



James Mulhern, *President & Chief Executive Officer* | Randy Mooney, *Chairman*

Agri-Mark, Inc.
Associated Milk Producers Inc.
Bongards' Creameries
Cooperative Milk Producers Association
Cortland Bulk Milk Producers Cooperative
Dairy Farmers of America, Inc.
Dairymen's Marketing Cooperative, Inc.
Ellsworth Cooperative Creamery
Farmers Cooperative Creamery
FarmFirst Dairy Cooperative
First District Association
Foremost Farms USA
Land O'Lakes, Inc.
Lone Star Milk Producers
Maryland & Virginia Milk Producers Cooperative Association
Michigan Milk Producers Association
Mid-West Dairymen's Company
Mount Joy Farmers Cooperative Association
Northwest Dairy Association
Oneida-Madison Milk Producers Cooperative Association
Prairie Farms Dairy, Inc.
Premier Milk Inc.
Scioto County Cooperative Milk Producers' Association
Select Milk Producers, Inc.
Southeast Milk, Inc.
St. Albans Cooperative Creamery, Inc.
Swiss Valley Farms Company
Tillamook County Creamery Association
United Dairymen of Arizona
Upstate Niagara Cooperative, Inc.
Zia Milk Producers, Inc.

December 17, 2015

The Honorable Tom Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

Re: Opposition to Alternative Pooling Provisions for USDA Certified Organic Milk

On behalf of our 30,000 dairy farmer members, the National Milk Producers Federation (NMPF) reiterates its opposition to the Organic Trade Association's (OTA) petition for a hearing to amend all Federal Milk Marketing Orders (FMMO). In our view OTA's proposal would create disorderly marketing conditions and would significantly disadvantage farmers and processors servicing the conventional dairy market.

Our views have been further solidified by OTA's recent response to the Department's straightforward request in a letter to OTA dated October 29 seeking additional information to help determine if OTA's proposal had sufficient substance to merit holding a hearing. OTA's response to that request simply reiterates its original request to amend all FMMOs to effectively exempt organic milk, lacks specificity on how that proposal would benefit organic dairy farmers, and acknowledges that it would reduce the regulated milk prices for all conventional dairy farmers remaining in the FMMO by as much as \$50 million dollars per year. Since the OTA effectively declined to provide any meaningful response to your request for additional information to support its petition – an amendment which would alter the structure of the FMMOs in a fundamental way – NMPF again requests that the Department reject the OTA FMMO proposal. Instead we respectfully suggest a more meaningful and effective solution: that any concerns over the supply of organic milk be redirected to the real issue – the National Organic Program (NOP), which develops the national standards for organically-produced agricultural products.

In its October letter, the Department sought additional information from OTA to assess how the proposed modifications to the FMMO program would: (i) increase the supply of organic milk; (ii) be consistent with the requirement that similarly situated handlers face the same regulated minimum milk prices; (iii) direct monies withheld from the FMMO to organic dairy farmers; (iv) impact conventional dairy farmers; and (v) what other solutions OTA considered that may increase the supply of organic milk.

In response, OTA implied that the Department's request for additional information was inappropriate and suggested that such information would customarily be "provided only during a hearing." NMPF finds that The Supplemental Rules of Practice clearly address the appropriateness of the Secretary requesting additional information before determining the merits of a hearing:

"USDA shall either: [...] request additional information from the person submitting the proposal to be used in deciding whether a hearing will be held. If the information requested is not received within a specified timeframe, the request shall be denied; [...]" (7 CRF §900.23)

Decisions to open FMMOs for amendment impact all of the nation's dairy farmers and should not be taken lightly. As such, NMPF commends the Department for its due diligence in requesting the aforementioned information. NMPF also appreciates the Department quickly responding to data requests from the industry. It is this very data that points to the financial consequences to dairy farmers of OTA's proposal.

With respect to the Department's request for additional information, OTA responded to two of the five requests. Using the Department's prepared data on the "Change in Value of the Pool by Removing Class I Organic Milk", OTA confirmed that their proposal would have a negative impact on dairy farmer FMMO blend prices. The total change in FMMO pool value caused by removing organic Class I packaged fluid milk sales totaled \$98 million dollars during the July 2013 to June 2015 period. OTA categorized this impact as "small." However, during the 2009 Producer Handler Hearing, NMPF provided evidence that bids to buy or sell milk are often considered and awarded on differences of less than 1¢ per hundredweight (Federal Register Vol. 74 No. 202, 2009). Thus, while OTA maintains that this negative impact borne by conventional dairy farmers is small and not enough of an incentive for conventional dairy farmers to vote out an order, NMPF disagrees.

Further, when asked how similarly situated handlers would face the same regulated minimum milk prices, OTA suggested that handlers voluntarily would be bound to "higher minimum milk prices." OTA's answer is an admission that similarly situated handlers would not face the same regulated minimum milk prices under the proposal. Under OTA's proposal "higher minimum prices" would vary month to month for each handler based on the handler's actual utilization of milk as specified in §__.71 of the order. As stated by the Department in the National Producer Handler Hearing, by NMPF in our October opposition letter, and again by the Northeastern Milk Processors in their November letter to the Department, individual handler pooling does not result in uniform pricing among handlers and would run counter to the goal of Agricultural Marketing Agreement Act (AMAA) of avoiding unreasonable fluctuations in milk supplies and prices.

With respect to the remaining three requests for information, OTA elected not to respond directly, and instead cited antitrust impediments as the reason why potential benefits to organic dairy farmers could not be demonstrated through any studies or analyses. NMPF finds the following responses of great concern for the financial well-being of both conventional and organic dairy farmers:

- When questioned how “monies generated [...] can be directed to organic dairy farmers” OTA replied that the proposal would establish “higher minimum price obligations for electing handlers.”
- On “how your proposal would increase the supply of certified organic milk” OTA replied that individual organic handlers and the farmers can discuss independently how those funds could be used to increase organic supplies.
- Finally, when asked about alternative solutions it considered to “increase the supply of organic milk”, OTA cited only options that would provide an exemption from FMMOs, and failed to acknowledge how the NOP’s Origin of Livestock Proposed Rules, a currently open docket, can be amended to ensure ample supplies of organic milk-producing animals needed to meet consumer demand (AMS-NOP-11-0009; NOP-11-04PR).

The reality of OTA’s proposal is that the “higher minimum price” would not be paid to farmers. In fact, the higher minimum price obligation is the very mechanism by which OTA seeks to achieve exemption for organic handlers from FMMO pooling and pricing provisions. Due to the inclusion of organic milk over-order premiums in the calculation of the gross pay price, electing organic handlers would be exempt from FMMO pooling and pricing provisions when the gross pay price exceeded the new and higher minimum price – a near certainty given the disparity between organic and conventional pay prices. OTA recognized that the market currently plays a role above the new, higher minimum prices, confirming the lack of tangible benefits associated with OTA’s claim of “higher minimum prices”.

Importantly, none of OTA’s responses signal an intention or a mechanism whereby organic dairy farmers would ultimately benefit from the proposal. Instead, OTA posits that dairy farmers would have an option to discuss with their milk handlers how the additional monies could benefit them. Under this scenario it is uncertain what portion of the monies would be retained by the processor and what portion, if any, would be paid to the dairy farmer. Given the uncertainty surrounding the funds, it is entirely possible the organic exemption could be used to significantly enhance processor revenue, or, as suggested by both NMPF and Northeastern Milk Producers, used to create competitive advantages for organic milk processors over conventional fluid milk processors.

The premise of OTA’s request to effectively exempt organic milk from FMMO pricing and pooling provisions is its claim that a currently inadequate supply of organic milk is “*made worse by FMMOs.*” This statement is not consistent with available evidence. First, the organic dairy category has grown by 356 percent since 2003, attesting that the organic milk supply responds to price signals from the marketplace. Second, USDA data, as well as several dairy industry experts contacted by the Department, confirm that there are ample supplies of organic replacement heifers and milk cows (AMS-NOP-11-0009 page 23472). Third, in organic industry surveys conducted by OTA in both 2013 and 2014 respondents cited the drought and feed costs as the key constraints on market growth – not FMMO pricing and pooling (AMS-NOP-11-0009 page 23468). Yet, when asked about alternative solutions considered to “increase the supply of organic milk” OTA did not cite their active participation in the open docket for the NOP Origin of Livestock Proposed Rules. This was a curious omission, given that, in its FMMO proposal, OTA

acknowledges that the key challenge for ensuring an adequate supply of organic milk is the NOP:

“Organic handlers really do need additional supplies of USDA certified organic milk, but cannot grow the supply through their producer patrons fast enough especially given the time constraints imposed by the NOP.” (OTA Hearing Request 2015)

Thus, despite recognizing this key constraint to the organic milk supply, OTA inconsistently, and irresponsibly, targets FMMOs. The reality is OTA has effectively lobbied for over 30 years to establish rules related to organic standards of milk production and livestock origination that directly impact the ability of organic dairy farmers to adjust supply in response to market-based demand signals. OTA’s recent petition to amend FMMOs to *“better bring forth an adequate supply of USDA certified organic milk”* would be not only financially detrimental to both conventional and organic dairy farmers but is also completely inconsistent with the positions for which they advocated during the NOP rulemaking process.

While OTA has petitioned for amendments to all FMMOs because *“demand is outpacing supply,”* it has simultaneously filed comments on behalf of NOP’s Origin of Livestock proposed rule (AMS-NOP-11-0009; NOP-11-04PR) that will make the supply of organic milk less flexible to meet consumer demand. Specifically, OTA supports and recommends rules that: (i) prohibit multiple transitions of conventional herds into organic production; (ii) prohibit producers that only raise organic heifers from transitioning conventional animals to organic; and (iii) prohibit flexible breeder stock rotations into organic management.

NOP’s Proposed Rule on the Origin of Livestock, for which OTA supports, limits dairy animal transition and would exacerbate the very problem that OTA seeks to correct by amending all FMMOs. OTA recognizes this supply effect in its comments on the NOP proposed rule:

“The change to the Origin of Livestock rule will reduce the availability of replacement animals eligible to be milked organically and reduce the available genetics for herd improvement.”

Given OTA’s position in the Origin of Livestock rulemaking, OTA’s effort to seek de facto exemption from FMMO pooling provisions for organic handlers on the basis of claimed supply shortages is highly misleading and jeopardizes both organic and conventional dairy farmer financial returns. The Department is on record that the NOP *“proposed rule has the potential to increase costs to dairy farmers who currently purchase transitioned dairy animals as replacements.”* Thus, if the NOP proposed rule is adopted, costs of production for organic dairies are likely to increase, and financial returns for cow-calf operations transitioning non-organic animals into organic production will be reduced. Then, accompanying increased operating costs and decreased revenue for some, the de facto FMMO exemption would reduce the regulated minimum milk price for all dairy farmers in the United States. It is difficult to understand how two negative changes can yield a positive outcome. In the unlikely event that additional monies resulting from FMMO exemption would be

directed to organic dairy farmers, the additional revenues are likely to be offset by higher costs borne by the NOP proposed rule.

The Department did consider an alternative modification to the Origin of Livestock that would have achieved the same regulatory objective as the current proposed rule (AMS-NOP-11-0009 page 23471). Option A would have amended the NOP regulations to specify that a *“producer could transition dairy animals into organic production over a 12-month period on a continuous basis.”* Option A would ensure that the supply of organic replacement heifers and milk cows continues to be available to meet consumer demands. However, limited stakeholder opposition to Option A, and unsubstantiated conclusions about the impact on organic heifer prices and consumer confidence in organic milk, led the Department to the current proposed rule.

OTA recognizes the negative impact of the NOP proposed rule on organic dairy farmers’ costs of production, but maintains that de facto exemption from FMMO pooling and pricing would have no statistical impact of farmer pay prices. *“OTA has no reason to believe the national blend price impact would be significantly different if the proposal were to be adopted and fully utilized with a 100% credit.”* As evidenced earlier, OTA’s assessment on the farm financial impact of its FMMO proposal could not be more incorrect. Dairy farmers will have lower regulated minimum prices if OTA’s proposal is adopted.

It is NMPF’s belief, based on the aforementioned evidence, that it is the constraints imposed by the NOP, not FMMOs, that pose the relevant challenge to the supply of organic milk available to meet consumer demand. FMMOs, as amended in the AMAA, operate in the interest of producers and consumers and serve only to ensure an orderly flow of the milk supply. Orderly marketing is achieved by establishing terms of trade and minimum prices between farmers and handlers of milk. Premiums paid to organic dairy farmers above FMMO prices are not shared in the pool. Under current FMMO provisions all handlers and farmers share in the benefits of orderly marketing provided by FMMOs. OTA has failed to convince the 30,000 dairy farmer members of NMPF, both conventional and organic, how their proposal would achieve more orderly marketing conditions than those presently provided under FMMOs.

NMPF recognizes the Department’s desires to proactively satisfy consumer expectations with respect to organic livestock and to provide for greater consistency in the implementation of the NOP Origin of Livestock requirements. As such, since the NOP is responsible for establishing the standards for organically produced agricultural products, it should be the conduit through which supply-related rules are amended to accommodate demand. Similarly, as economic theory suggests, the fundamental stimulus for increased organic milk production can only be market-based price signals transmitted from the consumer by the handler. Attempting to stimulate a supply response by amending the minimum price and revenue sharing provisions of FMMO program is an ill-conceived and ineffective solution to a problem that arguably may not exist.

OTA’s FMMO proposal effectively shifts the responsibility for ensuring an adequate supply of organic milk to meet consumer demand from both the processor, as well

as a reasonable regulatory framework affecting supply, to conventional, and potentially organic, dairy farmers. We urge you to deny the Organic Trade Association proposal to amend all Federal Milk Marketing Orders and direct OTA to the National Organic Program to alleviate any supply-related challenges.

Thank you again for your commitment to a strong and robust U.S. dairy industry.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jim Mulhern", with a stylized, cursive script.

Jim Mulhern
President and CEO