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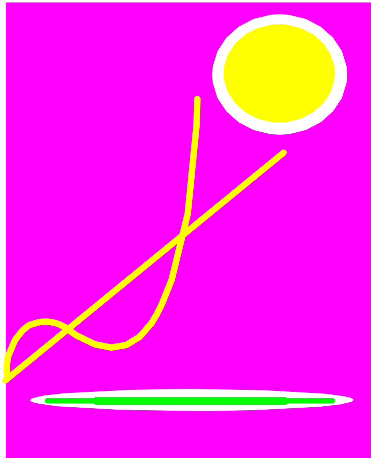

Food Marketing Policy

Issue Paper

No. 51 August 2006

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Annotated and Expanded Minutes of the Milk Marketing Policy Meeting University of Connecticut July 18, 2006

by

Ronald W. Cotterill

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University of Connecticut

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August 14, 2006

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Annotated and Expanded Minutes of the
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University of Connecticut
July 18, 2006

By
Ronald W. Cotterill

The July 18, 2006 meeting at the University of Connecticut continues an ongoing investigation of the Northeast fluid milk prices by universities, state and local officials, cooperatives and farmers. There was a morning and afternoon session. Dairy farmers and state legislators explicitly charged the group of economists that met in the morning session to discuss and develop strategies to raise farm level milk prices in the Northeast. Then after lunch the economists reported to a larger group of farmers and legislator, and other interested parties.

At 10:30 am, Professor Ronald Cotterill met with Robert Wellington, Corporate Economist for Agri-Mark; Edward Gallagher, Corporate Economist for Dairylea/DMS and Carmen Ross, a former federal milk market order executive and for the past 15 years a consultant on over-order pricing regulations. Mr. Ross wrote the operating rules for the Regional Cooperative Marketing Agency (RCMA) in the 1980s and the Northeast Dairy Compact in the 1990s. The group discussed the following milk pricing options: over-order pricing by a marketing agency-in-common of the Northeast milk marketing cooperatives, the State of Maine fee revenue program and the Maine target price payment program for dairy farmers, the Pennsylvania Milk Marketing Board, the New York price gouging law, and the price collar and fair share pricing programs proposed by the University of Connecticut.

First, Ed Gallagher reported that several cooperatives in the Northeast are in the process of combining into a regional milk marketing agency. These cooperatives include Dairylea, DFA (Northeast Area Council), Agri-Mark, St. Albans, Upstate, Maryland and Virginia, and Land O'Lakes, (east coast division). The group discussed the challenges faced by the Regional Cooperative Marketing Agency (RCMA) a prior cooperative and state supported over-order bargaining effort in the early 1990's which faced a significant border problem. At that time[1] processors, most notably Farmland Dairy of northern New Jersey, that were unwilling to pay the over-order premium secured milk from outside of the bargaining unit. As this milk went into the market place the RCMA was forced to give competitive credits to processors that otherwise cooperated. They needed the competitive credit in order to compete with low priced milk supplied by the non cooperating processors.

The cooperatives in RCMA organized a boycott of Farmland Dairies in an attempt to enforce the over order premium. Farmer's milk was diverted from Farmland, however, Farmland received replacement milk from Amish farmers that the Hershey manufacturing operation released to the fluid market. This ultimately broke that over-order premium bargaining effort. See attachment A for news stories and RCMA letters to farmers. They give the tenor and analytics of nitty gritty milk price bargaining.

Cotterill pointed out that this is precisely the kind of free rider problem that the cooperatives faced in the 1920's. Ultimately the creation of the Federal Marketing Order in the 1930's mandated that all processors must participate in the milk pool and pay the federally mandated minimum fluid price. Market orders have the power to elevate raw

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[1] The existing cooperative over-order pricing agency effort is not RCMA, nor is it intended to operate like RCMA. In Ed's words, this will be a business focused efforted operated by the cooperative members.

milk prices. He also noted that over the past 20 years federal order fluid milk pricing has been relaxed so that effectively we are back to the 1920's. Cooperatives and dairy farmers need more than the announced federal order class I fluid "minimum" price. Today cooperatives, processors, and retailers' bargaining efforts determine raw fluid milk prices when they bargain to set the over-order premium. As in the 1920's cooperatives face a free rider problem when attempting to elevate prices above federal minimums. Non cooperating processors and retailers can entice independent minded farmers to defect or not join the bargaining unit. Absent rejuvenated and tighter federal market order pricing farmers and their cooperatives must look to states for assistance in elevating farm prices.

Ed felt that the 1992 Farmland decision (Farmland Dairies, et. al. v Richard T. McGuire, Commissioner of the New York State Department of Agriculture and Markets, et. al. United States District Court for the Southern District of New York, 789 F. Supp. 1243) on the legality of cooperative bargaining for over-order premiums leaves some leeway for compensatory payments that might be able to solve the border problem (i.e. limiting access to lower cost milk from outside of the bargaining unit). A compensatory payment is payment of the over-order premium by processors or retailers who purchase from the farmers that are outside the unit. It removes the incentive to bring in outside milk to defeat the bargaining effort. However, Ed was not clear on how the cooperatives, possibly in conjunction with the states, would construct such a compensatory payment scheme that would pass legal muster and thereby empower cooperative bargaining to set higher raw milk prices in the Northeast fluid milk market. He said that the cooperatives

forming the Northeastern over-order pricing agency may have an answer over the next few months.

Ed recognized that past bargaining provided only transitory relief but stressed that dairy farmers, and the cooperatives that serve them, must leave no stone unturned when looking for ways to raise farm milk price. Therefore he maintained that we must once again consider cooperative bargaining to see if a new over-order pricing agency can work. Ed seemed to think that the cooperatives in the region are now more cooperative than they were in the past and therefore on the supply side there is a better ability to coordinate an over-order pricing program that is equitable and fair to all participants. He indicated there were a number of similar pricing agencies operating througout the U.S. and, in his recollection, in each and every case its members garnered higher premiums than existed prior to the formation of the agency.

Cotterill granted that Federal Milk Market order today set minimum Class I prices, and that cooperatives routinely charged over-order premiums to determine market prices for raw fluid milk. Dairy Market News (April issue) each year reports competitive over-order premiums for all regions of the U.S. These market prices reflect the added services that cooperatives provide (quality, balancing of supply, etc.) the relative bargaining power of cooperatives, processors, and retailers and the availability of milk form alternative supply sources. Cotterill explained, however, that the question facing the Northeast is not whether over-order premiums can be elevated a few nickels or dimes, it is whether they can be elevated $2 to $3 per hundredweight to restore the Class I price paid to $17 or $18 per hundredweight when raw milk prices are low. To do so one needs

to have a program that has no border problems. Otherwise milk from outside the Northeast bargaining unit will defeat this price elevation.

A northeastern over-order pricing agency will face significant border problems if it attempts to elevate prices more than $1 per cwt. Cotterill pointed out that Lancaster County Cooperative is not currently in the over-order pricing agency group, although Ed thought they might join. Cotterill also pointed out that there are very large independent producers in areas such as Cayuga county, New York and in other areas in the Northeast that will probably not be members of the proposed regional bargaining unit. Also, large producers who are members of the regional bargaining unit may well be enticed to defect for a premium by a renegade processor who refuses to cooperate with the over-order premium program.

The fact that an over-order premium on fluid milk that significantly enhances the fluid price must be blended with lower priced manufacturing milk sales means the bargaining effort pays less than the over-order premium back to farmers. Therefore, a processor that pays less than the premium but more than the lower blended price premium can attract farmers who keep all of the processor premium. Since that premium is less than the over-order premium other processors can claim a competitive credit. This process repeats itself until the significant over-order premium movement collapses. Over order premiums drop back to levels justified by quality service and location diffentials. Cooperative bargaining efforts have pretty much shown that as little as 5% of the milk supply outside of the program can defeat a cooperative bargaining effort that tries to raise milk prices significantly in a relatively short time. Cooperatives need to control more than 95% of the milk supply, quite possibly 100%, to be effective.

If a cooperative agency can geographically price discriminate, they can elevate prices more at consumption points that are farthest from the border. For example, RCMA in the early 1990's was able to sustain a higher premium in the Boston area than in New York City because it is more distant from Ohio and other outside areas with large reserve supplies. High Southern New England premiums contributed along with lower premiums from areas with border problems to a blended premium that was paid to farmers in all areas of the bargaining unit. This generated some discontent among New England farmers who maintained that those high premiums should have remained in New England. However, if that had occurred then it would have been easier for New England processors to find nearby farmers who would defect and defeat the bargaining effort in New England. A raw milk pooling effort must keep farmers in areas of reserve supply "satisfied" or restrict their entry.

Here is an example of how transportation costs affect over-order premiums. Current transportation costs for 50,000 lb tankers of raw milk are estimated to be 61 cents per hundredweight for a hundred miles. Therefore, if the area of reserve supply is 300 miles away (roughly the distance from Cayuga County, New York to Boston) the price in Boston could be $1.83 per hundredweight above the price of raw milk at the large independent farms located there. If those farms receive a dollar a hundredweight less than New England farms then the New England farms can obtain only 83 cents as an over-order premium. I would stress that this is only a crude example; however, it gives the general thrust of how geographic factors influence the ability to secure over-order premiums. More distant areas of reserve supply translate into higher premiums due to

higher transport costs. Lower raw milk prices in those areas of reserve supply translate into lower over-order premiums for a given transport cost.

(Cotterill will analyze below whether a set of state marketing boards along the lines of the Pennsylvania Milk Marketing Board program can solve the border problem for the new RCMA.)

Next, Bob Wellington explained the Maine program. The state of Maine has two policies that are not tied together that affect the milk industry. The first policy is a franchise fee that all milk handlers and processors who sell milk in the state of Maine must pay. This fee goes into the Maine general fund. The second program is the Maine target price program that sets a particular price per hundredweight for different sized Maine dairy farms. When the market price including all cooperative over order premiums falls below that target price the state pays a subsidy to Maine dairy farmers to ensure that they receive the target price. Larger farms that have lower cost of production have lower target prices.

Bob explained that this two part program works for Maine because Maine is at the end of the line in the U.S. milk industry. Basically, it has ocean on the East and to the North is the Canadian border. Also milk production, processing, and retailing activities are pretty much self contained within the state. Maine does not import a lot of milk, nor does it export a lot of milk. This means that the program has very few border issues.

Everyone agreed that this type of program would not be appropriate for a state such as Connecticut which imports a significant amount of milk or for a state such as Vermont which exports most of its milk. If the state of Connecticut were to charge a franchise fee on milk processors it has only one processor in the state, Guida. That

company would be at a serious disadvantage relative to out of state processors that supply Connecticut and do not pay the fee. The state of Connecticut can not go out of state and levy the fee on processors in Massachusetts or New York or other states.

In fact, the State of Connecticut can't levy a fee on Guida if that company receives milk from out of state. In the early 1990s the State of Massachusetts levied on fluid milk processors in the state and paid the proceeds back to Mass. Farmers. The U.S. Supreme Court ruled that this violated the interstate commerce clause. Those plants received milk from out of state farmers and benefits went only to in state farmers. Therefore, it distorted the flow of milk across state borders (West Lyn Creamery et. al. v Jonathan Healy, Commissioner of Mass Dept of Food and Agriculture, 512 U.S. 186, June 17, 1994). Thus the Maine fee based revenue enhancement program is not workable in Connecticut. Similarly, Vermont cannot levy a fee on out of state handlers and processors to provide revenue for a dairy farmer subsidy program.

The state of Connecticut, or any other state such as Vermont, could from its general fund set up a target price program such as Maine's; and in fact pay money out to farmers when prices were below the desired price levels. However, without revenue enhancement the state foots the bill rather than the milk industry. The program is not a market based solution. It's a direct subsidy program. Recently such programs as a short term emerging stop gap were instituted in Connecticut and Vermont (more on this below).

Next, the group analyzed the Pennsylvania Milk Marketing Board approach to creating an over-order premium. The Pennsylvania Milk Marketing Board sets minimum wholesale and retail prices in the state. It uses them to help establish an over-order

premium for raw milk in the state. The Board, however, has a border problem similar to that facing cooperative over-order pricing. It can only increase raw milk prices to levels that are equal to those received in neighboring states that have reserve supplies plus transportation to Pennsylvania.

The marketing board set minimum wholesale prices provide cover for processors in the regulated area who pay an over-order premium. This wholesale minimum is set at a level that ensures that in area processors who pay the premium are not forced by competition to sell at a loss. Nonetheless, note that if the Board charges a premium that is above the sum of the raw milk price in the nearest outside supply area and transport cost to Pennsylvania then processors that switch to that milk profit relative to those that buy in area raw milk.[2]

The milk board program has similar constraints at retail. The announced minimum retail price guarantees that no retailer can sell retail milk below a certain level in the regulated area. If a retailer goes out of the area and procures milk at a price that in fact is below the minimum wholesale price when they come back in area they must price at least as high as the minimum retail price. Again, this protects retailers that buy in area milk and thus protects the milk board's over order the premiums. However, the board's over-order premium can only elevate the wholesale price to a level equal to the nearest out of area wholesale price plus transportation to the regulated area. Otherwise all retailers buy out of area milk below the announced wholesale minimum and profit from that difference.

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[2] For proof positive that this will happen, see Attachment B. New Jersey attempted this approach and New Jersey farmers suffered.

To summarize the milk marketing board has a "border" problem that limits its ability to enhance significantly the farm milk price. By significantly I mean $2-3 per hundredweight rather than less per hundredweight.

We did not discuss whether the Marketing Board approach would be appropriate for the state of Connecticut. However, some further analysis might be constructive at this time. In Connecticut we have one in state processor. The majority of our milk is processed by plants outside of the state of Connecticut.

If the Connecticut Milk Regulation Board were to institute a Pennsylvania Marketing Board system, they would be demanding that only the in state processor pay an over-order premium back to farmers. They would be setting minimum wholesale and retail prices to protect this processor by ensuring that milk from processing plants in Massachusetts and New York, most notably, would come in at a wholesale price that was sufficiently high to guarantee that the in state processor can cover not only processing and distribution costs but also pay the premium back to farmers. Similarly, there would be a minimum retail price to guarantee that retailers who went out of state to buy milk at a lower wholesale price would not be able to cut the price in state to disadvantage retailers who bought the instate milk that has the over-order price built in.

Note that the transport cost differential for processed milk from New York and Massachusetts plants rather than Guida at New Britain, Connecticut is very low and in some areas of Connecticut is negative. In other words, milk delivered from the Franklin, Massachusetts Dean plant has less transport cost than Guida in some areas of eastern Connecticut that are closer to that Dean plant. This means that retailers will readily switch to out of state plants, sell at the announced minimum retail price and profit relative

to those who might stay with Guida and the over-order premium program. Consequently, a marketing board program a la Pennsylvania in Connecticut will not be able to enhance existing cooperative over-order premiums. The policy amounts to pushing on a rope.

Fundamentally the PA market board system will not work because over 60% of the fluid milk sold at retail in Connecticut is from out of state, and a significant share of Connecticut raw milk moves out of state for fluid processing at Hood, Agawam and Dean, Franklin, MA, among others.

One might think that the Pennsylvania Milk Marketing Board approach would work if Massachusetts, Rhode Island, and New York adopted similar programs and there was a parallel effort by the various states to institute over-order premiums. Yet even then, processors could avoid the premium by securing milk from out of state. A state program holds only for milk produced, processed, and sold in state. Again, if compensatory payments could be set up at the borders to essentially require out of state processors to pay those same over-order premiums for milk shipped into the area then the system would be very powerful and able to significantly elevate farm prices.

Next, the group discussed the New York State price gouging law and the related Rogers-Allen raw milk pricing law. Faced with similar low milk prices in 1990 there was an effort to revitalize and re-empower the Rogers-Allen Law in New York. This law has been on the books since at least the early 1930's and thus precedes the federal milk market orders. The Rogers-Allen Law essentially empowers the Commissioner of Agriculture in the state of New York to set a minimum raw milk price that processors must pay for milk. In the early 1990's when Rogers-Allen was updated to give the commissioner this type of authority in a more powerful fashion, downstate legislators in

return for their support, received upstate support for a price gouging law to limit the ability of retailers and processors to raise retail prices and hurt consumers. Ultimately, the compensatory payments component of the over-order milk pricing program instituted under the Rogers-Allen Law was declared unconstitutional by the U.S. Supreme Court. The New York Milk Price Gouging Law, however, has continued to operate since implementation in the early 1990's. {Go to the New York Department of Agriculture and Markets website for more information.}

Research at the University of Connecticut shows that the New York price gouging law is in fact effective in limiting retail prices when farm prices are low (Cotterill, 2006). When farm prices are low, retail prices in New York tend to come down; whereas in southern New England they do not. However, when farm prices are high throughout the region, New York milk prices tend to catch up with southern New England prices. In other words, the 200% price ceiling that is currently in the law works when farm prices are low, but when farm prices are high the price ceiling simply is not binding.[3]

The group then discussed ways to revise the New York price gouging law so that it would not only protect consumers but also generate higher prices for farmers. Bob Wellington suggested that we design a program that gives incentives for retailers to raise prices with the intent that the increase go back to farmers. Cotterill explained that this is in fact the price collar approach that University of Connecticut has written extensively on (Tian and Cotterill, 2004). The New York price gouging law only requests that the Department of Ag and Markets investigate when retail prices are over 200% of the raw

[3] The New York law defines a retail "threshold" price that is 200% of the announced Class I minimum price plus any cooperative over-order premiums. If a retailer's price is above the threshold the New York State Department of Ag and Markets can investigate. Retailers can cost justify their price otherwise the matter is referred to the attorney general for prosecution. Go to the New York Department of Ag and Markets website for more information.

milk price paid farmers (class I minimum plus cooperative premiums). Also, that law allows for a cost justification for prices above 200%. One could transform the New York law into a retail price collar if one put teeth into the law by simply stating that the retail price can be no more than twice the raw milk price. In other words retailers would no longer be able to cost justify higher prices. Then when raw milk price drops and the 200% collar set by the milk regulation authority begins to bind, the retailer has an incentive to raise the raw milk price so that they can charge a higher dollar margin to cover retail costs and meet profit needs.

The problem with this approach is how does a retailer insure that any higher price that it pays at wholesale is passed back to the farmer to ensure that the raw milk price goes up so that the retailer is no longer in violation of the price collar? Possibly one could devise a payment system wherein the retailer pays it directly to the farmers that supplied the milk.

Alternatively, as Tian and Cotterill (2004) explain, one can also place a price collar on the processor. The retailer would honor the law by raising the wholesale price. Then the processor would have to raise farm price to honor its price collar and cover costs.

An incentive policy is technically feasible; however, it is very cumbersome from an operational and enforcement standpoint. Also it regulates processors as well as retailers. Although a program based on incentives rather than more explicit rules may seem more attractive to the industry, really it is not. The Fair Share program outlined below is less cumbersome. It avoids processors, is more clear cut, and is easier to

implement than an “incentives” policy that transforms the New York law into price collars.

This discussion led to the last option which is the fair share approach that the University of Connecticut has proposed (Cotterill, 2006). For example, the Milk Regulation Board could decree that retailers may charge no more than a 50% markup over the wholesale price.[4] This protects consumers from the extremely high retail margins that have been documented in Southern New England. Then to generate a return to farmers a fair share rate would be set when raw fluid milk prices are below a certain level, say $18 per hundredweight fluid. The fair share rate would work as follows: First, the goal of the fair share rate is to generate enough money to return the raw fluid price to some desired target level, for example $18 per hundredweight. Second, the fair share rate would apply to retailer’s markup. The first 20% of a retailer’s markup could be free, i.e. have no fair share requirement. Then from 20% to 50% a certain proportion of that additional markup, i.e., the amount needed to return the farm price back to $18 a hundredweight, would be paid into a fund that is returned to the farmers. This Producer Fund would not be a state treasury activity. Rather the Producer Fund would be organized along the lines of the Dairy Compact Commission. See Cotterill (2006) for detailed spreadsheet examples of how the fair share program works at different raw milk price levels.

A major advantage of the Fair Share Policy focus on retail is that it avoids the border problem of the other programs which focus on raw fluid milk prices. Under the Fair Share Policy when prices are low, the Milk Regulation Board implements a fair

[4] This degree of consumer protection could change over the milk price cycle. Fifty percent may be valid when raw milk prices are extremely low. When they are higher a 50% markup may be too generous and perhaps the protection component needs to be revised down to say a 30% markup.

share rule. Supermarkets can not avoid payments by shifting to an alternative supplier. The fair share rule is retail margin based and is paid no matter where the milk comes from. A retailer has no incentive to shift to an out of state processor because that shift does not allow it to avoid the program, or otherwise increase its profits.

Interstate Commerce considerations require that the producer payment fund not discriminate between producers located in the state of Connecticut and other states. Milk from other states that is sold in Connecticut supermarkets needs to receive payment along with milk from Connecticut that is sold in Connecticut supermarkets. The leading cooperatives in the region, Agri-Mark and Dairylea/DMS would be the primary participants in the Producer Payment Fund Board that is constituted to oversee the payments of this money back to the farmers who supplied the milk to Connecticut supermarkets. Carmen Ross, the author of the RCMA and the Dairy Compact producer payment regulations believes that such regulations are feasible.

If Massachusetts, Rhode Island, and Connecticut adopted the Fair Share approach one would effectively have the old Federal Order One and the New England Dairy Compact milk shed. New York, Massachusetts, Vermont, Connecticut, Rhode Island farmers that supply the southern New England fluid milk market would in fact be the producers that receive the benefit from such a program. (Determining who “supplys” the market is a detail that Ross and others can identify along lines similar to the determination of who participates in federal or cooperative pooling plans.)

Note that the fair share policy has absolutely no direct impact upon fluid milk processors. It only focuses upon retailers. Politically as well as economically this is a plus. Also, there are positive indirect impacts on processors. If retail prices are lower,

there would be increased demand for milk that could benefit processors. Also, if in fact the program tends to keep near by farms in Connecticut and other New England states in business, processing plants located in New England would stand a stronger chance of surviving long run in this industry.

Finally, the fair share regulatory approach offers very different social welfare results than the northeastern bargaining agency or marketing board approaches. The fair share regulatory approach redistributes a portion of a retailer's margin to farmers and possibly consumers. Thus it can reduce the market power of retailers in the milk channel. This improves social welfare by improving economic efficiency and by meeting legislated income equity goals (more income for farmers and possibly consumers and processors and less for owners of supermarkets). The cooperative bargaining and market board approaches assume that the milk market channel (processing and retailing) is competitive. This, however, is no longer true. One now has substantial market power and wide profit margins in the channel. Adding producer market power via either a private cooperative bargaining agency or public regulation can have unintended effects. It can exacerbate non competitive pricing by channel firms, increase economic inefficiency and distort income distribution from desired equity norms. For example, when the Northeast Dairy Compact raised raw milk prices, for example retailers "piled on" and raised consumer prices by much more than the raw milk price increase, adding handsomely to their profits (Chidmi, Lopez and Cotterill, 2005, Lass, 2005). One needs a fair share approach to eliminate piling on.

To summarize, the advantages of the fair share program over the marketing board and cooperative bargaining approaches are as follows:

- No border problem, consequently one can significantly enhance fluid milk prices (more than $1 per cwt).
- Processors are not regulated. They continue business as currently done.
- Consumers receive some pricing benefits due to the retail mark-up ceiling, 50% over wholesale in the example given.
- In state processors are not disadvantaged relative to out of state processors. In a milk importing state such as Connecticut, any board or bargaining effort that attempts to significantly improve raw fluid prices would do so at the expense of in state processors.
- The fair share program can be incrementally implemented on a state by state basis. The bargaining approache can only be implemented simultaneously for all northeast states.
- The marketing board, even if implemented in several states, has serious border problems at each state border. Effectively it covers only milk produced, processed, and sold in state.
- Cooperative bargaining agency and/or marketing board policies work best in competitive milk market channels. Today the channel is not competitive. The fair share regulatory approach can mitigate retailer market power to the advantage of others in the milk marketing channel. The other approaches can not control piling on.
- The Maine franchise fee is not suitable for milk importing or exporting states.

This ended our discussion during the morning.

After lunch the full group convened. A list of all participants is attached in back of these minutes. Ed Gallagher, Bob Wellington, Ron Cotterill, and Carmen Ross each made an introductory statement explaining what happened during the morning, and then the group launched into a general discussion of the many options available to it. George Wilber, Jack Tiffany and others reported on the success in the obtaining a short term subsidy from the state in the amount of two million dollars. It will effectively pay Connecticut's farmers approximately $1.00 a hundredweight for all milk produced during the first six months of 2005. Jack Tiffany expressed the opinion that this might be increased in a subsequent legislative session. Most people in the group, however, recognized that $1.00 a hundredweight on $12 milk simply is not enough to cover the cost and income squeeze that Connecticut dairy farmers currently face. Moreover there clearly is a need for a long-term solution that does not depend on Treasury funds. Tiffany and Burr reported that the Governor explicitly wants a long-term solution to be delivered to the Legislature in January. Wilber and others reported that Vermont has appropriated over 8 million for short term subsidies to dairy farmers.

Bob Jacquier and Jack Tiffany from the Connecticut Milk Regulation Board asked the group of four experts to come up with market based long term solutions to the milk pricing problem. The group of four is to prepare and present to the Connecticut Milk Regulation Board two or three alternatives that the Board could choose between and ultimately decide among for the January deadline. These minutes contribute to that obligation.

References:

Chidmi, Benaissa, Rigoberto A. Lopez, and Ronald W. Cotterill. (2005). "Retail Oligopoly Power, Dairy Compact, and Boston Milk Prices." *Agribusiness*, Vol. 21, No. 4, Autumn.

Cotterill, Ronald W. (2006). "Pricing and Policy Problems in the Northeast Fluid Milk Industry." Invited Address at the Northeast Agricultural and Resource Economics meeting, Mystic, CT. June 14. Forthcoming, *Review of Agricultural and Resource Economics*. Available as Research Report No. XX available at www.are.uconn.edu/fmktc.html.

Cotterill, Ronald W., Adam N. Rabinowitz, and Li Tian. (2003). "Milk Market Channel Structure: Its Impact on Farmers and Consumers, and the Inadequacies of Antitrust Enforcement as a Foundation for Dairy Policies: Evidence from the Northeast Dairy Industry. Testimony before the United States Senate Committee on the Judiciary. Hearing titled, "Monopsony Issues in Agriculture: Buying Power of Processors in Our Nation's Agricultural Markets," October 30. Available at www.fmpc.uconn.edu. Click on "milk pricing".

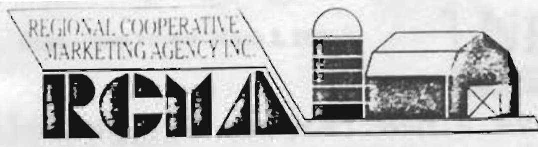
Lass, Daniel A. (2005). "Asymmetric Response of Retail Milk Prices in the Northeast Revisited." *Agribusiness,* Vol. 21, No. 4, Autumn.

Tian, Li and Ronald W. Cotterill. (2004). "The Theory of Price Collars: The Linking of Prices in a Market Channel to Redress the Exercise of Market Power." Proceedings of conference titled, "Industrial Organization and The Food Processing Industry, "Institute for Industrial Economics, and I.N.R.A, University of Toulouse, France, June 4-5. http://www.toulouse.inra.fr/centre/esr/conf.htm.

Dairy Meeting Attendees, Tuesday, July 18, 2006

	Name	Affiliation
1)	Ron Cotterill	Professor of Agricultural Economics, Economics, and Director of the Food Marketing Policy Center, University of Connecticut
2)	Bob Wellington	Economist, Agri-Mark
3)	Ed Gallagher	Economist, Dairylea/Dairy Marketing Services
4)	George Wilber	Elected representative, Connecticut state legislature
5)	Jack Tiffany	Dairy farmer, member Connecticut milk regulation board
6)	Bob Jacquier	Dairy farmer, member Connecticut milk regulation board
7)	Bruce Sherman	Connecticut State Department of Agriculture
8)	Herman Weingart	Retired dairy farmer
9)	Maria Weingart	Dairy farmer in Utah
10)	Joe Greenbacker	Dairy farmer, Agri-Mark Director
11)	Carmen Ross	Milk marketing economist
12)	Charles Rhodes	Graduate student, University of Connecticut
13)	Adam Rabinowitz	Graduate student, University of Connecticut
14)	Michael Cohen	Graduate student, University of Connecticut
15)	Emilio Pagoulatos	Chair, Department of Ag and Resource Economics, University of Connecticut
16)	Bonnie Burr	Director Government Relations, Connecticut Farm Bureau
17)	Peter Orr	Dairy farmer
18)	Paul Miller	Dairy farmer
19)	Nate Cushman	Dairy farmer
20)	Robin Chesmer	Dairy farmer

Attachment A



26 Harvester Avenue
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This is the latest info. from RCMA. Hope you find it helpful and informative

March 11, 1988

Dear Dairy Farmer:

In recent weeks, hundreds of dairy farmers have met to discuss how they can best secure a higher price for their milk at RCMA meetings across the Northeast. I urge you to attend your Region's Annual Meeting, or one of the special informational meetings to learn how you can help in the fight for fair farm prices. In the meantime, a lot is going on that you need to know about.

1. The Farmland diversion is on schedule and succeeding. As of today, more than 125 dairy farmers are diverting or have transferred milk from Farmland Dairies. Farmland will lose 3 - 4 millions of pounds of milk this week.

2. **Hershey Chocolate Co. has still not agreed to pay RCMA premiums.** We have notified Hershey that RCMA intends to divert members' milk if an agreement is not reached. RCMA hopes to meet with Hershey's management next week to get an answer. I further hope that a fine organization like Hershey, which has a long history of marketing Northeastern farmer's milk, will recognize that dairy farm families need RCMA premiums.

3. The New York State Legislative Commission on Dairy Industry Development has sent a letter to Hershey's Chief Executive Officer Richard Zimmerman, asking the company to provide information so that investigators can review allegations that Hershey is using a discriminatory pricing policy that penalizes RCMA members.

4. According to required disclosure papers filed by Farmland's lobbists, Malkin & Ross, Farmland -- a New Jersey company -- is spending thousands of dollars each month in New York's state capital to fight against RCMA and dairy farm prices. Farmland also spent thousands of dollars during the last several days to run paid advertisements in a number of farm publications and daily newspapers. Obviously, Farmland is willing to spend large sums to break RCMA, rather than pay fair prices for your milk in the future.

5. The RCMA Executive Committee recently set the December premium at 10 cents per cwt. This amount would have been higher if Farmland had paid its share of premiums, and if RCMA had not had to pay the costs associated with the Farmland diversion. As much as I regret spending money to divert milk, I know that if we do not make a stand now, over-order premiums will only be a memory. About 150 Northeastern milk dealers recognize the importance of the RCMA premiums and are participating in the program. I sure wish that Farmland would come around.

6. Membership totals have been steadily increasing in the last few weeks. This is a sign that many dairy farmers who were sitting on the fence, wondering if RCMA members had the backbone to stand-up to

Farmland and Hershey, have a new respect for what can be accomplished when farmers stick together. RCMA has launched major membership drives. The Pensylvania Farmers' Association, the New York Farm Bureau and other farm organizations have announced renewed support of RCMA. **You can be of immense help by talking with your neighbors about joining RCMA.**

7. The list of political leaders who have joined the fight for fair farm prices continues to grow. This kind of bi-partisan support is extremely important to us. **You can help by writing to your local, state and federal representatives and urging immediate and open support for RCMA.**

8. In the past, we've asked farmers shipping to milk dealers who are not paying the RCMA premium to call or write their dealer. In each case, this show of unity and support has been the deciding factor. All of us should feel a debt to those in the frontline positions in the Farmland situation. To show your support for RCMA, please write to: Mark Goldman, President, Farmland Dairies Inc., 520 Maine Avenue, P.O. Box 3340, Wallington, N.J. 07057.

9. As I mentioned in Point #4, Farmland has launched an aggressive paid advertising campaign to spread misleading information about RCMA. I don't know about you, but I am outraged that Farmland thinks by paying to get its' slanted message printed it can buy the loyalty of dairy farmers. RCMA is not about to spend money to respond through similar ads. We've been trying to counter Farmland's misinformation campaign by talking with reporters and getting free publicity. **You can help by writing to the farm publications you receive and your local newspapers to voice your support for RCMA.**

10. Finally, I've been saving this point until the end because it shows exactly how far Farmland's "solutions" to the problems faced by dairy farmers are from reality. Farmland has claimed the answer to falling farm prices is in Washington. Well, a group of RCMA dairy farmers from Vermont went to Washington last Thursday to meet with Vermont Senator Patrick Leahy, Chairman of the Senate Agriculture Committee, Vermont Rep. James Jeffords, ranking Republican on the House Dairy Subcommittee, and U.S. Secretary of Agriculture Richard Lyng. The dairy farmers at the meeting report that Secretary Lyng rejected their proposals to increase farm milk prices before the Congress takes up the Farm Bill in 1990. The members of Congress offered no hope that dairy policy would be regionalized during the next several years. We all know that is too far into the future to be a real help in the Northeast.

I hope you'll pardon the length of this letter. As a fellow dairy farmer, I know you don't want to spend all of your time reading the mail. However, the fight we are in right now is taking place on a number of levels and as RCMA president, it's my job to be sure you're getting an accurate and up-to-date picture of the situation. To give you an idea of the kind of media attention being given dairy farming and RCMA, please take a few moments to read the enclosed newspaper articles.

RCMA will keep you informed as we move forward.

Sincerely,
William Zuber
RCMA President

Empire State Farmer--March 2, 1988

Editorial

Keep Fighting

Much credit should be given the new farm organization RCMA for standing up to Farmland Dairies and others who have refused to go along with farm prices for milk.

We have said before, that most consumers want farmers to receive their fair share for milk produced. So far they have come up far short of a "fair" price, and enough of them have gone out of business.

It is in the best interest of every wholesaler and consumer to pay a fair asking price for milk. Most consumers will pay a little more to see a profitable farm operation. Farmers are consumers too! They purchase automobiles, groceries, furniture, and every other item in the shopping spectrum. They help keep the economy growing.

Now RCMA is helping in the effort to get a fair price for milk, and if farmers stand united, this will happen.

46 – Farmshine, Friday, February 26, 1988

Ag secretary supports RCMA

HARRISBURG, Pa. — Pennsylvania Agriculture Secretary Boyd E. Wolff has reiterated his support for the Regional Cooperative Marketing Agency (RCMA) and called on milk producers to remain united and support efforts to hold onto premiums the organization has won for its memebers.

RCMA has the support of 22,000 dairy farmers in the Northeast and Middle Atlantic states and has legal authority to bargain for better milk prices on behalf of all milk producers in Federal Orders 1, 2, and 4.

The cooperative is entirely farmer-controlled and recently announced it would pay a premium of 16 cents per hundredweight on November milk. In the first three months of premium payouts, RCMA put nearly 7 million dollars into the pockets of dairy farmers.

"RCMA is an old idea whose time finally came because of hard work and a united effort by 22 thousand producers," said Secretary of Agriculture Wolff. "I think this struggle is in the best interest of our farmers and will protect the milk supply for our consumers."

RCMA negotiates for over-order pretums on behalf of its members. A 14-year struggle to sign up producers and turn the concept into reality ended in victory with the first premium payments for milk produced in September of 1987.

Secretary Wolff has long been a supporter of RCMA and held a news conference in support of a membership campaign in June of 1987. More than ninety-five percent of the dairy farmers in the 11 state area from Maine to Maryland have signed RCMA contracts.

NEW BERLIN GAZETTE

RCMA—Not Farmland

Since the first of February, dairy farmers, via the RCMA, have been doing battle with Farmland Dairies of Wallington, New Jersey, because of Farmland's refusal to pay the RCMA's over-order milk price established in September.

The outcome of this battle may well have an impact on the state's largest industry which will not be fully realized for years to come.

By now, everyone has heard of the plight of farmers. Not just in New York, but in many areas across the country. Rather than present more figures and statistics about how many farmers go out of business each week or declining milk prices, we'll show you another way to look at it.

In 1986, 368,900,000 pounds of milk were sold from Chenango County farms and 446,400,000 pounds from farms in Otsego County, according to the most recent statistics from the New York State Department of Agriculture and Markets.

Multiply those amounts by the average 1987 price of $12.45 per hundredweight and consider that $101,504,850.00 were pumped into the local economy from milk reciepts alone. If the price of milk drops $1.00, that's a loss of $8,153,000 to the local enconomy.

Perhaps you can begin to understand the vital role the dairy industry plays in our communities.

Dairy farmers need and deserve the support of the public in their fight with Farmland.

If Farmland wins and is not compelled to pay the over-order price, you will see the end of the RCMA. No other handler is going to pay more than they need to for the milk they process—you can't expect them to, they have to be able to compete in the marketplace like everyone else.

Although Farmland is paying their own premiums right now, most farmers admit they doubt that would be the case if milk were plentiful and the RCMA was out of the picture.

Dairy farmers, like any other group of business people deserve the right to set a price for their product which will allow them compete in the marketplace—or perhaps more immediately—just to stay in business.

For far too long, farmers have accepted what they could get.

The RCMA represents an opportunity for dairy farmers to get a fair price.

The future of dairy farming should be left in the hands of the farmers, not handlers like Farmland.

NY Assemblyman McCann Calls For Statewide Support Of RCMA

N.Y. Country Folks Feb. 15, 1988 p.3

New York State Assemblyman Jack McCann last week called on dairy industry leaders, regulators and dairy farmers statewide to support the Regional Cooperative Marketing Agency (RCMA) in its efforts to improve dairy farm profitability.

McCann, the ranking Republican on the Assembly Agriculture Committee, cited the refusal of Farmland Dairies Inc. of New Jersey to pay the RCMA over-order premiums as a direct attempt to break the strength of RCMA.

"Economically, 1988 is not expected to be a banner year for our dairy farmers," said McCann. "The ability of RCMA to negotiate premiums on the price milk dealers pay to farmers for their product will be the difference between success and failure for many New York dairymen.

"Farmland Dairies has claimed that RCMA is illegal. That claim is hard to believe, particularly after state Attorney General Robert Abrams has declared RCMA to be a valid and legal entity," said McCann.

"Dairy farmers must not waver in their support of RCMA," McCann said. "RCMA must work to continually build and inform its membership and the public about its daily efforts to improve the dairy industry.

"Dairy industry leaders must continually voice their support for RCMA, and government leaders must stand up to the well financed lobbying and media campaign waged by Farmland Dairies," said McCann. "We must stand firm in our beliefs that our dairy farmers know what is best for them."

(Barre-Montpelier, Vermont) Times-Argus March 13, 1988

Milk Cartel's Embargo Termed Key To Survival

RCMA Is Trying To Buck History As It Seeks Higher Prices For Farmers

By BRYAN PFEIFFER
Staff Writer

A Northeast milk cartel, viewed as crucial to keeping many dairy farmers in business, is fighting for survival in New Jersey, where erosion of its power could trigger collapse of the entire organization.

The Regional Cooperative Marketing Agency, a union of sorts for 22,000 dairymen — including most dairy farmers in Vermont — is feuding with a pivotal milk distributor that refuses to pay the cartel's premium price.

Last month RCMA began organizing farmers to stop selling milk to the buyer, Farmland Dairies Inc. of Wallington, N.J., a major distributor in New York City and parts of New Jersey. The embargo is designed to force Farmland to the bargaining table.

RCMA is weakest in western New York and parts of Pennsylvania, homes to many farmers who sell milk to Farmland. It's a battle site that cartel officials say will make or break their organization.

If farmers and distributors lose confidence in RCMA's ability to sustain the milk stoppage against Farmland, defections could spread throughout the Northeast and the cartel would crumble, RCMA officials say.

"This is the last stand," said Steve Kerr, an RCMA spokesman who is directing the milk shutoff.

In a related development, Vermont Agriculture Commissioner Ronald Allbee and a delegation of state lawmakers will meet with New York dairy officials Tuesday to discuss legislating a higher price for milk in 11 Northeast states, from Maine to Maryland. Allbee said the compact — like a strong RCMA — could greatly increase milk prices paid to dairy farmers.

Also, the compact would not be subject to pressure from defiant milk buyers. Indeed, it could sanction RCMA to administer the higher prices, according to a memorandum prepared for Tuesday's meeting by the Vermont Legislative Council, the legal staff for the Legislature.

Mixed Results

The milk embargo against Farmland, and RCMA itself, resemble labor struggles and organizations that have surfaced in American agriculture throughout this century. Numerous farmers' unions have been short-lived; others — similar to RCMA — currently garner dairymen milk prices above the federally set minimums. But none has been successful in the Northeast.

RCMA leaders are aware of obstacles to organizing dairy farmers. The RCMA cartel collapsed after a similar effort to boost prices in the early 1970s, but was revived last year.

"No major farm organization has been able to administer prices for a group of farmers as variegated as dairy farmers, to my knowledge," said Morton Rothstein, a professor of agricultural history at the University of California at Davis and editor of the journal "Agricultural History."

"Usually what happens when you get a sort of super-cooperative like this is the thing is successful to a point — if there is enough momentum behind it," said Fred Webster, a dairy economist at the University of Vermont. "Then sometimes it tends to breed dissension."

The Dairymens' League in New York was a prime example. In 1916, 90,000 farmers called a milk strike in an effort to get a higher price from distributors.

"They started out by announcing a price for milk much like RCMA," said Andrew Novakovic, associate professor in the Department of Agricultural Economics at Cornell University in Ithaca, N.Y.

It worked. Within two weeks the strike forced buyers to meet the farmers' demands.

But the League's influence was gradually eroded as milk distributors lured large-scale dairy farmers away with individual offers of higher prices, said Novakovic.

"Once (distributors) recognized the new game in town . . . they sought ways to get around it," he explained. "And the way you get around any cooperative is to whittle away at its membership.

"RCMA is facing that right now," he said.

But Novakovic said that several organizations like RCMA — notably in milk markets in Chicago and the Southeast — are drawing dairy

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farmers milk prices higher than those set by the federal government.

The organizations succeed because they control virtually the entire supply of milk. These cartels differ from RCMA in that they distribute milk almost exclusively through farmers' cooperatives.

Besides selling to co-ops, RCMA member farmers also ship milk to private, so-called independent milk distributors in the Northeast.

"It's a liability for RCMA," said Novakovic.

Some independent distributors — such as Farmland — are considered by RCMA to be its greatest opponents.

Farmland Controversy

The attempt to cut off milk to Farmland — RCMA estimates it's now diverting 31 percent of the dairy's purchases to other distributors — is orchestrated to force Farmland to the bargaining table.

"We're not paying RCMA anything," said Farmland President Marc Goldman. "We have no agreement with RCMA and we don't recognize RCMA."

Goldman said his company supports farmers' right to remain independent, or out of the fold of RCMA. He characterized the cartel as a divisive force in the industry and said the dispute is allowing other beverages to capture a greater share of sales.

"Coca-Cola is specifically targeting milk as a beverage they can compete against," said Goldman.

RCMA exchanged lawsuits with Farmland and three other dairies in December. The cartel reached an out-of-court agreement with all but Farmland in January.

Farmland pays its own premium above the federal price for milk, but it is less than what RCMA members are hoping to get from participating distributors later this spring. Goldman said market forces and a tight milk supply most of the year are cause for his premium.

But RCMA claims Farmland's premium — which recently was higher than RCMA's — is designed to lure farmers away and break the cartel. RCMA spokesman Kerr said premiums from independent handlers such as Farmland would vanish if the cartel actually is broken.

According to Kerr, about 125 farmers of the 500 farmers who ship to Farmland have been participating in the milk embargo.

"The diversion is a hands-on deal for farmers," said Kerr. "It's not a bunch of politicians in Washington telling farmers, 'This is what we're going to do for you — some day.'

"We've got a message from Washington — 'You're on your own, boys,'" he added.

Kerr said the next few months could be the turning point for RCMA, because the group will have less control over the flow of milk.

In the spring, as cows are turned out to pasture, they produce more milk, which floods the market and is relatively easy to come by — a phenomenon known as the spring flush. With ample milk on the market, the embargo could lose its punch.

"It's the wrong time of year to be doing what we're trying to do," admitted Curtis Gundersen, general manager of the St. Albans Farmers' Cooperative Creamery Inc., which supports RCMA and pays its prices.

Gundersen explained that Farmland president Goldman would be trying to unload excess milk anyway during the spring flush. Distributors like Farmland generally sell surplus milk on the spot market during the flush, often at a financial loss.

"What we're pulling away today may only be doing him a favor because he would have to try and get rid of that extra milk anyway," said Gundersen.

The longer Farmland is able to weather the diversion, "the more you're going to get restless farmers" who would defect from RCMA and be attracted to premiums paid by independent milk buyers that don't support the cartel, said Gundersen. "Then we're in trouble."

Kerr said that if Farmland can avoid paying the RCMA premium, it will be able to sell milk at a competitive advantage in the New York marketplace. This would lead other milk dealers — now paying the RCMA price — to abandon the premium in order to keep their prices as low as Farmland's, said Kerr.

RCMA must guarantee milk distributors a level playing field — "price equity" — if it is to flourish, said Cornell's Novakovic.

"If Farmland is successful in avoiding the payment to RCMA, then other handlers will obviously say, 'Look if you can't guarantee price equity we can't be involved in the program,'" he explained.

Supporters of the cartel are angry with another, well-known milk buyer — Hershey Food Corp. in Hershey, Pa. The chocolate company also does not pay the RCMA premium for milk.

"There are no kisses from Her-

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shey for dairy farmers," said William Davis, president of the Cabot Farmers' Cooperative Creamery Inc., referring to the company's popular chocolate candies.

RCMA officials allege that Hershey is shipping milk to Farmland to help the dairy cope with the embargo.

"We're pulling milk, (Hershey) is replacing it," said Kerr.

Last week a group of Vermont farmers began organizing a boycott of Hershey products because of the alleged shipments.

Asked if Hershey is helping to replace milk lost in the embargo, Goldman responded: "We've done business with Hershey for years," and he indicated the allegation is overblown.

Kerr and other RCMA officials speculated that Hershey will soon negotiate with the cartel and pay its premium.

Milk Price Premium

RCMA, based in Batavia, N.Y., last September set a milk price of $14.42 per hundred pounds, which in January was 56 cents above the federally set price in New England.

The RCMA price only applies to milk known as Class I, that is, milk sold for drinking and not processing into such foods as ice cream, cheese or yogurt. Because roughly half of New England's milk is shipped for processing, dairy farmers in Vermont actually get the premium on only half their milk.

Some farmers call the premium meager; others say they'll take anything they can get. Acknowledging RCMA is not a cure-all for their troubles, farmers agree it's the only clout they have among themselves to raise milk prices, which have been set by the federal government since the Great Depression.

RCMA now returns about $2.5 million per month in premiums to its 22,000 members in 11 states, but the battle with Farmland is cutting into the returns.

The dispute with Farmland comes at a time when RCMA prices are most needed. Average milk prices in Vermont this year are expected to drop to their lowest point this decade. It's a spiral that, combined with increasing farm costs in 1988, will force more dairy farmers to call it quits, according to farmers and agricultural officials.

Dairy farmers hope RCMA can maintain its New England premium price of $14.42 per hundredweight throughout the spring because farmers' milk prices will soon drop due to the spring flush.

For example, according to a forecast from the Massachusetts co-op Agri-Mark Inc., the Class I milk price in New England will drop to $12.70 per hundredweight by June. Assuming RCMA can maintain its price at $14.42, farmers selling milk in June will garner a $1.72 premium above the federally set minimum price for their Class I milk.

RCMA has a future target of roughly $15 per hundredweight for fluid milk, said Kerr. But whether the group can ever approach that price hinges on the dispute with Farmland.

"It's a war," said Davis of Cabot Creamery. "And it's going to be unfortunate if Farmland prevails."

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Attachment B

August 8, 2006

Nina Mitchell Wells
Secretary of State
Office of the Secretary
PO Box 300
Trenton, NJ 08625-0300

Re: Findings of Fact and Conclusions from the Dairy Hearing Held July 24, 2006

Dear Secretary of State:

Please accept this document as my findings of fact and conclusions as to whether to fix the price of milk in New Jersey in accordance with N.J.S.A. 4:12A-23. Pursuant to that section, I am obligated to file this decision with you within 15 days from the date of the hearing held to set the price of milk. N.J.S.A. 4:12A-23. Such a hearing was held on July 24, 2006.

For the reasons set forth below, please be advised that I have determined insufficient evidence was presented at the hearing to permit me to take action as to this issue at this time. As a result, I intend to hold a second hearing to consider additional factors in establishing a minimum price for the purchase of milk by a New Jersey processor, a New Jersey retailer and by the consumer. In addition, that hearing will also consider evidence as to whether an anti-price gouging regulation is necessary and whether regulations should be promulgated to control the manner in which premium payments are made to New Jersey producers. Finally, the subsequent hearing will seek to elicit information regarding the manner in which hauling charges are assessed to a producer.

I. STATUTORY AUTHORITY

Pursuant to N.J.S.A. 4:12A-19, the Director of Dairy Control is empowered to conduct investigations into "all matters pertaining to the production, distribution, importation, storage, disposal, classification, sale or resale, conditions and terms of sale or resale, [and] costs of production, distribution, sale and resale, processing, [and] sale for manufacture, of milk." The Director is also empowered to promulgate rules, regulations and orders that are necessary to carry out the provisions of the Title 4, Chapter 12A of the New Jersey Statutes. N.J.S.A. 4:12A-20.

Among the many powers of the Director pursuant to Chapter 12A, the Director has the authority to fix the price at which milk is to be purchased or sold in New Jersey. N.J.S.A. 4:12A-22. Prior to fixing such a price, however, the Director is obligated to conduct a hearing in accordance with N.J.S.A. 4:12A-23. Such price-fixing authority

includes the authority to set minimum prices charged to consumers for milk in accordance with the requirements of N.J.S.A. 4:12A-22.1. The authority of the Director does not end at fixing prices; rather, the Director is permitted to "regulate the conditions and terms of sale [of milk], establish and require observance of fair trade practices; supervise, regulate and control the entire milk industry of the State of New Jersey, including the production, importation, classification, processing, transportation, disposal, sale or resale, storage or distribution of milk." N.J.S.A. 4:12A-21. Finally, the Director is authorized to control the conditions of sale, and the terms and credit regulations governing sales of milk between processors, dealers and stores. N.J.S.A. 4:12A-26.

On July 6, 7, and 11, 2006, I received four letters from Gloucester County Board of Agriculture, Salem County Board of Agriculture, Sussex County Co-operative Milk Producers Association, and Sussex County Board of Agriculture requesting that a hearing be held to consider imposition of an over-order premium to address the rising production costs and falling milk prices debilitating the New Jersey producer. (AP-3 to AP-6). Therefore in accordance with my authority in N.J.S.A. 4:12A-22, I held a hearing pursuant to N.J.S.A. 4:12A-23. Public notice was provided in accordance with N.J.S.A. 4:12A-23 and testimony was taken addressing both short-term and long-term measures that could be implemented to stabilize and revitalize the New Jersey milk marketing system.

II. THE NEW JERSEY MILK INDUSTRY

New Jersey's milk industry consists of 115 milk producers, both commercial and institutional farming operations, which produce 1.86 million hundredweight of milk annually. (T1, 12:17-18). Approximately 20 million hundredweight of milk is consumed annually by New Jersey's 8.6 million residents. (T1, 12:19-21). Forty-two years ago, New Jersey was home to over 3,500 milk producers. (AP-62). Now, over 98 percent of New Jersey's milk is produced out-of-state (T1, 15:11-12), and if action is not taken to revitalize New Jersey's dairy industry, soon there will be no locally produced milk available to our residents.

Almost 98 percent of the milk received and processed in New Jersey is done through the State's four processing plants. (T1, 15:8-12 and T1, 143:23-25). Of the milk processed in those plants, 75.9 percent is processed for Class 1 utilization, 20.7 percent is processed for Class 2 utilization. (T1, 144:2-5). Most of New Jersey's milk is marketed through Dairy Marketing Service (DMS) who markets all the raw milk produced by DairyLea, Dairy Farmers America Northeast Council, Land O'Lakes, 10 regional cooperatives in the Northeast and over 2,000 independent producers in the northeast area. (T1, 53:12-19). There are also approximately 9,500 licensed retail establishments selling milk in New Jersey.

III. FINDINGS AND CONCLUSIONS

New Jersey is currently part of the Northeast Federal Milk Marketing Order. 7 CFR 1001.2. This system was established by the federal government to equalize milk payments received by dairy producers. However, the Federal milk marketing order system has failed to adequately protect New Jersey producers. (T1, 99:19-23). The federal market minimum is a weighted figure that takes into consideration the prices for Class I and Class II milk, butterfat, nonfat solids, and protein and provides a somatic cell count adjustment. 7 CFR 1000.50. Unfortunately, it fails to take into consideration the variation in cost of production based on location. (T1, 133:13-16). New Jersey has extremely high costs of living, including high labor prices, and high property taxes. (T1, 51:23-24 and T1, 95:19-24). Moreover, the Federal milk marketing order system forces New Jersey producers to deduct approximately $0.91 per hundredweight from their milk checks to go back in the pool for the benefit of out of state producers. (T1, 144:17-22). Although it sets a minimum floor in which milk may be sold, the floor established is flexible and can result in situations where the federal market minimum is below the cost to produce milk. 7 CFR 1001.60.

A. EXISTING PROGRAMS

Currently dairy producers have many programs available to them that can assist in overcoming market instability. Many of these programs are extremely beneficial to the dairy producer when the producer chooses to take advantage of their availability. However, lack of funding, lack of education and other impediments have resulted in less than successful application of the existing State and Federal Programs. Continuation of education and management programs to assist producers are essential for long-term viability of New Jersey milk producers. (T1, 67:13-17 and T1, 68:13-16 and AP-49). Therefore, a comprehensive approach to revitalizing the dairy industry must consider ways of improving existing programs.

1. Federal Programs

The Milk Income Loss Contract (MILC) is a federal subsidy program that pays farmers a subsidy payment when the price of Class I milk drops below $16.94 per hundredweight. 7 CFR 1430.200 et seq. (T1, 38:22-23 and AP-32 & AP-68). Currently, farmers receive payments in the amount of $0.35 per $1.00 when milk prices dip below $16.94 per hundredweight. 7 CFR 1430.208. For example, if the price of milk were $12.94 per hundredweight, a farmer would receive an MILC payment on $4.00, equal to $1.40 per hundredweight sold at that price. Unfortunately, there is a cap on these payments when the producer produces more than 2.4 million pounds of milk per year. (T1, 38:17-18 and AP-32). This results in extreme hardship for producers who produce more milk that the 2.4 million pound cap. (T1, 38:15-21). Moreover, the availability of this program to the producers is entirely dependent upon federal funding and could be discontinued by congress at any time. (AP-68). Such an action was threatened by the federal government at the end of 2005. (AP-68). Because continuation and reform of this program is beyond the control of the Department, the actions that can be taken by the Department to improve this program are extremely limited.

Commodity Credit Corporation (CCC) payments are also available to producers of commodity crops, such as corn, soybeans, wheat, etc. when market prices dip below certain levels for those commodities. 7 CFR 1400.1 et seq. Producers can also take advantage of federal emergency disaster loans or emergency disaster payments through Farm Service Agency. 7 CFR 1437.1 et seq. and 7 CFR 1479.100 et seq. These loans are typically made available following a disaster, typically weather related, and are designed to help producers recover from losses resulting from a disaster. Although recently the program has offered disaster loans, historically, disaster payments have been available when federal funding is available.

2. State Programs

The Dairy Alliance, which is a coalition involving the Department of Agriculture, NJ Farm Bureau and Rutgers Cooperative Extension, offers several programs that can assist farmers in increasing production and productivity and decreasing costs. (T1, 16:2-5). Business management planning is available to producers that provides planning and advice in five critical areas: production, marketing, finance, legal and environmental, and human resource issues. (T1, 16:6-10 and T1, 78:12-16). This program is designed to be a comprehensive approach to business planning. Although this program is extremely beneficial to producers, lack of funding to operate the program as well as lack of producer interest in participating has stifled this program's success. (T1, 129:7-17). Insufficient evidence was presented in the record to properly discuss and evaluate methods of revitalizing this program. However, going forward, the Department will explore funding options to reinvigorate this program so that producers can take full advantage of it benefits. Should funding become available or a stable funding source be identified, the Department will also explore ways to increase producer participation, such as better education as to the benefits of this program or requiring mandatory participation in order to receive certain types of state aid.

A milk quality program also exists, which assists producers in improving herd health and milk quality in their productions. Increased milk quality typically translates into increased milk prices to the producer. (T1, 78:2-8). Unfortunately, improving milk quality takes time and money and the financial benefits of better milk quality are not seen immediately. (T1, 13-15). However, despite the constraints of these programs, programs that offer direct, one-on-one contact between agricultural experts and the producer are extremely effective. (T1, 67:24-68:3). Participation in the milk quality program could also be tied to a regulatory program monitoring or regulating the payment of premiums for high quality milk. However, producers will be unable to reap the benefits of premiums absent improved or sustained production of high quality milk, which should in turn incentivize producer participation in the milk quality program.

As was the impediment of the Dairy Alliance's business management planning program, the milk quality program also suffers from a lack of funding. (T1, 78:6-23). While many New Jersey dairy producers are already producing high quality milk, all could benefit from participation in the milk quality program not only to learn ways of

improving milk quality, but also to learn ways to improve upon such production. Alternative funding sources need to be identified and better education to the producer needs to occur to ensure that producers realize the benefits that can be attained by participation in this program.

Promotional programs, such as "Jersey Fresh Milk" have also been created to provide producers an opportunity to have value added to their quality milk products. (T1, 16:10-14). Unfortunately the "Jersey Fresh Milk" promotion program has run into some difficulties, such as refusal of processors to bottle "Jersey Fresh" milk because it would compete with the processor's brand of milk. (T1, 37:7-13). A more detailed evaluation of this Program is discussed below.

3. Other Programs

Other services such as the herd management team meetings are available. (T1, 78:9-11 and AP-56). Herd management team meetings bring together several professionals, including financiers, veterinarians, accountants and other experts in the dairy industry to meet with producers one-on-one to create farm-specific programs to decrease costs and increase productivity. (AP-56). Additionally, an agricultural reengineering program is available through Rutgers Cooperative Extension that provides farmers with financial management tools, such as FINPACK to help increase productivity and decrease costs. (T1, 76:23-77:7 and T1, 77:21-78:1 and AP-57 to AP-58). FINPACK is farm management software that provides producers with tools to create balance sheets, cash flow management plans, and long-range plans to ensure financial viability. (T1, 77:22-25). Both of these programs have helped the producers who have participated. (T1, 129:7-12). Again, both of these programs are plagued with lack of funding. (T1, 78:20-23).

B. SHORT TERM OPTIONS

1. Setting Minimum Price for Milk

Obviously the most expeditious way to improve a producer's bottom line is to ensure that the producer receive a milk price that covers all costs to the producer. Setting a minimum price for milk has been found to be an appropriate exercise of state power. United Dairy Farmers Coop. Assoc. v. Milk Control Comm. of the Commonwealth of PA, 335 F.Supp. 1008 (D.Pa. 1971), aff'd. 404 U.S. 930 (1971). The Director of Milk Control is empowered under N.J.S.A. 4:12A-22 to set a minimum price for milk in New Jersey. National Dairy Products Co. v. Milk Control Board of NJ, 8 Abbotts, 491, 133 N.J.L 491 (1945). "In fixing milk prices, the Director must be concerned with three principal elements: whether to fix prices at all; if so, on what basis and to what extent; and what precise figures should be prescribed." Garden State Farms, Inc. v. Mathis, 61 N.J. 406, 428 (1972). However, when setting a minimum price for the sale of milk, there must be sufficient evidence in the record to support the Director's decision; otherwise, the director's decision will be set aside. Garden State Farms v. Hoffman, 46 N.J. 595 (1966).

For the reasons set forth below, I have determined that there is sufficient evidence that a minimum price needs to be set immediately for the protection of the dairy producers because it appears that many of them are currently operating at a loss. Unfortunately, I also find that there is insufficient evidence presented on the record to properly establish a formula for setting this minimum price and additional testimony and evidence needs to be presented in order to ascertain the exact cost per hundredweight for New Jersey producers, as well as costs figures for retailers and processors, and wholesale prices.

The last "over-order premium" or minimum price occurred in1997, and established a premium payment made directly to the producer. 30 N.J.R. 238 and 30 N.J.R. 1037. No corresponding minimum prices, however, were established for the wholesale or retail price of milk. 30 N.J.R. 238 and 30 N.J.R. 1037. Testimony was provided at the hearing claiming that a flat minimum price for producers only, as was done in the past, does not offer sufficient protection to New Jersey producers. (T1, 118:2-7 and T1, 126:15-19). Allegations were made that if the price of raw milk were to increase, New Jersey processors would simply acquire their milk from other sources outside of New Jersey. (T1, 89:8-17 and T1, 90:8-11). Simply setting a minimum price or an over-order premium for producers, although good in theory, may not be in the best interests of the dairy producer. In fact, some testified at the hearing urging the Department not to "take the detrimental path of legislating artificial price mechanisms that raise the cost of milk in New Jersey." (T1, 90:8-11). As was observed at the hearing, "We've gone through some of these [same] things in years past where there have been state-imposed premium programs. It didn't really work very well. It didn't help the dairy farmer, it didn't help the processor, didn't seem like it really did a whole lot of positive things." (T1, 118:2-7).

This is not to say that setting a minimum price is not appropriate in this instance. Rather, if a minimum price is to be set, it must be set throughout the system so that no single sector bears the brunt of the impact. (T1, 146:11-20 and T1, 147:10-16). If the premium program is merely a premium for the producer, and is not carried through the dairy marketing chain, many processors will seek to buy milk out-of-state to avoid paying the higher premium. (T1, 37:18-23 and T1, 89:8-17). Therefore, minimum prices must be set on the price of raw milk, the wholesale price of milk and the retail price of milk.

When setting the minimum price of milk, the director is obligated to consider "the various grades of milk produced, the varying percentages of butter fat, plant volume, seasonal production and other conditions affecting the cost of production, cost of transportation and marketing, and the amount necessary to yield a reasonable return to the producer and to the milk dealer, processor or subdealer." <u>N.J.S.A.</u> 4:12A-22.

Much information was provided at the hearing as to raw milk prices to producers and retail milk prices. (T1, 13:1-23; T1, 24:9-15; T1, 35:10-18; T1, 34:6-35:6; T1, 35:25; T1, 47:17-48:1; T1, 50:11-14; T1, 80:23-81:2; and T1, 155:4-9 and AP-47; AP-340 to AP-365, AP-381 to AP-384). It was undisputed that New Jersey's raw milk prices for

June 2006 equaled $1.07 a gallon, a 25-year low. (T1, 13:23-25). Evidence presented clearly demonstrated the fact that producers were losing drastic amounts of revenue due to the severe decline in prices. One producer explained that he lost $13,547.49 in revenue between the first six months 2005 to the first six months of 2006. Likewise, another producer presented evidence that he grossed $76,578.95 in the first six months of 2006, whereas he grossed approximately $90,126.44 in the first six months of 2005. (T1, 26:13-16). Still another producer explained that his gross receipts declined 9 percent for the first 6 months of 2006 as compared to 2005 receipts and experienced a decline of 18 percent from 2004's gross receipts, resulting in a net loss of $23,500. (T1, 47:17-48:1). Unfortunately, insufficient evidence was presented to establish wholesale prices for milk. Absent this critical piece of information, minimum prices cannot be established for milk sold by processors.

Low milk prices are only one part of this equation. Production costs for producers appear to have increased significantly in the past year. In 1980, when milk prices were approximately the same as they are today, fuel costs to producers averaged about $0.58 to $0.59 per gallon, whereas fuel costs today have soared to $2.30 a gallon for diesel. (T1, 24:15-17 and T1, 50:15-17). Even between 2005 and 2006, fuel and fertilizer costs have jumped drastically. Fuel costs for one producer equaled $18,159.78 in 2005 but rose to $20,903.35 in 2006. (T1, 26:18-21). Broken down on a monthly basis, one producer explained her fuel costs jumped $4,000 per month. (T1, 37:1-2 and AP-18). Even the smaller producer is being hit hard with high fuel costs, as one producer's costs increased from $3,938 in 2005 to $6,216 for the first six months of 2006. (T1, 48:2-3).

Likewise, feed and fertilizer costs rose dramatically from 2005 to 2006. Fertilizer costs for one producer in 2005 were $10,410.98, but he has spent $13,709.63 in fertilizer costs just in the first six months of 2006. (T1, 26:22-25 and AP-12). Another producer indicated that his feed costs jumped 20 percent in the last year. (T1, 48:1-12). NASS, National Agricultural Statistical Service, estimates that fertilizer prices have risen 8.7 percent, agricultural chemical prices have increased 9.9 percent, farm machinery costs have increased 7 percent and fuel prices have risen drastically by 22 percent. (T1, 66:16-20 and AP-48).

Although sufficient information was presented on the record to suggest that production costs have dramatically increased, insufficient evidence was presented to establish the exact cost of production incurred by the producer. One farmer estimated that he was receiving $3.00 to $4.00 per hundredweight below cost for his milk, but failed to provide information on the total cost of production on his farm. (T1, 52:9-11). Another producer estimated that production costs averaged approximately $15.00 per hundredweight for the New Jersey producer, but based those figures off of a study of Maryland dairy farmers rather than New Jersey producer information. (T1, 36:18-23). In fact, only one producer actually stated his costs to produce milk. (T1, 24:7-8). Production cost figures from only one producer are not sufficient evidence on which to calculate a minimum price applicable to all New Jersey producers as there is no way to verify that it is representative of all 115 dairy producers in this State. As was stated by

the Supreme Court in Lampert Dairy Farm, Inc. v. Hoffman, 37 N.J. 598, 605 (1962), "there must be evidence to support the conclusion that the minimums realistically reflect cost factors . . . ." The cost information provided on the record simply does not satisfy this test.

One producer did suggest that the minimum price established be equivalent to the Class 1 price received for milk. (T1, 37:18-23). However, this suggestion fails to adequately consider the costs associated with producing milk, as there is no guarantee that the Class 1 price will cover all production costs. Moreover, the failure of the record to set forth realistic cost figures requires that this matter be left for consideration at the subsequent hearing.

Therefore, a second hearing will be scheduled to obtain more specific information as to the cost of producing milk, costs of processing milk and retail costs for the sale of milk. Likewise, additional testimony and evidence will need to be presented regarding wholesale prices for milk so that a minimum price may be set for all milk purchased in New Jersey, whether from producers, processors, dealers or retailers.

2. Anti-Gouging Regulations

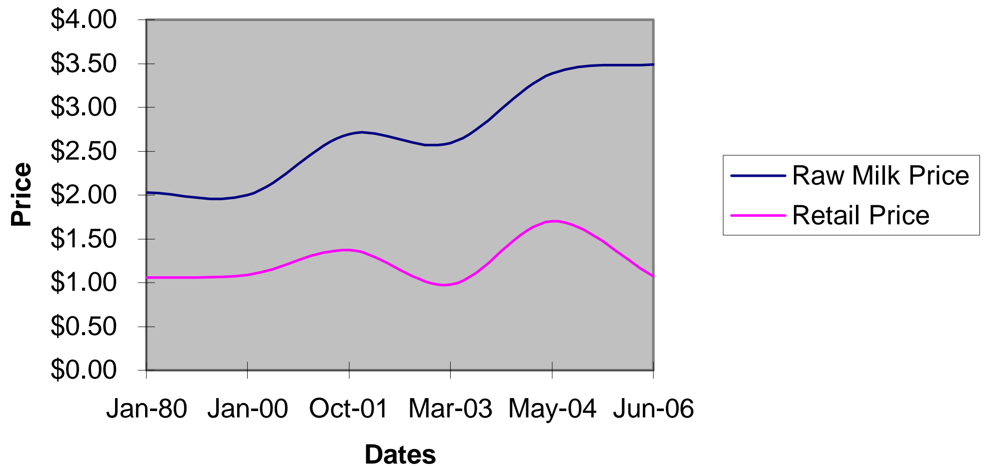
As indicated above, the Director has the authority to "regulate conditions and terms of sale; [and] establish and require observance of fair trade practices." N.J.S.A. 4:12A-21. In Port Murray Dairy Company, 6 N.J. Super 285, (App. Div. 1949), the court found Regulation 15, an anti-price gouging regulation, to be within the statutory scope of powers granted to the Director. Moreover, Abbotts Dairies v. Armstrong, 14 N.J. 319, 329 (1954) determined that N.J.S.A. 4:12A-1 et seq. "must be construed to authorize the Director to set fixed prices which constitute maximum as well as minimum prices."

At the hearing, there were several allegations that certain sectors of the dairy industry were making substantial profits at a time when milk prices to producers were at a 25-year low. Specifically, it was alleged that Dean Foods, who owns a New Jersey processor named Garelick New Jersey, made a net profit in 2005 of $327.5 million and $285.4 million in 2004. (T1, 33:6-9). Allegations were also made regarding the profit margins of Farmland Dairies, another New Jersey processor, claiming, "Farmland's pockets are bulging." (T1, 72:25-73:1). Similarly, it was opined that "Farmland, Mr. Margherio, who is the CEO of Farmland . . . indicated in [an] article that these are the most profitable times in the history of Farmland." (T1, 98:1-6). By contrast, at least one distributor alleged that it had been operating at a deficit for the past five years. (T1, 92:23-93:5). These bare allegations without actual cost information and wholesale price information, is insufficient to determine whether actual price gouging has occurred.

Although clearly the cost of fuel has increased for many processors (T1, 93:9-12), sufficient evidence to determine an accurate cost figure per gallon was unavailable. For example, one processor alleged that his fuel costs increased by $1.00, but no other data as to cost increases or their overall affect on milk processing costs were set forth in testimony. Moreover, one of the exhibits introduced contained extremely detailed

breakdowns of processors' costs per gallon in producing milk. (AP-287 to AP-311). Unfortunately the costs figures established in that document were from data provided for 1993 and 1994 and failed to take into account today's cost increases. (AP-217). No evidence was presented on the record regarding wholesale milk prices paid by retailers. Information on the costs to dealers and retailers were equally absent from the record.

However, statistical information regarding the sale price of milk verses the retail price of milk suggests that there may be price gouging occurring in the dairy industry. Typically, when the price of raw milk increases, the retail price decreases. Likewise, when raw milk prices increased, retail prices decreased. For example, in 1980 consumers paid $2.03 for whole milk (T1, 13:8) and farmers received $1.06. In January 2000 consumer price was $2.00 for whole milk (T1, 13:8-9) and the farmer received $1.09 (T1, 13:10). In October 2001, the consumer price was $2.69 for whole milk (T1, 13:12-13:13) and the farmer price was $1.37 (T1, 13:13-13:14). March 2003's consumer price was $2.59 per gallon for whole milk (T1, 13:15-13:16) while the farmer received $0.98 (T1, 13:16 to 13-17). In May 2004, the consumer paid $3.39 for whole milk (T1, 13:1) while farmers received $1.70 per gallon. Finally, consumers are still paying $3.49 per gallon as of June 2006 (T1, 13:23-24 and T1, 35:25) while farmers are receiving $1.07 for whole milk. These figures are represented in the chart below:



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Additional detailed price figures for 2000 to 2006 were also presented showing the same trends. (AP-382 to AP-384).

As can be seen in the graph above, after May 2004, there is a great divergence in the retail price of milk and the raw milk price. Since today's milk prices do not appear to follow the same statistical path as they have historically followed, the divergence can only be attributable to two factors: either someone in the production chain is experiencing significant increases in profits or the production costs in all sectors of the dairy industry have increased so dramatically that the statistical analysis no longer

applies. (AP-63). Since insufficient cost data was available at the hearing, this question cannot be answered. Moreover, should the Department establish a minimum price for milk, it is possible that the cost to the consumer could rise. Therefore, it may be necessary to establish a maximum sale price to protect the consumers or to create regulations prohibiting price gouging. As a result, a second hearing is necessary to determine the exact cause of the statistical divergence and to ensure that New Jersey consumers are adequately protected from unfair trade practices such as price gouging.

3. Regulating Hauling Costs

Pursuant to N.J.S.A. 4:12A-21, the Director of Milk Control has the authority to regulate the transportation of milk. Costs associated with transporting milk to the processing plant are one of the many cost factors that are increasing and therefore affecting the producer's bottom line. (AP-19). In years past, producers were not charged any hauling costs to transport their milk, as these costs were borne by the processor. (T1, 72:12-14 and T1, 73:24-74:3). Now, hauling is charged directly to the producer. (AP-26). Some producers requested that hauling charges be eliminated altogether. (T1, 73:17-21). However, requiring a processor to assume all hauling charges may put them at a competitive disadvantage over their competitors and could result in the existing processors refusing to haul New Jersey produced milk.

Hauling costs charged to at least one producer rose 19 percent. (T1, 48:8-10). The current system of distributing hauling costs has resulted in New Jersey producers located closest to the processing plant subsidizing hauling costs for the out-of-state producers located much farther away. (T1, 83:17-22). Despite the allegations of unequal or unfair application of hauling charges, no specific information was set forth on the record detailing the exact method in which hauling charges are assessed. Absent such information, it is impossible to determine whether regulation of hauling charges is warranted. Because hauling charges detrimentally impact a producer's bottom line, additional information is needed to determine whether New Jersey producers are bearing an unfair share of the hauling charges properly attributable to other producers. By ensuring that hauling charges are more equitably divided among the milk producers, we can ensure that the producer costs are reduced without affecting the processors' overall ability to recoup their hauling expenses. Such a result could be a win-win for the industry. Therefore, additional testimony and evidence will be elicited at a subsequent hearing to flush out the intricacies of how hauling charges are assessed.

4. No Interest or Low Interest Loans

As has been adduced by the evidence at the hearing, New Jersey producers have experience tremendous losses in income due to the recent low milk prices and high production costs. (T1, 26:13-16; T1, 47:17-48:1; T1, 52:9-11; and T1, 97:5-7). Loan guarantees and no interest or low interest loans can help the producer cover some of their costs of production without the high interest rates or service charges being imposed upon them. (T1, 146:4-10). By providing a producer the opportunity to pay less in interest to repay debts, it thereby reduces the monthly production expense to the producer. Other

states, such as Connecticut and Vermont, have offered low interest loans and loan guarantee programs to their producers to help them stay viable during this crisis. (T1, 38:2-5).

While the Department feels that this program may be beneficial to the producers of this State, there was insufficient time to properly evaluate whether there were funding sources available to offer no-interest or low-interest loans to New Jersey producers. Although one producer indicated that she did not need any additional loans (T1, 38:8-9), some producers may benefit from having additional cash flow available. The Department will therefore continue to explore whether this program could be made available in New Jersey. This evaluation, however, will occur separate and apart from any subsequent hearing.

5. Over-Order Premium

An over-order premium was requested by several producers during the hearing. (T1, 24:1-3, and AP-4 to AP-6 and AP-49). This suggested program differs from the establishment of a minimum pricing program in that rather than having direct payments to the producer, a fee or assessment is charged on various segments of the dairy industry and the money is funneled into a fund that is used to make subsidy payments to New Jersey producers. Several funding sources were identified. For example, it was suggested that the licensing fees for stores be raised from $25 to $35 to fund a grant program for New Jersey producers. (T1, 39:3-10 and T1, 147:1-9). Similarly, an increase in the licensing fees to processors was suggested which would in essence increase the fee by a few pennies per gallon sold. (T1, 101:2-12) Another suggestion involved "taxing" milk $0.05 per gallon or $0.02 to $0.03 per gallon and refunding the money collected back to the producer. (T1, 84:6-13 and T1, 126:22-127:4). Charging an "entrance fee" for those selling milk in this state was also suggested, which would be used to fund a program that would act as a subsidy payment to producers similar to the MILC program. (T1, 98:23-99:1).

However, an over-order premium program such as the ones suggested is ill advised. As indicated above, if special assessments were imposed upon New Jersey processors, the State would risk loosing this invaluable sector of New Jersey's dairy industry. (T1, 89:8-17; T1, 90:8-11; T1, 118:2-7 and T1, 126:15-19). Moreover, it is extremely unlikely that the programs suggested above would withstand a court challenge. A similar program that required Massachusetts's dealers to make monthly premium payments into a "Massachusetts Dairy Equalization Fund" was held invalid by the United States Supreme Court in 1994. West Lynn Creamery v. Healy, 512 U.S. 186 (1994). Therefore, I decline to consider these options as viable solutions to the diary industry's concerns.

6. Improving Enforcement of Existing Laws

Allegations were also made at the hearing that the Department has been "too lax" on enforcing the existing laws regarding the purchase and sale of milk. (T1, 105:11-12).

"I think the regulatory system in the State has to be reinstated to what it used to be in the '50s where it was hard nose, hard core regulatory. When somebody makes a violation, everybody that's involved in the breaking of the regulations should be dragged in." (T1, 106:10-15).

While the Department has promulgated several regulations which govern various aspects of the dairy industry, (N.J.A.C. 2:48, 2:50, and 2:52 to 2:56), there was insufficient evidence presented as to the Department's approach to enforcement of its existing regulations. However, since this concern was raised, it warrants consideration at the subsequent hearing to determine if enforcement of existing regulations has failed to adequately protect the interests of the diary industry. Therefore, this issue will be discussed at that time.

C. LONG TERM

1. Regulating Premiums Paid to Producers

In addition to market price, an additional mechanism available to increase the price producers receive for milk is through the use of premiums. A premium is an additional payment received by a producer that acts as an incentive to perform at a certain level. Premiums are generally offered to producers with higher quality milk. For example, evidence adduced at the hearing indicated that Dairylea offered at least three premium programs to their producers: a market adjustment premium, a volume premium and a quality premium. (AP-23). However, evidence has also indicated that these premiums have undergone several changes and are likely to undergo additional changes in the future. (AP21). Producers sometimes receive premiums for lowering their somatic cell count and improving the quality of milk. (T1, 129:9-12). In addition, premiums are sometimes available to producers who produce rBST-free milk. (T1, 127:23-24 and AP-42). Many consumers are now demanding rBST free milk. (T1, 75:12-13). This often correlates into higher prices for that quality milk.

Part of the authority of the Director of Milk Control includes regulating the conditions and terms of sale for milk. N.J.S.A. 4:12A-21. Premium payments made as part of the sale of milk would be considered part of the terms and conditions of sale. Allegations were made by producers at the hearing that they have seen drastic cuts in their premiums. As one producer explained, "We sell our milk to DMS. They took over the Farmland production late last summer. . . Since that time, we've seen our premiums cut and our hauling increase." (T1, 49:6-11). Another producer testified that his premiums have been cut 15 percent. (T1, 47:23-24). There were even allegations made by producers that premium payments were not being forwarded on to the diary producer. (T1, 75:12-17 and AP-62).

Obviously, no evidence was presented by any processor regarding his payment or non-payment of premiums to producers. Likewise, the financial records of such processors and DMS were not entered into evidence. In fact, other than the allegations made on record, there was no evidence regarding premium payments presented on the

record. However, the allegations made by the producers at the hearing are serious and should be evaluated at the subsequent hearing. It may be necessary for the Department to promulgate rules that regulate how premiums are paid to producers. As a result, additional evidence and testimony will be required at the subsequent hearing to properly evaluate this issue.

2. Industry Task Force or Group meetings

Communication is a critical component of any good relationship, whether personal or professional. When communication breaks down, the relationship fails to function properly. Lack of communication between the various industry sectors has resulted in lack of understanding of the issues affecting the dairy industry and an inability to resolve them. (T1, 115:21-4 and T1, 117:8-13). Several individuals who testified at the hearing indicated that group meetings might be beneficial. (T1, 32:18-20; T1, 57:19-58:1; T1, 117:8-13 and T1, 130:20-25). As one witness explained, "I know as a processor we don't do very well if we don't have a supply of milk coming into a plant. As a dairy farmer I don't think that you do very well if you don't have somebody that's buying your milk. And the same thing happens for the next stage, which is getting the milk to the marketplace and selling it. So all of those components, to me seem to work together. . . ***The fact that we're sitting here at a hearing, to me, says that our industry has failed***." (T1, 115:25-116:11) (emphasis added).

While the Department of Agriculture stands ready to assist in any way possible, many of the issues raised in the hearing can and should be addressed through industry task force groups or routine industry meetings. Representatives of the Department are willing to participate in these industry meetings, but as has been seen in the past, task forces and committees have not been very successful when used exclusively to resolve problems. (T1, 119:8-11). At this critical stage in the game, establishing a task force to resolve this issue, without more, will not provide New Jersey's dairy farmers with the protection and price stability that is desperately needed in their existing financial crises. However, the Department strongly urges the various industry sectors to routinely meet to discuss the various issues affecting the dairy industry in New Jersey. Regular monthly or quarterly meetings will help avoid the necessity for Department intervention in the future. Should the industry need assistance in facilitating these meetings, the Department would be happy to assist. Since there seemed to be sufficient industry interest in establishing industry meeting, now is the time to gather together to reach a workable solution industry wide.

3. Media Campaign to Raise Consumer Awareness and Better Promotion of Milk Industry

Another interesting suggesting put forth at the hearing was the establishment of a media campaign to raise consumer awareness to the plight of the dairy producer in New Jersey. (T1, 39:14-16 and T1, 137:5-12). Significant consideration was given to this suggestion but such a media campaign, by itself, does not appear to be in the best interest of the producers. One of the big impediments to this suggestion is that there is very little New Jersey produced milk available to the consumer. Over 98 percent of the milk consumed in this State is produced elsewhere. (T1, 12:17-23). Should we choose to

spend the money to embark on a media campaign to encourage consumers to buy local first, it is unlikely that they would be able to easily locate local milk.

Rather, money would be better spent tying a media campaign to a promotional program such as “Jersey Fresh Milk” and working on ways to increase consumer demand for locally produced products. Promotional programs, such as “Jersey Fresh Milk” have been created to provide producers an opportunity to have value added to their quality milk products. (T1, 16:10-14). Unfortunately the “Jersey Fresh Milk” promotion program has run into some difficulties, such as refusal of processors to bottle “Jersey Fresh” milk because it would compete with the processor’s brand of milk. (T1, 37:7-13). This may be something that can be rectified through programs to incentivize the processors to use the “Jersey Fresh” label. Sussex County Milk Producers are working towards promoting the “Jersey Fresh Milk.” (T1, 75:8-10). Much work still needs to be done to introduce the product into the market and to increase both consumer awareness and demand for high quality “Jersey Fresh Milk.” The Department will continue to explore ways to increase market opportunities and to expand promotion of New Jersey produced milk. This topic, however, is better left addressed through industry task forces or group meetings as addressed above. Such a discussion should occur separate and apart from any subsequent hearing.

Clearly, the issues that generated the hearing on July 24, 2006 and those that arose therefrom are complex and will require that the Department have all the information necessary to ensure that the actions it takes will result in the best possible outcome for the overall health of the dairy industry in New Jersey. Since it is imperative that our ultimate decision be based only on what is in the hearing record, we must take pains to have all such information entered into that record. My office will publish public notice setting forth the date, time and location of the subsequent hearing in the near future.

Respectfully Submitted,

Alfred Murray, Director
Division of Marketing and Development