USDA Received: July 19, 2021

June 04, 2021

Dana Coale Deputy Administrator

USDA-AMS Dairy Programs

Stop 0225

Room 2968 – South

1400 Independence Ave. SW

Washington, DC 20250-0225

RE: Proposal to amend Federal Milk Marketing Order No. 30

Dear Ms. Coale

Please find attached Lamers Dairy, Inc.'s petition with the support of Ronnybrook Farms, Highland Farms LCC., Broadacre Dairies, Calder Brothers Dairy, Snowville Creamery LLC., Farmers All Natural and Toft Dairy, request an amendment to expand and clarify the regulatory exemption of small distributing plants through the informal rulemaking procedure under 553 of Title 5 of the United States Code.

We believe that the exemption for small distributing plants can be expanded to mirror the producer handler exemption. This will reduce the regulatory burden – for small handlers and for USDA – without having a significant impact on orderly marketing and Federal order pool values.

Thank you for your consideration on this important issue, and please feel free to contact me if you have any questions.

Sincerely,

Mark J. Lamers

Mark J. Lamers, President

Lamers Dairy, Inc.

Dear Ms. Coale

Lamers Dairy Inc. Appleton, WI., with the support of, Ronnybrook Farms Ancramdale, NY. High Lawn Farms LLC Lee MA., Broadacre Dairies, Powel, TN.,Calders Brothers Dairy Lincoln Park MI., Snowville Creamery LLC Pomeroy OH., Farmers All Natural Wellman, IA. and Toft Dairy Inc. Sandusky OH. hereby submit this proposal to exempt all Class I handlers from pooling obligations under the Federal Milk Marketing Orders whose monthly route distribution sales are below three millions pounds per month.

Proposal

To change Federal Milk Marketing Language of exempt plants to include all pool distributing plants whose monthly route distributions are under 3 million pounds.

The purpose of the change would be to grant relief from pooling obligations under the Federal Milk Marketing Order System to be the same as that of a producer-handler's. It is widely accepted that producer-handlers who have less than three million pounds of route distribution do not have a significant impact of the orderly marketing of milk. Put another way, producer-handlers who produce under three million pounds of route sales under the classified pricing system does not cause enough of a difference in the Class I pricing structure. Therefore they are exempt from Federal Order participation. (United States Department of Agriculture, Agriculture Marketing Service (7 CFR. Chapter X) part 1030.10 Milk in the Upper Midwest Marketing Area). Granting the proposal would create a marketing situation were-by producer-handlers and pool distributing plants whose monthly class I pounds are under 3 million would be treated the same.

Current Law and conditions

Current Federal Milk Marketing Orders regulations requires all Class I distributing plants whose monthly route distributions sales are above 150,000 pounds per month be required to participate in the Producer Settle Fund known as the pool. There is also Language within the FMMO exempting Producer Handlers whose monthly route distributions are under three million pounds per month.

Under the classified pricing structure of the FMMO, fluid milk sales classified as Class I, is priced higher than Class II, III and IV. Under normal marketing conditions this would cause the Class I handler to have to pay monies into the producer settlement fund, creating what is known as the Producer Price Differential or a positive PPD. Over the past 10 month there has been so much volatility of the pricing in the manufacturing market that the Class III price exceeded the Class I price creating a negative ppd. This created a condition by which the manufacturing plants would have to pay into the pool and Class I handlers would get a draw. However because of provisions under the law that allows Class III milk to be de-pooled from the market, Class I handlers still had to pay into the pool. (See exhibit A attached, a letter dated 12/24/20 to Victor Halverson, Market Administrator of F.O. 30.)

Disorderly Marketing Conditions.

Federal Order 30, of which Lamers Dairy Inc. is a part, has seen great volatility in the Class III price over the past 10 month. Over that time period over 2 billion pounds of milk was de-pooled. The PPD over that time same period had one month with a positive PPD and the remaining month saw a negative PPD ranging from a -$.46 to a -$5.43. When that amount of milk is pulled from the pool, it puts a greater burden on the Class I handler as well as the consumer. The effect on the Producer was that there was a significantly higher negative PPD than there would have been if the 2 billion lbs. of milk were not de-pooled. This is taking monies out of the hands of the producer.

In November 2020 in Federal Order 30 there was a -$5.43 PPD. Running a hypothetical analysis as if the 2 billion pounds of milk were not de-pooled, the PPD would have been an approximate negative -$2.05 (See exhibit C). The whole premise of the Federal Milk Marketing Order is that all producers can share in the higher value of the milk in the market. This cannot happen when the Class III price is higher than the Class I and billions of pounds of milk are not pooled on the Order. Subsequently the Class I Handlers still had to pay into the Pool to subsidize the Class III price. This is not Orderly Marketing.

We recently had to replace some of our milk supply because a few of our farm families were getting out of the milking portion of their operation. When soliciting other farms and comparing pricing I found that other plants were deducting the negative PPD then turning around and adding a plant premium or bonus. That premium was generally about half of the Negative PPD. Logic would have it that the plants were able to do that because they had the money not only from the sale of the cheese in a high price market, but also with the money they saved from avoiding to pay into the Producer Settlement Fund along with funds received from the Producer Settlement Fund via Class I Handlers. This puts Handlers such as us who buy milk directly from the Farmers at a great competitive disadvantage.

Impact of proposed change

Attached Exhibit B is a study conducted by my office with the help from the USDA-AMS-Dairy Program Office. In that study I looked at the time period of 4 month beginning with December 2020 through March of 2021. The study shows the total Class I pounds of all Federal Orders, the number of pool plants with Class I sales under 3 million pounds, the average sales of those same plant and the percentage of sales those plants represent against the whole. The average is just over 1%. It is reasonable to assume that over a longer time period the same would hold true. Clearly this volume, if exempt from pooling, would have practically no impact on the pricing of Class I milk in the market. Over the past several years there has been a significant decline in the number distributing plants across the country. Federal Order 30 alone went from 24 pool distributing plants in 2010 to 14 plants today. Part of the reason for this is the burden that the Federal Order Pooling System has put on the Class I handlers. What remains today are very large high volume plants and a number of small plants under 3 million lbs. These small plants generally serve niche markets and are not set up to handle a large volume of milk and are in no way capable of competing for higher volume of sales. Volume pricing seen in today's market is just not attainable for the small plants. In fact in some markets as our own, retailers put a higher percentage of markup on our product because they know they can get it from the consumer because of the demand for our product. I think that would hold true in other markets as well.

As for the producers, there would be virtually no effect on pricing if the proposal were to be granted. In fact there is more financial harm done to the producer when de-pooling occurs than there would be if the proposal was adopted.

Impact on small business

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires that any Federal program has to consider what impact a Federal regulation would have on a small business. Clearly the Federal Order Pooling system puts a great burden on small business. As an example, under normal milk pooling conditions in Federal Order 30, Class I sales account for approximately seven percent of all the milk in the order. Seven

percent subsidizes 93 percent. Now when 2 billion lbs. of milk is allowed to be de-pooled as it was in the month of November 2020, the financial impact on not just the small Class I handler but all Class I handlers is just undeniable. This is an unfair trade practice as prohibited under Agriculture Marketing Agreement Act under Terms Common to all Orders.
The Federal Milk Marketing Orders has an obligation to protect **ALL** small handlers, not just producer-handlers.

Another example of the Class I handler large or small being unduly affected by policy is that in Federal Order 30 when the majority of the Class III milk was de-pooled, it also affected the amount of money going to the Market Administrative Fund. Lamers Dairy was notified by the Market Administrator that the assessment rate was going to be doubled to make up for the lost revenue because of the amount of milk that was de-pooled. Again an unfair trade practice that the Class I handler has to endure. This is not protecting the Class I handler large or small. The Class I Handler has to make up for this, and the only way that can be done is to pass that cost on to the consumer.

Granting the request of the stated proposal will go a long way to protect the small Class I handler and ensure that they are able to continue to thrive in an ever-changing dairy industry.

Impact of proposal on producers, handlers. Consumer's, and administrators

The adoption of the proposal would have very little if any impact on all parties involved. When procuring producer milk, competition for that milk remains the same. Federal Order pricing would see little change if any. Most plants pay Federal Order minimum prices along with some kind of over Order premiums. There would be no effect on consumers and the Market Administrator's office would probably benefit from not having to figure these exempt plants' utilizations into the pricing calculations and finished product testing. Again, as illustrated in exhibit B, only 1% of the milk in the entire country would be affected by granting the proposal, a very insignificant amount.

Summary/conclusion

Lamers Dairy Inc., along with the proponents of this proposal fully request that this proposal be granted. In exempting all Class I handlers whose monthly Class I route sales are below 3 million pounds per month, the USDA will have taken steps to ensure that small Class I handlers have a place in this dairy economy. Small independent handlers serve a need in their local economy, providing a living for their employees along with providing a market for the producer's milk from whom they buy their milk.

Granting this proposal will bring into line the reasoning and rationale of an exempt plant that has less than 3 million pounds of Class I route distribution. A Plant of that size does not have a significant impact in the classified pricing structure and would not cause disorderly marketing conditions.

All Federal Milk Marketing Orders are bound by the Regulatory Flexibility Act (5 U.S.C. 601-612) to ensure that all Federal regulations be studied as to the impact that a particular regulation would have on small business. Clearly granting the proposal would bring uniformity of the treatment of small handlers under the Federal Milk Marketing Order System.

We feel that this change could be made through the informal rule making process. The small plants impacted by this proposal do not have the financial resources or the man power to address this in a formal national hearing. This modest change does not rise to the level of requiring a national hearing.

If the USDA would like to have a meeting to consider this proposal I would be more than happy to accommodate.

Respectfully,

Mark Lamers
President
Lamers Dairy Inc.

Lamers Dairy
Dairyland's best.
Lamers Dairy, Inc. • N410 Speel School Road • Appleton, WI 54915

7/12/21

Ms. Dana Coale

Dear Ms. Coale

Please find enclosed the exhibits for my petition to amend the Federal Order.

There was an oversite on my part and the exhibits were supposed to be included with the early mailing you should have received.

Regards.

Mark Lamers
President
Lamers Dairy Inc.

1-920-83
0-0980

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Exhibit A

12/24/20

Dear Mr. Halverson

I am writing this letter as a follow up to our phone conversation dating 12/18/20. There is growing concerns about the recent negative PPD that have been occurring over past few months, particularly with our producers that supply us with milk. As you know there has been a great surge in Class III pricing starting back in June and has continued to this date causing large negative PPD'S.

Since April 2020 there has been over 2 billion lbs. of milk being de-pooled on FMMO 30 because of the negative PPD"S. Because we are a pool plant we are put at a competitive disadvantage because we are not allowed to de-pool the majority of our milk as the cheese plants do when the Class III price exceeds the Class I price. In November of 2020 there was a negative $5.43 PPD and because over 2 billion lbs. milk being de-pooled, Class I handlers still had to pay into the pool putting more burden on the consumer whose price is affected by these actions This is disorderly marketing to the utmost effect.

Cheese plants not only received the benefit of the high Class III market price they also avoided paying a portion of their monies into the pool because of the amount of De-pooling that has occurred. When it came to paying the farmers, cheese plants did not deduct the full amount of the negative PPD from the producers because of the amount of money they saved from not having to pay into the pool. In some cases this amounted to $2.00 cwt. This puts us at a competitive disadvantage when it comes to producer pay prices.

Back in February 2019, CMPC and UMMA petitioned to have the shipping requirements lowered because they claimed that a portion of their members were not able to participate in the pooling of milk. That petition was granted. We response to that petition dated March 27th of 2019. Our response may have seemed irrelevant at the time but under today's circumstances however I find it very relevant because now when there is a price inversion between the Class III price and the Class I price I find it ironic that they now choose not to participate.

Furthermore on December 23, 2020 your office granted a request by DFA and others to allow milk to be dumped at the farm for a period starting December 23rd lasting through January 4th of 2021 and still be pooled under the order when the milk would never hit the market. How is this fair to distributing plant that pay into the pool?

Mr. Halverson, The whole pooling system is fundamentally flawed and has been for some time. If Class III and Class IV plants want to partake in the pooling of milk to take advantage of the revenue sharing of the Class I market then the same should hold true in times of price inversions. No de-pooling should be allowed, then you would have a more equitable system.

The Small Business Act from the Small Business Administration, requires that Government Agencies need to govern in such a way as to protect small business. Federal Order language does that to a certain degree with the Producer Handler exemption of 3 million lbs. or less. The reasoning for this is that 3 million lbs. of product on the market for any given month does not significantly affect orderly marketing conditions. I believe that that provision should apply to all handles. I believe that through the informal rule making process you have the ability to make this change. There needs to be protection for small business such as ours.

I have enclosed some text from the Regulatory Flexibility Act that re-enforces Government Agencies to consider the impact of government regulations on Small Business. In light of this past years events surrounding the volatile pricing in Federal Order 30 along with the massive amount of de-pooling that has taken, I believe it is time for you to take action to protect Small business by granting my request for Lamers Diary to be exempt from the mandatory pooling requirement beginning January 1st 2021 based on the same protection allowed to a producer handler whose production is under the 3 million lbs. per month.

Respectfully

Mark Lamers

President: Lamers Dairy Inc.

EXHIBIT B

Class I Pounds*

Federal Order #	20-Dec	21-Jan	21-Feb	21-Mar	Total Lbs 12/20 - 3/21
1	727,078,088	705,627,274	652,242,437	716,400,018	2,801,347,817
5	346,999,039	325,771,310	306,760,578	322,819,654	1,302,350,581
6	174,889,681	175,808,318	161,089,985	173,604,577	685,392,561
7	280,090,102	268,924,985	253,449,691	271,840,744	1,074,305,522
30	227,905,266	212,446,180	200,722,091	219,159,910	860,233,447
32	411,274,964	396,252,491	377,068,324	388,153,091	1,572,748,870
33	587,945,745	578,536,359	532,400,723	578,737,874	2,277,620,701
51	438,202,821	413,621,598	389,554,873	429,764,940	1,671,144,232
124	146,556,899	137,397,400	129,470,073	139,197,875	552,622,247
126	354,675,621	357,825,979	301,645,463	364,231,504	1,378,378,567
131	111,028,771	104,599,482	94,827,385	113,088,091	423,543,729
Total	3,806,646,997	3,676,811,376	3,399,231,623	3,716,998,278	14,599,688,274
Pool Plants Under 3 MM Lbs/Mo	41,100,000	39,500,000	46,300,000	37,200,000	164,100,000
% of Total Pounds From Pool Plants Under 3 MM Lbs/Mo	1.08%	1.07%	1.36%	1.00%	1.12%
# of Pool Plants Under 3 MM Lbs/Mo**	40	39	43	40	
Average Lbs Per Pool Plant Under 3 MM Lbs/Mo	1,027,500	1,012,821	1,076,744	930,000	

* Source- Federal Milk Marketing Order Monthly Online Reports
** Source- Ms. Erin Taylor, Director, Order Formulation and Enforcement Division, USDA -AMS- Dairy Program

USDA United States Department of Agriculture

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UPPER MIDWEST MARKETING AREA
Federal Order No. 30

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EXHIBIT C HYPOTHETICAL COMPUTATION OF PRODUCER PRICE DIFFERENTIAL FOR NOVEMBER 2020

PER COREY FREIJE

		Utilization	product lbs	Component lbs	Rate	Value
Class I						$3,686,391.61
		7.36%	213,005,568			
skim			98.11%	208,984,763	12.78	$26,708,252.71
bf			1.89%	4,020,805	1.6316	$6,560,345.44
Class II		5.96%	172,642,728			
nfs			8.8776%	15,326,583	0.9667	$14,816,207.79
bf			5.5907%	9,651,995	1.5623	$15,079,311.79
Class III		80.56%	2,332,744,375			
pro			3.2136%	74,965,121	5.6226	$421,498,889.33
os			5.7979%	135,250,146	0.1894	$25,616,377.65
bf			3.7783%	88,138,104	1.5553	$137,081,193.15
Class IV		6.12%	177,228,291			
nfs			8.8339%	15,656,208	0.9047	$14,164,171.38
bf			5.8631%	10,391,072	1.5553	$16,161,234.28
SCC adjustment						$1,640,036.92
Total producer milk			2,895,620,962			$683,012,412.05
Add	Overage					$32,805.53
	Inventory reclassified					$53,021.17
	Other sources milk(.60(h))					$268.23
	Other sources milk(.60(i))					$0.00
Subtract	Transportation Credit					$16,392.88
	Assembly					$169,273.25
	Reconstituted FMP					
	producer Milk Protein				$5.62260	$525,411,351.69
	producer Milk other solids				$0.18940	$31,644,846.92
	producer Milk Butterfat				$1.55530	$184,221,112.41
	producer Milk scc ac seasonal averages					$2,137,871.81
Total milk and value						-$60,502,341.98
Add	location adj					$2,094,564.55
	one-half unobligated balance psf					$465,524.93
Total Value					-$2.001030	-$57,942,252.50
Subtract:	producer settlement fund reserve				$0.048970	$1,047,282.27
Producer Price Differential					-$2.0500	-$58,989,534.78