

LAW OFFICE OF MARVIN BESHORE

130 State Street
Harrisburg, PA 17101

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

Marvin Beshore
Mbeshore@beshorelaw.com

November 9, 2017

Via Email Only To: Dana.coale@ams.usda.gov

Dana Coale, Deputy Administrator
USDA-AMS-Dairy Program
1400 Independence Avenue, SW
Washington, DC 20250-0225

Re: Request for Emergency Hearing – Federal Milk Marketing Order 6

Dear Ms. Coale:

This office represents Southeast Milk, Inc., Dairy Farmers of America, Inc., Premier Milk, Inc., Maryland and Virginia Milk Producers Cooperative Association, Inc., and Lone Star Milk Producers, L.C. On behalf of these qualified cooperative associations, which together market in excess of 90 percent of the producer milk pooled on Order 6, we are requesting that the Department hold an emergency hearing for purposes of amending Federal Order 6, the Florida Milk Marketing Order, to provide for temporary amendments to that order which authorize limited reimbursement to handlers who experienced extraordinary losses from Hurricane Irma during September 2017.

Hurricane Irma

Hurricane Irma was the largest, most powerful hurricane ever recorded on the Atlantic Ocean and one of the most destructive and widespread storms ever to strike the Florida Peninsula. Irma did not strike a glancing blow, but traveled straight up the entire peninsula of Florida in September 2017. The impact was reflected as USDA designated 19 of 67 Florida counties as primary natural disaster areas, with another 25 counties qualifying for natural disaster assistance. Moreover, FEMA declared all 67 Florida counties disaster areas, eligible for varying levels of assistance, with over 700,000 individual assistance applications approved so far. The disaster-designated counties range from the southernmost, Miami-Dade County, to counties adjoining the Florida-Georgia (Jacksonville) and Georgia-Alabama (Pensacola) borders. According to National Oceanic and Atmospheric Administration data, nearly the entire state experienced rainfall totals over 6.0 inches and sustained wind speeds over 50 mph during the storm.

The widespread nature of the storm had a devastating impact on the dairy industry. It affected not only milk production, but also milk transport, milk processing and milk purchases at retail, restaurant, and the institutional food service level. Furthermore, Irma caused every

operating dairy plant in the state to shutdown at some point, many doing so for multiple days. All the Florida pool plants serviced by the cooperatives at the time of the hurricane were shut down for at least one day, with five (5) pool plants shutting down for at least three (3) days. As a result, the cooperatives not only took losses on moving milk outside their normal marketing areas, but they were also forced to resort to dumping their members' milk which had no home. Between physical damages to members' dairies, heat stress to animals as a result of damages to cooling systems, market losses, and additional transportation costs, our members incurred substantial and extraordinary losses from this storm. These costs and losses were unavoidable despite milk production falling significantly after the storm.

Prior federal order hurricane relief

After assessing Irma's impact and comparing it with the 2004 hurricane events for which emergency federal order relief was found appropriate, we submit that while the two hurricane events are not identical, regulatory relief is appropriate in 2017, as it was in 2004. Thus, we are requesting an emergency hearing to consider some market order-based relief, similar to that afforded in 2004, for this 2017 natural disaster.

Losses incurred and order amendments requested

The cooperatives, and their dairy farm owners, which are requesting the emergency hearing have borne the vast majority of the costs incurred at the raw milk production level and associated with supplying the Order 6 market. As noted, these costs have included dumping milk, replacing lost/dumped milk, rerouting tankers to distant plants with additional transport cost and reduced prices, garnering imported milk supplies, and reestablishing any semblance of a normal bulk milk delivery structure to ensure adequate supplies for our customer requirements.

In view of these costs, which will be documented in detail at a hearing, the cooperatives are requesting emergency relief in the form of amendments to Federal Milk Marketing Order 6. The requested amendments are set out on the attached proposed amendatory order language. The amendments are strictly limited and applicable only to milk movements during the hurricane period of September 6 to September 15. The categories of costs requested for recovery include: (1) the minimum class price value of whole and skim milk dumped due to the unavailability of markets while plants were shut down; (2) additional transportation costs associated with milk movements resulting from the storm; (3) lost minimum location price value on milk movements out of market; and (4) price losses on distress sales of milk. Reimbursement for handlers who incurred these limited costs, which would have to be proven to the satisfaction of the Market Administrator, would be through a temporary \$.09 per hundredweight increase in the Class I price under the order. The increase would only be applicable for the number of months necessary to cover the documented costs.

Responses to the hearing request requirements in 7 CFR § 900.22:

In accordance with the regulations relating to requests for hearings, we address the requirements of 7 CFR § 900.22 as follows:

- (a) Explain the proposal. What is the disorderly marketing condition that the proposal is intended to address?

The proposal, including the disorderly conditions which have led to it, is detailed in the body of the letter above.

- (b) What is the purpose of the proposal?

The purpose of the proposal is detailed in the body of the letter above.

- (c) Describe the current Federal order requirements or industry practices relative to the proposal.

Prior practice provided for relief similar to that requested for this natural disaster, emergency circumstance. The relief provides that a portion of the extraordinary costs of the nine (9) day hurricane period are shared throughout the marketplace, rather than being borne solely by the dairy producers supplying the market. Marketwide pooling and classified pricing, which are the basic mechanisms of the market order are utilized for the relief requested.

- (d) Describe the expected impact on the industry, including on producers and handlers, and on consumers. Explain/ Quantify.

Losses have already been suffered by the producers pooled under the order. The requested relief will redress those losses through modest short-term price adjustments on all Class I utilization for a limited time period.

- (e) What are the expected effects on small businesses as defined by the Regulatory Flexibility Act (5 U.S.C. 601– 612)? Explain/Quantify.

There will be no special impact on small businesses. Many of the supplying producers are small businesses and some of the regulated handlers are also small businesses. The proposed temporary amendments will be integrated into the operation of the ongoing regulations so that there will be, in essence, no separate impact on any regulatory party, small or large.

- (f) How would adoption of the proposal increase or decrease costs to producers, handlers, others in the marketing chain, consumers, the Market Administrator offices and/or the Secretary? Explain/Quantify.

The cost increase to Class I handlers would be a charge of less than 1% of the Class I price for a limited period. The impact on consumers would be less than \$.01 per gallon for a limited period of time. There would be no impact on others in the marketing chain; or increased costs to the Market Administrator offices or the Secretary.

(g) Would a pre-hearing information session be helpful to explain the proposal?

No.

We request that this hearing be called on an expedited basis so that the relief can be delivered at the earliest possible time.

We will be happy to provide any additional information you may need and answer any questions you may have. Thank you in advance for your assistance.

Very truly yours,



Marvin Beshore
Attorney for Requesting Cooperatives

Attachment: Proposed amendatory language

cc: Erin Taylor, Acting Director, Order Formulation and Enforcement Division, AMS Dairy Program (erin.taylor@ams.usda.gov)

Clifford Carman, Assistant to the Deputy Administrator, AMS Dairy Program (Clifford.carman@ams.usda.gov)

Erik Rasmussen, Market Administrator (erasmussen@fedmilk1.com)

Jim Sleper, CEO, Southeast Milk, Inc. (jsleper@southeastmilk.org)

Elvin Hollon, Vice-President, Economic Analysis/Fluid Marketing, Dairy Farmers of America, Inc. (ehollon@dfamilk.com)

Tom Pittman, Premier Milk, Inc. (tpittman@premiermilk.org)

Jay Bryant, CEO, Maryland and Virginia Milk Producers Cooperative Association, Inc. (jbryant@mdvamilk.com)

Sonia Fabian, Lone Star Milk Producers, L.C. (sfabian@lonestarmilk.com)