BEFORE THE UNITED STATES DEPARTMENT
OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

In the Matter of	:	
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MILK IN THE MIDEAST	:	**Docket No.: AO-166-A68;**
MARKETING AREA	:	**DA-01-04**
	:	
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COMMENTS AND EXCEPTIONS OF DAIRY FARMERS OF AMERICA, INC. (DFA), MICHIGAN MILK PRODUCERS ASSOCIATION, INC. (MMPA) AND PRAIRIE FARMS DAIRY, INC., UPON THE TENTATIVE DECISION

I. Introduction and summary.

These comments and exceptions are submitted on behalf of Dairy Farmers of America, Inc. (DFA), Michigan Milk Producers Association, Inc. (MMPA), and Prairie Farms Dairy, Inc. (Prairie Farms). These commentors are qualified cooperatives and the proponents of several of the proposals in this proceeding.

These cooperatives wish to commend the Department for the straightforward findings and rationale of this interim decision which makes clear that the pooling provisions of federal milk orders must be related to performance for, and service of, the Class I market, which is the central purpose of the marketing orders. We are convinced that the interim final decision, if implemented in full, will go far towards restoring more orderly marketing in the Mideast marketing area. The following comments with respect to one provision should not be construed to detract from this basic agreement with the decision.[1]

II. The applicability of the net shipment provision to cooperative plants under Section 7 (c) of the Order should be reconsidered.

These cooperatives proposed, and continue to support, the net shipments provisions for Order 33. We believe such a provision is both reasonable and necessary to assure performance-based pooling for the order. Upon analysis of the anticipated implementation of the interim order language, however, we have identified some issues and would like to make certain intentions clear.

As indicated, we continue to hold that the provision is critical and we wish it to remain in the final decision. We are concerned that as the Order's utilization returns to the higher levels expected by the Secretary in the publication of the reform final rule, the pressure for handlers and distributing plants to use the "pump in – pump out" delivery scheme to pyramid Order qualification will increase. The added cost of "working this scheme" may not be enough deterrent alone to prevent it. Therefore, to protect the Order's utilization, the net shipment provisions are needed.

The most obvious potential abuse which remains possible is when handler A delivers to distributing plant X and plant X transfers milk back to handler A or diverts some of its' own supply to handler A. The Market Administrator can clearly see this transaction and should apply the "net arithmetic" to the qualifying calculation.

A second scenario, which is more difficult to police, may occur. Some handlers may try

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[1] We also join the Comments of Continental Dairy Products, Inc., with respect to the amendments to § 1033.7(c)(2) and will be defending the Secretary's action in the Alto v. Veneman litigation.

to set up "triangles" to circumvent the net shipment rules. A "triangle" occurs when handler A delivers to distributing plant X and distributing plant X transfers or diverts some of it's own supply to handler Y. But handlers X & Y have some type of arrangement that will allow them to share in the gains of pyramiding qualification. This transaction is more difficult to detect but we would like the Market Administrator to have the latitude to deal with it and apply the "net arithmetic" if indeed he can detect it. Clarifying intent language in the final decision would be helpful on this point.

Our intention is that the regulations match up deliveries and diversions on a handler-by-handler or source-by-source basis (including the distributing plant and it's own supply as a source) in order to apply the "net arithmetic." The regulations should be written and interpreted to this extent. Shipments "in" from Handler A and diversions out to Handler A should be matched separately from shipments in/out from/to Handler B. Again, the distributing plant itself, with any independent supply, should be understood as a handler in this equation.

Finally, we now recognize that we erred in supporting the request that the net shipment provisions apply to a 7(d) plant in the same manner as a 7(c) plant. The 7(d) plant, a cooperative supply plant, is very involved in balancing the market and its very existence is, at least partially if not fully, devoted to short term deliveries to and receipts from the marketplace. As the sheer size of retailers grows, and the number of distributing plants decreases, the occurrence of a surge in orders on Friday to meet the demands of a last minute sale usually are matched with a reduction in spot orders and perhaps the receipt back of milk transferred out of the plant on Monday or Tuesday. With the reduction in supply plants, options for these diversions is limited. It is possible that a cooperative supplier could be forced to stop balancing a handler because the cooperative could not qualify all of the balancing, local milk supply when hit by the "net arithmetic." There are few if any non-cooperative supply plants that serve in this balancing role.

It is important to note that qualification of a 7(d) plant is essentially on a higher performance standard than a 7(c) plant because the 7(d) plant must qualify on the basis of the cooperative's total pool operations. The 7(d) volumes cannot be segregated from 9(c) milk for qualifying purposes. Pyramiding is not possible in a 7(d) plant. Its shipping requirements are actually a "hard" 30% whereas the 7(c) plant supply can be leveraged (pyramided), even under the revised pooling requirements.[2] Consequently, the same requirements should not be placed upon the 7(d) plant and we would request that the final decision remove the language that subjects a 7(d) plant to the net shipment provisions.

III. <u>The producer payment provisions of the order need to be monitored closely to assure that there is no unintended erosion of producer cash flow</u>.

We are disappointed that the Department has seen fit not to recommend the revisions to the producer payment provisions of Proposal 4. We understand that the Department may wish to

[2] The pyramiding/leveraging allows for as low as a 12% "hard" shipping requirement from a supply of milk qualified through a supply plant as follows: Producers can deliver 40% to a pool plant (which is the supply plant), diverting 60% to a nonpool plant. Then of the supply plant's 40%, only 30% must be delivered to a distributing plant. Consequently, even **after** the amendments, 100 lbs of distant milk can be qualified with delivery of 12 pounds to an Order 33 distributing plant. The 7(d) plant must ship 30%, period.

evaluate the performance of the current payment rates for a longer period of time. We trust that the provisions will be monitored closely and that if the longer run data establishes that producer cash flow has been eroded that the Secretary will be prepared to reconsider proposals to address that circumstance at a later date.

Respectfully Submitted,

8/12/02

By: [signature]

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