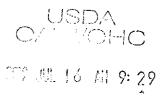
Before the Secretary United States Department of Agriculture



Regarding Milk in the Northeast and other Marketing Areas
Proposed Amendments to Orders

Docket No. AMS DA-09-0007-0001

July 17, 2009

Hearing Brief

By Dennis J Schad, Director of Regulatory Affairs Land O'Lakes, Inc 405 Park Drive Carlisle, PA 17013

Land O'Lakes (LOL) is a dairy cooperative with more than 4,000 dairy farmer member-owners. The cooperative has a national membership base, whose members are pooled on five different federal orders. Land O'Lakes is a member of the National Milk Producers' Federation (NFPF) and joined in the Federation's support and testimony for Proposals 1 and 2. Given the abbreviated federal order hearing process mandated by the Farm Bill, Land O'Lakes chose not to offer formal testimony at the Cincinnati hearing. Land O'Lakes made that decision because it had no unique evidence to offer on the proposals and felt that the briefing process adequately afforded the cooperative the opportunity to express its views, opinions and arguments.

Land O'Lakes Recommends the Adoption of Proposals 1 and 2

Land O'Lakes believes that marketing conditions require a change in the Producer-Handler (PD) and Exempt Plant definitions. Testifying for NMPF, Dr. Cryan outlined the history of the Producer-Handler provisions (Ex. 23, p 2-4), showing that the AAMA provided the discretion of the regulation of PD's to the Secretary. Most recently the Secretary exercised this authority in 2006 by limiting PD status in Federal orders 124 and 131 to PD's marketing less than 3 million pounds of fluid milk per month.

Historically PD's were characterized as average to slightly above averagesized dairy farmers who sold to the milk to the public from their bulk tanks or through local home delivery routes. Such dairy farmer-processors had little effect on the market's competitive environment and to the market-wide settlement pools. However, as the dairy industry consolidated, so did the size of some PD's. Exhibits 14 and 20 chart the consolidation and growth in size of PD's between 2002 and 2009. During October 2002 there were 48 dairy farmer-processors with route distribution in the Federal orders. Of those PD's, 37 (77%) had monthly sales below 300,000 pounds. By March 2009, the number of PD's fell to 37 and only 20 (54%) of those posted monthly sales below 300,000 pounds per month.

Dairy farms have grown larger in the recent past, to the point that USDA has reported that over 58% of the milk produced in the United States originates from farms with more than 500 cows. Evidence (NT, p. 1307-8) was provided that the cost of a green-field dairy farm for a 10,000 cow dairy herd would cost about 40 million dollars, while a bottling-processing facility for the milk produced by 10,000 cows was estimated to be around 10 million dollars. The economics of entry into the PD business clearly favor downstream integration of dairy farms.

The experience of the building and establishment of the GH Dairy in El Paso is illustrative of the relative ease of market entry for a producer into the producer-handler business (NT, p. 2731). Within a twelve to eighteen month time frame during 2008, that dairy farm-milk processing entity went from an idea and a plan to an effective and competitive dairy farmer-processor business.

The current PD regulations contribute to disorderly marketing in the Federal orders in two ways. First, monies captured from Class I route disposition by PD's are diverted from the market settlement fund and directed to the PD's. Depending on the size of the order and the number of PD's selling into the market, the effect varies. Exhibit 56 estimates the effect on the market pools after the adoption of Proposals 1 and 2. Led by the decrease of the Order 32 pool of as much as \$0.12/cwt, the effect of PD's on producer prices is not inconsequential.

The second way in which the PD regulations promote disorderly marketing is by undermining the minimum Class I price. Essential to the effective Federal order regulation of dealers is the reliance by dealers that all are equitably priced. When PD's were smaller, pricing discrepancies were less of an issue because the larger regulated handlers could compete with PD's

through increased plant efficiency. As the PD's have grown, that advantage has diminished. Throughout the hearing, dealer after dealer testified that PD's underpriced them in the marketplace (NT, pp. 642, 937, 1443, 2365 and 3766).

Moreover, dairy farmers, who produce kosher or organic milk, specialty products that normally command a premium in the market, also find that their pricing is undermined by dairy farmer-processors that enter that market.

Land O'Lakes recommends that the Secretary accept Proposals 1 and 2 by specifically adopting:

- 1. Eliminating the producer-handler provision in all orders.
- 2. Increase the exempt plant volume limitation to 450,000 lbs.
- 3. Provide that the volume limitation include all Class I route disposition, irrespective of geography.
- 4. Provide that an exempt plant package only in a unique label or labels.

Land O'Lakes Recommends the Rejection of Proposals 23, 24 and 25.

Land O'Lakes opposes Proposal 23. This proposal would exempt any handler's own farm production from regulatory pricing. Adoption of this proposal would allow a current PD to balance his farm production with pooled milk, while allowing the PD to collect at least the handler-pool value of his farm production. This proposal is more onerous to producer interests than the current PD regulations.

Land O'Lakes opposes Proposal 24. This proposal would exempt from regulatory pricing those Class I sales by a PD to retail establishments, owned by the PD, and home delivery sales. Exemptions, included in Proposal 2, adequately provide exemptions for PD sales.

Land O'Lakes opposes Proposal 25. The restoration of handler-pooling provisions would pit dairy farmer against dairy farmer, each competing for the higher Class I market. Such competition would lead to lower overall farmer prices, while not addressing the base problem of inequality of Class I pricing between PD's and regulated handlers.

Land O'Lakes Supports "Grandfathering" of Some Current Producer-Handlers

There are numerous proposals included in the Hearing Notice that would "grandfather" current PD's up to a stated volume limitation. These limitations range from 750,000 pounds to 3,000,000 pounds per month. Land O'Lakes believes that the Hearing Record is adequate for the Secretary to determine the appropriate volume maximum for a "grandfathered" producer distributor.