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Docket No. AO-361-A39; DA-04-03B

Title: Milk in the Upper Midwest Marketing Area: Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and Order

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### **Supplemental Comments of the Wisconsin Cheese Makers Association**

Wisconsin Cheese Makers Association submits these comments as supplemental to comments to be filed by attorney John Vetne on behalf of “AMPI Group.” Wisconsin Cheese Makers Association is a member of the “AMPI Group.”

Below, Wisconsin Cheese Makers Association (WCMA) notes USDA direct quotes from the February 22 Recommended Decision (as published in the Federal Register) and offers comments on these quoted conclusions.

Federal Register Page 9012 (column 2) ...”when a dairy farmer or cooperative is able to receive increased returns from shipping milk to a manufacturing handler during times of price inversions, other dairy farmers or cooperatives who may have shipped more milk to a pool distributing plant are competitively disadvantaged.”

#### ***Comments:***

WCMA disagrees with this statement. Each dairy producer in the federal order receives the blend price for milk during months when prices are inverted and in months when prices are not inverted. There are no increased returns from shipping milk to a manufacturing handler.

If a manufacturing handler de-pools milk, this handler is not subject to the order pricing and may or may not pay more than the blend price in the month de-pooled. This payment decision occurs outside the order structure is at the discretion of the milk buyer and is not relevant to the federal order.

The decision by some dairy farmers or cooperatives to ship milk to a pool distributing plant is a marketing decision, not a mandatory requirement. Some producers choose to serve the Class 1 milk and this business decision occasionally results in losses. This is ordinary risk in a free market economy, not a “competitive disadvantage.”

Federal Register Page 9012 (column 2) ...”when handlers and cooperatives opt to not pool milk inequities arise among the producers and handlers that are contrary to the intent of the federal milk marketing order program – maintaining orderly marketing conditions.”

#### ***Comment:***

USDA is extending the philosophy of orderly marketing and equity among and across all dairy producers to cover even business decisions. USDA is stating that inequities caused by some producers’ decision to serve the Class 1 market deserve protection (such as a change in re-pooling requirements). Yet this choice to serve the Class 1 market is entirely voluntary.

Federal Register Page 9012 (column 3) .....”additional measures are needed as a means of assuring that milk remains pooled and thus available to the Class 1 market. Adoption of Proposal 2 is a reasonable measure to meet the objectives of orderly marketing.”

**Comment:**

As noted in the AMPI testimony (Hearing Exhibit 40, page 7), milk in a given month is always available to the Class 1 market. The decision to de-pool is made after the end of a month. Thus the statement above by USDA is not accurate. In addition, Federal Order 30 has more than adequate milk supplies to assure milk moves to bottlers. With an average 15 percent Class 1 utilization, this market has no problem supplying milk for bottling.

Federal Register P 9012 (column 3) ...”Handlers and cooperatives opting to not pool milk do not account to the pool at the classified use-value of those milk receipts. They do not share the higher classified use-value of their milk receipts with all other producers who are pooled on the order, primarily the producers who are pooled on the order [who] are incurring the additional costs of servicing the Class 1 needs of the market.”

**Comment:**

This recommended decision appears designed to codify protection to those producers that make a voluntary marketing decision to serve the Class 1 market. In other words, producers that have made the business decision to de-pool are creating disorderly marketing, but producers that make the business decision to serve the Class 1 market through potentially costly long-term contracts are not creating disorderly marketing. With this decision to limit re-pooling, USDA is protecting the business decision made by one group of dairy producers and limiting the business decisions of another group. This is merely another form of inequity.

Federal Register P. 9013 (column 1) ...”Adoption of this standard will not prevent manufacturing handlers or cooperatives from electing to not pool milk. However, it should serve to maintain and enhance orderly marketing by encouraging participation in the marketwide pooling of all classified uses of milk.”

**Comment:**

WCMA is not certain that USDA is required to “encourage participation” in pooling all classes of milk. The order is to assure an adequate supply of fluid milk and is to equitably share revenues from the sale of milk. The order continues to recognize that participation in the pool is voluntary.

Is it the government’s role to create disincentives to exercise the voluntary right to not participate in pooling? By limiting repooling, USDA is writing into the order an inequity in the price that dairy producers shipping milk to manufacturing handlers will receive. USDA is addressing a perceived inequity faced by dairy farmers shipping milk to pool distributing plants by creating a real inequity in price for producers shipping to manufacturing plants. WCMA believes that USDA is creating a new inequity with this recommended decision.

**In Conclusion:**

USDA has attempted to remedy a situation that it perceives to be a cause of disorderly marketing and inequity among producers in Federal Order 30. However, the problem addressed is not caused by the order and does not need relief by changing the order. The cause is business marketing decisions made by some producers in the market – the decision to serve the Class 1 market. With this recommended decision to limit repooling, USDA is simply creating a new inequity among producers. Producers that make a business marketing decision to de-pool will be denied pooled dollars in subsequent months. With this decision, USDA is placing into the order a purposeful inequity in the pay prices received by producers. USDA cannot and should not codify inequity in the price paid to dairy producers.

USDA should reject Proposal 2 (as it pertains to depooling).