From:	AMS - FMMO Hearing
To:	Salinas, Angie - MRP-AMS
Subject:	FW: [External Email]Market order hearing proposal
Date:	Wednesday, June 14, 2023 4:11:31 PM

One more!
LB

From: bob@cedargrovecheese.com <bob@cedargrovecheese.com>
Sent: Wednesday, June 14, 2023 4:09 PM
To: AMS - FMMO Hearing <FMMOHearing@usda.gov>
Subject: [External Email]Market order hearing proposal

Proposal to Modify Provisions of Milk Marketing Orders Governing Participation

To: Deputy Administrator, Dairy Programs, AMS, USDA

From: Cedar Grove Cheese Inc., Plain, Wisconsin

Robert Wills, President
bob@cedargrovecheese.com
608 546-5284 [redacted]

June 14, 2023

Cedar Grove Cheese has been making cheese from patron milk since 1878. We directly employ about [redacted] and use milk from 32 farms. Our family has invested heavily in Cedar Grove Cheese, while enabling our suppliers to continue investing their money in their farms. Cedar Grove Cheese is typical of Wisconsin and national cheese makers who are a source of innovation and provide important markets for dairy farmers. The number of independent cheese processors and their share of sales has dropped significantly, leaving farmers fewer outlets for their milk. Competitive disadvantages caused by marketing regulations have contributed to that decline.

We believe that USDA and the Market Order Administration should eliminate provisions of milk market orders that treat handlers differently depending on whether they are organized as cooperatives or proprietary firms. The provisions hurt producers who sell to proprietary firms by putting their buyers at a competitive disadvantage. The provisions enable unfair methods of competition and unfair trade practices. The resulting loss of potential buyers hurts all farmers by reducing competition for milk.

Section 608c(5)(F) allows cooperatives to blend the net proceeds from sales and "distribute thereof to its producers in accordance with the contract between the association and its producers…" This flexibility has been interpreted to permit cooperatives to pool milk, and receive distributions from the pool, even though the farmers are paid less than the market order blend or minimum pool price. Farmers supplying milk to proprietary plants, in order for that milk to be eligible for pooling and distributions from the pool, must each be paid the market order blend or minimum price.

At any time, this disparate treatment allows cooperatives to out-compete proprietary firms for superior quality farmers by paying them premiums derived by paying other farmers prices below the order minimums. Over the past year or longer, the disparity has been more extreme. Some cooperatives in Wisconsin openly announced that they would be paying their producers prices substantially below the order minimums. The cooperatives were still able to participate in the market orders and receive pool distributions. Handlers that are financed as proprietary firms either had to pay significantly higher prices to each producer – prices that were not supported by the value of the commodities produced from the milk – or they were ineligible for participation in the market order and could not receive payments from the pool. The value of this inequity could have been as much as $.15 per pound of cheese for the price of milk, and a couple cents per pound for the pool draw.

Economic analyses have provided strong evidence that competition results in higher prices for farmers. The number of milk buyers has declined significantly over the past decades. Concentration among milk buyers is high nationally and practically non-existent in some parts of the country. Rules that enable only a subset of buyers to obtain a subsidy from the market orders, contribute to the decline in competition by making it harder for some buyers to compete.

The Capper-Volstead Act provides opportunities for farmers to combine in cooperatives without running afoul of anti-trust provisions of the Sherman and Clayton Acts. Subsequent case law has made it clear that the exemption is not unlimited. Predatory acts and monopolization are still restricted. The market order is governed by 608c(7)(A) that market order provisions include terms and conditions that: “Prohibit… unfair methods of competition and unfair trade practices in the handling thereof.” The need for the Market Order Administrator to protect competition is further amplified by the provisions that enable the rules of the market orders to be adopted only by the producers, but allowing cooperatives to submit votes en masse (so-called “block voting”) on behalf of their members. Processors organized as cooperatives have the ability to set the rules of the market orders in ways that provide them unfair advantages over their competitors.

While the requirement to prevent anti-competitive behavior is based in Federal Code, as noted, the implementation of regulations to carry out that intent is the responsibility of the Market Administrator. CFR 1000.86(b) and/or other provisions should be revised or implemented in a manner that assures individual market order provisions do not harm competition.

Our request is for the Market Administrator to require market order rules to benefit farmers equally whether they sell their milk to a buyer who is organized as a proprietary firm or sell their milk to a cooperative. We believe this is supportive of competition for farm milk and will result in better prices for all farmers.