

Ryan Miltner

From: Mack, Vandetta [Vandetta.Mack@ams.usda.gov] on behalf of Coale, Dana [Dana.Coale@ams.usda.gov]
Sent: Friday, May 01, 2009 2:56 PM
To: ryan@miltnerlawfirm.com; awr@ashrlaw.com; nbryson@hollandhart.com
Subject: Miltner request re P-H hearing

Dear Ryan:

This is in reply to your three separate emails requesting statistical data and other information on behalf of the American Independent Dairy Alliance for the upcoming Producer-Handler and Exempt Plant hearing in Cincinnati.

We are working to complete your and all other data requests. Because of the number of specific requests, it is unlikely that we will have all of the requested information available before the hearing begins on Monday, May 4th. However, be assured that we will provide as much of the information requested as we are able and as soon as possible.

As to your specific requests, we will not be able to supply some of the data you requested. In this regard, I wanted to let you know what data and other information requested we are not able to provide:

Regarding your first email request of April 16, 2009:

- 1) Items 5 and 6: Neither Class I volumes by average fluid handler nor total volume by average manufacturing handler for the selected time-periods are available. Accordingly we will be unable to provide this data.
- 2) Items 8-12: The information you requested will not be provided. In addition to being beyond the scope of providing statistical data, what you seek cannot be articulated without the benefit of testimony and evidence that this hearing will examine.
- 3) Items 15 and 16: A plant blend price for each handler assuming that the individual handler pool proposal had been adopted cannot be provided because specific sales, sales conditions and terms to individual plants by specific producers are unknown. Also, the range of milk prices received by FMMO producers for the months in 2007, 2008 and 2009 for each marketing area is not available because the data is collected by milkshed, not marketing area.

Regarding your second email request of April 22, 2009:

- 1) Item 2: Cost-of-production data divided into categories as you requested is not collected by AMS. However, cost-of-production data on an average cow basis is available from USDA's Economic Research Service. Please refer to the ERS web site: www.ers.usda.gov.
- 2) Item 4: AMS does not collect brand-specific sales outlet or home delivery information. Accordingly, this data cannot be provided.
- 3) Item 5: AMS does not collect data for sales of milk that is "locally produced by grass-fed cows for niche markets." Accordingly this information cannot be provided.
- 4) Item 8: We will be able to provide a portion of the data you requested – specifically, data on distributing and pool plant volumes by order will be provided for the years 2000, 2005 and 2009.

Regarding your third email request of April 24, 2009:

USDA has statistical information that will be presented and offered as evidence at the hearing. Additionally, please know that every data request regarding this hearing will be posted, together with the data we are able to provide, on our website. As always, we satisfy all data requests to the extent we are able and the decision to enter prepared data into the record is ultimately at the discretion of the party requesting the data.

April 16, 2009

By e-mail only to dana.coale@ams.usda.gov

Dana Coale
Deputy Administrator, USDA-AMS-Dairy Programs
1400 Independence Avenue, SW
Washington, DC 20050

Re: Docket No. AO-14-A78, et al.; DA-09-02; AMS-09-0007;
Requests for Information and Data Submitted by the American Independent Dairy
Alliance

Dear Ms. Coale:

The American Independent Dairy Alliance (AIDA), proponents of proposals 23, 24, and 25 in the hearing docket above request that Dairy Programs provide the following data and information for introduction during the evidentiary phase of the hearing. If Dairy Programs needs additional clarification regarding any of these requests, please contact me. If Dairy Programs cannot provide the information requested, please so indicate and why such information is not available or cannot be provided.

1. We request that the market administrators' offices calculate the statistical uniform price for each of the federal orders for each month in 2008 assuming that the NMPF/IDFA proposal (Proposal 1) to eliminate the producer-handler exemption was in effect.
2. We request that the market administrators' office recalculate the statistical uniform price for each of the federal orders for each month in 2008 assuming that the NMPF/IDFA proposal (Proposal 2) to raise the limit for exempt plants to 450,000 pounds per month was in effect. To gauge the maximum impact on the uniform price, presume that all plants with volumes less than 450,000 pounds are fully exempted on such volumes.
3. We request that the market administrators' office recalculate the statistical uniform price for each of the federal orders for each month in 2008 assuming that both the NMPF/IDFA proposal to eliminate the producer-handler exemption and the proposal to raise the limit for exempt plants to 450,000 pounds per month (Proposals 1 and 2) were in effect.

The following information requests (Numbers 4-6) cover each of the same time periods identified on the chart posted on AMS website labeled "Information on Producer-Handlers Operating in Federal Milk Marketing Areas: Selected Time Periods." For your reference, a copy of that chart is appended to this letter. In

addition, we request that this chart be made an exhibit at the evidentiary hearing in Cincinnati.

4. Average volume of milk marketed per producer for the same time periods.
5. Class I volumes handled by average fluid handler for the same time periods.
6. Total volumes handled by the average manufacturing (non-Class I) handler for the same time periods.
7. In addition to the number of producer-handlers provided for the time periods on the attached chart, please provide the number of producer handlers in each marketing area for the month of December in 2005, 2006, and 2007.

The following information requests (Numbers 8-12) seek adequate notice of the standard of proof that Dairy Programs will apply to evaluate the case made for any of the pending proposals to change the current producer handler regulations.

8. Provide the definition of “disorderly marketing” or characteristics of “disorderly marketing conditions” that USDA will employ or utilize in determining whether it is appropriate to limit or eliminate the producer-handler definitions in each marketing area.
9. Define what specific economic factors and statistical measures USDA will utilize to determine whether producer-handlers are causing or contributing to “disorderly marketing” as defined by USDA. If a threshold impact of producer-handler activity on the statistical uniform price will be utilized, identify that threshold figure and state whether it will be applied to each marketing order uniformly.
10. For any threshold impact provided in response to Request 8, describe whether that impact will be applied to the gross impact of producer-handlers in a given marketing area or whether it will be applied to each individual producer-handler operation. If the impact will be applied to the gross impact of producer-handlers in a given marketing area, describe how Dairy Programs intends to “apportion” the impact among existing producer-handler operations.
11. State whether it is the policy of USDA that, “there has been no demonstration that such entities have an advantage as either producers or handlers so long as they are responsible for balancing their fluid milk needs and cannot transfer balancing costs, including the cost of disposing of reserve milk supplies, to other market participants.” *See* 64 Fed. Reg. 16026, 16135 (April 4, 1999).
12. State whether USDA believes that lacks the authority to regulate the size of producer-handler operations in any marketing area other than Arizona. *See* 64 Fed. Reg. 16135, 7 U.S.C. § 608c(5)(O).

The remaining requests in this letter are related to AIDA's proposal to adopt individual handler pools.

13. For each marketing area, identify those months in 2006, 2007, 2008, and 2009 in which milk was "depooled" by handlers, the volumes of milk depooled, and the estimated impact on the PPD or blend price received by pooled producers.
14. For each marketing area, provide for the months of January 2007, January 2008, and January 2009, the plant blend price for each handler in each marketing area, assuming the adoption of individual handler pooling. We understand that you may need to redact such information as is necessary to not provide confidential data about the handlers. We also request that for each month stated for each marketing area, the range of prices encompassing the middle 50% and middle 90% of priced milk be provided. For example, if there are a hypothetical ten handlers in a marketing area, then we would request that the plant blend prices for each of the ten plants be provided in a list. The plants should be rank ordered by the plant blend price. Then, using the volumes of each handler, the prices for the middle 50% of volume and middle 90% of pooled production should be reported. A chart with a proposed format for reporting this information is provided.
15. For each marketing area, provide for each month in 2008 and 2009 the range of mailbox prices received by FMMO producers.
16. For the months of January 2007, January 2008 and January 2009, provide in list form the mailbox prices received by each producer in each marketing area. The range of prices encompassing the middle 50% and middle 90% of mailbox prices is also requested. If statistical analyses of the mailbox prices have been performed by any of the market administrators offices, then please provide those analyses.

Please provide your responses by e-mail to Al Ricciardi (awr@ashrlaw.com), Ryan Miltner (ryan@miltnerlawfirm.com) and Nancy Bryson (nbryson@hollandhart.com). Questions regarding these requests should be directed to either Al Ricciardi or Ryan Miltner.

We appreciate your efforts in providing the information requested.

Very truly yours,

/s/

Ryan K. Miltner

Cc: Gino Tosi (by e-mail)

Information on Producer-Handlers Operating in Federal Milk Order Marketing Areas, Selected Time Periods

Time period	Orders reporting producer-handlers	Percentage of orders reporting producer-handlers 1/	Number of producer handlers	Sales by producer-handlers 2/	Percentage of sales by producer-handlers 3/	Average sales per producer-handler for the time period
	Number	Percent	Number	1,000 pounds	Percent	Pounds
Oct., 1959	38	51.4	348	12,057	1.2	34,645
Oct., 1964	38	50.7	387	24,197	1.7	62,525
Oct., 1969	42	63.6	421	42,554	2.1	100,654
Oct., 1974	40	66.7	333	40,956	1.7	122,990
Oct., 1980	26	55.3	287	41,917	1.6	146,052
Oct., 1987	22	51.2	175	34,951	1.3	199,719
Oct., 1992	19	47.5	137	51,268	1.9	374,219
Dec., 2001 4/	9	81.8	79	55,300	1.7	700,000
Dec., 2008 4/	10	100.0	40	56,883	1.5	1,422,080

1/ Information for the New York-New Jersey order was not available for the Oct., 1959 through Oct., 1974 time periods.

2/ Route sales of packaged fluid milk products in the marketing areas of the reporting orders.

3/ Proportion of total route sales of packaged fluid milk products in the marketing areas of the reporting orders from all sources.

4/ The data for this time period may be affected by the new category of nonpool plant -- exempt plant (volume status)-- that was instituted under Federal milk orders in January 2000. See "Producer-Handlers -- Description".

Handler	Plant Blend	Volume (Million Pounds)	Aggregate Volume	Percentage of Aggregate	Percentage of Volume
A	13.54	3.4	3.4	3.03%	3.03%
B	13.75	1.2	4.6	1.07%	4.10%
C	13.79	2.5	7.1	2.23%	6.33%
D	14.1	10.8	17.9	9.63%	15.97%
E	14.15	7.3	25.2	6.51%	22.48%
F	14.21	12.1	37.3	10.79%	33.27%
G	14.35	32.3	69.6	28.81%	62.09%
H	14.76	11.1	80.7	9.90%	71.99%
I	14.78	6.3	87	5.62%	77.61%
J	15.02	25.1	112.1	22.39%	100.00%
Total Volume		112.1			
First Quartile		28.025	14.21		
Third Quartile		84.075	14.78		
5%		5.605	13.79		
95%		106.495	15.02		

Using this data, it would be said that the middle 50% of producers receive between 14.21 and 14.78 and the middle 90% receive between 13.79 and 15.02.

April 22, 2009

By e-mail only to dana.coale@ams.usda.gov

Dana Coale
Deputy Administrator, USDA-AMS-Dairy Programs
1400 Independence Avenue, SW
Washington, DC 20050

Re: Docket No. AO-14-A78, et al.; DA-09-02; AMS-09-0007;
Second Request for Information and Data Submitted by the
American Independent Dairy Alliance

Dear Ms. Coale:

The American Independent Dairy Alliance ("AIDA"), proponents of proposals 23, 24, and 25 in the above hearing docket, requests that Dairy Programs ("Dairy Programs") provide the following data and information for introduction during the evidentiary phase of the hearing which is scheduled to begin on May 4, 2009 in Cincinnati, Ohio. This request supplements the first request submitted to Dairy Programs by AIDA on April 16, 2009.

If Dairy Programs needs additional information or any clarification regarding any of these requests, please contact me directly. If Dairy Programs cannot provide the information requested in a timely manner, please so indicate and then explain why such information is not available or cannot be provided.

AIDA requests that Dairy Programs produce the following documents/information:

1. Provide for each marketing area the number of nonmember producers (producers not members of a cooperative association) and pounds of milk marketed by cooperative members and non-members for each month from January 2000 through the most recent available month. For the number of non-member producers and the volumes of milk marketed by non-members, provide the percentage of the total number of producer and marketings represented by the non-members.
2. Provide for each marketing area, or on such other regional division as is available, the cost of production for dairy herds broken down by the following herd sizes: 100 cows and fewer; between 100 and 300 cows; between 300 and 800 cows; between 800 and 2000 cows; greater than 2000 cows. The costs should be provided for each month for the previous three years. In addition, please provide available cost of production information for organic herds, herds that are pasture-grazed, and herds that are kosher certified in as close to the same categories as the overall cost of production figures.
3. Provide for each marketing area, for the past three years, the percentage of Class I volumes pooled on the order that are organic.

4. Provide for each marketing area, for the past three years, the percentage of Class I volumes pooled on the order that are processed by handlers marketing their products through handler-owned, brand-specific outlets or by home delivery.
5. Provide for each marketing area, for the past three years, the percentage of Class I volumes pooled on the order that are processed by handlers marketing their products as locally produced, grass-fed, or which otherwise service niche markets.
6. Based on the data collected by AMS on the retail prices of milk in various markets, provide any data on the effective economic value to consumers of competition as reflected in retail prices for fluid milk.
7. Provide estimates of the costs that producer-handlers would incur for pool participation exclusive of producer settlement fund obligations. Please include Dairy Programs' estimated costs of preparing and filing pool reports, the costs of administrative assessments, and the costs of testing the milk from the handlers' own farm. As part of this data, please provide the estimated costs for each order and for producer-handlers with total production of 250,000 pounds per month, 500,000 pounds per month, 1,000,000 pounds per month, 3,000,000 per month, and 5,000,000 per month.
8. Provide a breakdown of the number of distributing plants and supply plants for the FMMO system and for each marketing order by size for the years 1950, 1960, 1970, 1980, 1990, 2000, 2005, and 2009 into the following categories: (1) less than 450,000 pounds per month; (2) 450,001 pounds to 1,000,000 pounds per month, (3) 1,000,001 pounds to 3,000,000 pounds per month, (4) 3,000,001 pounds to 5,000,000 per month; (5) 5,000,001 pounds to 10,000,000 pounds per month; (6) 10,000,001 pounds to 20,000,000 per month; (7) 20,000,001 pounds to 30,000,000 pounds per month; (8) more than 30,000,000 pounds per month.

Please provide the responses of Dairy Programs to AIDA by e-mail to Al Ricciardi (awr@ashrlaw.com), Ryan Miltner (ryan@miltnerlawfirm.com) and Nancy Bryson (nbryson@hollandhart.com). Any questions from Dairy Programs to AIDA regarding these requests should be directed to either Al Ricciardi or Ryan Miltner.

We appreciate your efforts in providing the information requested.

Very truly yours,

/s/

Ryan K. Miltner

Cc: Gino Tosi (by e-mail)

April 24, 2009

By e-mail only to dana.coale@ams.usda.gov

Dana Coale
Deputy Administrator, USDA-AMS-Dairy Programs
1400 Independence Avenue, SW
Washington, DC 20050

Re: Docket No. AO-14-A78, et al.; DA-09-02; AMS-09-0007;
Third Request for Information and Data Submitted by the
American Independent Dairy Alliance

Dear Ms. Coale:

The American Independent Dairy Alliance (“AIDA”), proponents of proposals 23, 24, and 25 in the above hearing docket, requests that Dairy Programs (“Dairy Programs”) provide the following data and information for introduction during the evidentiary phase of the hearing which is scheduled to begin on May 4, 2009 in Cincinnati, Ohio. This request supplements the first request submitted to Dairy Programs by AIDA on April 16, 2009 and our second request submitted on April 21, 2009 .

If Dairy Programs needs additional information or any clarification regarding any of these requests, please contact me directly. If Dairy Programs cannot provide the information requested in a timely manner, please so indicate and then explain why such information is not available or cannot be provided.

AIDA requests that Dairy Programs produce the following documents/information:

1. Provide for each marketing area the volume of producer-handler milk broken down between milk disposed of as Class I utilization and milk disposed of in other classes or through sales of bulk milk by producer-handlers to other handlers for each year since 1999.
2. Please submit as exhibits at the evidentiary hearing the documents listed on the Dairy Programs webpage “National Producer-Handler Hearing” under the subheading “USDA Prepared Data.”

Please provide the responses of Dairy Programs to AIDA by e-mail to Al Ricciardi (awr@ashrlaw.com), Ryan Miltner (ryan@miltnerlawfirm.com) and Nancy Bryson (nbryson@hollandhart.com). Any questions from Dairy Programs to AIDA regarding these requests should be directed to either Al Ricciardi or Ryan Miltner.

We appreciate your efforts in providing the information requested.

Very truly yours,

/s/

Ryan K. Miltner

Cc: Gino Tosi (by e-mail)