

STATEMENT

PROPOSAL NO. 3

NORTHEAST FEDERAL MILK ORDER HEARING

DOCKET NOS. AO-14-A70; DA-02-01

HELD SEPTEMBER 10, 2002

IN ALEXANDRIA, VIRGINIA

**DAVID C. ARMS, SR.
ECONOMIC CONSULTANT**

ON BEHALF OF

**NEW YORK STATE DAIRY FOODS, INC.
201 SOUTH MAIN STREET, SUITE 302
NORTH SYRACUSE, NY 13212-2166**

PROPOSAL NO. 3:

New York State Dairy Foods, Inc. (NYSDFI) proposes to amend the producer milk definition in Section 1001.13, by adding new paragraphs (d)(3) through (d)(6) to read as follows:

Section 1001.13 Producer Milk.

* * * * *

(d) * * *

(3) The equivalent of at least two days' milk production of a dairy farmer is caused by the handle to be physically received at a pool plant in each of the months of August through December;

(4) Of the total quantity of producer receipts during the month (including diversions), the handler diverts to non-pool plants not more than 60 percent of such receipts in each of the months August through December and not more than 75 percent in each of the months January through July;

(5) Any milk diverted in excess of the limits set forth in paragraph (d)(4) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to designate the dairy farmer deliveries which are ineligible, producer milk status shall be forfeited with respect to all milk diverted to non-pool plants by such handler; and

(6) The delivery requirements and the diversion percentages in paragraphs (d)(3) and (d)(4) of this section may be increased or decreased by the market administrator if the 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 to be made 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.

JUSTIFICATION FOR PROPOSAL 3:

This amendment is being proposed, because we are finding the current Reform Order pooling provisions far too liberal. Since its inception in January 2000, the new provisions have resulted in abusive "pool riding" practices and the association of milk from distant sources not readily available to handlers to satisfy market fluid milk needs during the pool qualifying months August through December.

Because the Northeast Order has unlimited diversion rules and frequently enjoys a higher classified use value than certain other markets, some handlers have been able to draw the higher Northeast Order pool producer differential (PPD) returns for their milk, without establishing a meaningful and continuing association with Order 1 pool plants. Under the new pooling standards, a handler can pool milk indefinitely in order 1, simply on the basis of a single delivery to a pool plant. The handler then diverts unlimited quantities locally at a special net pricing advantage than is otherwise available on the milk. The end-result is in an unwarranted transfer of order 1 PPD funds, because the diverting handler has no intention of becoming a regular source of reserve milk for the Northeast Order. Rather, the milk is moved to a pool plant in order 1, only as necessary to qualify for the higher PPD payment. Under these circumstances, producers and handlers in Order 1 find themselves once again carrying some of the “reserve” associated with another market.

We propose to restrict such abuse of the pooling privilege, by requiring that at least two day’s milk production from each dairy farmer in the pool, must “touch base” at a pool plant in each of the pool qualifying months, rather than only once. Secondly, we propose to limit the diversions of pool milk to non-pool plants throughout the year—to no more than 60 percent August through December and to no more than 75 percent in other months. We also propose in 1001.13(d)(5), standard de-pooling language found in other orders for over-diverted milk along with provision in (d)(6) allowing the market administrator the means to adjust the diversion limits as orderly marketing conditions may require.

Data on page 87 of exhibit # 5, shows very clearly the dramatic extent of “pool riding” taking place in the Northeast in recent years under order reform. From the data, we note dramatic increase in producer milk receipts from distant sources, especially in the “flush” season, exceeding 100 million pounds from more than 800 producers in some months. The milk involved came from such distant sates as Idaho, Minnesota, Wisconsin, Michigan, and Utah. None of this milk was needed to balance fluid milk needs here. Much of it was diverted elsewhere, rather than being physically received on a regular basis at pool plants in the Northeast.

Similarly, the data on pages 2 and 3, Exhibit 5, showing the number of producers and daily average output of producer milk, originating from states outside the Northeast, gives a clear picture of the seasonal swings in the these receipts-- obviously pooled to the disadvantage of northeastern producers.

Adoption of our proposed amendments in proposal No. 3, would alleviate the “pool riding” problem by placing reasonable seasonal limits on diversions of pool producer milk to non-pool plants. Precedent for such diversion limits had previously been established in the northeast in the former orders prior to merger in 2000. Our proposal is also similar to that recently made effective in the Mideast Federal Order and is designed to correct similar problems. Provision for more restrictive diversion limits in the pool qualifying months August through December, (60 percent vs. 75 percent in other months) better assures availability of fluid milk supplies at pool distributing plants when needed. Diversions in excess of 75 percent in the non-qualifying months should be de-pooled,

because it involves the pooling of excess reserves at pool producers' expense. The 75 percent limit allows enough flexibility to handlers to schedule diversions of producer milk for manufacturing as may be necessary, without losing pool status.

NYSDFI strongly urges the adoption of proposal No. 3, to eliminate clear-cut abuse of the present pooling provisions in the Order.

This concludes our statement on Proposal 3.