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May 27, 2015

Via Email and Federal Express

Ms. Dana Coale
Deputy Administrator
Dairy Programs
Agricultural Marketing Service
United States Department of Agriculture
South Building
1400 Independence Avenue, S.W.
Room 2968-S
Washington, D.C. 20250-0240

Re: Potential California FMMO Hearing – Dairy Institute of California Submission

Dear Ms. Coale:

This submission is made on behalf of the Dairy Institute of California as a revised submission of its April 10 alternative proposal for consideration at a potential California Federal Milk Marketing Order (“FMMO”) hearing. Except as expressly revised or supplemented in this letter or attachments, the cover letter and attachments submitted on April 10 otherwise stand as the Dairy Institute’s submission.

We attach three documents: (1) a revised complete proposed Order for California; (2) a “track changes” version of the proposed Order that is otherwise identical to document (1) that shows changes made to proposed Order submission made on April 10; and (3) an alternative, but not a substitute, proposal for one paragraph of one section of the proposed Order in the form of proposed alternative language for 7 C.F.R. §1050(q) “Other solids price.”

As this would be an Order promulgation hearing, any interested party could be permitted at the hearing to suggest (and support by testimony and other evidence) alternative solutions and Order language for “open” sections; all proposed sections are open and thus should be subject to this proviso. Nonetheless, the proposed potential alternative for 7 C.F.R. §1050(q) “Other solids price” is submitted now in order to alert any interested person that a California FMMO hearing presents an opportunity to consider an alternative solution to the present FMMO treatment of the whey contribution to the Class III price.

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To be clear, the first two documents submitted also contain a provision for 7 C.F.R. §1050(q) "Other solids price" that is based upon the existing dry whey formula that can be found in Part 1000 of the existing FMMOs. However, the whey contribution to the Class III price has been the subject of much recent industry discussion in recent submissions to USDA, AMS, Dairy Programs (including the April 13 submissions in response to USDA Regulatory Flexibility Act information request), in national forums and dairy media, and in regulatory arenas, including discussion around the California state milk order and this potential proceeding. The alternative proposal for 7 C.F.R. §1050(q) also is consistent with the whey factor pricing concept submitted to CDFA by the Dairy Institute's recently submission for consideration at CDFA's hearing to be held in June, 2014, a hearing that was called after the Dairy Institute's April 10 submission.

The underlying basis for the alternative proposal is that liquid whey, not dry whey, could be the formula factor used to calculate the whey contribution to the Class III price because it may be the real world marketable product most produced for market today. Under the alternative proposal, if evidence at the hearing supports the concept, the whey contribution end product formula would be based on the sales value and manufacturing cost of liquid WPC-34 and the yield of WPC-34 from skim.

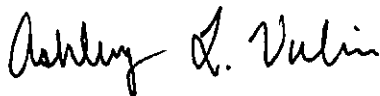
We respectfully urge USDA to include the alternative proposal for 7 C.F.R. §1050(q) in any hearing notice in addition to the full proposed Order language found in attachments 1 and 2 with a dry whey calculation for 7 C.F.R. §1050(q). Given the ongoing discussion regarding the whey contribution to the Class III price, there may well be changes to this alternative proposal as we obtain more data.

Respectfully,

Davis Wright Tremaine LLP



Charles M. English, Jr.



Ashley L. Vulin

Attachments

cc: *All via-email and with attachments*

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Mr. William Richmond
Ms. Erin Taylor
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