

LAMERS DAIRY

Dairyland's Best

N410 Speel School Road
Appleton, WI 54915

Phone 920-830-0980
Fax 920-830-1418

DEPARTMENT OF AGRICULTURE
Agriculture marketing Service
7 CFR Part 1030
[Docket No. AO-361-Alo: DA-04-03A]

Milk in the Upper Midwest Marketing Area: Tentative Partial Decision on Proposed Amendments and Opportunity To File Written Exceptions to Tentative Marketing Agreement and Order.

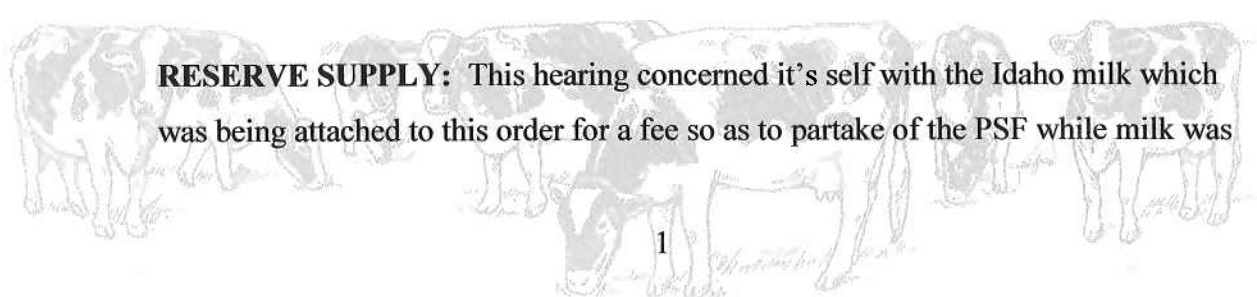
Exceptions submitted by Lamers Dairy, Inc.

Introduction: We agree with the witness appearing on behalf of the National Family Farm Coalition (which was quoted in the partial decision page 19714) who are of the opinion "that the entire Federal order system is in need of complete reform. Our Agreement is based on the following discrepancies contained in the partial decision which was published in the Federal Register/ Vol. 70, No. 71/Thursday, April 14, 2005.

Under Finding and conclusions:

PURPOSE: It is stated on pages 19713 & 19715 in several places that the purpose of the Federal order system is to ensure a sufficient supply of milk for fluid use and provide for uniform payments to producers who stand ready, willing, and able to serve the fluid market.

RESERVE SUPPLY: This hearing concerned it's self with the Idaho milk which was being attached to this order for a fee so as to partake of the PSF while milk was



not needed as reserve supply for the Class I fluid market. The question of necessary reserves for the fluid market was testified to by Jim Hahn, former market administrator and now representing LOL. Under cross he admitted that a 20% reserve was all that was necessary for the Class I market. On Page 19716, the writer notes the abundance of milk available in the Order 30 milk shed and that Class I utilization averaged 24.2 percent. Accordingly, 20 percent of 24.2 equals 4.84 percent necessary reserve for Order 30. This amount equated against the milk on the market equates to over 14 times reserves necessary for the Class I market. This means that these unnecessary reserves are already diluting the Class I revenues while the unnecessary reserve can not possibly serve the Class I market. This is true because fluid milk products cannot be stored for a long period of time as can manufactured products and Class I handlers cannot economically purchase more milk than their customers will consume in a short time period. It is stated by the writer on page 19716, "Associating more milk than is actually part of the legitimate reserve supply of the diverting plant unnecessarily reduces the potential blend price paid to dairy farmers who service the market's Class I needs." The unnecessary qualified supply plant milk within the Order area is not legitimate reserve supplies when they are not needed for distributing plants.

POOL PLANT STANDARDS: On page 19715 it is stated, "Pool plant standards, specifically standards that provide for the pooling of milk through supply plants, *need to reflect the supply and demand conditions of the marketing area.* This is important because producers whose milk, regardless of utilization, is pooled receive the market's blend price. When a pooling feature's use deviates from its intended purpose, and its use results in pooling milk that cannot reasonable be considered as serving the fluid need of the market, it is appropriate to reexamine the standard in light of current marketing conditions". This is a correct opinion though considering the facts presented above, this policy is not followed. The mere willingness of manufacturing handlers (in the name of their producers) to ship milk to the Class I market on a very limited basis does not justify taking money through the PSF from the Class I handlers and their producers. This is no less than Government

sanctioned stealing. Then, when price inversion occurs and manufacturers should pay into the pool, they are allowed to opt out.

THE TRUTH: As the PSF pays money only to handlers and not to producers, it is the handlers who want an additional source of income so as to be able to pay their producer suppliers higher prices. (See page 19713.) Handlers qualify unneeded supplies of milk to the Market is for this purpose as well as to receive kickbacks. This gives these handlers so doing a competitive advantage over their competition who are unable or unwilling to take part in a system which violates the provisions and purpose of the Act.

INCREASE PREMIUMS: Note is made on page 19713, that Deans explained that “Class I handlers have to increase their premiums in an effort to offset the negative PPD so they can retain their producers”. The primary cause of negative PPDs is price inversion coupled with de-pooling by supply handlers when they should normally pay into the PSF. This is part of the disorderly marketing testified to by Dr. Ed Jesse and included in his paper submitted as Exhibit 27 in which he concluded that “producers do not receive uniform prices and handlers are not treated equally”.

Producer COSTS TO SERVE THE FLUID MARKET: Page 19715 refers to Order system recognizing a cost to producers to serve the fluid market needs. Be it known that all producer milk wishing to serve the Class I market must be Grade “A”. Latest economic studies relating to the cost to produce Grade “A” milk places that cost from 3 cents to 5 cents per cwt. Beyond that, there is the cost of hauling. The cost of hauling milk is usually a certain rate per cwt. depending on where the producers’ milk is hauled. The producer will generally choose where he wants to sell his milk. A distributing plant or a manufacturing plant or combination plant charges a hauling rate to a producer. Costs of hauling milk are dependent on the applied economics of the handler and cost to the producer is agreed to when he

decides to ship milk to a certain handler. This partial decision implies that it cost producers more to ship milk to the fluid market. **This is not true.**

SHARING THE CLASS I RETURNS – CONFLICTS: The market wide sharing of the *artificially high Class I price* cause a direct conflict with the stated purpose of “ensuring an adequate supply of milk to meet the Class I needs of the market”. The market wide pool is abused and allows supply plant manufacturers to attract Grade “A” milk using pool receipts, for manufacturing uses. This contravenes the intended purpose of the higher Class I price to attract milk for fluid use. This is opposite to the purpose of the “Act” as noted above and is arbitrary and capricious and an abuse of administrative discretion. The procurement of producer milk is a free competitive market in which market-wide pooling provisions violate the equal protection clause of the Constitution of the United States because handlers are not treated equally as pointed out by Dr. Ed Jesse, Agricultural Economist University of Wisconsin.

THE PARTIAL DECISION: Is a step in the right direction but does not go far enough. Based on the information above, the accurate and true marketing situation the solution below would be more orderly and lawful.

THE SOLUTION: It is the artificially high Class I price established coupled with the market wide pool which is the cause of the disorderly marketing associated with the market. An individual handler pool with lowered Class I differential would solve the problems. An individual handler pool was proposed by Dean Foods as well as Lamers Dairy. Our proposals were denied. An individual handler pool would eliminate de-pooling along with unnecessary reserves. The department should entertain the real solutions.

Respectfully submitted,


Richard J. Lamers COB

5/6/05