



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 Rob Blaufuss  
Part 2

## Introduction

My name is Rob Blaufuss and I will testify today on pool distributing plant, pool distributing plant unit, supply plant shipping requirement and producer milk qualification language found in Proposal 2.

## Pool Distributing Plant Language

Proponents of Proposal 2 agree with the Cooperatives proposal in that a 25% route distribution threshold for a §1051.7(a) plant is more appropriate for a California Federal Order. The proposed language for a §1051.7(a) in Proposal 2 has been revised to as follows:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or §    .7(b) of <sup>any</sup> ~~an~~ Federal milk order, from which during the month **25 percent** or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25% of such route disposition and transfers must be to outlets in the marketing area

The Class I route distribution level at which a plant attains pool distributing plant status is set by each of the individual orders. Pool distributing plant sales qualification standards are higher in those orders which have higher Class I utilization levels. In Federal Orders 5, 6 and 7, the Federal Orders with the highest Class I utilization rates, the Class I route distribution at which a plant becomes a fully regulated pool distributing plant occurs when a plant sells 50% or

more of the milk physically received at the facility as Class I. In Federal Orders 1, 32, 124, 126 and 131 that qualification standard is set as 25% of total sales. As the result of a 2012 hearing, FMMO 33 has a pool distributing plant qualification of 30%. Finally, in FMMO 30, the qualification standard is met when 15% of the milk physically received at the plant is sold as Class I.

Class I handlers are regulated by where their sales occur, not by where their plant is physically located. In order for a plant to be a §1051.7(a) distributing plant, it must sell a set percentage of their total Class I sales with-in an FMMO. Should a pool distributing plant fail to sell 25% of their total route dispositions into an individual Federal Order they would then be considered a Partially Regulated plant. Both Proposal 1 and Proposal 2 call for a 25% in-area shipping requirement. Dean Foods supports this in-area sales percentage as it is consistent with language found in other Federal Orders.

The Dairy Institute of California Proposal provides language in its California Federal Order proposal which allows for a formation of a distributing plant unit. Proposal 2 language with regard to unit pooling mirrors that of the Upper Midwest Order. The language in §1051.7(d), allows for two or more plants operated by the same handler and located in the marketing area to qualify for pool status as a unit by meeting the total and in-area route disposition requirements of a pool plant. Pool distributing plant language requires that at least one of the plants qualifies pursuant to §1051.7(a). Provision language also requires that other plants in the Unit must process Class I or Class II products, using 50 percent or more of the total Grade A fluid milk products received in bulk from such plant or diverted therefrom by the plant operator in Class I or Class II products.

### **Ensuring an Adequate Supply of Milk for Fluid Purposes**

A supply plant is a plant which receives milk directly from dairy farmers and transfers or diverts fluid milk products to other plants or manufactures dairy products on its premises. A supply plant ships a set percentage of the Grade A milk received from dairy farmers to pool distributing plants. In return for supplying Class I plants with milk, supply plants are eligible to share in the Order's Class I revenues. The shipping percentages for an individual order are typically set at or near the Class I utilization level of the order. Supply plant shipping percentages are an important provision in the Federal Order system. They ensure that pool distributing plants have access to an adequate milk supply and allow for a reserve supply of milk available to serve the needs of the Class I market.

Dean Foods supports the Dairy Institute of California's regulations around supply plant shipping percentages. A key part of the Dairy Institute proposal is that it allows for the shipping percentage to adjust over time should changes occur in the Class I utilization in the California FMMO pool. The adjustable shipping requirements will ensure that pool distributing plants will continue to receive an adequate milk supply should the Class I utilization in the California pool increase. Federal Orders currently require a request to be submitted to the individual Market Administrator offices in order for shipping percentages to be adjusted. This process can be inefficient and puts the burden of proof on those parties which seek to maintain the status quo rather than those parties requesting the change. The Dairy Institute proposal would be more efficient in that all the parameters for shipping percentage adjustments have ~~been~~ already been provided in §1051.7(c)(2), although the Market Administrator could still adjust the levels. The adjustment would no longer be at the sole discretion of the Market Administrator and would be based entirely on the most current Class I utilization of the pool. Should additional milk be

needed for Class I purposes, the quota (or non-quota equivalent pounds) milk shipping percentage would be adjusted further.

When the quota plan was initially set-up in California the base pool quota was established as 110 percent of the Class 1 utilization accounted for during the base period divided by the number of days in that period the producer actually had Class 1 utilization<sup>i</sup>. The amount by which the production base exceeded pool quota was designated as daily base. The Gonsalves Milk Pooling Act of 1969 eliminated the direct incentive to supply milk to fluid milk processors<sup>ii</sup>. Unlike the Federal Orders there are no direct requirements to ship milk to Class I plants in the California state regulatory system; however, the underlying statutory regimes and regulatory policies developed are unique. Instead California relies on a call provision should milk not be made available to fluid processors. This provision requires that, when milk is needed, call handlers may place a call for milk to be used for Class I purposes from designated supply plants. To a certain degree historic tradition also plays a role in why Class I markets remain supplied. Since its introduction, quota and Class I have shared a close link. While there is no requirement to supply fluid milk bottlers there has long been a historic sense of tradition to do so.

As I stated earlier, the cooperative proposal makes me exceedingly anxious about our ability to attract a milk supply long term. A California Federal Order would likely represent a reset of the status quo in California. A reset of historic milk supply relationships would have dramatic implications for a Class I handler's ability to source milk. With no basic performance requirement on either quota or non-quota milk, supply plants may opt to ship milk to manufacturing plants which tend to be located closer to the milk production areas rather than to Class I plants which tend to be further away from the farms and closer to urban population centers. Under the Coop proposal, all milk would enjoy the privileges of being in a Federal Order

pool without ever actually having to meet any of the basic shipping requirements found in all other Federal Orders. The Coop proposal could ultimately lead to increased 'pool riding' in California. Pool riding occurs when milk is allowed to attach itself to a Federal Order without ever actually performing. Non-performing supply plants are allowed to enjoy the same privileges as those plants which are serving the Class I market, in most instances the higher blend price.

### **Producer Milk Qualification Standards**

All Federal Orders require producers to meet basic requirements in order for producer milk to be associated with an individual Federal Order. In order for their milk to be considered pool milk they must first 'touch base' with a pool plant. The touch base requirements are not meant to <sup>be</sup> onerous on the producer. Producer requirements vary significantly from order-to-order with higher requirements in place in higher Class I markets and smaller requirements in those markets with lower Class I utilization. In Florida, for example, in any month not less than 10 days' production must be physically received at a pool plant during the month in order for that milk to be eligible to be diverted. Given the lower Class I utilization level we are supportive of a touch base requirement that mirrors that of the Upper Midwest Order. The Dairy Institute's proposal does not allow for producer association to occur unless at least the lessor of one day's production or 48,000 pounds of milk of a dairy farmer is physically received at a pool plant.

In order to ensure orderly marketing there must also be re-pooling requirements in place to limit a handler's ability to bring a significant amount of milk back onto the order that had previously been removed from the pool, also known as de-pooling. The Dairy Institute proposal does exactly that by limiting the amount of milk reported by a handler to no more than 125% of producer milk receipts pooled by the handler during the prior month between April and February



and may not exceed 135% in March. Dean Foods feels that these are appropriate re-pooling percentages given the dynamics of today's California dairy market.

The Coops are trying to have it both ways in Proposal 1. In a Federal Order hearing in the Upper Midwest, an order similar to California, and another hearing in the Mideast, Dean Foods proposed inserting a true Dairy Farmer for Other Markets provision into the respective order language. These dairy farmers for other markets provisions were similar to the language currently found in the Federal Order 1. Like it does in Federal Order 1, this provision would have severely limited a plants ability to de-pool in the Upper Midwest and the Mideast by making it difficult for milk to return to the pool once the choice to remove it from the pool was made. In both hearings the Cooperatives, two of which are proponents of Proposal 1, did not support our position. With respect to the Federal Order 30 hearing in-fact, Mr. Marvin Beshore, the attorney representing DFA, Inc., LOL, Inc., etc. stated the following in his post-hearing brief, "Furthermore, we do not advocate the adoption of proposals which would more nearly prohibit de-pooling. 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 re-pooling. The Dean Foods proposals would require more radical changes in Order 30; Proposal 2 represents an effective, but modest solution for the problem<sup>iii</sup>." It<sup>is</sup> worth noting that the Proposal 2 in that Federal Order 30 hearing called for the 125% re-pooling limitations that proponents of Proposal 2 in this proceeding have proposed. Dean supports the Dairy Institute petition with respect to re-pooling limitations as it ensures uniformity amongst all Federal Orders and does not create a special exemption.

This concludes Part 2 of my testimony.

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<sup>i</sup> California Department of Agriculture, History of California Milk Pooling Program, P.3.  
([https://www.cdfa.ca.gov/dairy/pdf/History\\_of\\_pooling.pdf](https://www.cdfa.ca.gov/dairy/pdf/History_of_pooling.pdf))

<sup>ii</sup> California Department of Agriculture, History of California Milk Pooling Program, P.5.  
([https://www.cdfa.ca.gov/dairy/pdf/History\\_of\\_pooling.pdf](https://www.cdfa.ca.gov/dairy/pdf/History_of_pooling.pdf))

<sup>iii</sup> In the Matter of Milk in the Upper Midwest Marketing Area. Post-Hearing brief of Cass-Clay Creamery, Inc., Dairy Farmers of America, Inc., Land O' Lakes, Inc., etc. Submitted by Marvin Beshore, Esquire on October 25, 2004. P.14.  
(<http://www.dairyprogramhearing.com/getfile86798679.pdf?dDocName=STELDEV3025102>).