



National Family Farm Coalition

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By Fax and Mail Delivery

March 2, 2009

The Honorable Tom Vilsack
Secretary of Agriculture
United States Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

Dear Secretary Vilsack:

Dairy farmers across America are confronting the most serious economic crisis they have experienced in their lifetimes. The farm gate price for milk has collapsed by more than 50% from one year ago and dropped an unprecedented \$5 in one month for February. Farmers now confront \$9-\$11 per hundredweight (cwt) milk prices while costs of production hover between \$20 and \$30. Dairy farmers request your urgent attention and action. If nothing is done to halt the current crash in prices, up to 80% of the nation's dairy farms may be out of business by the end of the year, jeopardizing domestic production and making us more vulnerable to dependence on foreign imports. The National Family Farm Coalition urges you to use your authority to implement the Agricultural Marketing Agreement Act of 1937 (7 U.S. Code) 608c (18) relative to the current farm milk price to ensure a viable domestic dairy infrastructure.

Section 608c (18) requires the Secretary of Agriculture to adjust farm milk price within all Federal Orders 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." If prices are found to be "not reasonable" in reflecting the price of feeds and other factors, the Secretary can explicitly "fix such prices" to reflect these factors.

U.S. Code TITLE 7 Chapter 26 SUBCHAPTER III 608c 18
(18) Milk prices

The Secretary of Agriculture, prior to prescribing any term in any marketing agreement or order, or amendment thereto, relating to milk or its products, if such term is to fix minimum prices to be paid to producers or associations of producers, or prior to modifying the price fixed in any such term, shall ascertain the parity prices of such commodities. The prices which it is declared to be the policy of Congress to establish in section 602 of this title shall, for the purposes of such agreement, order, or amendment, be adjusted 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. Whenever the Secretary finds, upon the basis of the evidence adduced at the hearing required by section 608b of this title or this section, as the case may be, that the parity prices of such commodities are not reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk and its products in the marketing area to which the contemplated agreement, order, or amendment relates, **he 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. Thereafter, as the Secretary finds necessary on account of changed circumstances, he shall, after due notice and opportunity for hearing, make adjustments in such prices.

Current national cost of production for milk is \$20 cwt. Costs for fuel, feed, fertilizer and seeds have all skyrocketed in the past year. Meanwhile, consumers have yet to benefit from lower prices at the supermarket for milk or cheese. Now more than ever is the time for USDA to enforce 608c (18). Already, farm suicides have occurred in California, and as unpaid bills pile up and milk prices decline, we can only anticipate more desperation in many parts of rural America. As USDA is also supposed to factor in the public interest when determining milk prices, NFFC believes dairy's vital role in providing economic opportunity in rural America, along with providing Americans with a stable, quality and safe food supply, provides a compelling public interest role deserving of support equal to Wall Street banks. The dairy industry is an economic multiplier reaching beyond the farms, affecting feed and seed suppliers, tractor dealers and a host of other dependent industries in the farming sector. The public's interest would be served by having a dispersed, resilient food supply where dairy farmers throughout the country could make a profit.

Myth of Surplus Overproduction

Assumptions that the milk price collapse is related to a surplus of milk in the market are not supported by numerous data that expose the United States importing record amounts of product and increased commercial disappearance (USDA's estimate of demand for key dairy products) in 2008:

- Farm milk prices began to fall in late 2008 despite nonfat dry milk exports in December 2008 that nearly totaled the same as in December 2007;
- In December 2008, the United States imported a massive quantity of milk protein concentrates (MPC, an illegal dairy substitute not approved by the FDA);
- Imports of casein, another dairy-derived protein, also increased in December 2008;
- **Commercial disappearance of dairy products actually *increased* in 2008, by 2.6% while as late as December 2008, commercial disappearance increased 2.7% from December 2007.**

Most crucially, the United States ended 2008 with a **4.2 billion pounds of milk shortfall** that was made up through increased imports, and this does not even include MPCs or

casein products. U.S. farms sold 188.8 billion pounds of raw milk, but commercial disappearance was 193 billion pounds. Calculating MPCs and caseins would show an actual shortfall of domestic milk production for 2008 that would be much higher. **Total foreign dairy imports may comprise up to 7.5% of consumption.**

If supply/demand is not driving down farmers milk prices, what is? NFFC has worked tirelessly to expose the flawed dairy pricing system that prices milk based on cheese traded at the Chicago Mercantile Exchange. There is almost near perfect correlation between the price of cheese at the CME and farm gate milk prices. NFFC's efforts have shown how the thinly traded cheese market is ripe for price manipulation. The December 2008 \$12 million fine leveled by the Commodity Futures Trading Commission on Dairy Farmers of America for price manipulation at the CME was finally public confirmation that the dairy pricing system has been controlled by a handful of powerful interests at the expense of America's dairy farmers.

Judicial Opinions

Court cases have also noted the Secretary's authority to enforce 608c (18). In late 1999, United States District Court Judge, William Sessions III, in the case of St. Albans Cooperative Creamery, Inc., et al., plaintiffs versus Dan Glickman, Secretary of Agriculture, issued an opinion and order citing Dan Glickman for failure to consider dairy farmers' cost of production in the federal milk pricing formula.

Judge Sessions made it explicitly clear that, "This court looks to the direct language of the statute to determine the sufficiency of the Secretary's consideration, which makes no mention of indirect consideration being adequate in meeting the requirements of 608c (18). The record shows no direct consideration of regional costs in feed, feed availability, or other region specific economic factors." Judge Sessions also stated, "The court finds the Secretary's Final Order and Decision violates Congress' mandate under the 1937 Agricultural Marketing Agreement Act (AMAA)."

Referring to 608c (18) repeatedly, Judge Sessions continued, "Defendants counsel conceded in oral argument that the only consideration of such factors prior to the announcement of the final order was indirect." According to Judge Sessions, "had such indirect consideration been sufficient, Congress would not have gone to such lengths in drafting 608c (18)'s explicit requirements that feed cost of other regional economic considerations be accounted for in the setting of milk prices." Clarifying the matter even further, Judge Sessions said, "Indirect consideration of regional economic factors is imprecise, direct consideration of these factors is required by AMAA."

Antitrust and Competition Issues

Section 608c (7) of the Agriculture Marketing Agreement Act also mentions the Federal Milk Marketing Order's role in preventing "unfair methods of competition and trade practices":

(7) Terms common to all orders: In the case of the agricultural commodities and the products thereof specified in subsection (2) of this section 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.

For years NFFC has exposed the serious antitrust and anti-competitive practices plaguing the dairy industry. The Department of Justice launched a two-year investigation into DFA in 2005, but the findings were never released under the Bush Administration. We urge USDA to examine its authority under 608c (7) and immediately look into the antitrust abuses by dairy cooperatives and other entities that are causing serious economic harm to dairy farmers. USDA should also pressure DOJ to revive its investigation into DFA and release its findings.

As demonstrated by the current catastrophic economic factors, case law and milk supply, the time is now for you, as the United States Secretary of Agriculture, to adjust farm milk prices to cover the cost of production and implement 608c(18) for American dairy farmers and consumers. Every month the government fails to take actions means the loss of thousands of dairy farms and further jeopardizing domestic food security.

Sincerely,



Ben Burkett, President



Paul Rozwadowski, Dairy Subcmte Chair

Attachment:

Dairy Farm Crisis 2009: A Look Beyond Conventional Analysis