

**Prepared Testimony of  
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**Re: Proposal No. 7, "Netting for Diversions"**

Federal Milk Market Order Hearing  
Docket Nos. AO-368-A30; AO-380-A18; DA-01-08  
April 16, 2002

My name is Daniel S. McBride. I am testifying today on behalf of Northwest Dairy Association, which is usually referred to as "NDA". In earlier testimony I have introduced myself, as well as NDA and WestFarm Foods.

NDA Strongly Opposes Proposal No. 7. As we understand this proposal, the Western Order (Order 135) would be amended with a new paragraph that would reduce the diversions from a pool distributing plant by the amount of any transfers out of that plant. The concept is to "net" the transfers out against the deliveries.

The practical effect of this is totally consistent with the balance of proposals 3 through 7. As with the others, Proposal No. 7 will greatly reduce the ability of everybody in the market to pool milk – with the exception of only one party in this market that can hope to meet the combined standards be proposed, and that is the proponent, DFA.

Proposal No. 7 is similar in wording and intent to Proposal No. 3, which establishes a "netting" provision in the pool supply plant. The objections I raised in my earlier testimony regarding that provision are equally applicable to Proposal No. 7.

None of the other Federal orders has such a "netting" provision, and there is nothing different about market conditions here to justify such a provision. Throughout the Federal order system, pool supply plants and other reserve plants benefit the market because they are able to balance milk supplies required by the fluid market and to pool milk in an orderly fashion so that disorderly marketing conditions do not occur. The obligation of such plants to serve the needs of the pool distributing plants can be regulated through the percentage delivery requirements, without a "netting" rule.

This Proposal No. 7 must be analyzed in conjunction with Proposals 3, 4, and 6. Proposal 6, alone, would remove from the Western order pool approximately 38% of the average volume of milk pooled last year in the Western Order. When

compounded by the effects of Proposals 3, 4, and 7, there would be a disruption in this market that would be unprecedented in Federal order history. Yet there is no justification for any of it!

What this package would NOT do, and what Proposal 7 would not do, is to make additional milk available to distributing plants. There exists today competition to supply those plants, not a need to “mandate performance”. As noted in earlier testimony, DFA has the Class I market “locked up”, making it impossible for most parties other than DFA to perform to any greater degree. The milk of NDA and others is already available and willing to perform. That is NOT what these proposals are about.

Instead, this group of proposals would increase the value of pooling rights, and enhance the ability to extract other concessions from producers, plants, and cooperatives in the market – leverage which will come in handy when negotiating the sale of pooling rights, or negotiating favorable terms of mergers or joint marketing arrangements. That is certainly not what Federal orders are about!

Coupled with the foreclosure of the Class I market which I discussed in earlier testimony, this package of proposals simply boots producers out of the marketwide pool unless they make an arrangement with DFA. USDA is being asked to set up DFA to control the Western order market.

The sole impact of Proposal No. 7 will be to make it more difficult for NDA and others to meet the order’s pooling standards. That is not a justification for adopting it! Indeed, doing so would violate earlier policies that were behind the current order provisions.

The policy set forth in the 1999 Final Decision that established the current orders made it clear that the desire was to permit milk to be pooled, and to facilitate efficiency in balancing the remainder of the milk. Some markets were established with unlimited diversion percentages, simply because over the years as milk supplies have grown (with more demand for cheese), the amount of milk produced relative to Class I sales has declined in most markets. As that occurred, one or more parties would eventually run up against a diversion limitation, and petition the Department to formally issue a rule suspend the limitation entirely. The Department typically granted such suspensions, in order to assure that all milk traditionally associated with a pool could continue to be pooled. Indeed, the Final Decision indicates that the intention was to allow that to be done administratively, order by order, rather than to be burdened with a formal rulemaking requirement every time some milk might not be able to meet the diversion limitations.

Furthermore, it was noted in the Final Decision that the real limit to the amount of milk that can be pooled through diversion lies in the combination of a plant's pooling base (which fundamentally traces back to what portion of a plant's milk is delivered on route distribution within the marketing area) and the required percentage of such milk that can be pooled off of that base. The key was not the diversion percentages themselves, nor whether milk moving out of a distributing plant should be "netted against receipts. Instead, the key concepts are the pooling base and the diversion percentages. Especially the diversion percentages, which are the "tool" used in the orders (by the Department and the Market Administrators) to adjust an individual order to the changing needs of the market – either the need for more deliveries to the distributing plant, or the need for more efficient handling of the market's surplus.

Proposal No. 7 would simply limit the ability of a plant to maximize the utilization of its pooling base, by throwing into the Western order calculation a "netting" provision that does not exist in any of the other milk orders. That was not the intent of the current order program, as indicated in the Final Decision:

``Even for orders without any diversion limits, there is a **practical limit to how much milk may be diverted from a pool plant because of the pooling standards that must be met.** For a pool supply plant, for example, there is a standard computed by dividing the amount of milk shipped to distributing plants by a plant's total receipts. As provided in the orders, "receipts" include milk that is physically received at the plant as well as diverted to nonpool plants. This inclusion of diverted milk in a plant's receipts automatically limits the amount of milk that may be diverted by those plants. Thus, the maximum quantity of milk that such plants would be able to divert and still maintain their pool plant status would be 100 percent less the pool plant shipping standards for the month.

This treatment of diverted milk will mitigate the need for suspending order diversion limitations, an action that is quite common in some of the current orders. **Unlimited diversions for many of the new orders will allow for maximum efficiency**

**in balancing the market's milk supply.** The market administrator's ability to adjust shipping percentages for pool supply plants, pool reserve supply plants, and balancing plants will ensure that an adequate supply of milk is available for the fluid market without the imposition of diversion limits." [Quoted from Final Decision, pages 17 and 18 of "Acrobat" internet version, in the section entitled "Provisions applicable to all orders". Emphasis in bold supplied.]

The proponents are asking USDA to reverse direction and thereby limit the amount of milk that can be pooled, and create more and more requests for suspensions of the rule or administrative changes in the requirements. No such change should be made without clear and convincing evidence of a problem, and a clear demonstration that there is no other solution that is less radical and less disruptive of Federal order concepts.

We are aware of no market conditions which can justify such a radical change, and strongly urge that this provision be rejected entirely.

I would be happy to answer any questions.

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