



Serving Northwest Dairy Producers Since 1931

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December 17, 2007

Ms. Dana Coale, Deputy Administrator
USDA - AMS - Dairy Programs
1400 Independence Avenue SW
Washington, DC 20250-0225

Dear Ms Coale:

Farmers Cooperative Creamery, (FCC) is providing these written comments and contingent alternative proposals in response to the DFA and NDA request for a Hearing to consider expanding the Pacific Northwest Federal Order to cover the entire states of Washington, Oregon, Idaho and Utah.

FCC is a cooperative association which acts as a handler in the Pacific Northwest Federal Order, Market Order 124. FCC processes or markets the milk of about 80 producers associated with the Pacific Northwest Order and markets about 675 million pounds milk annually. As the second largest cooperative operating within the PNW order, the provisions being proposed for this expansion of the PNW order are of great importance to FCC and, if adopted, may adversely affect the blend price paid to FCC member producers.

It has been extremely difficult to capture data relating to this request for the period after March 2004 due to lack of data since the area is unregulated and proponents provided few factual details in development of their initial requests. We are aware that some additional material has been prepared by the Market Administrators' offices at the request of interested parties. This material reinforces our preliminary view that a hearing to expand the PNW market is not warranted. We will therefore first comment on the concept of the market expansion proposal in hopes that our questions and concerns can be addressed.

A Hearing to Expand the PNW Market is Not Justified Based on Current Data.

FCC understands that section 900.3 of USDA's Rules of Practice ordinarily requires Dairy Programs to undertake an "investigation" of hearing proposals to determine if the proponents have made a prima facie case for a hearing in light of standards established by the Act and by policy precedent of the agency. We further understand that USDA must hold a hearing under section 17 of the Act (7 U.S.C. 608c(17)), if one-third or more of individual producers (not cooperatives as producer representatives) petition the Secretary for a hearing in writing. No section 17 petition has been submitted by proponents. USDA therefore has the discretion to hold or not hold a hearing on the DFA and NDA requests based on its preliminary investigation. Farmers Cooperative Creamery suggests that USDA's initial response to the DFA and NDA proposal should be to deny a hearing at this time.

Established USDA standards for expansion of a milk marketing area, or for market merger, give great weight to evidence of overlap in the sales area of distributing plants.

Other factors include overlap in milk supply procurement areas, sources of supplemental milk supplies, and need to attract supplemental milk for a common milk pool. These standards or criteria applied before federal milk order reform, during the reform process for defining the existing regional markets, since federal order reform in consideration of market merger proposals for the Southeast and Appalachian markets, and in addressing pooling issues involving milk from outside of traditional procurement areas of several markets.

The DFA and NDA request for hearing does not quantify any overlap in distributor sales, but only observes that "there is handler competition" and that "the current Order 124 handler list indicates overlap." This is apparently a reference to reported sales in the PNW market by partially-regulated plants located in Idaho or Utah -- an extremely small volume according to supplemental data prepared by the M.A. There are probably some sales by fully-regulated PNW plants into unregulated portions of Idaho, Utah and eastern Oregon, but out-of-area distribution by PNW plants as a whole is small, as it was prior to termination of the former Western Order. Further, proponents provided no information available to them about such out-of-area distribution from pool plants that they control or supply. This lack of supporting data from proponents allows USDA to make an inference that supporting evidence would also be lacking at a hearing. At a minimum, lack of objective facts available to proponents, and responsive to established market expansion criteria, provides USDA with the opportunity to require proponents to supplement the factual basis for a hearing, and its parties, before a decision is made whether or not to hold a hearing that will result in substantial expense to the agency and interested parties.

There is also no significant overlap in the milksheds for the PNW market and the former Western Market based on data from the former Western Market pool, and information subsequently compiled by the Market Administrator. Supplemental milk from outside the PNW is not needed to serve the PNW market. In summary, current data show...

- The PNW already one of lowest class I Utilization orders;
- There is little movement of raw milk or finished goods between the PNW market and the former Western Market;
- Order rules already allow for movement of milk into PNW under certain requirements, and already allow for legitimate movements of outside milk to PNW distributing plants, if ever needed.

True, there has been some periodic opportunistic pooling of milk from Idaho on the PNW market, but this can be addressed by amendments to the PNW order without expansion of the order into the milkshed from which opportunistic pooling originates. If source of opportunistic pooling is a good reason for market expansion, the current Central and Mideast Markets would have been merged by now with the Upper Midwest.

Expanding the PNW to cover Idaho in the foregoing circumstances could also result in disorderly marketing, adversely impacting PNW producers that do serve to Class I Market:

- PNW producers will be sharing Class I dollars with a large Idaho milk supply that has never served and remains unnecessary to meet the PNW Class I market needs.
- What happens to the 400-500 million pounds per month of available Grade A milk, mostly in Idaho, that is not currently associated with a Class I Market and would not be pooled under the DFA and NDA proposals?

- The proposed expansion will create "haves and have-nots" in regards to pooling access, and create aggressive competition for the ability to pool Milk. This will lead to unhealthy conditions relating to pool access, and most likely negatively impact the over-market premium programs in place in the PNW.
- This competition for inclusion in the pool will create great incentives for both uneconomic movements of milk and for sale of pooling access by existing suppliers of Class I markets.
- The competition for pooling rights will most probably affect the over-market premium programs now in place in the PNW.

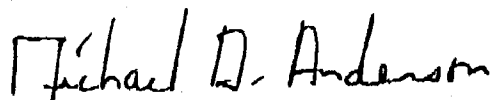
USDA Should Entertain Proposals to Regulate the Former Western Market Without Expansion of the PNW Market to Include Idaho and Utah.

FCC sees no reason to consider expanding the PNW market to cover Idaho and Utah. However, FCC does acknowledge that if USDA wishes to consider regulatory options for producers in Idaho and Utah independent from an expanded order, it will have several options recommended by other interested parties in this hearing process. These options could include:

- Implementation of an information-only Western Order, which would supply market information, while deferring any price regulation until the market structure is better understood.
- Reinstating the original Western Order, as implemented in January 2000.
- Put in place the recommended final decision for the Western Order as presented in November 2005.
- Consider proposals for a more appropriate geography for a new Western order, dependent upon milk sales and movements. We understand that Dean Foods is considering such a proposal.

FCC is opposed at this time to holding a hearing for the expansion of the PNW order to Cover Idaho and Utah for the reasons stated above, and based on facts currently available to us. However, FCC is not opposed to the idea of re-regulation of the former Western Order Marketing Area. If producers in Idaho and Utah want to re-regulate their market in some fashion, FCC recommends that USDA consider the proposals submitted for Idaho and Utah market.

Sincerely,



Michael D. Anderson