

**BEFORE THE UNITED STATES DEPARTMENT  
OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE**

**In the Matter of** :  
**Milk In The Upper Midwest** : **Docket Nos.:**  
**Marketing Area** : **AO-361-A39;**  
: **DA-04-03**  
:

**Comments Upon and Exceptions to the Tentative Partial Decision**

**on behalf of**  
**Cass-Clay Creamery, Inc., Dairy Farmers of America, Inc., Land O' Lakes, Inc.,**  
**Manitowoc Milk Producers Cooperative, Mid-West Dairymen's Company,**  
**Milwaukee Cooperative Milk Producers, Plainview Milk Products Cooperative, Swiss**  
**Valley Farms Company, Westby Cooperative Creamery,**  
**and Woodstock Progressive Milk Producers Association**

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**Date: June 13, 2005**

## **I. INTRODUCTION**

These comments and exceptions are filed on behalf of the proponents of Proposal 2 at the hearing. These ten (10) dairy farmer cooperative associations all market the milk of their members and in some cases, other dairy farmers and cooperatives, in Order 30. The holding of this hearing and its results are of great importance to these organizations. These organizations appreciate the Department's decision to implement on an emergency basis portions of Proposal 2 which are adopted in the tentative partial decision. At the same time, we need to call the Secretary's attention to the entirety of Proposal 2; to the linkage in terms of the marketing in the order of all parts of Proposal 2 and to the continued need for the earliest possible adoption of the portions of Proposal 2 which would address the problem of disorderly pooling conditions in Order 30.

## **II. THE PROPOSED AMENDMENTS TO THE POOLING STANDARDS AND TRANSPORTATION CREDIT PROVISIONS OF THE ORDER SHOULD BE IMPLEMENTED ON A FINAL BASIS.**

The Department's lead conclusion with respect to the pooling standards issue is correct, fully supported by the record, and sums up one of the issues of pooling requiring immediate amendments to Order 30. The Secretary concluded:

[I]nadequacies of the current pooling provisions [of Order 30] are resulting in large volumes of milk pooled on the UMW order which do not demonstrate a reasonable and consistent servicing of the UMW class 1 market.

70 Fed.Reg. 19710 (April 14, 2005). These cooperatives support this conclusion of the Secretary

in the partial decision.

The tentative partial decision also concludes:

The hearing record clearly indicates that the milk of producers located in areas distant from the marketing area is pooled on and receives the UMW orders blend price. Current inadequate supply plant performance standards enable milk which has de minimus physical association with the market and which demonstrates no consistent service to the class I needs to be pooled on the UMW order. The inappropriate pooling of milk occurs because the order has inadequate diversion provisions to allow for milk to be diverted to a manufacturing plant located far from the marketing area.

70 Fed. Reg. 19715 (April 14, 2005). These cooperatives support this conclusion which is unexceptionable on the basis of the hearing record testimony.

The tentative partial decision made the right selection for amendment provisions to correct the pooling of out of area milk not serving the market. As the decision observed, there were several proposals, among them Proposals 1, 2, and 6 which were intended to address this disorderly pooling problem. The tentative partial decision's adoption of the mechanism provided by Proposal 2, as well as Proposal 1, is appropriate and superior to that suggested in Proposal 6. We commend the Department for this choice of remedy and urge that it be made permanent in the final decision.

The tentative partial decision correctly concluded that the portions of proposal 2 adopted on a tentative basis do not improperly discriminate against out of area milk or create trade barriers which are not authorized by the AMAA. To require performance or the ability to feasibly perform for the class 1 market in a milk order is appropriate and authorized by the AMAA. The tentative partial decision unmask the devices currently being used in Order 30 to pool milk in Idaho which has no potential for ever serving the market. The tentative partial decision noted that a fee is paid by the out of area handlers to an in area handler to accomplish or

facilitate the pooling of the distant milk (70 Fed. Reg. at 19715). The fee-based pooling reveals the underlying fact that direct pooling of the distant milk supplies would be non-economic.

The option for addressing this problem which the tentative partial decision utilizes is appropriate and non-discriminatory. It continues the historical basis for pooling of milk within the traditional procurement area of Order 30 and the predecessor Orders. It also assures that milk which can legitimately serve the Class 1 market when needed (reserve supply) can be associated with Order 30 when not needed by the fluid market.

The decision appropriately determines that increasing the touch base provisions in the order would not be appropriate in this market with its relatively low class I utilization. The increasing touch base requirement is not necessary to address the distant, non-economic milk pooling issue and the tentative partial decision correctly did not adopt it.

These cooperatives are concerned with language in Proposal 2 which was requested and not adopted in the tentative partial decision concerning the use of shipments to non-order 30 plants to qualify distant supply plants. Proposal 2 had the following language, proposed as part (c)(1)(b) of the pool plant definitions:

Qualified shipments by plants located outside the states of Illinois, Iowa, Minnesota, North Dakota, South Dakota and Wisconsin and the upper peninsula of Michigan may be made only to plants described in paragraphs (c)(1)(I) of this section.

This language was not adopted by the Secretary which raises the possibility of a supply plant being established in Idaho and delivering qualified shipments to other federal order plants in Order 124 or Order 32. Deliveries to these other order plants for up to 50% or more of the qualifying shipments of the supply plant could reduce the cost of pooling milk to a level that

continues to make it economic without substantially serving the Order 30 Class I market.<sup>1</sup> This would not in our view be desirable and would in fact be a potential loophole in the system. We urge the Department to re-look at this language in the final decision.

### **III. THE PORTIONS OF PROPOSAL 2 WHICH WERE NOT ADDRESSED IN THE TENTATIVE FINAL DECISION NEED TO BE IMPLEMENTED AT THE EARLIEST POSSIBLE DATE**

These cooperatives wish to reemphasize the linkage in their view between the open depooling of milk allowed under current order provisions and the non-economic pooling of milk which is not serving the market place. For instance, without limitations on depooling, it remains possible for milk in Idaho with class IV utilization to potentially pool on Order 30 if open and free depooling is available to the milk in the event that price relationships change.

Depooling is a disorderly marketing condition which will continue to plague Order 30 until the remedy supported by the record, which we believe to be that in Proposal 2, is adopted. The chief witness for these cooperatives testified at the hearing and we want to re-emphasize that testimony (Tonak, TR. 328):

The adoption of only one part of [Proposal 2] will not achieve fairness and equity for those producers who regularly supply the [Order 30 Class 1] market.

We appreciate the Secretary's tentative partial decision and the immediate implementation of portions of Proposal 2. We wish to re-emphasize that depooling must be addressed at the earliest possible time; it is a twin disorder in Order 30 with distant milk pooling

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<sup>1</sup> An out-of-area supply plant could, under this language, make qualifying shipments to closer other order plants and/or large unregulated producer handlers and only ship 5% or less of the totaled pooled milk to Order 30 plants in (c)(1)(1). This would allow large volumes of out-of-area milk to continue to share in the Order 30 pool with only a minute portion of that milk actually servicing the Order 30 Class 1 market needs.

and must be remedied on the same prompt schedule.

#### **IV. \_\_\_ CONCLUSION**

These cooperatives again commend the Department for what we believe to be the correct and prompt implementation of a portion of Proposal 2 to address the pooling of distant milk in Order 30. We urge the Department to consider the linkage of the disorderly condition of open depooling in Order 30 and take the most expeditious possible action to adopt the remaining portions of Proposal 2.

RESPECTFULLY SUBMITTED,

Date: June 13, 2005

By: /s/\_\_\_\_\_

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