

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

In re:

Milk in the Northeast and Other Marketing
Areas

7 CFR Parts 1000 *et seq.*

Docket No. 23-J-0067;
AMS-DA-23-0031

**CARMEL, INDIANA
DECEMBER 2023**

**TESTIMONY OF JAMES HAU
REGARDING NATIONAL HEARING ON
FEDERAL MILK MARKETING ORDER PROPOSALS**

December 6, 2023

I. BACKGROUND

My name is Jim Hau. I am both the President and the CFO for Maple Hill Creamery and oversee all operations of our small company; and I can confirm, Maple Hill is a small business per the SBA definition based on our number of employees. I have a Bachelor of Science degree in business administration from Marquette University and an MBA from Northwestern University. My career includes over 35 years in the Consumer Products business, working with both large public international corporations and small private start-ups. My experience with the dairy industry spans just over 20 years and includes Unilever's ice cream business, White Wave Foods' Horizon business, Pantheryx's colostrum supplement business and now Maple Hill. Maple Hill's headquarter is located in Kinderhook, New York, but we have operations spread throughout the country and I am based just outside Boulder, Colorado.

Maple Hill is a young company started in 2009 and a pioneer in dairy's fastest growing segment of grass-fed organic milk. While small, with just 18 employees, we have quickly grown to national distribution in over 8000 retail locations including the largest retailers in the country like Kroger, Safeway/Albertsons, Walmart, Whole Foods, Publix and Sprouts. Milk from Maple Hill farms can be found in every region of the continental United States and Hawaii. Our products include fluid milk, yogurt, kefir, and butter and are produced in four plants largely in the northeast. The plants are third party co-packers as we do not have the financial resources to build our own factories. Fluid milk is the vast majority of our revenue and is currently produced in one plant that produces class I products. Maple Hill products have retail sales over \$85 mm across retailers nationwide and we hold the #2 share in our key fluid milk segment.

Today, I am hoping to bring a few key points to the attention of this committee.

Key Point #1 – Our business is critical to the success of our 120 independent small family farms

Importantly, while we have just 18 employees, we represent over 120 small family farms, who participate in one of four coops, but ship directly to Maple Hill. In our business, "small family farm" is not a cliché, as our average farm milks just 50 cows. Grass-fed organic dairy represents

not just the most innovative and fastest growing segment of the dairy milk shelf, but it is the most effective way for small family farms to be able to compete and co-exist in an increasingly large industrial farm environment. In most cases, Maple Hill is the only dairy customer for these family farms. The vast majority of our farms are in upstate NY, with a few in PA as well, and participate in the federal order 1 area. The vast majority of the milk they produce for us, goes into class I fluid milk.

Key Point #2 – The grassfed organic business represents an important source of innovation to the dairy industry

The grass-fed organic dairy business accounts for just over 1% of total dairy retail milk sales. While, on a volume basis, the dairy milk business is down 2.5% this year, grass-fed organic has grown 7%.

In recent years, plant-based beverages have been able to erode dairy's share of the beverage market by making claims around "healthier alternatives" and "better for the environment". The grass-fed organic dairy segment is the dairy industry's most powerful tool to push back on this erosion. Grass-fed organic dairy is both healthier for the consumer, as the most naturally nutrient dense dairy product on the market, and healthier for the environment due to its most regenerative agricultural nature.

This latter point has been recognized by the USDA in its recent award of a Partnership for Climate Smart Commodities grant to our company and its farmers.

Key Point #3 – The USDA has, wisely, invested in this regenerative space in support of growing the grassfed organic segment, which enhances the overall dairy industry.

That USDA grant recognizes the importance of supporting the farmers in this growing category and the importance of helping to market the product, given its scarce resources due to higher costs and thin margins. Maple Hill's success, to date, has come from educated consumers who have done their research and recognize our product's benefits. Our future success is dependent on our ability to market a high-quality product, at a reasonable price, to a broader

consumer base. The higher cost of grass-fed farming, including the price we pay our farmers, which is well above FMMO rates, makes marketing funds scarce in an already thin-margin dairy business. It also forces us to price our product at the most premium level in the dairy case, which precludes what would otherwise be higher growth. Those high costs and thin margins represent, I believe, the most significant impediment to our ability to grow this innovative dairy segment. The USDA grant will help with that effort.

Key Point #4 – Pooling is a tax on our business, which receives no benefit from the FMMO process

Because we pay our farmers well above FMMO rates, they do not get any benefit from pooling funds. Maple Hill, while paying into the pool, also does not derive any benefit from pooling funds. We balance our own milk. Our customers and consumers do not benefit from pooling as our product is already available in every region of the country. From a pricing standpoint, pooling actually increases consumer prices rather than offering relief. For these reasons, pooling is simply a tax on grassfed organic, and all organic dairy businesses, which deprives our companies of much needed funding, so that dollars can be redistributed to the conventional segment. This adds to the already high cost of grass-fed dairy development and, as previously mentioned, weakens growth. I don't believe that, in all the hours of testimony heard to date, anyone has disputed these points...likely because we are all in agreement that there is no rationale to dispute them. However, rather than addressing the problem, the issue has been ignored and now, threatens to be exacerbated.

Key Point #5 – Pooling is a material hit to profitability of small growing companies and, therefore, impedes innovation, even before the proposed increases, which will materially worsen the situation

While it would be inappropriate for me to share confidential Maple Hill financial information, I would like to share a theoretical example, based on practical numbers, of the impact of the pooling tax. A small, early stage, organic milk company with revenue of about \$25 m, is

likely to incur a pooling tax of approximately \$600k. Likely, that start up is losing money and already fighting for investment dollars. However, assuming they are lucky and can garner what would be considered a healthy dairy margin of, say, 5% EBITDA, they are getting \$1.2 m that is available for taxes, interest, and reinvestment to grow their business. Giving \$600k of that to conventional farms through pooling has a very material impact on their ability to reinvest and grow. The proposals considered here today, that could take that up another 80%, would eat up another \$480k.

The impact this could have on small companies entering the space with innovative products cannot be overstated. In many cases, maybe most cases, they simply will not be able to get off the ground. If Maple Hill had incurred this higher pooling tax in the early days, it is likely we would not exist today. Even though we have now grown to a stronger and more established company, if the considered increases were to go through, we will likely need to reconsider material aspects of our growth strategy.

II. OPPOSITION TO NMPF PROPOSAL 19

Let me now explain our opposition to Proposal 19. NMPF's Proposal 19 seeks to increase the Class I price differential from its current range of \$1.60 – \$6.00 to a proposed range of \$2.20 – \$7.90. This will compound the problem for organic dairy farms. For this reason, we oppose NMPF's Proposal 19. USDA must reject this proposal for multiple reasons:

1. The increase would represent a greater taxation and further slow progress of this important and growing segment of the dairy industry.
2. We do not see logic in justification for the current Class I price differential even remaining at \$1.60, given current supplies of fluid milk.
3. Based on my experience in the market, there is more than a sufficient supply of fluid milk. Raising the Class I price differential will only serve to increase unneeded conventional milk supply, which is the slowest growing dairy segment, and harm organic suppliers, including grass fed, which is the fastest growing dairy segment.

4. The differential increase will have the impact of increasing supply at the same time it decreases demand because it robs valuable investment in market growth and innovation, which drives demand, only to redistribute it to supply. Such an imbalance is not a healthy impact on the dairy industry or its farmers, the very people meant to be helped by the increase.

5. We cannot pass on a commensurate cost increase as proposed here without risking the loss of customers and/or beverage market share. This result would harm both my company and my farmers and could mean even fewer Class I dollars in the pool. Moreover, it will impede our ability to innovate and market an important segment of the dairy industry as it works to reverse the losses of beverage market share.

6. The NMPF proposals do not represent the best interests of our dairy farmers and, in fact, are openly willing to sacrifice the best interests of our small family farmers in favor of other interests they represent.

7. The differential change is not necessary to ensure distribution of milk to alleged “deficit” regions of the country as Maple Hill distributes milk from the northeast to all parts of the country without any support of FMMO pricing.

8. The only impact these proposals will have on our dairy farms is to reduce investment in our business, thus inhibiting their ability to grow, other small family farms’ ability to participate in this growing segment, and hamper the dairy industry’s ability to use innovation to expand market share and compete against others in the beverage industry, including the plant-based segment that continues to erode dairy consumption in the US.

9. In fact, none of the rationale put forth in the NMPF proposal is true for Maple Hill or the 120 dairy farms with which we partner. The increase in class I differential represents a potential 80% increase in the pooling tax on our business with 0 benefits to our stakeholders and will do nothing to increase pay prices to our farmers (in fact it is more likely to have the opposite effect) and it will do nothing to increase the already national availability of milk from those farms (in fact, it is more likely to have the opposite effect).

a. We pay grass fed organic farms a premium because this type of dairy farming is more difficult. Without that premium, there is little financial incentive for farmers to convert to grassfed organic. Thus, increasing the pooling tax and inhibiting the ability to pay farmers more undermines the ability to expand grassfed organic dairy farming.

10. This increased tax burden will also increase consumer prices (for consumers who can pay it) and reduce the number of dairy consumers, where affordability has teetered over the edge of manageability.

11. Finally, an increased pooling tax burden supported by the USDA, which is punitive to the regenerative grass-fed organic segment, would philosophically and financially conflict with the USDA's desire to support regenerative agriculture as demonstrated by the recent PCSC grant award. The USDA is in the process of investing \$20m with Maple Hill to expand climate friendly organic grassfed farming. Now we are here, today, considering a damaging tax on the organic business, which will undermine the very rationale for the investment the USDA just announced.

In sum, we foresee

- Reduced investment in dairy innovation, leading to shrinking dairy share of the beverage market
- Higher prices for consumers
- Potentially lower pay prices for farmers

I traveled a considerable way today to make the Department aware of these issues because it will materially affect the way we move forward and impact all aspects of our business in a negative way. I am grateful for the opportunity to make the trip and speak to you today because this represents critical issues for our ability to compete and move forward as a business. For the sake of all our farmers, consumers, and stakeholders, I hope I have been clear on the impacts and properly represented the problem this proposal represents for my company and for 120 small

family farmers who, with this growing grass-fed organic segment, have found a way to compete (at least to this point) in an industry that continues to favor larger corporate farm entities.

I would be happy to take any questions at this time.

Thank you for your time.

DATED this 5th day of December, 2023.

By /s/ James Hau
James Hau