

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

IN RE:

MILK IN THE NORTHEAST  
AND OTHER MARKETING AREAS;  
National Federal Milk Marketing  
Order Pricing Formula Hearing

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

Hearing: Carmel, Indiana  
Aug. 23, 2023 to Jan. 30, 2024

POST-HEARING BRIEF OF  
THE MIDWEST DAIRY COALITION

The Midwest Dairy Coalition is a coalition of farmer-owned cooperative associations representing dairy farmers in eight Upper Midwestern States.

Steve Etko  
Policy Director  
Midwest Dairy Coalition  
1301 Hancock Avenue  
Alexandria, Virginia 22301  
[steveetka@gmail.com](mailto:steveetka@gmail.com)

Submitted via email to  
USDA Hearing Clerk at: [SM.OHA.HearingClerks@usda.gov](mailto:SM.OHA.HearingClerks@usda.gov)

REC'D - USDA/OALJ/HCO  
2024 APR 1 3:17 PM

On behalf of the dairy farmer-owned cooperative members of the Midwest Dairy Coalition (MDC), I am submitting this post-hearing brief regarding the National Federal Milk Marketing Order Federal Order Hearing.

The Federal Milk Marketing Order (FMMO) hearing process that AMS recently completed is long-overdue. The last time such a hearing took place was in 2000. Much has changed in the dairy industry since that time, and the Midwest Dairy Coalition has been a strong advocate for a full-scale FMMO reform hearing to address all aspects of the pricing system, with a full consideration and analysis of changes affecting all four classes of milk. The MDC has also been a strong opponent of efforts to move one subset of federal order reform independently from the rest (such as the proposed Class I mover reform), because we believe that any piecemeal approach to FMMO reform would result in an inadequate consideration of the implications of such changes across all other classes of milk. Similarly, we have expressed our strong preference for FMMO changes to be made through the formal hearing process established by Congress through the Agricultural Marketing Agreement Act (as amended), and not through legislative changes made by Congress outside the FMMO hearing process overseen by AMS.

While our members are interested in all aspects of the 2023-202 FMMO hearing, this post-hearing brief primarily addresses: 1) the need to update make allowances, 2) the need to address the economic harms to dairy producers associated with the unsustainably large spread between block and barrel cheese prices, and 3) our support for returning to the “higher of” Class III and IV advanced skim milk prices in calculating the Class I mover.

The dairy cooperative members of the Midwest Dairy Coalition include:

Associated Milk Producers Inc.,  
Bongards Creameries,  
Ellsworth Cooperative Creamery,  
FarmFirst Dairy Cooperative,  
First District Association, and  
Rolling Hills Dairy Cooperative

Collectively, the dairy cooperatives of the Midwest Dairy Coalition represent about 650 dairy producers in 8 Upper Midwestern states.

### **An Update to the Make Allowances Used in Federal Order Class III and IV Formulas is Long Overdue**

In 2000, the last full-scale national federal milk marketing order hearing and reform process led to the establishment of an end-product based system, which was a departure from the previous system, which calculated minimum federal order prices based off “competitive pay prices” paid to dairy farmers.

Under this post-2000 system, USDA’s Agricultural Marketing Service surveys manufacturers of butter, cheddar cheese (40-lb blocks and 500-lb barrels), dry whey, and nonfat dry milk on a weekly basis and reports prices of those products through the weekly National Dairy Product

Sales Report (NDPSR). By law, entities producing and selling one million pounds or more of these products per year are required to report their weekly sales information to AMS. This data is the basis for computing monthly federal order class prices for milk. However, this end-product pricing system also requires a calculation of the cost of manufacturing those end products from raw milk, called a “make allowance,” which must then be subtracted from the end-product prices to establish the monthly minimum uniform prices paid to farmers under the FMMO system.

Unfortunately, as opposed to instituting a process for regular updates in make allowances to reflect changes in manufacturing costs, make allowances have been static since 2008, when those values were set at:

<b>Product</b>	<b>Current FMMO Make A lowance (per lb.)</b>
Cheese	\$0.2003
Whey	\$0.1991
NFDM	\$0.1678
Butter	\$0.1715

As expected, the cost of manufacturing dairy products has increased significantly since 2008. Those cost increases are not reflected in the FMMO formulas, which has resulted in distortions in manufacturing plant investment decisions nationwide, with implications throughout the dairy supply chain.

There is widespread agreement in the dairy industry that make allowances must be updated, but widespread disagreement about magnitude and timeframe of those updates.

During the 2023-2024 FMMO hearing process, Midwest Dairy Coalition members provided testimony about make allowances, from the perspective of dairy cooperatives with manufacturing plants, as well as the perspective of milk marketing cooperatives without manufacturing plants:

Associated Milk Producers Inc. (AMPI) is a dairy cooperative based in New Ulm, Minnesota owned by 800 dairy farmers in Wisconsin, Minnesota, Iowa, Nebraska, South Dakota, and North Dakota. The cooperative owns and operates seven plants, which manufacture cheese, butter, and powdered dairy products. Steve Schlangen, dairy farmer and AMPI Chairman of the Board from Albany, Minnesota explained the current make allowance situation in his hearing testimony:

*We are amid a once-in-a-generation opportunity to reset the federal milk marketing order system.*

*The opening page of the USDA-AMS Federal Milk Marketing Order web site states the intended purpose of federal milk marketing orders: “Federal orders serve to maintain stable marketing relationships for all handlers and producers supplying marketing areas, thus facilitating the complex process of marketing fresh milk.”*

*The first step of fulfilling this mission is determining the minimum milk prices for the four classes of milk utilization. In other words, federal orders determine the minimum values for all milk pooled under a federal order. To accurately determine these milk values, the system must reflect current manufacturing costs for milk and require regular updates to reflect both changes in costs and efficiencies. Today, the milk price regulations are outdated and increasingly irrelevant. Void of any updates since 2008, the current manufacturing milk calculations do not reflect today's costs. Simply put, it has become a system built on bad math. This is detrimental to dairy manufacturers and farmers alike, disregarding the basic purpose of the system: providing the stable marketing relationships as described on the FMMO website.*

FarmFirst Dairy Cooperative is a marketing and test verification cooperative based in Madison, Wisconsin, with a membership of nearly 2,600 dairy farmers in seven Upper Midwestern States. The cooperative provides test verification for their members, who ship milk to 52 processors, predominantly cheese plants. In addition, FarmFirst has a milk marketing division, Family Dairies USA, which sells the milk of 135 farmer patrons to 20-2 proprietary dairy product plants.

In his hearing testimony, FarmFirst General Manager Jeff Lyon explained how the outdated make allowances negatively affect his cooperative and its members:

*Since FarmFirst does not operate a processing facility, my testimony will address the effect that current make allowances have had on my members and why FarmFirst supports the NMPF proposal. Over the last few years, FarmFirst has experienced a significant decrease in the premiums we have received for our milk due in large part to outdated make allowances.*

*Current make allowances have compressed margins at processing plants, which in turn have been passed on to producers in the form of lower premiums so processing plants can manage their margins. Make allowances need to be updated in the long-term interest of processor reinvestment in their plants...*

*From 2020 through July 2023, we experienced a 24 percent decrease in the average negotiated premium paid per pound of milk, which resulted in a reduction of approximately \$2.7 million or about \$0.16 cents per hundredweight that we were not able to pay our Family Dairies USA producers. The \$2.7 million does not include milk sold under the Class III price during this time period.*

Ellsworth Cooperative Creamery is a Wisconsin-based dairy cooperative with a barrel cheese plant, a new specialty and block cheese plant, and a sweet whey drying plant. As Paul Bauer, Ellsworth's General Manager, explained in this hearing testimony:

*Ellsworth Cooperative Creamery has the unique position of supplying information to the NDPSR on two products, barrel cheese and sweet whey powder. In December of 2022, only 10 barrel plants and 14 dried whey plants reported information to NSPSR. So, the cost to convert and make products are very relevant to Ellsworth and the entire classified*

*pricing system. In addition, we have a new block cheddar plant that will soon be reporting to NDPSR as we increase production, and this will help to explain the cost difference in final packed form of dairy products.*

Paul Bauer's testimony provides a detailed explanation of the cooperative's cost increases over the last 16 years associated with producing barrel cheese and dried whey, and why make allowances must be updated.

As stated above, the MDC strongly argues that changes to the FMMO system, including make allowance updates, should be made through the robust FMMO administrative hearing process developed by Congress to fully consider all perspectives and potential repercussions of proposed changes. However, one important aspect to FMMO reform does require a statutory update. Specifically, the Midwest Dairy Coalition has advocated for Congress to update the Farm Bill to include a provision to require USDA to conduct a mandatory, audited plant-cost study every two years, a critical step to ensure that the "make allowance" data used to calculate milk prices under the FMMO system are accurate and updated.

### **Spread Between Block and Barrel Cheese Prices Has Contributed to Disorderly Marketing and Necessitates Change in Class III Formula**

Historically, the price spread between block cheese prices and barrel cheese prices was in the range of 3 or 4 cents per pound, with block prices being historically higher, reflecting higher packaging costs for block cheese. However, in the past 6-7 years, the spread between block and barrel cheese prices has increased significantly, necessitating a revision to the Class III formula.

As explained in the National Milk Producers Federation's May 20 FMMO Modernization backgrounder:

*Presently, the FMMO formulas weight cheese blocks and barrels about 50/50 in the reports to USDA's weekly mandatory price survey. But that does not reflect the relative volumes of cheese actually produced and priced by these two forms of natural cheddar cheese. Price volatility in recent years has made barrel cheese an inaccurate indicator of the value of most cheese...*

Ellsworth Cooperative Creamery General Manager Paul Bauer explained further in his hearing testimony:

*The differences between blocks and barrels on average have been stable prior to 2017. Since 2017, price differences between blocks and barrels have led to disorderly marketing of milk in cheese processing areas of the FMMOs with barrel cheese manufacturing. Producers who ship milk to plants producing barrel cheese are paid significantly less as they are unable to pay Federal order minimum price for milk since the barrel cheese price is too low. Ellsworth producers for example (Table 1) are losing \$.84 per hundredweight through April of 2023.*

In his hearing testimony, AMPI's Steve Schlangen states the following:

*As both a block and barrel cheddar manufacturer, AMPI recognizes the unstable relationship between block and barrel prices in Class III has caused a variety of problems for the industry.*

Within the Midwest Dairy Coalition membership, there is agreement that the current Class III formulas must be changed to address the spread between block and barrel prices. However, even with the MDC, there is disagreement about the appropriate solution to that problem, with some supporting NMPF proposal 3 to eliminate the Cheddar cheese 500-pound barrel price series from protein price formula. Other MDC members argue for a shift toward the use of a weighted average price to better reflect current volumes of block and barrel cheese production.

### **Return to Use of the “Higher of” Class III and IV Advanced Skim Milk Pricing Factors in Calculating the “Class I Mover”**

The Midwest Dairy Coalition supports proposal 13 submitted by the National Milk Producers to amend the base Class I skim milk price in all Federal orders. Specifically, the proposal seeks to replace the simple average of the Class III and Class IV Advanced Skim Milk pricing factors with the “higher of” the two factors and remove the additional \$0.74 per hundredweight.

As explained in the NMPF May 2023 FMMO Modernization Summary:

*The current Class I mover carries an asymmetric risk versus the previous “higher of” calculation. This means dairy farmers are exposed to unlimited risk on the downside, while benefits to dairy farmers are limited on the upside. This asymmetric risk was exposed during the pandemic-induced market volatility that occurred during 2020. But even after the pandemic, the current mover has significantly underperformed the previous mover for five consecutive months in 2022, demonstrating that serious negative impacts to producers from this asymmetric risk are not unique to the pandemic-induced market disruptions that occurred two years ago.*

While MDC is supporting the NMPF proposal to revert to the “higher of” approach for the Class I mover, our members would like to reiterate the importance of making this change as part of the FMMO reform process underway. This change should not be extracted from the FMMO reform process to be executed separately. While the FMMO process can be exhaustive and exhausting, the MDC views the FMMO reform process as being the best way to make sure that the implications of all reforms are considered and analyzed in concert, since all changes have ripple effects throughout the entire system and across all classes of milk.

Thank you for your consideration of these perspectives.

## CERTIFICATE OF SERVICE

### Milk in the Northeast and Other Marketing Areas

Docket No.: 23-J-0067

Having personal knowledge of the foregoing, I declare under penalty of perjury that the information herein is true and correct, and this is to certify that a copy of the POST-HEARING BRIEF OF THE MIDWEST DAIRY COALITION has been furnished and was served by electronic mail upon the following parties on April 3, 2024 by the following:

#### USDA (OGC)

Brian Hill, OGC

[Brian.Hill1@usda.gov](mailto:Brian.Hill1@usda.gov)

Michelle McMurtray, OGC

[Michelle.McMurtray@usda.gov](mailto:Michelle.McMurtray@usda.gov)

Donna Erwin, OGC

[Donna.Erwin@usda.gov](mailto:Donna.Erwin@usda.gov)

Carla Wagner, OGC

[Carla.Wagner@usda.gov](mailto:Carla.Wagner@usda.gov)

#### USDA (AMS) Dairy Programs

Dana H. Coale, Deputy Administrator

[Dana.Coale@usda.gov](mailto:Dana.Coale@usda.gov)

Erin Taylor, Director Order Formulation and Enforcement Division

[Erin.Taylor@usda.gov](mailto:Erin.Taylor@usda.gov)

#### AMS - FMMO Hearing

[FMMOHearing@usda.gov](mailto:FMMOHearing@usda.gov)

#### USDA (OSEC)

Katharine Ferguson

[Katharine.Ferguson@usda.gov](mailto:Katharine.Ferguson@usda.gov)

Lucas S. Sjostrom, Executive Director

Minnesota Milk Producers Association

P.O. Box 65

Brooten, MN 56316

E-mail: [lucas@mnmilk.org](mailto:lucas@mnmilk.org)

Mike Stranz, Vice President of Advocacy

National Farmers Union

20 F Street NW, Suite 300

Washington, DC 20001

E-mail: [mstranz@nfdc.org](mailto:mstranz@nfdc.org)

Erick Metzger, General Manager

National All-Jersey, Inc.

6486 East Main Street

Reynoldsburg, OH 43068

E-mail: [emetzger@usjersey.com](mailto:emetzger@usjersey.com)

#### **Counsel for New Dairy Opco, LLC**

#### **Counsel for Milk Innovations Group**

Davis Wright Tremaine LLP

920 Fifth Avenue, Suite 3300

Seattle, WA 98104

Charles M. English, Jr.

E-mail: [chipenglish@dwt.com](mailto:chipenglish@dwt.com)

Ashley L. Vulin

E-mail: [ashleyvulin@dwt.com](mailto:ashleyvulin@dwt.com)

Grace Bulger

E-mail: [gracebulger@dwt.com](mailto:gracebulger@dwt.com)

John H. Vetne

E-mail: [johnvetne@gmail.com](mailto:johnvetne@gmail.com)

#### **Counsel for National All-Jersey, Inc.**

Wendy M. Yoviene

Baker, Donelson, Berman, Caldwell,

& Berkowitz PC

901 K Street, NW, Suite 900

Washington, DC 20001

E-mail: [wyoviene@bakerdonelson.com](mailto:wyoviene@bakerdonelson.com)

Mark Lamers

Lamers Dairy, Inc.

N410 Speel School Rd.

Appleton, WI 54915

E-mail: [mark.lamers@lamersdairyinc.com](mailto:mark.lamers@lamersdairyinc.com)

CERTIFICATE OF SERVICE (cont'd)  
Milk in the Northeast and Other Marketing Areas  
Docket No.: 23-J-0067

Peter Vitaliano  
National Milk Producers Federation  
2107 Wilson Blvd., Suite 600  
Arlington, VA 22201  
E-mail: [pvitaliano@nmpf.org](mailto:pvitaliano@nmpf.org)

**Counsel for National Milk Producers Federation**

Stoel Rives LLP  
101 S. Capitol Blvd., Suite 1900  
Boise, ID 83702  
Bradley R. Prowant  
E-mail: [bradley.prowant@stoel.com](mailto:bradley.prowant@stoel.com)  
Nicole C. Hancock  
E-mail: [nicole.hancock@stoel.com](mailto:nicole.hancock@stoel.com)

Marvin Beshore  
Johnson, Duffie, Stewart & Weidner  
301 Market Street,  
P.O. Box 109  
Lemoyne, PA 17043  
E-mail: [embeshore@johnsonduffie.com](mailto:embeshore@johnsonduffie.com)

Mike Brown, Chief Economist  
International Dairy Foods Association  
1250 H Street, NW, Suite 900  
Washington, DC 20005  
E-mail: [mbrown@idfa.org](mailto:mbrown@idfa.org)

**Counsel for International Dairy Foods Association**

Steven J. Rosenbaum  
Covington & Burling LLP  
1201 Pennsylvania Avenue, NW  
Washington, DC 20004  
E-mail: [srosenbaum@cov.com](mailto:srosenbaum@cov.com)

**Counsel for Select Milk Producers, Inc.**

Ryan K. Miltner  
The Miltner Law Firm, LLC  
100 North Main Street  
P.O. Box 477  
New Knoxville, OH 45871  
E-mail: [ryan@miltnerlawfirm.com](mailto:ryan@miltnerlawfirm.com)  
[ryan@miltner-reed.com](mailto:ryan@miltner-reed.com)

**Counsel to Dairy Cooperative Marketing Association, Inc.**

John A. St. Peter  
Dempsey Law Firm, LLP  
10 Forest Avenue, Suite 200  
Fond du Lac, WI 54935  
E-mail: [jsp@dempseylaw.com](mailto:jsp@dempseylaw.com)

American Farm Bureau Federation  
600 Maryland Avenue SW, Suite 1000W  
Washington, DC 20024  
Sam Kieffer  
E-mail: [sk@fb.org](mailto:sk@fb.org)  
Roger Cryan  
E-mail: [rogerc@fb.org](mailto:rogerc@fb.org)  
Danny Munch  
E-mail: [dmunch@fb.org](mailto:dmunch@fb.org)  
Erin M. Anthony  
E-mail: [erin@fb.org](mailto:erin@fb.org)  
Mike Tomko  
E-mail: [miket@fb.org](mailto:miket@fb.org)

Alison L. Krebs  
Director, Dairy and Trade Policy  
Leprino Foods Company  
1830 W. 38th Avenue  
Denver, CO 80211  
E-mail: [akrebs@leprinofoods.com](mailto:akrebs@leprinofoods.com)



CERTIFICATE OF SERVICE (cont'd)  
Milk in the Northeast and Other Marketing Areas  
Docket No.: 23-J-0067

Marin Bozic  
Edge Dairy Farmer Coop  
E-mail: [marin@bozic.io](mailto:marin@bozic.io)

Daniel Smith  
E-mail: [dsmith@gmavt.net](mailto:dsmith@gmavt.net)  
[dsmith@dairycompact.org](mailto:dsmith@dairycompact.org)

Jim Sleper  
Sleper Consulting, LLC  
E-mail: [sleperjp@gmail.com](mailto:sleperjp@gmail.com)

Respectfully Submitted,

**WANDA**  
**MOSBY** Digitally signed by  
WANDA MOSBY  
Date: 2024.04.03  
10:01:13 -04'00'

---

Wanda Mosby, Legal Assistant  
USDA/Office of Administrative Law Judges  
Hearing Clerk's Office, Room 1031-S  
1400 Independence Ave., SW  
Washington, DC 20250-9203