

From: T Carlin <hillviewdairyfarm@yahoo.com>
Sent: Wednesday, December 30, 2009 10:11 AM
To: ATR-Agricultural Workshops <agriculturalworkshops@usdoj.gov>
Subject: USDA and DOJ Competition in Agriculture workshops Comments
Attach: Dairy Industry Corruption DOJ.doc

Hillview Dairy Farm
Gerald and Tina Carlin
3064 State Route 3005, Meshoppen, PA 18630
(570) 833-4592

Legal Policy Section, Antitrust Division, U.S. Department
of Justice
450 5th Street, NW, Suite 11700
Washington, D.C. 20001

December 30, 2009

Dairy farmers across the United States have been paid an average of just over \$12.00 per hundredweight on milk produced. In 2009, while the average total economic cost of producing milk will probably come in at around \$22.00 per hundredweight. Dairy farmers have endured unprecedented economic hardship over the past year. The effects of low milk prices have been felt throughout the rural economy with tens of billions of dollars in economic losses, while Dean Foods, Kraft Foods and others have enjoyed record profits at our expense. The following gives some background information on issues that have had an impact on farm milk prices.

History

Parity pricing insured that farmers had earning capacity equal to other workers and businesses. Parity pricing was removed in 1981 and replaced by market pricing which has been an open door for manipulation and corruption.

The Capper-Volstead Act of 1922 enabled farmers to form marketing cooperatives to bargain for fair prices in the market place. Co-op leadership have used the protection of Capper-Volstead to pursue corporate interest. Rapid consolidation over the past two decades has resulted in co-ops that are distant from and for all practical purposes unaccountable to their producer/members.

Cost of Production as mandated by law has been ignored or scorned. Farmers in all commodities need to be able to cover all of their costs of production and this continues to be a problem for dairy farmers under the current Federal Order Reform. There is a need to address this injustice with new legislation.

In 1937, Congress passed the Agricultural Marketing Agreement Act in which section 608c(18) mandated the Secretary of Agriculture to consider regional cost of production in the pricing formula. Cost of production and then 75-80% of Parity was the basis for establishing milk prices until 1981. Since that time, there has been no connection between farm milk prices and either Cost of Production or Parity.

In 1996, the United States Congress instructed Secretary of Agriculture Dan Glickman to reform the Federal Milk Marketing Orders. In July 1999, USDA put their order reform up for producer

referendum. Only Option 1B was offered. Although many did not like 1B, the referendum passed because cooperatives like Dairy Farmers of America (DFA) used the "block voting" option. Several dairy cooperatives sought an injunction against the proposed order reform on the basis that 1B would financially harm milk producers in most of the country. In the *St. Albans Cooperative Creamery, Inc., et al., Plaintiffs versus Dan Glickman, Secretary of Agriculture, Defendant* case an injunction was granted. U.S. District Judge William Sessions III did not focus on the merits of 1A vs. 1B but rather cited Dan Glickman for failure to consider dairy farmers' cost of production. Judge Sessions made clear in his "Opinion & Order" 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 that ". . . the Court finds the Secretary's Final Order and Decision violates Congress' mandate under the 1937 Agricultural Marketing Agreement Act (AMAA) . . ." and ". . . that Plaintiffs have a likelihood of success in their claim that the Secretary's Final Order and Decision violates the AMAA by failing adequately to consider economic factors regarding the marketing of milk in the regional orders across the country." Furthermore, Judge William Sessions found ". . . that the balance of hardship weighs heavily in favor of the Plaintiffs." Judge William Sessions, III made no fewer than five references to USDA's failure to act according to the 1937 Agricultural Marketing Agreement Act, section 608c(18). In his "Opinion and Order" statement, one such discussion spans seven pages. In late 1999, Congress instructed USDA to implement Option 1A. This satisfied the Plaintiffs, (were the Plaintiffs following the intent of the Capper-Volstead Act?) and the case was dropped without resolution of the cost of production issue.

In May 2000, USDA held hearings on Class III and IV pricing in which testimony was offered in support of implementing a cost of production factor in these formulas. In December 2000, USDA released the Tentative Decision on Proposed Amendments for Class III and IV pricing. Once again, USDA ignored the mandates of 7 U.S.C. 608c(18) maintaining that the Class III and IV prices ". . . are such prices as will reflect the aforesaid factors. . ." [General Findings (b)]. This is ludicrous in light of the volatility of Class III and IV prices. However, USDA did concede that "if a sound mechanical concept could be advanced that overcomes the objections relative to supply and demand, it should be considered."

United States Department of Agriculture issued an invitation for proposals on changing Class III and IV pricing in the summer of 2006. Approximately 40+ proposals for cost of production were submitted. National Family Farm Coalition submitted a somewhat detailed proposal to base Class III and IV pricing on a national average cost of production. In the pre-hearing, February 2006, USDA officials insisted that they do look at 608c(18) regularly and implied that they are following it. USDA turned down NFFC's proposal. As a result, several members of the Dairy Sub-committee, particularly Arden Tewksbury and Gerald Carlin of Pro Ag, drafted legislation using the NFFC proposal as its basis. Senator Arlen Specter's office put the draft into bill form, and it was originally introduced in the Senate on June 27, 2007 by Senator Arlen Specter and Senator Robert P. Casey, Jr. Senator Casey who is on the Senate Agriculture Committee was unable to get support, S1722 to become part of the 2008 Farm Bill. However, there was a feed adjuster figured into the "Milk Income Loss Contract" (MILC) program of the Farm Bill. This is just a small step in the road to assuring that all farmers receive cost of production for the food they produce. The bill was reintroduced by Senator Specter, with some changes, on August 6, 2009. The bill is known as the *Federal Milk Marketing Improvement Act of 2009* or S1645.

7USC 608c

(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 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 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 to meet current needs and further to assure a level of farm income adequate to maintain productive capacity sufficient to meet anticipated future needs, 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.

The Committee for Economic Development (CED) came out with a paper in 1962 titled *An Adaptive Program for Agriculture* which ridiculed the efficiencies in agriculture and called them a drag on the overall economy and laid out a plan to coax people out of agriculture into more "productive" occupations. Kenneth E. Boulding, a member of the research advisory board of CED said, "The only way I know to get toothpaste out of a tube is to squeeze, and the only way to get people out of agriculture is likewise to squeeze agriculture. If the toothpaste is thin, you don't have to squeeze very hard, on the other hand, if the toothpaste is thick, you have to put real pressure on it. If you can't get people out of agriculture easily, you are going to have to do farmers severe injustice in order to solve the problem of allocation."

The "Flanagan Report" issued in 1973, intended to be secret but made public by Senator Hubert Humphrey once again was critical of farm inefficiency and outlined a plan to force farmers into greater efficiency through global agriculture.

Background

The ongoing loss of traditional dairy farmers has destabilized America's domestic food supply as rural communities struggle to maintain the functional infrastructure necessary to properly care for cattle and farmland and produce local food. Government agriculture and trade policies have developed an atmosphere in which corruption is flourishing. This is evident in the overview of the history of a federal dairy policy that has implemented programs that foster the disappearance of dairy farmers.

Preliminary political and organizational corruption motivated the initiation of these dramatic policy changes in the dairy sector, and the resulting changes effectively have perpetuated a cycle of chronic corruption. The subsequent social and economic abuse that has been unleashed on American dairy farmers will be eliminated only if motivated reformers realize that studying the history of the entire process is mandatory in order to understand not only what has happened but also how to fix the broken system that has stripped dairy farmers of their basic rights. [These rights include private property rights, the right of self determination, the right of free speech and association, the right to

petition the government for redress of wrong, among others.]

The apparent drive behind consolidation in agriculture has been the goal to eliminate independent farmers, processors and retail stores and to move control of food production from local farmers and businesses to global corporations, governments, and "business interest." The control of food is being consolidated into the hands of the powerful few in order to enhance the power and financial gain for special interest insiders. Archer Daniels Midland (ADM) controls most of the grain trade between the United States and other countries and Fonterra Cooperative Group, Ltd., controls most of the dairy trade between other countries and the US. With so few outlets, free-market options are extremely limited. This is being done by "globalists," governments, corporations, global businesses, and others who want to control the world's population for their own purposes.

Examples

Dairy co-ops have shown evidence of perpetrating corruption in many ways. Among them, co-op leadership has increasingly isolated those who raise opposition in being removed. New leadership is chosen from those who are trained to be "yes" people.

Blackmail of co-op members who speak up is widely known, thus the fear of reprisal keeps most members silent because of fear of loss of their milk market.

Co-ops have been notorious about shutting down plants and consolidating trucking routes resulting in fewer marketing options. Because co-ops and other milk handlers can charge dairy farmers for milk hauling, they are free to move milk and disrupt competitive markets by moving milk between Federal Orders, which dilutes the Class I price in high Class I utilization Orders.

Consolidation/closing of dairy processing plants reduces and/or eliminates farmers' ability to move their milk to competitive outlets in a diversified marketplace. "Captivity" and paralysis characterize the business and economic "options" for dairy farmers and for independent dairy processors and milk marketing cooperatives.

Small marketing co-ops and independent processors have difficulty "Qualifying" and "Balancing" their milk. They are forced to comply with the dictates of the large co-ops and their associated firms.

Block voting has kept dairy producers from knowing the details of and voicing their opinions on Federal Milk Marketing Order (FMMO) referendums.

"Make Allowances" have allowed dairy processors to charge farmers the costs associated with manufacturing milk, thus relieving the processors of the responsibility of getting that money from the marketplace.

Milk Protein Concentrate (MPC) is being imported and used by dairy co-ops in order to "stay competitive." By doing so, they are directly competing against their own membership. MPC, mostly imported and uninspected, is a dry dairy product that is being widely used in the manufacture of many food products. MPC has never been subject to any safety or nutritional studies. It has not been given Generally Recognized As Safe (GRAS) status with the Food and Drug Administration (FDA). It is widely used in cheese and makes an inferior product. Many are concerned that the process of making

MPC may damage or alter the milk protein. It is known that many of the food value nutrients are taken out during the ultra-filtration process. Corporate greed drives the use of this product not quality or innovation. MPC's are imported from many countries with poor safety standards. This could pose a threat to the US food supply.

Scandals

Dairy Farmers of America (DFA), Dean Foods and National Dairy Holdings are involved in several scandals which are detrimental to their farmer/members, small processors and retailers. Dairy cooperatives have a long history of marginalizing their members. Many retired co-op members have been shorted on their equity being returned. Other have been told by their co-op that the co-op will never support cost of production for dairy farmers. One DFA member was told to work real hard and die in his barn.

In late 2004, a massive investigation of DFA and Dean Foods was launched by the United State Department of Justice in conjunction with over 20 state Attorneys General. The investigation focused mostly on abusive, anti-competitive market practices in the Southeast, where farmers were paid less than minimum FMMO prices. Small co-ops were cohearsed, gobbled up, or controlled by DFA and farmer members were sucked into DFA and its affiliates against their will. Some 200 file boxes of evidence were reportedly collected along with scores of sworn affidavits. One person close to the investigation said that this was worse than Enron. The investigation ground to a halt in the fall of 2006. It may have been completed by that time but no action was taken by the Department of Justice in spite of numerous calls to do so from politicians and others.

Civil lawsuits were also filed by farmers and retailers charging DFA and Dean Foods with abusing their market power and inappropriate transactions with affiliates involving millions of dollars worth of farmer/member assets.

Furthermore, dairy co-ops and affiliates were part of a Non-fat Dry Milk powder scandal from August 2006 to April 2007 in which the price of powder was under reported on the NASS survey. As a result, US dairy farmers were under paid by tens to hundreds of millions of dollars. No money has been paid back.

In December 2008, the Commodity Futures Trading Commission (CFTC) and Dairy Farmers of America (DFA) reached a settlement in the investigation by the CFTC into DFA's trading practices on the Chicago Mercantile Exchange (CME) in 2004.

On May 7, 2008, DFA disclosed that a secret one million dollar payment was made to former DFA Board Chairman Herman Brubaker by DFA's former CEO Gary Hanman. This unauthorized payment was concealed through a DFA affiliate in 2001. The money was reportedly paid back with interest.

In the spring of 2008, two California milk plants were closed to intentionally disrupt the flow of milk. As a result, farmers had to dump milk even though no surplus existed. Some loads of milk were rejected for 'lack of space' but were later bought for \$3-\$4 below market price by the same interest that rejected the milk in the first place. The corruption in California had a negative affect on milk prices nationwide.

The price that farmers are paid for their milk is determined by trading on the Chicago Mercantile Exchange (CME). This is a very thin market with less than one-tenth of one percent of the nation's dairy products being traded. The CME is open to manipulation with no external oversight. Officially, farm milk prices are determined by the National Agriculture Statistic Survey (NASS). This survey parallels the CME price almost perfectly with a two to three week lag. There has been no disclosure of what plants NASS surveys. Secrecy surrounds the NASS survey, leading to serious

questions about its accuracy and honesty since no auditing is done.

Legislative Actions which encourage corruption.

Forward contracting first appeared in the 2002 Farm Bill as a pilot program which expired on December 31, 2004. The industry and lenders continued to pressure farmers to forward contract after the pilot program expired. Forward contracting is being promoted by processing interests in an effort to secure milk at prices below the Federal Milk Marketing Order minimum. Forward contracting was renewed as part of the 2008 Farm Bill. The end result of this could be mandatory forward contracting in order to be able to market milk. This is yet another form of corruption to suppress farmers and increase corporate profits.

The Milk Income Loss Contract (MILC) program was established in the 2002 Farm Bill. MILC, which on the surface appears to be a dairy farmer's subsidy, gives the buyers of cheese greater ability to lower prices, knowing that the government will provide some safety net to cushion the low prices.

National Animal Identification System (NAIS) constitutes official corruption in that under the pretense of food safety, the federal and state governments are unnecessarily trampling the privacy rights of farmers and creating an intrusive and ineffective system which will create a regulatory and financial burden especially on family farms, while connected people and companies will reap huge financial benefits.

Though some of these issues are not directly under the jurisdiction of the Department of Justice, we believe that market manipulation, anti-competitive practices, and blackmail certainly are. We urge the DOJ to restart the investigation involving Dairy Farmers of America (DFA) and Dean Foods that was suspended in 2006. Guilty parties should and must be brought to justice in order to restore a measure of accountability and faith in the dairy industry.

Sincerely,

Gerald and Tina Carlin