



Department of Agriculture
Agricultural Marketing Service

Milk in the Upper Midwest Marketing Area)
 Hearing Proposal Amendments to)
 Tentative Marketing Agreements and Orders)

Docket No.: AO-361-A39; DA-04-03

Introduction

This Brief and Proposed Findings in Fact are submitted on behalf of Proponents (see Exhibit 17) of Proposal No. 1, as amended, by Associated Milk Producers Inc (AMPI) witness, in an effort to prevent continuation of disorderly marketing conditions in the Upper Midwest order – the long distance pooling of milk on the order with absolutely no intention of serving the fluid market. The existence and large magnitude of the pooling problem is not in dispute. The impact on the Upper Midwest pool and producers is also undisputed. The loss of income to those serving fluid milk handlers in the Upper Midwest is large and growing.

Emerging conditions in the Upper Midwest require quick and decisive action by the Secretary. When approximately \$3 million per month is being siphoned off for milk pooled by entities located long distances from the Upper Midwest, who never had any intention of serving the fluid market, disorderly marketing conditions plainly exist.

These conditions warrant immediate action by the Secretary in the form of adoption of Proposal No. 1, as amended.

Proposed Findings Of Fact
and Conclusions Of Law

Pursuant to 5 U.S.C. § 557 (c), proponents request that the Secretary make the following Findings of Fact and Conclusions of Law:

Factual Background

Due to liberal pooling provisions in the Upper Midwest order, large quantities of distant milk, mostly from Idaho, are being pooled on the Upper Midwest order. These provisions allow handlers inside the Upper Midwest order geography, who consistently have sales to distributing plants in excess of order requirements, to pool Idaho milk with minimal additional milk actually shipping to distributing plants. Clearly these "paper pool" transactions are reducing pool revenues for those producers who are close enough to Upper Midwest distributing plants to be considered a legitimate supply or reserve supply of milk. Idaho milk, some 1,500 miles away, can not logically be thought of as even a reserve supply for a market with approximately 15 – 20 percent utilization. The termination of the Western order effective April 1, 2004, has exacerbated the problem, with even more milk not pooled and looking for an easy and profitable pooling deal.

Idaho and other milk located long distances from the Upper Midwest should be able to pool locally, in their own regions. For whatever reason, this isn't happening. The Upper Midwest order has among the lowest blend prices in the country and were it not for these pooling loopholes, would not be attracting this milk. It is simply easier and more financially lucrative to attach the milk to the Upper Midwest, not have to ship and have someone send you money.

Proposal No. 1 as Modified Should be Adopted

Proposal No. 1 does not prevent pooling of long distance milk supplies; it simply requires them to ship their fair share to distributing plants. This is certainly reasonable in light of the \$3 million per month cost to the Upper Midwest pool. Midwest dairy farmers should not have to give that money up unless this distant milk is serving the market.

Emergency Consideration

Proponents have more than demonstrated the emergency need for a rapid decision. The loss of income for Midwest dairy farmers has averaged approximately 20 - 25 ¢ per hundredweight over the last 2 years and can not be ignored.

Conclusion

For the foregoing reasons, Proposal No. 1, as amended, should be adopted on an emergency basis with the Secretary omitting a Recommended Decision and issuing a Proposed Interim Final Rule which can be implemented as soon as possible. Proponents urge the Secretary to act immediately to close this regulatory loophole that is negatively affecting Midwest dairy farmer income.

Respectfully submitted,



Neil S. Gulden

Associated Milk Producers Inc.

315 North Broadway

New Ulm, MN 56073

507-354-8295