



**BEFORE THE UNITED STATES DEPARTMENT
OF AGRICULTURE
AGRICULTURAL 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-14-009**

Clovis, California, November 16, 2015

**Testimony of *Dennis Schad*
~~Elvin Hollon~~
(~~Seventh Statement~~)
(Rebuttal)**

**In Support of Proposal 1 of California Dairies, Inc.,
Dairy Farmers of America, Inc., and Land O'Lakes, Inc.**

**Proposal to Establish a Federal Milk Marketing Order for the
State of California**

Cooperatives' Exhibit 11

The Cooperatives' Proposal Relative to "Call" Provisions

The Cooperatives support "call" provisions in the proposed California Federal Milk Marketing Order (FMMO). We believe our initial position will work as we have offered it but in light of the comments we have heard at the hearing feel this modification will improve it.

It is our position that calls are generally necessary for the market only when wide scale market conditions that impact all processing handlers in a region occur. For example, calls are not the solution to an individual plant acquiring a new customer, opening a new plant, or a complaint relative to ongoing market premiums. The Market Administrator should take these factors into consideration when deciding to issue a call. We would define a call as requiring handlers with predominantly Class III and IV milk utilization to supply milk to Class I handlers pooled by the Order if market conditions under the terms of the call provisions support the need. Call provisions would be used to meet short term market conditions when normal milk supplies are less than market demand.

We considered linking the requirement to quota but chose instead to relate it to Class III and IV utilization. The distribution of quota pounds among handlers is unknown and a high percentage of quota pounds may be held by farms that ship directly to distributing plants – thus insulating that volume of milk from filling a call request. Handlers with predominantly Class III and IV utilization benefit the most from the added value of Class I prices and should bear the burden for filling a call request.

Call provisions have been included in Federal Orders in previous years, but, except for language in the Pacific Northwest Order, are not present in current Orders. The current California State Order (CSO) contains call provisions. While their actual use has been limited,

the industry is of the opinion that the presence of those provisions can result in shipments being made to a requesting call handler above the volumes tied to regular business transactions if a supply need is present. We think that the language present in FMMO 124, the language that was present in the pre-reform Order 68 and the current language in all Orders granting the Market Administrator discretion and flexibility in adjusting performance provisions are a reasonable guideline for how these call provisions could be structured. The Order 124 and pre-Reform Order 68 language defining call provisions are attached this statement.

The lack of the provision's actual use in the CSO and its absence in FMMOs make it somewhat difficult to evaluate the effectiveness of the provisions and to craft call provisions. We will offer guidelines on how "call" provisions should be structured.

Suggested Guidelines

1) **Definitions of Handlers Which can Initiate a Request for a Call to the Market Administrator; and Handlers Which Are Required to Respond to a Call.**

A handler initiating a call must be a §1051.7 (a) or (b) plant. A plant making a call must utilize in its plant all the milk for which the plant is the responsible handler and which was pooled on its report in the prior two months. A handler making a call cannot direct milk to other uses and cannot expect other pool handlers to satisfy a shortfall in their supply needs via a call.

All pool handlers would be potentially responsible to fill the demands of a call. Only the Market Administrator has visibility to all shipments and pool volumes of all handlers and is able to craft call requirements specific to each situation.

2) **Definition of Call Regions for the Call Provisions Supported by the Cooperatives.**

We believe the Northern and Southern California procurement regions, as currently

defined by CDFA, with one addition should be used for the purposes of aligning the responses to a call with the available supplies to do so. Plants making a call in a procurement region would be supplied by handlers with milk production in the same procurement region. These market regions have differing supply and demand relationships and could require different provisions for making and supplying a call. The regions (termed procurement regions) are defined as:

Procurement Region 1 - Southern California Marketing Area and the counties of Fresno, Kern, Kings, Tulare, the Arizona county of Yuma;

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

These are correct boundaries based upon current market conditions. We support providing the Market Administrator with the discretion to create sub-regions if necessary to provide the most efficient response to the market situation.

3) Procedure for Initiating and Issuing a Call.

Handlers would notify the Market Administrator of the request for a call to be issued for their procurement region. The Market Administrator would investigate the request and if justified would issue a call requiring all handlers in the designated procurement region to deliver a specified percentage of pooled milk to §1051.7 (a) or (b) plants in the region.

If a handler fails to deliver per the terms of a call, a per hundredweight penalty equal to the greater of \$5 per hundredweight or 25% of the non-quota blend price for the applicable month that the call was initiated multiplied by the handler's shortfall in deliveries would be assessed. Any penalty would be deposited into the blend price pool. The Market Administrator will set the call percentage requirements at levels to generate the milk necessary to satisfy a call.

4) **Factors to Consider in Defining the Terms of Sale if a Call is Issued.**

The Market Administrator will determine that the handler requesting a call is willing to pay the necessary market terms for milk deliveries, when deciding whether to initiate a call. The charges for milk subject to a call will be determined by negotiation between the supplying handler and the plant.

§ 1124.11 Cooperative reserve supply unit.

Cooperative reserve supply unit means any cooperative association or its agent that is a handler pursuant to § 1000.9(c) that does not own or operate a plant, if such cooperative has been qualified to receive payments pursuant to § 1124.73 and has been a handler of producer milk under the order in this part or its predecessor order during each of the 12 previous months, and if a majority of the cooperative's member producers are located within 125 miles of a plant described in § 1124.7(a). A cooperative reserve supply unit shall be subject to the following conditions:

(a) The cooperative shall file a request with the market administrator for cooperative reserve supply unit status at least 15 days prior to the first day of the month in which such status is desired to be effective. Once qualified as a cooperative reserve supply unit pursuant to this paragraph, such status shall continue to be effective unless the cooperative requests termination prior to the first day of the month that change of status is requested, or the cooperative fails to meet all of the conditions of this section.

(b) The cooperative reserve supply unit supplies fluid milk products to pool distributing plants located within 125 miles of a majority of the cooperative's member producers in compliance with any announcement by the market administrator requesting a minimum level of shipments as follows:

(1) The market administrator may require such supplies of bulk fluid milk from cooperative reserve supply units whenever the market administrator finds that milk supplies for Class I use are needed for plants defined in § 1124.7(a) or (b). Before making such a finding, the market administrator shall investigate the need for such shipments either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the market administrator's investigation shows that such shipments might be appropriate, the market administrator shall issue a notice stating that a shipping announcement is being considered and inviting data, views and arguments with respect to the proposed shipping announcement. Any

decision on the required shipment of bulk fluid milk from cooperative reserve supply units must be made in writing at least one day before the effective date.

(2) Failure of a cooperative reserve supply unit to comply with any announced shipping requirements, including making any significant change in the unit's marketing operation that the market administrator determines has the impact of evading or forcing such an announcement, shall result in immediate loss of cooperative reserve supply unit status until such time as the unit has been a handler pursuant to § 1000.9(c) for at least 12 consecutive months.

FO 68 "call" provision language

§ 1068.7

Title 7—Agriculture

(d) Any plant (which, if qualified pursuant to this paragraph, shall be known as a "pool reserve supply plant") that is located in the marketing area and that is approved by a duly constituted regulatory agency for the handling of Grade A milk, subject to the following conditions:

(1) A daily average of 25,000 pounds or more of Grade A milk from dairy farmers is received at the plant during the month;

(2) At least one tank truck load of Grade A fluid milk products (not less than 45,000 pounds) has been shipped from the plant to a pool distributing plant or to a comparable plant under another Federal order within the last 12 months, unless the plant is already qualified as a pool plant pursuant to this paragraph;

(3) The operator of the plant has filed a request with the market administrator for pool status at least 15 days prior to the first day of the month in which such status is desired effective. Once qualified as a pool plant pursuant to this paragraph, such status shall continue to be effective unless the operator requests nonpool status for the plant prior to the first day of the month for which nonpool status is requested, the plant subsequently fails to meet all of the conditions of this paragraph, or the plant qualifies as a pool plant under another order;

(4) The operator of the plant supplies fluid milk products to pool distributing plants located within an area designated by the market administrator as the "call area" in compliance with any announcement by the market administrator requesting a minimum level of shipments, as further provided below:

(i) The market administrator may require such supplies of fluid milk products from operators of any pool reserve supply plants within the call area whenever he finds that milk supplies for Class I use at pool distributing plants within the call area are needed from plants qualifying under this paragraph. Before making such a finding, the market administrator shall investigate the need for such shipments either on his own initiative or at the request of interested persons. If his investigation shows that such

shipments might be appropriate, he shall issue a notice stating that a shipping announcement is being considered and inviting data, views, and arguments with respect to the proposed shipping announcement;

(ii) For the purpose of meeting any shipping requirement announced by the market administrator:

(a) Qualifying shipments to pool distributing plants within the call area may originate from any plant or producer milk supplies of the handler provided that shipments from sources other than the plant(s) subject to the call must be in addition to any shipments (including shipments directly from producers' farms) already being made by the handler and may not result from shifting milk supplies from a pool distributing plant outside the call area to one within the call area; and

(b) Shipments from a reserve supply plant within the call area to a pool distributing plant outside the call area or to a comparable plant regulated under another Federal order may count as if delivered to a pool distributing plant within the call area if the market administrator is notified of the amount of any such commitments to ship milk prior to announcement of a shipping requirement pursuant to this paragraph. Qualifying shipments to an other order plant may not be classified pursuant to § 1068.42(b)(3); and

(iii) Failure of a handler to comply with any announced shipping requirement, including making any significant change in his marketing operations that the market administrator determines has the impact of evading or forcing such an announcement, shall result in immediate loss of pool status for the plant pursuant to this paragraph. A plant losing pool status in this manner or a plant that requests nonpool status may not again qualify as a pool plant pursuant to this paragraph for a period of one year from the date on which pool status was last held: