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Randal Stoker [redacted]

Comments and Exhibits from Randal Stoker

1 message

Randal Stoker [redacted] Sun, Jul 25, 2010 at 2:36 PM
To: Dairy Industry Advisory Committee <DIAC@wdc.usda.gov>

Dear Honorable Chairman Andrew Novakovik,

Please forward the following two proposals and the associated exhibits to the other members of the Dairy Industry Advisory Committee.

Proposal #1: Initiate a process for the gradual reduction and eventual elimination of mandatory class I differentials. This will gradually allow the market to determine the appropriate class I differentials in all markets and circumstances. This will restore equity, orderly marketing, and appropriate price discovery for all milk in all locations and circumstances. The gradual restoration of competition will maximize producer revenues while minimizing marketing costs, market power, and improper profiteering. This process, once adopted on a federal basis, will be voluntarily followed by similar state programs. The reduction of both federal and state class I differentials would eliminate regional biasness and political pressure as all locations phase out uniformly by percentages over the same period of time. For example, this could be accomplished with four reductions of 25% over the period of 1 year (reductions once every three months) or with five reductions of 20% over a period of 5 years (reductions once every year). The time frame and percentages are not as important as initiating the process and following through with it. This process will phase out mandatory classified pricing and revenue pooling--the root of most of our most serious problems in the industry (such as excessive concentration of market power, profiteering, price volatility, market transparency, inefficiency, illusive price discovery, inability of the market to adjust to cover costs of production in certain regions, and unjust transfers of economic benefits and burdens).

Proposal #2: Replace the mandatory NASS dairy product survey (volumes and prices) with a mandatory raw milk survey (volumes and prices). This survey would cover all producer to processor sales/purchases of raw milk and would also include all adjustments for milk component test, quality, volume, and other incentives and penalties. This survey would allow USDA to disseminate accurate information on the competitiveness of all raw milk purchases for regions and sub regions. Information could be provided as locally as possible without disclosing proprietary information. This would be a great tool for transparency and price discovery that would provide milk producers with timely and accurate data on the competitiveness of their individual milk buyer. Both producers and processors would be benefited as they negotiate their best exchange options that best fit their own particular needs and circumstances. This will assist the market to be more competitive and transparent, and will enhance the price discovery process for all locations and circumstances.

I have also attached several exhibits that provide the background, need, reasons, and justification for these proposals. Please feel free to contact me if you need any further clarification or have any questions.

Randal Stoker

4 attachments

DIACEx1.pdf
64K

DIACEx2.pdf
52K

DIACEx3.pdf
100K

DIACEx4.pdf
75K

DIAC EXHIBIT 1
Submitted by Randal Stoker, July 25, 2010
Market Share and Market Rights

In April of 1985, I took employment as a Procurement Manager with Beatrice Foods at their Twin Falls, Idaho cheese plant. This plant obtained their entire milk supply from loyal manufacture milk producers in the south central Idaho area. The patron milk prices were independently determined monthly through my consultation with the plant manager and corporate approval. Patron milk prices were determined competitively and were also based on the monthly M-W price as announced by USDA.

One of my earliest goals was to implement an economic incentive program to encourage our patron milk producers to improve both the milk quality and the cheese yielding composition of the plant's milk supply. My incentive program was extremely successful. The quality of the plant's milk supply was greatly improved as were the plant's cheese yields. The program was so successful that similar programs were adopted by other competing milk buyers in the area.

In December of 1985, shortly after the tremendous successes of our incentive program, Beatrice Foods sold the plant to a fluid milk marketing cooperative based in Thornton Colorado. The cooperative, Mountain Empire Dairymen's Association (MEDA), had a few member producers in the Magic and Treasure valleys of Idaho. The financially successful marketing cooperative was desirous to invest in production facilities and also needed a more reliable "balancing plant" for their remote outlying member producers located in Idaho.

At the time, the south central Idaho area was a popular and growing area for new and expanding milk production. The area featured relatively low cost water, land, and energy, and dairy feed was both plentiful and relatively inexpensive. Weather too, was conducive to the production of milk and high quality dairy hay.

Still, south central Idaho had relatively few Grade A milk producers. The vast majority were "manufacture" milk producers. The Grade A milk producers that were in the region marketed their milk through a wide variety of overlapping Federal milk marketing order areas including:

1. the Southwestern Idaho-Eastern Oregon order based in Boise ID,
2. the Great Basin order based in Salt Lake City UT,
3. the Lake Mead order based in Las Vegas NV,
4. the Western Colorado order based in Grand Junction CO, and,
5. the Eastern Colorado order based in Denver Co.

The Grade A producer milk in the area was transported to the respective order locations just often enough to qualify for marketwide pooling on the particular order. However, the vast majority of the local Grade A milk was transported daily to local manufacturing plants where the milk was often severely discounted and, at times, had difficulty even finding a home—thus, the incentive and motivation for the purchase the Beatrice cheese plant by MEDA.

Previous to the MEDA purchase of the Twin Falls plant, rarely if ever, did the plant receive any Grade A milk and the plant's milk supply arrangements were always adequate, manageable, and profitable to both Beatrice and their associated milk patrons. At the time of the purchase, another cheese manufacturer in the area offered me employment (they seemed very distrustful of Grade A milk cooperatives). I was intrigued by the idea that milk producers could "own" their own milk plant and decided to accept MEDA's offer to remain with the plant and work for MEDA.

Not long after I became deeply troubled by the changes and complexities pertaining to milk marketing that immediately became evident by the unique circumstances:

- MEDA's Grade A milk producers were immediately given preferential status.
- MEDA's Grade A milk began to displace and push out the former loyal milk patrons whenever plant capacity was reached.
- Laboratory tests confirmed that, in many instances, "manufacture" milk patrons had significantly higher quality milk than did "Grade A" milk producers.
- Laboratory tests confirmed that, in most instances, Grade A producers had significantly lower milk solids content in their milk, reducing the plant's cheese yields and efficiencies significantly.
- MEDA's Grade A milk producers, by virtue of marketwide pooling alone, received much higher milk prices, even though their milk quality and cheese yield was lower than the former "manufacture" grade milk producers.
- Plant hauling costs increased due to milk trucks traveling greater distances to pick up MEDA's Grade A milk producers who were more sparsely located at greater distances from the cheese plant relative to our original producers. In addition, the MEDA Grade A producers needed to qualify for marketwide pooling.
- MEDA had never operated a milk processing plant before and relations between remote MEDA management and the local plant management and operators soon became strained.
- MEDA had never before marketed dairy products but had only marketed raw milk. The plant's cheese coolers were soon at maximum capacity and quality cheese had to be severely discounted in order to be marketed.
- Former "manufacture" milk producers began expressing desires to convert to Grade A status (most already met all Grade A standards in both milk quality and production facilities) in order to obtain the relatively higher milk prices enjoyed by the MEDA Grade A producers.
- MEDA Grade A producers had previously purchased or financed "MEDA base" (the right to market milk on Federal milk marketing orders). Since additional markets for Class I milk were not growing, accepting additional Grade A milk (via "manufacture" milk producers "converting" to Grade A) would only serve to dilute and to lower MEDA utilizations (reducing the Grade A producer milk prices) and lowering 'MEDA base" values. MEDA Grade A producers feared that MEDA base was a dying and soon to be dead asset or a worthless liability. Consequently, the MEDA Board of Directors, refused to offer "MEDA base" to the plant's "manufacture" producers.
- Our "manufacture" producers began contacting other competing Grade A cooperatives seeking the price enhancements of marketwide pooling. Many of these producers joined other cooperatives that offered pooling with no "base".
- These circumstances and the associated disorder lead to a rapid series of "marketing agreements", mergers, and joint federations with other dairy cooperatives (i.e.

Intermountain Milk Producers Association—IMPA and eventually, Western Dairymen Cooperative Association—WDCI—now part of Dairy Farmers of America—DFA).

- The "MEDA base" soon became worthless and the competition between dairy cooperatives became a dog-eat-dog contest to seize "pooling rights" on the orders with the greatest Class I utilization. Order class I utilizations plummeted and the unjust and arbitrary redistribution of benefits and burdens associated with classified pricing and revenue pooling became very evident.

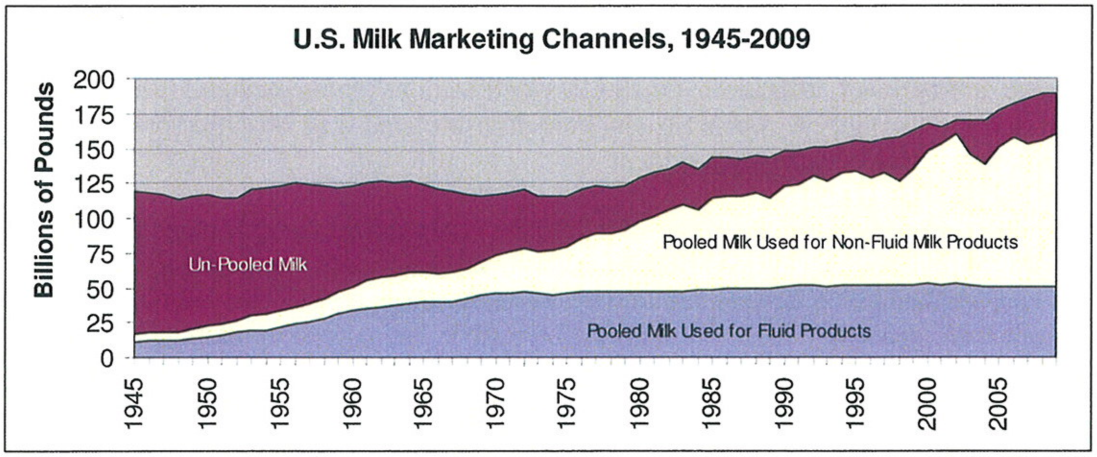
This personal experience gave me a perspective into the complexities and injustices that are inherent in our milk marketing system. Most dairymen and dairy policymakers only see these trends in a very gradual and relatively subtle way. Most, for instance, feel that the conversion from "manufacture" grade to Grade A as a gradual, positive, and normal trend that is simply associated with progress. I see it in a much different light!

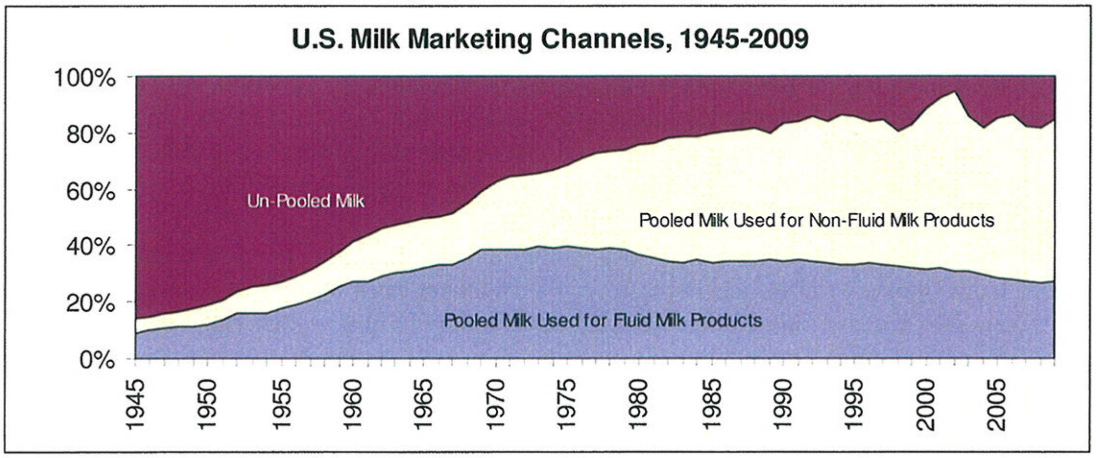
Later, in 1989, I took employment with Ward's Cheese, which later became Avonmore West, and is now known as Glanbia. This cheese processor was also traditionally supplied by loyal manufacture producers and they too began having trouble competing with cooperatives who could offer the benefits of marketwide pooling. Again, many of the manufacture milk producers had facilities and milk quality that easily qualified them for Grade A. Glanbia, was forced to adopt a Grade A premium in order to maintain their milk supply. Later Glanbia sought opportunities to participate in the marketwide pool but rulemaking attempts were eventually successful in foreclosing them from any participation in the marketwide pools.

I find it amazing and very troubling to see how "manufacture" milk has been pushed out by displacement from the very manufacture milk plants that were built by their "manufacture" grade milk. For many, many years, dairy policymakers have grappled and argued over the term "undue price enhancement". Given my personal experiences, I know first-hand how "surplus" fluid milk certainly receives "undue price enhancement." This is easily evident by the enormous and growing volumes of "pooled" milk that rarely if ever is manufactured into fluid milk products. Producers, for undue economic price enhancement purposes alone, increasingly pursue and dilute the enhancement found in pooling.

In many instances, "manufacture" milk was and may still be, in many instances, superior to the so-called "Grade A" milk but is termed "manufacture grade" only because it is unable to find or meet the so-called "standards" necessary to receive the "undue price enhancement" that is associated with marketwide pooling (often having nothing to do with milk quality, production facilities, or milk composition).

The term "market share" is such a misunderstood term in dairy marketing! The market demand for fluid milk products has remained flat or even shrinking while the market demand for manufacture milk products has grown exponentially. It seems ironic and disgraceful that Grade A pooled milk producers (those who are associated with both State and Federal marketwide pooling) so adamantly demand claim of and defend tooth-and-nail their "market share" of the "price enhanced" fluid milk (Class I) market while these same pooled producers remain totally oblivious of, and, proceed in total disregard of, the fact that they are forcefully displacing or "stealing" the manufacture milk producer's "market share" in their growing manufacture milk market!





Producers traditionally supplying manufacture milk plants over the past half century have been limited to three economic choices:

1. Be content with and accept decreasing and increasingly volatile milk prices with increasingly extended and prolonged price depressions (basically remaining comparatively unprotected when compared with pooled producers),
2. Covert to Grade A status and somehow become "associated" with pooled producers, or,
3. Sell out.

Policymakers often talk about the alarming rate at which we are loosing our dairy operations. It is likely that the majority of dairy operations that have been exiting the business have been manufacture milk producers who not only are deprived of the benefits of pooling but also bear the disproportionate burden associated with the side effects of the fluid milk surpluses caused by marketwide revenue pooling.

DIAC EXHIBIT 1
Submitted by Randal Stoker, July 25, 2010
Market Share and Market Rights

Those manufacture producers who have converted to Grade A and have sought to be "associated" with the revenue pools are often blamed by traditionally pooled producers for diluting "their" fluid milk benefits. In an effort to preserve price levels and minimize the dilution effects, starting in 2003, hearings and rulemaking have resulted in "tightening" pooling standards. These provisions are nothing more than efforts to foreclose outside entry and protect benefits to an exclusive group.

Those who do successfully become associated with the pools not only dissipate the rents enjoyed by pooled producers but also accelerate the demise of the remaining manufacture producers. It the early stages of marketwide pooling the major portions of the fluid milk surplus burdens were shared by a relatively large number of manufacture milk producers. Today, we have reached a point in which these burdens are born by a smaller and smaller number of manufacture milk producers. In fact, today, and to an increasing and accelerating extent, these burdens are now even being shifted back to the formerly protected pooled producers because there are so few manufacture producers left to bear that burden. Thus, the present milk pricing crisis that is now reaching even to pooled producers!

Economic studies show that revenue pooling, together with classified milk pricing, effectively lowers the price of milk for manufacturing uses.[1] Recent studies also show that the previous studies <u>overstate producer benefits and understate the social costs of classified milk pricing and revenue pooling</u>. "We show that producer benefits from milk marketing regulation are smaller than previously estimated, and that, under likely conditions, this key element of U.S. farm policy has made milk producers as a group worse off, not better off. Simply put, a program that proponents claimed benefits dairy farmers as a whole my have actually reduced producer welfare. This result reverses the conventional wisdom on this important government program."[2]

- Milk price volatility is caused by increasingly larger inventory build-ups of manufactured dairy products as domestic manufactured dairy product prices are pushed down below world prices by "surplus" pooled milk.
- Prices for manufactured milk products are depressed because the majority of US milk producers receive false price signals (due to classified pricing, class I differentials, and pool blending).
- The gradual dilution of benefits, although increasingly evident, is now becoming alarmingly evident now that manufacture milk producers are almost non-existent. The fewer and fewer, and, soon to be non-existent, manufacture milk producers can no longer bear exclusively the unjust burdens that are shifted from pooled producers and the burdens are just beginning to be evident even to pooled producers.

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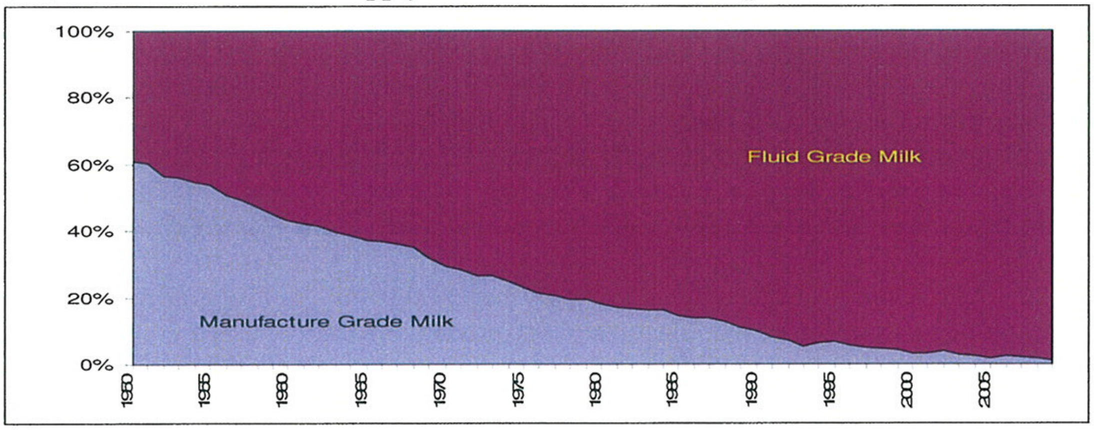
[1] <u>*Effects of Milk Marketing Order Regulations on the Share of Fluid-Grade Milk in the United States*</u>, by Joseph V. Balagtas, Aaron Smith, and Daniel A. Sumner. November 2007, at page 846: http://ajae.oxfordjournals.org/content/89/4/839.full.pdf

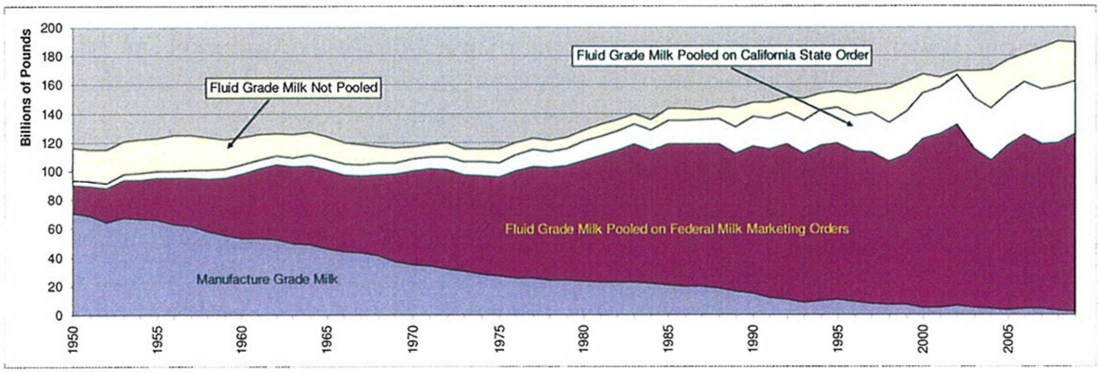
[2] "[T]hose who stand to benefit from regulation devote resources to securing those benefits, thereby reducing the net benefit to farmers and adding to the social cost of the regulation." <u>*Dissipation of Regulatory Rents: How Milk Marketing Orders Made Milk Producers Worse Off*</u> by Joseph V. Balagtas and Daniel A. Sumner August, 2005.

- Politicians and policymakers are quick to illustrate the alarming rates at which we are losing our dairy operations. However, they never mention or notice how the vast majority of dairy farmers who have been and are forced out of business are the "manufacture" or unpooled milk producers who:
  a. Are displaced and pushed out of their "market share" by those who are unjustly "privileged" to be worthy of the "undue price enhancement" provided to pooled producers,
  b. Unlike the pooled majority, this minority does not have the economic or political wherewithal to lobby for the "protection" of their "market share", and,
  c. Have no choice or alternative but to receive even lower milk prices than the complaining pooled producer majority. In many instances, manufacture producer milk quality may even meet or exceed Grade A standards and is processed into the exact same manufactured dairy products as the pooled producers who, by virtue of our regulatory scheme alone, receive a privileged and protected higher price. How can anyone say that this is just?

The following graph illustrates how "undue price enhancement" has nearly completely displaced manufacture milk as a milk supply for US manufacture milk plants over time.



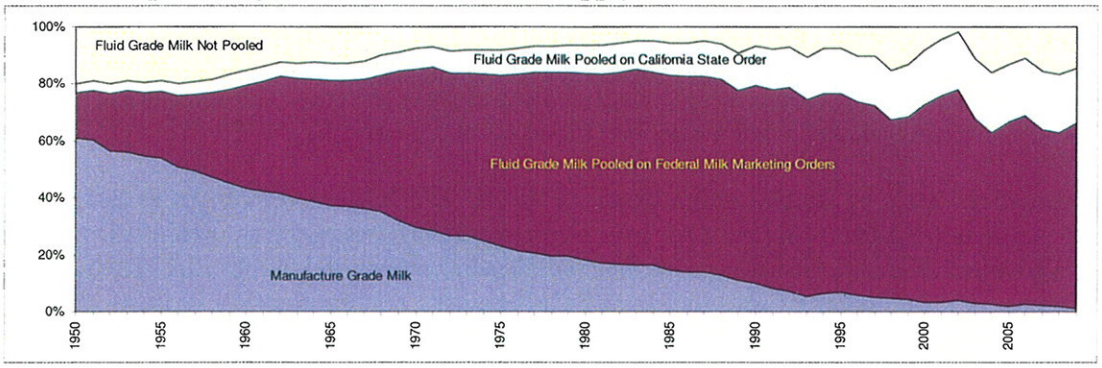
The following graph illustrates the historic US milk volumes and their respective marketing channels:



Even if some of the above manufacture milk simply converted to Grade A and obtained pooled status, the converted producers simply add to the dilution effect and also because of the marginal benefit (although increasingly diluted) add to the surplus of Grade A fluid milk and thus compound the burden effects that are shifted to the remaining manufacture and unpooled producers.

A recent economic study stated that "The participation costs [of classified pricing and revenue pooling] are shown to significantly reduce producer benefits and increase social costs of the regulation. Net producer losses follow because the cost of lower milk prices due to entry is paid in part by producers who remain outside the marketing orders."[3] (emphasis added)

A major contribution of our present dairy crisis has been the increasingly futile attempts made by U.S. milk producers to obtain the increasingly limited and dissipated rents created by a cartel-style regulatory program. This graph is similar to the one above but shows the US marketing channels as percentages of the total US milk supply:



Both the California State pool and the Federal order pool increasingly consist of so-called "reserve" milk that is not used or needed to satisfy fluid milk demands. This phenomenon is nothing different than the dilution of the value and eventual worthlessness of MEDA fluid milk base that I personally experienced back in 1985-89. The disorder and crisis we are now experiencing throughout our nation are essentially the exact same that I witnessed on a more local scale in south-central Idaho.

[3] *Dissipation of Regulatory Rents: How Milk Marketing Orders Made Milk Producers Worse Off* by Joseph V. Balagtas and Daniel A. Sumner August, 2005. at: http://www.ncsu.edu/project/arepublication/milkrents.pdf

DIAC EXHIBIT 2
Submitted by Randal K. Stoker July 25, 2010.
Market Power and Meaningful Regulatory Reform

Dairy Cooperatives use Regulatory Provisions to Maintain Market Power

For several years Brown Dairy, a producer-handler, in the Great Basin Milk Marketing Area, had experienced difficulty servicing the highly variable seasonal demands of remote and secluded summer Boy Scout camps and winter ski resorts in their market service area. In order to efficiently service these needs Brown Dairy had requested a suspension of limitations on class I purchases from other pool producers of the order. As a result, on June 13, 1989, USDA issued a proposed suspension of rule. The USDA notice invited "written comments on a proposal to suspend indefinitely the Great Basin order's limit on the amount of milk that may be purchased by a producer-handler from pool plants or other order plants." Comments were due on or before July 5, 1989.[1] As an interested party, I sent my personal comment stating my support for the proposed suspension. My comment in part stated:

> I believe that [USDA] should allow [producer-handlers] to purchase during short periods of high demand especially since all the milk they purchase from pool supplies will receive the Class I price of the order. In addition to paying the Class I price, the producer-handler would more than likely also be charged for hauling and handling fees and over-order premiums as well. Given this fact, and given the fact that producer-handlers usually are able to obtain their milk at their production cost, very little milk will be purchased, except that which may be needed during very short periods of extremely high demand. Whenever a purchase is made, it will not cause any further dilution of pool utilization, in fact, on the contrary, it should strengthen it. Therefore, this change would not cause any significant negative impact on other pool producers.

Little did I realize that Western Dairymen Cooperative Inc. (WDCI), my employer at that time, would take tremendous offense to my personal comment. I was abruptly terminated from my WDCI employment at a time that was particularly difficult for my wife and family. The only justification for my termination, according to WDCI, was my "non-cooperative philosophy." Needless to say, I was shocked and bewildered. I felt it important to inform USDA that my personal opinion, one that was invited and solicited, had resulted in my termination with WDCI. In a September 28, 1989, letter to Agriculture Secretary Clayton Yeutter I stated that I could not "find any justification for their action except maybe the fear of the loss of a very small portion of their market power."

Secretary Yeutter asked Willard Blanchard, the Director of USDA's Dairy Division, to reply to my letter. In the October 20, 1989, reply, Mr. Blanchard stated: "Without taking sides, I guess I can understand the rationale of the cooperative for its action." Mr. Blanchard's statement renewed my desire to understand "the rationale" and how and why such a suspension would be such a threat to the dairy cooperative.

Although my employment pursuits precluded me from any direct involvement in this proceeding, I attempted to follow the legal wrangling and deliberations between WDCI and USDA and was contacted several times by Daniel Bensing, the Assistant US Attorney representing USDA. As I followed this and other similar disputes I became increasingly amazed at the lengths that dairy cooperatives went to, all at the ultimate expense of their members and all based upon the alleged premise of acting in their member interests. It became apparent that dairy cooperatives use, and

[1] See Federal Register, volume 54, No. 116, issued Monday, June 19, 1989. Page 25727

depend, on federal regulations *and regulation complexity* to gain and protect their market power.[2]

On December 26, 1989, in spite of significant opposition, USDA granted Brown Dairy the requested suspension. Soon thereafter, on January 29, 1990, WDCI filed a lawsuit seeking to invalidate USDA's decision to grant the suspension. WDCI claimed that USDA did not have the authority to suspend an order provision that was contrary to the wishes of the dominant milk supply of the region, especially without a formal hearing. Depositions and briefs were filed and on February 27, 1990, a hearing was held in US District Court for District of Columbia. After considerable expense and effort, the court ordered WDCI to support the USDA suspension decision on April 10, 1990.

The following points made in the District Court's decision and order are very noteworthy:

- The Secretary is directed to terminate or suspend any order or any provision of any order which obstructs or does not tend to effectuate the declared policy of the AMAA 7 U.S.C. § 608c(16)(A).
- The Secretary is not required to hold a hearing before terminating or suspending an order or a provision thereof. Carnation Co. v. Butz, 372 F. Supp. 883, 885 (D.D.C. 1974)
- There is nothing in the Act nor its legislative history to indicate that termination or suspension of regulatory controls require notice and hearing. Carnation, 372 F 2d at 886.
- Unlike section 608c(16)(B), section 608c(16)(A) does not require producer approval.[3]

This was a very enlightening experience for me personally and the Assistant U.S. Attorney quoted my termination experience in several of his briefs [Please refer to endnote[i] for a more detail on the briefs and a chronological history of this case].

But what is most important is that this illustrates how cooperatives actually use and manipulate the AMAA's provisions to protect and maintain exclusive market power. The suspension, in no way deprived pool producers from class I revenues, in fact, during the temporary times when Brown Dairy would purchase their supplementary needs, the coop and their pooled producers would actually enjoy increased class I revenues. Instead, the issue was market power and the maintenance of that market power.

National Hearing on Milk Orders

Simultaneously, on March 29, 1990, Secretary of Agriculture, Clayton Yeutter, announced a national hearing on federally regulated milk pricing and invited comments from interested parties. Since certain Federal order provisions tended to concentrate market power in the fluid milk sector, on May 26, 1990, I submitted a proposal to gradually reduce and eventually phase out and terminate Grade A and distance differentials and compensatory payments. On May 31, 1990, Mark C. Schechter, of the Antitrust Division of the U.S. Department of Justice (DOJ) submitted proposals that were essentially identical to the proposals I had submitted 5 days

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[2] "Dairy cooperatives' market power is closely tied to the treatment of cooperatives under Federal Milk Marketing Orders." USDA Report to Congress, July 2004, Economic Effects of U.S. Dairy Policy and Alternative Approaches to Milk Pricing. http://www.usda.gov/documents/NewsReleases/dairyreport1.pdf p. 22

[3] U.S. District Court – D.C., Case 90-0220 Decision and order of Judge Royce C. Lambert, 4/10/1990

previous.[4] I was encouraged that the U.S. Department of Justice, Antitrust Division, shared my concerns pertaining to these provisions.

Because our proposals struck at the philosophical premise and justification for Federal intervention in milk pricing, our proposals were met with extreme opposition by the Administrative Law Judge who even made several attempts to strike the Justice Department's testimony from the hearing record. However, even after an exhaustive and extensive testimony and hearing record, on November 15, 1991, Agriculture Secretary Madigan stated: "I am [still] not satisfied that all of the issues were thoroughly aired during the AMS hearings" and he asked for even more public input. I again indicated my support of the Justice Department proposals.

Even though the Justice Department brief stated that "The record in these hearings demonstrates that…Grade A differentials, should be terminated since they are provisions that no longer effectuate the policies of the AMAA" and that "there are no legal barriers to the necessary reforms that have been proposed by the Department of Justice"[5], USDA's policymakers capitulated to the status quo by stating that "this approach has no support from those who are regulated under Federal orders (handlers) and from [pooled] producers."[6] USDA's rulemaking decision in this instance is evidence that the regulator had become "captured" by the regulated.

According to USDA administrators, USDA needed legislative authority or direction in order to implement any of our shared proposals to phase out classified pricing and revenue pooling. However, as the US District Court for District of Columbia's April 10, 1990 order had already indicated, and, as the Justice Department accurately stated on May 14, 1991:

> The AMAA vests in the Secretary broad powers to make changes in marketing orders when such changes are necessary to effectuate the policy of the statute. Indeed, the Act expressly provides that the Secretary shall terminate or suspend operation of an order or a provision of an order if the Secretary finds that the order or provision "obstructs or does not tend to effectuate the declared policy of this chapter." 7 U.S.C § 608c(16)(A).
>
> Grade A differentials should be terminated since they no longer effectuate the policies of the AMAA.[7]

I have continuously been concerned about concentrated market power and the lack of competition in the dairy industry. Throughout my 30-year career in the dairy industry I have been an unwavering advocate of fundamental reform that will restore the benefits of freedom and competition. I have personally witnessed the side-effects of market power and the inequities and injustices that result from the improper administration of the AMAA's provisions.

As the advisory committee to the USDA Secretary, please carefully consider these facts and encourage the Secretary to use his vested power to adopt fundamental, meaningful, and effective reform that will actually restore long-term sustainability and profitability to the dairy industry.

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[4] http://www.usdoj.gov/atr/public/comments/200599.htm
[5] http://www.usdoj.gov/atr/public/comments/200631.htm
[6] See 58 FR 12650, March 5, 1993.
[7] Reply Brief of the Department of Justice, Before the United States Department of Agriculture, Washington, D.C., In re: Milk in the New England and Other Marketing Areas, Hearing to Consider Possible Changes in the Federal Milk Marketing Program, May 14, 1991. http://usdoj.gov/atr/public/comments/200631.htm

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[i] Chronological history of events pertaining to the Glen Brown temporary suspension of certain provisions of the Great Basin milk marketing order:

- June 13, 1989 – USDA issued a notice that USDA-AMS was considering a proposal to suspend a provision of the Great Basin order. (54 FR 25727)
- June 19, 1989 – I sent my personal comment never mentioning any affiliation with WDCI
- July 25, 1989 – U.S. Senator, Orin G. Hatch, requests that Kenneth C. Clayton, Deputy Administrator for Marketing Programs give "every appropriate consideration" of Brown's suspension request.
- August 30, 1989 – WDCI terminated my employment stating that I held a "non-cooperative philosophy."
- September 28, 1989 – I sent a personal letter and my bio to Secretary Yeutter explaining the result of my comment and that the purpose of my letter was "to inform [him] of the true nature of [the] issue." I also stated that "As stated in my letter to AMS, I feel that pool producers (such as WDCI's) would not be significantly harmed by this action" and that "the large cooperatives, it seems, cannot be satisfied with the major portion of market power, they want it all!"
- October 23, 1989 – Willard Blanchard, Director, Dairy Division, sent me a letter which stated in part "I guess I can understand the rationale of the cooperative for its action."
- December 26, 1989 – USDA issued the Suspension of Rule (54 FR 53528) granting Brown Dairy their requested suspension
- January 29, 1990- WDCI filed an injunction for declaratory relief lawsuit against USDA (US District Court for the District of Columbia (Civil Action No. 90-0220)
- February 1, 1990 – Herbert L. Forest, former Director of the Dairy Division (retired since 1982) filed a deposition in support of WDCI's lawsuit against USDA's suspension decision.
- February 6, 1990 – Clayton H. Plum, Chief, Order Formulation Branch, filed a deposition defending USDA suspension decision.
- February 12, 1990 – Daniel Bensing, Assistant US Attorney, filed a brief supporting and defending USDA suspension decision. This brief states: "The fact that all of the producer handlers' purchases must be at Class 1 prices completely undercuts any argument that plaintiffs will be harmed by this change. …Defendant confesses to being puzzled as to why, given the lack of any ascertainable harm to producers by this suspension, the Western Dairymen Cooperative has gone to the trouble, no doubt substantial expense, of opposing this change. Defendant submits that a clue to the real motivation of the Cooperative can be found in the attached letter of Mr. Randal Stoker, the former Cooperative employee who was fired for submitting a comment in support of the suspension. In a letter to Secretary Yeutter describing the effect of his abrupt termination for demonstrating "non co-op philosophy," Mr. Stoker provided an insightful analysis into the effect of the suspension and his opinion as to the Cooperative's real motivation: …For the life of me I cannot seem to find any justification for their action except maybe they [the Cooperative] fear the loss of a very small portion of their market power. …The pool would receive class 1 price for any milk thus purchased. A producer

handler would not purchase large amounts for long periods of time since he would be required to pay class 1 prices instead of his cost of production. Simple economics would still force him to balance his own supply and demand according to his own marketing ability. To penalize a producer-handler for purchasing over a certain amount of milk at the top of the order is crazy! To do so forces him to produce extra "surplus" milk. …The large cooperatives, it seems, cannot be satisfied with the major portion of market power, they want it all!"

- February 13, 1990 – National Milk Producers Federation filed a brief in support of WDCI's lawsuit against USDA's suspension decision.
- February 20, 1990 – WDCI filed a brief in support of their injunction for declaratory relief lawsuit against USDA.
- February 23, 1990 - Daniel Bensing, Assistant US Attorney, filed a brief supporting and defending USDA suspension decision. This brief states: "*Particularly in light of Mr. Stoker's assertion*-which plaintiffs have not contradicted-that he was fired because his expression of his deregulatory philosophy "could be very detrimental to [the] cooperative by swaying producer member opinion in the wrong direction," *there is good reason to doubt that WDCI's opposition to a regulatory change should be given great weight by the Secretary.*" [*emphasis added*]
- February 27, 1990 – Hearing in US District Court for District of Columbia
- April 10, 1990 – US District Judge Royce C. Lamberth, ruled that the Secretary's motion to dismiss was granted, that WDCI's cross motion for Summary Judgment was denied, and that WDCI's motion for Preliminary Injunction was moot.
- July 5, 1990 – Senator Orrin G. Hatch sent a letter to Randal Stoker stating: "Thank you for sending me the information regarding America's dairy policy. I particularly appreciate your sharing your reasons for supporting the suspension in the Great Basin Milk Marketing Order. Please be assured that I will keep your views in mind as the Senate begins deliberation on the 1990 Farm Bill and our dairy policy. I value your comments and insights, and I hope you will continue to share them with me."

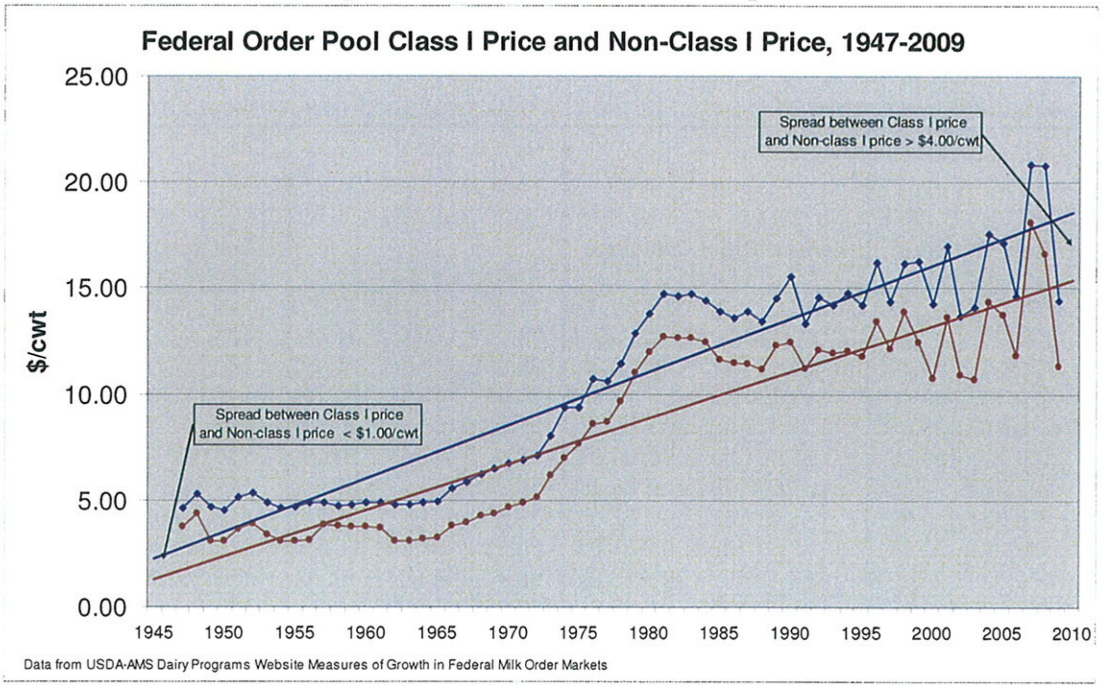
DIAC EXHIBIT 3
Submitted by Randal Stoker, July 25, 2010
Classified Milk Pricing and Revenue Pooling

Voluntary classified milk pricing and revenue pooling pre-date regulated milk pricing and will likely continue to exist after Class I differentials are reduced and phased out. The mandatory and governmental involvement in the classification of milk into classes and the administration of revenue pooling was the political result of the milk crisis and price wars of the 1930's.

Milk Classification
Although the classes of milk have varied over the decades, milk can generally be divided into two major classes: Class 1 (fluid milk or milk consumed as a beverage) and, manufacture milk (all other milk used to manufacture a wide variety of other dairy products). When regulated milk pricing was first developed in the 30's there was a marked quality distinction between the raw milk used in these two major classes. The quality distinctions between these two general classes of milk are nearly indistinguishable today while the price differences are now wider than ever.

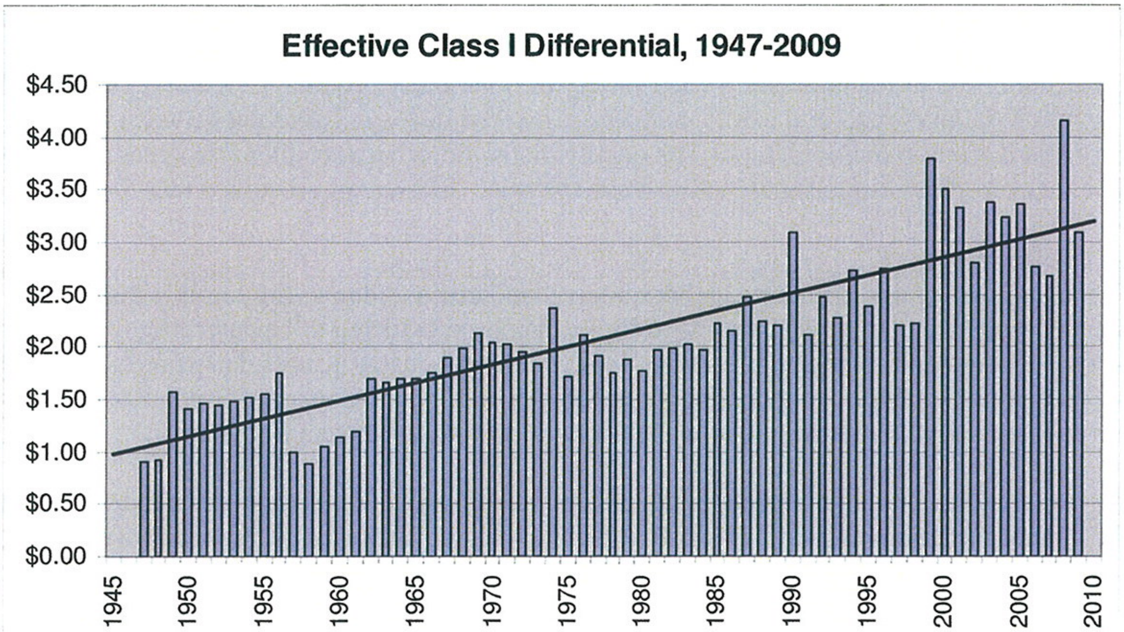
Class 1 Differentials
Historically Class 1 milk, due to its higher quality standards and due to fluid milk's bulkiness and perishability in both raw and packaged forms, has been believed to be deserving of a higher market value relative to manufacture milk. Today, although manufactures dairy products are less bulky, modern technologies and distribution networks now permit packaged fluid milk products to be transported and marketed just as extensively as manufactured dairy products.

Today, almost all manufactured milk products are made from milk meeting fluid grade standards and in spite of the narrowing differences between the classes, the price differences have continued to widen. Governmental price regulation contributes significantly to this divergence. The artificial protection and support of class 1 milk prices above normal equilibrium drives the unprotected and unsupported manufacture prices below normal equilibrium. This graph shows the historic price relationship for the combined federal order pool.



The class 1 differentials used today are administratively fixed for every US county and can be adjusted only by Congress or executive branch administrators. The most recent adjustments to these differentials came from a decision of executive administrators in May of 2008.

This graph shows the historic effective federal order class 1 differential (the actual difference between the pool's class 1 and non-class 1 price) and trend.



The effective differential is the actual difference between the pool's class 1 price and the pool's non-class 1 price.

Revenue Pooling

Most of the US milk is marketed through regulated revenue pools. This table shows that from 2000 through 2009, more than 86 percent of the US milk produced was marketed through pools.

Year	Total US Milk Production	Federal Order Combined Pool		California State Pool		Combined Fedeal Order and California State Pool	
2000	167,393,000,000	116,920,057,335	69.8%	31,576,555,439	18.9%	148,496,612,774	88.7%
2001	165,332,000,000	120,222,706,682	72.7%	33,078,120,133	20.0%	153,300,826,815	92.7%
2002	170,063,000,000	125,546,227,603	73.8%	35,008,600,985	20.6%	160,554,828,588	94.4%
2003	170,348,000,000	110,580,723,655	64.9%	35,297,082,429	20.7%	145,877,806,084	85.6%
2004	170,832,000,000	103,047,683,883	60.3%	35,254,448,834	20.6%	138,302,132,717	81.0%
2005	176,931,000,000	114,681,899,860	64.8%	35,677,072,275	20.2%	150,358,972,135	85.0%
2006	181,782,000,000	120,618,281,212	66.4%	36,815,687,472	20.3%	157,433,968,684	86.6%
2007	185,654,000,000	114,407,476,447	61.6%	38,514,602,160	20.7%	152,922,078,607	82.4%
2008	189,984,000,000	115,867,388,791	61.0%	39,614,654,321	20.9%	155,482,043,112	81.8%
2009	189,320,000,000	123,430,397,236	65.2%	36,402,593,975	19.2%	159,832,991,211	84.4%
Total	1,767,639,000,000	1,165,322,842,704	65.9%	357,239,418,023	20.2%	1,522,562,260,727	86.1%

Classified Milk Pricing and Revenue Pooling

The following tables show the federal order, California State, and combined revenue pools:

The Federal Order Program

Year	FO Class I Value		FO Uniform Value		FO Non-Class I Value	Federal Order Class I Revenue	Federal Order Uniform Revenue	Federal Order Non-Class I Revenue
2000	$14.24	$2.13	$12.11	-$1.38	$10.73	$6,548,896,495.80	$14,159,018,943.27	$7,610,122,447.47
2001	$16.96	$2.06	$14.90	-$1.27	$13.63	$7,782,507,752.17	$17,913,183,295.62	$10,130,675,543.45
2002	$13.69	$1.78	$11.91	-$1.03	$10.88	$6,303,283,708.46	$14,952,555,707.52	$8,649,271,999.06
2003	$14.10	$1.98	$12.12	-$1.40	$10.72	$6,463,922,218.31	$13,402,383,706.99	$6,938,461,488.68
2004	$17.56	$1.82	$15.74	-$1.41	$14.33	$7,891,375,506.38	$16,219,705,443.18	$8,328,329,936.80
2005	$17.13	$2.06	$15.07	-$1.31	$13.76	$7,634,895,125.66	$17,282,562,308.90	$9,647,667,183.24
2006	$14.59	$1.73	$12.86	-$1.04	$11.82	$6,609,818,045.19	$15,511,510,963.86	$8,901,692,918.67
2007	$20.81	$0.50	$20.31	-$0.33	$19.99	$9,411,481,927.28	$23,238,308,689.19	$13,826,826,761.91
2008	$21.18	$2.40	$18.78	-$1.52	$17.26	$9,529,400,975.07	$21,760,357,500.14	$12,230,956,525.06
2009	$14.40	$1.96	$12.44	-$1.14	$11.30	$6,516,812,584.41	$15,349,145,311.30	$8,832,332,726.89
Avg.	$16.45	$1.88	$14.57	-$1.20	$13.37	$74,692,394,338.74	$169,788,731,869.97	$95,096,337,531.23
Effective Class I Differential:			$3.08			44%	100%	56%

The California State Program

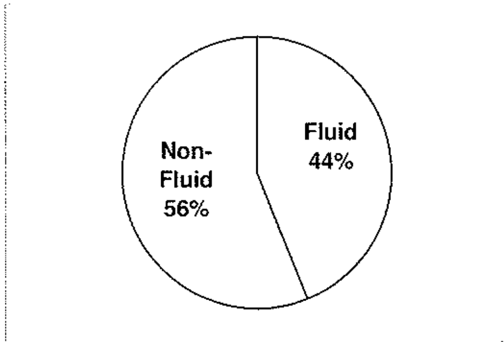
Year	CA Class I Value		CA Uniform Value		CA Non-Class I Value	California Class I Revenue	California Uniform Revenue	California Non-Class I Revenue
2000	$12.59	$1.29	$11.30	-$0.33	$10.97	$813,789,863.50	$3,567,893,479.33	$2,754,103,615.83
2001	$14.31	$0.71	$13.60	-$0.17	$13.43	$923,442,590.47	$4,497,939,704.10	$3,574,497,113.63
2002	$12.04	$1.45	$10.59	-$0.33	$10.25	$785,186,353.08	$3,706,072,991.04	$2,920,886,637.96
2003	$12.40	$1.42	$10.98	-$0.32	$10.66	$804,624,447.66	$3,875,640,773.11	$3,071,016,325.45
2004	$14.48	-$0.13	$14.61	$0.03	$14.63	$833,261,546.09	$5,149,278,207.88	$4,316,016,661.79
2005	$13.78	-$0.13	$13.91	$0.02	$13.93	$749,190,642.90	$4,961,017,927.89	$4,211,827,284.99
2006	$11.96	$0.38	$11.58	-$0.07	$11.52	$665,046,988.02	$4,265,079,021.38	$3,600,032,033.36
2007	$19.28	$1.24	$18.05	-$0.22	$17.83	$1,112,284,018.59	$6,951,370,377.52	$5,839,086,358.93
2008	$19.44	$1.96	$17.48	-$0.34	$17.14	$1,152,406,009.93	$6,926,257,340.96	$5,773,851,331.03
2009	$12.21	$0.76	$11.46	-$0.15	$11.31	$715,195,864.36	$4,170,247,780.24	$3,455,051,915.88
Avg.	$14.20	$0.75	$13.46	-$0.15	$13.30	$8,554,428,324.60	$48,070,797,603.45	$39,516,369,278.85
Effective Class I Differential:			$0.90			18%	100%	82%

The Federal Order and California Programs Combined

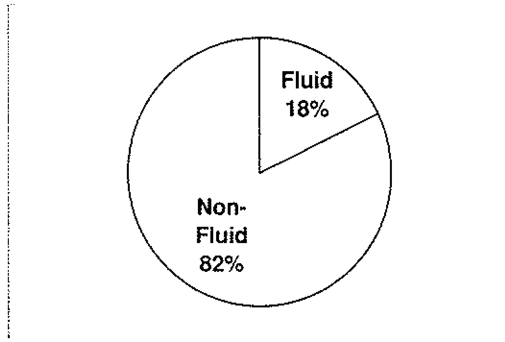
Year	Combined Class I Value		Combined Uniform Value $/cwt		Non-Class I Value $/cwt	Combined Program Class I Revenue	Combined Program Uniform Revenue	Combined Program Non-Class I Revenue
2000	$14.04	$2.10	$11.94	-$1.15	$10.79	$7,362,686,359.30	$17,726,912,422.60	$10,364,226,063.30
2001	$16.63	$2.01	$14.62	-$1.05	$13.57	$8,705,950,342.64	$22,411,122,999.72	$13,705,172,657.08
2002	$13.48	$1.86	$11.62	-$0.91	$10.71	$7,088,470,061.54	$18,658,628,698.56	$11,570,158,637.02
2003	$13.89	$2.05	$11.84	-$1.14	$10.70	$7,268,546,665.97	$17,278,024,480.10	$10,009,477,814.13
2004	$17.21	$1.76	$15.45	-$1.02	$14.43	$8,724,637,052.47	$21,368,983,651.06	$12,644,346,598.59
2005	$16.77	$1.98	$14.79	-$0.98	$13.81	$8,384,085,768.56	$22,243,580,236.79	$13,859,494,468.23
2006	$14.30	$1.74	$12.56	-$0.83	$11.73	$7,274,865,033.21	$19,776,589,985.24	$12,501,724,952.03
2007	$20.64	$0.90	$19.74	-$0.45	$19.29	$10,523,765,945.87	$30,189,679,066.71	$19,665,913,120.84
2008	$20.98	$2.53	$18.45	-$1.23	$17.22	$10,681,806,985.01	$28,686,614,841.10	$18,004,807,856.09
2009	$14.15	$1.94	$12.21	-$0.91	$11.30	$7,232,008,448.77	$19,519,393,091.54	$12,287,384,642.77
	$16.19	$1.88	$14.31	-$0.96	$13.35	$83,246,822,663.34	$217,859,529,473.42	$134,612,706,810.08
Effective Class I Differential:			$2.84			38%	100%	62%

These pie graphs show the respective milk revenues pooled together with the respective milk volumes pooled:

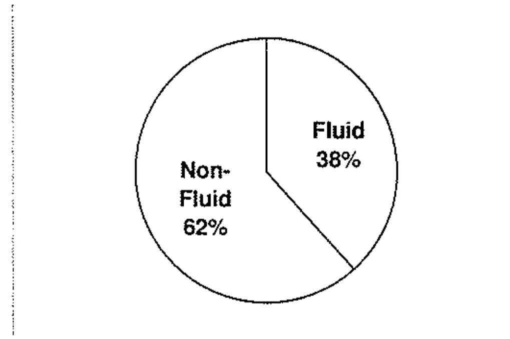
Revenue Pool



Federal Order Pool

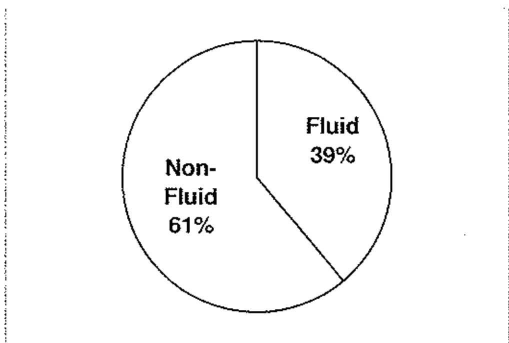


California Pool

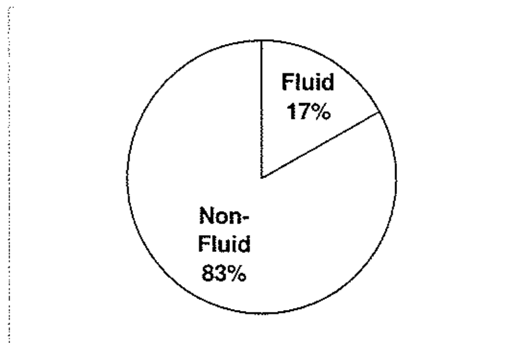


Both Pools Combined

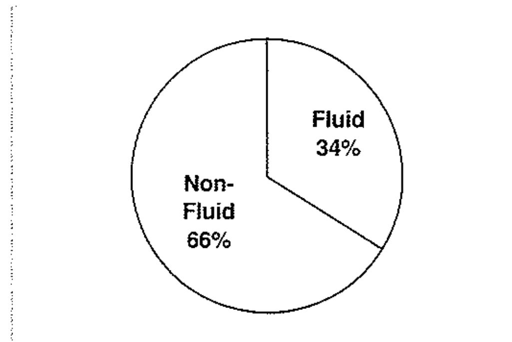
Utilization (Milk Volumes Pooled)



Federal Order Pool



California Pool



Both Pools Combined

It is noteworthy that, the major contribution to these individual and combined pools comes from non-class 1 milk utilization and revenue and yet most producers and policymakers continue to focus first on increasing, protecting, and supporting the class 1 price while ignoring the effects of those policies on the far more important non-class 1 portions of these pools.

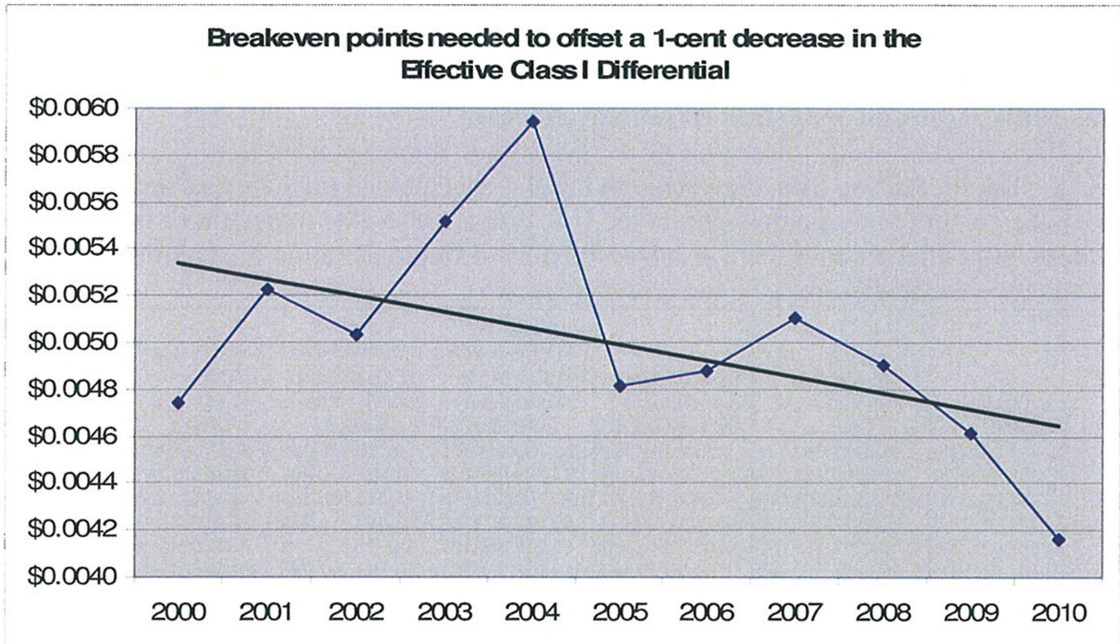
Since the major portion of these pool revenues are derived from the non-class revenues, the non-class 1 revenues and prices have a far greater impact and <u>should therefore be relatively more important even to pooled milk producers</u> than are the class 1 revenues and prices.

DIAC EXHIBIT 3
Submitted by Randal Stoker, July 25, 2010
Classified Milk Pricing and Revenue Pooling

Because the demand for class 1 dairy products is almost flat compared to the persistent rising demand for manufactured dairy products (especially cheese), mandated class 1 differentials depress the non-class 1 prices in both state and federal order pools. Although economists vary in their estimations[1], there is wide consensus that classified pricing and revenue pooling artificially increases class 1 prices and drive down and depress non-class 1 or manufacture milk prices.

Most recently, an economic study showed that "since marketing orders result in a lower price for manufacturing milk... the additional costs of meeting Grade A standards completely dissipate the rents from price discrimination leaving Grade A producers as a group no better off. At the same time, with downward sloping demand for manufacturing milk, the marketing order increases the quantity of milk sold on the manufacturing market, lowering the price of all milk, and making the remaining Grade B producers worse off. Thus, milk producers as a group are made worse off by the marketing order."[2]

With combined pool data, an analysis can be conducted to determine the breakeven point at which a reduction to the artificially protected and supported class 1 price is offset by an increase in the unprotected and unsupported non-class 1 price of the combined pool. The following graph uses the actual combined California and Federal pool data for the 10+year period from January 2000 through May 2010 to determine the annual breakeven points:



[1] Ippolito and Mason (1978) estimated that milk price regulations increased the U.S. average price of class 1 milk by 9 percent, while reducing the price of manufacturing milk by 6 percent. Dahlgran (1980) estimated that regulation increased class 1 prices by 8 percent, while reducing manufacture milk prices by 9 percent.
[2] *Dissipation of Regulatory Rents: How Milk Marketing Orders Made Milk Producers Worse Off* by Joseph V. Balagtas and Daniel A. Sumner August, 2005. at: http://www.ncsu.edu/project/arepublication/milkrents.pdf

According to this analysis and trend, for the past 10 years, every penny reduction in the effective class 1 differential would have been more than offset by less and less of a penny increase in the non-class 1 differential. Thus, the benefits of classified pricing and pooling have become so exhausted that now, even pooled producers as a group, are increasingly disadvantaged by the administration of classified pricing and revenue pooling.

This trend will continue and is due to a combination of factors including; 1) continued and widening differences between class 1 and non-class 1 demand; 2) increased milk production and production efficiencies; 3) larger volumes of milk pooled; 4) continued conversion of grade B dairies to grade A; and, 5) more severe and extended price depressions resulting from incorrect and inaccurate price signals to pooled producers (who make up the major portion of the US milk supply). All of these factors are likely to continue the erosion of this now outdated policy.

Furthermore, the effects of classified milk pricing and pooling have spillover affects upon other U.S. milk producers, who for one reason or another, find themselves outside the so-called "protective umbrella" of regulated pricing. I believe that the constitutional premise of classified milk pricing and revenue pooling is hereby made invalid.

A 2002 dairy policy paper accurately stated that: "Orders induce and perpetuate inefficient milk production, procurement, and distribution patterns. Orders bestow differential benefits on some producers and impose related costs on others. By creating haves and have nots, orders create political supporters and opponents. The administration of federal orders in recent years has reflected political pressure more than economic rationale."[3]

Using U.S. milk production data, together with the above combined pool data we are able to determine the amount of un-pooled milk in the U.S. We are also able to determine the extent to which these un-pooled producers are disadvantaged by the administration of classified milk pricing and revenue pooling relative to pooled producers.

Year	Total US Milk Production	Combined Fedeal Order and California State Pool	Total US Grade A and Grade B Unpooled Milk	Value of Unpooled Milk at Combined Pool Blend Price	Value of Unpooled Milk at Combined Pool Non-Class 1 Price	Disadvantage to Unpooled Producers Total $	Disadvantage to Unpooled Producers $/cwt
2000	167,393,000,000	148,496,612,774	18,896,387,226	$2,256,228,635	$2,038,920,182	$217,308,453	$1.15
2001	165,332,000,000	153,300,826,815	12,031,173,185	$1,758,957,520	$1,632,630,201	$126,327,318	$1.05
2002	170,063,000,000	160,554,828,588	9,508,171,412	$1,104,849,518	$1,018,325,158	$86,524,360	$0.91
2003	170,348,000,000	145,877,806,084	24,470,193,916	$2,897,270,960	$2,618,310,749	$278,960,211	$1.14
2004	170,832,000,000	138,302,132,717	32,529,867,283	$5,025,864,495	$4,694,059,849	$331,804,646	$1.02
2005	176,931,000,000	150,358,972,135	26,572,027,865	$3,930,002,921	$3,669,597,048	$260,405,873	$0.98
2006	181,782,000,000	157,433,968,684	24,348,031,316	$3,058,112,733	$2,856,024,073	$202,088,660	$0.83
2007	185,654,000,000	152,922,078,607	32,731,921,393	$6,461,281,283	$6,313,987,637	$147,293,646	$0.45
2008	189,984,000,000	155,482,043,112	34,501,956,888	$6,365,611,046	$5,941,236,976	$424,374,070	$1.23
2009	189,320,000,000	159,832,991,211	29,487,008,789	$3,600,363,773	$3,332,031,993	$268,331,780	$0.91
Total	1,767,639,000,000	1,522,562,260,727	245,076,739,273	$35,070,481,390	$32,717,744,693	$2,352,736,697	$0.96

These estimates are based upon the assumption that un-pooled producers would receive the combined pool's non-class 1 price per hundredweight, when in most cases; these producers are likely paid something even lower than the regulated non-class 1 pool price.

[3] Marketing and Policy Briefing Paper, Department of Agricultural and Applied Economics, College of Agricultural and Life Sciences, University of Wisconsin-Madison Cooperative Extension, Paper No. 78C, September 2002, Rethinking Dairyland, Chapter 3, The Effects of Federal Dairy Programs on the Competitiveness of Dairying in Wisconsin. Page 15.At: http://www.aae.wisc.edu/future/publications/mpb78c.pdf

These minority producers, for one reason or another, as a class, are completely foreclosed from the benefits of pooling. At the same time, these un-pooled producers are disproportionably disadvantaged by classified pricing and revenue pooling; they have absolutely no voice, no vote, and relatively no political or economic power to challenge the very root problem of their increasingly prolonged and depressed milk prices. Therefore, this minority bears disproportionately the burdens caused by a protected benefit to a majority.[4] Idaho, my home state, now has the major share of unpooled milk. Rulemaking and rulemaking proposals have been repeatedly pursued in efforts to further foreclose the economic benefits of marketwide pooling while other federal order markets, such as the Upper Midwest, carry billions of pounds of milk used monthly for manufacture purposes only.

The 2002 dairy policy paper went on to explain the adverse long-term side-effects of classified pricing and pooling:

> Since Class I differentials were fixed, the only restraint on milk production in this situation was an erosion of the weighted average milk price through a reduction in Class I utilization. Additional Grade A milk production not used in Class I did reduce Class I utilization and uniform prices in many markets where Class I differentials were increased. But at the same time, the added production augmented the national supply of milk for manufacturing, reducing manufacturing milk prices.
>
> Dairy producers in high Class I markets were substantially isolated from milk surpluses and low cheese prices. The burden of milk surpluses fell predominately on Class III use markets. Thus, producers in all regions of the country did not receive the same price signal from the marketplace to reduce milk production. This slowed necessary milk supply adjustments and prolonged the period of low milk prices.[5] (Emphasis added)

It is important to note, however, that compared to the pooled majority, the un-pooled minority is completely helpless and politically powerless. Thus, they are unable to rectify their unpleasant situation and increasingly suffer the spillover burdens that are shifted away from pooled producers through the administration of regulated pricing. These circumstances and this evidence sheds new light on the constitutionality and the AMAA antitrust immunity of classified pricing and revenue pooling since the constitutional sanction was based entirely upon the premise of equal sharing of all the associated benefits and burdens.[6]

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[4] The only exception to this estimate may be the un-pooled producer-handlers, who, during this period of time, indirectly may have been supported by the regulated class 1 prices of their competitors. Because of this, these producer-handlers most likely enjoyed prices higher than the other un-pooled producers. It is important to note, however, that, absent regulated pricing, producer-handlers' so-called loophole advantage immediately becomes moot.

[5] Marketing and Policy Briefing Paper, Department of Agricultural and Applied Economics, College of Agricultural and Life Sciences, University of Wisconsin-Madison Cooperative Extension, Paper No. 78C, September 2002, Rethinking Dairyland, Chapter 3, The Effects of Federal Dairy Programs on the Competitiveness of Dairying in Wisconsin. Pages 17 and 18 At: http://www.aae.wisc.edu/future/publications/mpb78c.pdf

[6] In Rock Royal, the Supreme Court compared milk pooling with the Railroad Retirement Board v. Alton pooling (declared invalid and unconstitutional). The Court reasoned that the Railroad Retirement pooling was invalid because "the burdens ...were not equalized [to all affected parties] with the benefits. ... It was these provisions, deemed unequal, which led to the conclusion that the manner of pooling of funds denied due process." Furthermore, in describing the statutory provisions for equalization of the burdens of surplus, the Rock Royal Supreme Court clearly stated that: "If the cooperative members [or pooled producers] were freed of the burden of carrying their proportion of milk going to manufacturing use, the discrimination in their favor would be most strongly marked."

Early studies recognized these adverse side effects and cautioned policymakers accordingly. On March 27, 1961, the Secretary of Agriculture, Orville Freeman, announced that he had commissioned a task force to study and report to him on milk pricing problems.

First: he asked that the committee appraise the pricing system in light of new technological and commercial developments.

Second: he requested that the committee take a national and general view rather than a local and specific view.

Third: he limited committee membership to persons unconnected with the Federal government in order to obtain an "outside audit" of the system.

After extensive study, the resulting report was submitted to Secretary Freeman on March 16, 1962, and was published in booklet form December 1962. The report has since become known as the "Norse Report", named after Edwin G. Norse, the chairman of the 18-member committee. The report concluded:

> We believe that the Secretary must exercise care to avoid short-run partisan positions in the interests of fluid milk producers as may run counter to other dairy interests of the general economy, or the long-run interests of the fluid milk producer himself. Traditionally the order program has dealt most directly with [pooled producer] problems. The growing interrelationships between market [pooled] milk and manufacturing [unpooled] milk segments <u>now mandate extreme care to avoid hardships on the manufacturing sector</u>. Moreover, modern marketing conditions bring handler interests and handler problems more and more often to the core of orderly marketing issues.
>
> The Secretary is empowered and entrusted to develop a system of orders, integrated as to their relations with each other and to all the uses into which milk goes, not merely orderly as to their internal housekeeping. He is cabinet minister to <u>the nation's agriculture</u>, with equal obligation to <u>all</u> farmers.[7] (<u>Emphasis added</u>)

In 1989, I became a party in a dairy rulemaking proceeding that included a decision by the Secretary of Agriculture to <u>suspend</u> certain regulatory provisions in the Great Basin order. Those opposed to the suspension challenged the Secretary's decision in court. The following points made in the District Court's decision and order are noteworthy:

- The Secretary is directed to terminate or suspend any order or any provision of any order which obstructs or does not tend to effectuate the declared policy of the AMAA 7 U.S.C. § 608c(16)(A).
- The Secretary is not required to hold a hearing before terminating or suspending an order or a provision thereof. <u>Carnation Co. v. Butz</u>, 372 F. Supp. 883, 885 (D.D.C. 1974)
- There is nothing in the Act nor its legislative history to indicate that termination or suspension of regulatory controls require notice and hearing. <u>Carnation</u>, 372 F 2d at 886.
- Unlike section 608c(16)(B), section 608c(16)(A) does not require producer approval.[8]

I believe this is why the Justice Department stated on May 14, 1991 that:

> The AMAA vests in the Secretary broad powers to make changes in marketing orders when such changes are necessary to effectuate the policy of the statute. Indeed, the Act expressly provides that <u>the Secretary shall terminate or suspend</u> operation of an order or a provision of an order <u>if the Secretary finds that the order or provision "obstructs or does not tend to effectuate the declared policy of this chapter."</u> 7 U.S.C § 608c(16)(A).

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[7] <u>Report to the Secretary of Agriculture by the Federal Milk Order Study Committee</u>, Produced through the facilities of the U.S. Department of Agriculture, Washington, D.C. December 1962. P. 101

[8] U.S. District Court – D.C., Case 90-0220 Decision and order of Judge Royce C. Lambert, 4/10/1990

> Grade A differentials should be terminated since they no longer effectuate the policies of the AMAA.[9] (emphasis added)

Public servants and administrators of the law have a moral obligation to serve all parties over whom they have stewardship. Administrators of the AMAA have an obligation and duty to serve all dairy farmers not just pooled producers exclusively. Jesus himself denounced the self-serving and self-justifying administrators of the law in His day by stating: "they bind heavy burdens and grievous to be borne, and lay them on men's shoulders; but they themselves will not move them with one of their fingers." (Matt. 23:4) I believe that public administrators, who have sworn to support Constitutional principles, have a moral obligation to remove unjust burdens and that justifying such burdens with unfounded self-justification is both reprehensible and immoral.

The Secretary of Agriculture has the authority and the duty to suspend classified pricing and revenue pooling provisions by declaring that these provisions obstruct and do not tend to effectuate the declared policy of the AMAA.

The Department of Justice's Report on Milk Marketing summary stated:

> Federal milk orders are a significant deviation from a free market economy which deviation creates substantial undesirable economic effects. . . The order system has evolved into a generally inefficient and ineffective means of achieving the broadly outlined Congressional goals. . . To the extent the transfer payments are viewed as a desirable goal of the order system, the fact that some farmers actually lose income to other farmers cannot be overemphasized. It is difficult to imagine that Congress intended this result. . . The system is not in the best interest of dairy farmers because not all of the benefits intended for them by Congress have been realized, and what benefits there have been bestowed in an inequitable or regressive fashion, or in an inefficient manner.[10] (Emphasis added)

For some unknown reason, the diary industry and dairy policymakers have concluded that mandatory classified pricing and revenue pooling are "hard-wired" and indispensable. In fact, the adverse effects of mandatory classified pricing and revenue pooling have now even become justification for increasing even more evasive and oppressive market intervention![11]

Although all markets are benefited by common standards and free access to accurate market information, generally speaking, economic intervention (price regulation) is avoided in order to allow market forces to serve the public interest. Equality of opportunity compels competition to promote freedom and direct the market prices to serve the public interest.

> Competition is the mechanism that harnesses individual profit-seeking for the public good. Competitive rivalry between firms, industries, products, and regions is constantly changing the nature of the food industry. Freedom is at the heart of our competitive food markets: (1) freedom of consumers to choose what they wish to eat; (2) freedom of firms to develop new products and

[9] Reply Brief of the Department of Justice, Before the United States Department of Agriculture, Washington, D.C., In re: Milk in the New England and Other Marketing Areas, Hearing to Consider Possible Changes in the Federal Milk Marketing Program, May 14, 1991. http://usdoj.gov/atr/public/comments/200631.htm

[10] Response to the USDA Comments on the Department of Justice Report on Milk Marketing, October 1978, p. 1

[11] "The industry [is] simply hard-wired to over produce the market demand. Producers have every incentive to maximize milk production due to the way we regulate milk with the use of "pools" that pay the same price for the last gallon of milk you produce as the first, and our producers have the ability to rapidly overwhelm the market demand." Dairy Price Stabilization Program, at: http://www.milkproducerscouncil.org/spring2010dpsp.pdf, page 8

> market them as they see fit; (3) freedom of new firms to enter the food industry; (4) freedom of farmers to make decisions about what to produce, how to produce it, and where and when to sell it; and (5) freedom of buyers and sellers to bargain together and arrive at mutually advantageous exchanges. These freedoms are vital to our decentralized, private enterprise economy.[12]

I would like to summarize by using an analogy that all dairymen can identify with. Continuing to use classified pricing and revenue pooling is like trying to milk the very last drop of milk from an already over-milked cow. We have now past the point when the last remaining drops of milk obtained are worth the continued irritation to the cow's future productive capacity. We need to take the milking machine off of this already over-milked cow and direct this cow out of the political milking parlor. Then, after a period of time grazing the pastures of competition, our cow will return with her full milk producing capacity and bring back with her the justice, the prosperity, and most importantly, the freedoms we all seek.

[12] The Marketing of Agricultural Products, 6th edition, Richard L. Kohls and Joseph N. Uhl, 1985, p. 175

DIAC EXHIBIT 4
Submitted by Randal Stoker, July 25, 2010
Marketing Efficiencies and Over-order Prices

The United States Department of Agriculture's Agricultural Marketing Service (USDA-AMS) provides three series of monthly milk prices, namely, (1) Federal order minimum blend or uniform prices, (2) Mailbox prices, and, (3) Over-order prices. The description of, and data pertaining to, these price series can be found on the agency's website.

Blend or Uniform Prices

Through the administration of Federal Milk Marketing Orders, pooled producers generally are entitled to receive the Federal Order minimum Blend or Uniform price. This minimum price is based upon the calculation of each marketing order's pool of milk received from qualifying producer suppliers and pool of revenue received from regulated and participating handlers. In this Exhibit, in order to compare prices appropriately, the Federal Order minimum prices have been adjusted from the standard 3.5% butterfat to the average monthly component values of the milk pooled since both the Mailbox and Over-order prices reflect the average component value of the monthly milk pooled,.

Mailbox Prices

The Mailbox Prices series is collected through the administration of the Federal milk order (FMO) program. According to the USDA website Mailbox prices are "the net prices received by dairy farmers at their farm gates, in their mailboxes. It includes all payments received for milk sold and all deductions for costs associated with marketing the milk."

Over-order Prices

The Over-Order Price series is also collected through the administration of the Federal milk order (FMO) program. Over-order prices are "detailed information on the over-order charges paid by milk processors regulated under the Federal milk order (FMO) program for raw milk used in each of the four classes of milk utilization" The Over-order prices include "prices paid by milk processors who buy raw milk from independent dairy farmers. As such, this data series covers all of the milk that is priced under the order during the month."

Although 2 of the 10 federal order areas have restricted the reporting of their respective over-order prices, This Exhibit assumes that the Over-order prices received for the other two restricted areas are similar to, or likely, even greater than, the weighted average over-order prices for the other 8 reporting areas.

The following table shows each month's prices for all reporting milk marketing orders combined for the 6 years starting with 2004 and through 2009.

	US FO @3.5	Adj FO @Test	US FO Mailbox	Over Order
Jan-04	$12.85	$13.25	$13.12	$13.97
Feb-04	$13.22	$13.67	$13.54	$14.40
Mar-04	$15.16	$15.56	$15.27	$16.30
Apr-04	$16.48	$16.80	$17.40	$17.71
May-04	$19.34	$19.51	$19.01	$20.46
Jun-04	$18.91	$19.04	$18.26	$19.96

Jul-04	$16.84	$16.96	$16.32	$17.91
Aug-04	$14.99	$15.16	$14.75	$16.08
Sep-04	$15.52	$15.77	$15.37	$16.79
Oct-04	$15.33	$15.77	$15.58	$16.38
Nov-04	$15.75	$16.30	$16.12	$16.90
Dec-04	$16.00	$16.52	$16.38	$17.14
Jan-05	$15.63	$16.08	$15.89	$16.23
Feb-05	$15.16	$15.52	$15.24	$16.10
Mar-05	$15.39	$15.74	$15.46	$16.03
Apr-05	$15.20	$15.42	$14.97	$16.03
May-05	$14.76	$14.92	$14.48	$15.34
Jun-05	$14.69	$14.75	$14.13	$15.38
Jul-05	$15.26	$15.30	$14.62	$15.94
Aug-05	$15.16	$15.22	$14.65	$15.86
Sep-05	$15.28	$15.49	$15.16	$16.07
Oct-05	$15.27	$15.68	$15.42	$16.04
Nov-05	$14.75	$15.25	$15.09	$15.51
Dec-05	$14.28	$14.80	$14.73	$15.07
Jan-06	$14.28	$14.68	$14.42	$15.01
Feb-06	$13.55	$13.91	$13.56	$14.26
Mar-06	$12.67	$12.97	$12.64	$13.41
Apr-06	$12.04	$12.26	$11.91	$12.81
May-06	$11.97	$12.13	$11.79	$12.74
Jun-06	$12.08	$12.18	$11.74	$12.88
Jul-06	$12.07	$12.14	$11.66	$12.86
Aug-06	$12.27	$12.36	$11.93	$13.14
Sep-06	$12.86	$13.11	$12.88	$13.81
Oct-06	$13.33	$13.71	$13.65	$14.18
Nov-06	$13.58	$14.00	$14.00	$14.42
Dec-06	$13.89	$14.27	$14.20	$14.73
Jan-07	$14.44	$14.80	$14.66	$15.26
Feb-07	$14.70	$15.07	$14.93	$15.56
Mar-07	$15.61	$15.90	$15.60	$16.45
Apr-07	$16.62	$16.87	$16.45	$17.46
May-07	$18.12	$18.29	$17.78	$19.08
Jun-07	$20.35	$20.46	$19.80	$21.29
Jul-07	$22.35	$22.43	$21.49	$23.19
Aug-07	$22.28	$22.39	$21.47	$23.10
Sep-07	$22.16	$22.36	$21.78	$22.97
Oct-07	$21.37	$21.67	$21.39	$22.21
Nov-07	$21.43	$21.84	$21.81	$22.27
Dec-07	$21.10	$21.56	$21.04	$21.94
Jan-08	$20.55	$20.94	$20.70	$21.36
Feb-08	$18.84	$19.18	$19.03	$19.85
Mar-08	$17.64	$17.97	$18.01	$18.80
Apr-08	$18.08	$18.34	$18.19	$19.11
May-08	$18.05	$18.24	$18.09	$19.25
Jun-08	$19.45	$19.56	$19.12	$20.60
Jul-08	$20.06	$20.14	$19.43	$21.11

Aug-08	$18.94	$19.08	$18.58	$20.02
Sep-08	$18.16	$18.43	$18.27	$19.26
Oct-08	$17.23	$17.67	$17.94	$18.41
Nov-08	$16.64	$17.14	$17.42	$17.59
Dec-08	$14.95	$15.38	$15.78	$15.98
Jan-09	$13.34	$13.66	$13.77	$14.23
Feb-09	$11.06	$11.31	$11.61	$12.01
Mar-09	$11.14	$11.37	$11.60	$12.07
Apr-09	$11.63	$11.82	$11.96	$12.50
May-09	$11.47	$11.60	$11.61	$12.31
Jun-09	$11.26	$11.35	$11.27	$12.09
Jul-09	$11.32	$11.38	$11.30	$12.23
Aug-09	$11.89	$11.98	$12.04	$12.90
Sep-09	$12.63	$12.79	$12.98	$13.76
Oct-09	$13.62	$13.94	$14.29	$14.65
Nov-09	$14.64	$15.01	$15.37	$15.69
Dec-09	$15.68	$16.09	$16.37	$16.70
2004		$16.07	$15.90	$16.87
2005		$15.34	$14.98	$15.79
2006		$13.12	$12.84	$13.67
2007		$19.45	$19.16	$20.04
2008		$18.53	$18.40	$19.30
2009		$12.65	$12.85	$13.39
2004-2009		$15.80	$15.57	$16.44

It is noteworthy to look closely at these three price relationships.

First, the differences between the Federal order minimum blend/uniform prices and the mailbox prices paid to dairy producers are as follows:

Year	Federal Order Blend	Mailbox	Difference
2004	16.07	15.90	-0.17
2005	15.34	14.98	-0.36
2006	13.12	12.84	-0.28
2007	19.45	19.16	-0.29
2008	18.53	18.40	-0.13
2009	12.65	12.85	-0.20
2004-2009	15.80	15.57	-0.23

As these Mailbox prices indicate, dairy producers who market their milk through Federal orders are generally paid less than the regulated minimum blend price. The reason that Mailbox prices are lower than Federal order minimum prices is because mailbox prices include deductions paid by producers for such expenses as hauling, order administration, mandatory promotion assessments, and cooperative dues. According to USDA, Mailbox prices include "all deductions for costs associated with marketing the milk." (Emphasis added)

Second, the differences between the Federal order minimum blend/uniform price and the over-order prices received from processors are as follows:

Year	Federal Order Blend	Over-order	Difference
2004	16.07	16.87	+0.80
2005	15.34	15.79	+0.45
2006	13.12	13.67	+0.55
2007	19.45	20.04	+0.59
2008	18.53	19.30	+0.77
2009	12.65	13.39	+0.74
2004-2009	15.80	16.44	+0.64

As these Over-order prices illustrate, the handlers buying that same monthly pooled milk pay substantially higher prices than the Federal order minimum prices.

A comparison between the Over-order revenues paid by handlers for pooled milk and the Mailbox prices paid to producers for the same pooled milk clearly shows that significant amounts of revenues collected are not being passed on to the associated milk producers. This illustrates the extreme inefficiency of the marketing chain on the supply side.

It is important to note that according to USDA, not only does the Mailbox prices include "all deductions for costs associated with marketing the milk" but, also "includes all payments received for milk sold." (Emphasis added)

Therefore, it is noteworthy to compare the actual revenue or milk values and differences represented by these per hundredweight prices:

Year	Federal Order Blend	Mailbox 1/	Over-order 2/
2004	$16,554,885,492	$16,258,428,142	$17,386,817,465
2005	$17,593,224,173	$17,179,644,325	$18,104,063,634
2006	$15,827,281,518	$15,485,106,487	$16,483,556,794
2007	$22,254,546,736	$21,738,089,486	$22,932,396,068
2008	$21,472,663,771	$21,320,914,289	$22,361,423,048
2009	$15,617,327,228	$15,802,118,380	$16,524,566,906
2004-2009	$109,319,928,917	$107,784,301,109	$113,792,823,913

1/ Weighted average Mailbox price for all reporting areas applied to monthly milk pooled.
2/ Weighted average Over-order price for all reporting areas applied to monthly milk pooled.

For the 6-year period from 2004 through 2009, more than $6 Billion of the actual dollars that were paid by handlers for Federal order pooled milk was lost, unaccounted for, or was otherwise not passed on to dairy producers. This amount is not just incidental but is substantial. This is more than $1 Billion per year, $83.5 Million per month, or $0.87/cwt of milk!

The AMS website states that "Over-order charges for the most part reimburse cooperatives for services performed for fluid milk processors." However, most of the costs associated with the marketing of Federally pooled milk such as "hauling charges, cooperative dues, assessments, equity deductions/capital retains, reblends, the FMO deductions for marketing services, [and] Federally mandated assessments such as the National Promotion Program" are included in the Mailbox prices. If other additional costs purported to be covered by Over-order revenues truly cost this much, competitive forces are desperately needed to motivate dairy cooperatives to become more efficient in providing these purported services!

The Justice Department stated that the "characterization of [over-order] premiums as service charges is a ruse: the charges have been consistently in excess of the cost of services provided, and, the principle "service" provided, balancing surplus, is not a service, but rather a means of controlling Class I eligible milk to the market, a key to market power."[1]

USDA's website even admits that "to a lesser extent, over-order charges can result from market power, generally attained through marketing agencies in common, which can be used to obtain additional revenue not associated with services."[2] (Emphasis added)

The Justice Department stated that:

- "Producer cooperatives have been able to increase monopoly rents by charging Class I premiums. An over-order premium may not be all monopoly profit, but...the federal order system gives some assistance in maintaining and collecting these over-order premiums."[3]
- "Cooperatives with market power tolerate [non-class I] operational losses in order to reap some Class I premiums" and that "any cooperative who states that it processes [non-class I] milk at a loss and charges a premium on class I milk, over a substantial period of time, is stating it has market power."[4]

The Over-order revenue trend was relatively consistent from January 2004 through December 2008 as indicated by the following graph:

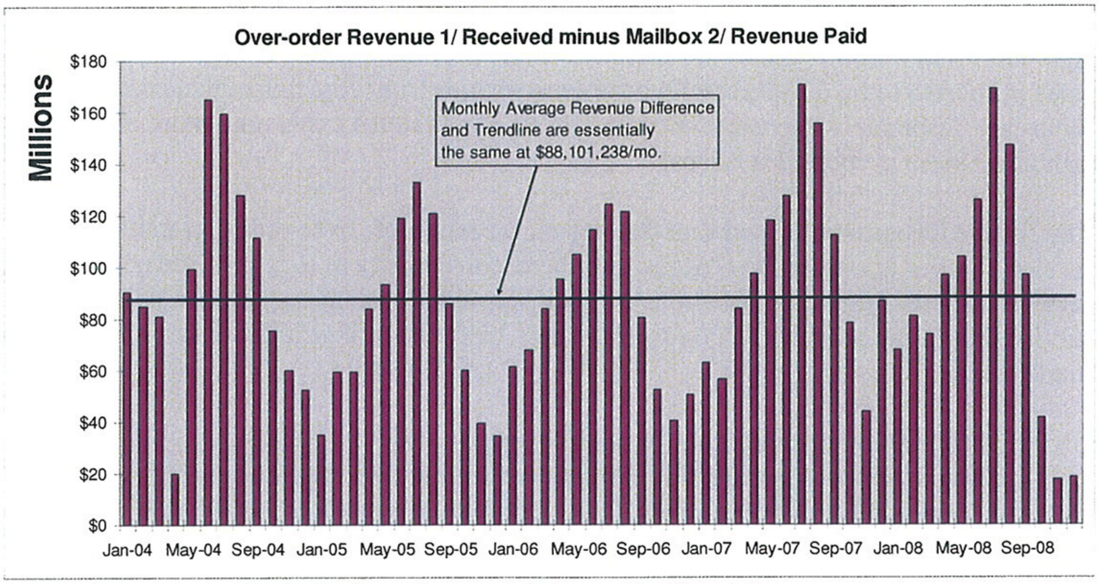
[1] Milk Marketing, A Report of the U.S. Department of Justice to the Task Group on Antitrust Immunities, January 1977. Page 395

[2] See: http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?more=M.OptionalText1&template=TemplateM&navID=IndustryMarketingandPromotion&leftNav=IndustryMarketingandPromotion&page=OverOrderPrices&description=Over-Order+Prices&acct=dmktord

[3] Milk Marketing, A Report of the U.S. Department of Justice to the Task Group on Antitrust Immunities, January 1977. Page 383

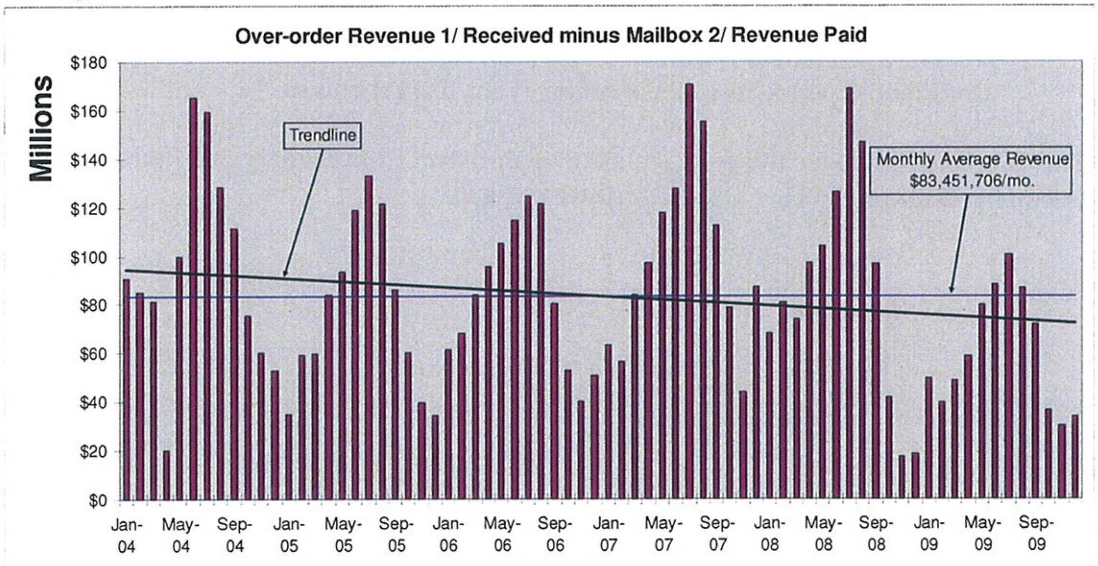
[4] Milk Marketing, A Report of the U.S. Department of Justice to the Task Group on Antitrust Immunities, January 1977. Pages 388-389

DIAC EXHIBIT 4
Submitted by Randal Stoker, July 25, 2010
Marketing Efficiencies and Over-order Prices



1/ Weighted average Over-order price for all reporting areas applied to monthly milk pooled.
2/ Weighted average Mailbox price for all reporting areas applied to monthly milk pooled.

Over-order revenue losses dropped significantly after the DOJ/USDA increased antitrust oversight and announced dairy antitrust workshops:



1/ Weighted average Over-order price for all reporting areas applied to monthly milk pooled.
2/ Weighted average Mailbox price for all reporting areas applied to monthly milk pooled.

Referring to over-order premiums, the much regarded Norse Report stated that:

> We believe that it was the clear intent of the Congress that Secretary's orders should provide public assistance to the private enterprise system rather than superseding it" and that "when free collective bargaining by strong cooperative associations results in negotiated marketwide premiums substantially and persistently above the uniform prices

> established in the order, an ambiguous and dangerous situation confronts the order system.
>
> Experience shows that, with the less-than-completely-free market conditions provided by the Secretary's order and with dairy price supports, monopoloid distortions of the market and intermarket price structure may persist indefinitely. This would defeat the basic purpose of the order system to achieve as fully and promptly as possible a national milk price structure that would be internally consistent, serve consumers needs, and promote optimum allocation of the nation's productive resources.
>
> Where negotiated marketwide premiums persist, consideration should be given to suspension of the pricing and pooling provisions of the order.[5] (emphasis added)

It is also noteworthy that the AMAA not only vests the Secretary of Agriculture with the authority to suspend "the pricing and pooling provisions" of the act but:

- The Secretary is directed to terminate or suspend any order or any provision of any order which obstructs or does not tend to effectuate the declared policy of the AMAA 7 U.S.C. § 608c(16)(A). (emphasis added)
- The Secretary is not required to hold a hearing before terminating or suspending an order or a provision thereof. Carnation Co. v. Butz, 372 F. Supp. 883, 885 (D.D.C. 1974)
- There is nothing in the Act nor its legislative history to indicate that termination or suspension of regulatory controls require notice and hearing. Carnation, 372 F 2d at 886.
- Unlike section 608c(16)(B), section 608c(16)(A) does not require producer approval.[6]

A recent economic study in the American Journal of Agriculture Economics found "strong evidence that milk marketing orders are an important determinant of the [over-order] premium[s] paid for Grade A milk. The Grade A premium is larger where marketing orders set a higher fluid milk differential."[7] Thus, the AMAA's immunity and price regulating provisions allow, insulate, and concentrate the necessary market power that permits this exploitation and the costly inefficiencies plainly illustrated in this Exhibit.

The Secretary of Agriculture should suspend the pricing and pooling provisions of the AMAA and the Antitrust Division should sunset the AMAA's antitrust immunity. Such actions will encourage, promote, and restore unbiased and responsive competition to our milk marketing system. Such a course will maximize producer returns and minimize the costly waste and inefficiencies where they exist (and that are so plainly evident) in our present milk marketing system.

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[5] *Report to the Secretary of Agriculture by the Federal Order Study Committee*, December 1962. Pages 98-99

[6] U.S. District Court – D.C., Case 90-0220 Decision and order of Judge Royce C. Lambert, 4/10/1990

[7] *Effects of Milk Marketing Order Regulations on the Share of Fluid-Grade Milk in the United States*, by Joseph V. Balagtas, Aaron Smith, and Daniel A. Sumner. November 2007, page 846 at: http://ajae.oxfordjournals.org/content/89/4/839.full.pdf