

## Attachment 2

To Letter to Deputy Administrator  
Agricultural Marketing Service, Dairy Programs  
United States Department of Agriculture

Supplementary responses to topics  
Addressed in 7 C.F.R. §900.22

Submitted by:  
Dairy Institute of California

**Deputy Administrator  
USDA/AMS/Dairy Programs  
April 9, 2015  
Attachment 2**

**§ 900.22 Proposal Submission Requirements**

Section 900.22 requirements are technically limited to proposals seeking to amend a federal order and thus not applicable to this proceeding. The Cooperatives' proposal included this information, though, so the Dairy Institute is responding. Pursuant to 7 C.F.R. § 900.22, the Dairy Institute of California addresses the following issues, to the extent applicable:

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

The Dairy Institute's proposal is explained in detail in the cover letter. There are no significant disorderly marketing conditions in California as that term has been defined by USDA and the Courts after more than 80 years of program implementation and Agency interpretation. A Federal Order for California is not warranted.

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

While the Dairy Institute denies that there are "disorderly marketing conditions" in California sufficient to justify a Federal Order, if the Agency concludes that a promulgation hearing is warranted, this proposal is submitted as an alternative to the Cooperatives' submission. The Cooperatives' proposal would actually foster disorderly, not orderly, marketing conditions, so an alternative proposal is necessary. The Dairy Institute's alternative proposal is designed to look and work like other Federal Milk Orders presently in existence or promulgated by USDA in the past, while still recognizing some California regulatory features. Adoption of the Dairy Institute proposal would:

- (1) Promulgate a Federal Milk Order for California, modeled after existing Federal orders, that considers and recognizes California industry and regulatory practices to the extent legally permissible under the Agricultural Marketing Agreement Act, as amended (7 U.S.C. § 601 *et seq.*);
- (2) As per the most recent Farm Bill, the Dairy Institute proposal would promulgate an Order that would "reblend and distribute order receipts to recognize quota value;"
- (3) Foster orderly marketing conditions by linking the ability to pool milk to the delivery of milk to Class I processing plants as is required in all other Federal Milk Orders; such shipping requirements, with the exception of out-of-state milk, are wholly missing in the Cooperatives' proposal;

- (4) Foster orderly marketing conditions by establishing market-clearing regulated prices for Class III and Class IV;
  - (5) Foster orderly marketing conditions by fully regulating large producer handlers operating Class I facilities that otherwise meet the distributing plant definition;
  - (6) Foster orderly marketing conditions by treating out-of-state milk that is pooled under the proposed Order in a manner that does not create illegal trade barriers; and
  - (7) Provide for a market administrator to administer the pool, make price announcements, and provide valuable market information (the Cooperatives' proposal omits these standard provisions of a Federal Order).
- (c) "Describe the current Federal order requirements or industry practices relative to the proposal."

The Dairy Institute cover letter accompanying the Petition answers this query.

- (d) "Describe the expected impact on the industry, including producers and handlers, and on consumers. Explain/Quantify."
1. Even though there is more than an adequate supply of milk in California (especially for fluid needs), regulated producer prices are likely to increase under the Dairy Institute proposal as compared to the current regulated California program;
  2. Regulated handler prices will increase under the Dairy Institute proposal as compared to the current regulated California program;
  3. Class I handlers, assuming the proposal is adopted as drafted, would face higher regulated prices even as their sales have been decreasing;
  4. While consumer pricing is complex, higher regulated prices can be expected to result in somewhat higher consumer prices; and
  5. The impacts are difficult to quantify at this time.
- (e) "What are the expected effects on small businesses as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612)? Explain/Quantify."
1. Small businesses that operate regulated handlers would see an increase in their minimum regulated prices as compared to the regulated California program; and
  2. Small businesses that are dairy farms and choose to pool their milk would see an increase in their regulated milk prices.

- (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 response to paragraph (d) answers the question as to regulated prices paid to dairy farms and by regulated handlers. Also the response to paragraph (d) answers the question as to the impact on consumers. There will be a new Market Administrator for this California order and there would be substantial upfront costs to implement the order, which would be borne by handlers. These will probably be one-time costs, but will likely be substantial. The Secretary’s costs will be in holding a significant rulemaking; these costs are also likely to be substantial.

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

Yes.