MID-WEST DAIRYMEN'S CO.

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February 20, 2004

Mr. Richard McKee
Deputy Administrator
USDA/AMS/ Dairy Programs
South Building – Room 2968
STOP 0225
1400 Independence Avenue S.W.
Washington, DC 20250-0225

RE: Request for Hearing on Order 30 Pooling Limits and Transportation Credit

Dear Mr. McKee,

This proposal is submitted on behalf of the producer-members of Cass-Clay Creamery Inc., Dairy Farmers of America, Foremost Farms USA, Land O'Lakes, Mid-West Dairymen's Company, Milwaukee Cooperative Milk Producers, Manitowoc Milk Producers Cooperative, Swiss Valley Farms, and Woodstock Progressive Milk Producers. (The Cooperatives). These Cooperative and their dairy farmer members supply approximately 43% of the milk pooled on Order 30 and over 59% of the milk delivered to Order 30 distributing plants. The Cooperatives are very concerned about the equitable sharing of the pool dollars since they supply a significant portion of the Order 30 Class I needs.

The Cooperatives request that USDA schedule a hearing on an emergency basis for this proposal which would limit the repooling of producer milk after depooling and change the pooling requirements for producer milk originating outside of the states where the Upper Midwest Marketing Area is located. The proposal would also limit the transportation credit to no more than 400 miles.

The basic purposes of the Federal Order has been to assure an adequate supply of milk for the fluid market and equitably share the dollars generated by the Federal Order regulations. For this purpose minimum prices and pooling requirements have been developed. The current situation makes it unattractive to supply the Class I market when there is a negative PPD and the resulting depooling. The returns to the producers who supply the fluid market are further eroded by milk from far outside the market area. This "distant" milk has not served the needs of the fluid market on a regular basis. The Cooperatives proposal would help level the playing field and restore fairness among the pool participants. The proposed language is in Attachment I.

Limit Repooling after Depooling. The Federal Order Class III value has occasionally surpassed the pool returns for Class I milk. It is not a new phenomenon. In the three years preceding the January 2000 implementation of Federal Order Reform there were negative PPD's in "old" Federal Order 30 in 12 of the 36 months – February, August, September of 1997; July, August, October, November and December of 1998; and April, July, August and September of 1999.

The Federal Order Reform Final Decision published in April 1999 recognized the problem of price inversions and depooling.

> *In the past when price inversions have occurred, the industry has contended with them by taking a loss on the milk that had to be pooled because of commitments to the Class I market, and by choosing not to pool large volumes of milk that normally would have been associated with Federal milk order pools. When the effective Class I differential is negative, it places fluid milk processors and dairy farmers or cooperatives who service the Class I market at a competitive disadvantage relative to those who service the manufacturing milk market.*
>
> *Milk used in Class I in Federal order markets must be pooled, but milk for manufacturing is pooled voluntarily and will not be pooled if the returns from manufacturing exceed the blend price of the marketwide pool. Thus, an inequitable situation has developed where milk for manufacturing is pooled only when associating it with a marketwide pool increases returns.*

The Final Decision addressed the depooling problem by using an advance Class I price mechanism determined by recent manufacturing prices. This approach worked for three and a half years. The negative PPD's returned in July 2003 as the marketplace price relationships changed. After the Class I/Class III price inversions self-corrected the negative PPD's continued because the Class II and IV prices were significantly lower than the Class III price.

The Cooperatives' proposal would restore some level of equity and fairness among producers and handlers by limiting the ability of depooled milk to repool. The concept of limiting repooling is not new. Order 1 has had a similar concept," Producer for Other Markets," in place for many years. The Cooperatives' proposal would not be as restrictive as exists in Order 1.

Under this proposal a handler could depool approximately 20% of the milk in one month and pool all of the milk the following month. A handler could easily depool 40% of the milk and have it 100% repooled in a few months. Obviously the greater the share of milk depooled the longer before the milk would be returned to full pool participation.

Change the requirements for pooling "distant" milk. The milk from far outside the marketing area, "distant" milk, has made virtually no deliveries to the fluid market. The Order requires one day's production to be delivered to a pool plant during the first month the milk is pooled. Often the pool plant is not even a fluid plant, but a pool supply plant.

This "distant" milk continues to qualify for a share of the pool proceeds through the deliveries of "local" producer milk. The "local" producers or handler will generally receive some sort of compensation through a "pooling fee." Only a handful of handlers are the recipient of this "pooling fee". Many producers and handlers who supply the fluid market receive none of the "pool fee" compensation but carry the burden of reduced returns due to the dilution of the pool proceeds. The returns to producers and handlers who supply the fluid market are inequitable since some receive the "pooling fees" and some do not.

The "distant" milk pooled on Order 30 has grown over the last few years. The growth of milk pooled on Order 30 from Utah and Idaho is shown below:

	MILLION POUNDS
JUN 2000	0
DEC 2000	0
JUN 2001	69
DEC 2001	120
JUN 2002	153
DEC 2002	156
JUN 2003	195
DEC 2003	264

The Cooperatives project that if and when the Western Order termination is effective this volume will grow further – perhaps by an additional 150 million pounds or more.

The impact of the "distant" milk on the PPD is shown in Attachment 2. The straight average of the actual PPD for 2003 is $-.053; without any Idaho or Utah milk the estimated PPD average would be $.193; and with the actual Idaho and Utah pooled milk and 50% of the Western Order Class III and IV, the estimated PPD average would be $-.102. The conclusion we draw is that the "distant" milk from Idaho and Utah cost the producers who actually serve the Order 30 fluid market $.246/per hundredweight, the difference between the actual PPD and what the PPD would have been without the Idaho and Utah milk. The "distant" milk from the Western Order will likely "cost" these same producers an additional $.049, the difference between the $-.053 actual PPD and the $-.102 projected PPD with the Western Order milk. This is a total estimated impact on the income of the Upper Midwest dairy farmers who actually supply the Class I market of almost $.30 per hundredweight.

The Cooperatives' proposal would require the "distant" milk to meet the Order 30 pooling requirements solely based on the performance of the "distant" milk. The "distant" milk would not be able to divert to nonpool plants and would need to perform through deliveries from supply plants to Order 30 distributing plants. By pooling in this fashion the "distant" milk would establish that it truly was part of the Order 30 market and deserved a share of the pool proceeds.

Inseparability of the Proposal. There may be a desire to only address the repooling after depooling or the distant milk. The two can not be separated. They are "joined at the hip."

Fixing depooling/repooling is at best a hollow improvement if it does not include more detailed performance requirements for the distant milk. The ever increasing volumes of distant milk must actually serve the fluid market and not just "paper pool" if it is to share in the pool proceeds. Similarly, to only change the pooling requirements for the distant milk is not adequate. The reality is even with changes in the pooling requirements distant milk will create havoc in the Order 30 pool if depooling/repooling is not addressed. The distant milk will jump in and out of the pool whenever the pooling returns warrant. This is best shown by comparing the Uniform Price and the Class IV Price in 2003.

2003	ORDER 30 STATISTICAL UNIFORM PRICE ZONED TO IDAHO ($-.20)	CLASS IV PRICE	DIFFERENCE
JAN	10.16	10.07	.09
FEB	9.93	9.81	.12
MAR	9.45	9.79	(.34)
APR	9.67	9.73	(.06)
MAY	9.91	9.74	.17
JUN	9.93	9.76	.17
JUL	11.17	9.95	1.22
AUG	12.02	10.14	1.88
SEP	13.03	10.05	2.98
OCT	13.31	10.16	3.15
NOV	13.20	10.30	2.90
DEC	12.21	10.52	1.69

In the early part of the year it would not have been profitable to pool distant Class IV milk, especially if 10% of the distant milk would be required to deliver to an Order 30 distributing plant. In the fall as the difference between the Uniform Price and the Class IV Price widens it becomes much more profitable to pool, even if that pooling requires 10% of the pooled milk to move 1,500 or more miles.

To limit the hearing to only distant milk or only to depooling/repooling would not be equitable to those producers who actually service the needs of the fluid market on an ongoing basis each and every month.

Limit Transportation Credits. Transportation credits are received from the Order pool to assist in the cost of moving milk from supply plants to distributing plants. Transportation credits do not apply to direct ship milk or diverted milk. In 2003 88% of the milk receiving the transportation credit traveled less than 200 miles and all eligible milk transportation was within the proposed 400 mile limitation.

In summary we ask that USDA correct the inequity that exists due to the repooling of depooled milk and the pooling of distant milk. The only way that the dairy farmers who supply the fluid market can gain and maintain a level playing field is for USDA to call a hearing on an emergency basis and act as soon as possible.

We would appreciate the opportunity to visit with you and your staff concerning our proposal, answer any questions, or provide additional information.

Thank you for your consideration of our proposal.

Sincerely,

Dennis Tonak, Manager

MID-WEST DAIRYMEN'S COMPANY

On Behalf of:

Cass Clay Creamery Inc.

Dairy Farmers of America

Foremost Farms USA

Land O' Lakes

Mid-West Dairymen's Company

Milwaukee Cooperative Milk Producers

Manitowoc Milk Producers Cooperative

Swiss Valley Farms

Woodstock Progressive Milk Producers

DT/km
Cc: Paul Kyburz
Attachment

Attachment 1

Possible Order Language

Add a paragraph § 1030.7(c)(1)(v) to read as follows:

* * * * *

(v) Qualifying shipments by plants located outside the States of Illinois, Iowa, Minnesota, North Dakota, South Dakota, Wisconsin, and the Upper Peninsula of Michigan may be made only to plants described in paragraphs (c)(1)(i) of this section.

Revise § 1030.7(c)(2) to read as follows;

§ 1030.7(c) Pool Plant.

* * * * *

(2) The operator of a supply plant located within the States of Illinois, Iowa, Minnesota, North Dakota, South Dakota, Wisconsin, and the Upper Peninsula of Michigan may include as qualifying shipments under this paragraph milk delivered directly from producers' farms pursuant to §§ 1000.9(c) or 1030.13(c) to plants described in paragraphs (a), (b) and (e) of this section. The operator of a supply plant located outside the area described above can not include such shipments as qualifying shipments. Cooperative associations may not use shipments pursuant to § 1000.9(c) to qualify plants located outside the marketing area.

* * * * *

Change the introductory paragraph of § 1030.13(d) to read as follows:

§ 1030.13 Producer Milk.

* * * * *

(d) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c) to a nonpool plant (except a distributing plant fully regulated under another Federal order), located in the States of Illinois, Iowa, Minnesota, North Dakota, South Dakota, Wisconsin, and the Upper Peninsula of Michigan, subject to the following conditions:

* * * * *

Add a paragraph (f) to § 1030.13 as follows:

§ 1030.13 Producer Milk

* * * * *

(f) Except in the month of August, the quantity of milk reported by a handler pursuant to § 1030.30(a)(1) and/or § 1030.30(c)(1) for September through February, and April through July may not exceed 125 percent, and March may not exceed 135 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, other than pool distributing plants, shall be classified pursuant to § 1000.44(a)(3)(v) and § 1000.44(b)(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 market administrator will make the determination. The following provisions apply:

(1) Milk shipped to and physically received at pool distributing plants shall not be subject to the 125 or 135 percent limitation;

(2) Producer milk qualified pursuant to § ____.13 of any other Federal Order and continuously pooled in any Federal Order for the previous six months shall not be included in the computation of the 125 or 135 percent limitation;

(3) The market administrator may waive the 125 or 135 percent limitation;

(i) For a new handler on the order, subject to the provisions of § 1030.13(f)(3), or

(ii) For an existing handler with significantly changed milk supply conditions due to unusual circumstances;

(4) 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.

Revise paragraph § 1030.55(a)(2) to read as follows:

§ 1030.55 Transportation Credits and Assembly Credits

* * * * *

(2) Multiply the hundredweight of milk eligible for the credit by .28 cents times the number of miles, not to exceed 400 miles, between the transferor plant and the transferee plant;

* * * * *

Attachment 2:

Actual Upper Midwest Producer Price Differentials and Estimated Upper Midwest Producer Price Differential for 2003 Based on Various Assumptions

2003	Actual Producer Price Differential	Estimated Producer Price Differential After Removing Producer Milk Pooled From Idaho and Utah	Estimated Producer Price Differential After Adding 50% of the Class III and Class IV Producer Milk Pooled on The Western Order
	$/cwt		
January	.58	.62	.53
February	.47	.52	.44
March	.54	.57	.50
April	.46	50	.42
May	.40	.43	.37
June	.38	.40	.35
July	(.41)	(.18)	(.44)
August	(1.58)	(1.17)	(1.64)
September	(1.07)	(.34)	(1.16)
October	(.88)	(.08)	(.95)
November	(.07)	.34	(.13)
December	.54	.71	.49

Requested by: Dennis Tonak, Mid-West Dairymen's Company
Prepared by: Henry Schaefer, Upper Midwest Market Administrator's Office
Date: February 19, 2004