

Before the Secretary  
United States Department of Agriculture

Regarding Milk in the Central Marketing Areas  
Docket No. AO-313-A48; DA-04-06

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Comments and Exceptions to Recommended Decision

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Land O'Lakes (LOL) is a dairy cooperative with more than 3,300 dairy farmer member-owners. The cooperative has a national membership base, whose members are pooled on six different Federal orders. Land O'Lakes has long maintained a pooled supply of member milk on the Central Market.

Land O Lakes agrees with the Secretary in that issues relating to pooling and de-pooling producer milk are best handled as local concerns. Market conditions in the various orders should define the individual order provisions relating to pooling producer milk. Following are comments regarding the de-pooling part of the Recommended Decision for the Central Order. Land O'Lakes proposes two recommendations to the de-pooling part of the Recommended Decision.

**The Secretary Should Consider Calendar Composition When  
Setting the March Pooling Percentage**

Land O'Lakes agrees with the adoption of Proposal 2 of the Hearing Notice. That proposal will limit the volume that any handler can pool on the Order to 125 percent of the previous

month's pooled volume. This common-sense approach limits de-pooling by handlers, yet does not require the burdensome producer accounting incumbent with the dairy-farmer-for other-markets approach.

Land O'Lakes recommends that the Secretary recognize the issue of calendar composition and set the allowable percentage of March deliveries at a higher value than the other months. Due to the practice of de-pooling without consequence, month to month comparisons of producer volumes pooled on Order 32 are misleading. However, Exhibit 10, page 18 shows the percentage change of month to month production between March and February is normally greater than other months. There are two apparent reasons: first, March has 31-days while February normally has 28-days; and milk production normally begins its seasonal growth in March.

The recommended decisions for Orders 30 and 33 recognized the importance of this issue and they set the March percentage at higher levels. Like Order 30, Land O'Lakes recommends that the percentage for March in Section 1032.13(f) be set at 135-percent.

### **The Secretary Should Clarify the Language of § 1032.13 (f) (1)**

Section 1032.13 (f) and its subsections define the volume of milk a handler is permitted to pool on Order 32, based on that handler's performance during the prior month. That section defines allowable pooled volume as 125 percent of the handler's previous month's pooled pounds. Subsections 1032.13 (f) (1) through (4) place limitations or additions on the volume calculated in Section 1032.13 (f). However, the interplay between Sections 1032.13 (f) and 1032.13 (f) (1) lend itself to two vastly different interpretations.

The first interpretation is the more restrictive one, where the language of (f) (1) would preclude the inclusion of distributing plant deliveries in the 125 percent calculation. Following this interpretation a handler who pools 100 million pounds, including 30 million pounds of distributing plant deliveries, would be limited to 117,500,000 of allowable pooled pounds in the subsequent month. The arithmetic for this calculation is  $((100 - 30) \times 1.25) + 30 = 117.5$

Obviously this interpretation is contrary to the intent of the proponents because as the percentage of a handler's distributing plant deliveries increases, the allowable pooled volume for that handler decreases.

The second interpretation is more permissive. Following this interpretation, a handler's distributing plant deliveries are included in the total pooled volumes that are multiplied by 125 percent in section (f) and again added to that product through section (f) (1). Arithmetically this interpretation would allow a handler with a Class I utilization equal to marketwide utilization to de-pool all of his Class III volume without consequence.

The following hypothetical illustrates the second example. A handler has monthly sales equal to the marketwide utilization in Month 1. Because of a Class III price inversion, the handler chooses to de-pool all of his Class III sales in Month 2. While current order regulations allow the handler to re-pool all of his Class III volumes in Month 3, the intent of the Recommended Decision is to limit de-pooling by placing financial consequences on a handler's ability to re-associate de-pooled milk on the Order.

However, a literal interpretation of the language of the Recommended Decision would allow this handler to re-associate all his de-pooled Class III milk in Month 3. Section 1032.13(f) allows this hypothetical handler in Month 3 to pool 69,000,000

pounds, 125% of the previous month's pooled volume (125% of 55,200,000). Additionally, Section 1032.13(f) (1) allows the handler to pool all deliveries to distributing plants during Month 3. The resulting sum of the two provisions is 100,200,000 pounds, which is greater than the handler's pooled volume in Month 1.

	Month 1	Month 2 <b>De-pool All Class III</b>	Month 3
Class I	31,200,000	31,200,000	
Class II	12,200,000	12,200,000	
Class III	44,800,000	0	
Class IV	11,800,000	11,800,000	
	100,000,000	55,200,000	

Allowable Re-pooling  
Month 3:

125% of Pooled Volume	69,000,000
Plus Class I	31,200,000
<b>Total Allowable Pooling</b>	<b>100,200,000</b>

Land O'Lakes doubts that it was not the intent of the proponents of Proposal 2 to permit handlers with marketwide Class I utilization to de-pool all of their Class III volumes without consequence.

Land O'Lakes offers the following recommendation to clarify section (f) (1):

**§ 1032.13 (f) (1)** Milk shipped to and physically received at pool distributing plants in excess of the volume shipped to and physically received at pool distributing plants in the prior month shall not be subject to the 125 or 135 percent limitation;

The suggested language allows a handler who increases sales to distributing plants in the subsequent month to exempt the incremental Class I sales increase from the limitations of the 125-percent pooling restrictions. Without any incremental Class I sales, the suggested revision would allow the hypothetical handler to pool 69,000,000 pounds in Month 3; 86,250,000 pounds in Month 4 and all of his Month 1 volume in Month 5.

As a conforming change, Land O'Lakes recommends that the third sentence of Section 1032.13(f) be changed to:

§ 1030.13(f) Milk received at pool plants in excess of the 125 or 135 percent limit, be classified pursuant to §1000.44(a)(3)(v) and 1000.44(b).

It is assumed that the handler or market administrator shall first allocate distributing plant deliveries to the allowable pooled volumes. This conforming change will allow milk delivered to distributing plants to be classified as "dairy farmer for other markets" if the handler's §1032.7(a) deliveries exceed the handler's allowable pooled volumes.

Land O'Lakes thanks the Department for addressing these issues of pool equity in Order 32 and respectfully submits these comments and exceptions to the Recommended Decision.