

American Dairy Coalition - 2023 Action Plan – January 23, 2023

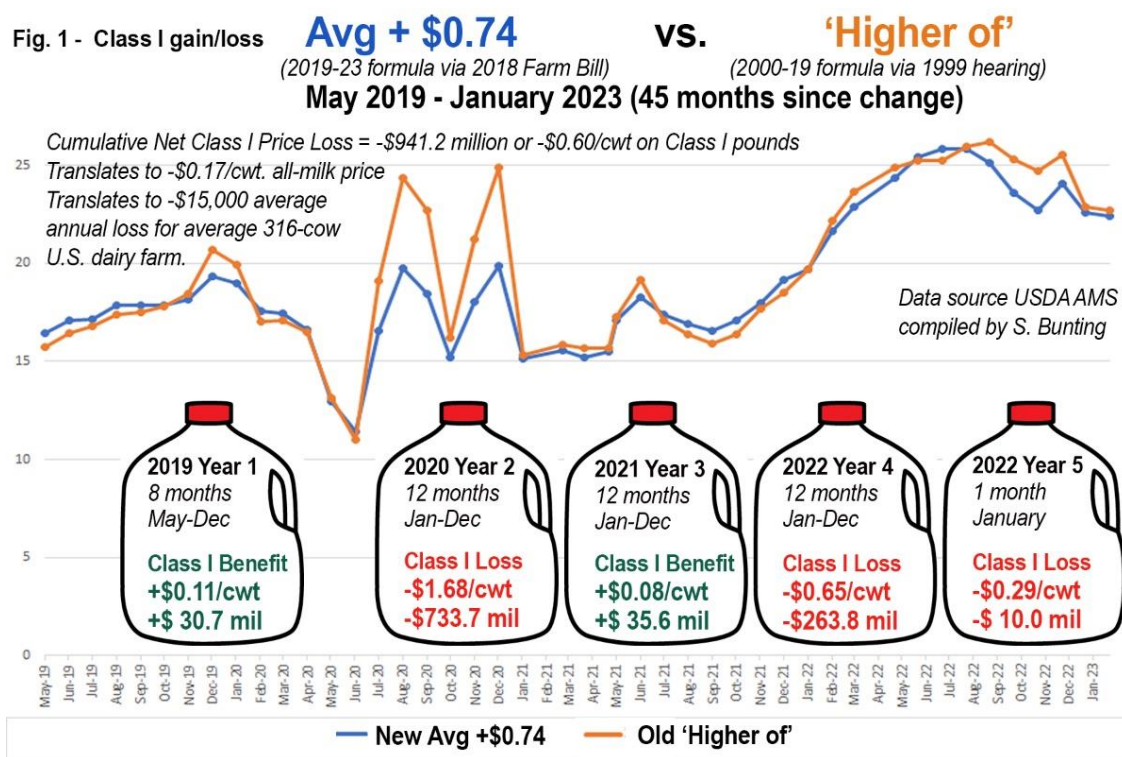
I. Restore 'higher of' formula for the Class I milk price 'mover' in the Farm Bill

ADC supports returning the Class I milk price 'mover' formula to the 'higher of' as quickly as possible by making this simple return to the prior formula part of the upcoming Farm Bill. The reason for this request is because the change away from the 'higher of' to a 'simple average' with a 74-cent adjuster was made legislatively in the previous Farm Bill. Industry consensus now recognizes the negative effects of this change in today's volatile global markets.

Background: In the 2018 Farm Bill, Congress changed the Class I price mover formula, but this did not go through the hearing process for farmer input and referendum normally used for FMMO pricing changes. It was expected to be a 'revenue-neutral' change for farmers that was intended to give fluid milk processors better risk management capability so they could invest in Class I marketing innovation. However, we have found little if any use of hedging by Class I processors. Furthermore, Class I pricing is already an advance pricing mechanism within the FMMO system for transacting sales of this high-turnover fresh product.

Instead of being 'revenue-neutral,' the Class I 'mover' change added more risk to the farmer side. There is a cap on the upside but no limit to the downside when market shocks occur or when products in the two manufacturing classes move in opposite directions for any reason.

Over the 45 months, the Class I formula change led to cumulative net losses estimated at \$941 million, including \$264 million in estimated Class I value loss for 2022, alone. (Fig. 1)



In addition, many farmers have lost confidence in risk management tools because they did not perform as designed or expected when market shocks occurred. The new Class I formula contributed to dysfunctional class price alignments in the four-class FMMO system, which led to further losses as manufacturers de-pooled milk from FMMO revenue sharing.

Manufacturing class milk handlers are accustomed to drawing Class I revenue from the pool. When they have to pay manufacturing class revenue into the pool, they tend to de-pool the milk instead, since their participation is voluntary. Only in some cases is the retained real market value then passed on to their own farmers outside of the pool.

Simply changing two words in Sec. 1403 of Title 7 puts the Class I milk base price formula back to where it was before the 2018 Farm Bill change. By striking the words ‘simple average’ and restoring the words ‘higher of’ as shown below -- and keeping in place the language that had fast-tracked the 2018 change to now fast-track this reversal and keeping in place the language that the formula can be amended by federal order hearing – this additional risk and loss for farmers can be averted while a federal order hearing is then encouraged to sort through long-term proposals for FMMO formulas. (See below Title 7 Sec. 1403)

SEC. 1403. CLASS I SKIM MILK PRICE. (a) CLASS I SKIM MILK PRICE.—Section 8c(5)(A) of the Agricultural Adjustment Act (7 U.S.C. 608c(5)(A)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended by striking “Throughout the 2-year-period” in the third sentence and striking “and subsequent to such 2-year period” to read “Beginning on the effective date of this sentence (and unless modified by amendment to the order involved), for purposes of determining prices for milk of the highest use classification, the Class I skim milk price per hundredweight specified in section 1000.50(b) of title 7, Code of Federal Regulations (or successor regulations), shall be the sum of the adjusted Class I differential specified in section 1000.52 of such title 7 (or successor regulations), plus the adjustment to Class I prices specified in sections 1005.51(b), 1006.51(b), and 1007.51(b) of such title 7 (or successor regulations), plus the ~~simple average~~ higher of the advanced pricing factors computed in sections 1000.50(q)(1) and 1000.50(q)(2) of such title 7 (or successor regulations), ~~plus \$0.74~~.”. (b) EFFECTIVE DATE AND IMPLEMENTATION.— (1) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the first day of the first month beginning more than 120 days after the date of enactment of this Act. (2) IMPLEMENTATION.—Implementation of the amendment made by subsection (a) shall not be subject to any of the following: (A) The notice and comment provisions of section 553 of title 5, United States Code. (B) The notice and hearing requirements of section 8c(3) of the Agricultural Adjustment Act (7 U.S.C. 608c(3)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937. (C) The order amendment requirements of section 8c(17) of that Act (7 U.S.C. 608c(17)). (D) A referendum under section 8c(19) of that Act (7 U.S.C. 608c(19)).

As for the 74-cent adjuster that was part of the 2018 Farm Bill language, highlighted above in green, this could be deleted, or it could be retained until a Federal Order hearing process looks at the long-term systemic issues around FMMO participation.

Retaining the arbitrary adjuster at some level is one way these prior losses can be recouped at no cost to the farm bill baseline while also supporting milk margins used in the dairy safety net. It would also create motivation within USDA and the industry to get underway with the much-needed national hearing on the future of the Federal Milk Marketing Orders.

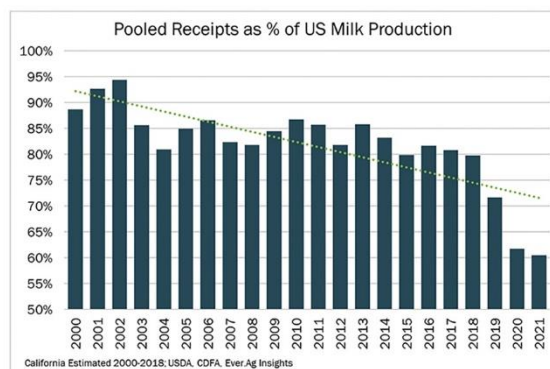
II. National hearing on FMMO sustainability

ADC seeks a National Hearing – with Report to Congress -- on Federal Milk Marketing Order (FMMO) sustainability in order to determine 1) what the declining FMMO participation means for our farmers' mailbox payments received from their milk handlers, 2) what it means for dairy farmers having access to a competitive market of milk handlers seeking additional volume, 3) how additional transparency and competitive price discovery can be achieved, and 4) how to expand dairy products surveyed in the weekly USDA AMS National Dairy Product Sales Report.

Background: Dairy stakeholder forums, discussions and surveys indicate farmers are strongly in support of the existing services provided by the FMMO system; however, since 2019, we've seen 40% of the milk produced in the U.S. be sold outside of the FMMO system as more handlers are choosing not to consistently participate in FMMOs via de-pooling. De-pooling allows these milk handlers to pay farmers less than the minimum order prices, which are required if they stay in the FMMO system and don't de-pool. Manufacturing milk handlers de-pool when economically advantageous, while Class I fluid milk handlers are prohibited from de-pooling.

Declining Share

Table I



AFFB FMMO Forum - October 16, 2022

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Only Class I fluid milk processors/ milk handlers are required to participate in FMMOs. Other class processors/handlers choose whether or not to participate in FMMO revenue sharing pools based on the economic benefits of doing so. With the massive de-pooling of milk taking place, farmers question how long it will be before the FMMOs no longer operate. This possibility brings additional concerns as markets are less competitive with farmers having fewer options for selling their milk. They then find themselves in an even weaker price discovery position with even more demands placed on their production practices and more money taken in

deductions from their milk check payments. During 2021 and year-to-date 2022, just 60% of U.S. milk production was marketed through federal and state orders. This is down from just over 60% in 2020, 70% in 2019, 80% in 2014-18, generally 85 to 95% for 2000-13.

Farm Bill Hearing: ADC believes a Farm Bill hearing is necessary prior to an FMMO hearing in order to set the groundwork or scope on what a FMMO hearing request should include, in order to expedite the process and secure a rapid decision instead of farmers having to wait years and years for an answer, which may ultimately come too late. People who testify should only be allowed to testify if they bring solutions to the table.

For example, a portion of the existing mandatory checkoff program could be used for Class I fluid milk promotion innovation, including promotion of nutrient-dense whole milk and full-fat dairy in order to meet the intent of the Dairy Production Stabilization Act of 1983.

Dairy production is not stabilized when the only structure for price discovery and payment oversight – the FMMOs – is rapidly weakened by diminished Class I sales, now accounting for less than 20% of U.S. milk production.

Class I pilot projects could include putting whole white and whole chocolate milk in schools throughout the U.S. as a public-private partnership between government nutrition programs and farmer-funded promotion and/or others, and then measuring results in consumption among Americans under 20. This is the demographic group showing the fastest decline in fluid milk consumption, according to economic data. Such a pilot project could also measure changes in milk waste and student attitudes toward milk before and after the expanded choices.

(Health indicators such as BMI could also be measured before and after as data on all of these items have already been collected before and after the 2010 federal prohibition of whole milk in schools.)

Today, a large portion of Class I processing is owned by cooperatives that are allowed to pay their farmers prices that are below FMMO class minimums -- even on Class I milk. These factors put private milk handlers and proprietary plants, as well as cooperatives with lower Class I sales, at a competitive disadvantage, pressuring them to de-pool milk and conduct transactions with their farmers outside of the FMMO system.

A congressional hearing could also evaluate whether checkoff funds should only be used with promotion partners that pay their farmers FMMO minimum prices or better because the authorization for the checkoff comes under a dairy production stabilization mandate and without a valid FMMO system, there is no price discovery or payment oversight for farmers.

A hearing could also look at improving FMMO price discovery and market transparency by expanding the USDA National Dairy Product Sales Report to include more products.

For example, we see that bulk mozzarella has surpassed cheddar in volume but only the block and barrel cheddar cheese prices are reported. We also see that nonfat dry milk is included in the price survey, while skim milk powder is excluded.

These are similar bulk commodities, although skim milk powder is the global standard milk powder, which is more uniform in protein content and tends to be a higher-value bulk product but still a commodity, not a 'value-add.'

Bottomline: As Class I pounds decrease while other class uses increase, massive de-pooling threatens the future of FMMOs, which are the only existing structure for payment oversight, weights and measures, and price discovery in dairy, whereas livestock and grain producers have GIPSA / Packers and Stockyards and Mandatory Reporting for these marketing services.

One factor contributing to declining FMMO participation is the rapid loss of Class I fluid milk pounds since 2010 as mentioned in regard to the prohibition of whole and 2% milk in schools and WIC. Another contributing factor is the arbitrary change made to the Class I pricing formula in the 2018 Farm Bill.

III. Nutrition innovation

ADC supports nutrition policy that exempts nutrient-dense foods, like whole milk, from saturated fat limits imposed by the Dietary Guidelines for Americans. These fat limits prevent growing children from choosing whole and 2% milk in key USDA nutrition programs, such as school lunch and WIC.

When children are able to choose milk they enjoy, they are more likely to have a favorable milk experience and therefore benefit from milk's nutrition not only in the short term as children, but also all the way through adulthood.

ADC supports federal policies that restore the choice of whole milk in schools and hold harmless state governments and local school boards who choose to pass legislation or conduct pilot whole milk programs to incorporate nutrient-dense foods, like whole milk, that exceed the fat limits of the Dietary Guidelines when implementing federal nutrition programs, including WIC and National School Lunch and Breakfast.

Not only are these policies good for childhood nutrition outcomes, these positive milk experiences help stabilize instead of seeing year over year the accelerated declines in fluid milk consumption that have been evident since 2010 -- affecting the future sustainability of the Federal Milk Marketing Order system.

IV. Individual, confidential producer referendum vote

All FMMO changes currently require a producer referendum. ADC believes dairy farmers should be able to cast a secure and confidential individual ballot in FMMO producer referendums instead of allowing cooperatives to bloc-vote for their members.

V. Conservation and Climate: Respecting our farmers with science-based, common-sense sustainability -- *Methane math matters*

We support efforts to protect farms from burdensome and intrusive Scope 3 individual farm emissions tracking in the supply chain, using instead collective approximations based on science.

It is critical that farmers own their data, with protections for how their data are used. In this regard, ESG and Scope 3 benchmarks should not be used to deny farmers access to commodity safety-net programs, crop insurance, Dairy Margin Coverage, Farm Bill risk management tools or conservation programs; nor should 'emissions data' be used to deny farmers access to capital.

It is critical that the achievements farmers make on their farms remain part of their actual farm footprint if used as insets in the supply chain or offsets outside of that supply chain. Farms are the bottom rung of the food supply chain ladder, closest to nature, with the longest history of good faith continual improvement already providing substantial environmental and societal benefits producing food that sustains our lives and our economies.

In short, ADC believes Farm Bill programs that farmers rely on should not be conditioned on climate goals. America's food producers are among the most progressive and sustainable in the world, and they should be getting credit for what they are already doing and assisted in their continual improvement.

The past history of the Conservation Title has funded innovation, research, voluntary incentive-based cost-sharing programs and public-private partnerships that have led to continually improving environmental practices on farms. We propose that if agricultural methane continues to be under the microscope, research and pilot projects could be funded to demonstrate the true climate neutral impact of biogenic agricultural methane sources in terms of Global Warming Potential (GWP).

The method used to calculate GWP of agricultural methane sources such as cattle and other ruminants should be science-based, peer-reviewed, accurate and achievable. Even the IPCC AR6 acknowledges that GWP100 overstates methane emissions from cattle by three to four times. Oxford University developed *GWP-star*, which accounts for atmospheric removal of methane as a short-lived flow gas with cattle being part of this biogenic carbon cycle.

In other words, cows are not cars, and should not be compared in this way because the methane emitted is part of the continuing cycle of methane already present that is destroyed in the atmosphere at the same rate it is emitted when cattle herds are constant. Fossil fuels, on the other hand, introduce new emissions from sources previously sequestered underground.

Unfortunately, net-zero initiatives and public policy discussions surrounding this, to-date, have made an enormous error. Net Zero carbon is not achievable for cattle because cattle continually belch as part of a recycling of methane to carbon to carbohydrate to nutrient-dense food and digestive emission that go with that cycling back through again. We can't mandate dairy farmers to meet goals that are not science-based nor realistic for the chemical and biological processes involved.

We might add here that this cycle has been going on for centuries – even when a similar number of buffalo and other ruminants ranged the prairies as the number we have in domestic and wild ruminants today. The difference between *GWP-star* and GWP100 is explained in these papers by Oxford University and the CLEAR Center at University of California-Davis. See links below:

<https://clear.ucdavis.edu/news/new-paper-clear-center-charts-pathway-climate-neutrality-us-dairy>

<https://clear.ucdavis.edu/explainers/gwp-star-better-way-measuring-methane-and-how-it-impacts-global-temperatures>

<https://www.oxfordmartin.ox.ac.uk/publications/demonstrating-gwp-a-means-of-reporting-warming-equivalent-emissions-that-captures-the-contrasting-impacts-of-short-and-long-lived-climate-pollutants/>