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United States Department of Agriculture
Before The Secretary of Agriculture

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

Hearing beginning August 23, 2023
Carmel, Indiana

Brief Presented By:

Mark Lamers

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INTRODUCTION

When considering changes in regulation to the Federal Milk Marketing Orders (FMMO) I believe there are four things to be considered. First and foremost is the law. The Agriculture Marketing Agreement Act of 1937, (The Act), clearly defines the duties of the Secretary of Agriculture when considering changes to the FMMO system. Second, the history of the dairy industry and how it has changed from 1937 to 2024. The third is the facts. How is the FMMO system working today as opposed to what the original intent was? And four, what are the proposed changes and what is the impact going to have on the producer, the handler and most importantly the consumer.

The law

AGRICULTURE MARKETING AGREEMENT ACT 1937 (THE ACT)

DECLARATION OF POLICY

[Sec.2. It is hereby declared to be the policy of Congress-

- (1) Through the exercise of the powers conferred upon the Secretary of Agriculture under this title, to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish, as the prices to farmers, parity prices as defined by section 301 (a)(1) of the Agriculture Adjustment Act of 1938.

- (2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in the view of current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish subsection (1) of this section.
- (3)

TERMS-MILK AND ITS PRODUCTS

(5) In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7) no others.

(A) Classifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each such use classification which **ALL HANDLERS SHALL PAY**, and the time when payments shall be made for milk purchased from producers or associations of producers, Such prices shall be uniform as to **ALL HANDLERS**, subject only to adjustments for (1) volume , market, an production differentials customarily applied by handlers subject to such order, (2) the grade or quality of the milk purchased , and (3) the location at which delivery of such milk , or any use classification thereof, is made to such handler. Throughout the 2-year period beginning on the effective date of this sentence, (and subsequent to such 2-year period unless modified by amendment to the order involved). The minimum aggregate amount of the adjustment, under clauses (1) and (2) of the preceding sentence, **TO PRICES FOR MILK OF THE HIGHEST USE CLASSIFICATION** under orders that are in effect under this section on the date of the enactment of the Food Security Act of 1985.

TERMS COMMON TO ALL ORDERS

(7) In the case of the agriculture 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.

When I look at the above laws that are in the Act, a few things jump out at me. Section 2 paragraph 1 talks about prices paid to producers to be of parity pricing. Under Milk Prices, paragraph 18, specifies what parity pricing is. And that is" to reflect the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk or its products in the marketing

area to which the contemplated marketing agreement, order, or amendment relates.” I only raise this issue because the FMMO pricing system has never had parity pricing, as it relates to milk pricing being a part of any pricing structure. Because of the number of proposals at this hearing and the number of proposals that were not considered, tells me that most entities involved in the FMMO system are not happy with in which the system is operating today. Because this element of pricing is not in the current formulation, the formulation in place today is not in compliance with the law. If the Secretary of Agriculture recommends a decision that is not approved, maybe this is something that can be considered at a future hearing.

The second, under Terms-Milk and its Products, the Act was intended for all producers and all handlers to participate, and that milk be priced in accordance with its highest use classification. When handlers are allowed to de-pool milk and not be part of the FMMO regulations, it too is in direct violation of the law. The Secretary is obliged to uphold the provisions of the Act.

Lastly under Milk Prices paragraph 18, The Secretary “shall fix such prices as he finds will reflect such factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest”.

HISTORY OF FMMO AND MILK PRODUCT CONSUMPTION

When considering proposed changes to the FMMO regulations, I believe it is important to start at the beginning and examine how milk production and consumption of milk products have changed since 1937. It is important to remember that when the AMMA of 1937 was implemented. Most all milk produced and consumed in this country was in fluid form. FMMO regulations made sense at that time. 87 years later this is just not the case. Innovation in milk products, specially manufactured products, has become, in some parts of the county, the driving demand for producer milk. In the early years, not all milk was Grade A, a good portion was Grade B. Because milk being consumed in fluid form requires to be

Grade A, classified pricing was formed and thus Class 1 differentials, because fluid milk sales was of the highest use. This classified system enticed producers to change from Grade B to Grade A if their milk was going to a bottling plant. Milk that was not used for bottling went to the manufacturing sector with a lesser value thus creating the market wide pooling we have today. Remember that most of the milk produced went to a bottling plant, so the system worked. Since order reform in 2000, that has not been the case.

INDUSTRY CHANGES SINCE 2000

Before order reform milk prices were based on butterfat and skim. With order reform came the component pricing structure in orders that are carrying a larger volume of manufactured products. Using component values incentivized producers to produce component values in milk that are more valuable to manufacturing segments of the industry. Increased values of components such as protein, other solids and somatic cells increases the yield in manufactured products and does nothing to increase the yield or value of fluid milk used in class 1. The AMMA Sec. 116., requires the Secretary to conduct a study of component levels in producer milk before setting component values as it pertains to the pricing of producer milk. To my knowledge this has not been done, therefore National Milk Producers Federation's (NMPF) proposal 1 and 2 should not be considered. As stated in my testimony, exhibit Lamers 1, milk component levels can be very different from farm to farm and from one area of the country to another. Setting component values at a national level is arbitrary and would be in violation of the Act. The Secretary is charged with setting the minimum price, not propping up producer prices to set the class 1 mover, which is what would happen if proposal 1 and 2 were adopted.

CLASS 1 SALES AND DIFFERENTIALS

The evidence brought forth in this hearing is clear. Fluid milk sales across the entire country are down significantly. The number of class 1 processing plants is becoming fewer and fewer. Again, I would cite my own testimony, exhibit Lamers 1, as an example of what is happening in Feder Order 30 alone. I am sure that if the Agricultural Marketing Service, (AMS) looked at all Feder Orders, I believe that trend would be the same. Manufactured products, particularly class 3, are steadily increasing as new specialty cheese products are being developed. There are ample milk supplies being produced in this country. Evidence from the hearing shows this being the case.

The AMMA states that milk is to be priced at the **highest use**. It is my opinion that as the current trend continues, having milk prices between all four milk classifications be in closer relationship would better reflect the real value of milk being produced. Milk Innovation Group (MIG), proposal 20 would accomplish this. MIGs proposal 20 must be given great consideration and should be part of any recommended decision by AMS and the Secretary. No longer are high class 1 differentials needed to supply the fluid market and given the fact that over 98% of milk produced in this country is grade A, further demonstrates that high class 1 differentials are not needed.

NMPF reasoning for their proposals is based on the argument that farmers are not making enough money so that's why they're going out of business. It is true that we are losing more farms, I believe that is because of family dynamics. Fewer farms are not being taken over by the next generations. Milk production remains strong. More milk production is shifting to larger farms making it more cost effective to move milk to markets.

NMPF argument that milk must move further distances because of there being fewer bottling plants to ship milk to as being a reason to increase class 1 differentials, is not particularly the whole story. Milk

movement efficiencies have been gained, because of fewer stops having to be made to get that milk as well. NMPF proposals does nothing but try and squeeze more money out of the fluid market, a market that has been in steady decline for years. If NMPF members want their farmers to get more money, all they must do is pay them more.

Proposal 19 and 21 should not be part of any recommended decision. In my opinion, no evidence produced at the hearing suggests that there is any problem with getting milk to class 1 or class 2 markets. The Secretary should allow a free and open market to dictate how the cost burden of moving milk to any market be handled by the parties involved in procuring such commodities. This will not create disorderly marketing because the milk will still flow in the same way it does today.

DE-POOLING

Setting class 1 and class 2 differentials at a level higher than what is necessary Just to mitigate de-pooling should never be a function of the FMMO system. In fact, doing so is in direct violation of the Act. Again, I refer to the original intent of the law, that all handlers shall pay the fixed minimum prices to producers, and that milk be priced at its highest use value. If the price of class 3 or class 4 rise above the class 1 and 2, should not all producers benefit from that? If we are to have a true market wide pooling system, then all handlers should participate and not be allowed to move in and out of the pool only when it is to their financial benefit, and that is exactly what is happening today. This very practice is an unfair trade practice. Again, go back to the law, as I stated above, and that is that any order shall "prohibit unfair trade practices". I can't stress enough the importance of what the original intent of the law is "that milk be priced at its highest use". Allowing milk to be de-pooled takes money out of the hands of the producer as shown in exhibit Lamers 1A. This is true in all Federal Milk Marketing Orders where de-pooling occurs.

The FMMO system has evolved into a system that has made it legal to extract excess funds from class 1 handlers over and above what is necessary to supply that market. NMPF proposals seeks nothing but to take more money from class 1 handlers, particularly proprietary handlers.

CLASS 1 MOVER USING THE HIGHER OF THE CLASS 3 OR CLASS 4 PRICE

The current method of using the average of the class 3 and class 4 plus the multiplier should remain in place. The class 4 market is such a small percentage of the milk used in the market that it should not be used as the main driver when it comes to setting the class 1 base. Using the current system is more representative of the manufactured market. It would stand to reason that if the Secretary were to uphold his obligation to set minimum prices, one could argue that the lowest price between class 3 and class 4 should be used when setting the class 1 mover. That would fulfill the original intent of the law. Using the higher of only artificially raises the class 1 price to the consumer and is not in their best interest. FMMO 30 alone has seen price differences of \$3.00 to \$5.00 cwt. Between class 3 and class 4 in the past several months.

CONCLUSION

The state of the dairy industry today, the decline of the number of class 1 processing plants, is directly linked to the FMMO system. Declining sales and the burden the class 1 handler bears to subsidize the manufacturing market has made it practically impossible for proprietary class 1 handlers to survive. One must look no further than Dean Foods as evidence of this fact. If AMS and the Secretary

recommend that Class 1 differentials be increased, one can only expect this trend to continue making it more difficult to supply the fluid market.

Exhibit MIG/Hood-21 and exhibit MIG-Turner-12 clearly and accurately state the truth about the impact the current FMMO system has on Proprietary Class 1 handlers. Cooperatives who own both manufacturing and bottling plants have a clear competitive advantage in the fluid market because of being able to blend their proceeds when paying their producers and the fact they are not required to pay the minimum blend price. If this trend continues you will have nothing but cooperatives responsible for supplying any market and competition will be destroyed.

Today's industry is nothing like 1937 where most of the milk was consumed in fluid form. All processing plants, whether class 1,2,3 or 4 want milk in their plants because there is a market for the products that they are producing. This shows that there is value in all classes, thus the value of the milk should be reflected in the price of that milk being produced, one no more important than the other. Milk prices between the classes should be closer to each other not further apart. There is competition for that milk as well as evidence of over-order premiums that are being paid.

Evidence from the hearing clearly shows that there is more than enough milk being produced in this country to supply the fluid market. So that part of the regulation is being fulfilled. That being the case, the secretary of Agriculture only needs to set the minimum price. Adopting any proposed changes that would increase what class 1 handlers would pay into the pool would go beyond what is needed to ensure an adequate supply of fresh and wholesome milk for the consumer and would not be in the consumer's best interest. It would also send the wrong message to producers that might increase the amount of milk already being produced. The producer bears some responsibility to not overproduce as well.

AMS has a very difficult task in front of them, one that will take courage, courage to do the right thing. NMPF in its initial request for a hearing, cited that they had 2/3rds majority of producers in favor of their proposals. I would hope that that would have no bearing on any possible recommended decision. It is my prayer that AMS would recommend a decision that would get us back to what the original intent of the law is, and to create an order system that is equitable to all and not one that picks winners and losers. The FMMO system should be simplified and not be made more complicated. some farmers already do not fully understand how they are being paid.

If AMS adopts any NMPF or any other proposal that would seek to increase the amount of money class 1 handlers would have to pay into the pool, I hope that special consideration be given to protect small independent class 1 processors such as Lamers dairy. This could be done through the provision of the order (7 CFR. Chapter X) part 1030.10. This provision exempts producer handlers who produce less than three million lbs. per month from participation in the FMMO system.

I would like to thank the Secretary of Agriculture for granting this hearing to allow for all voices to be heard and thank you to the AMS staff and the Honorable Judge Clifton, for their efforts through this long hearing process.

Respectfully Submitted.

A handwritten signature in black ink that reads "Mark Lamers". The signature is written in a cursive, flowing style.

Mark Lamers

President Lamers Dairy Inc.

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 LAMERS DAIRY, INC. POST-HEARING BRIEF has been furnished and was served by electronic mail upon the following parties on April 17, 2024 by the following:

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