UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

On Review of a Recommended Decision by the Administrator,

Agricultural Marketing Service (Dairy Programs)

Milk in the Central Marketing Area, 7 C. F. R. Part 1032

Docket AO-313-A48; DA 04-06

Comments on and Exceptions to Recommended Decision, 71 Fed. Reg. 9015 (Feb. 22, 2006)

These comments are submitted on behalf of National All-Jersey Inc. (NAJ), a national membership organization of 1,043 dairy producers and supporters of equitable milk pricing. Ninety percent of NAJ's members qualify as small businesses. 387 of NAJ's members live in the states served by the Central Marketing Area. In addition, NAJ participated in and provided testimony during the hearing held in December 2004.

NAJ supports the concepts of a classified pricing system that provides improved returns for producers providing the producers demonstrate a willingness and ability to serve the fluid market. Where the needs of the fluid milk market are adequately supplied, as the Administrator found, and access to fluid milk sales is severely limited, as the record overwhelmingly demonstrates, "willingness and ability" should be the only standard for producer eligibility to share in the blend price. NAJ strongly believes that the returns from a classified pricing system should not be limited to only producers serving the fluid market.

One reason for the creation of the Federal Milk Market Order (FMMO) system in the 1930s was to help to provide for an adequate supply of wholesome, fresh milk for consumers. In that regard the FMMOs have been a rousing success. The Grade B producers that predominated the industry 70 years ago now consist a very small minority of current producers. No doubt a large degree of the shift can be attributed to the higher proceeds available to producers who could produce Grade A milk that was eligible for the fluid market and the FMMO system.

The rousing success of the FMMOs can also be seen in the Class I utilizations of recent years. In 2003, 41.46% of all milk marketed through FMMOs was used for Class I products. In 2005 Class I products required 38.86% of the FMMO milk supply. Clearly U.S. dairy producers are producing more than twice as much milk as is required by consumers as fresh milk.

However, given the price formulas imbedded within the FMMO system, most dairy producers continue to want to qualify their milk for a FMMO. The price formulas stipulate that Class I milk will be priced as the higher of Class III or Class IV ***plus*** the appropriate location differential for the plant receiving the milk. Because Class I milk is forced by the formula to be the highest priced producer milk in the FMMO pool it will enhance the overall value of the pool above the values of the three classes of manufacturing milk. Producers whose milk primarily serves the manufacturing market will seek the higher returns provided by FMMOs market-wide pooling even though less than half the total milk produced is needed for the Class I market. Producers serving manufacturing plants seek minimal performance standards to participate in the FMMO system.

On the other hand, producers whose milk is used by fluid handlers the majority of the time are reticent to share the higher Class I proceeds with producers serving the manufacturing markets. This phenomenon, motivated by natural self-interest, has been observed since the inception of federal milk regulation in the 1930's. Today, producers for the fluid market try to set the FMMO performance standards as high as possible to limit the dilution of the Class I proceeds. However, if performance standards are set too high, cut throat competition among producers to serve the Class I market will ensue, with the Class I handlers able to seek bids from producers for the opportunity to share in the higher Class I proceeds. In this event, the FMMOs will actually work against the producers' interest, and will create two classes of producers, the haves and the have-nots.

The challenge to the Department is to find the right balance between performance standards being so lax that producers far from a FMMO's fluid customers can share in the proceeds generated by those Class I sales, and being so strict that producers in the same milk shed as the Class I customers cannot share in the Class I proceeds simply because they do not belong to the proper fraternity or sorority that happened to win the bidding process to supply milk to bottlers.

In regards to the recommended decision for the Central Order, NAJ believes the Department tipped the balance to the too strict side, especially as it pertains to the touch base provision. Data provided by the Market Administrator at the hearing (http://www.ams.usda.gov/dairy/central/USDAEX09.pdf, page 18) showed that the Central Order's Class I utilization was as follows:

Year	Class I
2000	30%
2001	27%
2002	26%
2003	33%
2004	35% (through October)

In 2005 the Class I utilization was 31%. It is expected that 2006 Class I utilization will be similar to the preceding three years. With nearly two-thirds of the Order's milk not needed for fluid uses, requiring producer milk to touch base six different months per year (instead of only one time) will simply be a boon for the hauling industry as trucks pass each other. Milk not local to bottling plants will, on its way to touch base, pass other milk that is local to the distributing plants as it is displaced to manufacturing plants.

The same exhibit from the Market Administrator (http://www.ams.usda.gov/dairy/central/USDAEX09.pdf, pages 48-64) also showed that these states (Arkansas, California, Idaho, Indiana, Kentucky, Michigan, Montana, Nevada, New Mexico, North Dakota, Ohio, Texas, Utah, Wyoming), which have no counties within the Central Order's boundaries, accounted for the following percentages of the milk pooled on the order over the past five years.

Year	% Order 32 Milk
2000	2.92%
2001	5.11%
2002	11.79%
2003	9.19%
2004	7.07% (through October)

Over 90% of the milk pooled in the Order in the two years immediately prior to the hearing can be considered to be part of the Order's natural milkshed. To require milk from states that are part of the natural milkshed to perform at a level not required to fulfill the Order's Class I needs will lead to disorderly marketing, decrease efficiency of serving the market, and place undue financial stress on the small business producers, such as NAJ members. None of these outcomes is a rational objective of the FMMO system.

Better solutions can and have been found to prevent non-native milk which has no reasonable expectation to regularly serve the Order's Class I market from attaching itself to the Order. The Upper Midwest Order, Order 30, provides an example. The Upper Midwest Order, like Order 32, uses far more of its milk in manufactured dairy products than for fluid products. The result of a hearing for Order 30 in August 2004 was that the original touch base requirement (commonly referred to as one-and-done) was modified only for producers outside the states served by Order 30. Dairies producing milk in states with at least some counties inside the Order 30 marketing area could continue with only touching base with a distributing plant one time. This decision served the dual purpose of keeping distant milk from becoming a permanent fixture on the Order and diluting the proceeds from the Order's limited Class I sales, and not unduly burdening local producers by requiring unnecessary deliveries to Class I plants. Furthermore, local producers were not pit against each other trying to secure precious pool space in the Order's limited Class I plants. Order 1 utilizes a similar disparity in its touch base requirements for local and non-local milk by requiring milk from distant locations to perform as a unit, without reliance on milkshed supplies to qualify.

NAJ firmly believes and that the Final Decision for Order 32's touch base requirement should mirror those of Order 30 and Order 1. Order 32's existing touch base requirement should not be changed for milk produced in states with counties within the Order 32 marketing area. The proposed changes in the Recommended Decision should apply only to milk produced in states that have no counties within the Order's geographic area.

Respectfully submitted,

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