

February 22, 2024

The Honorable Thomas J. Vilsack
Secretary, U.S. Department of Agriculture
200A Whitten Building
1400 Independence Avenue, S.W.
Washington, D.C. 20250

Docket: 23-J-0067

REC'D- USDA/OALJ/HCO
2024FEB 23 1:13 PM

RE: Request for Emergency Return to “Higher-of” Class I Mover

Dear Secretary Vilsack,

On behalf of our members across the country, we thank you for the U.S. Department of Agriculture’s continuing effort to provide price stability and transparency to dairy farmers. U.S. dairy farm families face many challenges as they make their critical contribution to the well-being of our nation.

One of those challenges is the ongoing milk price spreads that have substantially lowered farmer milk prices under the current “average of” Class I mover formula. The American Farm Bureau Federation and National Farmers Union request that you address this challenge by issuing an interim final decision in the current federal milk marketing order hearing process that returns the Class I mover formula to the “higher-of” the Class III or IV calculations, as it was before the 2018 farm bill.

The 2018 farm bill included a provision that swapped the higher-of the advanced Class III or IV skim milk price formula for the simple average-of advanced Class III and IV skim milk formulas plus 74 cents. This was intended to produce a roughly equal long-term Class I milk price. This statutory change was made at the request of dairy processors and dairy cooperatives and was intended as a revenue-neutral way to improve risk management opportunities for beverage milk.

The current formula was based on a quick legislative decision and not based on a hearing record of demonstrated need; it has also not turned out to be revenue neutral for dairy farmers. A return to the “higher-of” is supported by the record in the current hearing, as well as by the rulemaking at the time it was first established in 2000.

Disruptive market conditions during the recent pandemic exposed and exacerbated a temporary but serious shortage of block cheddar cheese production. This led to very high Class III values, a huge imbalance between Class III and Class IV prices, and over \$700 million in Class I revenue losses to producers in the 11 federal order pools in 2020 alone resulting from the “average-of plus” Class I mover. This, along with the delay associated with advanced pricing, resulted in manufacturing milk prices higher than the market blends, leading to massive de-pooling of producer milk by manufacturing plants to capture those higher market prices. These large negative producer price differentials created significant disparities among the milk checks of different groups of farmers. These losses in pool value have continued through 2023 and into

2024, as Class IV prices have become the driver of the dairy market and the gap between Class III and Class IV prices has flipped, but remained large, with no end in sight. As of December 2023, cumulative pool losses have surpassed \$1 billion since the formula went into effect in May 2019, including pool losses of \$50 million in November 2023 and \$38 million in December of 2023. Dairy farmers with pooled milk face ongoing threats of decreased milk checks linked to the current Class I mover formula.

The members of both our organizations, through our respective grassroots policy development processes, have unanimously expressed the high priority they put on a speedy return to the “higher-of” Class I mover.

AFBF policy states: *“(G)iven the circumstances of the Class I mover changes in the 2018 farm bill, we support returning to the Class I milk mover formula to the higher-of Class III or IV in the most expedient manner possible.”*

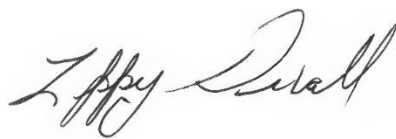
A special order of business adopted by the delegates at the 2023 National Farmers Union Convention supports the immediate return to a Class I pricing formula based on the higher-of Class III or Class VI.

In a forum held in Kansas City in October 2022 to address federal milk marketing order issues, the recommendation with greatest support from the 300-dairy farmer-majority participants was for a return to the “higher-of” Class I formula.

The FMMO hearing process has completed only step 5 of a 12-step process before changes would potentially go into effect for our dairy farmers. With about \$55 million in Class I losses related to the current Class I formula in January 2024 alone, each additional month without a change poses a threat to dairy farmers’ livelihoods. An interim final decision could speed implementation of this change by six months or more.

We understand that USDA is undertaking a comprehensive process of amending federal orders; however, dairy farmers remain stuck with current pricing regulations until USDA publishes a final rule. Current market dynamics underscore the need for expedited return to the “higher-of” Class I mover. The current Class I mover was a well-intentioned but misguided policy that has reduced dairy farmer income. Emergency implementation of the “higher-of” Class I mover formula will staunch persistent losses associated with a policy that has left dairy farmers struggling to make ends meet.

Sincerely,



Zippy Duvall
President, American Farm Bureau Federation



Rob Larew
President, National Farmers Union

CERTIFICATE OF SERVICE

Eleven Federal Milk Marketing Orders

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 REQUEST FOR EMERGENCY RETURN TO HIGHER-OF CLASS I MOVER has been furnished and was served upon the following parties by electronic mail on February 28, 2024 by the following:

USDA (OGC)

Brian Hill, OGC

Brian.Hill1@usda.gov

Michelle McMurtray, OGC

Michelle.McMurtray@usda.gov

Donna Erwin, OGC

Donna.Erwin@usda.gov

Carla Wagner, OGC

Carla.Wagner@usda.gov

USDA (AMS) Dairy Programs

Dana H. Coale, Deputy Administrator

Dana.Coale@usda.gov

Erin Taylor, Director Order Formulation and Enforcement Division

Erin.Taylor@usda.gov

AMS - FMMO Hearing

FMMOHearing@usda.gov

USDA (OSEC)

Katharine Ferguson

Katharine.Ferguson@usda.gov

Erick Metzger

General Manager

National All-Jersey, Inc.

6486 East Main Street

Reynoldsburg, OH 43068

E-mail: emetzger@usjersey.com

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

Nicole C. Hancock

E-mail: nicole.hancock@stoel.com

Counsel for National All-Jersey, Inc.

John H. Vetne

E-mail: johnvetne@gmail.com

Counsel for International Dairy Foods Association

Steven J. Rosenbaum

Covington & Burling LLP

1201 Pennsylvania Avenue, NW

Washington, DC 20004

E-mail: rosenbaum@cov.com

Wendy M. Yoviene

Baker, Donelson, Berman, Caldwell,
& Berkowitz PC

901 K Street, NW, Suite 900

Washington, DC 20001

E-mail: wyoviene@bakerdonelson.com

Counsel for Milk Innovations Group

Davis Wright Tremaine LLP
920 Fifth Avenue, Suite 3300
Seattle, WA 98104
Charles M. English, Jr.
E-mail: chipenenglish@dwt.com
Ashley L. Vulin
E-mail: ashleyvulin@dwt.com
Grace Bulger
E-mail: gracebulger@dwt.com

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

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
ryan@miltner-reed.com

Lucas S. Sjostrom
E-mail: lucas@mnmilk.org

Mike Stranz
E-mail: mstranz@nfudc.org

E-mail: sleperjp@gmail.com

Marin Bozic
E-mail: marin@bozic.io

Respectfully Submitted,

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