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Before the United States Department of Agriculture

In re:	)	
	)	[AO] Docket No. 15-0071
Milk in California	)	AMS-DA-14-0095

Post Hearing Brief

On Behalf of

Maine Dairy Industry Association

Kentucky Dairy Development Council

Georgia Milk Producers, Inc.

Tennessee Dairy Producers Association

Introduction

This Brief is submitted on behalf of the Maine Dairy Industry Association, Kentucky Dairy Development Council, Georgia Milk Producers, Inc. and Tennessee Dairy Producers Association. The Brief supports adoption of a California Federal Milk Market Order, subject to certain provisos proposed collectively by all four organizations, and other, additional provisos proposed by some of the other organizations. All of the different provisos relate to the analytical and factual uncertainties presented in the Record regarding the impact that promulgation of a California Federal Order might have on orderly milk marketing in the other regions of the country. Most particularly, the Record reflects substantial uncertainty regarding the impact the Cooperatives' proposal would have on California milk production.

Given these pivotal uncertainties in the Record, rather than provide Findings and Conclusions of Law, the Brief's posture is to request that the Department make such Finding and Conclusions so as to resolve these pivotal uncertainties. In the alternative, the four groups collectively assert that if the Department promulgates an Order without making such express Findings and Conclusions, then the issued Order must include provisions setting forth how the Department will act expeditiously to mitigate any adverse impacts on price and/or production outside of California, if they occur. Two groups, Kentucky Dairy Development Council and Tennessee Dairy Producers, further assert that the Department should not promulgate a California Order in the absence of such express Findings of Fact resolving the uncertainties in the Record. Finally, the Maine Dairy Industry Association asserts that a California Order should only be promulgated if it includes provisions that incorporate or otherwise reflect the proponent Cooperatives' "base plans", which would establish effective limitations on member milk production in California, and thereby prevent adverse, extra-territorial effects.

I. Procedural Posture, Party Standing and Summary of Argument

A. Notice and Substance of the Hearing; Participation in the Proceedings By the Four Parties to the Brief

This hearing was noticed on August 6, 2015 for consideration of 4 proposals to promulgate a California Milk Market Order "to regulate the handling of milk in California".[1] The hearing notice followed the Department's conduct of three public outreach meetings throughout California in May 2015 USDA "to explain the FMMO rulemaking process and allow proposal sponsors the opportunity to explain the technical details of their submissions" and to allow for informal questioning.[2]

The hearing was conducted continuously over a two month period, from September 22, 2015 – November 18, 2015. The four parties to this brief, Maine Dairy Industry Association,

[1] 80 FR 47209; August 6, 2015
[2] USDA Release No.: 061-15; April 20, 2015

(MDIA) Kentucky Dairy Development Council (KDDC), Georgia Milk Producers, Inc. (GMP) and Tennessee Dairy Producers Association (TDP) appeared and formally participated in the hearing at its inception, through Counsel, Daniel Smith, Esq. In addition Everett Williams, President of GMP and Richard Sparrow, President of KDDC, appeared as witnesses in the hearing.[3]

Consistent with 7 CFR §900.9(b), MDIA, KDDC, GMP and TDP submit this brief with regard to the proposed promulgation of the proposed California Order. The Brief presents an overall perspective on the two lead proposals that is common for all four organizations. The Brief also presents collective recommendations with regard to the potential promulgation of the California Order by the Department. The Brief also provides one differing, specific recommendation to the Department on behalf of KDDC and TDP, only, and one specific, differing recommendation on behalf of MDIA, only.

B. Party Interest and Standing

MDIA is an association of producers representing all 260 operating Maine dairy farmers. MDIA is partially funded by voluntary member dues and partially funded by a mandatory, statutory producer assessment. MDIA appears in formal representation before the state Milk Control Board and serves as a source of education about the dairy industry for the state legislature. MDIA has also participated in past federal milk market order proceedings. MDIA is an "interested" party within the meaning of 7 C.F.R. § 900.9(b).

KDDC is an association of producers representing all permitted operating Kentucky dairy farmers and allied industry members. KDDC is partially funded by voluntary member dues and partially funded by a grant from the Kentucky Agricultural Development Fund. KDDC

[3] Transcript, November 12, 2015, pp. 7337; 7660

operates a number of programs in support of the Kentucky dairy farmers and the industry and serves also as a source of education about the dairy industry for the state legislature. KDDC has participated in past federal milk market order proceedings. KDDC is an "interested" party within the meaning of 7 C.F.R. § 900.9(b).

GMP is an association of producers representing all 220 operating Georgia dairy farmers. GMP is funded by a mandatory, statutory producer assessment. GMP serves as a source of education about the dairy industry for the state legislature. GMP has participated in past federal milk market order proceedings. GMP is an "interested" party within the meaning of 7 C.F.R. § 900.9(b).

TDP is an association of producers representing all 315 operating, permitted Tennessee dairy producers. TDP is partially funded by member dues and by a voluntary producer assessment. TDP serves as a source of education about the dairy industry for the state legislature. TDP has participated in past federal milk market order proceedings. TDP is an "interested" party within the meaning of 7 C.F.R. § 900.9(b).

C. Summary of Argument

Individually and collectively, the four groups presenting this brief provide an important perspective for the Department's deliberation with regard to the proposed promulgation of a California federal Milk Market Order.[4] The groups represent all dairy farmers in four different states, from two regions of the country. Each group is a non-profit organization that represents the

[4] The three witnesses from the two Southeast states and from Maine also provided significant perspective for the Department's review. Mr. Sparrow is a former regional representative for DFA and President of KDDC, and currently operates a dairy farm with his sons; Mr. Williams operates a substantial family dairy operation, and is President of GMP and a Member of Cobblestone Milk, Inc. Commissioner Whitcomb's family continues operation of their multi-generation farm in Waldo, Maine, and he was engaged in a multi-year effort to reform the FMMO program's Class III price as a producer and MDIA Board member, and currently as Maine State Commissioner of the Department of Agriculture, Conservation & Forestry. He is also currently the President of the Northeast Association of State Departments of Agriculture (NEASDA).

common interest of all dairy farmers in its respective state - cooperative and independent, organic and conventional - and without regard to the individual handling of producer milk. As non-profits and with varying degrees of public financing, the groups are not only advocating for the sustainability of their individual member farmer operations but also for the collective sustainability of their respective state's milk supplies, in the greater public interest. Their missions thus coincide to a substantial degree with the federal Order system's purpose of ensuring adequate supplies of fluid milk for consumer consumption.

Two of the groups, KDDC and MDIA, are actively involved with in-state programs that disperse substantial "over-order" payments to dairy farmers. In Maine, these payments are entirely paid out of state funds. In Kentucky, the payments are state funds matched by industry funds. In both cases, the states represented by the producer groups have thus made substantial, direct investment in retaining local milk supplies, in the public interest.

The two regions, the northeast and southeast, are both population dense and thereby regulated under federal Orders having primary, substantial Class I markets. While so operating in dairy markets of tremendous potential, the dairy farm sectors in both have been under tremendous chronic distress since federal Order reform in 2000. This chronic distress has resulted in the dairy farmer sector in the southeast region being no longer able to provide for the fluid demands of the market, and thereby unable to serve the fundamental function of the three Orders the farmers operate under. Now rendered milk-deficit, the fluid milk supplies for these three Orders must be imported from locations increasingly remote from the traditional milksheds for the regional marketing areas of the Orders.

Under these circumstances, any additional challenge to the sustainability of milk production and the region's capability to ensure the maintenance of adequate Class I supplies, consistent with basic federal milk market order principles, presents a pressing concern in the southeast, for both the industry and the public interest.

With reform and consolidation of the Boston, New York City and Pennsylvania Orders, the northeast Order now covers a broad very region. Including both top producing states of New York and Pennsylvania, the region, as a whole, has sufficient surplus production to ensure more than adequate Class I supplies. Yet the local segments of the region's dairy farm sector have experienced tremendous dislocation arising out of Order reform. Federal Order prices have been highly volatile since Order reform, and over-order pricing has been insufficient either to dampen this volatility or to account for the persistent, pronounced disparity between regulated minimum prices and producer costs of production.

These combined pressures have lead to a substantial exiting of farming operations across the Northeast since Order reform. All states in the region have reacted in various ways to stabilize their dairy farm sources of in-state milk supplies. The New England states have been particularly active in this regard, with Maine taking a lead role by adopting its "Tier Program" of direct producer, over-order payments.

Maine's perspective, again, is thus of significant import for the Department's review of the proposed California Orders. In companion to the Southeast, Maine's perspective should prompt the Department to apply heightened scrutiny to any regulatory action that might exacerbate the regulatory distress, to any degree, for the nation's dairy farmers operating under existing federal Orders.

In particular, the Department must take into account the impact that promulgation of a California Order might have on operation of state programs that have been adopted to dampen the regulatory distress that has occurred since federal Order reform. Each of the four industry groups on this Brief was formed at different times, and under different political circumstances. All of the groups, however, were formed to compliment operation of federal milk market Orders in their states, as needed to sustain and enhance in-state milk production. Each of the four groups has developed a program tailored to both the individual capabilities and requirements of its particular state's producers and industry, and the state's capability to support the group as a matter of the public interest. All four programs, in common, serve to accentuate the strengths of operation of federal orders for their states' producers while working to minimize the adverse impacts, where consolidated, regional federal orders have proven to operate inadequately.

So serving primarily to promote the interests of their member dairy farmers, all four groups strongly support the California Cooperatives' effort to join the federal Order system, to achieve more orderly marketing conditions and more equitable milk prices for their member producers. The California Cooperatives have made a compelling case that they confront substantial marketing disorder warranting replacement of the state Order with a federal Order.

The four groups also support the effort as a matter of the self-interest of their members. They believe that federal dairy policy, in the common interest of all of the nation's producers, would be greatly strengthened by having the California dairy industry regulated under a uniform federal system rather than operating on its own regulatory island.

This hearing opened, however, with the Department's submission of its preliminary analysis of the two primary proposed Orders - *Preliminary Regulatory Impact Analysis of Proposals to Establish a California Federal Milk Marketing Order* ("Report")[5]- that showed both would have a negative impact on the interests of all producers outside of California, if promulgated, in addition to the positive impacts for producers in the California market. Of most

[5] Exhibit 5.

concern, the analysis in the Department's Report shows that the Cooperative and Institute proposals would both result in lower producer prices. Further, the analysis also shows that both would result in the additional, associated negative impact of flat or reduced milk production. The latter, potential adverse impact is of greatest concern in the southeast, being already a milk deficit region.

The cooperative proponents have responded to these stated concerns about their proposal with three arguments. First, they assert that the model's baseline production data over-states actual California milk production. Second, they represent that the model does not account for the fact that cooperative proponents have instituted "base plans", or supply control measures, that would ensure that California milk production would not increase as the Department's model projects. Finally, they represent that the model also does not account for the fact that California's milk processing capacity is not sufficient to accommodate increased milk supplies, which should also serve to dampen the likelihood of increased production.

For their part, the Institute asserted that the Department may have relied on incorrect pricing data, and that this data input error causes a data output error with regard to the price increases that their proposal is projected to cause.[6]

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[6] Mr. Williams identified a calculation issue, as well:
"Also, when I look through the analysis, it's data in there that does not make good sense to me. And I'm looking at it on common sense and a real high, far distant level, not down in the pennies. But basically, and I went to our local Market Administrator office in Atlanta and presented a question and it went to Washington, and I still haven't gotten anywhere with it. And I talked to Mr. Clifford just awhile ago, and he says he's going to find the problem for me....

And if you look at the charts, they saying it is going to lower the brim (sic) price in the Appalachian Order 13 cents, Florida price Order 22 cents, and the Southeast 26 cent. But then you look at the Institute proposal, and it basically raises the California producer price about 10 cent, and that in turn, according to the analysis, increases 60 million pounds of production, which is not a lot of production. So therefore, it only affects the Appalachian Order 4 cents, so that's 13 to 6 cents on that one. The Florida Order goes from 22 cents to 7 cent on those two proposal. But the Southeast Order stays 8 to 24, which just my simple common sense looking at it, it's got to be wrong. And I can't find anybody to tell me I'm wrong, but nobody can find the answer. So I really think that's substantial, 'cause it really makes it look like all these proposal has the same effect in the Southeast, which they don't." Transcript, November 12, pp. 7345-46

The testimony supporting the Department Report's submission as evidence, and the follow up cross-examination, demonstrated convincingly that the modeled evidence of these adverse national impacts is substantial and well-founded despite these stated reservations,. The evidence further makes clear that the Department's analysis and Report are the product of a sophisticated econometric model. Nor did the Department concede on cross examination that the baseline production and pricing data are incorrect, or that the analysis based on this baseline data must be altered as urged by the two proponents groups.

In making its promulgation determination, including its assessment of these basic, conflicting claims made by the cooperative proponents with regard to the likely impacts of their proposals, the four producer groups on this Brief collectively represent that the Department must procedurally operate from two fundamental regulatory principles. The Department must ground its decision-making in the basic programmatic principle that Milk Market Orders are established to assure the provision of sufficient fluid milk supplies. This principle must lead the Department to consider whether promulgation of the California Order would result in further diminution of supply for the southeast Orders. This principle also will require the Department to consider whether the new Order would cause additional distress for the Northeast's diffuse dairy farm sectors, resulting in further reliance on the remote New York and Pennsylvania milksheds for the provision of the Order's overall fluid milk supplies.

Second, as a matter of more basic regulatory principle, the Department must assure that imposition of a new provision intended to confer regulatory benefit for one portion of a regulated community does not result in unanticipated, material harm to others subject to the same regulatory program. In this instance, promulgation of a new California Order intended to rationalize federal milk market order regulation for the benefit of California producers should not simultaneously result in significant harm to dairy producers in other regions subject to existing federal order regulation.

Operating from these two procedural requirements, the Department must expressly account for the evidence presented indicating the substantial likelihood that promulgation of a California Order would cause lower milk prices and flat or lowered milk production, and other indices of disorderly marketing, in the regions of the country outside of the California marketing area. This evidence includes both the Department's own preliminary report and the evidence presented by the three witnesses from Kentucky, Georgia and Maine, respectively.

At best, the Department should be able to make specific Findings of Fact that its baseline, preliminary evidence of these likely adverse impacts has been overcome. In particular, if the Department chooses to adopt the cooperative proposal, it should make express findings with regard to the three claims made by the proponents, with regard to baseline production, the effectiveness of the base plans, and the long-term impact of processing capacity. These Finding of Fact should be sufficient to support legal Conclusions of Law that the Order is not likely to cause such adverse impacts beyond California.

In the alternative, the four groups collectively assert that if the Department promulgates an Order without making such express Findings and Conclusions of Law, then the Decision and issued Market Order must both include specifically enumerated provisions for how the Department can and will act expeditiously to mitigate any adverse impacts on price and/or production that might materialize with promulgation of the Order. These provisions in the Decision and Order should at minimum, provide a specific plan for the conduct of an expedited hearing to consider adoption of required curative amendments for a region's Order where such harm has resulted.

More preferably, the California Order itself should include specific provisions designated to ensure that operation of the Order does not or is less likely to result in out-of-region harm. (One such provision is proposed below by MDIA.) In addition, the promulgation Decision should establish curative provisions of amendment for other individual regional Orders where the Department anticipates that harm resulting from promulgation of the Order may occur. The Decision should include express supporting Findings of Fact and Conclusions of law for these two sets of curative provisions in the California Order and other regional Orders.

Two groups, KDDC and TDP, further assert that the Department should not promulgate a California Order in the absence of express Findings of Fact establishing that the preliminary evidence has been overcome, and accompanying Conclusions of Law establishing that such Order will not reduce producer pay prices or otherwise cause disorderly marketing in other regions outside of California, most particularly a reduction of milk production in the southeast. According to these two groups, the Department should promulgate a California Order only if it can be premised on express Findings and Conclusions with regard to these key, potential adverse impacts.

Finally, MDIA asserts that a California Order should only be promulgated if it includes pro provisions should incorporate or otherwise reflect the proponent Cooperatives' "base plans", which establish limitations on member milk production in California. MDIA proposes that such supply control measures be made express, mandatory provisions of the California Order, if promulgated. The provisions should establish an appropriate baseline amount of production for the year of the Order's adoption that will serve best to assure there are no adverse impacts outside of California. The provisions should be further tailored to prevent increased production above the base line that might cause negative extra territorial impacts in the future.

These provisions should be supported by express Findings of Fact and Conclusions of Law. These Findings should establish that the supply control provisions will limit California milk production consistent with the Cooperative proponents' representations, and the Conclusions should establish that they will so prevent the adverse out-of-region impacts identified by the Department as likely to occur from adoption of a proposed California Order.

II. Legal Argument

A. The Department Must Account for Present Disorderly Marketing Concerns in the Southeast and Northeast Regions, and the State Actions that Have Been Taken To Minimize These Concerns

Three witnesses presented testimony about disorderly marketing concerns, related to pricing and milk production, in the southeast. One witness provided testimony regarding these concerns for the northeast.

Southeast

Calvin Covington, retired CEO of Southeast Milk Incorporated, presented testimony about the distressed capability of the southeast dairy industry to provide the fluid milk requirements for the population dense, southeast market.[7] Mr. Covington identified the disturbing trend in exit of farming operations, and simultaneous reduction in regional milk production over the last twenty years. He indicated that, between 1995 and 2014 the number of licensed or permitted dairy farms in the southeast declined from about 8600 to about 2650, or almost a 70 % decline.[8] For the same period, the southeast saw its milk production decline from 13.5 to 9.5 billion pounds.

With population dramatically increasing at the same time, the impact of this decline has been such as to cause the southeast to become a milk deficit region. According to Mr. Covington's

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[7] Transcript, October 20, 2015; p. 3772. Mr. Covington's testimony was presented on behalf of two southeast based dairy cooperatives; Cobblestone Milk Producers Cooperative, based in Chatham, Virginia and Southeast Milk Incorporated, based in Belleview, Florida. According to Mr. Covington, the two cooperatives combine to market approximately 3 billion pounds of milk, primarily to fluid processing plants, which is one-third of the fluid milk in the ten southeast states.

[8] Id at 3774.

testimony, the census population of the ten southeast states was 76.5 million, in 2014. Based on the recent calculation of 159 pounds of per capita fluid milk consumption, total fluid consumption for the region was thus 12.2 billion pounds, in 2014. With total southeast milk production in 2014 at about 9.5 billion pounds, according to Mr. Covington,

> This is a deficit of 2.7 billion pounds. If we consider balancing and standardization requirements, the annual deficit easily grows to 4.5 billion pounds.[9]

Not surprisingly, according to Mr. Covington, under these circumstances, Class I utilization last year in the three southeast Orders was far and away the highest in the federal Order system. For 2014, Class I utilization in the Florida Order was 85 percent, 74 percent in the Southeast Order, and 68 percent in the Appalachian Order.

Mr. Covington further indicated that none of the ten states have sufficient production to provide for their individual state's milk consumption requirements. He observed that, based on the annual per capita milk production data published by the Central Milk Market Administrator, "[n]ot a single one of the ten southeast states hits the 300 pound mark" required to meet a State's Class I and II plus reserve milk needs.[10]

Tying his testimony together, Mr. Covington stated that

> A major objective of Federal Milk Marketing Orders is to ensure consumers have access to adequate and dependable supplies of high-quality milk from the sources best suited, both technologically and economically, to supply these demands. Meeting this objective is a major challenge in the Southeast. Lower producer prices and less milk make the challenge more difficult."[11]

He also noted that, in the south, especially in Florida and South Georgia, farm structure allows dairy farmers to react very quickly to changes in price by adding or reducing milking cows.

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[9] Id at 3778.
[10] Id at 3779.
[11] Id at 3778.

Changes in price, then, "could have a big impact on how many cows they milk, as well as how much milk they produce."[12]

Finally, according to Mr. Covington,

> Being milk deficit, the additional milk needed to meet the southeast fluid milk deficit must be transported into the area, either as bulk or packaged milk. Producing less milk than needed to meet the consumer fluid milk demand, increases expense of transporting milk into the market. This transportation adds additional expense to the cost of milk which is borne by producers, processors and consumers.[13]

Richard Sparrow[14], testifying as President of KDDC and as a dairy farmer, accentuated the significance of milk prices on the viability of dairy farming in the southeast, and for Kentucky:

> Mr. Covington's testimony provides the frame for my work experience. On the one hand, with this deficit always in mind, we in the cooperative sector in the Southeast work constantly to maintain the sustainability of our member farmers, and also to grow their productive capacity, so as to be able to provide as much local supply as possible to our processor customers. On the other hand, given the ever-present deficit, we simultaneously confront the additional challenges presented by the need to import the required supplemental milk supply.
>
> The crux of this dual challenge is producer prices. Higher milk prices make it far more possible to sustain, and grow, our existing, local milk supplies. Lower milk prices force farmers out, and thereby increase the pressure and need to import greater volumes of milk from away.[15]

Echoing also the region's primary concern with impacts on price and production, Everett Williams[16], President of GMP and also a dairy farmer, summarized the import of Mr. Covington's testimony for GMP's efforts to maintain the viability of the dairy industry in Georgia:

> Along with favorable temperatures and growing seasons, the state provides a supportive educational and regulatory environment for agriculture and dairy farming. Demand for milk has increased with the growing population of the state and region. Georgia is home to three major milk processing facilities, which assure a stable in-state supply of packaged milk for consumers. In addition, Georgia is an important supplier of the large and substantially milk deficit Florida marketplace, with almost half of Georgia's raw milk production exported and utilized there.

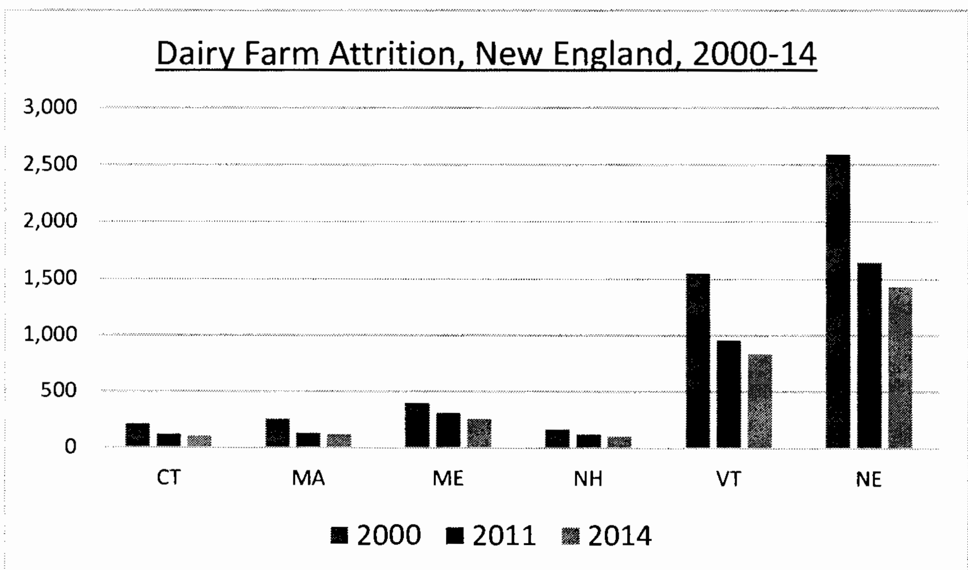
[12] Id.
[13] Id at 3779.
[14] Transcript, November 12, 2015, p. 7360
[15] Id at 7366-67.
[16] Transcript, November 12, 2015; p. 7337.

Despite these advantageous marketing conditions, as with dairy farming across this country, maintaining a profitable dairy farm and working to promote the health and growth of my state's industry, is a constant uphill struggle. While we have relatively high classified minimum prices in the southeast, it yet remains a challenge to be assured of adequate producer pay prices and cash flows because a significant amount of the higher prices is used to bring in deficit milk and to balance the market.[17]

Northeast

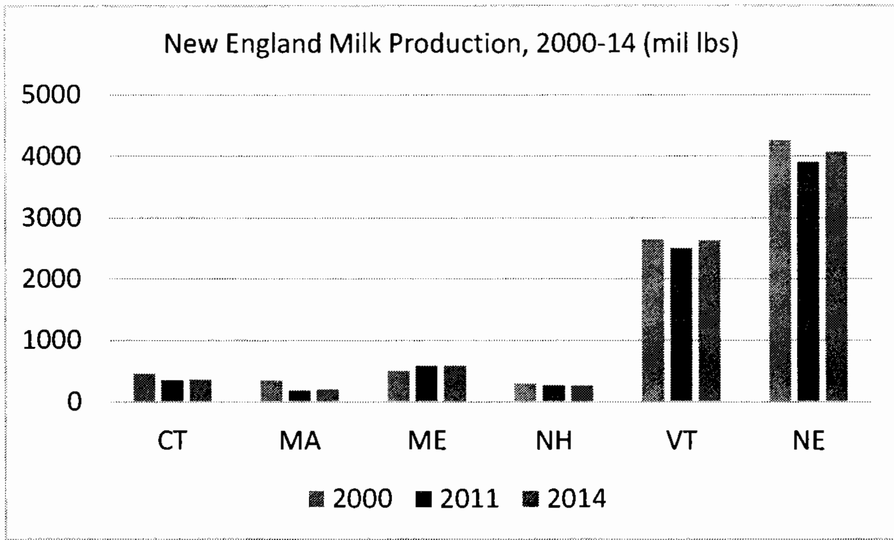
Maine's Commissioner of Agriculture, Walter Whitcomb[18], testified about the concern for the rate of farm attrition in the northeast, since federal Order reform in 2000. Using Federal Milk Market Order statistics,[19] here is the context for Commissioner Whitcomb's stated concern. As may be seen, the farm pricing and milk production scenario is quite a bit more complex for New England and the Northeast, since the three Northeast Orders were merged.

Here are the changes in farm numbers in the six New England states, following consolidation of the New England Order into the Northeast Order.

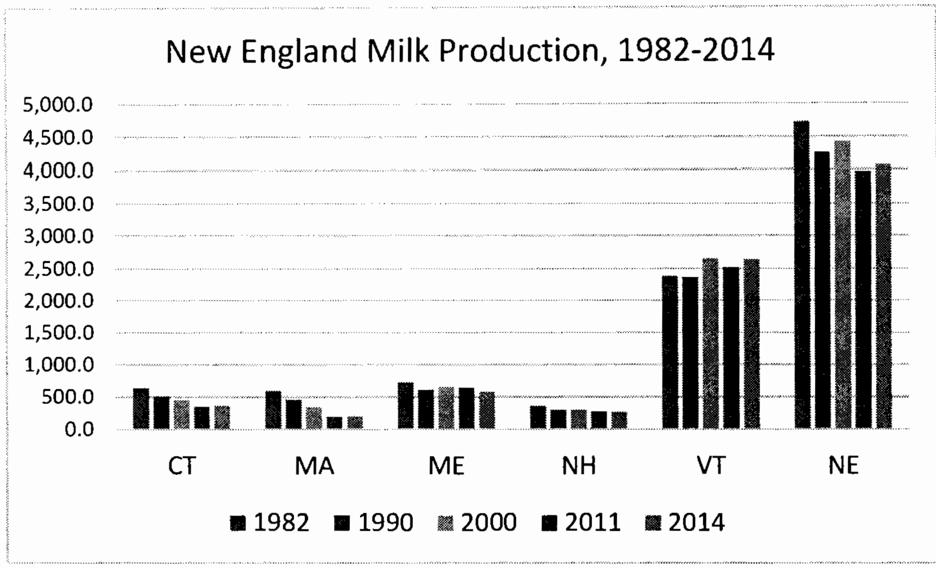


[17] Id at 7340-41.
[18] Transcript, November 13, 2015; p. 7602.
[19] Northeast Milk Marketing Area Statistical Handbook; prior statistics for New England Order

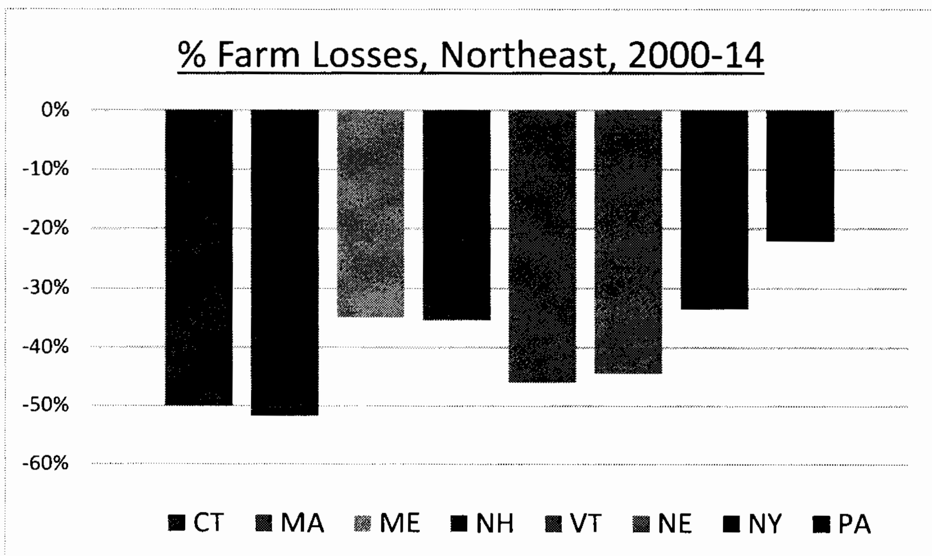
Milk production also declined in the New England region during this period, amounting to a reduction of approximately 5% for the region as a whole.



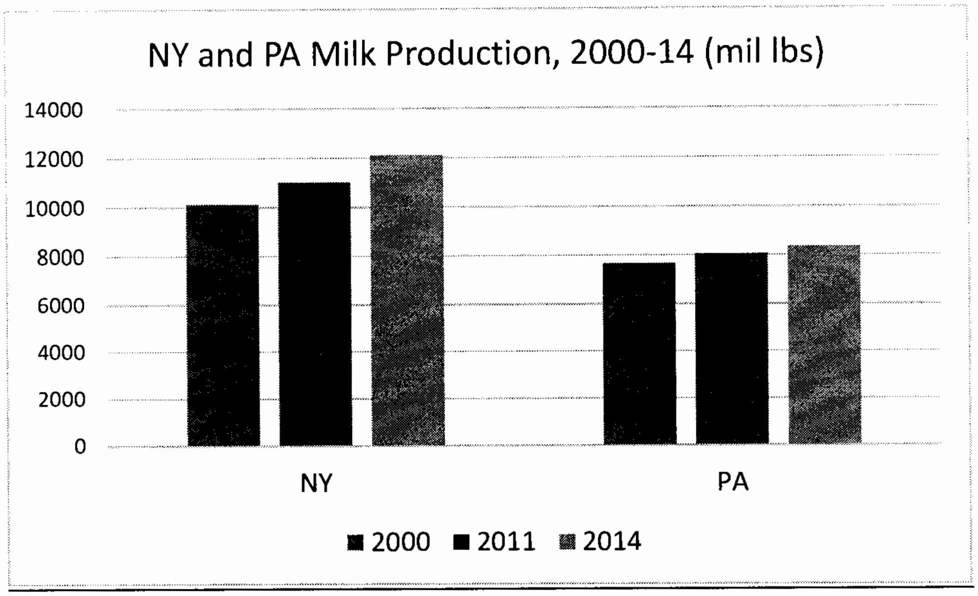
This decline in milk production continued a decades-long trend, during which New England production decreased sixteen percent between 1982 and 2014. Prior to Order consolidation, increased Vermont milk production (along with additional milk supplies imported from New York State) were relied upon to make up for the substantial loss of base productive capacity in the southern portion of the milkshed, nearby the primary marketing area. As may be seen, however, Vermont milk production has been basically flat since 2000.



Though still showing significant decline, the rate of farm attrition in New York and Pennsylvania, the anchor of the newly consolidated, regional milkshed, has been less than in New England since Order reform.



At the same time, in contrast to New England, milk production has increased in both Pennsylvania and New York since Order reform, and quite substantially in the case of New York.



B. State Action to Sustain Local Milk Supplies

As noted at the outset, Mr. Sparrow, Mr. Williams and Commissioner Whitcomb all presented evidence about the programs their States have adopted to promote the sustainability of dairy farms and in-state milk production. Mr. Sparrow also spoke on behalf of the Tennessee Dairy Producers' Association, which is also a producer advocacy group.

In the case of the three southeast state programs, the clear intent is not only to sustain the base supply, but more to promote increased milk production. For Maine, the object is at least to retain the existing base supply.

Kentucky

Mr. Sparrow began by observing that Kentucky had significant potential to increase its milk supply, He noted that its presence in a deficit region offers market opportunity, and that Kentucky is a known source of high quality commodity feed crops He also indicated that Kentucky has a relatively large number of dairy farms for one state, 718 dairy farms, ranking12th, nationally, and not insubstantial base production of 1.12 billion pounds, ranking 27th. "Yet we rank 42nd in milk production per cow, and the average farm size is only 88 cows per farm. We thus have a pretty good base, with a lot of capacity for growth."[20]

According to Mr. Sparrow, KDDC was formed in 2005, to educate, represent and promote the interests of Kentucky dairy farmers, and to foster an environment allowing for the growth of the Kentucky's dairy industry. KDDC has implemented a series of programs, including the Kentucky Dairy Improvement Program, KDIP, which utilizes regional dairy consultants to provide information and services to dairy farmers, the Market Incentive Leadership for Kentucky, (MILK) Program, which promotes local milk production and quality, and the Young Dairy Producer Initiative, to provide leadership and management skills to active and new farmers, 18 to 45 years of age.

With the express concern in mind as to how imposition of the California Order might adversely affect its operation, Mr. Sparrow focused his testimony on the MILK Program. He testified that the program's incentive premiums are drawn from a combination of state and private funds, with the first coming from a grant received by KDDC from the State of Kentucky's Agricultural Development Fund, and the latter representing matching funds provided collectively by Kentucky's milk handlers.

To receive the premium payments, participating dairy farmers must increase actual pounds of milk marketed by a required percentage over an established yearly base, and their milk must meet or exceed a set level of quality standards. Producers must also participate in a production testing program (DHIA).

[20] Transcript, November 12, 2015; p. 7367.
Mr. Sparrow also testified on behalf of TDP. He indicated that Tennessee is similarly situated in the marketplace, with room for expansion. Tennessee produces 750 million pounds of milk, ranking 30th in milk production and 19th in the number of licensed dairies. At the same time, Tennessee ranks 41st in production per cow. Id at 7378.

Since the program's inception in 2007, $5.6 million in incentive premiums have been paid to Kentucky dairy producers through December 2014.[21] The total amount of milk produced by the MILK Program participants in 2014 was 562,061,145 pounds, which is just over half of Kentucky's total annual milk production. During this time period, 2007-2014 over 412 million additional pounds of milk have been generated over the base years' production. [22]

Utilizing the average FMMO mailbox price per hundredweight of milk over this time, the additional 412 million pounds of milk has yielded $82,409,768.00 of additional revenue for Kentucky dairy farmers. The program has thus leveraged the $5.6 million expenditure by a factor of nearly fifteen times.[23]

Given Mr. Covington's testimony about the costs of importing milk, Mr. Sparrow noted that the additional 412 million pounds generated under the MILK Program also results in substantial transportation savings. This additional volume of milk produced in-region, since 2007, displaced the need for the transport of over 8,240 tankers loads of supplemental milk into Kentucky, for processing. Based on the Order Transportation Credits of approximately $0.005 per hundredweight, per mile, for a 50,000 pound tanker load of milk, this equates to $2.50 per mile. According to information received from the Appalachian Market Administrator's office the average load travels approximately 400 miles to delivery in KY. This equals a cost of about $1,000 per load. The MILK Program has thus saved approximately $8,240,000 in transportation cost, along with its promotion of increased milk production.[24]

As noted, Mr. Sparrow also testified on behalf of the Tennessee Dairy Producers Association (TDP). TDP represents all dairy producers in Tennessee, intending to provide a

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[21] Id at 7370.
[22] Id.
[23] Id at 7371.
[24] Id at 7372.

unified voice "for expediting a consistent response to any issue that might affect the short or long range viability of the dairy industry in Tennessee. TDPA will also serve as an unbiased source of information for dairy producers as well as consumers."

Mr. Sparrow tied his testimony together by noting that

> With the same motivation, other states in the Southeast have also implemented programs with the same objective as the MILK program. These programs, along with the amendments to Class I differentials and pooling requirements established by the 2007 FMMO hearing for the three Southeast Orders, have resulted in a slight upward trend since 2010 in milk production in the Southeast. It is critical to all segments of the dairy industry in the Southeast-- producer, processors, and consumers - that this upward trend in production continue to increase in order to provide for the fluid milk needs of our the market.[25]

Georgia

Mr. Williams described Georgia's significant positioning as a central component of the southeast milkshed, being one of the major milk producing states in the deep South. Georgia produces about 1.7 billion pounds of milk annually, ranking 24th nationally. He also indicated that dairy is in the top 10 of Georgia's agricultural commodities, annually contributing $1.2 billion to the state's economy.[26]

Mr. Williams also described operation of GMP as a producer-funded, self-sustaining organization. Georgia's dairy producers vote, by referendum, every three years to maintain Georgia Milk's operation, and pay a 1-cent per hundredweight assessment to enable operation of its communication, promotion and education programs. Georgia Milk's main objective is to educate dairy producers, the public and governing officials on all issues affecting Georgia's dairy industry. These include legislation, environmental regulations, animal health and milk pricing. In

[25] Id at 7373-74.
[26] Id at 7340-41.

the last category, milk pricing, Georgia Milk works to be directly involved in Federal Orders processes that affect Georgia producers.

Maine

Walter Whitcomb, Maine's Commissioner of Agriculture, appeared as a witness[27] and presented evidence of Maine's state action. According to Commissioner Whitcomb, MDIA prompted State action after expiration of the Northeast Interstate Dairy Compact, and the resulting, renewed ineffectiveness of order premiums to adequately augment federal order minimum producer prices. By operation of the two programs then implemented, Maine dairy farms receive a pooled over order price payment through the operation of the Maine Milk Commission, and a variable, more market-driven subsidy payment from the state general fund, through the state's Maine Dairy Stabilization Program, also known as the "Tier Program". "In combination, these payments have, for a decade, enabled Maine dairy farm pay prices to approach break-even level."[28]

According to Commissioner Whitcomb, since 2012, the State's "Tier Program" has paid out $15.5 million in direct support payments to Maine's dairy farmers, covering about 600 million pounds of milk production, annually. "Last year, alone, the State paid $10.6 million."[29]

Finally, Commissioner Whitcomb noted that the Maine programs have had a positive effect. As indicated by the tables set out previously, the dairy farm attrition rate in Maine is substantially less than in the New England region's average, and strikingly so as compared with the southern New England States.[30]

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[27] Transcript, November 13, 2015; p. 7606.
[28] Id at 7617.
[29] Id.
[30] Id at 7618.

C. The Department's Evidence of Likely Adverse Impacts Outside of California That Would Result From Promulgation of a California Marketing Order

The Department's *Preliminary Regulatory Impact Analysis of Proposals to Establish a California Federal Milk Marketing Order* ("Report")[31] was issued in August 2015, well in advance of the hearing being convened. The Report, introduced by the Department as Exhibit 5, presented narrative and compiled data tables itemizing the impacts the Department's econometric model indicated that all four proposed Orders would have for the California marketing area, based on a variety of pricing and production indices. The Report also provided a more summary narrative but still detailed tables showing the modeled impacts, based on these numerous indices, that the different proposals would have on all of the marketing regions outside of California.

The Tables for the different regions of the country identified widespread, reduced producer pay prices over time resulting from establishment of both the Cooperative and Institute proposals. The Department's narrative indicated that the Cooperative proposal would result in an annual increase in California milk production amounting to 540 million pounds per year.[32] This additional milk production was identified as the cause of the reduced producer prices impacts that would be experienced in the other regions of the country from imposition of this proposal. The Institute proposal was not determined to cause the same increased milk production, but nonetheless resulted in price reductions outside of California.[33]

With regard to the Cooperatives' proposal, the Report states, in summary

> This analysis finds that throughout 2017-2024, the Cooperative proposal will increase the California blend prices at test, increasing the California all-milk price and California milk production, in turn increasing California producer revenues. The increase in California production causes an increase in U.S. milk production,

[31] Exhibit 5.
[32] Exhibit 5 at 14.
[33] Id at 22.

which decreases dairy product prices in all current FMMOs and across the rest of the United States.[34]

Mr. Covington's testimony provided summary analysis of the reported pricing and production impacts shown for the southeast, and his testimony is referenced below. The data shown for the northeast is referred to, as well.

a. Pricing

Here are Mr. Covington's tables showing the reductions in producer payments shown for the modeled period, 2017-2024.[35]

Appalachian - Changes in Blend Prices at Test (2017-2024)

Proposal	Average ($/cwt.)	Minimum ($/cwt.)	Maximum ($/cwt.)
Cooperative	-$0.13	-$0.15	-$0.09
CPHA	-$0.13	-$0.15	-$0.09
Ponderosa	-$0.13	-$0.15	-$0.09
Dairy Institute	-$0.04	-$0.27	$0.23

Florida - Changes in Blend Prices at Test (2017-2024)

Proposal	Average ($/cwt.)	Minimum ($/cwt.)	Maximum ($/cwt.)
Cooperative	-$0.22	-$0.31	-$0.10
CPHA	-$0.22	-$0.30	-$0.10
Ponderosa	-$0.21	-$0.29	-$0.10
Dairy Institute	-$0.01	-$0.44	$0.41

Southeast - Changes in Blend Prices at Test (2017-2024)

Proposal	Average ($/cwt.)	Minimum ($/cwt.)	Maximum ($/cwt.)
Cooperative	-$0.26	-$0.34	-$0.13
CPHA	-$0.25	-$0.34	-$0.13
Ponderosa	-$0.25	-$0.32	-$0.13
Dairy Institute	-$0.24	-$0.75	$0.33

As may be seen, Mr. Covington's tables show that the Cooperative proposal would result in an average reduction of producer blend prices, per hundredweight, ranging from $0.13 in the Appalachian Order to $0.22 and $0.26 in the Florida and Southeast Orders, respectively. As may

[34] Id at 24.
[35] Exhibit 83 at 2-3.

also be seen, the Institute's proposed Order would cause greater price variability and result in substantially lower producer prices, over time.

Individual Pricing Impact in Georgia

On behalf of GMP, Mr. Williams' testimony explained the impact these reductions in producer prices would have on the average Georgia dairy farm.

> In Georgia, the average farm has about 375 cows and produces about 7.5 mil pounds of milk annually, or about 75,000 cwt, annually. According to the Department's calculations, the average Georgia farm, pooled on the southeast Order, would thus lose, on average, about $19,500 per year. For year 2024, (which is the "Minimum" in Mr. Covington's calculation), the projected loss is $25,500.[36]

Mr. Williams also explained the impact on receipts for the state's dairy industry, overall. He indicated that, for the state's aggregate milk production of 1.7 billion pounds, the average loss would be just over $4.4 million per year.

Pricing Impact on Kentucky's In-state Pricing Initiative

On behalf of KDDC, Mr. Sparrow testified about the impact that the reductions in producer prices would have on operation of Kentucky's in-state pricing program. Mr. Sparrow testified:

> Overall, for the State's total annual milk production of 1 billion pounds, or 1 million cwt, the average loss caused by the Cooperative proposal would be just over $2.6 million, annually. This would wipe out half of the value of the production incentive payments that have been made under the MILK Program. This loss is projected to increase to $3.4 million for 2024.[37]

b. Production Impacts in the Southeast

The Department's additional analysis identified the additional, most problematic impact for the southeast that results from reduction in producer prices. As cited above, Mr. Covington's

[36] Transcript, November 12, 2015; pp. 7343-44.
[37] Id at 7375.

testimony identified his region's core concern, which is that the Department's analysis indicated that milk production would be flat in the near future, and decline over time.[38]

As also described above, Mr. Covington explained that, in the south, especially in Florida and South Georgia, farm structure allows dairy farmers to react very quickly to changes in price by adding or reducing milking cows. Changes in price, then, can "have a big impact on how many cows they milk, as well as how much milk they produce."[39]

Mr. Sparrow testified how the Department's Table 5 confirmed Mr. Covington's assessment with regard to the Cooperative's proposal. Mr. Sparrow presented the Department's calculations of the impacts the Cooperative's proposal would have on milk production in the three southeast Orders:[40]

TABLE B5: Milk Production Changes under the Cooperative Proposal

	Units	2017	2018	2019	2020	2021	2022	2023	2024	Avg	Min	Max
AP	Bil. LB	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	-0.01	0.00
FL	Bil. LB	0.00	0.00	-0.01	-0.01	-0.01	-0.02	-0.02	-0.02	-0.01	-0.02	0.00
SE	Bil. L	0.00	0.00	-0.01	-0.01	-0.02	-0.03	-0.05	-0.07	-0.02	-0.07	0.00

Mr. Williams accentuated GMP's concern with the Department's analysis suggesting that milk production in the Southeast would decline or at best remain flat. Tying his testimony together, he concluded:

> Mr. Covington has indicated that "lower producer prices and less milk" make more difficult our challenge of providing an adequate supply of fluid milk for our region. From the calculations provided above, it is quite apparent to the producers in Georgia Milk Producers that all the proposals being considered in this hearing would likely cause even greater stress for our region, if adopted in their current form.[41]

Mr. Sparrow expressed his similar, summary concern.

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[38] See page 12.
[39] See page 12.
[40] Exhibit 167 at 6 (November 12, 2016)
[41] Transcript, November 12, 2015; p.7345.

> Again, milk prices are the key to all of this. We are thus deeply concerned by the Department's preliminary analysis, which indicates that all of the proposals for a California Order will reduce Southeast producer prices. KDDC's concern is that that such a price reduction will offset the gains we have made, particularly with the MILK program, and set us again on a downward, rather than upward, trend in milk production.[42]

Commissioner Whitcomb echoed the concerns expressed in the testimony of all three witnesses from the southeast.

> While I am proud of our ability to evolve and adapt, I am increasingly concerned for my farm's future, and for all our dairy farms across the state and the region. Well known to everyone here, there is a persistent, chronic discrepancy between cost of production and the combined federally regulated minimum and market-based over-order pay prices. With dairy farming now so cash flow dependent, this recurring discrepancy has for too long now required my family, and my neighbors, to perpetually confront incurring more operating debt or dissipating our property's equity to cash flow our operations. [43]
>
> Maine's dairy industry has no capability to absorb any long-term reduction from a new source in market derived producer pay prices. The state's dairy aid programs are under severe budget stress just to respond to the negative conditions created by the combined circumstance of inadequate federal Order minimum and market-based over-order pricing. The level of supplemental support currently provided is only break even. Any reduction in pay prices from another source will threaten the viability of our programs and hence the sustainability of our industry. And we are not unique as a state. [44]

D. Proponent Cooperatives' Testimony Regarding Milk Production Data and Analysis, and Its Uncertain Resolution

As indicated at the outset, the Cooperative proponents responded to the evidence of extra-territorial impacts with three assertions. First, they asserted that the model's baseline production data over-stated actual production. Second, they represented that the proponents had instituted "base plans" that would ensure that California milk production would not increase as the model projected would occur. Finally, they represented that California processing capacity was not

[42] Id at 7375.
[43] Transcript, November 13, 2015; p. 7616.
[44] Id at 7618.

sufficient to accommodate the projected increases, which had resulted in the need for the base plans.

Counsel for the Cooperatives first represented, in cross-examination of the Department's witness who had presented the Preliminary Report, that the Model's baseline overstated actual California milk production. He further indicated that such "differences in relative production would have some impact on how the model works over time. Is that intuition incorrect in the econometrics?" [45]

In response, the Department's witness indicated that "[i]n a model where we are using the most current data that we have when we projected it, which we stay -- we maintain or have the consistent projections with the USDA agricultural projection forecasting period."[46]

Counsel continued this line of inquiry with Mr. Covington Mr. Williams[47] and Commissioner Whitcomb. Counsel asked Mr. Covington if he had heard testimony indicating that actual production, for 2014, was 2.3 billion pounds less than the amount utilized in the USDA model's baseline. He further questioned whether this application of this baseline milk production in the model might alter the likely impacts that Mr. Covington might expect the model to forecast. [48]. Mr. Beshore inquired of Mr. Whitcomb, as follows:

> So -- so one of the questions that we were able to ask was, in making the economic projections, were you, and I'm talking to the USDA folks, did you take into account the fact that the cooperatives in California have Cooperative base plants among their producer members, that is, production control agreements among their producers, as does Hilmar Cheese Company, the largest private company or non-Cooperative buyer. Were you able to take that into account and model it into the projected results from the hearing? And they indicated they were not, that there was really, there's really no way to take those kinds of, to model those sorts of things into the, you know, into that kind of economic model.

[45] Transcript, September 23, 2015; p. 283.
[46] Id.
[47] 7354-55
[48] Transcript, October 20, 2015; p. 3788.

> Okay. So my question is, since they couldn't, since they weren't able to take into account that there are built-in production controls in the California system, therefore, the results didn't reflect that, would that, with me bringing that to your attention, would that have any impact, or how would you react to that in terms of your concerns from Maine that over stimulation of production out in California could affect your prices there?[49]

In response, Commissioner Whitcomb replied:

> We, you know, I don't profess to have any, nearly as much knowledge probably as anybody in this room as far as price expectations. But we certainly wanted to register our worry, as you heard from producers and representatives from producer groups yesterday in those regions that still need additional milk production, the pressure would be negative. I just think that with the discussion that goes on in so many places about the regional need and the obvious political importance of having production in every part of the country, that want to be very, very cautious, that, you know, we don't end up with even a small amount of pressure in areas that are very, very sensitive to price fluctuations.[50]

E. <u>The Department's Promulgation Decision and Order Must Account for the Evidence of Likely Adverse Impacts Outside of California</u>

All four parties to this Brief represented their primary support for adoption of a California Order. This support is premised, however, on the further representation that the Department must account for the evidence in the Record of reduced producer payments, and the likelihood of reduced or at best flat milk production.

The gist of the four groups' collective concern is both the analytical and evidentiary uncertainty in the record regarding the likelihood that the Order would cause increased California milk production, with its attendant adverse impacts, nationally. As described here throughout, the Department's preliminary Report raises a substantial concern in this regard. On the other hand, as also cited above, Counsel for the Cooperatives repeatedly raised questions about the critical baseline production data relied upon in the Department's Preliminary Report.[51]

[49] Transcript, November 13, p. 7628-29.
[50] Id at 7629-30.
[51] See also Transcript, September 23, pp. 276-282;; 357-366; Exhibit 11.

Further, specific testimony was provided, on the one hand, that California plant capacity had been exceeded in prior years, resulting in the imposition of base plans to limit production. Once again, however, on the other hand, further testimony indicated that as recently as 2012 and after imposition of such base plans, milk production had nonetheless exceeded plant capacity, resulting in milk being moved to out of state markets, as recently.[52]

The Record is replete with these seeming analytical and evidentiary inconsistencies as to these critical production issues, and hence the Order's potential out-of-region impact. The Department must account for the uncertainties and conflicting evidence, so as to resolve these analytical and factual dichotomies.

1. The Department Must Account for the Assurance of Adequate Supplies of Fluid Milk, as a Primary Purpose of Federal Orders

In his testimony, Mr. Covington established for the Record the fundamental truism that the primary purpose of federal Orders is to ensure adequate supplies of Class I milk:

> A major objective of Federal Milk Marketing Orders is to ensure consumers have access to adequate and dependable supplies of high-quality milk from the sources best suited, both technologically and economically, to supply these demands.[53]

Mr. Covington also established that assuring the FMMO system is devised as an integrated program, with proper consideration given for its impacts, national in scope, are long-standing analytical principles for the program:

> Considering the impact of one Federal Order on another Order is not without prior acknowledgement. Citing the leading 1962 "Nourse Report", he indicated that there is "...a recognition that the outlook of the Secretary of Agriculture and his aides should not be parochial but industry-wide and national in its scope. The Secretary is empowered and entrusted to develop a system of fluid milk marketing orders, integrated as to their relations with each other and with all the uses in which milk goes, not merely orderly as internal housekeeping."[54]

[52] Transcript, October 1, 2015; pp. 1661; 1729-36; Exhibit 39
[53] Transcript, October 20, 2015; p. 3778.
[54] Id at 3774-75.

Elvin Hollon, chief witness for proponent Dairy Farmers of America, further defined this charge for the Department's promulgation decision:

> In order to craft proper provisions for a California Federal Milk Marketing Order, the Secretary must understand the unique conditions of the California marketing area, as well as the integrated relationships firmly established by existing order provisions between the California dairy industry and the remainder of the Federal Milk6 Marketing Order system, and strike the proper balance between the prevailing interests of the entire system and the interests and conditions present in the California market.[55]

As a matter of its basic procedure, all four groups assert the Department must refer to these touchstones of the purpose of federal Orders in determining whether to adopt a California Order. The Department must assess the need for a California Order to accomplish this purpose for that region. At the same time, the Department must ensure that promulgation of the California Order does not compromise the capability of producers in other regions to further the Order system's statutory purpose for their regions.

2. The Department Must Make Findings and Conclusions of Law Regarding the Proposed Order's Impact on Producer Prices and Production Outside of California

As discussed throughout, the essence of the four groups to this Brief is the potential for promulgation of a California Order to cause lower milk prices and flat or lowered milk production in other regions of the country outside of the California marketing area. As also indicated throughout, the Record is replete with analytical and evidentiary inconsistencies as to these critical issues for their concern, particularly the issue of the Order's likely impact on California milk production.

[55] Transcript, September 25, 2015; p. 797.

Accordingly, all four groups on this Brief request that the Department, as part of its promulgation decision, make specific Findings of Fact resolving these analytical and factual disparities in the Record. In particular, the Findings should address whether the preliminary evidence of likely adverse impacts, as presented in *Preliminary Regulatory Impact Analysis of Proposals to Establish a California Federal Milk Marketing Order* ("Report")[56], has been overcome. These Finding of Fact should address the impacts identified in the Report's data tables, as well as the representations made by proponents regarding the model's baseline data, processing capacity and base plans.

The Findings should be sufficient to support legal Conclusions of Law that the Order will not depress producer pay prices or milk production outside of California.

3. In the Alternative, the Decision Should Provide An Express Plan and Explicit Provisions for How the Department May Act Without Delay to Resolve Adverse Impacts in Other Regions, Should They Arise

In the alternative, the four groups collectively assert that if the Department promulgates an Order without making such express Findings and Conclusions of Law, then the promulgation Decision and issued Market Order should each include specifically enumerated provisions for how the Department can and will act expeditiously to mitigate any adverse impacts on price and/or production that might materialize with promulgation of the Order. These provisions in the Decision and Order should, at minimum, provide a specific plan for the conduct of an expedited hearing to consider adoption of required curative amendments for a region's Order where such

[56] Exhibit 5.

harm has resulted.[57]

4. A Promulgated Order Should Include Provisions Ensuring That Operation of the Order Will Not Depress Producer Pay Prices Or Production Outside California

The California Order should include specific provisions designated to ensure operation of the Order does not result in out-of-region harm. The promulgation Decision should establish curative provisions of amendment for other individual regional Orders where the Department anticipates that harm resulting from promulgation of the Order may occur. The Decision should included supporting Findings of Fact and Conclusions of Law for these two sets of provisions in the California Order and other regional Orders.

F. Two Groups Assert That the Department Should Not Promulgate a California Order In the Absence of Express Findings and Conclusions of Law Establishing That Its Preliminary Evidence of Adverse Impacts Beyond California Has Been Overcome

Two of the four groups, KDDC and TDP, assert that the Department should not promulgate a California Order in the absence of express Findings of Fact establishing that the preliminary evidence has been overcome, and accompanying Conclusions of Law that such Order will not reduce producer pay prices or otherwise cause disorderly marketing in other regions outside of

[57] Commissioner Whitcomb provided testimony about how this might be accomplished:
I believe the Department should establish conditions allowing for the Order's adjustment by informal rule making. Clearly, the Department is bound by the law's requirement of a producer referendum...The referendum approval process, however, may itself be used to approve the conditions, and thereby allow for more flexible rule making. effectively to raise issues of concern and to begin to develop, with the Department, a formal record that could be used to initiate the more formal rule making procedure, if the process reveals that such a hearing is needed.

It does not serve the public or dairy interests for the USDA hearing process to take years to advance. The Department needs to respond to situations like the volatility in Class III pricing that has caused so much damage to our industry. The Department should take care to craft a California Order to enable it to be amended in a more dynamic fashion in response to profound changes that will inevitably result from the position of the California Order. Transcript, November 13, 2015; pp. 7621-22.

California. According to these two groups, the Department should not promulgate a California Order only if it can be first premised on such Findings and Conclusions.

G. MDIA Further Asserts That A California Order Must Include Base Plan Production Limits

MDIA, individually, proposes that a California Order should only be promulgated if it includes specifically designated provisions that are intended to and will ensure that the Order does not result in increased California milk production. Such base plan provisions should be made express, mandatory provisions of the California Order, if promulgated

These provisions should reflect the proponent Cooperatives' base plans, which establish limitations on member milk production in California. Exhibit 6, which enumerates the base plan that has been implemented by one of the proponents, provides the outline for such supply control measures. As set forth, the provisions should establish an appropriate baseline amount of production that will serve best to assure there are no adverse impacts outside of California. As further set forth, the provisions should include enforcement provisions such as mandatory deductions for over-production, as well as incentive provisions to promote compliance with the base allocation. Finally, as also provided, the provisions should have the flexibility to make adjustments to the authorized base amounts, to reflect changing market circumstances.

These provisions should also be supported by express Findings of Fact and Conclusions of Law. These Findings and Conclusions should establish that the supply control provisions are likely in fact serve to limit California milk production so as to prevent the adverse out-of-region impacts identified by the Department as likely to occur from adoption of a proposed California Order.

Respectfully submitted,

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