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UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

In re: Milk in the Appalachian, Southeast, and Florida Marketing Areas	7 CFR Parts 1005, 1006, and 1007 Docket No. 23-J-0019 (AMS-DA-23-0003)

BRIEF AND PROPOSED CONCLUSIONS OF LAW SUBMITTED BY MILK INNOVATION GROUP

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I. INTRODUCTION

This Brief and Conclusions of Law is submitted on behalf the Milk Innovation Group. The Milk Innovation Group is a group of fluid processors and producers. The seven members are: Anderson Erickson Dairy, Aurora Organic Dairy, Danone North America, Fairlife, HP Hood, Organic Valley / CROPP Cooperative, and Shamrock Foods**.** Organic Valley / CROPP Cooperative and Shamrock Foods are handlers regulated by Federal Milk Marketing Order (FMMO) 5.

II. ASSEMBLY CREDITS

The Milk Innovation Group supports allocating more Class I "dollars" to the producers that supply and serve Class I plants. In concept, establishing an assembly credit furthers this aim and has sound precedent and policy support. However, the proposals here do not accomplish the aims they claim—of supporting Class I. Rather, with no support in either the economic or policy justifications, the proposals seek to create an even greater burden on Class I processors. Given the price-enhancing nature of provisions at issue here and the continued decline in fluid milk sales, the Milk Innovation Group cannot support Proposals 6, 7, and 8, and neither should USDA.

Instead, a better model for an assembly credit is the Upper Midwest Order, FMMO 30. In the Upper Midwest, the assembly credit is funded by the pool and does not enhance Class I prices. The same justification for the assembly credit in the Upper Midwest exists here: to compensate producers that actually supply Class I plant. Notably, Proponents supported this concept of an assembly credit for this reason:

> [P]roducer milk delivering to distributing plants should receive compensation over and above that producer milk pooled on the order, but not delivering to distributing plants.

Dennis Tonak, Prairie Farms, Hr'g Tr. vol. 5, at 498:4–7.

> "So, in effect, there[are] two market-wide benefits, one to the local producers to encourage them to increase milk production; and secondly, along with the potential differences in uniform price or Class I price, to encourage those producers to maintain milk production and move it to the plant where it is needed.

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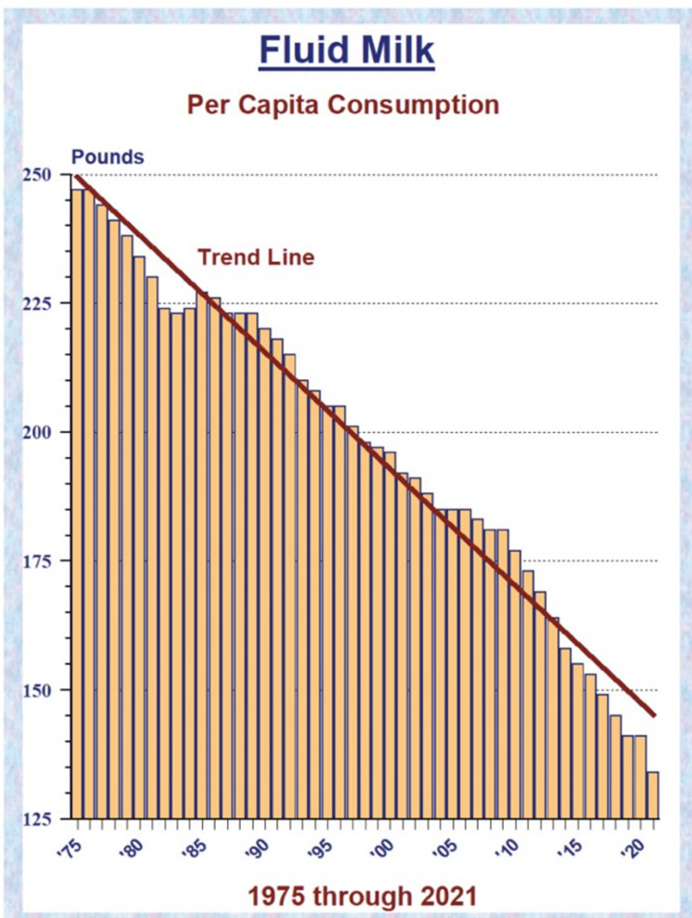
Id. at 538:5–11. The Milk Innovation Group likewise believes that farmers undertaking the costs of serving the Class I market should be incentivized to continue supplying the Class I market and then compensated for that work. However, efforts to achieve this compensation should not be at the expense of further harm to the Class I market as a whole.

III. CLASS I MARKET CONDITIONS

Efforts to increase regulated minimum prices for Class I milk in an environment where fluid milk sales continue to decline precipitously will only further weaken the industry. As demonstrated by USDA's own data, Class I has been on a steep downward trajectory for years now.



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See USDA, *Per Capita Consumption of Selected Dairy Products*, Marketing Service Bulletin, Central Marketing Area, (Oct. 2022), https://www.fmmacentral.com/PDFdata/msb202210.pdf.

Federal Milk Marketing Orders do not—and cannot—serve to enhance producer prices, but rather operate to set the minimum price necessary to avoid disorderly marketing and ensure a sufficient supply of fluid milk. However, time and again during discussion of Class I over-order charges / premiums with the USDA, the cooperatives disingenuously ask the USDA to do their price negotiation work for them.

Proponents fail to consider the impact of their Proposals on processors, viewing it only from the lens of producers seeking to extract more and more money from some mythical, bottomless source. But Class I is not a golden goose, and USDA must reject processor's improper use of FMMO's to enhance their own prices at the expense of processor. By their own admission, that is what they seek to do here:

> [The credit] provides a reimbursement system superior to over-order prices, which are challenging to maintain and even more challenging to increase.

Elvin Hollon, Dairy Cooperative Marketing Association, Hr'g Tr. vol. 3, at 275:17–19.

> [I]t's a whole lot easier to do it on the regulated side of [the Class I price] than it is on the over-order premium.

Jason Smith, Maryland and Virginia Milk Producers Cooperative, Hr'g Tr. vol. 4, at 394:16–19.

> It is very difficult to recover some of the costs through the marketplace.

Dennis Tonak, Prairie Farms, Hr'g Tr. vol. 5, at 534:3–4.

The cooperatives also fail to consider the impact on consumers when they seek to increase Class I prices without justification or support. Ultimately higher Class I prices increase consumer prices for a gallon of milk. During a time of rapid inflation, particularly at the grocery store, the

USDA should not be enacting unjustified regulatory changes that will raise consumer prices. That is why USDA should use the Upper Midwest model for assembly credits, since it is not price enhancing.

Cooperatives proffered no meaningful defense to this inevitable conclusion of increased consumer prices. When asked about the increase to consumer prices, the cooperatives obfuscated:

> Fair question. In this particular situation, I guess I would answer that question by saying the [goal] is to try to keep as much local milk in the market producing milk. And so, I think the three dairy farmer witnesses, one of the things they spoke about was the number of dairies that they knew of that were near their farm who were no longer there, and to the extent that we can help the farm in the area grow or remain in business or maybe even come into business is going to provide the most economic milk supply for the processors in the southeastern Orders and ultimately for consumers, that's always a hard argument to follow all the way through the chain, but it speaks to be true. So every farm that goes out of business gets replaced by a supplemental milk load that costs a whole lot more.

Elvin Hollon, Dairy Cooperative Marketing Association, Hr'g Tr. vol. 3, at 336:20–337:9.

IV. CONCLUSION

Class I needs help, not higher prices. And consumers need choices, not more of the same at ever higher cost. While the Milk Innovation Group supports the idea of an assembly performance credit as a way to improve the health of Class I, the misguided Proposals 6, 7, and 8 will have the opposite impact. USDA should reject the Proposals.

DATED this 19th day of April, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below I served a copy of the foregoing **MILK INNOVATION GROUP'S BRIEF AND PROPOSED CONCLUSIONS OF LAW** on:

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Dated this 19th day of April, 2023.

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