NATIONAL FAMILY FARM COALITION

September 13th, 2024

Erin Taylor,
USDA/AMS/Dairy Programs,
Order Formulation and Enforcement Branch,
STOP 0231-Room 2530,
1400 Independence Avenue SW,
Washington, DC 20250-0231

RE: Comment on Proposed Rule - Milk in the Northeast and Other Marketing Areas; Proposed Amendments to Marketing Agreements and Orders
Docket No. AMS–DA–23–0031. 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1051, 1124, 1126, and 1131.

Dear Ms. Taylor,

The National Family Farm Coalition (NFFC) is grateful for the opportunity to comment on the Milk in the Northeast and Other Marketing Areas; Proposed Amendments to Marketing Agreements and Orders (Docket No. AMS–DA–23–0031) proposed rule under U.S Code of Federal Regulations Title 7 Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1051, 1124, 1126, and 1131. While we recognize the importance of this ruling. The largest changes to the FMMO system since 2000. NFFC strongly rejects the increase in the make allowance credits for processors. As it has been recognized by the current administration, and by the Secretary of Agriculture in particular: consolidation in the agricultural sector has negatively affected small farmers and in the dairy industry the transfer of well from farmers to processors will ultimately accelerate the consolidation process in the sector and the end of the small dairy farm as we know it.

NFFC is an alliance of grassroots farmer- and advocate-led groups across 42 states, representing the rights and interests of independent family farmers, ranchers, and fishermen in Washington, D.C. Today NFFC's 31 state, national, and regional farm and rural organizations are bound by a common belief that communities have the right to determine how their food is grown and harvested; that everyone in the food system should receive fair prices or wages; that all producers have equitable access to credit, land, seeds, water, markets, and other resources; and, that our food and agriculture policy must support sustainable farming, ranching, and fishing practices. Since NFFC's founding in 1986, we have been advocating for strong antitrust and fair competition laws, and more effective implementation rules, to defend the rights and interests of farmers and consumers.

For decades, NFFC has urged Congress and the USDA to significantly change the US dairy system to provide farmers with secure, estable, and fair prices for their production as way to sustain a diverse and extended number of dairy farmers; overtime "[t]he number of licensed U.S. dairy herds fell by more than half between 2002 and 2019, with an accelerating rate of decline in 2018 and 2019,"[1] and we are currently losing over 10% of dairy farmers a year.[2] It is clear that the current system is not working, particularly for those dairy farmers who would like to maintain a management herd and not convert into mega dairy operations. The unintended consequences of policies promoting consolidation in this sector go beyond the farmers and impact rural communities in general.

We appreciate the efforts the USDA made by organizing a record 49-day hearing that wrapped up in January of this year. But USDA's good intentions to ensure fair representation and participation from industry stakeholders during the hearings, fall short since many small and medium-scale dairy farmers feared lost markets and income due to retaliation from processors wishing to protect a broken system. This resulted in testimony dominated by processor interests and uneven recommendations that overwhelmingly benefit them. During the hearings, the National Family Farm Coalition (NFFC) continued to advocate on behalf of our farmer members for broader reforms to the current dairy production system that go well beyond FMMO recommendations.

In the interim of this temporarily fixed, NFFC would like to offer our position into the specific of the Milk in the Northeast and Other Marketing Areas; Proposed Amendments to Marketing Agreements and Orders rules. Addressing each of the five categories of milk pricing provisions in the eleven Federal Milk Marketing Orders (FMMO):

1) Milk Composition Factors: Update the factors to 3.3 percent true protein, 6 percent other solids, and 9.3 percent nonfat solids.

NFFC sees this change positively, we think that dairy farmers could see a potential increase in their income and it may be also convenient that similar consideration is given to the butterfat test's price increase. This way, although limited dairy farmers could temporarily compensate for the cost of production. As one processor put it: "If standard butterfat test are not increase at the same time as protein and other solids test, then when producers hedge their milk revenue using products that are based on Class III milk or Class IV milk prices, they will tend to be under protected against a decline in butterfat prices."[3] NFFC, however, will continue to advocate for floor prices for all dairy producers that will fix these temporary rules.

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[1] James M. MacDonald, Jonathan Law, and Roberto Mosheim. Consolidation in U.S. Dairy Farming, ERR-274, July 2020.
[2] Zulauf, C. and G. Schnitkey. "US Dairy Herds and Policy and the 2022 Census of Agriculture." farmdoc daily (14):38, Department of Agricultural and Consumer Economics, University of Illinois at Urbana-Champaign, February 23, 2024.
[3] Edge Dairy Farmer Cooperative, Post-Hearing Comments, April 1st, 2024.

2) Surveyed Commodity Products: Remove 500-pound barrel cheddar cheese prices from the Dairy Product Mandatory Reporting Program survey and rely solely on the 40-pound block cheddar cheese price to determine the monthly average cheese price used in the formulas.

The NFFC rejects this particular rule proposal. NFFC urges USDA to adopt our member organization, the California Dairy Campaign's proposal to add mozzarella to the Class III milk price. Since the hearing began last year, mozzarella has been added to the Global Dairy Trade Index and is trading today at $2.18 per pound. This week, GDT announced additional types of mozzarella that will be traded. Dairy farmers should be paid based on mozzarella prices, yields, and volumes. The lack of inclusion for mozzarella resulted in significant loss of revenue for dairy farmers. Achieving a healthy dairy system requires fair compensation.

USDA should always consider the markets from the consumption side of the equation. The demand for mozzarella has been increasing at a faster rate than cheddar cheese and these changes are negatively impacting producers. Supply management system should correct these inefficiencies.

Regarding the removal of the 500-pound barrel cheddar cheese price; NFFC finds that Edge's proposal to "expand the scope of the National Dairy Products Sales report survey to capture all barrel cheddar production"[4] must be a first step in the first direction to set prices ahead of time and offer less volatility to milk prices.

3) Class III and Class IV Formula Factors: Update the manufacturing allowances to: Cheese: $0.2504; Butter: $0.2257; NFDM: $0.2268; and Dry Whey: $0.2653. The decision also proposes updating the butterfat recovery factor to 91 percent.

As we mentioned above, NFFC strongly opposed this rule proposal.

> "The make allowance mathematically reduces average product prices used to calculate minimum farm milk prices. Some producers feel that the make allowance unfairly reduces the minimum milk prices set under the FMMOs. Manufacturers say the make allowance is simply the cost of processing milk into dairy products, and calling it a cost to farmers misrepresents the economics of producing dairy products."[5]

With clear certainty NFFC can say that the effects that allowances cause in the dairy sector is the rapid disappearance of small dairy farms and the sustained consolidation of the dairy industry. The unexpert public thinks that our government "subsidizes" farmers when in reality is providing the mechanism for farmers to subsidize processors. This propose rule change is equivalent to an average increase of 30 percent as noted by California Dairy Campaign:

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[4] Idem.

[5] Shields DA. Dairy pricing issues. Congressional Research Service. 2009 Nov 6;40903.

> "Class III Make Allowances:
> Cheese .2003 increased to .2504 (+.0501 or 25%)
> Dry Whey: .1991 to .2653 (+.0662 or 33%)
> Class IV Make Allowances:
> Butter .1715 to .2257 (+.0542 or 32%)
> Nonfat Dry Milk .1678 to .2268 (+.059 pr 35%)"[6]

Make allowances are deductions from farmer milk checks paid to processors to offset their manufacturing costs, embedded within dairy pricing formulas. This increase to make allowances is the largest the USDA has ever proposed, more than double the previous record increase of $0.35 cents per hundredweight.

These amounts, measured in mere cents, appear deceptively minor yet have major impacts on milk prices paid to farmers and can drastically shrink their already razor-thin, or nonexistent, margins. But consider that the average cow produces 24,000 pounds of milk per year and it adds up fast! Assuming the average dairy herd size of 357 cows, an $0.80 cent increase in make allowance credits means $68,544 in lost farmer income.

Many processors argue that substantial increases in make allowances are necessary, given rising costs since USDA's last update in 2008. In calculating this increase, however, the USDA relied on a single voluntary, unaudited survey that, by their own estimation, only included 17% of the nation's processors. This survey also failed to account for differences in scale between processors. A single, non-representative survey of a handful of the country's dairy processors was used to justify increasing make allowances by approximately 20%, inflating the profit margins of these plants at the expense of farmer milk checks. Because plant costs are cushioned from volatility in the dairy market this change will make processing plants less responsive to market demand, further depressing all milk prices paid.

The truth is that FMMO will never successfully work as a tool for equitable price determination in the dairy industry. At the end of the day, the market is the driving force behind price. The industry continues to double-down on a failing system that shortchanges dairy farmers, especially the small and mid-scale businesses, who cannot compete with the whims of corporate industry leaders. The system fails consumers, too, through volatile and uncertain prices that go up at the grocery store when farm prices rise (increases in price that don't return to the farmer, of course), but rarely track the decline in what farmers are paid.

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[6] California Dairy Campaign, CDC Urges Dairy Farmers to Oppose Make Allowance Increases, Website: https://californiadairycampaign.com/usda-fmmo-info Last visited 9/13/2024

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USDA must recognize that not all processors are equal and that allowances would mainly benefit those plants which are already solid advances in the market; thus increasing consolidation in the sector. For once, USDA should conduct a mandatory survey of manufacturing cost before taking this precipitated and not well thought proposal.

4) Base Class I Skim Milk Price: Update the formula as follows: the base Class I skim milk price would be the higher-of the advanced Class III or Class IV skim milk prices for the month. In addition, adopt a Class I extended shelf life (ESL) adjustment for all ESL products equal to the average-of mover plus a 24-month rolling average adjuster, with a 12-month lag.

Returning to the high-of on all class I milk could positively impact dairy farmers and for this reason NFFC support this proposed rule. NFFC would like to think that this change does not respond to the increase in the manufacture allowances, because it will repeat the crisis in which we currently are. We also would like to advise USDA of potential side effects with this increase in prices and this is to promote increasing milk production in an already saturated market. Perhaps, the price advance is not the correct model to address fair prices for dairy farmers.

5) Class I differentials: Update the Class I differential values to reflect the increased cost of servicing the Class I market. The county-specific Class I differentials are specified in the decision.

NFFC as in the previous case is in favor of the proposed rule change, under the understanding that these are measures that could help farmers for the time being but would not solve the chronic problem of the system.

<u>Conclusions</u>

Farmers can't wait any longer for fair prices for their products - 40% of US dairy farmers have closed within the past five years alone. Each farm lost means more than just income, infrastructure, and jobs disappearing; it's the erasure of a proud dairy heritage that has sustained rural communities for generations. Dairy farmers deserve floor prices achieved through an effective supply management system, coupled with a guaranteed, fair income that will cover their real costs of production including their cost of simply living.

We are sincerely thankful for the effort USDA has put into reviewing a broken system and offering some relief to the challenges dairy farmers face. However, we know the changes that dairy farmers seek will not come from the USDA, but instead from political action taken by Congress. The question is: do they have the political will to act? NFFC will continue to work with our dairy farmer members to push for a comprehensive solution to the crisis. If we compare the healthy diary system of our neighbors in the North, we may get good solutions to our problems.Canada's dairy supply management program is a good example to follow.That program has served to support limited production at prices that are fair to farmers and consumers, enabling them to invest in more sustainable farm practices. In 2021, the NFFC presented the Milk from Family Dairy Act (MFDA), a common-sense dairy policy proposal that will benefit family dairy farmers, their communities, workers, the environment, and consumers.

The basic tenets of MFDA have precedent in existing and historical farm programs in the US and other countries, as well as in legislation introduced in the US Congress in the last two decades. This addendum to the MFDA provides examples of these.

Precedent

The U.S. sugar and cranberry industries both operate under a supply management program with similarities to the Milk from Family Dairies Act. The MFDA is based in numerous ways on the Canadian dairy system, including elements of Canada's pricing system, supply management, and provincial producer marketing boards.

The following bills have been introduced in Congress containing elements of the MFDA, including farmer price stabilization and supply management. Support for these measures has come from across the political spectrum, exemplified by bills introduced by Republicans, Democrats, and Independents.

- 2020: H.R.8274 – Dairy Pricing and Policy Commission Act, introduced by Rep. Kind (D-WI-3), referred to House Committee on Agriculture
    - Establishes a commission to study (1) decreasing real values of dairy farmer milk prices and income; (2) economic and policy causes for the declining number of small and medium-sized dairy operations; (3) levels of milk production in the United States with regional changes in farm numbers, cow numbers, and milk production per cow; (4) opportunities and challenges for increasing domestic and export demand for dairy products; (5) effects of declining dairy farm numbers on rural economies; and (6) causes for the consolidation within the dairy industry; and develop legislative, regulatory, and market-based recommendations to improve milk prices and dairy farm profitability.
- 2011: S.1640 - Federal Milk Marketing Improvement Act, introduced by Sen. Casey (D-PA), considered by Senate Agriculture Committee. Sen. Specter (R-PA) introduced a similar bill in 2007, which was considered as part of negotiations on the then-2007 Farm Bill.
    - Changes minimum Class II milk price on the national average cost of milk production, uses the Class II milk to be the basic formula price for all milk marketing orders
    - Directs USDA to account for total milk production and use, and reduce producer prices by up to 5% in the case of national excess milk production

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- Provides new produces with a limited exemption from price reductions

- 2010: S. 3531 // H.R. 5288 - Dairy Price Stabilization Act of 2010, introduced by Sen. Sanders (I-VT) and Rep. Costa (D-CA) with two Senate and eight House cosponsors.
  - Establish the dairy market stabilization program that shall apply to all dairy facilities within the contiguous United States that produce milk for sale commercially.
- 2009: H.R.3935 - Save Our Dairy Farmers Act of 2009, introduced by Rep. LaTourette (R-OH-14), referred to House Agriculture Subcommittee on Livestock, Dairy, and Poultry
  - Establish temporary minimum prices for Class II and III milk and direct the Secretary of Agriculture to report to Congress regarding dairy price stabilization options
- 2007: S. 2766: National Dairy Equity Act of 2007, introduced by Rep. Reynolds (R-NY-26), referred to House Agriculture Subcommittee on Livestock, Dairy, and Poultry
  - Establishes five regional dairy marketing orders, administered by Regional Dairy Boards with authority to establish price premiums. Processors pay premiums to USDA; a USDA fund pays out premiums to farmers.

Thank you for the opportunity to comment and for your consideration of our views. If you have any additional questions about this comments please feel free to contact Antonio Tovar (antonio@nffc.net).

Sincerely,

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National Family Farm Coalition