

Chris Kraft – Member / Owner Dairy Farmers of America, Inc.

Testimony Before the
U.S. House of Representatives Committee on Agriculture
Subcommittee on Livestock, Dairy and Poultry
Hearing on Federal Order Rulemaking Procedures
April 24, 2007

Good Morning. I am Chris Kraft. My wife Mary and I own and operate two dairy farms in the Fort Morgan, Colorado area. Our farms combined produce approximately 49 million pounds of milk per year or the equivalent of 2.5 tanker loads of milk per day. I am a Dairy Farmers of America (DFA) Mountain Area Council Board member. My cooperative markets my milk and the Colorado producers I represent in Federal Order 32 – the Central Order.

DFA is composed of more than 11,300 farms in 49 states. We pool milk on 10 of the 11 Federal Orders. We have participated in every Federal Order Hearing that has been held since DFA was formed in 1998. We work daily with every Market Administrator office, speak regularly with the Office of the Deputy Administrator on milk marketing concerns and have supported the Order system at Hearings, before Congress, in the media and in the courts.

The US dairy marketplace for is composed of approximately 62,000 commercial dairy farmers, 400 fluid-milk processing plants owned by perhaps as few as 75 entities. Ten retailer companies that, according to the industry publication Supermarket News, account for 68.4 percent of all grocery sales have a firm grip on the retail grocery market. Clearly dairy farmers are not in a position of equal bargaining power and Federal Orders are key in maintaining a more level playing field for dairy farmers. Orders provide the marketing framework for dairy farmers. They announce and enforce minimum prices, provide common terms of trade for milk marketing, insure

timely and accurate payment for milk sold by farmers and audit milk sales to help farmers capture their share of consumers' dollars. Without them producer incomes would be worse and we feel consumers would be ill served.

Orders are composed of complex and strictly defined provisions that are tightly worded and done so because regulatory policy simply cannot be as flexible as daily market transactions might otherwise demand. Because the dairy industry and markets evolve, Orders must be open to change. While the industry appreciates the fact that the change process should be open, transparent and deliberate, the extreme slowness of the process leads many to become disgruntled and discouraged leading to frequent complaints. Certainly each of you listening to me understands that constant complaints about any issue, even when unjustified, ultimately result in action; and sometimes the wrong action. I am concerned that if the Federal Order Hearing process is not improved producers will succumb to the constant rhetoric about the negatives of Orders and throw the baby out with the bathwater.

In my testimony today, I will outline three issues involving the Federal Order system and the Hearing process. They include, 1) changes needed to streamline the Order Hearing and Decision procedures and the data necessary to hold a Hearing, 2) the inadequacy of staffing levels at key positions within the Order system, 3) a few key comparisons between the Federal Order System and the California State Order system.

The industry is very concerned about the length of time that it takes to make changes in the provisions of a Federal Order. There are no mandated time constraints to institute a sense of urgency to the process. A Decision can sit on a reviewer's desk within the approval process with no urgency to be addressed because there is no deadline for doing so. Public perception has been that Decisions were delayed either for political reasons, or simply because the Decisions were viewed to be controversial. Our Cooperative has several business lines that are currently stymied in their planning and marketing operations because an Order Decision that affects them has not been announced in a reasonable time. We feel that USDA does a good job moving Decisions through the process so long as the Decision itself remains inside the Dairy Programs staff area. However, once they travel up

the chain-of-command and back down, with any revisions needing multiple briefings, reviews and rewrites the process often stalls. It would be helpful if USDA revised its Administrative Procedures rules (the legal code that defines the Hearing process) to institute guidelines and timetables. For example, if all Decisions were required to be published to the industry within a certain period of time – possibly 100 days after a Hearing – USDA would have to streamline the process. The Committee should get a clear answer from Mr. Day this morning whether or not USDA believes it can promptly effect this type of rule change in its own Administrative Procedures process on its own or whether it requires Congressional action. Either the Federal Order System should be exempted from certain of the review processes or given the authority to certify that a particular Decision meets the intended non-Dairy Division rules or requirements.

Mr. Gallagher outlines several examples of procedural changes specific to the Hearing process, including a formal review of the process by a third party that would report back to this Committee. We very much endorse this review concept and urge the Committee to adopt it. More specifically, we would be willing to participate in the process if asked. Our Cooperative has staff and resources that are devoted to working with the Order system and we feel we could have much to offer to the review process. Mr. Gallagher also outlined several step-by-step suggestions of how the Hearing process could be streamlined and we support the concepts as he defined them. A review of the timelines he established may need more discussion but the concept itself is in the right direction.

We would appreciate the Committee requesting a report from Mr. Day, within 60 days, as to how USDA intends to speed up the Hearing process and follow-up progress reports on how those steps are being completed. We realize that changing the Administrative Procedures practices itself is complex – for good reason, but we must start to make these changes if we are going to improve the process.

A second issue related to the Hearing process that needs attention, because the dairy industry by itself cannot do an adequate job, is in the area of collecting and providing data relative to the product price formula

hearings. Milk is a perishable product. As a dairy farmer I have to sell my product every day. I simply can't put milk in an elevator and wait to bargain for a better price tomorrow. Our industry requires a system that establishes prices in a reasonable time and is reflective of market conditions. Personally I'd like to set prices for the year on the day school opens – it is usually hot, the cows are not happy and don't produce a lot of milk; school demand is a significant boost to Orders and seasonally cheese demand is ramping up ahead of holiday orders – so milk is tight. Our processor customers would probably like to set prices on New Years Eve when demand is off, milk production is turning up and supplies long.

Our current system uses storable dairy products to set perishable milk prices. This mechanism is termed product price formula pricing. It is a reasonable way to price milk, but to do this the industry needs good price discovery, milk component and plant yield data and the cost to convert milk into various products. Everyone in the industry has a vested interest in the numbers that must be generated for the price formulas so each of our individual company data presented at Hearings is biased. We need USDA to do product yield research and cost surveys and publish the data for the industry to use.

The process of sorting through all the proprietary data at a Hearing is difficult at best. Each side has its own data set and reports as it chooses – but always with an eye on their own interests. The current hearing record on product price formulas will be more cumbersome than the tax code and the industry media will be so full of unreasonable statements that many of the participants will judge the quality of the Final Decision by observing if there is a near equal number of complaints from both sides of the issue rather than the reliability of the process itself! USDA needs both funding and directives to establish the type of data I referred to above. This will speed the Hearing process and provide all parties with base data to operate from at price formula hearings. Providing market information is a legitimate function of government.

With respect to staffing, it is important to remember how extremely complicated the Federal Order system is, and how dairy products are priced in the United States. That said it is critical that knowledgeable staff are appropriately placed and that the system is designed to maintain that necessary knowledge base.

The Dairy Programs Division has organized its staff to place individuals who review industry requests for provision changes, actually hold Hearings and write Decisions in a work-group known as the Order Formulation staff. The knowledge base for these positions is extremely specialized and takes some time to develop. The Dairy Programs Division rightly separates the Order Formulation staff, housed here in Washington, from the day-to-day Order Administration process. This is proper – but the Order Formulation group is simply understaffed. Currently there are only two senior level staff members – an inadequate number to support the needs of the industry. We believe that it has become increasingly difficult to attract and retain younger staff for these important positions. As they gain knowledge and experience, they have opportunities to parlay their experience to other sectors of the industry and move to locations where their income, cost of living and personal lifestyles may be preferable to the Washington D.C. area. I am sure each one of you faces this type of decisions with your own staff make-up. Indeed it seems that most Congressional offices are composed of younger professionals who simply cannot remain in their position for too long due to economic considerations.

If we are going to have a responsive Order system there must be more resources to administer changes to it. It is extremely difficult to attract the needed knowledge base to Washington because of the relationship of cost of living, quality of life and pay grades. So either the pay grade must be raised, the resource personnel officed outside the Washington DC area – or the system will grind to a halt.

Finally, I'd like to comment on some of the shortcomings and the strengths of the California system compared to the Federal Order system. The California system requires that decisions be announced in 62 days from the end of a Hearing. Federal Orders should strive toward this type of schedule. However, the California

system is aided by several factors that are simply not available in a Federal Order. As required by the California State Milk Marketing Order all milk produced in California is eligible to be included by the Order regulation – there is no debate about who shares in the Order proceeds or how one meets the requirements to share. This is not true in Federal Orders. Claiming a portion of Order proceeds is earned by the extent to which one supplies the fluid market. This fact causes much of the contention in Federal Orders and we are not proposing fewer or single Orders – rather just noting the facts. It is only human nature to want to share more but supply less – this makes Federal Order Hearings more contentious and will not be solvable as long as we have more than one market for fluid milk. Because markets have different combinations of milk production, demand, supply and consumption trends there will be more than one fluid milk market and more than a single Federal Order in the US for some time into the future. Additionally the rules of procedure in California, in our opinion, overly limit discussion and information exchange that can take place at a Hearing so while Federal Orders need to move in that direction, just copying the California process is not the correct decision.

Finally, the CDFA system does an unparalleled job of collecting industry data that is needed for a Hearing on price formulas. For example, California collects data on milk volume, component test, product yield, by-product yield and plant-processing costs and regularly publishes this data for industry review. The Federal Order system must begin to collect this type of information if it is to regain industry support for the Hearing process.

Thanks for listening to my thoughts – producers need your interest. If you have any questions I will try to answer them and those I can't answer here I will get a written reply from our staff. We have a good and vital tool in the Federal Order system. But if we are not careful, inattention will result in producers getting so disillusioned that they will make poor decisions about the usefulness of Orders.

Committee on Agriculture
U.S. House of Representatives
Information Required From Non-governmental Witnesses

House rules require non-governmental witnesses to provide their resume or biographical sketch prior to testifying. If you do not have a resume or biographical sketch available, please complete this form.

1. Name: Richard C. or Mary L. Kraft

2. Business Address: 15960 County Road 21
Fort Morgan, CO 80701

3. Business Phone Number: 970-867-5158

4. Organization you represent: Dairy Farmers of America, Inc.

5. Please list any occupational, employment, or work-related experience you have which add to your qualification to provide testimony before the Committee:

DFA Mountain Area Council Board Director, 6 years
Commissioner on the Colorado Water Quality Control
Commission, 6 years; Commissioner Morgan County Planning
and Zoning Commission

6. Please list any special training, education, or professional experience you have which add to your qualifications to provide testimony before the Committee:

1992 graduate of Colorado Agricultural Leadership Program
1996 I traveled to Saratov Russia to study and exchange
ideas on Russian agriculture.
I'm the son of missionary parents in Republic of South
Africa.

7. If you are appearing on behalf of an organization, please list the capacity in which you are representing that organization, including any offices or elected positions you hold:

Dairy Farmers of America, Inc.
I am on the Mountain Area Council Board of Directors.

PLEASE ATTACH THIS FORM OR YOUR BIOGRAPHY TO EACH COPY OF TESTIMONY.

Committee on Agriculture
U.S. House of Representatives
Required Witness Disclosure Form

House Rules* require nongovernmental witnesses to disclose the amount and source of Federal grants received since October 1, 2004.

Name: RICHARD "CHRIS" KRAFT
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Telephone: (970) 768-2747
Organization you represent (if any): DAIRY FARMERS OF AMERICA.

1. Please list any federal grants or contracts (including subgrants and subcontracts) you have received since October 1, 2004, as well as the source and the amount of each grant or contract. House Rules do **NOT** require disclosure of federal payments to individuals, such as Social Security or Medicare benefits, farm program payments, or assistance to agricultural producers:

Source: _____ Amount: _____
Source: _____ Amount: _____

2. If you are appearing on behalf of an organization, please list any federal grants or contracts (including subgrants and subcontracts) the organization has received since October 1, 2004, as well as the source and the amount of each grant or contract:

Source: _____ Amount: _____
Source: _____ Amount: _____

Please check here if this form is NOT applicable to you:

Signature: Richard Kraft

* Rule XI, clause 2(g)(4) of the U.S. House of Representatives provides: Each committee shall, to the greatest extent practicable, require witnesses who appear before it to submit in advance written statements of proposed testimony and to limit their initial presentations to the committee to brief summaries thereof. In the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include a curriculum vitae and a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by any entity represented by the witness.

PLEASE ATTACH DISCLOSURE FORM TO EACH COPY OF TESTIMONY.