

**UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE**

**Mideast Federal Milk Order
Hearing No. 33**

**Docket No. AO-166-A72;
DA-05-01**

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**SEPARATE POST HEARING
BRIEF OF MICHIGAN MILK
PRODUCERS ASSOCIATION**

Michigan Milk Producers Association ("MMPA") is a member-owned Capper
Volstead cooperative that markets milk in the Mideast Federal Order.

MMPA submits this separate brief in support of MMPA's proposed modification to Proposal No. 2 regarding performance standards, and in support of a modification to Proposal No. 9 for the amount of transportation credit applicable to milk delivered from Michigan farms to Michigan plants.

Proposal No. 2

In general, MMPA supports the proposed tightening of the performance standards for supply plants and cooperative association operated plants and agrees that adjustments to the existing standards are appropriate to better identify those producers whose milk is reasonably associated with the market and meets the Class I needs of the market. These are the producers who should share in the market-wide distribution of proceeds arising primarily from Class I sales. It is entirely appropriate to protect the "blend price" against economic consequences resulting from the inappropriate introduction of outside milk. LeHigh Valley Cooperative Farmers, Inc. vs. United States, 370 U.S. 76, 99; 82 S.Ct. 1168, 1181; 8 L.Ed.2d 346, 359 (1962).

The issue is *how much* to tighten the performance standards. In recognition of the milk marketing realities in the Mideast Order, MMPA proposes that for the month of August, the performance requirement for a cooperative association under 7 C.F.R. § 1033.7(d) should be 35 percent. MMPA supports the proposal that the § 7(d) performance standard be increased from 30 percent to 40 percent for the other months of September through November. MMPA maintains, however, that an increase from 30 percent to 40 percent for the month of August is too great an increase of the § 7(d) performance requirement and is unnecessary and inappropriate for the Mideast Federal Order.

MMPA's 1680 member farms produce approximately 50% of the milk produced in the state of Michigan and 20% of the milk produced in the Mideast Federal Order. Substantially all of MMPA's member milk is produced within the Mideast Order and substantially all of MMPA's milk is marketed within and qualified only on the Mideast Order. MMPA is not attempting to duplicate what the 7th Circuit Court of Appeals called "the fly in the ointment," in Alto Dairy vs. Veneman, 336 F.3d 560, 563 (7th Cir., 2003), where producers with minimal connection to or commitment to a higher blend price market attempted to be qualified and pooled on that market rather than on the market in which their "traditional customers" were located. MMPA does not have and has never had any arrangement to qualify producer milk for other entities or organizations.

As explained in MMPA Director of Milk Sales Carl Rasch's testimony (566-568), access to Class I sales in Michigan is becoming increasingly limited due to industry consolidation and committed primary supplier relationships. MMPA is the primary market balancer in Michigan and milk MMPA markets is available for and sometimes called upon to supplement deliveries to Class I handlers who are normally supplied by others. Even so, meeting a 40 percent § 7(d) performance standard in August will be difficult for MMPA. MMPA believes, however, that it can meet a 35 percent performance requirement for August. Setting the § 7(d) performance standard higher than 35 percent for August would potentially lead to one or more of the disruptive, counterproductive and inefficient alternatives described by Mr. Rasch at pages 568-569 of the hearing transcript. The most likely of these alternatives would be some sort of voluntary exchange with another market participant that would result in increased transportation costs and inefficient and unfamiliar movement of milk merely to satisfy a higher qualification requirement. Such a result would be the sort that 7th Circuit Chief

Judge William J. Bauer, concurring in County Line Cheese Company vs. Lyng, 823 F.2d 1127, 1135 (7th Cir., 1987) labeled “a marvelous example of government nuttiness” leading to “this weird piece of human behavior” (routinely pumping-in and pumping-out the same milk at a distributing plant in order to qualify the milk as “shipped to” that plant) and that Judge Bauer thought important to inform readers was not the creation of the judicial branch of government.

Proposal No. 9

MMPA’s Director of Bulk Milk Sales, Carl Rasch, also presented testimony, at 572-575, that supports a reduced transportation credit under Proposal No. 9 for milk delivered entirely from Michigan farms to Michigan pool distributing plants because of the lower cost of such transportation. Michigan truck weight restrictions permit larger units, and over time Michigan milk haulers have increased the size of farm pickup trailers to take advantage of the economies of scale authorized by the heavier truck weights permitted. The resulting lower hauling costs per hundredweight should be reflected in a reduced transportation credit of \$.0024 per hundredweight per mile for transportation from farms to distributing plants occurring entirely within Michigan, if Proposal No. 9 is approved. The calculations supporting the 2.4¢ per hundredweight per mile rate are set forth in Exhibit 27-A-1.

Michigan Milk Producers Association opposes any transportation credits under Proposal No. 9 for milk movement from supply plants to pool distributing plants. As testified to by Mr. Rasch at 1105-1107, any transportation credit should be used only to encourage the most efficient movement of milk – that is, directly from farm to distributing plant – and there are adequate reserve supplies within the Mideast Order for reasonable direct ship movement of milk to deficit regions within the Order. In addition,

no encouragement should be given to pool riding by distant supplies by providing any incentive to establish supply plants outside of the marketing area to facilitate compliance with touch base performance requirements for individual producers. For these reasons, MMPA opposes any effort to expand Proposal No. 9 to apply a transportation credit to milk shipped from a supply plant to a distributing plant regulated by the Mideast Federal Order.

Respectfully submitted,

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