January 31, 2020

The Honorable Steven Mnuchin
Secretary of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Dear Mr. Secretary:

I write to bring to your attention an issue of concern to U.S. dairy farmers and their cooperatives.

The National Milk Producers Federation develops and carries out policies to advance the well-being of dairy producers and the cooperatives they own. The members of NMPF's cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of more than 32,000 dairy producers on Capitol Hill and with government agencies.

Dairy farmer cooperatives have used the Section 199 deduction since its inception in 2004, primarily by passing the deduction back directly to their farmer-owners. Cooperatives have been able to calculate the deduction on both patronage and nonpatronage income. In enacting the revised Section 199A(g), Congress made clear its intent that the deduction should operate in the same manner as the former Section 199.

However, we are concerned with the proposed regulation to implement the revised Section 199A(g) because it would limit the new deduction to patronage income. This restriction clearly contradicts the wording of the enacted law and the authority granted to the Department, which states that the regulations "shall be based on the regulations applicable to cooperatives and their patrons under section 199 (as in effect before its repeal)." Limiting the deduction as proposed in the rule not only runs counter to the law but would also impose a tax increase on the thousands of dairy farmers that own and market their milk through cooperatives. Moreover, it violates the spirit and intent of the good faith negotiations between members of Congress, cooperatives and private agricultural businesses that led to the enactment of the revised Section 199A(g).

Like other cooperatives, dairy cooperatives conduct business with non-patrons for multiple reasons, such as buying milk from non-members to meet processing capacity at their plants. In the dairy sector, this activity benefits cooperative patrons as well as non-patrons as it better enables cooperatives to meet market demand in an often-volatile market.

Now is not the time to impose a tax increase on U.S. dairy producers. As you may know, dairy farmers have recently endured a range of economic challenges, suffering from prolonged low prices for five consecutive years amidst uncertain market conditions and a challenging labor environment. While producers are eternal optimists for the future, a surprise tax increase in the form of the proposed rule would send the exact wrong signal at the wrong time.

As your Department works to finalize regulations to implement the revised Section 199A(g), we strongly urge you to include nonpatronage income in the deduction calculation as under the previous Section 199. Thank you for your consideration of this important request.

Sincerely,

Jim Mulhern
President & CEO