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- Agricultural Act of 1949 establishes a milk price support level more than double the current market price for milk used in manufacturing -- roughly \$39 per hundred pounds versus roughly \$18.
- Implies roughly a doubling in the consumer cost of bottled milk, cheese, butter, etc.
- 1949 Act currently suspended by 2008 Farm Bill, which set support price one-fourth the 1949 Act levels.
- Similar suspensions have appeared in predecessor farm bills for decades.
- Unless Congress acts, 2008 Farm Bill provision suspending the 1949 Act expires December 31, 2012.
- Government should explore power to reduce 1949 Act milk support pursuant to 7 U.S.C. 1446(d)(2): “Notwithstanding any other provision of law, the Secretary “[b]eginning after March 31, 1986... shall provide for a reduction to be made in the price received by producers for all milk produced in the United States and marketed by producers for commercial use.”
- Any imposition of 1949 Act support prices should be adopted through notice and comment rulemaking:
 - Current USDA regulations, with support prices consistent with 2008 Farm Bill (7 C.F.R. Part 1430), would need to be withdrawn.
 - USDA would need to issue new regulations to establish which dairy products it intends to purchase, and their specifications (*i.e.*, allowable moisture content), places of delivery, and the like.
 - Secretary retains discretion how to carry out the price support program. 7 U.S.C. 1421(b); 1423(a). “Congress...made no attempt to limit the Secretary’s discretion with respect to the formulation of price support programs, so long as they embody authorized methods and undertake to support prices at or within the limits of the stated levels... The Secretary must...decide what products of milk and butterfat CCC shall purchase...and what grades, sizes, etc. of such products shall be accepted; and finally he must translate the milk and butterfat support level into a dollars and cents purchase price.” *United States v. Swift & Co.*, 152 F. Supp. 738, 742-43 (D. Md. 1957), *aff’d*, 257 F.2d 787 (4th Cir. 1958).
 - Although 7 U.S.C. 1426 originally provided that Secretary shall “insofar as practicable” announce the level of price support “in advance of the beginning of the ...year,” that Section was repealed in 1996, *see* Pub. L. 104-127, Title I § 171(b)(2)(I), Apr. 4, 1996, 110 Stat. 938.