

Before the Secretary
United States Department of Agriculture

Regarding Milk in the Appalachian and Southeast Marketing Areas
Proposed Amendments to Orders

Docket Nos. AO-388-A17 and AO-366-A46; DA-05-06

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Comments and Exceptions

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Land O'Lakes (LOL) is a dairy cooperative with more than 3,500 dairy farmer member-owners. The cooperative has a national membership base, whose members are pooled on six different federal orders. For more than 10 years Land O'Lakes has provided a supplemental supply of milk to the Southeastern markets and during that period have had members pooled on the Appalachian and Southeast federal orders.

LOL supports the Tentative Partial Decision that the Secretary issued on September 13, 2006 regarding Proposals 1 and 3. As a supplier of supplemental milk to the Southeastern orders, LOL relies on transportation credits to help defer the transportation costs of moving milk from the cooperative's Northeastern and Midwestern milk sheds. Land O'Lakes commends the Secretary for updating the payment rate and increasing the Class I assessments. These are long overdue improvements to the Southeast orders.

However, continuing the current diversion pricing relationship is essential to maintaining a direct-shipped and balanced-supplemental milk supply for the Southeast region. Land O'Lakes objects to the Secretary's decision regarding Proposal 4 and offers the following Exceptions.

Implementation of the Interim Decision will result in a discriminatory burden placed on the markets' balancing supplies of milk. The hearing

record is clear; distributing plants in the Southeast do not purchase the same volume of milk each day. There are few balancing plants located in the marketing area of the Southeast orders, and efficient marketing would require that in-area supplies of milk first be dispatched to the orders' available Class I outlets on the days that distributing plants require minimal volumes. The marketing logistics of the Southeast's milk supplies result in disproportional daily balancing by the out-of-area milk supplies.

Except for December, the Southeast orders already limit diversions by all market participants to 25-percent of pool plant deliveries in Order 5 and 33-percent in Order 7. Additionally, Order 5 regulations require that a producer deliver 6-production days to a pool plant and Order 7 requires 10-days of pool deliveries before a producer can be qualified to divert milk. These stringent producer definition requirements are designed to limit diversions to the daily variations of distributing plant requirements, not the seasonal reserve supply of the orders.

The Secretary declares that the producers who provide the seasonal and supplemental supply of the Southeastern orders are not legitimate market participants. The Interim Decision will require that producers who qualify [S.100_.82 (c) (2) (ii) and (iii)] and apply for transportation credits, during the July through December period, will have their deliveries to pool plants excluded from the S100_.13 (d) (3) calculation which defines allowable diversions.

This new provision is discriminatory and affects dairy farmers, requesting transportation credits, irrespective of whether credits are issued. For instance, S.100_.82 (c) (i) (A) and (B) limits volume eligible for transportation credits at a pool plant to the lesser of the receiving plant's or market's Class I utilization. Therefore, depending how you allocate the credits, only the portion of the milk on the load, allocated to Class I, will receive the transportation credits; or a portion of the dairy farmers on the load, pursuant to S.100_.82 (c) (i) (A) and (B), will receive the full value of the transportation credits. Either way, the milk of a dairy farmer who is eligible for and requests transportation credits is excluded from the S100_.13 (d) (3) calculation which defines allowable diversions whether or not the value of the credits is returned to the farmer.

The Secretary states that the adoption of the modified Proposal 4 will enhance the blend price in the markets, however he provides no analysis that

would quantify the expected resulting blend price increase for the two orders. Without analysis from the Department one can not ascertain the benefit that would accrue to the orders' dairy farmers for the July through December period, when the effects of Proposal 4 will be felt by the orders' dairy farmers.

Moreover, the record shows that the extent of "problem" is different for the two orders. The volume of diversions on Order 7 is greater than Order 5, which is to be expected since the Orders have different levels (33-percent compared to 25-percent) of allowable diversions. While out-of-marketing area diversions have increased in Order 7 between 2005 and 2006, the Interim Decision notes that total diversions on Order 5 decreased: "Total (Order 5) diversions from the time period of July through November, when the transportation credits are available, decreased over 20-percent from 2004 to 2005." Without adequate Dairy Division analysis, it would appear that the Secretary is making a decision for Order 5 dairy farmers based on Order 7 marketing conditions.

Finally, it is a long held precept of the federal orders that the market is responsible for its balancing reserves. Provisions in the current Orders 5 and 7 currently place stringent touch base and diversion limitation during the fall. These regulations are designed to limit diversions to the daily fluctuations in distributing plant orders. Adoption of Proposal 4 will shift the balancing responsibility from the Southeast orders to the orders from where the supplemental supply resides. Currently those orders provide the pooling-home for the two months that a producer must be off-market to be transportation credit eligible. Adoption of Proposal 4 will further lower blend prices in those orders by requiring those orders to carry the daily reserve supply of the Southeast during the fall.

Land O'Lakes respectfully requests that the Secretary reconsiders his decision on Proposal 4.