Reactions to California's FMMO proposal

Two leading industry observers have the same message: the plan is far from a done deal.

Long, uncertain path

by David Ahlem

The petition to create a Federal Milk Marketing Order (FMMO) in California by the three cooperatives has been greeted with enthusiasm by many in the industry. It is being described as a way to create more milk price equality between California and other dairy regions in the U.S., while at the same time retaining key parts of the California order, such as quota. The proposal, however, is indeed only a proposal, and merely a first step in a long and costly process that ignores the real issue: how to create more value from milk to the benefit of both producers and processors.

The actual process to create a FMMO will likely take three years and include broad industry input that could drastically reshape what is currently being proposed by the California cooperatives. The process through which a FMMO is created is open and will include a wide variety of input. This input will come from FMMO expert lawyers, processor and producer industry representatives and, of course, producers themselves.

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The USDA and an administrative law judge will weigh both industry input and alternative FMMO proposals on the basis of economic and legal grounds before making any recommended order language, or deciding whether the evidence supports the creation of a California FMMO at all.

The time line will be long and the process arduous. If the USDA moves forward through the hearing process and issues recommended provisions for a California FMMO (most likely in late 2016), there will be more time for stakeholders to file exceptions before the USDA makes a final decision on the order language (mid-2017). Some months later, either individual producers or cooperatives through bloc vote (most common) will decide whether they want to enact USDA's final order language, which may look nothing like the original petition. If passed, order enactment likely would not occur until early 2018.

Major issues will be debated in the hearing process. Does disorderly marketing exist in California sufficient to require a FMMO? How will the quota system legally operate in a FMMO? Is there sufficient legal and economic grounds to require mandatory processor pooling and payment of FMMO minimum milk prices by all processors and manufacturers? These are very important debates.

No other FMMO has an operating quota system. No other FMMO requires the mandatory pooling and payment of minimum prices for all manufacturing milk. Both ignore USDA precedent. The outcome of these debates would have a significant impact on how revenue is redistributed in a California FMMO.

Despite optimism that the proposal will increase producer revenue, there is strong evidence, if historical precedent is any guide, this will not be the case. Key provisions of the proposal are very different compared to previous FMMO precedent and there is a strong likelihood that cooperatives/producers will be voting on something different than what they proposed (if they vote at all in three years). Furthermore, higher mandatory prices do nothing to create more value. Sustainable revenue enhancement will only come from investment, innovation, and heightened competition. A California FMMO does nothing to move us in that direction.

Instead of spending millions of dollars to continue chasing more money through redistribution systems, the industry would be better served continuing to work toward reforms in California that tackle the real issues: how to create more value from milk for producers and encouraging the processing investments that make it possible. Milk pricing and redistribution schemes that were designed to address the problems of the 1930s and are not employed by any of our international competitors, will only put our industry further behind, not ahead, in the long term. *WEST*

It is unknown how USDA will respond to three California cooperatives' request for a Federal Milk Marketing Order, but when it does there are sure to be many producer meetings to discuss it, like this one held at World Ag Expo in Tulare, Calif., in February 2013.

Must have balance

by Andrew Novakovic

Regarding the recently proposed California Federal Milk Marketing Order (FMMO), don't forget that USDA is by no means obliged to give California the order language proposed by the three cooperatives. The Agricultural Marketing Agreements Act gives dairy farmers who would be regulated under a new order, and them alone, the privilege of voting for an order, up or down in its entirety, but it also instructs USDA to balance the interests of producers and consumers in constructing the terms of the order.

In addition, the 1990s reform legislation strongly encourages USDA to keep orders as simple and as similar across areas of the country as possible. While this is not strictly or literally binding, USDA, in a sense, has to ask the question "Why?" when an area wants to do something different from the norm, not "Why Not?". The California cooperatives' proposal asks for several things that are quite different from other federal orders.

One of these differences relates to their pool quota. Another relates to the geographic construction of the order area. The Agricultural Act of 2014 resurrects language in the 1996 Farm Bill that pertains to certain special provisions for the California dairy industry in conjunction with federal order reform during that period, specifically:

"Upon the petition and approval of California dairy producers in the manner provided in section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, the Secretary shall designate the State of California as a separate Federal Milk Marketing Order. The order covering California shall have the right to reblend and distribute order receipts to recognize quota value."

"I don't think the language of the 1996 Farm Bill requires USDA to adopt the California pool quota plan precisely as it is. It simply says that a California order shall have a re-blending provision to recognize quota value."

This language requires USDA to designate the entirety of California as a single and separate federal order. USDA defines the geography of its marketing orders by marketing areas. Those areas which we are accustomed to seeing as shaded areas on a map refer to places in which processors compete for the sale of Class I milk products. Thus, the first exception in the old farm bill departs from the standard way in which USDA defines the geography associated with a marketing order.

If USDA were to ask the question, "Is California one big Class I market that goes all the way to border and stops there?", they might not answer yes. No other federal order is defined by the boundaries of a state. In addition, the California cooperatives' petition explicitly includes one county in Nevada because it is the location of a Dairy Farmers of America (DFA) plant that has been associated with the California market for years.

DFA is, of course, one of the petitioners. Thus, the co-ops' petition already deviates slightly from the literal words of the old law that have been resurrected. I don't think anyone is imagining that USDA will reject the inclusion of that Nevada county from a proposed order simply because of a literal reading of the old law, but I suspect it could.

The 1996 language also sought to accommodate California's unique pool quota system, under which farmers can pay for a piece of paper that gives them the right to a higher price than farmers who don't own that right. Of course, California has a very specific regulation defining exactly how its pool quota system works.

The California petitioners believe that USDA will or must adopt that specific system in its entirety. I don't think the language of the 1996 Farm Bill requires USDA to adopt the California pool quota plan precisely as it is. It simply says a California order shall have a re-blending provision to recognize quota value.

Beyond those unusually specific instructions, the rest of a California order, assuming USDA eventually proposes one, could look quite different from the cooperatives' proposal. Or it could look a lot like it, but have something in it that is very different from what the cooperatives have in mind.

At that point, each eligible voting farmer or his authorized cooperative would have to decide if the order language finally offered by USDA is close enough to what they had in mind, or if they would rather stick with what they have in California.

Of course, there is also nothing to prevent a California organization, including any or all of the three cooperatives, to continue to work on amendments to the current state order or its underlying legislation to see if they can get it changed to achieve a similar effect.

This California cooperatives proposal remains a box that can't be judged just by its wrapping. There is a lot that still needs to happen before we know whether USDA will recommend a federal order for California that its producers will judge to be better than what they have now, or what they might yet get from their state in the meantime. *WEST*

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