

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

In the Matter of	: Docket Nos.:
	:
Milk In The Mideast	: AO- 166-A72;
	:
Marketing Area	: DA-05-01

**COMMENTS UPON THE TENTATIVE PARTIAL DECISION ON
BEHALF OF DAIRY FARMERS OF AMERICA, INC. (DFA), MICHIGAN
MILK PRODUCERS ASSOCIATION, INC., (MMPA), NATIONAL
FARMERS ORGANIZATION, INC. (NFO), DAIRYLEA COOPERATIVE
INC. (DAIRYLEA) AND LAND O'LAKES, INC. (LOL)**

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Date: September 26, 2005

I. INTRODUCTION

These comments upon the Tentative Partial Decision and Proposed Rule, published July 27, 2005, are submitted on behalf of Dairy Farmers of America, Inc. (“DFA”); Michigan Milk Producers Association, Inc. (“MMPA”); National Farmers’ Organization Inc. (“NFO”); Dairylea Cooperative Inc. (“Dairylea”); and Land O’Lakes Inc. (“LOL”). The hearing proposals concerned (1) appropriate pooling standards for Order 33, including the potential dual pooling of milk; (2) depooling and repooling of milk; and (3) transportation credits for movement of milk to Class I plants. The tentative partial decision addressed the first set of issues, appropriate pooling standards in Order 33.

II. POOLING PROVISIONS OF ORDER 33

The tentative partial decision embodies a reasoned review of the hearing record on the issues addressed and implements an appropriate application of the principles of performance pooling for federal milk orders. These cooperatives commend and support the tentative partial decision on each of the issues reflected in Proposals 1 and 2. We support the adoption of Proposal 1 which eliminates the possibility of dual pooling of milk on state and federal marketwide pools. We support the adoption of proposal 2, as modified, which increases the performance requirements for 7(c) supply plants, 7(d) cooperative plants, and 7(e) contract plants. We further agree that cooperative plants should be located in the marketing area, which is a modification to Proposal 2. We further support the adoption of Proposal 2's changes in the

diversion limitations of Section 13(d) of the Order. All of these amendments will enhance the marketing and pooling of milk in Order 33.

These cooperatives wish to further commend the Department for the straightforward findings and rationale of this interim decision which makes clear that the pooling provisions of federal milk orders must be related to performance for, and service of, the Class I market, which is a central purpose of the marketing orders. In this tentative final decision the Department has held to this important standard in the face of opposition from the White Eagle Federation which seeks to change the focus of milk order provisions from performance pooling to market structure or market access assurance. The White Eagle approach is neither reflective of the purposes of the AMAA,¹ nor founded in historical administrative practice in milk order administration, nor supported by this hearing record.² The Tentative Partial Decision properly rejects the White Eagle invitation to deviate from the established purpose and statutory focus of federal milk orders.

III. CONCLUSION

These proponent cooperatives respectfully request that Proposals 1 and 2, as modified, be promptly adopted on a final basis. The aggregate impact of adoption of these proposals should modestly enhance the Order 33 pool. Moreover, permanent adoption of these proposals will help eliminate the current disorderly conditions in Order 33 and further the purposes of the

¹ See 7 U.S.C. § 602 (Declaration of policy)

² See, e.g., the testimony of White Eagle's primary witness, Dr. Cotterill, whose opinions concerning anticompetitive issues were made on the basis of what could only fairly be characterized as rumors, *i.e.* reports of anticompetitive conduct "which people were talking about . . . it has not been verified." (TR. 853)

Agricultural Marketing Agreement to establish orderly marketing conditions in fluid milk markets.

We trust that decisions will shortly be forthcoming on the other important issues from this hearing – the open depooling of milk, and the need for transportation credits for deliveries of milk for Class I uses in Order 33.

Respectfully submitted.

Date: September 26, 2005

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