



BEFORE THE UNITED STATES DEPARTMENT
OF AGRICULTURE
AGRICULTURE MARKETING SERVICE

In the Matter of Milk in California
Notice of Hearing on a Proposal to
Establish a Federal Milk Marketing
Order

7 CFR Part 1051
Docket No.: AO-15-0071
AMS-DA-14-0095

Clovis, California, October 2015

Testimony of Mr. Al Zolin
Part 3

Introduction

My name is Alan Zolin. I have been retained by Hilmar Cheese Company to work with Dairy Institute of California (DIC) to develop an alternative proposal to Cooperative Proposal 1. I have worked with a task force made up of a number of representatives from DIC member companies in order to develop and submit Proposal 2.

Description of Proposal 2 Performance Standards for pool supply plants

My testimony is intended to focus on the provision 7(c) which identifies the performance requirements for a pool supply plant. These performance requirements along with diversion limits establish what milk can be associated with the FMMO pool. Currently in other FMMO's this section refers to plants other than a distributing plant. In Proposal 2 we include a new category of plant called 9(d). I will discuss that provision at another time. DIC is proposing that the base shipping requirement for plants defined in this section be 10%. We looked at Order 30 as a guide for performance requirements because we believe the Class 1 utilization in Order 30 and a potential California Order would be similar. This similarity in Class 1 utilization is only one consideration in determining the performance requirement, but DIC believes it is the most important.

The type of plants that supply plant qualifying shipments can be made in order to meet the base performance requirement are the same as Order 30 ^{in Proposal 2}. I believe it was Henry Schaefer from USDA that gave a description of the operational aspects of these shipping requirements. We thank USDA for providing that information and agree with his characterization of the operational aspects.

Where Proposal 2 deviates from the language of Order 30 is that we describe a bracket system in order to modify the monthly base performance requirements based on changing Class 1 utilization in paragraph 7(c)(2). I have included a summary of the brackets as an attachment to my testimony. The reason DIC has added this modification is to insure that the Class 1 market is served. In Proposal 2, we are recommending that the Market Administrator (MA) calculate the weighted average Class 1 utilization of the previous 3 months, where information is available, and determine where that weighted average percentage falls into the bracketing system. Since the proposed date for announcement of producer prices is “before the 13th of the month” we believe there is enough time for the MA to use the 3 prior months. The actual weighted average Class 1 utilization will be assigned to a bracket and then the appropriate performance requirement will be announced by the MA ^{by the 15th,} for the next month. I have included an example of how the MA would determine the monthly performance percentage. In the example provided, I assume the same amount of producer milk pooled in each month to calculate the weighted average of Class 1 utilization.

We have added another new set of paragraphs to address the performance requirements of a handler that pools milk from producers that have quota milk. We have added paragraphs 3 and 4. These two paragraphs add additional responsibility to service the Class 1 market if the plant described in 7(c) is pooling quota milk. It is my understanding that the current California State Order (CSO) has a version of a performance requirement, in the form of a call provision for quota milk, if it is determined that the Class 1 market isn't being served. We used that concept in developing the language for paragraphs 3 and 4. Proposal 2 sets a performance percentage of 60% of the actual quota milk, or an equivalent volume to plants described in paragraph 7(a), (b) and (d). These plants are fully regulated distributing plants or units of distributing plants. DIC

felt that since these types of plants are providing bottled milk to the California market that their Class 1 needs should always be met. This additional requirement, in most circumstances should be enough to satisfy the fluid milk needs of the market.

It is possible that the market could require additional milk to meet its fluid needs. DIC believes that again quota milk should be required to meet that obligation first. Paragraph 4 is similar to the action of the current CSO call provision. Proposal 2 adds a timeframe when the performance requirements associated with quota milk may be raised up to 85%. The months of July through February are the timeframe that these higher performance requirements could be applicable. A specific request needs to be made by a distributing plant operator to the MA that it doesn't have enough milk for its Class 1 needs. The MA then has the responsibility to evaluate market conditions and has the authority to adjust these performance requirements based on that evaluation. These higher performance requirements must be utilized in Class 1 at the bottling plants. The CSO call provision has a similar requirement that the bottler must insure the milk involved in the call is utilized in Class 1. The way the CSO handles this test is by qualifying the handlers that can request a call. In order to qualify as a call handler you must have at least 80% Class 1 utilization. And a second test is that the "call handler has to certify that the milk would be used in Class 1." The ^{CSO}MA would then verify this certification of milk used in Class 1 on audit.

Concentrated milk transferred to a distributing plant that has an agreed upon use of Class 1 will also count to meet the performance requirement for the requirements described in all of Section 7(c). This provision is consistent to the Order language in Order 30.

Intent

DIC's intent is to assure that the Class 1 market has an adequate supply of milk in potential changing market conditions. The bracketing of the supply plant shipping percentage and the quota performance requirements are examples of this intent. Also Proposal 2 intends to provide supply plants flexibility in the methods of meeting the performance requirements. The flexibility is critical in supply plants servicing the Class 1^{market} in a cost efficient (and efficient movements of milk) manner. The concept of supply plant systems as described in 7(e) is just one example. Allowing supply plants to create a system in order to meet the shipping requirements of^{the} paragraph will help with orderly marketing. The language is very close to Order 30 language except for the inclusion of reference to a 9(d) handler.

Proposal 2 also provides the MA with a number of opportunities to make adjustments to the performance standards to insure the performance standards reflect supply and demand conditions. We recognize the additional performance requirements for quota milk, in effect, raise the overall performance requirements for supply plants. We rely on the Department to factor all our concerns into the appropriate set of performance requirements. We stress again that the need to service the Class 1 markets, the responsibility of quota milk, and flexibility and efficiency in the supply chain should be the guide the department uses in their decision making.

The bracket system will provide real time automatic adjustments to the performance standards without the need to hold a hearing or conduct exhaustive research on market conditions. DIC believes this type of automatic flexibility will result in a very responsive order to meet the needs of the marketplace. But supply and demand conditions can change rapidly. These changes can result in inefficient movements of milk due to performance requirements that

are too high or the Class 1 market not being served because the performance requirements are set too low.

Proposal 2 specifically addresses this flexibility in a number of places. Within the Quota performance standards of 7(c)(4) the MA has the discretion to adjust the performance standards subject to market conditions. Paragraph 7(f) provides the MA with the overarching ability to increase or decrease all the performance standards in paragraph 7(c) and 7(e). The MA ability to adjust the performance requirements has worked well in other FMMO's throughout the country. This type of provision (which is included in 1033.7(g)) was just recently utilized by the Mideast Order 1033. On July 29th 2015 The Mideast MA Order 33 made an adjustment to both the performance requirements for supply plants and the diversion limitations. The MA letter specifically refers to "avoiding uneconomical movements" as the main reason for making the adjustment to the performance requirements. The adjustment will be in effect "until further notice". This is documented in a letter on the MA Order 33 website located under the "NEWS" tab.

I do not plan to present any testimony on provisions that haven't been changed from the language that is included in Order 30. But I want to highlight paragraph 7(g)(7). This paragraph refers to a situation where a handler has a split plant. That is a pool plant and a non pool plant in the same location. To establish a split plant a handler must designate what portion will be the pool plant and the non pool plant. The non pool plant must be physically separate and operated separately from the pool plant. DIC feels that in conjunction with the 125% rule and the producer touch base requirements in Proposal 2 that are similar to Order 30, the split plant provision is needed to efficiently meet the pooling requirements. DIC discussed as a group performance requirements in total as similar to the Texas order Section 1126. This order does

not match the market similarities of the California market. Primarily its Class 1 utilization is higher than what is anticipated for California. In Texas there is no split plant provision and there is no re-pooling rule such as the Order 30's 125% rule. DIC has determined the combination of Order 30 performance standards would be the best suited for a new California Order.

This concludes my testimony.

**MILK MOVEMENT PROVISIONS PURSUANT TO THE
STABILIZATION AND MARKETING PLANS FOR MARKET MILK, AS AMENDED**

Effective September 1, 2015

Definitions

The following definitions were extracted from the Stabilization and Marketing Plans for Market Milk (Plans) and are relevant to the Milk Movement Requirements.

"Call handler" means any handler as defined in Section 100.6 Paragraphs (A), (B), and (D) of said Plans, who, for the seven days prior to making a call, certifies that his total direct and derived solids-not-fat Class 1 usage equals or exceeds 80% of such handler's total market milk solids-not-fat received or diverted and whose direct and derived solids-not-fat Class 4a and 4b usage does not exceed 5% of such handler's total market milk solids-not-fat received or diverted.

"Supply handler" means any handler that does not qualify as a call handler.

"Designated supply handler" means any supply handler for any month who has been designated by the California Department of Food and Agriculture (Department) as subject to call handler requests in accordance with the provisions of Section 500.3 of said Plans.

"Procurement region" means a prescribed area in which a call handler and a supply handler are both located and in which the call provisions of the said Plans are effective.

(a) The relevant prescribed areas shall be:

Procurement Region 1 - Southern California Marketing Area and the counties of Kern, Kings, Tulare and Fresno.

Procurement Region 2 - Northern California Marketing Area, except for the counties of Del Norte, Humboldt, Kern, Kings, Tulare and Fresno.

(b) All handlers defined in Section 100.6 Paragraphs (A), (B) and (D) of said Plans shall act as either supply (including designated supply handlers) or call handlers in the procurement region in which their plant is located.

(c) A handler defined in Section 100.6 Paragraph (C) of said Plans shall be a supply handler (and possibly a designated supply handler) for the procurement region in which such handler delivers the greatest volume of milk.

Milk Movement Requirements

The milk movement requirements shall be in effect from September 1, 2015 through April 30, 2016, unless the Department terminates the requirements sooner after making a determination that they are no longer necessary.

Each calendar week, a minimum percentage of quota solids-not-fat must have been used for Class 1 and mandatory Class 2 purposes by any designated supply handler before any such handler is exempt from the milk movement requirements for the remainder of that calendar week. The quantity of quota solids-not fat that must be made available by a designated supply handler during any week shall be determined on a calendar week basis, reflecting a prorata percentage of such handler's current monthly total. The following minimum percentages are established for each relevant procurement region:

<u>Procurement Region</u>	<u>Minimum Percentage of Quota Solids-Not-Fat That Must Be Made Available by Designated Supply Handlers on a Calendar Week Basis</u>
No. 1 Southern California Marketing Area and the counties of Kern, Kings, Tulare and Fresno	100%
No. 2 Northern California Marketing Area, except for the counties of Del Norte, Humboldt, Kern, Kings, Tulare and Fresno	100%

Procedures to Call or Release Milk

A call handler shall place requests for fluid milk in sequential order starting with the designated supply handler selected as first supplier for the week.

In addition to the minimum prices established for Class 1 usage, each designated supply handler may charge a call handler for services performed in a sale of bulk market milk for Class 1 use. Such additional charge for bulk milk shall not exceed:

- (a) The actual rate charged under like terms and conditions for the same or similar bulk milk handling services provided to other bulk milk purchasers, or if no such rate exists.
- (b) The prevailing rates charged by other supply handlers in the procurement region under like terms and conditions for the same or similar bulk milk handling services provided to other bulk milk purchasers, or if no such rates exist.
- (c) A rate subject to review or approval by the Department.

Any handler who has been specified by the Department as a designated supply handler shall be eliminated as a designated supply handler if such handler can demonstrate within 25 days after the announcement by the Department that since the previous year, such handler no longer qualifies as a designated supply handler.

Any call handler, who is unable to procure bulk market milk upon call from a designated supply handler, may file a complaint with the Department against each designated supply handler who refused to make milk available under the requirements herein.

Upon receipt of a complaint pursuant to Section 500.5 of the Plans, the Department shall review the reasonableness of the terms offered by the seller and determine the validity of any refusal to release the bulk market milk requested. If the Department determines that the complaint against the designated supply handler or handlers is justified, a charge of two dollars (\$2.00) per

hundredweight shall be assessed against the designated supply handler or handlers for each hundredweight of bulk milk requested, but not supplied. In reviewing the reasonableness of the terms offered by the seller, the Department shall consider the following as being reasonable:

- (a) The order for bulk milk shall be placed at least 48 hours prior to delivery.
- (b) The seller may require payment on delivery.
- (c) Minimum delivery volume shall be not less than 5,000 gallons per day.
- (d) Transportation terms that are accepted as normal practice.
- (e) The presence of a certification by the call handler that such handler qualifies as a call handler and that the milk requested will be used for Class 1 purposes.

Any call handler who makes a call upon a designated supply handler for market milk must file a certification form with the Department and with such designated supply handler that the market milk requested will be used for Class 1 purposes and that such call handler meets the standards of a call handler. All market milk released by a designated supply handler to a call handler shall be credited 100% for performance purposes.

Any call handler filing a certification form will be audited. If it is determined that any call handler who received market milk after certification did not meet the terms of such certification and/or was not a qualified call handler during the week for which the delivery and receipt of market milk was made shall be assessed two dollars (\$2.00) per hundredweight for each hundredweight of market milk received under the certification.

Amounts assessed shall be added to the handler's obligation account and credited to the solids-not-fat producer equalization fund as such is established in the Pooling Plan for Market Milk.

A list of designated supply handlers for the two procurement regions is given on the next three pages. The order in which handlers must be contacted changes from week to week in both procurement regions. The quantity, expressed as a percentage, of quota solids-not-fat that each designated supply handler must make available on a calendar week basis is 100% for all of September 1, 2015 through April 30, 2016.

CALL HANDLER CERTIFICATION FORM

Any call handler who makes a call upon a designated supply handler for market milk must file a certification form with the California Department of Food and Agriculture (Department) and with the designated supply handler. The certification form will stipulate that the market milk requested will be used for Class 1 purposes and that the call handler meets the standards of a call handler. The following is a sample certification form. The terms "call handler" and "designated supply handlers," as well as the requirements when making a call for milk are all specified in the enclosed Milk Movement Provisions.

In making a call, the first listed designated supply handler for the current week must be contacted. Only if this handler states that they have already met the 100% utilization requirement can the next handler be called.

Certification of a Call Handler's Request for Bulk Market Milk from a Designated Supply Handler

Call Handler Requesting Milk _____

Designated Supply Handler Asked to Supply Milk _____

Call Handler certifies that it meets the standards of a call handler as specified in Section 100.7 of the Stabilization and Marketing Plan for Market Milk. It satisfies the requirement of 80% or more Class 1 usage and less than 5% Class 4a and 4b usage during the seven-day period immediately prior to the date of making this call. The market milk it has requested will be used only for Class 1 purposes.

Name _____ Title _____

Signature _____ Date _____

NOTE:

Please send the Department's Copy to:

Dairy Marketing Branch
1220 N Street
Sacramento, CA 95814
E-MAIL: dairy@cdfa.ca.gov or FAX: (916) 900-5341

2015-2016 Designated Supply Handlers for Procurement Region 1
 The Southern California Marketing Area with the addition of the counties of Fresno,
 Kern, Kings and Tulare

<u>Period 1</u>	Percentage of quota that must be made available	Ranked Order of Designated Supply Handlers for Period 1	
<i>Dates:</i>		Name	Phone Number
September 1 - September 5, 2015	100%	1. Lind O'Lakes, Inc.	(559) 687-8287
September 20 - September 26, 2015	100%	2. California Dairies, Inc.	(562) 865-1292
October 11 - October 17, 2015	100%	3. Leprino Foods	(559) 925-7103
November 1 - November 7, 2015			
November 22 - November 28, 2015			
December 13 - December 19, 2015			
January 3 - January 9, 2016			
January 24 - January 30, 2016			
February 14 - February 20, 2016			
March 6 - March 12, 2016			
March 27 - April 2, 2016			
April 17 - April 23, 2016			

<u>Period 2</u>	Percentage of quota that must be made available	Ranked Order of Designated Supply Handlers for Period 2	
<i>Dates:</i>		Name	Phone Number
September 6 - September 12, 2015	100%	1. California Dairies, Inc.	(562) 865-1292
September 27 - October 3, 2015	100%	2. Leprino Foods	(559) 925-7103
October 18 - October 24, 2015	100%	3. Lind O'Lakes, Inc.	(559) 687-8287
November 8 - November 14, 2015			
November 29 - December 5, 2015			
December 20 - December 26, 2015			
January 10 - January 16, 2016			
January 31 - February 6, 2016			
February 21 - February 27, 2016			
March 13 - March 19, 2016			
April 3 - April 9, 2016			
April 24 - April 30, 2016			

<u>Period 3</u>	Percentage of quota that must be made available	Ranked Order of Designated Supply Handlers for Period 3	
<i>Dates:</i>		Name	Phone Number
September 13 - September 19, 2015	100%	1. Leprino Foods	(559) 925-7103
October 4 - October 10, 2015	100%	2. Lind O'Lakes, Inc.	(559) 687-8287
October 25 - October 31, 2015	100%	3. California Dairies, Inc.	(562) 865-1292
November 15 - November 21, 2015			
December 6 - December 12, 2015			
December 27 - January 2, 2016			
January 17 - January 23, 2016			
February 7 - February 13, 2016			
February 28 - March 5, 2016			
March 20 - March 26, 2016			
April 10 - April 16, 2016			

Performance shipping requirements

Bracket	Shipping percent
0 - 14.9	10
15 - 19.9	15
20 - 24.9	20
25 - 29.9	25
30 - 34.9	30
35 - 39.9	35
40 - 44.9	40
45 - 49.9	45
Above 50	50

Example of MA evaluation of Class I utilization for May through August shipping percentage

Month	Class I utilization	Shipping percentage	Months used	Previous 3 month average percent
Jan	10			
Feb	12			
Mar	13			
Apr	16			
May	19	10	Jan - Mar	11.7
Jun	25	10	Feb - Apr	13.7
Jul	22	15	Mar - May	16.0
Aug	25	20	Apr - Jun	20.0