EXHIBIT NO. 44
Metropolitan

Statement by Erick Metzger

On Proposals 1, 4 - 13

My name is Erick Metzger and I am employed as General Manager of National All-Jersey, Inc. (NAJ) with offices at 6486 E. Main St., Reynoldsburg, OH, 43068. I have served in this capacity for the past six months. My work experience includes 12 years with the American Jersey Cattle Association as Herd Services Manager, and prior to that, ten years with the American Guernsey Association in various capacities including five years as its CEO. I earned a Bachelor's degree in Animal Science from Purdue University in 1982 and a Master's of Business Administration from Franklin University in 1999.

NAJ is a national membership organization incorporated in 1958. It currently includes approximately 1,000 members, and ~~half and two-thirds of~~ over 80% them qualify small businesses. With annual revenues of just under $400,000, NAJ itself qualifies as a small business. NAJ's mission is two-fold. First, to promote equity in milk pricing. Second, to increase the value of and demand for Jersey milk.

My first personal experience with the impact of amending federal milk marketing orders happened during my youth. I was raised on my family's farm in northern Indiana, which included a 40-cow herd of Registered Guernseys. We produced milk that was marketed by a cooperative as fluid milk under the Golden Guernsey trademark label. Given the demand for that milk, everything we produced was sold to consumers as fluid milk, and we were paid the Class I price for 100% of our milk. Then the federal orders were amended to include market wide pooling, and even though all of our milk was still sold as higher value fluid milk, we were paid a lower price based on the market wide pool. This change had a significant negative impact on our family's income. In my family's case, we enjoyed a pricing benefit that was yielded to 'have-not' producers for the good of all producers.

My testimony in this case is to urge the Secretary to resist what may seem to be a politically attractive proposals, by the nation's largest milk cooperative, and by the nation's largest milk processor, to artificially limit market access and to edge the federal order system back towards have and have-not producers. This testimony addresses proposal 1 and on Dean proposals 4 – 13 as they may be advanced for purposes other than solely as a response to depooling. Neil Gulden previously gave testimony on depooling proposals.

This testimony is presented on behalf of National All-Jersey, in the interests of its members throughout the federal order system, Central Equity Milk Cooperative, Associated Milk Producers, Proposed by Foremost Farms USA Cooperative, First District Association, Land O'Lakes, Inc., Wells Dairy, and Milnot Holding Company. The cooperatives for whom I present this testimony marketed in excess of 200 million pounds of milk, from over 1,200 producers, on the Central Order during June 2004. The vast majority of these producers are small businesses, and these small businesses would bear the brunt of burdens proposed by DFA, Prairie Farms and Dean Foods, to make access to the Central Order pool more costly and less efficient.

Land O'Lakes, including its predecessor cooperatives, has marketed milk to plants regulated under the Central Order (or its predecessors), since the 1960's, primarily in the St. Louis area and Eastern South Dakota. Foremost and its predecessors, likewise, has supplied milk to plants in the Central Order, primarily Anderson-Erickson and Prairie Farms, since the 1960's.

Central Equity is not as familiar to USDA or the industry as AMPI, LOL, and others interested in this hearing. Central Equity, a Capper-Volstead cooperative, was organized in Southwest Missouri as a cooperative corporation in March 1987, with the cooperation and assistance of Calvin Covington and David Brandau of National All Jersey, to secure improved markets and component premiums for high solids producers. From 1989 to 2004, Central Equity producers marketed their milk with protein or solids premiums through or to regulated handlers. From 1987- 1988 through Southern Milk Sales to

Oxford Cheese in Kansas, and other customers. The market to Oxford Cheese ended when Mid-Am bought the plant. From 1988 to 1994 to Farm Fresh in Chandler, Oklahoma. From 1994 to 2003 to Kraft Foods in Bentonville, Arkansas. During 2003, Kraft notified producers that all procurement functions had been transferred to Dairy Marketing Services (DMS), and later that year DMS announced that protein premiums would end and producers' promotion dollars would be sent to Midwest Dairy instead of the Southwest Dairy Museum. Further, DFA shipped its own milk to Kraft, and displaced DMS milk was shipped to Cabool, at a lower differential.

Central Equity's predicament of milk in search of a home was resolved in early 2004, again with the assistance of NAJ, when it came to Central Equity's attention that Milnot might represent a home in search of milk. Since March 2004, Central Equity has marketed milk to Milnot in Seneca, Missouri, to Wells Dairy in Iowa, and ~~expects to market milk~~ to a fluid plant in metropolitan St. Louis starting this ~~next~~ month. Currently, Central Equity markets in excess of 20 million pounds of milk per month from about 190 dairy farms. These are located in Missouri, northeast Oklahoma, Kansas, Southern Illinois, Iowa, and Arkansas. Central Equity producers, to secure a place in the Central Order pool like their dairy farm neighbors, are pooled through Wells Dairy, and are required to 'touch base' at the Wells Dairy plant in Iowa because there is no closer 'touch base' facility accessible to Central Equity.

95% are small business

The Milnot Company was founded in 1912 in Litchfield, Illinois. The Seneca plant was built in the late 1948 1940's on the Oklahoma-Missouri line – literally: the state line runs through the plant – and has been producing condensed and evaporated milk products since that time. Milnot no longer owns the Litchfield plant. DFA and its predecessors supplied the Milnot plant for many years. In September 2003, when the supply contract was up for renewal, DFA advised Milnot that it no longer needed Milnot as an outlet and that it could not offer milk long term because all of the milk from the procurement area would be needed in June ~~after early~~ 2005 at a new cheese plant under construction in New Mexico. Milnot contacted Lone Star as a possible alternative supply, but was told by Lone Star that Milnot would have to go through DFA because DFA is the marketing agent for the Greater Southwest Agency to which Lone Star had committed its milk supply. Milnot later contracted with Central Equity to secure a long-term and reliable source of milk.

Proponents of Proposal No. 1 explained that, in the opinion of DFA and Prairie Farms, too much "milk is blending down the returns" of the Central Order and that the proposal is designed to "reduce[] the milk can be pooled and may be pooled in the future." Hollon testimony, Ex. 19, p. 19. This is the same philosophy expressed by DFA in advocating pooling restrictions for the Western Order two years ago, and then voting to terminate the Western Order when the Secretary did not go far enough in limiting access to the pool for other dairy farmers in the Utah-Idaho milkshed. Ex. 25.

This philosophy, expressed in self-interest by an organization that controls supply or access to a disproportionately large share of the fluid milk market, and would rather not share that revenue with non-members, is not new. Twenty-two years ago, Dairymen, Inc, a DFA-predecessor, expressed much the same view when the Alabama-West Florida market was created, asserting that it was the intent of the Act, and the policy of USDA, to "accommodate only the pooling of enough milk to meet the... market's Class I needs" and necessary reserves to balance Class I. Firmly rejecting this notion of legislative intent and agency policy, USDA responded: "The Act provides no basis for concluding that a federal order should restrict the absolute volume of Grade A milk that is pooled. What is intended is to provide regulations to ensure that the market's fluid needs will be met under marketing conditions characterized by orderliness and stability" 47 Federal Register 5124 at 5132 (February 3, 1982.)

When the Upper Midwest Order was first created in 1976, by merger of smaller markets, several parties argued that liberal pooling provisions should not accommodate the growing volume of Grade A milk, and that such accommodation "would dilute the pool or would jeopardize the ability of distributing plants to attract an adequate supply of milk for fluid use." USDA rejected these arguments, providing instead for "a broad basis for pooling Grade A milk supplies produced within and close to the proposed marketing area

. . . [to] obviate shipments of milk for the sole purpose of attaining pooling status." 41 Federal Register 12436 (March 25, 1976) at pp. 12442 – 12451. Pooling was not limited to milk supplying and balancing the Class I market, but rather accommodated milk ready, willing and able to serve the Class I market but not needed.

The broad pooling and market efficiency policies of USDA, as well as the agency's perception of statutory purpose, are expressed in rulemaking decisions. Day-to-day reinforcement and application of those policies have been expressed in hundreds of decisions to suspend or adjust pooling requirements when pooling of all milk normally associated with a market could not be accommodated efficiently because of increased milk production, decreased demand, shift in regulation of plants, loss of a fluid market outlet or other circumstances. These informal rulemaking decisions, often accomplished in days or weeks, are identified with Federal Register references in the last pages of Federal Milk Order Market Statistics. Some of these are summarized in Exhibit ____ to illustrate the policies historically applied by USDA, the factors and circumstances that may affect pooling and marketing practices, and the types of difficulties experienced by producers that have occurred repeatedly where pooling standards were too rigid to adjust for institutional variables and supply and demand conditions of the future.

What is new today is that USDA's Dairy Programs appears to be lending a favorable ear to the proposition that some Grade A milk, ready, willing and able to serve a fluid market to which there is little access or need, should not participate in a federal order pool. The Western Order decision, which DFA rejected as not going far enough, appears to be the first USDA decision in the history of the program that by design and effect would have cut off pool access to a large number of producers in the natural milkshed that had historically been associated with the market pool. If this is to be the agency's policy in the future, the industry deserves forthright acknowledgement of that policy fact, and of the reasons for change in policy.

Wise men say that past is prologue. It is interesting to observe that many of the institutional and logistical factors relevant to milk marketing and pooling mentioned at this hearing are the same as those discussed in the 1976 Upper Midwest decision to which I referred above. These include:

Institutional factors that affect supply and inhibit free adjustment of supplies between markets, such as

- consolidation of cooperative suppliers;
- consolidation of handler operations, fewer in number but greater in size;
- limitation of market access or "pooling base" to some markets in which the fluid milk supply was controlled by few organizations;
- local milk markets lost to competition or plant closings.

Logistical factors such as

- pooling of milk from Minnesota in "distant" markets in Southern Illinois and Kansas City to find a pool home for milk because of limited local pooling base (market acess);
- uneconomical movement and transportation of milk to qualify for pooling.
- unnecessary pumping of milk for transfer, which adversely affects milk quality.
- inability to recover costs, or pay a competitive price, for milk supplied to distant customers;
- lower returns to producers whose cooperatives had to engage in inefficient pooling practices due to institutional obstacles to pooling.

I do not refer to the Upper Midwest decision to advocate an Upper Midwest solution to perceived Central Area problems. The decision, however, is instructive in its acknowledgement of factors relevant to pooling standard analysis, and to the agency's reasoning process and policies. For example, where a combination of institutional and regulatory factors created marketing inefficiency, USDA fixed its part of the equation by eliminating some regulatory obstacles to efficiency. In this proceeding, where marketing inefficiency is touted as a problem, the solutions proposed by proposals 1 and 4 – 13 is to add regulatory obstacles to efficiency as the solution.

Handler and cooperative consolidation are institutional factors that greatly affect a producer's ability to gain market access (or pooling base) in the Central Market. Although DFA declined to provide relevant data on its supply and its supply contracts, it is a matter of public record that Dean is obligated by a long-term contract to purchase milk from DFA or through DFA marketing affiliates. Since agreements may be altered by mutual agreement, I assume that Dean may buy milk from third parties if DFA consents. The degree, though undisclosed, to which DFA controls access to fluid milk plants by supply agreement is very relevant to reasonable performance standards for the rest of the market. For example, if DFA's share of the supply to Class I plants is 70%, and its share of the producer pool is 50%, in a market of 35% Class I use the, other 50% of producers must compete for the remaining 10.5% of ~~Class I~~ the market's Class I sales. But some of the remaining Class I market, like the part supplied by DFA, will be served by dedicated patrons of a distributing plant and committed supplies by smaller cooperatives. That leaves a residual for reserve supply producers in the milkshed that is but a very small fraction of the Class I use of the market as a whole. It is the ability of this reserve supply nevertheless to participate in the market-wide pool that avoids cutthroat competition between farmers for fluid milk sales which impelled Congress to authorize milk marketing orders in the first place about 70 years ago.

Proposal 1, and the Dean proposals, will clearly create costs, inefficient movement of milk, and aggravate inequity between producers. Exhibit 12, producer milk by destination, shows that there are many counties in the milkshed in which no milk is moved during some months to pool plants and other counties in which the only pool plant delivery is to a supply plant. The number of producers who would be required to 'touch base' at a pool plant, even though there is no need for the milk, under DFA/Prairie Farms or Dean proposals from these counties is disclosed in Exhibit ____. Without doubt, there are many producers that do not touch base who are located in counties that have some deliveries to pool plants. If supply plants are eliminated, as per Dean proposal No. 4, hundreds of additional producers would be deemed not to have met a 'touch base' requirement, and all producers could participate in the pool only if their milk was delivered 1 to 4 days per month, depending upon proposal, at a distributing plant.

Dean Foods, no doubt, has visions of tank trucks lined up at its plants begging for an opportunity to touch base, but market inefficiency created by any of the touch base proposals would just as likely discourage available supplemental milk supplies from being offered to Dean.

To handle the added deliveries, which the market does not need, milk silos would have to be built to increase capacity, trucks would have to move more milk greater distances to touch base. Milk currently delivered to the touch base plant would be displaced and also hauled, at unnecessary expense, to manufacturing plants. Grade A milk currently commingled with Grade B milk for efficiency, and 15% of Land O'Lakes' Order 32 supply falls in this cateory, would have to be segregated with added trucks and drivers. With just a one-day touch-base requirement per month, and elimination of supply plants at which to touch base, I am advised that the monthly additional cost to Foremost would be about $270,000 on deliveries to Anderson-Erickson and Prairie Farms, plus a backhaul cost of nearly the same amount on milk displaced by the 'touch base' delivery.

For Central Equity producers, it means that milk from each farmer ordinarily delivered to Seneca, Missouri, would have to trek one to four times monthly under proposals 1 and 5, to Le Mars, Iowa, or possibly to a new market in Southern Illinois, and arrangements would have to be made to find a home for the displaced milk.

The proposed limitations on diversions and increased supply plant shipping requirements would have identical consequences, if adopted. The proposals are not based on any evidence of new need for milk, but rather a desired to get milk available off the market that is not needed. If this milk nevertheless decides to pool on Order 32, as it must as marketing access is being restricted by institutional factors and new regulatory barriers in adjoining markets, unnecessary shipments, unnecessary pumping, unnecessary handling, and unnecessary backhauls will add to total market costs and passed back to small business producers who can ill afford them, or to consumers who don't deserve to carry the cost of regulatory inefficiency.

Central Equity does not operate a supply plant, so the immediate consequence of the proposals to Central Equity would stem from the touch base requirements and diversion limitations. It is our opinion that this could spell the end of Central Equity and its role as a marketing tool for our producers. Central Equity dairy farmers would then be denied their right to join or remain members of the cooperative of their choice, and would have to seek membership in a cooperative with excess pooling base or market access (through sales to fluid plants) if they want to continue in the milk business.

The Secretary should, we believe, reject proposals to create inefficiency and costs for the purpose of either discouraging available supplies in the milkshed from participating in the Central Order pool, creating a revised pool that is not market-wide, or constructing by regulation a type of individual handler pool such as desired by Dean Foods.

If the Secretary nevertheless decides to adopt any of these proposals, because it would represent a major departure from past pooling policy, the Secretary should emphatically not countenance avoidance of a recommended decision. Rather a recommended decision should issue, expeditiously if that is necessary, forthrightly explaining the application of marketing facts to any departure from past policy or any new insight on statutory intent.

That concludes my statement.