

United States Department of Agriculture

Before The Secretary of Agriculture

In re: [Docket No. 23-J-0067; AMS-DA-23-0031]

Milk in the Northeast and Other Marketing Areas

Hearing beginning August 23, 2023

Testimony Presented By:

Mark Lamers

Representing Lamers Dairy, Inc.

N410 Speel School Road

Appleton, WI 54915

BACKGROUND

My name is Mark Lamers, President, Lamers Dairy. Our business is located at N410 Speel School Rd. Appleton, WI 54915. Lamers Dairy Incorporated is a fifth-generation fluid milk processing plant located in northeast Wisconsin. We have been doing business since my Great-Grandfather started the family business in 1913. We are currently a fifth-generation operation employing approximately 32 individuals. We procure our milk from 6 local farms in northeast Wisconsin. At Lamers Dairy we use HTST to process fluid milk in the forms of whole milk, 2% milk, 1% milk, skim milk, chocolate whole milk, 1% chocolate milk, whipping cream, half and half, orange juice, lemonades, and eggnog during the holiday season. We also produce custom-made ice cream mixes for local customers, as well as providing kosher milk for the Jewish community in Chicago, Minneapolis and Detroit. Lamers Dairy is in Federal Order 30 and on

average markets approximately 1.3 million pounds of Class I milk per month. This represents about 1/2 of 1% of the Class I milk marketed in Federal Order 30.

TESTIMONY REGARDING PROPOSALS

I am here today in opposition to Proposals 1, 2, 13, 16, 17, 18, 19 and 21. I am here today in support of Proposals 14, 15 and 20.

Lamers Dairy opposes Proposal 1 and 2 in part. Component values should be regional and not a national value, as component levels may be different in different regions of the country as influenced by breed of cow, types of feed and other factors. Setting component values to the average of the actual level of components within a geographical region is a more equitable system because the producer receives, and the buyer pays for the value of what is in that milk. Raising component values to a level higher than what is actual only increases the cost to the consumer. Having a look back period to see if component levels have changed in a particular market area may merit some consideration.

Lamers Dairy also opposes Proposal 13. The problem for using the "higher of" between the Class III and Class IV for fluid milk handlers is the fact that if the Class IV price exceeds the Class III price to the extent that the value is not in close relationship to each other, effectively you would have a very small percentage of the milk marketed being the mover for the Class I price. If the price relationship between Class III and Class IV were to remain somewhat constant and in close relationship with each other, using the "higher of" would make sense, but given the fact that there can be a greater price spread between Class III and Class IV and the potential volatility in those markets, using the "higher of" would only increase the price of fluid milk to the consumer. Lamers Dairy would support Proposal 14 or Proposal 15. I believe that over time

using the “average of” would help smooth out the volatility in the pricing of the Class III and Class IV markets.

Lamers Dairy opposes Proposal 16,17 and 18 calling for the elimination of advanced pricing. Class I handlers need to know in advance what their milk price is going to be so that they can set wholesale pricing to the retailer. The elimination of the advanced pricing in exchange for announced pricing would be akin to us having to price products for sale without knowing our actual input cost. If the price were to be higher than what was actually charged to the customer, there is no way for a Class I handler to go back to the retailer and recoup the lost money from being sold at a price that was too low. Advance pricing is a crucial factor in complying with Wisconsin minimum mark-up requirements.

Lamers Dairy strongly opposes the National Milk Producers Federation Proposal 19 to increase Class I differentials across the board. It cannot be emphasized enough that one of the purposes of the FMMO and the AMAA of 1937 was to have a sufficient supply of pure and wholesome milk for the consuming public and be in the public's best interest. If the proposed increase in the Class 1 differentials were to be adopted, proprietary Class I handlers would have no choice but to pass that cost on to the consumer, which is not in the consumer's best interest. There has been much conversation throughout this hearing regarding the effect of higher Class I prices on the consumer as it relates to store brand label versus branded label and the price differences between the two. There is no doubt that retailers utilize fluid milk as a leader to attract customers into their store. Fluid milk handlers who have a branded label on the store shelf next to a lower priced label risk losing market share when passing these price increases on to the consumer. In the case of Lamers Dairy, we are often the third label on the store shelf and typically we are priced at a higher percentage mark-up than the leader brand milk and even the next branded milk. Because of our commitment to local family farms producing fresh milk and supporting local farmers we have a strong customer base that supports our mission and our

business philosophy. Increasing the Class I differentials to the level proposed would only further hinder our ability to remain competitive in the markets we serve. Class I sales have been on a decline for some time. With competition on the grocers' shelf for fluid milk sales and alternative milk products, increasing Class I differentials would only make it more difficult to regain fluid milk sales. Looking at Federal Order 30 statistics in January 2000, there were 29 distributing plants, whereas today there are 9. In January 2000 there was approximately 351 million pounds of Class I milk sold compared to August 2023 there was approximately 159 million pounds, which is about a 55% decline in fluid milk sales. This trend is not unique to Federal Order 30 as other evidence has been introduced at this hearing that the same can be said for other regions of the country as well. Given these market trends, an increase in Class I differentials to the level proposed would only exacerbate the condition that already exists and would be of no benefit to any proprietary Class I handler or to the consumer. I would be curious to know that of the number of fluid milk plant closures over the last 20 years, how many were proprietary plants versus cooperative owned plants. It is my belief that the FMMO as they are applied today played a significant role in the decline of proprietary fluid plants in this country. As of today, Wisconsin has only three distributing plants operating in the state.

De-pooling And Disorderly Marketing

Co-ops which have manufacturing plants and fluid plants have a competitive advantage over proprietary Class I handling plants. Because co-ops are allowed to blend the proceeds between their fluid milk plants and their manufacturing plants the impact of the Class I differentials on their overall operation is not as significant to them as it is to proprietary plants who operate only fluid plants. Said another way co-ops that own fluid milk plants and pay monies into the federal order system draw that money back out of the system for manufactured milk pooled on that order. Co-ops are not required to pay their producers the minimum blend price. This gives them a competitive advantage over the proprietary Class I handler competing in the same market.

There has been much discussion at this hearing on the practice of de-pooling milk. The AMAA of 1937 clearly defines the objective of minimum prices paid to producers through the classified pricing structure. Under the Declaration of Policy Section, the Secretary of Agriculture is to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as well as to establish parity prices paid to producers, and to protect the interest of the consumer. Under TERMS-- MILK AND ITS PRODUCTS, that section lays out how the classified pricing structure is to be overseen, and part of the language within that section clearly states that prices paid are to be for milk of the highest use classification which all handlers shall pay. I want to emphasize here the language of highest use classification and all handlers. One must remember that when the AMAA was put into law it was in 1937 when most of the milk produced was consumed in the fluid form. Today, marketing conditions are drastically different than in 1937. The manufacturing sector of the industry in some federal orders is now the driving force in the movement of milk within that order. The California order and FMMO 30 are just two examples of that being the case. In FMMO 30, in northeast Wisconsin, over the past several years there have been four new manufacturing facilities built. On the flip side of this, FMMO 30 lost 20 Class 1 distributing plants since 2000. Clearly the value and highest use in FMMO 30 is in the manufacturing sector. By allowing de-pooling in orders that have these types of relationships between the Class I and Class III markets, producers do not receive the minimum blend price for milk they produced in that market.

In November of 2020 in FMMO 30 over 2 billion pounds of milk was de-pooled from the market, as reported by USDA Computation of Producer Price Differential for November 2020. The producer price differential or PPD for that month was a negative \$5.43. Lamers Dairy requested from the market administrator's office a hypothetical computation of the producer price differential of that same month had all the milk been pooled. I have attached these documents to my written testimony. See Exhibit C Hypothetical Computation of Producer Price Differential

for November 2020. You can see that in the hypothetical computation of the PPD for the month of November 2020 the PPD for the producers would have been a negative \$2.05. That is a difference of \$3.38 per hundredweight or \$67,600,000 producers lost in that month. Clearly de-pooling does not achieve the objective of the original intent of the AMAA of 1937. Setting artificially high Class I movers and artificially high Class I differentials to mitigate the practice of de-pooling is not and should not be a function of the FMMO. It is imperative that we keep in mind the original intent of the AMAA, to achieve unified pricing for producers and ensure a sufficient supply of fluid milk for the consuming public. In the AMAA of 1937 under the heading TERMS COMMON TO ALL ORDERS it states, "In the case of agricultural commodities and the products thereof specified in subsection (2) orders shall contain one or more of the following terms and conditions: (A) Prohibiting unfair methods of competition and unfair trade practices in the handling thereof". Allowing manufactured milk to be de-pooled from the market is an unfair trade practice. When competing for producer milk it is common to see over-order premiums being paid to producers to attract milk to a particular plant whether fluid or manufacturing. Fluid plants who pay into the producer settlement fund are competing against their own money when manufacturing plants drawing money out of the pool use that money to pay their producers.

OTHER EFFECTS OF MILK BEING DE-POOLED

There are other side effects when milk is allowed to be de-pooled over a prolonged period of time. FMMO regulations require handlers to pay money into an administrative fund to operate the FMMO that they are in. The administrative assessment is applied only to milk that is pooled on that order for any given month. During the year of 2020 when there were many consecutive months of milk being de-pooled, I received a message from the market administrator stating that he had to raise the assessment rate because there was not enough money in the administrative fund to operate the offices of the FMMO 30. Again, fluid milk handlers who are obligated to participate in the FMMO system must pay the burden of inadequacies within the FMMO

regulatory system and are continually being put at a competitive disadvantage. It is my opinion that continuing to allow manufacturing milk to be de-pooled is in direct violation of the AMAA of 1937 regarding its original intent.

DISORDERLY MARKETING

When disorderly marketing is talked about within the FMMO it is in association with price inversions between Class III and IV and the Class I price. I would contend that it is not the movement of milk within the market that is disrupted during these price inversions, rather it is the disruption of the movement of the money between handlers. If all handlers were to play by the same rules, disorderly marketing would not be a thing.

For the same reasons as stated above Lamers Dairy opposes Proposal 21 submitted by the American Farm Bureau Federation.

Lamers Dairy fully supports Proposal 20 submitted by the Milk Innovation Group. Adopting Proposal 20 could help level the playing field between proprietary Class I handlers who operate only fluid milk plants and cooperatives who own both manufacturing and fluid milk processing facilities. I am reminded here of the testimony given by a farmer by the name of HH Barlow of Cave City KY, when he stated in his closing statements regarding how competition was key to everything. As we look at the changes in the fluid milk markets from the time of the inception of the AMAA of 1937 to the year 2000 to today, the evidence is clear, we cannot continue to go down the path we are currently on. If AMS does not recommend MIGS Proposal 20 I would recommend the market administrator in each of the FMMO, with input from processors within that order, to come up with and set appropriate levels for the Class I differential as it pertains to the percentage of Class I milk use within that particular order.

Conclusion

Where do we go from here? Having spent my entire life working in the dairy industry and seeing the changes that have come about it is clear and evident that something needs to be done to help ensure the viability of all participants within the dairy segment of agriculture. The FMMO system should not be operated in a manner where there are winners and losers. AMS has asked many participants at this hearing if they qualify as a small business. The standard set for this hearing as it pertains to a small business, to satisfy the requirements of the Regulatory Flexibility Act is clearly defined. I would contend however that small businesses such as Lamers Dairy would find themselves in a more difficult position to survive if the proposals of the National Milk Producer Federation were adopted. There is a place for very small businesses such as Lamers Dairy and it would be my wish that special consideration and or protection be given to small businesses such as ours. National Milk Producers Federation, with its initial request for a hearing clearly pointed out that it has 2/3 of producer approval for their proposals. The Secretary of Agriculture the USDA and AMS have a great challenge in front of them. To do what is right for the industry as a whole and create a fair and equitable system for all.

I would like to thank AMS for allowing me to participate in this hearing process and it is my prayer that whatever the outcome of this hearing is, that it is for a better and stronger dairy industry, one that is equitable for all.

Dated this 9th day of October 2023.

By _____

Mark Lamers