



Lamers Dairy, Inc. • N410 Speel School Road • Appleton, WI 54915

June 13, 2023

Dana Coale Deputy Administrator

USDA-AMS Dairy Programs

Stop 0225

Room 2968- South

1400 Independence Ave. SW
Washington DC 20250-0225

Dear Ms. Coale

I am writing in response to the National Milk Producers Federation (NMPF) request for the Department of Agriculture (USDA) to hold a national hearing on changing provisions of the current Federal Milk Marketing Orders (FMMO).

All Though I do agree with some of the proposed changes such as addressing the component values used in the base pricing of milk and to a degree even addressing the make allowances, I strongly oppose the proposal for increasing the class 1 differentials across the board.

In NMPF proposal they address raising the class 1 differential. The only reason I can see for this is the fact that by increasing the make allowance it lowers the base price to producers and to help offset that decrease they want to take the money from the class 1 market to make up the loss. For a Cooperatives who have fluid plants along with manufacturing plants this is not a big deal because essentially the money goes from one pocket into the other. How ever for fluid plants who do not have manufacturing facilities the increase falls directly on the consumer. In Federal Order 30 where fluid milk consumption has been in steady decline, increasing the class 1 differential will just exacerbate that trend.

What needs to be remembered here is the original intent of the class 1 differential. That intent was to ensure that there was a sufficient supply of fluid milk for the consumer. In Federal Order 30 for example, fluid milk represents approximately 6 per cent of the milk pooled on the Order. There is no justification for a \$3.00 class 1 differential, and yet 6 per cent is subsidizing 94 per cent of the make.

The Class 1 differential should not be used to artificially prop up the price to the producer at the expense of the fluid consumer. Maybe the USDA should consider looking at all cheese product values to determine a base price and eliminate all de-pooling. Either a handler is in the pool or out.

One of the provisions of the Agriculture Marketing Agreement Act (AMAA) of 1937 under terms common to all Orders is the "prohibition of unfair trade practices". Increasing the class 1 differentials to the levels proposed is an unfair trade practice. It artificially raises the price to the consumer and class 1 handler.



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If the USDA is going to make changes to the FMMO, I believe it would be prudent to delay a hearing so that a more comprehensive look at all aspects of FMMO be made. For years the consumption of fluid milk has been in decline. The FMMO system should be one that is equitable to all consumers of dairy products. There needs to be a more level playing field for all, fluid plants and manufacturing plants alike. If this can be achieved, I believe it would go a long way in sustaining the dairy industry across the nation.

If the USDA decides to hold a national hearing, I respectfully request the attached proposal which I submitted on May 4th. 2021 (which was a request for all handlers with route distribution sales of less than 3 million lbs. a month be exempt from pooling the same as a Producer Handler) be included in the hearing.

Actions under the FMMO are subject to the Regulatory Flexibility Act which is to consider what the impact of any legislation would have on small business. Truly if the proposed changes by NMPF were adopted the impact on a small company such as ours would be devastating.

Respectfully

Mark Lamers
President Lamers Dairy Inc.
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May 4, 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., 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, 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., 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 Handlers. 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 process that the Class III price exceed the Class I price creating a negative ppd. This would create a condition buy 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, which Lamers Dairy Inc. is a part of, 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 negative (\$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). One has to keep in mind that 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 is 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 thru 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 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. I believe that 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 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 7 per cent of all the milk in the order. 7 per cent subsidizes 93 per cent. Think about it. 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 handles is just undeniable. This is an unfair trade practice as prohibited under Agriculture Marketing Agreement 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 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, Administrator

The adoption of the proposal would have very little if any impact on all parties involved. When procuring producer milk, completion for that milk remains the same. Federal Order pricing would see little change if any. Most all plants pay Federal Order minimum prices along with some kind of premiums. There would be no effect on the consumer and the Market Administrators office would probably benefit from not have to figure these exempt plants utilizations into the pricing calculations and finished product testing if it is being done. 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 pray fully request that this proposal be granted. In exempting all class I handlers whose monthly class I route sale 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, provide 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 rational of an exempt plant that has less than 3 million pounds of Class I route distribution. That is that 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,

A handwritten signature in black ink that reads "Mark Lamers". The signature is written in a cursive style with a long, sweeping underline.

Mark Lamers
President
Lamers Dairy Inc.