AMS - FMMO Hearing

From: bob@cedargrovecheese.com
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To: AMS - FMMO Hearing
Subject: [External Email]Revised Market Order Revision Request

Proposal to Modify Provisions of Milk Marketing Orders Governing Participation

To: Deputy Administrator, Dairy Programs, AMS, USDA

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Cedar Grove Cheese has been making cheese from patron milk since 1878. We directly employ 30 people and use milk from 32 farms. Our family has invested in the factory, while enabling our producer suppliers to continue investing their money in their farms. Cedar Grove Cheese is typical of Wisconsin and national proprietary cheese producers who are a source of innovation and provide important markets for dairy farmers.

We believe that USDA and the Market Order Administration should eliminate provisions of milk market orders that treat handlers differently depending on whether they are organized as cooperatives or proprietary firms. The provisions hurt producers who sell to proprietary firms by putting their buyers at a competitive disadvantage. The provisions enable unfair methods of competition and unfair trade practices. The resulting loss of potential buyers hurts all farmers by reducing competition for milk.

Section 608c(5)(F) allows cooperatives to blend the net proceeds from sales and “distribute thereof to its producers in accordance with the contract between the association and its producers…” This flexibility has been interpreted to permit cooperatives to pool milk, and receive distributions from the pool, even though the farmers are paid less than the market order blend or minimum pool price. Farmers supplying milk to proprietary plants, in order for that milk to be eligible for pooling and distributions from the pool, must each be paid the market order blend or minimum price.

At any time, this disparate treatment allows cooperatives to out-compete proprietary firms for superior quality farmers by paying them premiums derived by paying other farmers prices below the order minimums. During the recent period when market order prices have not adequately covered the cost of manufacturing, the inequity has been more extreme.

Some cooperatives in Wisconsin openly announced that they would be paying their producers prices substantially below the uniform, or minimum, price. The cooperatives were still able to participate in the market orders and receive pool distributions. Handlers that are financed as proprietary firms either had to pay significantly higher prices to each producer – prices that were not supported by the value of the commodities produced from the milk – or they were ineligible for participation in the market order and could not receive payments from the pool. The value of this inequity could have been as much as $.15 per pound of cheese for the price of milk, and a couple cents per pound for the pool draw. The competing cooperative benefited from lower milk prices and market order draws to be able to offer products to buyers at lower prices.

Economic analyses have provided strong evidence that competition results in higher prices for farmers. The number of milk buyers has declined significantly over the past decades. Concentration among milk buyers is high nationally and practically non-existent in some parts of the country. Rules that enable only a subset of buyers to obtain a subsidy from the market orders, contribute to the decline in competition by making it harder for some buyers to compete and potentially having them go out of business.

The Capper-Volstead Act provides opportunities for farmers to combine in cooperatives without running afoul of anti-trust provisions of the Sherman and Clayton Acts. Subsequent case law has made it clear that the exemption is not unlimited. Predatory acts and monopolization are still restricted. The market order is governed by 608c(7)(A) that market order provisions include terms and conditions that: “Prohibit… unfair methods of competition and unfair trade practices in the handling thereof.” The need for the Market Order Administrator to protect competition is further amplified by the provisions that enable the rules of the market orders to be adopted only by the producers, but allowing cooperatives to submit votes en masse (so-called block voting) on behalf of their members. Processors organized as cooperatives have the ability to set the rules of the market orders in ways that provide them unfair advantages over their competitors. The Market Administrator should put in the necessary regulations to make sure that the order provisions do not harm competition.

Our request is for the Market Administrator to require market order rules to benefit farmers equally whether they sell their milk to a buyer who is organized as a proprietary firm or sell their milk to a cooperative. We believe this is supportive of competition for farm milk and will result in better prices for all farmers.

Currently paragraph 73 of each market order states that each handler, not paying a cooperative association, shall pay each producer according to the stated formula. The requirement to make uniform payment to each producer does not appear in Part 1000, General Provisions of the Marketing Order. In 7 USC 608c, the Code governing orders, paragraphs (5) A and B appear to require uniform payments to each producer and outlines specific acceptable purposes for price differentiation. Paragraph C, however, appears to permit other differentiation to the limitation that the sum paid by a handler equal the value of the milk purchased by "him".

The uniform price requirement in paragraph 73 is not applied to cooperative associations as provided in 608 (F). This creates the disparity in pricing mentioned above that provides competitive advantages to the cooperatives. The following part of & USC 608c, paragraph 7, requires orders to contain provisions prohibiting unfair methods of competition and unfair trade practices. The unequal treatment of farmers supplying cooperative associations and proprietary firms is just such a provision supporting unfair competition and trade practices.

The market orders should be revised. One way would be to interpret Paragraph C as permitting the same time of reblending by proprietary firms as is permitted to handlers operated as cooperatives. Adjustments for marketing services, transportation, and marketing should be available to all participants providing those services. There may be other solutions to this problem. We call upon the USDA and the Milk Market Administration to use whatever procedures are within their power to eliminate the inequity and protect competition in milk markets.