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Federal Order #33 Hearing Statement

Docket No. AO-166-A68; DA-01-04

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Oct. 23, 2001

Wadsworth, Ohio

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Michigan Milk Producers Association

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For the record, my name is Carl Rasch. The purpose of the statement that I am about to read is to elaborate upon the intent of several of the proposals for which we are a proponent. I intend to identify problems or weaknesses that exist within the current FO 33 pooling provisions and explain how the changes we have proposed will affect those provisions and address the problems.

**Proposal No. 1:**

1. Amend §1033.7 by revising paragraph (a), to read as follows:

**§ 1033.7 Pool Plant.**

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(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or § 1000.7(b) of any other Federal milk order, from which during the months of August through April are not less than forty percent, and during the months of May through July are not less than thirty-five percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least twenty-five percent of such route disposition and transfers must be to outlets in the marketing area.

\* \* \* \*

- 1) This proposal amends the pool plant definition for a distributing plant by increasing the minimum route disposition performance standard from 30% to 35% for the months of May through July and from 30% to 40% for the months of August through April.
- 2) In the event that the "split plant" provision is eliminated as we have requested, the need to attach a supply plant to the market by transfer becomes more important. This language would constrain a pool distributing plants ability to attach diversions to the market.
- 3) Prior to reform, the performance requirements for distributing plants in the predecessor Orders were generally tighter.
  - FO #33 was 40% September-February and 35% March-August
  - FO #36 was 50% September-March and 40% April-August
  - FO #40 was 50% for all months
  - FO #49 was 40 % Sept.-Feb., 35% March-July, 30% for August

- 4) We have talked with all of our distributing plant customers and have determined that none would become unregulated as a result of these changes.
- 5) Variable percentages are proposed in order to account for the seasonality of Class I sales and milk production.

**Proposal No. 2:**

1. Amend § 1033.7 by removing paragraph (c)(1)(iv) and revising paragraph (c)(4) to read as follows:

**§ 1033.7 Pool Plant.**

\* \* \* \* \*

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(c) \* \* \*

(4) Shipments used in determining qualifying percentages shall be milk transferred or diverted and physically received by distributing pool plants, less any transfers or diversions of bulk fluid milk products from such distributing pool plants.

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- 1) Replacement of the existing 1033.7(c)(4) eliminates the automatic pool plant status for supply plants during the months of March through August. This change would require a supply plant to perform each month of the year in order to share in the pool proceeds. Since Order 33 has such a high volume of Class I sales, it seems reasonable to require year round association with the market. Exhibits presented earlier in our testimony outline the economic consequences of our proposal.
- 2) This proposal also eliminates 1033.7(c)(1)(iv). Shipments from a supply plant to distributing plants regulated by other federal order would no longer count for qualification in Order 33. Order 33 has the second largest volume of Class I sales amongst all orders. Traditionally, provisions that allow for qualification to be earned from shipments to other Orders were associated with "reserve supply Orders". Since Order 33 is not a reserve supply order it makes little sense to us to allow for this type of provision. It only makes it easier to attach milk to the Order without serving the market.
- 3) Prior to reform, many of the shipments made to "other orders" from the current "local milk supply base" of Order 33 were to the plants which are now regulated by the Mideast Order. Supplies of milk from Michigan regularly supplemented needs of the old Orders 49 and 33. Now those areas are part of the expanded FO #33 market.

- 4) The new section 7(c)(4) as proposed institutes a "net shipment provision" common to many orders. It prevents a supply plant from shipping milk into the "front door" of a pool distributing and then reloading and shipping the milk back out the "back door". Without a "net shipment" provision, manufacturing plants are able to satisfy the qualification standard and still retain use of the milk – hardly a method conducive to making milk available for the market. This proposal would prevent this from happening.
- 5) Currently the large economic incentive for attaching supply plant milk to Order 33 tempts both parties to "ship out the back door" even though the haul costs may be substantial. The Market Administrator must audit these shipments as a part of his regular audit practices. The temptation to "skip" the delivery part of the transaction and just report it as occurring is also great. Removal of the financial incentive, as this proposal intends, would eliminate the temptation to "fake" the delivery.
- 6) We propose to modify proposal 2 by inserting the following language at the conclusion of section 7(c)(2) to read as follows:

;provided however that if the supply plant is located outside of the marketing area, any such qualifying shipments must be from farms located in the county of the supply plant, or a contiguous county or from any county further away.

**Proposal No. 3:**

1. Amend § 1033.13 by redesignating paragraphs (d)(3) through (d)(6) as paragraphs (d)(4) through (d)(7), revising paragraphs (d)(2) and (d)(4), and adding a new paragraph (d)(3) to read as follows:

**§ 1033.13 Producer Milk.**

\* \* \* \* \*

(d) \* \* \*

- (2) The equivalent of at least two day's production is caused by the handler to be physically received at a pool plant in each of the months of August through November;
- (3) The equivalent of at least two day's production is caused by the handler to be physically received at a pool plant in each of the months of December through July if the requirement of § 1033.13(d)(2) for the prior August through November period are not met, except in the case of a dairy farmer who marketed no grade A milk during the prior August-November period.
- (4) Of the total quantity of producer milk received during the month (including diversions but excluding the quantity of producer milk received from a handler described in §1000.9(c)), the handler diverted to nonpool

plants not more than sixty percent during the months of August through February, and seventy percent during the months of March through July.  
\* \* \* \* \*

- 1) Revising paragraph (d)(2) increases the "touch base" requirement from one day to two days and adds August to the delivery months. August is a month of high fluid need and this proposal would recognize the market's need for additional milk in August.
- 2) The extra day of delivery does cause some more milk to move to market and makes the distant supplier give more recognition to the economics of each supply decision. However, if the "split plant" status is not eliminated as we propose, we would not support this change because the majority of the effect will then be felt by local milk which currently supplies the market every day.
- 3) This touch base standard is more in line with that of higher utilization markets. FO #5 requires the equivalent of five days and FO #7 requires the equivalent of ten days.
- 4) The new paragraph (d)(3) would require physical delivery to a pool plant of the equivalent of at least two days milk production during each of the months of December through July for producers who did not comply with the physical delivery requirement in each of the preceding months of August through November. Currently, a producer can be added in the "free ride" months with only a one time delivery to a pool plant to establish association with the market. This privilege coupled with the current unlimited diversion privileges has resulted in huge quantities of new milk pooled on the market during the months of March through August. Clearly this privilege should be limited to producers who have supplied the market in the shipping season.
- 5) An exemption for dairy farmers who were not marketing Grade A milk during the entire preceding qualification period would be granted.
- 6) The revised paragraph(d)(4) establishes diversion limits in those months where none previously were enforced. We cannot come up with any reason why anyone should have the ability to divert 100% of their milk supply during any month or months during the year! Clearly from the evidence provided here this unlimited diversion ability has been a big factor in the volume of milk added to the pool and equally clear that little of it actually delivered to the market.

- 7) We also propose that section 13(d)(4) be further amended to exclude from a handler's receipts any milk which is reported as a receipt and then diverted to another pool plant. This change will not limit a handler's ability to divert milk to another handler, but it will prevent them from using those diversions to also increase their ability to divert more milk to nonpool plants. This is a loophole that is being currently exploited and can be expected to grow if left uncorrected. We have prepared Exhibit \_\_\_\_ to illustrate how this loophole can be exploited and used by a handler to potentially pool large quantities of milk.

In order to correct this oversight, the provision language should read :

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1033.13(d)(4) Of the total quantity of producer milk received during the month (including diversions but excluding the quantity of producer milk received from a handler described in section 1000.9(c) or which is diverted to another pool plant), the handler diverted to nonpool plants not more than sixty percent during the months of August through February, and seventy percent during the months of March – July.

This hearing is being held to discuss pooling provisions and our wording change only corrects an oversight in the language of our original proposal. It does not change our original intent. We still intend that performance standards be reflective of market needs. Just as we cannot find any reason to support a zero diversion limit for a supply plants we cannot support zero diversion limits to pool plants from a distributing plant.

**Proposal No. 5:**

1. Amend § 1033.7 by removing paragraph (h)(7).
  
- 1) This proposal eliminates the definition of a "split plant" from the Order 33 language. It was not defined in any of the predecessor orders. We cannot find any legitimate function performed by a "split plant" in meeting the market supply needs of this order. Our previously introduced exhibits detail our concerns about their function in this market and its exploitation by the industry.