clearing for milk* used to make cheese and butter/nonfat dry milk cannot be overstated. The prices for milk used in these products must reflect supply and demand, and must not exceed a level that would require handlers to *pay more for milk than needed to clear the market* and make a profit.

64 Fed. Reg. 16026, 16094 - 95 (April 2, 1999), italics supplied.

Three years later, USDA reaffirmed in a Class III/IV pricing decision: “If *milk is to clear the market*, plants must be willing to accept it.” “The principal reason for [make allowances that cover costs of efficient plants] is to assure that the *market is cleared of reserve milk supplies*. 67 Fed. Reg. 67906, 67915 (Nov. 7, 2002) (italics supplied).

Leading up to the FMMO Reform, and anticipated milk price regulation without surveyed M-W milk prices available for use in setting Class III/IV milk prices, USDA and university economists recommended use of end-product prices to estimate milk values – the method selected by USDA in FMMO Reform. In 1978, Ohio Agric. Research Bulletin 1105 observed:

If all the reserve supplies of milk are to be marketed in an orderly way and the market cleared, the price for reserve supplies of milk over time must be closely related to net revenues available from the sale of manufactured products.

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In both the short run and long run, the reserve milk price must be a market clearing price and must reflect continually changing supply/demand conditions for milk used for manufactured dairy products. If returns from reserve milk products are below the equivalent reserve milk price, buyers would not accept the milk. If returns from reserve milk products are above the equivalent reserve milk price, Class I prices would have to reflect added premiums in order to assure adequate supplies. *The more severe problem is associated with a reserve milk price higher than market conditions justify.*<sup>15</sup>

The same conclusions were made in 1973 by USDA’s own Milk Pricing Advisory Committee report:

One of the objectives of the classified pricing scheme is to establish prices for milk not needed for fluid use at levels which will clear the market.

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<sup>15</sup> Jacobson, Robert E., et al, *Pricing Grade A Milk Used in Manufactured Dairy Products*, (Ohio Agriculture Research and Development Center, Wooster, Ohio: 1978, Research Bulletin 1105), pp. 3-4, 60 (italics supplied), available at [https://kb.osu.edu/dspace/bitstream/handle/1811/62924/OARDC\\_research\\_bulletin\\_n1105.pdf?sequence=1](https://kb.osu.edu/dspace/bitstream/handle/1811/62924/OARDC_research_bulletin_n1105.pdf?sequence=1)

If all the reserve supplies of milk not needed for fluid use are to be marketed in an orderly way and the market cleared, the price for surplus milk must be closely related to net revenues from the sale of manufactured products after the deduction of processing costs.<sup>16</sup>

In short, the cooperatives' arguments – that “market clearing” prices do not apply to local milk markets and regulated prices in local markets – are flat wrong as statements of fact, economics, law, and USDA policy.

*C. Reply to the cooperative proponents' argument that “California plants can afford to pay the same minimum price for Class III milk as applies in the rest of the FMMO system.” Co-op brief at 82 – 89.*

CDFAs economic formula for pricing milk used to produce cheese lies at the heart of the Co-ops' efforts to secure federal intervention for milk price control in California. The co-ops do not expressly acknowledge the need for Class III pricing to allow a return on investment for cheese plants as a matter of AMAA regulatory imperative (e.g., 64 Fed. Reg. at 16094 – 95), nor as a matter of federal constitutional imperative (see Hilmar opening brief at 32-37). But these principles are implicitly acknowledged by the cooperatives' arguments that California cheese plants “can afford to pay” FMMO Class III prices and still be profitable, albeit at “reduced profit” levels. Co-op brief at 82, 88.

As carefully documented in Hilmar Cheese Company's opening brief, at 13-15, observed geographic differences in product values for cheese reveal that requiring California cheddar cheese plants to pay the FMMO Class III price from 2002 – 2010, would have resulted in negative returns on investment in every year. It is not simply a matter of “reduced profits,” as the Co-ops now contend.

The co-op brief nevertheless maintains: “There is simply no basis in this record to support a contention that being required to pay the minimum national uniform Class III price will place California cheese plants at an unfair competitive disadvantage; it will simply eliminate a portion the competitive advantage they now have.” Co-op brief at 84. This notion is followed by a narrative on premiums paid

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<sup>16</sup> U.S. Department of Agriculture, *Milk Pricing Policy and Procedure, Part II*, (1973), p. 58, available at <http://dairy.wisc.edu/PubPod/Reference/Library/Knutson.etal.03.1973.pdf>

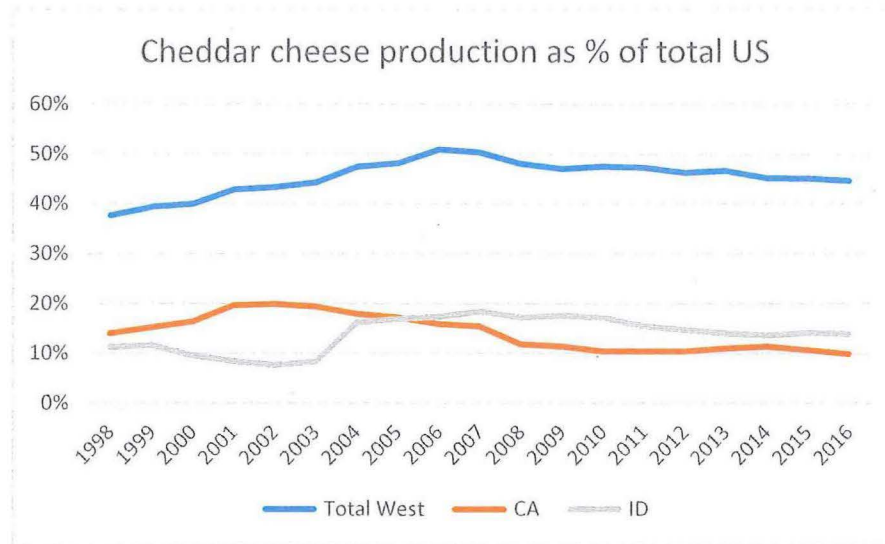
by manufacturing plants in the Midwest and eastern milk markets, apparently implying that voluntary premiums paid by California's eastern competitors disproves any competitive disadvantage to California plants under Proposal No. 1. Co-op brief at 83-84.

But higher premiums in the east would be expected from the observed and the modeled price surface for milk used to make cheese. As shown in Hilmar's opening brief (p. 14-15, Finding 22), plant margins and returns on investment have been steadily increasing for Minnesota and Wisconsin cheddar plants since 2001, while California cheddar plants would have experienced progressively greater negative returns under FMMO Class III prices during the same period. The premium practice of eastern plants in response to higher margins is rationally expected. When plant margins increase, "it is likely that processors share some of their margin with producers in the form of over order prices." 67 Fed. Reg. at 67914-15.

Competitive advantage or disadvantage can be demonstrated, if at all, by concrete evidence of marketing transactions or reasonably inferred by evidence of aggregate market behavior, as revealed in regional and national dairy product production, as reported by NASS Dairy Product publications. Cooperatives offered no evidence of illustrative transactions, and refer to no aggregate market behavior, to support their recent claims of competitive advantage of California cheese plants over cheese plants in other states and regions.

If California cheddar cheese plants "now have" a "competitive advantage" as cooperative proponents claim, that advantage should be observed in the national and regional cheddar cheese marketplace. In fact, since FMMO reform in 1998, California's share of the U.S. cheddar market has fallen while unregulated Idaho plants have gained market share, as shown below from NASS Dairy Products Annual Reports data.



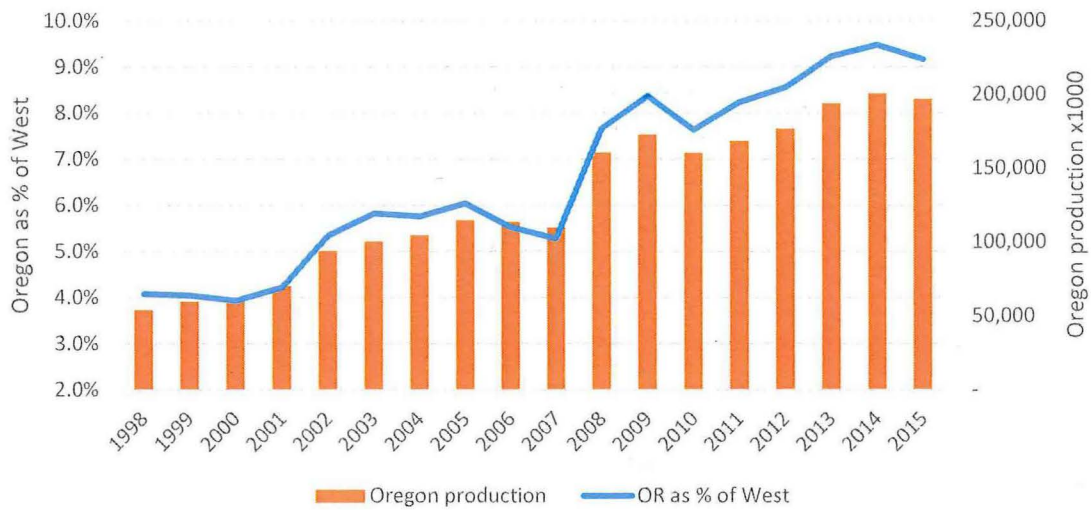


Respected dairy economists have long observed that if regulated “milk prices are too low relative to product prices and costs of processing, unduly wide profit margins will result,” and unregulated manufacturing plants would “be placed at a competitive disadvantage.” Ohio Agric. Research Bulletin 1105, *supra* n. 13, at 4. NASS Annual Cheddar cheese production data from 1998 – 2016, shown above, implies that a competitive disadvantage has existed for California plants since shortly after FMMO reform, and unregulated Idaho plants have enjoyed a competitive advantage since termination of the Western Order in early 2004.<sup>17</sup>

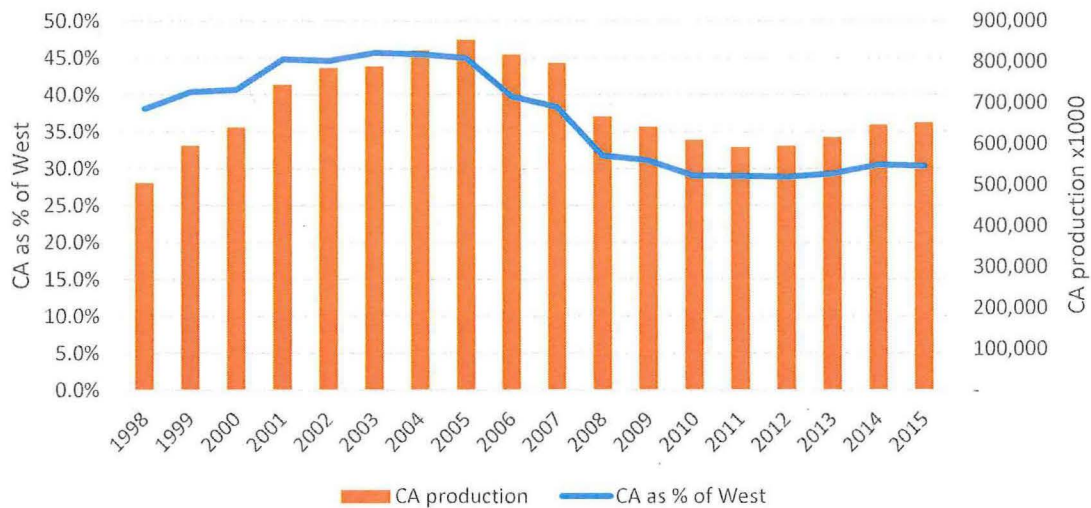
And if California’s current class 4b pricing has provided a competitive advantage over periodically-unregulated American cheese plants in the Pacific Northwest, production data would be expected to show market gain for California and market loss for Oregon in the NASS Dairy Products reports. In fact, California plants have lost market share to Oregon plants, as shown in the graphs below:

<sup>17</sup> A co-op witnesses observed that cheese production in the West has “expanded at a faster rate than production in California” since 2000. Co-op brief at 82. Although this is curiously cited as proof that California cheese plants can afford to pay more for milk, California’s loss of market share to its western competitors tends to prove the opposite.

Oregon American cheese production as % of West (LHS) and total Oregon volume (RHS)

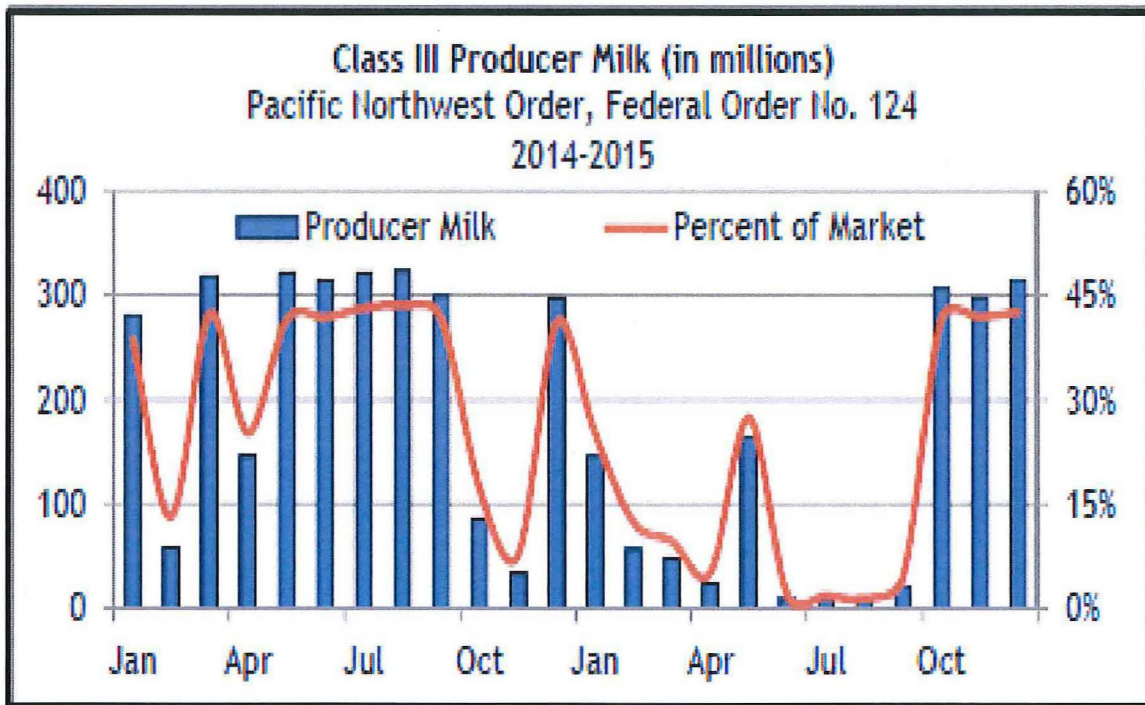


California American cheese production as % of West (LHS) and total CA volume (RHS)



California's loss of cheddar and American cheese market share to unregulated and periodically unregulated plants in Idaho and the Pacific Northwest (and elsewhere) is not just a competitive coincidence. Idaho plants are not governed by regulated prices, and can pay what the supply and demand marketplace requires. Pacific Northwest plants can choose to be unregulated to retain all

product revenues when there is a financial advantage to do so, and choose to be regulated and draw additional revenue from the pool when that is an advantage. The two plants owned by Tillamook in Oregon were unregulated (not pooled) from January through October 2015, and during 4 months in 2014. The Darigold cheese plant in Washington was unregulated during 7 months in 2015 and during 3 months in 2014.<sup>18</sup> Class III producer milk in the Pacific Northwest for 2014-15, reflecting cheese plant owners' exercise of unregulated options, is graphed below:<sup>19</sup>



<sup>18</sup> Compilation of Statistical Material, Pacific Northwest Federal Milk Marketing Order Federal Order No. 124, 2015 Annual page 1, and 2016 Annual page 1. (2014 and 2015 data). <http://www.fmmaseattle.com/statisticalreport.html> Cheese plants in the Southwest Market can also choose pool and unregulated status, without limit, driven by financial incentives. Class III use in the Southwest is generally over 700 million pounds per month, but during 3 months of 2015 it dropped to less than 23 million, and in two other months to barely over 200 million. 2015 Statistical Summary, Southwest Federal Order No. 126, p. 6, [http://www.dallasma.com/order\\_stats/stats\\_sum.jsp](http://www.dallasma.com/order_stats/stats_sum.jsp)

<sup>19</sup> Compilation of Statistical Material, Pacific Northwest Federal Milk Marketing Order Federal Order No. 124, 2015 Annual, page 7.

Northwest Dairy Association, which owns Darigold, testified in a 2004 USDA hearing that it depools milk to improve its margin from the sale of products. “The witness explained that NDA engages in the practice of de-pooling in other Federal orders as a way to recover costs in their manufacturing of butter and cheese because the Class III and IV make allowances do not adequately reflect such costs.” 71 Fed. Reg. 54136, 54140 (September 13, 2006); Ex. 98, Testimony of James De Jong, page 19. NDA’s post-hearing brief on the proposed California FMMO, supporting proponent cooperatives’ position, is apparently designed to increase the demonstrated competitive advantage that Pacific Northwest cheese and butter/nfdm manufacturers have with their option to escape FMMO price regulation whenever market-driven financial incentives create the opportunity.

The ability of FMMO handlers to depool milk and plants, an option not available under CDFA pricing, was observed by Land O’Lakes in 2006 to aggravate then-existing price disadvantages for California cheese plants in competition with FMMO plants.<sup>20</sup> And CDFA’s Hearing Panel Report last summer explained that FMMO handlers’ “ability in federal orders to ‘escape’ regulated minimum prices” is a significant competitive consideration in fixing reasonable regulated milk prices for California cheese plants.<sup>21</sup>

The market behavior of proponent cooperatives who have operated cheese plants in California confirms a long-term competitive disadvantage, not advantage, for California cheese plants under CDFA’s class 4b milk price control. Both Land O’Lakes and DFA have closed cheese manufacturing plants in California since FMMO reform, as have several other manufacturers. This was predictable. In 2007, Land O’Lakes testified to CDFA that if the regulated margin for class 4b cheese use milk did not improve, LOL would discontinue investment in cheese making and shift to greater class 4a butter/nfdm manufacturing, which provided

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<sup>20</sup> Ex. 36 (pdf pp. 17-18 of 28), transcript of testimony of Tom Wegner, Tr. pp 244-45.

<sup>21</sup> CDFA, Final Hearing Panel Report based on hearing of June 3, 2015, pp 21-24, available at <https://www.cdfa.ca.gov/dairy/uploader/docs/Panel%20Report%20Final%207.15.pdf>

disproportionately greater returns on investment under CDFA pricing. Ex. 37, .pdf pp. 16, 22-23, (testimony of Tom Wegner before CDFA, Tr. pp. 116, 122-123).

The California cheese plant closings by cooperatives and others illustrates the falsehood of emotion-driven claims that California manufacturers can “just raise prices” for finished manufactured dairy products. *E.g.*, Geoff Vanden Heuvel, Nov. 6, 2015, Tr. at 6563-64. Common sense and basic economic principles instruct that businesses will seek greater profits whenever possible, by raising prices, increasing efficiency, driving out the competition, or any other means.

The hearing record confirms common sense. Large buyers of commodity cheese will not pay more for cheese from one source if it is available for less from another.<sup>22</sup> Dairy economists and USDA also affirm common sense.<sup>23</sup>

More recently, the issue of whey product revenue to cheese plants, and how that revenue should be transmitted to producers in CDFA class 4b prices, has driven the regulatory debate in California, as it has also been a primary focus of Class III prices for a proposed California FMMO. The co-op brief argues that “large California cheese plants, which process the lion's share of the Class III products in California, process their whey in the same manner and to the same extent as cheese processors in the rest of the country,” and a comparable share of cheese plants in California and Wisconsin do not process whey at all. Co-op brief at 79-81. These

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<sup>22</sup> *E.g.*, Dryer, Oct. 23 Tr. pp 4299-4300; De Jong, Oct. 23 Tr. pp 4521-22, 4457-61; Stettler & Buholzer, Nov. 3 Tr. pp 5761-62.

<sup>23</sup> “Handlers producing such products have no opportunity to adjust prices at which they sell such products to assure adequate margins relative to the price for surplus milk established under a milk order.” *Pricing Grade A Milk Used in Manufactured Dairy Products* (n. 15, *supra*), at 3; *Milk Pricing Policy and Procedure* (n. 16, *supra*) at 40; 67 Fed. Reg. at 67915 (2002) (“The ability of processors to increase prices while maintaining sales is limited by the fact that the marketplace in which they sell their products is competitive.”); Dr. Eric Erba, Ex. 44: “To burden these plants with higher minimum prices that cannot be extracted from the market, even for a brief period, would have potentially devastating consequences” (explaining why FMMO Class III and IV price levels should not be adopted in California).

assertions, designed to carry forward USDA's 1999 whey pricing conclusions to California in 2016, omit critical national and California-specific market facts.

On the national level, dry whey as a byproduct of cheese manufacturing, compared to WPC, no longer meets the "more market activity" and "best indicator of value" of whey factors upon which USDA relied in 1999. 64 Fed. Reg. at 16099; Hilmar opening brief at 21-22. The shift from dry whey to WPC is most apparent in California, where only one plant produces dry whey on a regular basis.<sup>24</sup>

The hearing record persuasively supports a conclusion that USDA's 1999 conclusions on how whey product revenue should be included in the Class III price formula deserves to be re-examined. But for Class III prices in the contemplated California federal milk marketing area, subject to the pricing standards of 7 U.S.C. §608c(18), and the substantial record evidence requirements of 5 U.S.C §§ 556 and 557, the hearing record is more than just persuasive. Whey contribution to a

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<sup>24</sup> CDFA's Hearing Panel Report last summer carefully described the unique marketing conditions for whey byproducts in California:

"One consistent concern related to the whey factor, and the entire Class 4b pricing formula, is whether each component or factor of the pricing formula relates well to the actual manufacturing processes that occur in processing plants and the marketing conditions of dairy products manufactured in California. By relating the pricing formulas to the actual conditions observed in California plants, the resulting milk prices should be commensurate with the dairy products made from that milk, thus providing a better opportunity for California manufacturers to compete in statewide, national, and international markets. Previous hearing records show that the Department has expressed concern about the efficacy of the whey factor to relate to the actual manufacturing and marketing conditions of California cheese and whey products. The Panel believes that basing the whey factor on WPC34 could potentially improve how the whey factor relates to some, but not all, of the California cheese processors.

Since its inclusion in the Class 4b pricing formula in 2003, the whey factor has used dry whey as the basic commodity. However, since dry whey is produced consistently by only one of approximately 57 California cheese plants, a whey factor based on dry whey does not appear to accurately represent the manufacturing conditions of most California cheese plants. There are 10 California cheese plants that make WPC ranging from 25.0 percent to 89.9 percent protein content. As a group, these 10 plants represent a significant percentage of California cheese production: 96.5 percent, 72.3 percent, and 57.5 percent of California's Cheddar, Mozzarella, and total cheese, respectively."

CDFA, Final Hearing Panel Report based on hearing of June 3, 2015, pp 11-12, available at <https://www.cdfa.ca.gov/dairy/uploader/docs/Panel%20Report%20Final%207.15.pdf>

California Federal Order Class III price, if any whey factor is included at all, should be based on the market value of WPC.

## CONCLUSION

The hearing record confirms that, after thirty years of extraordinary and unparalleled expansion, California's dairy industry has entered a challenging stage of transition. The challenge in recent years has been aggravated by dairy farm financial stress and production loss due to drought, high feed and production costs, relatively low milk prices, and competing agricultural land use pressures.

Many milk producer witnesses, like proponent cooperatives, looked for a scapegoat to blame for the perceived crisis, and pointed to CDFA and California's dairy product manufacturers for that role. For a solution, proponents and producer supporters look for the alternative sovereign, USDA, to compel California's dairy product manufacturers to pay more for raw milk used to make cheese, whey, butter and powder. Proponent's petition to USDA is understandable as a political and emotional response to the financially troubled California milk market. But objective factual analysis and sound economics that govern USDA's milk marketing order prices and policies do not support the solution advocated in Proposal No. 1. The proponent cooperatives have clearly not met their "burden of proof" as required for all APA proceedings by which a rule or order is promulgated by the procedural requirements of 5 U.S.C. §556, which applies to this case.<sup>25</sup>

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<sup>25</sup> As argued by Co-op proponents, the result of this process is quasi-legislative regulation. Co-op brief at 25-26. But the §556 procedure for promulgation of a quasi-legislative FMMO rule or order is adjudicatory. The Supreme Court's holding in *Dir., Office of Workers' Comp. Programs, Dep't of Labor v. Greenwich Collieries*, 512 U.S. 267, 276 (1994), was addressed to the "persuasion" meaning of "burden of proof" in §556, so the co-ops effort to avoid that meaning by reference to cases not governed by §556 is fruitless. Similarly, the co-ops effort to avoid a "negative inference" by its non-disclosure of the Stephenson-Nicholson study in a §556 adjudicatory process FMMO proceeding is fruitless. Co-op Appendix, pdf pp. 145-155. The inference reasonably drawn by silence or non-disclosure is simply one of common sense and human nature. If this process is merely quasi legislative, as co-ops maintain, the agency has much greater liberty to apply rules of common sense that may possibly be constrained in proceedings governed by strict rules of evidence.

Dairy product manufacturers are, of course, dependent upon dairy farmers for raw milk to make their products. Manufacturers have an economic self-interest in the financial well-being of their milk producer suppliers, and for that reason will fervently strive to help relieve California milk producers' financial stress to the extent milk product supply, demand, market prices, and competition allow.

USDA, by objective and consistent application of its milk marketing order policies and standards, should deny a Federal California Milk Marketing Order in the form advocated by the cooperative proponents.

Respectfully submitted for Hilmar Cheese Co.,  
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ATTACHMENT TO REPLY BRIEF FOR HILMAR CHEESE CO.

Senate Report No. 565, 75th Cong., 1st Sess. (1937)

# Calendar No. 578

75TH CONGRESS }  
1st Session }

SENATE

{ REPORT  
{ No. 565

## MARKETING AGREEMENTS AND ORDERS

MAY 13 (calendar day, MAY 19), 1937.—Ordered to be printed

Mr. SMITH, from the Committee on Agriculture and Forestry, submitted the following

### REPORT

[To accompany H. R. 5722]

The Committee on Agriculture and Forestry, to whom was referred the bill (H. R. 5722) to reenact and amend provisions of the Agricultural Adjustment Act, as amended, relating to marketing agreements and orders, having considered the same, recommend that the bill do pass with the following amendments:

On page 3, after line 10, insert the following new subsection:

(d) Section 8c (2) is amended by striking out "and not including fruits, other than olives, for canning" and by striking out "(not including vegetables, other than asparagus, for canning)" and by inserting after the words "except the products of naval stores" the words "and the products of honey-bees" and after "soybeans" the following ", honey-bees".

On page 3, line 11, strike out subsection designation "(d)" and insert in lieu thereof "(e)".

On page 3, after line 12, insert the following new subsection:

(f) Section 8c (6) is amended by striking out "and not including fruits, other than olives, for canning" and by striking out "(not including vegetables, other than asparagus, for canning)" and by inserting after "soybeans and their products," the following "honey-bees,".

On page 3, line 13, strike out subsection designation "(e)" and insert in lieu thereof "(g)".

On page 3, line 16, strike out subsection designation "(f)" and insert in lieu thereof "(h)".

On page 5, line 14, strike out subsection designation "(g)" and insert in lieu "(i)".

On page 5, line 19, strike out subsection designation "(h)" and insert in lieu thereof "(j)".

On page 5, line 21, strike out subsection designation "(i)" and insert in lieu thereof "(k)".

On page 6, line 24, strike out subsection designation "(j)" and insert in lieu thereof "(l)".

## EXPLANATION OF AMENDMENTS

These amendments to H. R. 5722 are proposed to enable the producers of honey-bees and of fruits and vegetables for canning to develop marketing agreement and order programs in those cases where such programs would be beneficial to producers and would have their approval in accordance with the terms of the act. Under the original Agricultural Adjustment Act it was possible for producers of these commodities to have marketing agreement and license programs, but honey-bees and canning commodities were excluded in the amendments to the Agricultural Adjustment Act made in August 1935.

These amendments have been requested by producers and their representatives. Under the terms of the bill no order can be made effective with respect to these and other commodities unless the Secretary of Agriculture finds that the program has the approval of two-thirds of the producers. Under the circumstances there appears to be no logical reason for excluding producers of honey-bees and canning crops from obtaining the benefits provided in the bill.

## EXPLANATION OF BILL

The principal purposes of this bill are to reenact the marketing agreement and order provisions of the Agricultural Adjustment Act, to make certain changes in respect to the basis to be used in marketing agreements and orders for fixing prices to be paid milk producers, and to authorize mediation and arbitration of certain disputes between the producers and handlers of milk.

## NECESSITY FOR REENACTMENT OF THE MARKETING AGREEMENT AND ORDER PROVISIONS

Certain district courts have interpreted the Hoosac Mills decision, which invalidated the processing-tax and production-control provisions of the Agricultural Adjustment Act, as also rendering the marketing agreement and order provisions of the act invalid. These programs, as authorized by the act and as administered by the Secretary of Agriculture, are designed to improve the purchasing power of farmers by encouraging orderly marketing through the regulation of interstate commerce. These marketing programs are not for the purpose of controlling agricultural production and, in fact, they do not control the production of any agricultural commodity. Furthermore, under the provisions of the act such programs were contemplated to operate separately and independently and not as a part of, or in conjunction with the production-control programs.

While to date the question of the constitutionality of such regulation of interstate commerce has not been considered by the Supreme Court, the interpretation placed upon the Hoosac Mills decision by certain lower courts has rendered such programs temporarily ineffective in the districts to which such decisions apply; because these courts maintain that the Hoosac Mills decision invalidated the entire act, including this type of regulation in spite of the fact that the present act contains a separable provision.

The immediate reenactment of the marketing agreement and order provisions of the Agricultural Adjustment Act would remove the

technical basis upon which such adverse decisions rest and enable producers to receive the benefits of such programs without the necessity of waiting until these cases have been finally acted upon by the Supreme Court.

#### MILK PRICES

Subsection (18) added to section 8 (c) of the Agricultural Adjustment Act by section 2 (f) of the bill provides a more workable standard for the guidance of the Secretary in fixing milk prices in an order issued for a particular marketing area. Milk is the only agricultural commodity for which prices are permitted to be fixed in orders issued under the Agricultural Adjustment Act, and the Secretary is required to use the purchasing power of milk as his guide in the issuance of orders. This provision of the bill requires the Secretary, if an order or marketing agreement is to include fixed prices, to ascertain the prices which will be equivalent in purchasing power to prices of milk in the base period according to sections 2 and 8e of the Agricultural Adjustment Act. In addition, if he finds these ascertained prices are not reasonable in view of the local price of feeds, the available supply of feeds and other economic conditions which affect the supply of and the demand for milk in a particular marketing area, the Secretary shall fix such prices as will reflect these conditions, insure a sufficient quantity of pure and wholesome milk, and be in the public interest. The peculiar nature of milk as a commodity and the power of requesting prices of this commodity have been set forth by the Supreme Court in its decision in the case of *Nebbia v. New York* (1934), 291 U. S. 502.

The reasoning there set forth can be applied with equal force to the regulation of interstate commerce in milk. The intricate problems of the milk industry as described in the above cited opinion, explain the use of the several pooling and price plans authorized for inclusion in milk orders. Their effectiveness depends upon their adaptability to conditions affecting each marketing area and upon their adjustment from time to time to meet changing conditions. The Secretary is to use the same standard in adjusting prices as is to be used in the fixing of prices initially in the regulation of any marketing area.

#### MEDIATION AND ARBITRATION

Section 3 of the bill authorizes the Secretary of Agriculture, upon the request of milk cooperatives, to mediate, and upon the approval of all parties, to arbitrate disputes between the cooperatives and the handlers of milk in a particular market. The matters which may be arbitrated are confined to those involving terms and conditions such as might be included in orders under the order provisions of the act. While this action grants certain exemptions and immunities from the antitrust laws to the parties requesting mediation or arbitration and with respect to the proceedings, agreements, or awards which follow, public interest is amply protected by the requirement that this authority is to be exercised only when the Secretary is persuaded that the declared policy of the act will be effectuated thereby. It is believed that through mediation and arbitration, the services of the Secretary of Agriculture and the Dairy Section of the Agricultural Adjustment Administration will be available to a greater and more effective degree in developing a sound working relationship between

producers and handlers and in harmonizing those conflicting interests which, in the absence of amicable means of adjustment frequently result in marketing disorders inimicable to the interests of both the consuming public and the producers. Mediation and arbitration as authorized in this section are designed as additional methods of serving the milk industry rather than a substitution for marketing agreements or orders. It is expected that they will greatly facilitate a quick settlement of severe disputes and in some cases will afford a basis for a satisfactory adjustment and the subsequent development of marketing agreements or orders.

The committee was unanimous in its approval of this bill.

