

**BEFORE THE UNITED STATES DEPARTMENT
OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE**

In the Matter of : **Docket Nos.:**
:
Milk In Upper Midwest : **AO- 361-A39 and**
:
Marketing Areas : **DA-04-03**

**Brief of Cass-Clay Creamery, Inc.,
Dairy Farmers of America, Inc., Land O' Lakes, Inc., Manitowoc Milk Producers
Cooperative, Mid-West Dairymen's Company,
Milwaukee Cooperative Milk Producers, Plainview Milk Producers Cooperative, Swiss
Valley Farms Company, Westby Cooperative Creamery,
and Woodstock Progressive Milk Producers Association**

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I. INTRODUCTION

This brief is submitted on behalf of ten (10) Capper-Volstead cooperatives which market producer milk in Order 30 and are proponents of Proposal 2 in the Notice of Hearing. The Hearing Notice proponents of Proposal 2 represented 43 percent of the milk pooled and 59 percent of milk delivered to distributing plants on Order 30.¹

A. Proponents of Proposal 2

Cass-Clay Creamery, Inc. is a Capper-Volstead cooperative with headquarters in Fargo, North Dakota. It has 250 dairy farmer members and operates a cheese manufacturing plant and two fluid milk plants. In excess of ninety (90%) percent of Cass-Clay's members are small businesses and the cooperative itself is a small business. (Pagel, Tr. 181–183)

Dairy Farmers of America, Inc. (DFA) is a national Capper-Volstead cooperative with 13,445 dairy farm members. It markets producer milk in Order 30 and other federal milk orders. Nationally, DFA marketed 56.5 million pounds of milk for members, other cooperatives and non-members in 2003. DFA's primary market is selling bulk milk to other milk processors. (Hollon, Tr. 259)

Land O'Lakes, Inc. is a national dairy and agricultural products cooperative with headquarters in the Order 30 area at Arden Hills, Minnesota. Its Grade A dairy farmers market

¹ Since the publication of the Hearing Notice, which included Foremost Farms USA as an active proponent, Westby Cooperative Creamery and Plainview Milk Products Cooperative joined the group as active proponents while Foremost receded from active support of the proposals. (Tonak, Tr. 324, 459–460)

about 12 billion pounds of milk annually. It has about 1400 members in the Order 30 area. It operates both cheese and butter manufacturing facilities in Order 30. It also is a supplier to the fluid milk market. (Hahn, Tr. 121–123)

Manitowoc Milk Producers Cooperative is a bargaining and services cooperative with some 2900 member dairy farmers. Its headquarters is in Manitowoc, Wisconsin. More than 90 percent of its members are small businesses and the cooperative itself is a small business. It pools member milk in Order 30 and several other orders, marketing to both cheese plants and fluid milk processors. (Geiger, Tr. 216–219)

Mid-West Dairymen's Company is a small business dairy cooperative with 137 dairy farm members located in Southern Wisconsin and Northern Illinois. It is headquartered in Rockford, Illinois. It has a joint venture interest in an Order 30 distributing plant, which it supplies. It also operates an Order 30 supply plant and markets milk both to other pool and nonpool customers as well. (Tonak, Tr. 323–324)

Milwaukee Cooperative Milk Producers is the oldest dairy bargaining cooperative in the Upper Midwest. It operates in Order 30 with approximately 900 members, in excess of 90 percent of whom are small businesses. It markets milk to both fluid milk handlers and manufacturing plants. (Anderson, Tr. 235–237)

Swiss Valley Farms Company is a farmer-owned cooperative with headquarters in Davenport, Iowa. With approximately 1000 member farms, Swiss Valley markets producer milk primarily in Order 30. It operates one fluid milk distributing plant and four manufacturing plants. It sells milk to other handlers in addition to supplying its own facilities. (Pehler, Tr. 151)

Woodstock Progressive Milk Producers Association is a bargaining and marketing cooperative headquartered in Woodstock, Illinois. Its members market milk under Order 30 to both Class I and Class III handlers.

Plainview Milk Products Cooperative, Plainview, Minnesota, and Westby Cooperative Creamery, Westby, Wisconsin, are Capper-Volstead cooperatives, supply plant operators, and handlers in Order 30. (Exh. 5, Table 1)

B. Other hearing participants.

Dean Foods Company, the proponent of Proposals 3 through 6, is a fluid milk processor with plants in Order 30 and throughout the United States.

Associated Milk Producers, Inc. (“AMPI”) is a cooperative which operates cheese and butter and powder manufacturing plants in the Upper Midwest. AMPI also has limited milk sales to Class I handlers.

The Wisconsin Cheesemakers’ Association is a trade association of cheese manufacturing and marketing companies, companies which further process and package dairy products, and suppliers of goods and services to the dairy industry. It is not a handler on Order 30 and its witness, the Executive Secretary, refused to disclose the names of any members and further refused to identify any of the members that claimed Order 30 operations. (Umhoefer, Tr. 788–789)

Bongards’ Creameries, Ellsworth Cooperative Creamery, and First District Association are co-proponents with AMPI of Proposal 1. These organizations operate cheese and/or butter powder manufacturing plants in the Order 30 marketing area. No other information about their operations was presented for the record.

Alto Dairy Cooperative, Family Dairies USA, Davisco Foods, and Valley Queen Cheese Company were additional hearing participants represented by counsel. (Tr. 11) Alto and Family Dairies are cooperatives and handlers in Order 30. (Exh. 5, Table 1) Davisco is a proprietary owner of cheese and whey processing facilities in Minnesota and Idaho. (Tr. 250–51) Valley Queen is a proprietary cheese plant. (Pagel, Tr. 190)

The Minnesota Farmers Union, Wisconsin Farmers Union, and North Dakota Farmers Union are state affiliates of the National Farmers Union, a general farm organization. (Tr. 103–04)

C. Summary/overview of Order 30 marketing conditions.

Order 30, which regulates milk in the Upper Midwest marketing area, is comprised of the geographic region which includes the states of Wisconsin and Minnesota (except for one county in the southwestern corner of each state) and a portion of the states of North Dakota, South Dakota, Iowa, Illinois and Michigan. There is typically 1.5 to 2.0 billion pounds of milk pooled on Order 30 (Kyburz, Tr. 695-696). Over the past year or so, however, poolings have fluctuated dramatically from about 600 million pounds on the low side to more than 2 billion pounds. At the same time, since 2001, the procurement area of Order 30 has dramatically changed. The geographic area of the Order was expected to be the primary procurement area when Order 30 was promulgated in Federal Order Reform. However, recently the largest county source of pooled milk on the Order has become Jerome County, Idaho, fully 1283 miles from Minneapolis. (Exh. 28, p. 2; Exh. 5, tables 17 and 19) This hearing concerns proposed amendments to the Order 30 regulations which will address the extraordinary fluctuations in milk poolings and the pooling of distant milk on Order 30.

II. DISORDERLY POOLING CONDITIONS IN ORDER 30 REQUIRE PROMPT AMENDMENTS TO THE ORDER

Current market conditions in Federal Order 30 indisputably constitute disorderly marketing and pooling conditions which require the earliest possible amendments to order language. Classified pricing and marketwide pooling of revenues provide an orderly marketing environment for dairy farmers under the AMAA. The cooperatives submitting this brief are strong and firm advocates for, and supporters of, the federal milk order system. One of the strengths of that system is that it can respond to marketing conditions as they evolve and change to ensure that the objectives of federal orders are carried out and not frustrated. The current disorderly pooling conditions in Order 30 require amendments to the order.

The need for amendments to Order 30 to correct the disorderly pooling conditions is manifested in two primary market dynamics and one critical side effect. The first, clear manifestation of disorderly pooling conditions is the association with Order 30 of huge volumes of distant milk which draw the blend price from the Order but do not perform in support of the Order's Class I markets. This factual scenario is not disputed. The clearest documentation of this is Market Administrator data which shows that in December 2003 (as well as in other months), Jerome County, Idaho, had more milk pooled on Order 30 than any county in Minnesota or Wisconsin. (Exh. 28, p. 2; Tr. 326) At the same time, there is no indication anywhere that milk from Jerome County performs to any degree, if at all, in support of the Order's Class I needs. (See Exh. 9, Table 2) From April 2001 through May 2004, less than 1/10 of 1% of milk in Idaho pooled on Order 30 was delivered to a pool distributing plant; and only .21% of Idaho milk pooled was delivered to a pool plant of any type. (Exh. 9, Table 2) Milk

from Jerome County and other locations in Idaho has depressed the Order 30 prices substantially, causing economic losses for the regular Order 30 suppliers. Statistics prepared by the Market Administrator's Office establish that the blend price on the Order has been reduced approximately 25 cents per hundredweight continuously since 2003 because of the distant Idaho milk. (Exh. 9, Table 5a)

The second disorderly pooling condition in Order 30 is the huge depooling of Class III and Class IV milk when it is economically advantageous to the manufacturing use handlers. The volumes of the milk depooled, as documented by the Market Administrator, are in excess of 1 billion pounds per month during various times. The depoolings peaked, at least for this cycle, in April 2004 when only 608 million pounds of milk were pooled on Order 30. When this depooling occurred, the producers left on the market experienced a negative PPD of -\$4.11 per hundredweight. Noted dairy economists Drs. Ed Jesse and Bob Cropp of the University of Wisconsin have commented on the conflict with federal order objectives that present depooling regulations allow:

A major objective of federal milk orders is to assure orderly marketing. The unrestricted ability to pool and depool milk on a monthly basis, causing wildly fluctuating PPDs does not fit any definition of orderly marketing. Handlers are not treated equally. Producers do not receive uniform prices. (Exh. 27, p. 16)

An important side effect of the current Order 30 regulations which allow free depooling is that the Market Administrator's budget has been severely compromised by the reduction of income from administrative assessments which are collected only on pooled milk. There is no dispute that these pooling fluctuations have caused the Market Administrator to dip into operating reserves which are required to be maintained for future contingencies. Thus, free depooling not only creates inequities among producers and handlers with respect to monthly blend prices and

minimum class prices, it also creates unfair disparities in the sharing of the cost of administration of the federal order pool.

All of these problems which have resulted from disorderly pooling under the current provisions of Order 30 must be dealt with through this hearing process. It is critically important that the Secretary understand, as Dennis Tonak testified,

the adoption of only one part of [Proposal 2] will not achieve fairness and equity for those producers who regularly supply the [Order 30 Class I] market. (Exh. 28, p. 3; Tr. 328)

If only the distant problem is corrected, but depooling is not addressed, there will still remain substantial inequities in the marketplace between those producers who regularly supply the Class I market, adding value to the pool, and those producers who are solely associated with the pool for purposes of “riding” the blend price. If depooling is corrected, but distant milk pooling is not, milk from long distances which does not serve the market will continue to be pooled without performing and, with Class IV milk in particular, continue to severely dilute the blend price (PPD) for producers who regularly supply the market.

Furthermore, if the depooling problem is not addressed, the ability of the Market Administrator to assess the cost of administration on a fair and equitable basis will be compromised. We will discuss the issues of distant pooling, depooling, and the market administration assessment in turn.

III. PROPOSAL 2 SHOULD BE ADOPTED IN FULL

A. Proposal 2 should be adopted to require distant milk to perform in order to be pooled on Order 30.

The pooling of milk from Idaho (and other distant points) under the present regulations of

Order 30 is so lacking in justification that no one came forward at the hearing to support retaining the status quo. Even acknowledged distant poolers from Idaho, such as Family Dairies and Northwest Dairymen, who appeared at the hearing to comment on other issues, did not attempt to defend the status quo which allows milk from Idaho to be pooled with essentially no performance requirements at all.² The practice, quite obviously is so lacking in redeeming value that it must be stopped and stopped at the earliest possible time.

Elvin Hollon demonstrated beyond dispute the lack of an economic basis for pooling of this milk. Exhibit 26 calculates the return on milk from points in Idaho when it must perform to be pooled and without performance. When Idaho milk must perform at the 10% level in order to be pooled, whether it is Class III or Class IV milk, the return is negative. In other words, if it must perform, the milk will never be pooled. (Exh. 26, Table 9)

Pooling milk from Idaho has cost the regular suppliers to Order 30 literally millions of dollars. \$.25 per hundredweight on 1.5 billion pounds of milk per month is equal to \$3,750,000 per month. Over a year, these poolings have cost regular Order 30 producers in excess of \$40,000,000.

We do not propose to prohibit milk from Idaho, or from any geographic area, to be pooled on Order 30 if it serves the market. However, the Order should be amended so that if the milk does not serve the market, it will not be pooled.³ The order language must require real

² Northwest Dairy Association candidly acknowledged that “distant pooling is a common practice . . . we tightened it up in the Northwest Order, we recognize other orders are doing the same. . . .” In Order 30, NDA’s pooled milk from Idaho is delivered one time and one time only to the market. (Brown, Tr. 683–684)

³ Analysis underscores how the issues of depooling and distant pooling are intertwined and must both be addressed via Proposal 2. If the milk can selectively perform (depool and freely repool when convenient and economic), it can still be profitable for Class III and especially Class IV volumes to ride the Order 30 pool. See Exh. 26, Table 9.

performance and not allow for any sham performance. The language which is a part of Proposal 2 that addresses this issue would amend Order 30 to provide pooling provisions similar to those recently adopted for Order 33 which embody the substance of the role which reserve supplies and supply plants are intended to perform. The substance of the amendatory language requires that milk in Idaho, or other areas outside the states of the marketing area, must be delivered to Order 30 pool plants or Order 30 plants located within the states of the marketing area. Cooperative associations would be prohibited from using shipments pursuant to § 1000.9(c) to qualify plants located outside the area described in the proposed language. The language of Proposal 2 concerning distant milk, as modified at the hearing (Exh. 28, pp. 15-16) is:

2. Amend §§ 1030.7 and 1030.13 by adding a new paragraph § 1030.7(c)(1)(v), revising paragraph § 1030.7(c)(2), and revising § 1030.13(d) to read as follows:

§ 1030.7 Pool plant.

* * * * *

(c) * * *

(1) * * *

(v) Qualifying shipments by plants located outside the States of Illinois, Iowa, Minnesota, North Dakota, South Dakota, and Wisconsin and the Upper Peninsula of Michigan may be made only to plants described in paragraphs (c)(1)(i) of this section.

(2) The operator of a supply plant located within the States of Illinois, Iowa, Minnesota, North Dakota, South Dakota, and Wisconsin and the Upper Peninsula of Michigan may include as qualifying shipments under this paragraph milk delivered directly from producers' farms pursuant to § 1000.9(c) or § 1030.13(c) to plants described in paragraphs (a), (b) and (e) of this section. The operator of a supply plant located outside the area described above cannot include such shipments as qualifying shipments. Cooperative associations may not use shipments pursuant to § 1000.9(c) to qualify plants located outside the marketing area described above.

* * * * *

§ 1030.13 Producer milk

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(d) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c) to a nonpool plant (except a distributing plant fully regulated under another Federal order), located in the States of Illinois, Iowa, Minnesota, North Dakota, South Dakota, and Wisconsin and the Upper Peninsula of Michigan, subject to the following conditions:

This approach is neither novel nor extraordinary for this Order. Both the predecessor Order 68 and Order 30 regulations had provisions which circumscribed the terms for pooling distant milk or distant plants. In Order 68, since 1976, reserve supply plants were prohibited from being located in areas outside the marketing area. Similarly, in Order 30, a supply plant could not be part of a pool plant system if located outside the marketing area (except for grandfather exceptions). In both cases, the Orders recognized that in order to avoid inequitable pool-riding it was necessary to have reasonable provisions requiring distant plants to perform in order to participate in the pool.

The pooling terms of Proposal 2 allow milk from Idaho to be pooled on Order 30 if it performs, but prohibit it from pooling without performing. This is reasonable, well-based in the history of marketing regulations in this region, and plainly in line with the principles of pooling by performance which the Secretary has adopted throughout the federal order system. Furthermore, this portion of Proposal 2 (which is identical to Proposal 1 in this respect) was supported by all participants in the hearing who expressed a point of view upon it and it has not been opposed by any parties.

In addition, the applicability of transportation credit payments from the Order 30 pool should be limited to a maximum distance of 400 miles. This is a prophylactic change in order

language which is important to avoid the possibility that the pool would subsidize the delivery of milk from unneeded distances to Order 30 distributing plants.

B. Proposal 2's limitations on repooling of depooled milk should be adopted.

The issue of regulating depooling and repooling of milk in Order 30 is one that needs to be addressed just as urgently as the pooling of distant milk. While there is not the consensus in the industry with respect to proposals for the portion of Proposal 2 which provides some modest limits on repooling of depooled milk, there is very little substantive controversy in the hearing that depooling has led to disorderly marketing conditions.

The disorder caused by open depooling and repooling of Class III and Class IV milk should be addressed by adoption of Proposal 2's repooling limitations. We will first discuss the problem; secondly, the solution proposed in Proposal 2; and finally, address the objections to these repooling limitations.

1. The depooling/repooling problem.

Current Order 30 regulations allow handlers with dedicated Class II, Class III and Class IV milk supplies to elect to pool or not pool that milk after the month is over when they can determine whether it is economically advantageous to pool or not pool. All producers supplying Class I handlers are pooled without any option. When there are large swings in the dairy product markets as has been the case in the years 2003 and 2004 and as will continue to be the case in the marketplace with essentially no support price floor, there will be situations where pooling is not advantageous for Class II, III and IV users. When those handlers depool their milk supplies, the fluid milk handlers and their producers who have no choice are returned less value from the pool. As Dennis Tonak testified, the manufacturing handlers are able to operate on what amounts to an individual handler pool or a marketwide pool basis, whichever is more advantageous. As Drs.

Jesse and Cropp reported in their study, this phenomenon creates inequities both among producers and among handlers.

Open depooling and repooling does not alone cause, but contributes to, negative PPDs, a problem cited by many, if not all hearing participants. As data from the Market Administrator establishes, and several witnesses testified, the problem of negative PPDs is greatly exacerbated by open depooling. For instance, the Market Administrator's calculations in Exhibit 9, Table 5d, show that in April 2004 if all Class III milk in the Order had been pooled the PPD would have been almost \$3.00 higher than the -\$4.11 at the time. In all months of high levels of depooling the PPD is reduced substantially for those producers in the Order. At the same time, when the price relationships turn, and the manufactured milk comes back on the pool, the producers serving the pool on an ongoing basis have their PPD reduced by the blending in of the lower-valued Class III or Class IV milk. The producer serving the Class I market must pool and is never able to recover in future months losses from negative PPDs since the pool will be diluted by the open repooling. This is at the root of the inequity.

We believe the disorderliness of open depooling and repooling is beyond dispute. The Proposal 2 limitation provides the best remedy for the problem at this time in Order 30.

2. The Proposal 2 Solution.

Proposal 2 does not eliminate depooling. It simply limits the ability of a handler to immediately repool the depooled milk by placing a 125 percent limitation on increases in pooling from month to month. A handler can, when depooling is lucrative, eliminate whatever portion of his milk he chooses from the pool and pocket the short term revenue enhancement. However, the handler will need to be aware that he will need to phase his dedicated manufactured milk back into the pool over a period of time after it has been depooled. Table 6 of Exhibit 9 shows that the

handler could depooled up to 49 percent of his manufacturing milk and have 100 percent re-pooled within three months after the initial depooling. However, to the extent that more than [the] 49 percent was depooled the handler would need more than three months to get all of his milk back on the pool unless, of course, it was delivered to Class I distributing plants where it would automatically be pooled.

The Proposal 2 cooperatives evaluated **all** of the potential options that were in the hearing notice and others that were not for addressing the disorder of open depooling. They considered proposals for other market provisions similar to that proposed by Dean Foods in Proposals 3 and 4. They considered lesser percentages for the repooling limitation such as 115 percent in Dean Foods' Proposal No. 5. After analyzing these options and taking into account all of the operations of those who serve the Order 30 market regularly, we submit that Proposal 2 best fits the market. The Proposal language on depooling is:

Amend § 1030.13 by adding new paragraphs (f) through (f)(4) to read as follows:

§ 1030.13 Producer milk.

* * * * *

(f) Except in the month of August, the quantity of milk reported by a handler pursuant to § 1030.30(a)(1) and/or § 1030.30(c)(1) for September through February and for April through July may not exceed 125 percent, and March may not exceed 135 percent of the producer milk receipts pooled by the handler during the prior month. Milk diverted to nonpool plants reported in excess of this limit shall be removed from the pool. Milk received at pool plants, other than pool distributing plants, shall be classified pursuant to § 1000.44(a)(3)(v) and § 1000.44(b)(3)(v). The handler must designate, by producer pick-up, which milk is to be removed from the pool. If the handler fails to provide this information, the market administrator will make the determination. The following provisions apply:

(1) Milk shipped to and physically received at pool distributing plants shall not be subject to the 125 or 135 percent limitation;

(2) Producer milk qualified pursuant to § 11.13 of any other Federal Order and continuously pooled in any Federal Order for the previous six months shall not be included in the computation of the 125 or 135 percent limitation;

(3) The market administrator may waive the 125 or 135 percent limitation;

(i) For a new handler on the order, subject to the provisions of § 1030.13(f)(3), or (ii) For an existing handler with significantly changed milk supply conditions due to unusual circumstances;

(4) A bloc of milk may be considered ineligible for pooling if the market administrator determines that handlers altered the reporting of such milk for the purpose of evading the provisions of this paragraph.

There are a number of advantages to Proposal 2: First, it will not require any handler to change their physical operations in order to comply with it. This is especially important in Order 30 where there are a number of small handlers and small cheese plants.⁴ The same cannot be said of Dean Foods' Proposal No. 6, for instance. Secondly, while it is not as stringent a limitation on repooling as Dean Foods' Proposal No. 5, we believe Proposal No. 5 could well limit appropriate and non-abusive pooling of milk in situations where because of seasonal production fluctuations and for other valid reasons month to month increases in production could exceed 15 percent. Furthermore, we do not advocate the adoption of proposals which would more nearly prohibit depooling. We do not believe that such a radical change in the operations of Order 30 is necessary at this time to correct the abuse of open repooling. The Dean Foods proposals would require more radical changes in Order 30; Proposal 2 represents an effective, but modest solution for the problem.

C. Objections and Objectors to Proposal 2.

⁴ This is one of the reasons that depooling needs to be addressed in a fashion appropriate for each Order and not in a one-size-fits-all national hearing

The AMPI et al. objections. AMPI et al. object to any limitation on depooling on the grounds that pooling means a one-way flow of revenue from Class I handlers to other users. We do not believe that this is a principle of federal orders, or that it should be. If the only purpose of federal order marketwide pools was to blend Class I revenues, one would assume that there would be no pricing or pooling of any other uses; but that is not the case. All use values are blended to derive a uniform minimum producer price, blend price or PPD. The AMAA does not authorize only classifying, pricing and pooling Class I uses; it authorizes pooling of *all* uses of milk. 7 U.S.C. § 608c(5)(B)(ii), the statutory authority for marketwide pools, directs “the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered....” There is simply no basis in AMPI’s argument.

The further argument make by AMPI that open depooling and repooling has always been the practice in federal orders, is not correct and, in any event, should not impede the correction of an order malfunction. In fact, the inequity of depooling and repooling has been addressed in other orders (e.g. Order 1’s post reform dairy farmer for other markets provision) and in the federal order reform decision (price announcements were advanced). The fact that the problem has not been cured should certainly not prevent its being addressed here. After all, isn’t that what the hearing process is all about?

The Wisconsin Cheesemakers Association (WCMA). The WCMA apparently has the same or similar motivations as AMPI. These manufacturers want to take advantage of the Class I market when it is lucrative, but have nothing to do with it when it is not to their economic advantage. Again, there is no equity in the position they advocate and no statutory basis for it either.

As the trade association for the cheese manufacturing sector in the largest cheese producing state in the nation, the WCMA represents some of the largest companies in the cheese manufacturing business. These large companies, as well as their small brethren, all of whom refused to be identified by name, came before the Secretary attempting to pass themselves off as the spokespersons for their dairy farmer suppliers. This ruse must be rejected. Cooperatives are the statutorily chartered representatives for their dairy farmer members marketing under federal milk orders. See 7 U.S.C. §§ 608c(5)(E), (F), and (12). Many of the members of the cooperatives submitting this brief sell their milk to proprietary cheese manufacturers in Wisconsin and they do not endorse the position of the purchasing plant (if it happens to be one of the anonymous members of the WCMA).

The contentions of some that depooling and negative PPDs are national issues which should not be addressed in Order 30 or any one order are incorrect. First of all, the Secretary has made it abundantly clear that pooling provisions of each order are the products of marketing conditions in those orders. Each order has different marketing conditions and therefore requires different pooling provisions. Even though certain pricing policies in the federal order, such as advanced pricing of Class I milk, contribute to price inversions and these pricing programs are national, nevertheless, the pooling and depooling provisions in each order need to accommodate market conditions in that order in their own unique way. There is no reason, in fact it would be wholly unjustified, to await an as yet unrequested and likely never-to-be-conducted national hearing to synchronize pricing of all classes before addressing the present extremely disorderly conditions in Order 30 created by open depooling provisions in the Order.⁵

⁵ The Secretary should not give any credence to the arguments of the WCMA and other parties who request the indefinite preservation of inequitable pooling rules because there is a theoretical fix which they did not request for this hearing.

The disorderliness of open depooling needs to be fixed and needs to be fixed now before the next price inversion occurs⁶ and its accompanying disorder discredits the order program again.

The Dean Foods proposals have been referred to above. In our view, Proposal 2's remedy is superior in its fit for Order 30. In particular, we emphasize that it would address depooling without requiring changes in the efficient assembly operations for milk which have evolved in the marketplace over the years.

IV. PROPOSAL 7 SHOULD BE ADOPTED.

These cooperatives support the Market Administrator's request embodied in Proposal 7; that he have the authority to impose an administrative assessment of \$.08 per hundredweight in order to finance the operations of the Order. In doing this, we want to emphasize several things:

1. This assessment rate should be viewed as maximum authority only and not authority which needs to be utilized. To the extent the adoption of Proposal 2 would stabilize poolings under the Order, a rate of assessment near the current level should be able to be utilized by the Market Administrator and fully fund his operations.

2. If the issue of open depooling is not addressed so that volatility in pool volumes continues as at present, the Market Administrator should aggressively adjust the rate of assessment so as to as nearly equalize as may be possible the burden of supporting administration of the Order among milk which takes advantage of the Order. It would be patently and grossly unfair to have a single rate of assessment applicable to Class I supplies for twelve (12) months of

⁶ The next massive depooling has already occurred in September when approximately 600,000,000 pounds of Class III milk was depooled. The historical pool volumes on Order 30 can be compared with the current pool volumes, published by the Market Administrator at <Http://www.fmma30.com/PPD/PPD0904.pdf>, official notice of which is requested.

the year and to Class III/IV supplies only eight (8) months of the year because Class III/IV depooled when it was economically advantageous. If depooling remains an open option, the administrative assessment should be set at a high rate in months when all eligible milk is pooled and reduced as low as possible in months when there is massive depooling.

V. THE PROPOSALS SHOULD BE ADOPTED ON AN EMERGENCY BASIS

While no one can predict with certainty the future direction and rate of movement of milk prices, there is nothing in the hearing record to suggest that volatility is going to decline. Consequently, the circumstances which lead to depooling will remain, and as noted above, September has seen substantial depoolings in Order 30, with Class III volume only 50% of August's volume. At the same time, the double whammy of distant Class IV milk continues to depress the market's regular suppliers. This disorder must be corrected at the earliest possible time. The amendments should be implemented on an emergency basis, without requiring a recommended decision. Surely, the marketing conditions depicted in this hearing record meet the criteria for "emergency" action.

VI. CONCLUSION

These proponent cooperatives respectfully request that Proposal 2 be adopted and Proposal 7 be adopted. The adoption of these proposals would eliminate the current disorderly pooling conditions in Order 30 and further the purposes of the Agricultural Marketing Agreement to establish orderly marketing conditions in fluid milk markets.

Respectfully submitted.

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