

June 23, 2004

Duane Spomer

Acting - Deputy Administrator, Dairy Programs

Stop 0225, Room 2968-S

PO Box 96456

Washington, DC 20090-6456

Dear Acting - Deputy Administrator:

Dairy Farmers of America, Inc. and Prairie Farms Cooperative wish to request that a Federal Order Hearing be called to address several issues causing concern in Federal Order 32 - the Central Order.

The member owners of our Cooperatives are concerned about the recent experiences of "depooling" that have occurred in Order 32. This issue makes it very difficult to supply Class I handlers because the revenue streams available from the sale of raw milk to various classified uses vary widely. The "ability to pay" difference between a sale of milk to a fluid use buyer and a Class III buyer varied by \$4.02 per hundredweight in April. This meant that in order to maintain a milk supply for a Class I buyer an additional \$4.02 needed to be obtained from consumers, margins or borrowings or a combination of the three sources. The reason for the disparity is the ability of other than Class I handlers to "opt out" of the pool at will with no consequence.

Dairy farmers and handlers should be able to freely choose the demand segment of the market they wish to supply. However, with the volatile prices in the market today and the now clearly understood impact of this volatility on producer blend prices over time, additional Order language is necessary to insure that those producers who wish to regularly supply the market and share in the blend price are not damaged by those who choose to do so only occasionally.

Specifically, if a producer desires to share in the Order returns our proposals would make that decision have multi month consequences in order to solidify the commitment.

The continued extension of the status quo makes it difficult for those producers who have chosen to supply the fluid market to understand why blend returns should be shared with those who "opt in" the pool only when convenient and profitable and "opt out" when it is not. It makes it very difficult to budget for and staff an Order office because of the variation in income available to the Order. It raises consumer costs in order to generate enough funds to maintain a milk supply and frustrates consumers when retail prices change frequently and dramatically. Furthermore it damages overall demand for milk products because the frequent price changes make it difficult for consumers to establish the true value of milk in their diet and beverage choice.

It is the existence of regulation that causes this to occur so the regulations need to be changed to better reflect economic reality.

In addition to proposals that directly affect the depooling issue, we propose two additional changes in the Order performance requirements that will also better define who should share in the Order's return. Specifically we seek an increase in the shipping standards by 5% "across the board" and a strengthening of the "touch base" standard. The increase from 20% to 25% during the months of August – February and 20% the remainder of the year (currently 15%) should raise the bar for performance by attracting more milk to the market in the fall months when it is difficult to attract milk to bottling plants in the Central Order marketing area. Furthermore we request that a producer "touch base" at a pool plant at least one day during August – November and January – February in order to maintain association with the pool. The current "one and done" provision is too lax.

Finally, we are concerned that the current order provisions make it too difficult to identify which milk truly serves the market and which is able to share in the Order returns simply because it is so easy to do. We are concerned that changes that may be implemented in other

Orders and the lack of a Federal Order in the Mountain states will “flush” milk to Order 32. Much the same way that milk from California, when it was prevented from pooling in Order 30, then became attached to Order 32; and then to Order 135 when the Order 32 option was foreclosed. Thus we offer language that defines where milk can be diverted from in order to maintain pool status.

This further definition, in addition to our other proposals, should assist the Market Administrator in determining which milk truly performs for the market from milk that is simply sham performance. Our proposals will better align economic reality with Order provisions and operation and not facilitate activities that would never occur absent the presence of an Order.

Our language to facilitate these concepts is as follows:

Regular case = existing language

Bold case = proposed language

~~Strikethrough = deleted language~~

§ 1032.7 Pool Plant.

...

(c) A supply plant from which the quantity of bulk fluid milk products shipped to (and physically unloaded into) plants described in paragraph (c)(1) of this section is not less than ~~20~~ **25** percent during the months of August through February and ~~15~~ **20** percent in all other months of the Grade A milk received from dairy farmers (except dairy farmers described in § 1032.12(b)) and from handlers described in § 1000.9(c), including milk diverted by pursuant to § 1032.13, subject to the following conditions:

(1) Qualifying shipments may be made to plants described in paragraphs (a) or (b) of this section;

(2) The operator of a pool plant located in the marketing area may include as qualifying shipments milk delivered directly from producer’s farms pursuant to § 1000.9(c) or §

1032.13(c). Handlers may not use shipments pursuant to § 1000.9(c) or § 1032.13(c) to qualify plants located outside the marketing area.

...

§ 1032.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c) **located in the States of Colorado, Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, New Mexico, Oklahoma, South Dakota and Wisconsin** to a nonpool plant subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion until ~~at least one day's production~~ **milk** of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant;

(2) The equivalent of at least one day's milk production is caused by the handler to

be physically received at a pool plant in each of the months of August through November and January through February.

3) The equivalent of at least one days' milk production is caused by the handler to be physically received at a pool plant in each of the months of March through July and December if the requirement of paragraph (d)(2) of this section (§1032.13) in each of the prior months of August through November and January through February are not met, except in the case of a dairy farmer who marketed no Grade A milk during each of the prior months of August through November or January through February.

~~(2)~~ (4) Of the quantity of producer milk received during the month (including diversions, but excluding the quantity of producer milk received from a handler described in § 1000.9(c)) the handler diverts to nonpool plants not more than ~~80~~ **75** percent during the months of August through February, and not more than ~~85~~ **80** percent during the months of March through July, provided that not less than ~~20~~ **25** percent of such receipts in the months of August through February and ~~15~~ **20** percent of the remaining months' receipts are delivered to plants described in § 1032.7(a) and (b);

~~(3)~~ (5) Receipts used in determining qualifying percentages shall be milk transferred to or diverted to or physically received by a plant described in § 1032.7(a) or (b) less any transfer of diversion of bulk fluid milk products from such plants.

~~(4)~~ (6) Diverted milk shall be priced at the location of the plant to which diverted;

~~(5)~~ (7) Any milk diverted in excess of the limits prescribed in paragraph (d)(2) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk; and

~~(6)~~ (8) The applicable diversion limits in paragraph (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision 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 investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

(e) Producer milk shall not include milk of a producer that is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing program imposed under the authority of a State government maintaining marketwide pooling of returns.

(f) The quantity of milk reported by a handler pursuant to § 1032.30(a)(1) and/or § 1032.30(c)(1) for the current month may not exceed 125 percent of the producer milk receipts pooled by the handler during the prior month. Milk diverted to nonpool plants reported in excess of this limit shall be removed from the pool. Milk received at pool plants in excess of the 125% limit, other than pool distributing plants, shall be classified pursuant to § 1000.44(a)(3)(v) [Note: this would be other source milk]. The handler must designate, by producer pick-up, which milk is to be removed from the pool. If the handler fails to provide this information the provisions of 1032.13(d)(5) shall apply. The following provisions apply:

(1) Milk shipped to and physically received at pool distributing plants shall not be subject to the 125 percent limitation;

(2) Producer milk qualified pursuant to § _____.13 of any other Federal Order in the previous month shall not be included in the computation of the 125 percent limitation; provided that the producers comprising the milk supply have been continuously pooled on any Federal Order for the entirety of the most recent three consecutive months.

(3) The market administrator may waive the 125 percent limitation:

- (i) For a new handler on the order, subject to the provisions of § 1032.13(f)(3), or**
- (ii) For an existing handler with significantly changed milk supply conditions due to unusual circumstances;**

A bloc of milk may be considered ineligible for pooling if the market administrator determines that handlers altered the reporting of such milk for the purpose of evading the provisions of this paragraph.

Please direct any questions you may have to me.

Elvin Hollon

Director of Fluid Marketing and Economic Analysis
Dairy Farmers of America, Inc.