Written Comments Submitted by:

Edward W. Gallagher

Vice President, Economics and Risk Management

On behalf of:

Dairylea Cooperative Inc.

Before the:

United States Senate

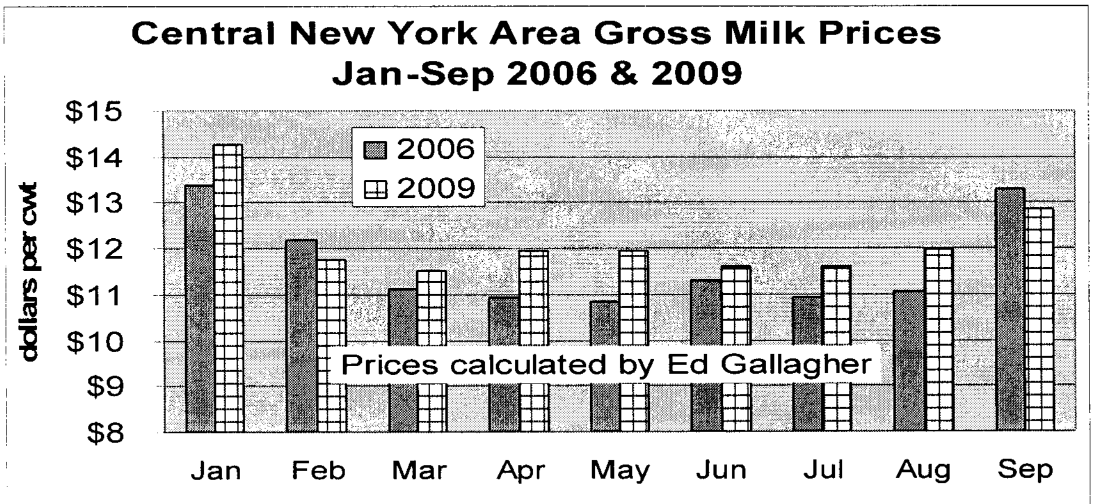
Committee on Agriculture, Nutrition and Forestry

October 27, 2009

Washington, DC

This testimony is submitted by Edward Gallagher, Vice President of Economics and Risk Management, on behalf of Dairylea Cooperative Inc. My business address is 5001 Brittonfield Parkway, Syracuse, NY. Dairylea has the largest membership of New York dairy farmers of any other dairy cooperative, and, according to *Hoard's Dairyman*, is the 5th largest US dairy cooperative. We have approximately 2,200 members in six northeastern US states.

Dairy farmers have been suffering through the worst cost-price squeeze in recent memory, perhaps in history. Prior to this down turn, one of the worst cost-price squeezes occurred during 2006. Milk prices this year, are about the same as they were in 2006, however, the financial conditions on dairy farms in New York and across the country is far worse.



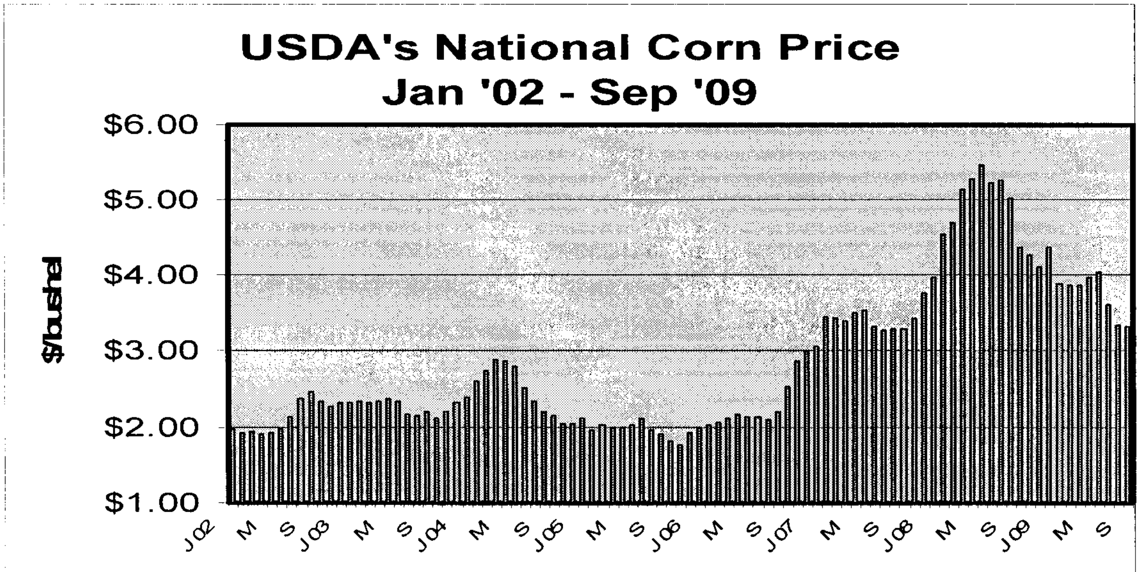
The situation is far worse due to the increased demand for corn-based ethanol and its impact on livestock feed prices.

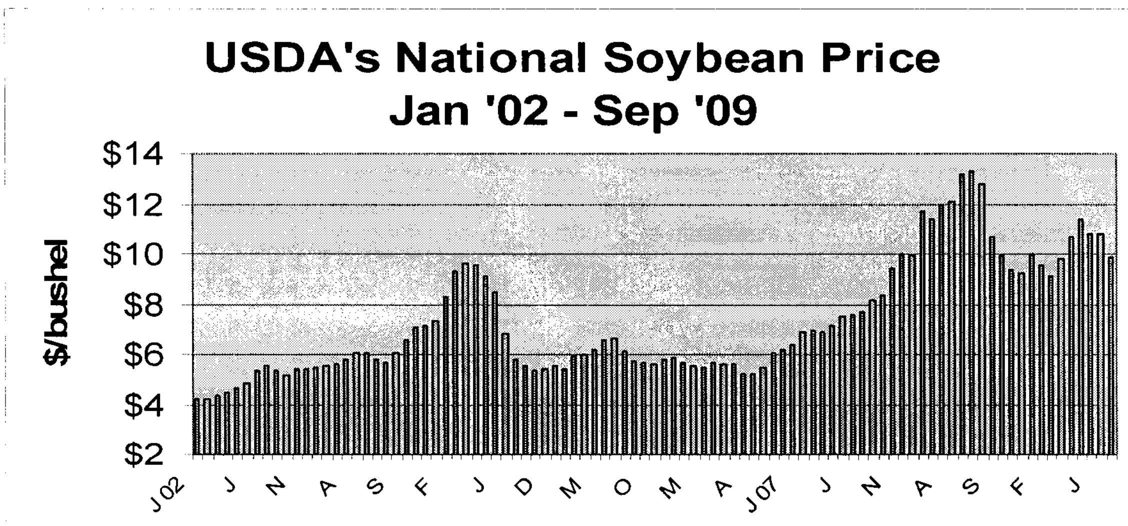
In 2006, the US had not significantly ramped up its ethanol production. In 2005, the US produced just short of four billion gallons[1]. Today, we are the world's largest producer of ethanol at 9 billion gallons – more than double the level from a few years ago. All farms purchase some feed. In New York, as it is across the country, the single biggest cost factor in producing milk is purchased feed. About one-third of the cost of producing a hundred pounds of milk is due to purchased feed. As you move across the county, that percentage will be larger. For many western US farms, the percentage is 50 percent or more.

As ethanol demanded more corn ground, it came at the expense of acreage to grow other feedstuffs – increasing their prices as well. Today, corn is priced in the $3 to $4 per bushel range. In 2006, it was closer to $2 per bushel. The spillover to other

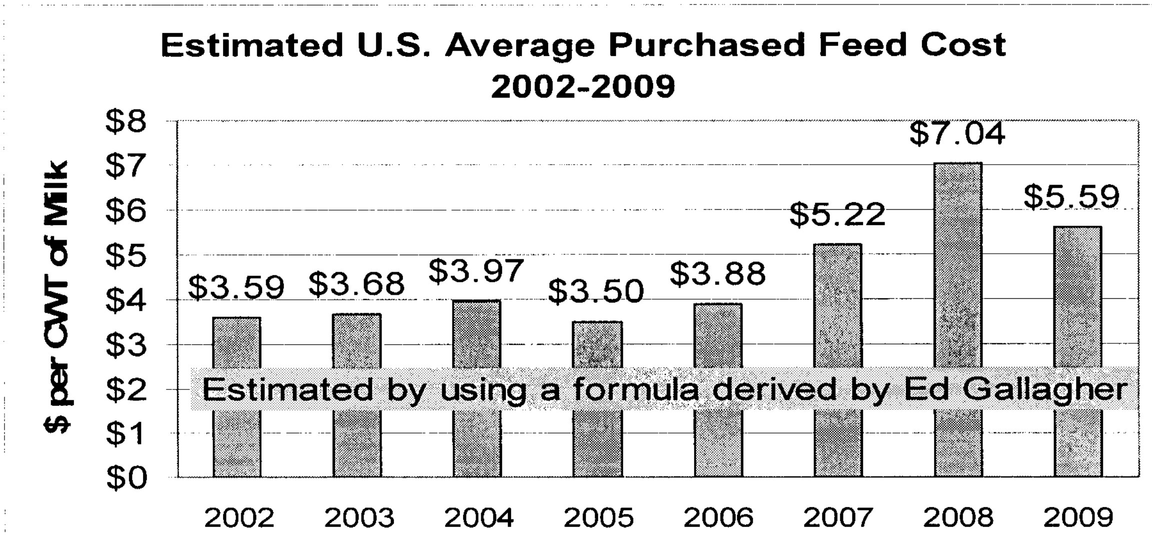
[1] US ethanol production from the Renewable Fuels Association website at http://www.ethanolrfa.org/industry/statistics/#A

livestock feedstuffs can be seen in soybean prices. Corn and soybean meal are the two most commonly purchased feed commodities, on dairy farms.

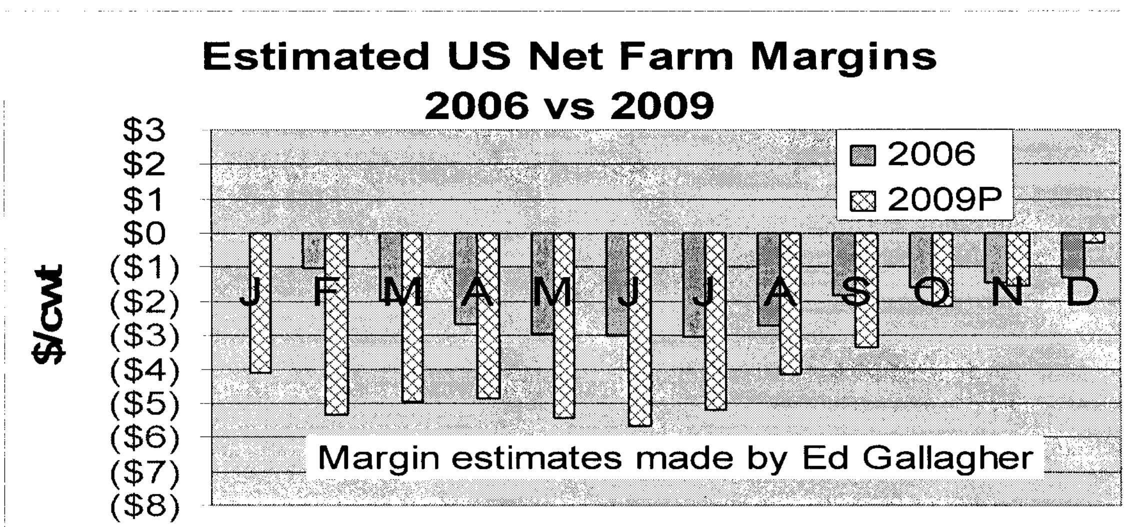




Due to the increased demand for corn from ethanol plants, and its impact on corn and other livestock feed prices, the cost of feeding dairy cows has risen by about $2 per cwt of milk between 2006 and 2009.



The ethanol impact on production costs has resulted in far more dire economic impacts on dairy farms, today, as compared to 2006. The loss on the average US dairy farm is about $2 per hundredweight greater in 2009 than in 2006. The losses average about $75 per milking cow per month. I have heard ranges given from a loss of $50 per cow per month in the Northeast to as much as $150 per cow per month in the western states.



For a number of years, my dairy policy talks have mentioned that the single best thing that the Federal government can do to preserve strong milk prices is to take actions to assure that the US economy is healthy and growing. The recent financial problems experienced, first here in the US and later around the globe, which hurt our economies and caused a recession, are the primary reason milk prices are so low.

The reason the US has seen a significant price decline has more to do with a shock on demand than anything else. This shock is not occurring in US consumer demand for dairy products – despite the worst recession, maybe since the Depression, the US consumers' demand for dairy products is up significantly – by about 3.3 billion pounds, milk equivalent. Instead, the demand shock occurred on our dairy exports. The US created financial crisis has caused a worldwide recession. This significantly reduced the demand for dairy products in emerging markets, the Middle East and Mexico – countries that had been aggressively buying our dairy products. Add in complications from China's melamine problem and significantly more milk production from the world's largest exporting country – New Zealand, and our exports were significantly reduced. I estimate that the US lost about 5.6 billion pounds, milk equivalent, of exports. Using data from US Dairy Export Council, I estimate that worldwide exports have shrunk by about 11 billion pounds, milk equivalent. As can be seen, the bulk of that loss occurred to US exports. Recent USDA data shows that US dairy exports have stabilized and are beginning to grow. Economic performance is improving in the US and around the world. I am cautiously optimistic that we have seen the bottom of the export decline and that, as we saw the biggest erosion in export volumes of any other country, we will see the largest gains in the coming months.

Dairylea, Dairy Farmers of America, St. Albans Cooperative Creamery and our other Northeastern US cooperative partners have fought very hard to win Federal stimulus money to support dairy farmers. In December of last year, the dramatic decline in US exports and the poor global economic performance signaled a dramatic downturn in milk prices. We put together a "triage" team that included senior management of the major northeastern cooperatives. In early January, with the support of Bob Gray, we were the first dairy group to go to Washington and ask for Federal stimulus funds to support the dairy industry as well as ask for USDA action in other areas. This activity and others like it from the National Milk Producers Federation and other farm organizations, eventually culminated in the tremendous actions undertaken by USDA Agricultural Secretary Vilsack including the full funding of the Dairy Export Incentive Program for the 2010 and 2011 fiscal years, the purchase of 200 million pounds of nonfat dry milk powder for food programs, and the increase in the dairy price support, among other activities. On behalf of the 2,200 members of Dairylea Cooperative and its management team, we commend Secretary Vilsack for his bold and swift moves to support America's dairy farmers.

Additionally, these combined efforts led to the $350 million dairy stimulus included in the 2011 Agricultural Appropriations Budget. Of this, $60 million has been earmarked to be used by USDA to buy dairy products for food pantries and other food programs. We expect the purchase of these products to have a strong and positive impact on dairy farmer milk prices. This impact may begin to be felt in late fourth quarter milk checks. The remaining $290 million is expected to be paid to dairy farmers in some form of direct payment. We request your assistance in making sure this money to lands in dairy farmers' accounts before the end of the year.

On all these initiatives, Dairylea's members and management team thank the members of the Agricultural Committee for their efforts in ensuring these activities came to fruition.

I am bullish on milk prices for the near term and throughout 2010. Part of the near-term bullishness is due to the $60 million available to USDA to buy dairy products. The biggest bang for the buck will occur if USDA uses the $60 million to buy Cheddar cheese. We ask that the funds be used in this manner.

I do believe the worst of the milk pricing crisis is behind us. The gross milk price in Central New York may be above $15 per hundredweight for November's milk production (received by farms in December). This is an all-in price that includes full component payments, the producer price differential and competitive premiums – but not the MILC or other direct payments. This is more than a $3 per hundredweight increase from this summer's prices. With modest growth in worldwide economies and no significant milk supply growth, 2010 prices could be at this level and higher.

I presented the following forecasts at Dairylea Cooperative Inc's 102nd Annual Meeting, two weeks ago. These forecasts are dependent on a number of factors. Since these factors are very difficult to gauge in advance, we developed a range system for forecasting the 2010 milk price. All forecasts are for the Central New York area gross milk price which includes full component payments and premiums.

The highest range, with an annual average ranging between $19 and $22 per cwt, would occur if there were rapid worldwide production declines and a corresponding rapid increase in demand, which would lead to a dramatic increase in US exports. This scenario envisions rebounding worldwide economies and sluggish or declining milk production around the world. There is about a 20% chance that this forecast could occur.

The mid-level range, with an annual average ranging between $16 and $19 per cwt, would occur if US milk production flattens out or rises slowly, worldwide milk production doesn't grow very much, and US domestic demand and export demand grow slowly. This scenario includes sluggish economic growth in the US but somewhat better growth in key US exporting countries. About a 45% probability has been assigned to this outcome.

The lowest range, with an annual average ranging between $13 and $16 per cwt, would result if the US and other countries see a double-dip recession slowing US demand and export growth and if milk production grew more than a nominal amount. A 35% probability has been assigned to this outcome.

As with all annual estimates, there are monthly prices that may fall above or below the annual average forecasts. For instance, in the mid-range forecast, a monthly price of $15 or $21 could occur and still have the annual average fall into the $16 to $19 range.

Right now, the dairy farming sector needs to heal. Almost every farm has taken on significant debt to cash-flow their operation through this down turn. These debts are significant. More so than any other year, we are hearing horrible stories about dairy farmers being cut off by their banks and suppliers. Many of those that have not reached this point live in fear that they soon will. This crisis is not that different than the one that faced the banking industry during the height of their crisis. The Federal government stepped up on a number of fronts that generated cash to maintain liquidity. The dairy farming sector needs to be flooded with cash right now. The Federal government and USDA have stepped up to do their part. As you can see from the attached handout, Dairylea and DFA have stepped up for their Northeastern US members. We are asking individual states in the Northeast to step up with financial support, as well.

Dairy farmers are going to need strong price recovery for more than a year in order to get their financial positions back to pre-2009 levels. Even in the midst of strong price recovery, supplemental direct payments will be needed to help dairy farms pay off the significant debts they have taken on to keep their family-businesses afloat during this crisis. We ask that you rally your Northeastern US state-legislative colleagues in support of state-level direct payments.

We need help on the cost-side as well. We are concerned that excessive speculative investments can, from time-to-time, cause higher commodity prices – pushing up feed and energy prices which drive up the cost of producing milk. We have been proponents of greater oversight of swap dealers using commodity futures. In mid-June, we wrote to the Commodity Futures Trading Commission asking them to change how they view swap dealers entering into futures transactions on behalf of investors transacting with them.[2] We asked the CFTC to look through the swap dealer and determine if the swap dealer's customer was using the swap as a legitimate hedge or as a speculative investment. If a speculative investment, then place speculative limits on that entity as if they were transacting directly in the futures market. As you deliberate on these derivative type issues, we ask that you take actions to limit excessive speculation that rewards a few at the expense of the masses via higher livestock feed, food, energy and other natural resource prices.

Longer term, there is much more work to do.

Milk price volatility is going to be a recurring problem. We do not believe there is any acceptable method to eliminate it from the industry. To do so, you will need to close the boarders to imports – ala Canada[3], or utilize Federal funds to artificially support dairy prices above those that would be derived in the marketplace, as was done in the late 1970's and early 1980's. Barring these policy initiatives, milk prices will continue to experience large increases, followed by large decreases.

It is of utmost importance that dairy farmers understand how to use price risk management tools to protect their farm businesses against a significant decline in milk prices. Dairylea and DFA have developed the industry standards in risk management/forward contracting options for our members.[4]

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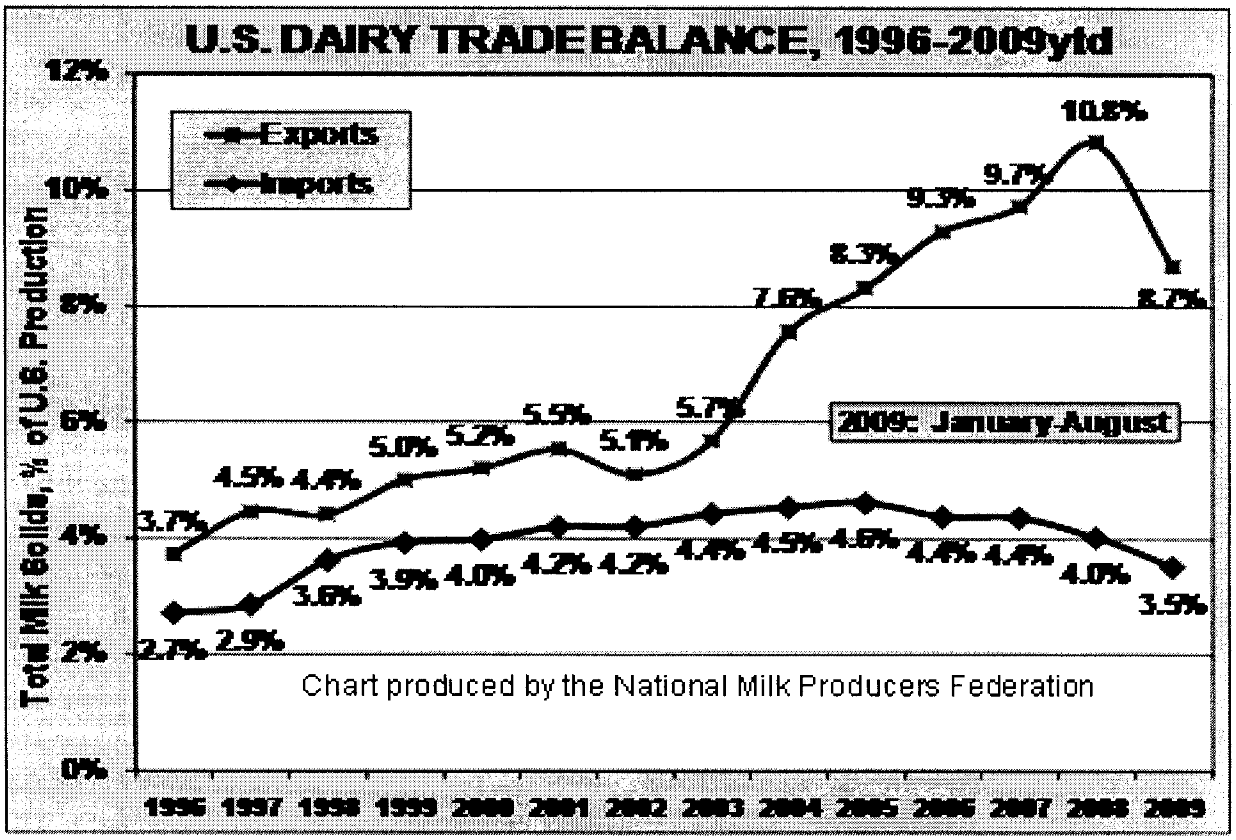
[2] A copy of the letter is attached to this testimony.
[3] This will most certainly result in a loss of US dairy exports as well.
[4] Dairylea's risk management offerings can be viewed at http://www.dairyriskmanagement.com/

This year, a number of our members had a portion of their milk production protected via milk price forward contracts. In some cases, members received more than $8 per hundredweight above the market price, on their forward contracted pounds. These programs can be used to create meaningful and important milk price safety nets. Our programs have matured beyond those that just lock someone into a price. We have a number of programs that allow members to get some or all of higher prices – that exceed their floor price. Additionally, we are in the final developmental stages of a program that allows members to lock into the margin between their milk price and primary feed costs – protecting their non-feed margins and holding members harmless to the vagaries of feed price volatility.

The Federal government has devised a milk price insurance program. The Chicago Mercantile Exchange operates dairy futures and options markets for dairy farmers to hedge their milk prices. These tools need to be more widely used by dairy farmers. I am encouraged by the activity of the New York Center for Dairy Excellence and the New York Farm Viability Institute and their counterparts in Pennsylvania to work with the broader industry to promote risk management education. More risk management education, improved programs and financial incentives are needed to change the practices on dairy farms so that they are more likely to use these tools that can protect against the financial ruin of their business.

Your help is needed. I am part of a National Milk Producers Federation Task Force to develop a better and more effective milk price insurance program. When it is devised we will need your help in getting it implemented. Financial incentives are needed to encourage broader use of risk management tools. I am circulating a proposal among a number of colleagues that would create a program to provide financial incentives to dairy farmers for using milk and feed price risk management tools that utilize some form of a futures option as a means of hedging. This incentive would be available to dairy farmers that forward contract their milk through a cooperative or proprietary handler, purchase milk price insurance or utilize their own futures account.

Right now the US is exporting about 8.7 percent of its milk production – down from over 10 percent a year and a half ago. The US imports the equivalent of about 3.4 percent of its milk production – creating a healthy and valuable positive balance of trade.

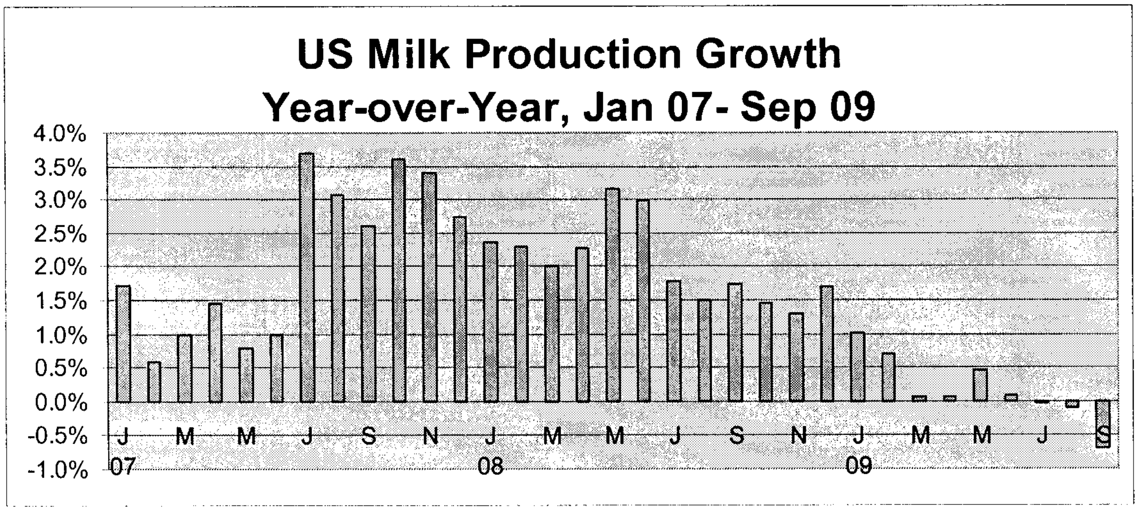


Most of our imports tend to be products that the US does not produce – or does not produce in very large quantities. For instance, brie cheese is a category of dairy products that is not widely produced here. Another category is milk protein concentrates (MPC).

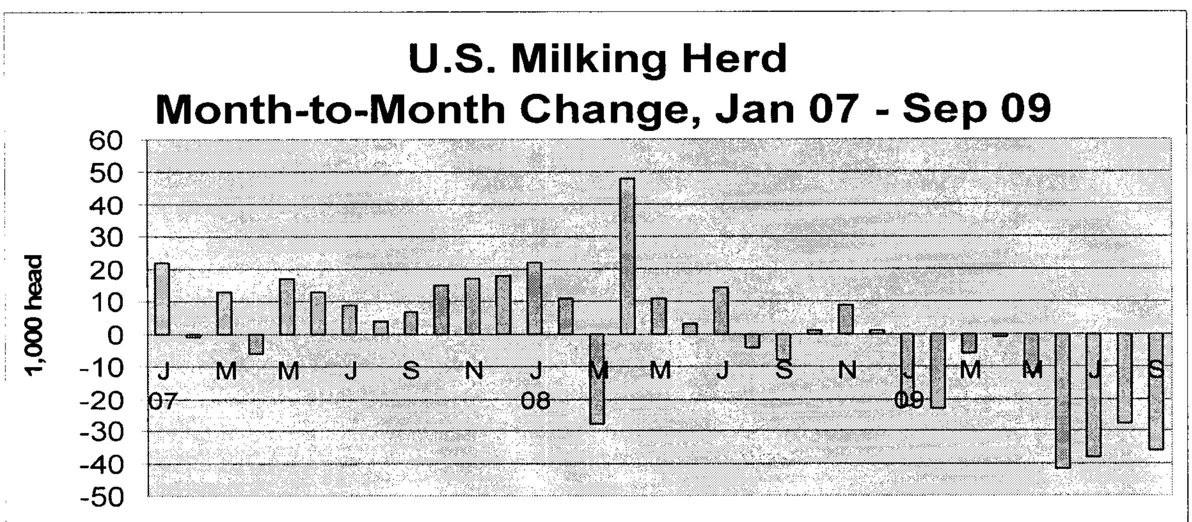
MPCs were not on anyone's radar screen when the General Agreement on Tariffs and Trade Agreement (GATT) was implemented. At that time, the technology was just coming into use in Europe and had very little production. Today, the technology has advanced considerably and the uses for MPCs have increased as well. Unfortunately, the US Dairy Price Support Program creates an economic disincentive to produce MPC here in the US and very little is produced. Nonetheless, we are seeing growth in US MPC production. The National Milk Producers Federation is looking into options to create incentives to produce more MPC here in the US.

Although MPC has gotten a bad rap, the problem is not the product. The problem is that most of the product used here in the US is produced in another country – taking away commercial demand for US produced dairy products and hurting our milk prices. To this end, we are actively working with National Milk and others to create incentives to produce more here in the US and are strong supporters of the Schumer Bill to create tariffs on the importation of MPC. Right now, MPCs have no tariffs – which is an unintended loop hole in the GATT agreement. We ask that you reach out to your colleagues on both sides of the aisle and in both the Senate and the House to quickly pass legislation that corrects the MPC import loophole.

There has been significant discussion about supply management programs this year. Although, this pricing crisis was caused by a demand shock and not an oversupply problem, we support efforts to reduce milk supplies in times when supply is larger than demand. US milk production usually grows by 1 to 3 percent each year. Right now, US milk production has flattened out and is in decline.



Since the beginning of the year, the US milking herd has declined by 208,000 head. This has occurred almost entirely due to the efforts of the Cooperatives Working Together program. This is the primary cause for the milk production decline and has overcome an increase in output per cow of almost plus one percent.



Without the investments made by dairy farmers from across the US to fund this program, the price outlook for the fourth quarter of this year and into next year would continue to be quite bleak. Unfortunately, the significant decline in demand has overwhelmed the financial ability of the CWT program to immediately correct it on the supply side. Nonetheless, it has been a resounding success in removing cows from the marketplace to set up the price rally we are now beginning to see occur.

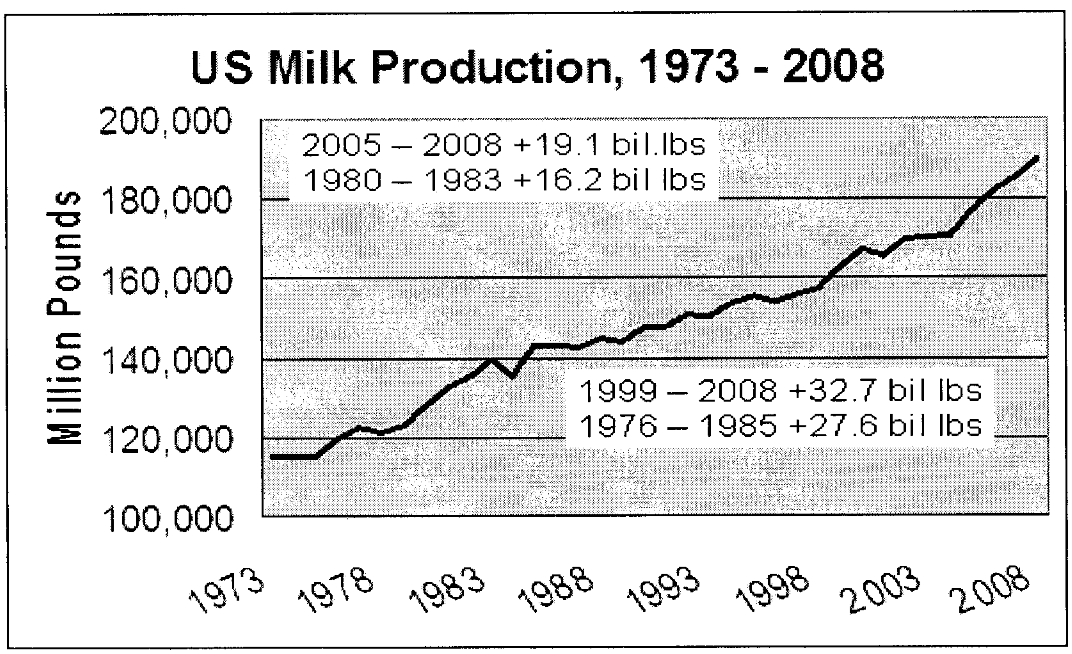
Keeping in mind that 2009 is more like the 100 year flood, we have been very reflective about changes in policy issues relative to supply management. We have spent a considerable amount of time this year engaging in dialogue with our members about their interests in supply management options. We have collected information via internet surveys. Dairylea had a member call-in, where members were given a specific time to call and talk to Dairylea's farmer-President, Clyde Rutherford and its CEO Greg Wickham, about their interests in supply management. We had three board meetings in which we allocated significant amounts of time to these issues. One of those meeting was an expanded board – which included unelected member leaders – where there was a panel discussion of members talking about their favorite supply management option. This was followed by a town hall type meeting. We had other member meetings, one-on-one discussion and information in cooperative-wide member communications.

Our members have spoken and the majority indicates support of the Cooperative Working Together (CWT) program and like its flexibility. Most oppose rigid government controlled, inflexible programs. Most support higher contributions to CWT and would like all farmers to contribute – beyond the current support that represents about 67% of the US milk supply. Although there are members, some of who are very vocal, that support the Canadian style quota program, the Specter-Casey bill or one of the programs similar to the Holstein proposal, there was not one of these that stood out above the other. Within the members surveyed by Dairylea, the minority of members supporting these concepts were split one-third, one-third, one-third.

We have put the member feedback into action and are working with other cooperatives and NMPF to develop a Dairy Growth Management Initiative (DGMI). DGMI would create a mandatory deduction on all farmers to fund a number of programs that are currently operated by CWT (excluding their export assistance program which would continue to be privately operated by CWT), include new programs to address possible oversupplies of heifers, allow for the use of milk diversion and partial herd reduction programs, consider base-excess programs in regions of the country that wanted to adopt them, programs to create incentives to produce dairy products demanded in international markets that are not readily produced here in the US, programs to produce dairy products demanded here in the US that are not readily produced here, and incentives for dairy farmers to utilize risk management programs, among other aspects. Although contributions would be mandated by government, DGMI would be administered privately and overseen by a board that would largely be made up of dairy farmers. This is similar to the set up of the Federal dairy promotion program.

We are also working with a number of different groups to review Federal Orders and the Dairy Price Support Program. We are looking into opportunities to floor Class I prices, adjust Class I prices higher when fuel prices rise, adjust Class I prices to better reflect higher milk hauling costs, create options for Class I plants to hedge their milk purchases on the futures exchanges – which could lead to reduced price volatility and greater Class I sales, eliminate manufacturing make allowances, reduce price circularity and other needed "tweaks" to the system. Additionally, we are exploring whether there needs to be major wholesale changes to the Federal order system that would change the method of price discovery it uses and make other modifications that might result in reduced price volatility, increased demand for dairy products and better overall milk prices. We are also looking at ways to modernize the dairy price support program so it does not penalize a plant for making MPC or other dry protein products that are demanded here in the US or in world markets. There are even considerations being given to the elimination of the program. Some people view the program as part of the reason this price down turn lasted so long. We do not know if this is the case, or if elimination of the support program is good or bad. Instead, the major point here is that nothing is being viewed as "sacred" and we are willing to look at all programs to see if they are supporting or hurting dairy farmer income. If a significant overhaul of these programs occurs, or even elimination of them occurs, the changes need to be gradual as opposed to abrupt. Many in the dairy industry have made strategic investments, and like it or not, these investments have been made under the guise of the current regulatory structure. If this structure is going to significantly change, incremental change will be needed in order to allow all stakeholders to adjust their investments without creating severe financial liabilities on some of them.

In closing, I would like to make note of two significant milk production growth periods for the US Dairy industry. One is the four-year period ending in 1983 and the other is the four-year period ending in 2008. These were the two greatest four-year milk production growth periods in US history.



Dairy farmers responded to price and profit signals during these two time periods and expanded milk production. However, there were two drastically different causes underlying the price induced growth. In the beginning of the 1980's, it occurred because the Federal government artificially established milk prices that exceeded those that the marketplace would have generated. In doing so, it spent over $20 billion dollars from 1979 to 1983 and purchased, in some years, more than 10 percent of the US milk supply.[5] From 2005 to 2008, the strong price was not induced by the government, but rather generated by market forces as US and international demand for dairy products grew and pulled farm milk prices to profitable levels for most of the time period.

As we address issues to create a stronger and healthier dairy industry that allows dairy farmers and others to maintain profitable businesses in the dairy industry, lets us reflect on which of these two scenarios are more preferential and how to best use Federal resources to support dairy farmers and the dairy industry in the 21st century.

Thank you for allowing us to provide these comments to you. We look forward to working with you as we grapple with today's challenges and opportunities.

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[5] *US Dairy Programs: Who Pays and How Much?*; Hal Harris and Joe Outlaw; a paper as part of a series entitled "Dairy Markets and Policy, Issues and Options", a project of Cornell University's Program on Dairy Markets and Policy, February 1995.

A CENTURY OF COOPERATION
Dairylea
Cooperative Inc.

Dairy Farmers of America

June 16, 2009

Mr. David Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW.
Washington, DC 20581

Re: Whether to Eliminate the Bona Fide Hedge Exemption from Speculative Position Limits

Dear Secretary Stawick:

Dairylea Cooperative Inc. (Dairylea) and Dairy Farmers of America (DFA) collectively request that the Commodity Futures Trade Commission (CFTC) change its policy relative to swap dealers being eligible for the bona fide hedge exemption and, instead, place limits on their speculative trading activity. We also request that speculative limits be placed on the non-commercial customers of swap dealers.

Dairylea and DFA are cooperatives exclusively owned by dairy farmers that operate family businesses. Our farmer members face financial harm by unchecked speculative activity when it increases commodity prices regardless of underlying market fundamentals – this increased volatility impacts dairy farmers' cash cost of operating. Although the comments below are specific to dairy farmers, unchecked market speculation harms everyone who consumes these commodities

Livestock feed is the life-blood of dairy farms. Without it, cows do not have the fuel necessary to produce milk. Although many of our dairy farmer members grow the preponderance of their feed, most purchase a significant amount in the form of pre-mixed feed concentrate, shelled corn, soybean meal and other commodities directly impacted by feed commodity futures prices. As an operating expense, purchased feed is the single largest component – representing about one-third, but up to 50% or more of production costs. Cash feed commodity prices, FOB the farm, change day-to-day and month-to-month, because of changes in futures prices which is the benchmark used in pricing these inputs.

In 2008, when corn futures prices escalated, physical commodity prices escalated as well. Speculative investment decisions by participants in hedge funds and other entities result in commodity price appreciation not supported by factors one would associate with impacting the supply and demand for the underlying physical commodity. When this occurs, commodity

PO Box 4844
Syracuse, NY 13221-4844

futures prices increase and push cash prices up. This non-fundamental increase drives up dairy farmers' cost of production and negatively impacts their financial position.

Your request for comments on the proposed change in regulation of swap dealers comes at a time when dairy farmers are suffering financial losses that may be the worst ever. U.S. dairy farmers are losing an estimated $74 per cow per month, on average – although farms that purchase a larger than average proportion of their feed may be losing significantly more[1]. For the average size farm of about 163 cows, this would be more than a $140,000 loss on an annualized basis. For dairy farms of 1,000 cows – which farms of this size and larger produce slightly more than 45 percent of the milk in the U.S. – the annualized loss is a staggering $1 million or more. Dairy farmers net margins have deteriorated due to price issues impacted by the loss of export markets and the worldwide financial crisis, and due to higher production costs largely showing up in feed prices. Since the expansion of federally supported ethanol production, the average cost of the purchased feed component of production costs has increased 68 percent[2]. A large factor in this increase is due to greater demand for feedstuffs generated by the ethanol marketing channel. Due to the feed price inflation caused by ethanol, dairy farmers can ill-afford additional price inflation caused by unchecked speculative investments.

Recently, July 2009 corn futures prices have increased from $3.59 ½ per bushel in March to $4.18 per bushel, today, a 16 percent increase. Along with increased prices in the soybean complex, this has driven cash operating costs on dairy farms up significantly at a time that milk prices remain at levels that is estimated to average 29 percent less than production costs during the first six months of this year[3].

Allowing unfettered speculation in feedstuffs to provide the opportunity of financial gain to some of the wealthiest Americans and its institutions, at the risk of financial harm to dairy farmers and at the risk of food inflation to all Americans, is unconscionable. Although we do not have evidence to offer as to the impact this has on economic activity, it seems evident that the prudent decision would be to take initiatives to limit the opportunities for speculative activities that potentially can significantly harm commerce and the pocketbooks of the majority of Americans not able to partake in the gains of the speculative activities.

Lynn Stout, the Paul Hastings Professor of Corporate Securities Law at UCLA, in her testimony to the Senate Committee on Agriculture, Forestry and Nutrition on June 4, 2009, stated when commenting about derivatives speculation that: "These speculative trading gains are purely private benefits, however, that come at other investors' expense. Meanwhile, unrestrained derivatives speculation has historically been linked to a host of very serious economic ills, including price bubbles, increased risk, reduced real economic growth, and increased fraud and manipulation."

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[1] Dairylea has projected the average loss at $74 per cow per month. Information from others suggests that losses exceeding $100 per cow per day have been occurring on farms that purchase larger than average amounts of feed.
[2] As projected by Dairylea using USDA data for corn, soybeans and alfalfa and a utilization formula developed by Dairylea. The analysis indicates that purchased feed cost has risen from a 2002-2006 average of $3.72 per hundredweight of milk produced to $6.26 in 2009.
[3] As projected by Dairylea.

Michael Masters, Managing Member, Master Capital Management, LLC, in his testimony to the Senate Committee on Homeland Security and Governmental Affairs in May 20, 2008, stated when asked are institutional investors contributing to food and energy price inflation: "Institutional investors are one of, if not the primary, factors affecting commodities prices today."

The concern we present goes beyond the spot month prices. Dairy farmers forward contract their feed purchases – locking in feed prices months in advance of deliveries. Regulations allowing investors to speculate, beyond reasonable limits, in non spot months, can have a price distorting impact on dairy farmer feed prices. This can result in farmers locking into feed prices at levels much higher than the fundamentals would suggest. For some farms that milk large numbers of cows on a small land base, locking into a year's worth of feed prices in late summer/early fall, is customary. Since dairy feed is the lifeblood of the business, these farmers contract with neighboring farms, feed mills, or others on a yearly basis – to assure that they will have feed for their dairy farm. These feed purchase contracts are influenced by futures prices – beyond the spot month. Excessive speculative activity, beyond the spot month that results in rising prices, can contribute to higher feed costs for these dairy farms.

In response to the questions posed relative to the oversight of non-commercial activities of swap dealers, we provide the following comments.

1) Swap dealers that are not providing transactions for the legitimate hedge of underlying physical commodities should have speculative limits imposed and no longer be allowed to qualify for exemption under the existing bona fide hedge definition.

2) A limited risk-management exemption for swap dealers is appropriate on transactions hedging underlying physical commodities, provided the transactions for the client are legitimate physical hedges. For example, if the client is a grain elevator that uses the swap dealer as a means of hedging its natural price risk, but also uses the swap dealer to place bets on copper prices, the transactions relative to copper should not carry the exemption. We realize this can slide into a gray area very quickly. For instance, a milk company that uses a swap dealer to hedge corn and soybean prices, that are part of a milk contract whereby the plant is paying dairy cooperatives a milk price that is adjusted by changes in feed prices, should qualify for the exemption since the changes in corn and soybean prices directly impact the price the plant pays for its milk supply. We recommend administrative latitude on the part of the CFTC, combined with a system of appeals for reconsideration, to handle these "gray" areas.

3) Upon making the change, some time period should be allowed to bring swap dealers into compliance.

4) Speculation that can drive energy and metal prices higher have the same ill-effect as speculation on feed commodities – including negatively impacting dairy farmers cost of production and their financial performance. Corn futures for example are linked to

crude oil futures because of the relationship of ethanol to fuel prices. We believe the same speculative limits should apply for energy and metals, as well.

5) Transactions for swap dealers' clients that are hedging price risk of the underlying physical commodity should still be considered bona fide hedgers. Guidance should be given to what constitutes a commercial, however, administrative discretion should be left to the CFTC or the self-regulatory organization, to appropriately adjust as necessary to the continued maturation of the derivative marketplace hedging physical commodity price risk.

6) Swap dealers should self certify whether clients are commercial, report information to identify such and be periodically audited. Annual reports should be filed along with monthly reporting of new clients or changes in existing client's activity (i.e., change from commercial to non-commercial activities).

7) More information is always better than less information, to the extent that it does not create a large financial burden for a small benefit. Transparency will be improved by creating subcategories as presented in the request for public comment.

8) No comment at this time.

9) It would be important to look through to the intermediaries to review their transactions and apply speculative limits to the initial counter-party, if applicable., For example, if a swap dealer transacted with a hedge fund, the CFTC or its representative should look through the transaction and apply applicable position limits to the hedge fund to assure the hedge fund did not work through another swap dealer, gaining additional speculative exposure and possibly circumventing the position limits.

10-15) No comments at this time.

Dairylea and DFA request that the CFTC change its policy and place limits on the speculative trading activity of large swap dealers. Doing so, will limit the speculative impact on feed and other commodity prices faced by dairy farmers and may lead to reduced volatility in commodity markets. This requested action may help limit the appreciation in operating costs on US dairy farms.

Dairylea is a farmer owned agriculture marketing and service organization with more than 2,200 members. It is the largest milk marketing organization in the Northeastern US, selling more than 5.5 billion pounds of raw milk annually through an extensive milk marketing network. Dairylea's goal is to maximize net returns at the farm by preserving and enhancing milk markets and milk marketing relationships, and by providing services and programs that create real value to our members.

DFA is a leading dairy marketing cooperative that serves and is owned by nearly 18,000 dairy farmers in 48 states. Through programs and services designed to help make businesses more profitable, DFA brings added value in the form of farm lending options, health insurance, sustainability resources, risk management tools, member retirement plans and on-farm field and lab services. Through its Gold Standard Dairy Program, DFA member farms meet high standards in areas including animal well-being, environmental stewardship, employee training and milk safety and quality. In addition to marketing milk, DFA is one of the country's most diversified manufacturers of dairy products, food components and ingredients, and is a leader in formulating and packaging shelf-stable dairy products.

Thank you for allowing Dairylea and DFA to comment on this important issue to the thousands of family business owners that own our cooperatives.

Sincerely,

Edward W. Gallagher

Edward W. Gallagher
Vice President
Economics and Risk Management
Dairylea Cooperative Inc.
Dairy Farmers of America, Farm Services Division
1-800-654-8838

Dairylea and DFA Northeast Initiatives and Actions

Dairylea Cooperative Inc. and Dairy Farmers of America's Northeast Area Council have undertaken a number of initiatives and other actions to improve members' financial positions and the overall milk price. The following lists a number of these efforts. These efforts are part of a constant "work in progress". The management staff and employees of Dairylea and DFA are always striving to create new opportunities and to improve existing programs to better support member profitability and cash flow needs.

Providing Capital to Members

- Dairylea and DFA have pumped millions of dollars into members' milk checks.
- Through Risk Management Services (RMS), Dairylea and DFA are the only cooperatives in the Northeast to provide milk price stabilizers to members to assist in their cash flow needs. Members using this program have received blend prices in excess of $2 per hundredweight above market prices.
- Through Dairylea's and DFA's lending unit, Agri-Max Financial Services, members have accessed lines of credit to supplement their line from their primary lenders.
- Dairylea and DFA have been aggressively boosting advance payments to members to get more money back to farms sooner.

Providing Forward Contract Safety Nets

- Dairylea's and DFA's forward contracting programs are paying millions of extra dollars to members that used the programs.
- Through RMS, some Dairylea and DFA members booked forward contracts, over a year ago, that carry prices that are as much as $8 per hundredweight above market prices.
- RMS is assisting members in establishing forward contracting plans to protect them against future milk price downturns.
- RMS offers the widest variety of forward contracting programs to help members manage the market's extreme price volatility. Programs include options for members to create their own price support floor – higher than Federal supports – and have the opportunity to retain 100% of prices that exceed their floor level.
- RMS has undertaken an aggressive educational program to help more members understand how to utilize these programs to protect their milk price and farm's assets.

Offering Competitive Health Insurance

- Agri-Services Agency (ASA) has developed high deductible, lower cost health care options – some in conjunction with Health Savings Accounts, to assist dairy farmers in being able to maintain health coverage during the low milk price cycle. ASA offers a variety of program options to offer farmers a choice with their health plans.

A CENTURY OF COOPERATION
Dairylea
Cooperative Inc.

Dairy Farmers of America

Using "Collective" Buying Power to Reduce Input Prices

- Eagle Dairy Direct uses the collective buying power of thousands of Dairylea and DFA members to negotiate lower prices for key milk production inputs. These lower prices are passed on to members purchasing through the program.
- Eagle estimates that members in their buying group realize a cost savings of up to $0.18 per hundredweight for purchasing through this programs. Eagle has a 5% operating margin limit however, so far in 2009, they have successfully operated on a 3.3% margin (typical farm supply companies operate between 20-30%).

Working With other Cooperatives to Maximize Milk Check Value

- Dairy Marketing Services, the joint-venture between Dairylea, DFA and St. Albans, along with our memberships in GNEMMA – the Northeast's milk pricing agency – has generated millions of dollars in over-order premiums and hauling cost savings to farms.
- Generating $8 million per month in over-order premiums that are distributed to dairy farmers marketing their milk though DMS.
- Coordinating the pickup and delivery of 900 loads of milk per day in a manner that reduces costly and inefficient routing – saving farmers hundreds of thousands of dollars each month.
- Financing milk balancing plants in a coordinated manner to provide a home for all milk produced by our farms. Dairylea's and DFA's investment in these programs serve to protect over-order premiums. In the absence of the milk balancing plants, farmers would have to compete for the more lucrative milk delivery locations – resulting in lower over-order premiums and loads of milk unable to find a delivery location.
- Employing well-trained professionals to work with members to produce high quality milk that earn farms quality premium bonuses.

Equity and Patronage Payments

Early Equity Retirement – Dairylea and DFA issued early equity retirements this year to provide direct assistance to our members in this crisis.

Patronage – Dairylea and DFA declared a patronage refund to members to ease financial stress. DFA paid 100% of its partonage early.

Undertaking Informational Actions

- Dairylea and DFA have done more than any other business to reach out to members in an effort to keep them informed and to initiate dialogue on important topics.
- Dairylea and DFA have been keeping members updated on markets, pricing and legislative issues via weekly faxes, monthly check letters, webinars, conference calls, face-to-face meetings, internet surveys and member call-ins.
- We have hosted webinars for the agri-business industry to keep them updated on pricing and legislative issues.
- We have reached out to members to get direct one-on-one input about the operation of DMS and the cooperatives, their needs and concerns and their feelings on various supply management and pricing programs.
- Dairylea and DFA have established a Northeast Marketing Hotline that provides weekly recorded message updates on relevant milk pricing issues.
- We have established a crisis hotline and member assistance program as a resource for members in need of consultative advice or assistance with farm stress.
- Dairylea and DFA established a member resource page on our websites, providing articles and information on ideas and programs that may be useful to members in their efforts to manage through this milk pricing crisis.

Evaluating Supply Management

- Dairylea and DFA expended considerable resources helping members understand various aspects of the supply management debate and seeking their input.
- These actions included a special member "call-in" on supply management and an "expanded" board meeting, with over 100 Dairylea and DFA members in key leadership roles attending, to discuss supply management options. This discussion was highlighted with members participating in a panel discussion of the various options. Additionally, Dairylea and DFA have been surveying members relative to their particular interests in supply management.
- Dairylea and DFA have also taken a leadership role within the industry debate on supply management so that we are well informed on the options and can ensure our members' concerns are heard across the industry. We are furthering discussions on supply and growth managements in conferences with cooperatives and farm groups around the country.

Additional Actions to Support Stronger Milk Prices

Dairy Growth Management Initiative (DGMI) - As a result of our supply management deliberations noted above, we proposed the Dairy Growth Management Initiative in efforts to ensure a secure industry with less volatility. This program would run similar to a mandatory CWT program, with farmers participating in creating legislation, advising the direction of the program, all while having a third-party administrator.

Cooperatives Working Together (CWT) - CWT completed three Herd Retirement programs since December of 2008 that will remove more than 4.8 billion pounds of milk from the US milk supply. CWT offers an avenue for producers to have an impact on the economic situation rather than relying on government programs. Additionally, CWT supports US dairy exports. Dairylea and DFA continue to support this program and provide leadership on program changes that would allow quicker responses to industry circumstances.

DEIP - Dairylea and DFA successfully lobbied the USDA for the implementation of the DEIP program to subsidize exports. This program assists in exporting US Dairy products such as nonfat dry milk powder, cheese and butter. We continue to encourage USDA to move excess milk supplies through the DEIP program in the upcoming year. The fiscal year '09-'10 allocations of DEIP can remove more than 1.5 billion pounds of milk equivalent from the U.S. market.

Dairy Product Price Support Program - Dairylea and DFA supported the USDA actions to raise the purchase price for cheese and nonfat dry milk, in the Dairy Product Price Support Program. We support additional support price increases. We also support discretionary ability by the Secretary of Agriculture to use $350 million either to raise the price support or to purchase cheese, butter, and powder for food-aid donations to other countries.

Dairy Management Inc. (DMI) - Dairylea and DFA supported efforts by Dairy Management Inc. (DMI) to increase demand and sales of US dairy products. Through DMI, dairy producers have invested in new products in the marketplace being offered up through McDonald's, Nesquick, Yoplait and others. DMI has also partnered with pizza powerhouse Dominos to introduce their American Legends pizza series which feature up to a 40 percent increase in the amount of cheese on each pizza. This partnership has the potential to place an additional 10 million pounds of cheese on American Legend pizzas each year, using more than 100 million additional pounds of milk. With over 25 percent of cheese sales going to pizza, we continuously seek out additional opportunities to increase dairy consumption.

National Milk Producers Federation (NMPF) - Dairylea and DFA are working closely with NMPF for action on the present economic situation. The groups are working together to address legislation, create programs within the industry and modify existing programs to improve the milk pricing system. Some of the actions taken this summer supported by Dairylea and DFA through our partnership with NMPF include:

- Strategic Planning Task Force to analyze milk pricing proposals that may lead to more stabile milk pricing, and a long term solution to pricing problems
- Call for the USDA to implement promotion assessment on dairy imports
- Backing new senate legislation to impose tariffs on milk protein imports
- Supporting efforts to expand the Dairy Price Support Program
- Presenting to a Congressional Panel the economic crisis in the dairy industry, urging improvement in the USDA safety net program

Additional Legislative Efforts Undertaken by Dairylea and DFA

- **Milk Protein Concentrate (MPC) Imports** – We support legislation that would impose a tariff and regulatory guidelines on imports of MPC.
- **Enhanced MILC payment or other means of direct payments to dairy farmers** - Dairylea and DFA support actions to get more money to farmers to assist in paying off the debt they have incurred this year.
- **Milk Solids Standards** – We support a national increase in fluid milk standards to create healthier and better tasting milk beverages- increasing demand and supporting higher farm prices.
- **Dairy Import Assessment Program** – We support this rule that implements a promotion assessment on dairy imports which will generate $6 million annually for promotional programs.
- **State-by-State Dairy Payment** – We strongly support state initiatives that result in direct payments to dairy farmers. We are currently working with the NY Farm Bureau and legislators for a significant payment to NY dairy farms.
- **NYS Mandatory Overtime** – We oppose this legislation and continue to track this issue closely and will educate lawmakers on the impact of this legislation to the agriculture sector of the state.
- **PA Hauling** – We are in support of this legislation that would allow milk to move more freely throughout our market and ultimately reduce milk hauling costs.
- **AgJOBS Legislation** – We support this legislation and have a continued presence in Washington, D.C. to provide dairy farmer views of AgJOBS legislation and Comprehensive Immigration Reform.
- **Clean Water Restoration Act (CWRA)** – We are working to ensure the language in this bill does not negatively affect dairy farmers.
- **Climate Change** – We are opposed to this bill as written. Its overall impact could cost dairy farmers money. We're working to make it more beneficial to farmers.
- **Healthcare** – We are watching closely and meeting with congressional leaders to ensure that our insurance offerings to the agriculture sector through ASA are not harmed in this legislation.
- **CAFO Regulations** – We constantly track state rules and regulations and report changes to legislation to our members.
- **Farmers Assuring Responsible Management (FARM) Initiative** – We support the efforts to develop a nation-wide proactive program that addresses animal well-being and quality assurance on the farm.