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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:

Milk in the Northeast and Other Marketing
Areas

7 CFR Parts 1000 *et seq.*

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

**BRIEF AND PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
SUBMITTED BY
NEW DAIRY OPCO, LLC**

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I. INTRODUCTION

This brief and proposed findings of fact and conclusions of law is submitted by New Dairy Opco, LLC (“New Dairy”). New Dairy did not appear at the 49-day USDA hearing regarding the proposed amendments to all Federal Milk Marketing Orders (“FMMOs”) and thus presented no evidence of its own. Nonetheless, New Dairy files this brief based upon the record evidence in this proceeding and in recognition of USDA’s recently implemented (March 1, 2024) decision impacting the three Southeastern orders. Milk in the Appalachian, Florida, and Southeast Marketing Areas; Final Decision on Proposed Amendments to Marketing Agreements and to Orders, 88 Fed. Reg. 88038 (Dec. 1, 2023). In that decision, USDA both increases the existing transportation credits in two of the three orders and adds for the first time distributing plant delivery credits in all three orders.

New Dairy owns and operates four fully regulated distributing plants (“Class I”) under FMMOs 5, 6, 7, and 33:

New Dairy Florida	Winter Haven	FL
New Dairy Kentucky	London	KY
New Dairy Ohio	Cleveland	OH
New Dairy Texas	Lafayette	LA

Hearing Ex. 33 (USDA Ex. 33), Rows 134-137, regulated on Orders 6, 5, 33, and 7. New Dairy submits this Brief for the purpose of opposing all proposals that would increase Class I or Class II minimum regulated prices: (1) Class I and II minimum regulated prices should not increase at all; (2) Class I and II minimum regulated prices should not increase relative to manufactured prices (Class III or IV); and (3) USDA has already effectively increased minimum regulated Class I prices March 1, 2024, in the three Southeastern Orders and should not do so again in this proceeding – that would amount to double charging using the same economic claims made in both proceedings by the cooperatives. Milk in the Appalachian, Florida, and Southeast Marketing Areas;

Amendments to Marketing Agreements and to Orders, 89 Fed. Reg. 6401 (Feb. 1, 2024). Finally, New Dairy endorses MIG Proposal 20.

II. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. USDA Has No Justification to Raise Class I Minimum Regulated Prices.

1. Every region in the United States outside the Southeast has more than an adequate supply of milk available for fluid use.

The Agricultural Marketing Agreement Act (“AMAA”) provides the sole basis for FMMO regulation of milk. The fundamental purposes of the AMAA are to assure an adequate supply of milk for fluid use and to be in the public interest. Both purposes are already met with existing price levels (indeed an argument can be made that minimum regulated prices are already too high). The specific issues in the Southeast are discussed in the next section below, but Class I utilization nationally is now so low that no one can seriously argue that there is an inadequate supply of milk for fluid uses. As such, raising minimum regulated prices ultimately to consumers is not in the public interest.

Milk production has never been higher while Class I utilization rates have been constantly declining. Hearing Ex. 436 (IDFA Ex. 62), at 11-13 (Testimony of Dr. Joe Balagtas). Across all Marketing Orders, Class I utilization fell by 29%, from 38% in 2001 to 27% in 2022. Class I utilization fell in seven of the nine Marketing Order regions reported in the table on page 13. *Id.* In addition, Class I utilization fell in the California Milk Marketing Order, from 22% in 2018 to 21% in 2022. Through June of 2023, Class I utilization in California is only 17%. In the Arizona Milk Marketing Order, Class I utilization fell from 37% in 2007 to 27% in 2022 (USDA Agricultural Marketing Service). Hearing Ex. 435 (IDFA Ex. 61), at 10 (Testimony of Dr. Joe Balagtas). Even NMPF concedes that current Class I utilization is the lowest it has ever been, based on statistics going back to 1932. Hearing Tr. 439:16-440:7, Calvin Covington (Southeast Milk) (Aug. 24, 2023).

No serious evidence contradicted the conclusions of Dr. Joe Balagtas of Purdue University:

To summarize, growth in U.S. milk production and declining fluid milk consumption have combined to reduce the national average Class I utilization rate by approximately 30% since 2000, when the USDA last implemented a systematic revision of Class I differentials. Thus, in aggregate, U.S. milk production is more than adequate to supply national fluid needs.

Hearing Ex. 435 (IDFA Ex. 61), at 10 (Testimony of Dr. Joe Balagtas) (emphasis removed from original).

USDA must conclude that there is an adequate supply of fluid milk and thus cannot increase minimum regulated Class I prices.

Moreover, there is no genuine argument contradicting the legal conclusion that USDA and the courts have always and continuously concluded that the AMAA statutory requirement as to an adequate supply of milk expressly refers to fluid milk sold in packaged form to consumers. Milk in the New England and Other Marketing Areas; Proposed Rule on Proposed Amendments to Marketing Agreements and to Orders, 64 Fed. Reg. 16026, 16070 (Apr. 2, 1999); Milk in the New England and Other Marketing Areas; Proposed Rule on Proposed Amendments to Marketing Agreements and to Orders, 63 Fed. Reg. 4802, 4891-4900, 4907-4908, 4912 (Jan. 30, 1998). The historical context of the passage of the AMAA supports this interpretation.

Milk sales competition during the Depression was the genesis for the chief mechanism for meeting the Declared Policy of the AMAA – setting a price for milk which is sufficient to call forth an adequate supply of pure and wholesome milk and being in the public interest. *United States v. Rock Royal Co-op.*, 307 U.S. 533, 543; *H.P Hood & Sons v. U.S.*, 307, 588, 605-606 (1939). In the 1920s–1930s, U.S. dairy farmers produced surplus milk (otherwise dumped or used to produce non-fluid products such as cheese or butter) and pursued the more lucrative fluid market with this milk. It was this disruption to the fluid milk market that Congress sought to address with the passage of the AMAA. *Nebbia v. New York*, 291 U.S. 502, 517-518 (1934); *Rock Royal*, supra, at 550; *see also, Baldwin v. Seelig*, 294 U.S. 511 (1935).

This Declared Policy of the AMAA – “to insure a sufficient quantity of pure and wholesome milk” – has become a USDA term of art after 80 years of agency application and interpretation. Milk in the Chicago Regional Marketing Area; Emergency Partial Decision on Proposed Amendments to Marketing Agreement and to Order, 52 Fed. Reg. 38235, 38240, Col. 3 (Oct. 15, 1987) (“a major purpose of the order program is to assure an adequate supply of pure and wholesome milk *for the fluid market*”) (emphasis supplied). In the 1998 Proposed Rule during FMMO Reform, USDA expressly tied this concept to the legislative language of the “AMAA mandate.” 63 Fed. Reg., *supra*, at 4892 (“the AMAA mandate” “to provide an adequate supply of milk’ for fluid use.”). Further findings during FMMO reform by USDA most completely and repeatedly set out the necessity of tying Class I prices to the adequate supply of milk for fluid use requirement. *Id.* at 4892, 4894, 4896-4898, 4900; 64 Fed. Reg., *supra*, at 16102 (“the purpose of the minimum Class differential is to generate enough revenue to assure that the fluid milk market is adequately supplied”); 64 Fed. Reg., *supra*, at 16070 (“marketing order provisions for both markets must provide for attracting an adequate supply of milk for fluid use.”); Milk in California; Proposal To Establish a Federal Milk Marketing Order, 83 Fed. Reg. 14110, 14133, 14135 (Apr. 2, 2018) (discussing California FMMO provisions necessary or unnecessary “to ensure an adequate supply of milk for fluid use”); *see also* Milk in the Rio Grande Valley and Certain Other Marketing Areas; Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders, 56 Fed. Reg. 42240, 42245 (Aug. 27, 1991) and Milk in the Great Basin and Lake Mead Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders, 53 Fed. Reg. 686, 698 (Jan. 11, 1988).

More recently, USDA responded on January 31, 2003 to Congressman Sherwood that the first objective of the FMMO program is “to assure an adequate supply of milk for the fluid market...” Hearing Ex. 433 (IDFA Ex. 57), Attachment A. Finally, only four months ago, USDA yet again reiterated this central thesis: “[e]nsuring Class I demand is met is essential to the FMMO system in meeting its objective of maintaining orderly marketing conditions.” Milk in the

Appalachian, Florida, and Southeast Marketing Areas; Final Decision on Proposed Amendments to Marketing Agreements and to Orders, 88 Federal Register 84038, 84050 (Dec. 1, 2023). NMPF witness testimony similarly acknowledges that “FMMOs have two primary purposes as contained in the [AMAA]: 1) maintain orderly marketing conditions, and 2) protect the interest of the consumer by ensuring an adequate supply of milk for fluid consumption.” Hearing Ex. 248 (NMP Ex. 34), at 5 (Testimony of Calvin Covington). And NMPF itself agreed at the hearing that “the Class I price is supposed to be set at a level that is sufficient to assure Class I processors of an adequate supply of milk for fluid milk purposes.” Hearing Tr. 4700:25-4701:2, Peter Vitaliano (Sept. 19, 2023); *see also* Hearing Ex. 238 (NMPF Ex. 32), at 3 (Testimony of Sara Dorland) (expressing the same).

Likewise, the Supreme Court affirmed this reading of the AMAA early on in its existence:

The problems concerned with the maintenance and distribution of an adequate supply of milk in metropolitan centers are well understood by producers and handlers... Since all milk produced cannot find a ready market as **fluid milk** in flush periods, the surplus must move into cream, butter, cheese, milk powder and other more or less nonperishable products... The market for fluid milk for use as a food beverage is the most profitable to the producer. Consequently, all producers strive for the **fluid milk market.**”

Rock Royal, supra at 549-550 (emphasis added).

There, the Court concluded that competition among the existing suppliers of fluid milk resulted in extreme competition which engendered business practices that jeopardized “the quality and in the end the quantity” of the vital fluid milk supply. *Rock Royal, supra*, 307 U.S. at 550. Other courts have followed suit. *See generally, Borden v. Butz*, 544 F.2d 312, 316 (7th Cir. 1976) (where testimony was given indicating that the primary purpose of a fixed price “is to bring forth an adequate supply of pure and wholesome milk” for Borden’s bottling operations of fluid milk); *see also Schepps Dairy v. Bergland*, 628 F.2d 11, 17 (D.C. Cir. 1979).

Given this history and focus on destructive competition for Class I sales and since the highest classification price set by the Secretary is the fluid milk price, clearly the “sufficient quantity” referred to in the statute is a quantity of milk for fluid use. In addition, while other products use “pure and wholesome” milk, it is milk in the bottle which must, under all circumstances, be pure and wholesome in order to best meet public interest. This Declared Policy cannot now be altered just to suit NMPF’s “revenue neutral” needs in this proceeding.

Again, USDA must conclude that the AMAA mandate to bring forth an adequate supply of milk for fluid use is already being met and thus all proposals increasing Class I prices should be denied.

2. USDA has since FMMO Reform twice addressed the Southeast already raising Class prices and Dr. Balagtas concludes there are adequate supplies in the region.

New Dairy with three of its four Class I plants regulated on the three Southeastern Orders, one each on Orders 5, 6, and 7, has a special interest in the proposed changes in Class I pricing in that region. NMPF proposes increases to Class I differentials in the three Southeastern orders when USDA already adopted increases twice since FMMO reform, including as recently as March 1, 2024. USDA cannot adopt NMPF 19 which would simply multiply these price increases effectively double or even triple-dipping on its arguments. Furthermore, Dr. Balagtas concludes “that milk supplies in this region are sufficient to provide adequate supplies of fluid milk at reasonable prices.” Hearing Ex. 435 (IDFA Ex. 61), at 13 (Testimony of Dr. Joe Balagtas). NMPF 19 should be denied as to the Southeastern United States on these grounds alone.

Since FMMO Reform, USDA at the behest of NMPF or a subset of its members has already increased Class I differentials and adopted transportation and delivery credit obligations that are separate from, and on top of Class I payment obligations in the three Southeastern Orders – Appalachian (Order 5), Southeast (Order 7), and Florida (Order 6). Milk in the Appalachian and Southeast Marketing Areas; Tentative Partial Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders, 71 Fed. Reg. 54118

(Sept. 13, 2006); 88 Fed. Reg., *supra*. These two decisions already significantly increase the funds that Class I handlers must pay to bring forth an adequate supply of milk for fluid use. Why would Class I handlers in these regions now be asked to pay even more? The obligations whether labeled as Class I differential increases as in 2006 or as funds raised for the purposes of moving milk to Class I plants in both 2006 and in 2024 serve the same purpose as Class I differentials and should be viewed as such.

Just looking at the 2024 increases implemented as of March 1, Class I handlers will pay as much as \$0.80 to \$0.85/cwt more in the three orders. This increase does not account for the increased payments made from the earlier proceeding (\$0.07/cwt in Appalachian and \$0.30/cwt in the Southeast). Hearing Ex. 433 (IDFA Ex. 57), at 24 (Testimony of Mike Brown). These increases alone account for almost 50% of NMPF 19 proposed increases. *Id.* at 25. And again that doesn't account for the pre-March 2024 charges for similar services that should be viewed as serving the same purpose as Class I differentials. In short, NMPF 19 looks to double or triple-count a significant portion of the purported needed increase.

Doing so ignores Dr. Balagtas' conclusion that supplies in the southeast region are adequate. Dr. Balagtas concludes that utilization rates alone may not be sufficient to conclude whether there is an adequate supply of milk for fluid use. His professional opinion is that inadequate supplies would be indicated by unreasonably high retail prices for milk. But he then also performed an analysis that confirmed his supposition that an adequate supply of milk does exist in this region:

In Atlanta, GA, the average price of milk was lower than the 30-city average in three of the past five years, and is below the 75th percentile price in each of the past five years. In Louisville, KY, the average price of milk is well below the 30-city average in each of the five years. In Miami, FL, the average milk price is higher than the 30-city average in each year, but lower than the 75th percentile price in four of the five years, and for four years running. Thus the relatively high Class I utilization rates in these Marketing Order regions do not correlate with relatively high retail prices for fluid milk. This fact suggests to me that milk supplies in these regions are

sufficient to provide adequate supplies of fluid milk to consumers at reasonable prices.

Hearing Ex. 435 (IDFA Ex. 61), at 12-13 (Testimony of Dr. Joe Balagtas). His ultimate conclusion is:

A closer look at the three Marketing Order regions with highest Class I utilization (Southeast, Appalachian, and Florida) suggests that Class I utilization rates in these regions are not trending upward, and that high Class I utilization rates are not causing high retail prices of fluid milk in those regions. Thus, it is my conclusion that higher Class I differentials proposed in Proposal 19 are not justified on the basis of Federal Milk Marketing Orders' objective of achieving adequate supply of fluid milk to consumers at reasonable prices.

Id. at 13 (emphasis removed from original).

Given this conclusion from Dr. Balagtas that there are adequate supplies of fluid milk in the southeast region and the multiple increases to Class I prices since FMMO reform including especially the minimum regulated price increases introduced the month before this brief is filed, USDA should not now increase Class I prices further. Most importantly, neither industry nor USDA can as of the date of this filing have any idea as to the real life, actual impacts these new regulatory changes will have on Class one utilization and milk supplies.

For this reason alone, NMPF 19 should be denied.

3. Fluid milk is demand elastic and raising prices will simply accelerate falling demand.

Multiple fluid milk processors testifying in the hearing explained that fluid milk sales respond to prices – that is that fluid milk is demand elastic. *See*, Hearing Tr. 10743:17-28, Warren Erickson (Jan. 17, 2024); Hearing Ex. 462 (MIG 23), at 4 (Testimony of Tim Kelly); Hearing Ex. 457 (MIG 21), at 4-6 (Testimony of Michael Newel). This does not surprise New Dairy. Further, there was direct testimony by those selling packaged milk (as opposed to those procuring raw milk) describing the increased and increasing competition from milk substitutes. Hearing Tr. 10935:6-11 and 10946:9-11, Tim Kelly (Jan. 18, 2024); Hearing Tr. 11141:8-14, Cammie Garofolo (Jan. 18, 2024); Hearing Tr. 11599:16-23, Sally Keefe (Jan. 29, 2024).

Two respected University professors from Texas A&M and Purdue also testified that fluid milk today faces own-price demand elasticity not previously recognized by USDA. Hearing Ex. 387 (IDFA Ex. 53) at 16 (Testimony of Dr. Oral Capps); Hearing Ex. 435 (IDFA Ex. 61), at 13-15 (Testimony of Dr. Joe Balagtas). Their conclusions demonstrate that USDA's prior conclusion that a higher Class I price can be applied to milk without jeopardizing producer revenue is no longer valid. *See*, 64 Fed. Reg., *supra* at 16102.

USDA must conclude that increasing Class I prices today will simply add to the deteriorating state of the Class I segment. This, too, means that USDA should not adopt further Class I price increases.

4. Any changes to Class I prices must not further disrupt the fragile Class I segment.

New Dairy opposes any increases to Class I prices. As to the Class I differentials, should USDA nonetheless disagree and decide to increase them, USDA must not ignore the fragility of the fluid milk segment. USDA must recognize and do what it can not to disrupt the competitive relationships between fluid milk plants that already face enough stresses with declining volume. The obvious best solution is to make no changes to the Class I differentials as that alone will alleviate disruption in the Class I market. But if notwithstanding all the good and sufficient arguments made above and by IDFA and MIG at the hearing and in their briefs, changes are to be made, USDA needs to carefully examine each proposed change in order to avoid further industry disruption. Such disruption would lead to disorderly marketing and could be materially detrimental to processors and their customers, dairy farmers, and consumers.

B. There Is No Justification To Raise Class I Minimum Regulated Prices Relative To Manufactured Prices.

Adoption of all of NMPF's proposals would necessarily result in greater spreads between manufacturing product pricing (Class III and IV) and Class I minimum regulated pricing. This would be unhealthy for the dairy industry. Imposing ever higher absolute, and relative to manufacturing products, prices on Class I will simply exacerbate the risks to the Class I segment

while likely increasing volatility all while not ensuring that dairy farmers would achieve more revenue.

First, the assumption that Class I is the most “profitable” segment in the industry (*see Rock Royal, supra* at 550) is simply no longer correct. The Dean Foods bankruptcy and the resulting fire sale of plant assets to Dairy Farmers of America averaging from \$8-\$10 Million dollars per plant should tell USDA everything it needs to know about the fragility of the fluid milk segment. *See, e.g.*, Hearing Tr. 11206:8-15, Jed Ellis (Jan. 19, 2024). Shehadey also purchased its Reno facility out of that Dean Foods bankruptcy for \$3.7 Million when one production line would normally cost north of \$10 Million. *Id.* at 11234:9-12. Moreover, as fairlife testified, the current system already “makes it very difficult for someone to lean into the industry and invest. . . if you look and you try to find outside capital . . . we need to make sure we have a secure milk source and a pricing system that’s very clear and understandable and the ground isn’t shifting.” Hearing Tr. 11319:19-11320:3, Tim Doelman (Jan. 19, 2024).

Finally, Dr. Mark Stephenson provided evidence that in about half the country milk is more valuable when used to produce cheese as opposed to fluid milk. Hearing Ex. 451 (MIG Corrected Ex. 16), at 10 (map). Further, he testified “[m]anufacturing milk uses are now not only ascendent, and the FMMOs are functioning as a fluid base system in a manufacturing-dominant world.” Hearing Tr. 10628:26-10629:1, Dr. Mark Stephenson (Jan. 16, 2024). To further separate the fluid and manufacturing milk prices by adding on to the difference between the Class I and manufacturing prices can only make the problem identified by Dr. Stephenson worse.

Second, as those prices further diverge, the more the dollars paid by Class I are spread out over the pool and shared among producers not serving the Class I market. This dilution just aggravates the problem of actually getting milk to the fluid milk plants because the producers serving the Class I market receive only a fraction of the pool dollars that handlers paid in. The solution isn’t to increase the level of the payments to the producer settlement funds. The solution, as USDA itself described in 1998 in the FMMO Reform Proposed Rule, is to adopt a more market-

oriented approach – relying more on over-order premiums and less on minimum regulated prices. 63 Fed. Reg., *supra*, at 4811, 4827, and 4829.

USDA should not adopt proposals that increase the spread between Class I and manufactured product prices.

C. USDA Cannot Adopt Proposals 1 And 2 Which Would Impose Charges On New Dairy In The Southeastern Orders For Components Handlers Do Not Receive.

New Dairy opposes Proposals 1 and 2 as they would impact all of their four Class I plants. IDFA and MIG have effectively described the overall reasons for rejecting these proposals.

New Dairy endorses the arguments of IDFA and MIG that Class I processors are unable to recoup the costs that it would incur if Class I prices are raised under Proposals 1 and 2. *See, e.g.*, Hearing Ex. 98 (IDFA Ex. 4), at 34-36 (Testimony of Mike Brown); Hearing Ex. 102 (MIG/Hood Ex. 3) at 7 and 9-10 (Testimony of Wendy Landry); Hearing Ex. 105 (MIG/Shehadey Ex. 4), at 3 (Testimony of Jed Ellis). Charging Class I processors for components for which they can receive no value in return would be *per se* disorderly.

New Dairy in this brief additionally expressly opposes Proposals 1 and 2 as they would impact New Dairy's three facilities regulated on Orders 5, 6, and 7. Unlike most of the other FMMOs, the three Southeastern FMMOs are not multiple component pricing orders ("MCP"), but rather are priced off of skim and butterfat only. Hearing Ex. 33 (USDA Ex. 33), at Rows 134-137, regulated on Orders 6, 5, 33, and 7. Therefore, unlike in the MCP orders, dairy farmers are not paid on the components that NMPF and NAJ seek to increase. This is an incongruity that makes no sense. Adoption of the proposals would impose on New Dairy's Class I operations in Kentucky, Louisiana and Florida charges that do not then have a parallel payment to the dairy farmers. Indeed, since the dairy farmers are paid on skim and butterfat only, there is no incentive for the dairy farmers to increase their skim components in these orders to ever match the national average. This is as IDFA's Mike Brown testified "Money for Nothing." Hearing Ex. 98 (IDFA Ex. 4), at 6 (Testimony of Mike Brown). Such a result would make no economic or accounting sense.

But worse, there is absolutely no record evidence (and in fact just the opposite) that suggests that dairy farmers in the three Southeastern orders are providing milk that have anything close to the component factors proposed in Proposals 1 and 2. As discussed below (and in the MIG Brief), the reality is that is that the levels of protein, other solids, and nonfat solids are overstated for the non-MCP orders including the three Southeastern orders.

The skim component levels are not available for the four non-MCP orders. However, butterfat levels for all 11 orders are known. As shown in Hearing Exhibit 112 (MIG Ex. 5A), at 4 (see Chart 4 below) (Testimony of Sally Keefe) butterfat is lower in the four non-MCP orders than the other 7. Given that butterfat and skim components are highly correlated and move together, the butterfat data suggests that the proposed component factors also overstate the levels of protein, other solids, and nonfat solids in the non-MCP orders. Hearing Ex. 98 (IDFA Ex. 4), at 24-26 and Table 4 (Testimony of Mike Brown).

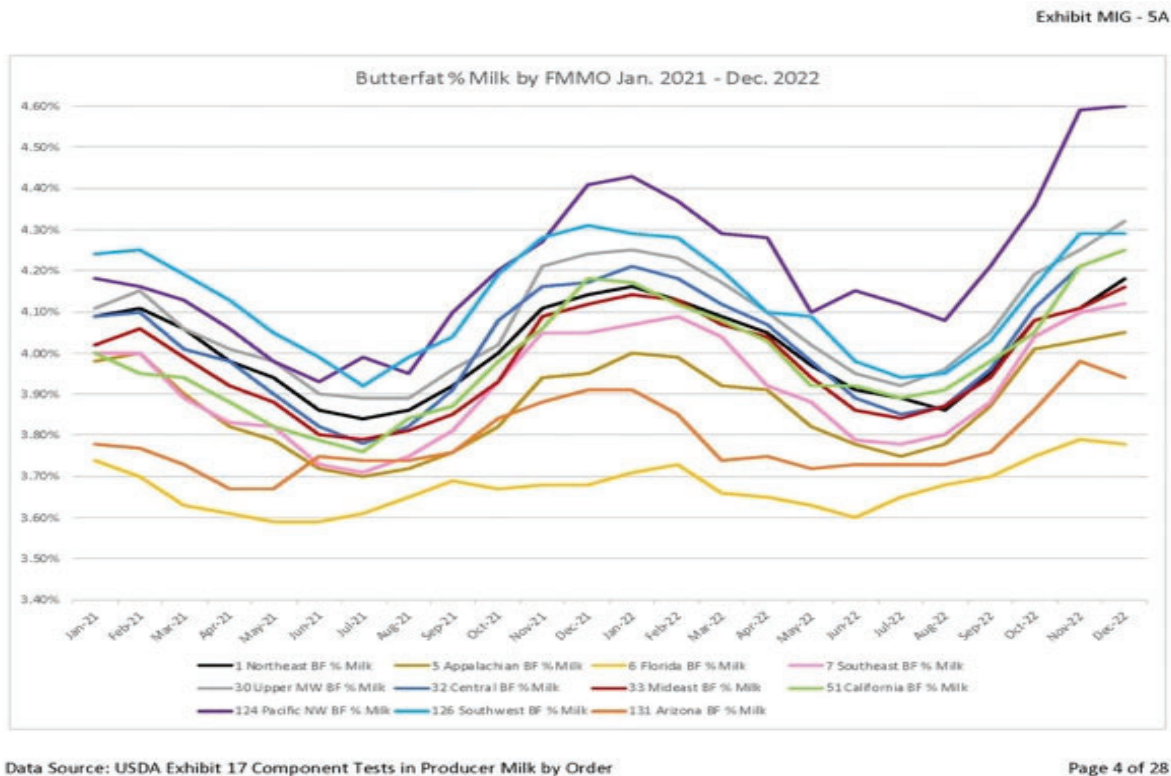


Chart 1

It would be disorderly to determine component factors for the minimum price using annual average component levels for most but not all FMMO milk. Further, it would be disorderly for producers especially in the non-MCP orders to be paid for components they do not produce. Doing so would artificially enhance minimum milk prices for both (1) the lower component orders and (2) the lower component seasons.

USDA should reject Proposals 1 and 2.

D. There Is No Justification to Raise Class II Minimum Regulated Prices.

With the exception of the American Farm Bureau Federation, virtually everyone else at the hearing opposed AFBF 21 which would also increase Class II minimum regulated prices. For all the reasons stated above with respect to Class I price increases, New Dairy joins in the near universal opposition to AFBF 21: (1) it is wholly unnecessary to bring forth a supply of milk; (2) it will further disrupt fragile Class I operations with associated Class II products that must by definition be pooled in competition with stand-alone Class II facilities that can choose to pool or not; and (3) other than a naked money grab, AFBF provides no rational economic rationale for its proposal. *See, e.g.*, Hearing Ex. 439 (IDFA Ex. 63), at 2-3 (Testimony of Tim Galloway).

E. USDA Should Adopt MIG Proposal 20.

New Dairy is not a member of MIG. Nonetheless, New Dairy concurs with the sentiments and arguments behind MIG Proposal 20. New Dairy endorses that proposal for the reasons stated in the record.

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III. CONCLUSION

For the foregoing reasons, USDA should reject Proposals 1, 2, 19, and 21 and adopt MIG Proposal 20.

DATED this 1st day of April, 2024.

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I hereby certify that on the date set forth below I served a copy of the foregoing **NEW DAIRY OPCO, LLC'S BRIEF AND PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW** on:

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by emailing a copy thereof to said attorneys' last-known email address as set forth above;

by emailing a copy thereof in Word format to said attorney's last-known email address as set forth above, pursuant to Oregon Local Rules.

by causing a copy thereof to be hand-delivered to said attorney's last-known address as shown above;

by sending a copy thereof via overnight courier in a sealed, prepaid envelope, addressed to said attorney's last-known address; or

by faxing a copy thereof to said attorney's last-known facsimile number;

Dated this 1st day of April, 2024.

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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 NEW DAIRY OPCO, LLC'S BRIEF AND PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW has been furnished and was served by electronic mail upon the following parties on April 2, 2024 by the following:

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