USDA
OALJ/OHC
11: 48
RECEIVED

UNITED STATES DEPARTMENT OF AGRICULTURE
Agricultural Marketing Service

Milk in the Upper Midwest Marketing Area 7 C.F.R Part 1030	)))	Dkt AO 361-A39 DA 04-03 Victor W. Palmer, ALJ, presiding
Milk in the Central Marketing Area 7 C.F.R Part 1032	)))	Dkt AO 313-A48 DA 04-06 Marc R. Hillson, Chief ALJ, presiding
Milk in the Mideast Marketing Area 7 C.F.R Part 1033	)))	Dkt AO 166-A72 DA 05-01 Peter M. Davenport, ALJ, presiding

TO: U.S. Secretary of Agriculture, Administrator AMS, Deputy Administrator Dairy Programs AMS, and Presiding Administrative Law Judges

REQUEST FOR SUPPLEMENTATION OF THE PUBLIC RECORD OF PROCEEDINGS BY DISCLOSURE OF *EX PARTE* COMMUNICATIONS (5 U.S.C. §557(d) and 7 C.F.R. §900.16)

This Request is made on behalf of producers, handlers and other persons ("requestors")[1] interested in federal milk order hearing proceedings pending before USDA on amendments to federal milk orders for the Upper Midwest, Central and Mideast Marketing Orders, 7 C.F.R. Parts 1030, 1032, and 1033. The Request

[1] This request is made on behalf of parties interested in one or more of pending proceedings for rule amendments in the Upper Midwest, Central and Mideast milk marketing orders: Associated Milk Producers, Inc., Bongards' Creameries, Ellsworth Cooperative Creamery, Family Dairies USA, First District Association, Davisco Foods, Valley Queen Cheese Company, Wisconsin Cheese Makers Association, Family Dairies USA, Central Equity Milk Cooperative, Associated Milk Producers, Inc., Land O'Lakes, Inc., First District Association, Wells Dairy, Milnot Holding Company, National All-Jersey, White Eagle Cooperative Federation, Superior Dairy, Inc., United Dairy, Inc., Family Dairies USA, Dairy Support, Inc, Guggisberg Cheese, and Brewster Cheese.

seeks an initial remedy for *ex parte* communications to USDA officials, by DFA and its affiliates, by searching for and placing "on the public record" a copy of all written *ex parte* communications, and memoranda stating the substance of all oral *ex parte* communications, as required by 5 U.S.C. §557(d)(1)(C) and by 7 C.F.R. §900.16(c).

This Request is precipitated by facts that came to the attention of undersigned counsel on or about March 28, 2005. At that time, counsel received a copy of an audio CD containing a speech given on October 12, 2004, by Gary Hanman, President and CEO of Dairy Farmers of America (DFA) to the 97th Annual Meeting of Dairylea Cooperative in Syracuse, New York.[2] In attendance as a guest at the Dairylea Annual Meeting was Dana Coale, who had been appointed in early September 2004 as Deputy Administrator, Agricultural Marketing Services, Dairy Programs.

Pending before Dairy Programs at the time of the Dairylea Annual Meeting were formal rulemaking hearings for amendments to the Upper Midwest Milk Marketing Order (hearing held August 16-19 in Minneapolis, Minnesota) and the Central Milk Marketing Order (hearing notice issued September 17, 2004). These hearings were held to consider proposals advanced by DFA and others to make federal milk order pool participation for dairy farmers more restrictive and to address "negative PPDs" and depooling behavior resulting from negative PPDs.

Unfortunately, Mr. Hanman could apparently not resist the impulse to make a pitch to the captive audience, including the Deputy Administrator, concerning the merits of formal milk order hearing issues then pending before Dairy Programs,

---

[2] Since our receipt of the audio CD, the contents of Mr. Hanman's October 2004 remarks have been transcribed by a professional court reporter. The transcription is attached.

Agricultural Marketing Service. Some of Mr. Hanman's remarks were made directly to Deputy Administrator Coale as the "new boss" of Dairy Programs.

Mr. Hanman speech to the Deputy Administrator and others gathered at the Dairylea Annual Meeting addressed, among other things, the following facts and issues relevant to pending hearings:

1. DFA's participation and role in milk marketing agencies in common and in milk marketing federations (Speech, Tr. 8-10);
2. DFA's visual aid display of "deficiencies in the program" (Speech, Tr. 11-12);
3. DFA's views on the desirability of for expedited rulemaking (Speech, Tr. 12);
4. DFA's views on the desirability of tighter, more restrictive, pooling provisions (Speech, Tr. 12); and
5. Negative PPDs and DFA's cash cheese trading activities on the Chicago Mercantile Exchange (Speech, Tr. 13-17).

Included with Mr. Hanman's presentation were visual aids, charts and graphs, to which reference was made in his speech, but of which undersigned counsel does not have copies. The transcript of the meeting made available to us also does not reveal any statements that may have been made by other attendees to the Deputy Administrator or to other Dairy Programs personnel in attendance, if any, in the course of presentations by speakers or in the course of social gatherings and meals.

Mr. Hanman's pitch to the Deputy Administrator at the Dairylea Annual Meeting clearly constitutes the kind of *ex parte* communication to which 5 U.S.C. §557(d) and 7 C.F.R. §900.16 are directed. The communications:

(1) were made by "interested person outside the agency,"
(2) were made to an agency employee "reasonably be expected to be involved in the decisional process of the proceeding,"
(3) were "relevant to the merits of the proceeding,"
(4) were *"ex parte"* within the meaning of 5 U.S.C. §551(14) and 7 C.F.R. §16 (e); and

(5) were made after the prohibition against ex parte communications had been triggered, as provided in 5 U.S.C. §557(d)(1)(E) and set forth in the hearing notices.

While we deplore Mr. Hanman's efforts to lobby the Deputy Administrator on hearing issues then before the agency for decision-making, we also recognize that it would be contrary to the public interest for government administrators to isolate themselves from the public to avoid all possibility of *ex parte* communications, both innocent and egregious. The EPA General Counsel has observed:

> It is probably impossible to prevent entirely the occurrence of improper ex parte communications. In a discussion of general matters between industry representatives and the Administrator, for instance, the conversation may inadvertently move to a matter which is involved in an adjudication. The Administrator must deal with a wide variety of topics, most of which are not covered by the ex parte rules, and should not feel constrained to avoid discussions with persons who are regulated by EPA merely because those persons also may be involved in some formal adjudication.[3]

It is neither uncommon nor improper for Market Administrator personnel and others in Dairy Programs to attend meetings of cooperative associations and conferences on dairy issues. Such attendance is consistent with their regulatory responsibilities to the dairy industry. However, it is also not unlikely, at such meetings and conferences, that the merits of hearing issues pending before USDA will be discussed as part of the program agenda or in social gatherings. For example, DFA's recent annual meeting in Kansas City included discussion of pending federal milk order hearing issues. Likewise, February's Southern Dairy Conference in Atlanta included Federal Milk Order hearing issues on the agenda

---

[3] Clean Air Act enforcement policy documents, Dec 10, 1981, memorandum from Robert M. Perry, General Counsel, to John E. Daniel, Chief of Staff, Office of Administrator, EPA. http://envinfo.com/caain/enforcement/caad49.html ("EPA ex parte memorandum").

(see http://www.ces.uga.edu/Agriculture/agecon/workshops/dcon2005.htm), and was attended by a number of USDA Dairy Programs personnel and representatives for interested parties, including Dean Foods[4], DFA, and others. These later events, if there were *ex parte* communications to or from interested parties, may also require supplementation of the record for the Mideast hearing, notice of which was issued on Feb. 11. The United States Court of Appeals for the District of Columbia Circuit recently acknowledged that while agency officials may need to meet with members of the regulated industry in order to properly perform their functions, an agency "wisely" places in the public record a copy or summary of *ex parte* communications even if there is just a "chance that the industry representatives were attempting subtly and indirectly to influence the outcome of [the] proceeding." *Electric Power Supply Ass'n v. FERC*, 391 F3rd 1255, 12__ (DC Cir., Dec 10, 2004), *citing Louisiana Ass'n of Independent Producers and Royalty Owners v. FERC*, 958 F.2d 1101, 1112 (D.C. Cir. 1992). This process helps preserve the integrity of, and public confidence in, the agency decision-making process, as intended by Congress in the 1976 "Government in the Sunshine Act," P.L. No. 94-409.

The APA and USDA Rules of Practice require that when an *ex parte* communication occurs, the communication be placed on the record for other interested parties to review. 5 U.S.C. §557(d)(1)(C); 7 C.F.R. §900.16(c). This neutralizes the ex parte nature of a contact, and allows other parties to respond as

---

4 The Southern Dairy Conference on February 15 included a morning presentation by the Deputy Administrator entitled "Where are Federal Orders Headed?" and an afternoon presentation by Ernest Yates, Dean Foods Company, entitled "Regional Competitiveness: A Processor Perspective." Mr. Yate's was one of the few presentations concerning which no material is reproduced on the SDC website. Inter-regional competitiveness in a federal milk order context, however, was discussed by other speakers (e.g., de Vries, "Federal order pooling strategies to protect local milk production") and was one of the arguments advanced by DFA for its proposals in hearings for the Central and Mideast marketing orders.

they may deem necessary, including consideration of remedies provided in 5 U.S.C. §556(d). As further explained by the EPA General Counsel in the EPA ex parte memorandum:

> The principal curative measure, once an improper ex parte communication has occurred and has been recognized as such, is to make the content and circumstances of the communication a part of the official record of the proceeding and afford the parties a chance to respond on the record. (If the communication was oral, a written memorandum of it must be prepared.) The written communication (or the memorandum summarizing the oral communication) must be forwarded to the Official of the Hearing Clerk, A-110, with a request that copies of it be furnished to all parties. This procedure is designed to nullify the "secret" nature of the communication and thereby preserve the fairness and integrity of the decision-making process.

This procedure has not, unfortunately, been followed by USDA after receipt of *ex parte* communications on pending milk hearing matters. This oversight must now be corrected. Although some delay in decision-making may ensue, responsibility for such delay lies squarely with DFA for not previously bringing to the attention of the record the need to neutralize the effect of its own *ex parte* overtures directed at USDA decision-makers.

Accordingly, we specifically request the Secretary, the Administrator, and Dairy Programs personnel who "may reasonably be expected to be involved in the decisional process of the proceeding"[5] to review all records that may disclose *ex parte* contacts with interested parties from the time a Notice of Hearing was issued for the Upper Midwest Order hearing (June 16, 2004), including, but not limited to: (1) appointment calendars, (2) schedules of meetings and conferences attended,

---

[5] 5 U.S.C. §557. Such personnel include, at a minimum, those identified in the hearing notices as subject to the *ex parte* rules: "Employees in the ... Office of the Secretary of Agriculture; Office of the Administrator, Agricultural Marketing Service; Office of the General Counsel; Dairy Programs, Agricultural Marketing Service (Washington Office) and the Office of the Market Administrator."

(3) correspondence, (4) phone messages and logs, and (5) travel schedules. If communications relating to the merits are located, or are recalled by personnel receiving oral communications, the documents or summary of oral communication must be placed in the public record of the proceeding(s) to which the communications are relevant. Upon placing such material in the public record, notice should be given to all known interested parties to allow an appropriate response, and consideration of additional remedial measures.

Respectfully submitted,

April 6, 2005

John H. Vetne

John H. Vetne
103 State St.
Newburyport, Ma 01950
978-465-8987
john.vetne@verizon.net

Attorney for Requestors

DFA Yesterday, Today and Tomorrow
Presentation by Gary Hanman
Dairylea Cooperative Annual Meeting
October 12, 2004

MR. GARY HANMAN: Thank you, Clyde. I don't know what publication he's been reading but there's some I'll send you that you didn't read, if you are trying to look at, certainly, my pedigree. When Greg and Rick asked me to come in and give a presentation to you here today at your 97th annual meeting, what they thought might be of interest to you would be to give a little thought about DFA yesterday, what we looked at at that time when we put it together, where we are today, and then what we see down the road as we look into tomorrow. And so the topic they assigned me to cover this afternoon was DFA yesterday, today and tomorrow. Yesterday and today are a lot easier to cover obviously than tomorrow, but let me start with that and see if we can get through this. And hopefully as I go through this, if you have questions you will write them down on either the DFA or Dairylea scratch pads you picked up.

As you know we came together, DFA came together on January 1 of 1998, and at that time there were several things that were bugging the people that put DFA together. I might add that the leadership that put DFA together took almost a full year, the year of 1997, to design it because we had to totally redesign a new dairy marketing cooperative. It was the first one that anybody had ever put together on a national scale. Up to that time we've had local cooperatives that had been merged into regional cooperatives, but nobody had put one together coast to coast on a national scale. And there were several things that were bothering our leaders at that time, and we want to cover some of those. Concentration. The end of price supports and maybe even Federal milk orders which meant that those two basic government programs that had supported us through the years were possibly going to be eliminated. And then the whole issue of trade onshore and offshore and the issue of trade barriers. And so they were looking at how do we deal with these issues, issues such as purer and purer numbers of dairy farmers when you think in terms of concentration. The best data I think for the number of dairy farmers come from the Farm Bureau and they say now we have less than 70,000 commercial dairy farmers in the United States. Not dairy farmers with milk cows, but dairy farmers, farmers who have cows that they milk on a commercial basis for an income stream. And so when you think in terms of what we and Clyde and Rick are dealing with and others, that all sugared-down group is very small compared to what we used to think about when we look at census data and we think there's a half a million or more dairymen in the country. We don't have that many commercial dairymen. So when we think about the politics and government relations, how much are 75,000 dairy farmers and their families, how much are they entitled to. Not only had concentration been occurring at the farm, but the markets that we were facing continued to shrink, and the biggest shrinkage was occurring in the liquid milk side of our business.

The green bars that you see there, each one of those are ten years apart. Those are the number of plants that we had in 1975, '85, '95 and 2002. And so we have seen a very rapid concentration of the market that we were serving, not so much on the manufacture side, cheese plants, the butter powder plants, those that are making products that have extended shelf life. But all of those are continuing to concentrate, and that concentration was occurring because people to whom they sold milk and dairy products were also getting together, getting bigger, covering more geography. You can see here the major retailers how they have changed from '97, that's when DFA started doing the planning to put our cooperatives together, and where they were last year and you can see the percentage growth. I would estimate that these six, five retailers sell about close to 40 percent of the retail business. So our formulators, our designers, our organizers were looking at this concentration at the retail level in the market where they sell their milk and then the demise of the number of farmers geographically dispersed which led them to a conclusion that we need a cooperative that reaches shore to shore, border to border, so that we can deal with this concentration.

They looked at the possible end to the price support program and the end of the Federal milk marketing order program because in 1996 when that Freedom to Farm Act was passed Congress made a very significant decision relative to how they were going to maintain income to rural America. They were going to do it in the form of direct payments, not in the form of prices of things you as farmers sold. That was a very major change in the way government was to address rural America's economic well being. And that probably more than anything was what put our group at least on their toes to think that if we are going to direct payments, do we need federal milk orders, do we need price support, how about import and export assistance. As Ed said this morning, we saw the price support over time move from a percent of parity to a specific hundredweight number and then down to 990 which really was a truly low economic safety net but not a market maker. And then with that, as Ed said this morning, we have seen tremendous increases in price volatility because when you have a perishable agricultural commodity like milk and you have all changes in demand or supply you get wild and wide price fluctuations. And so with economic price support low and with that variation above that level, we had wild price fluctuations to deal with.

So how did we go about looking at some of these trade barrier eliminations, what was at stake with that. Well, the budget that was put together said in six years we are going to do away with GAPP and we were going to have NAFTA, and the whole trade trend in international markets was one of opening up markets, eliminating trade barriers. And these domestic markets look like we are going to be a market of choice for those around the world. Clyde mentioned to you in his address this morning that we escaped the bullet in the Australian free trade, put that in quotes, "free trade" agreement, in that it is not a, quote, free trade agreement, and that we do have restrictions, limitations, quotas on dairy products that come in, but over time those volumes, those volume limitations, increase on a percentage basis working towards open and free competition, long term. Long term. Our organizers felt like our markets were going to be open. Maybe not totally open, but much more open than they have seen in the past.

In the past our domestic dairy policy had been one of building a wall around the United States, tailoring domestic supply to our domestic demand and not aiming to do any export business, but at the same time not allowing any outside intervention, outside product to come in. And what would this change in government attitude, the '96 farm bill. What our organizers saw was that this wall was going to come down one brick at a time over time, and that we had to get ourselves in a position where we could do more things ourselves and rely less and less on government assistance and less and less on government protection. Imports from lower cost countries were a threat. You will hear from Jay Vogel this afternoon, not that he's a threat, but the dairymen in his country produce milk all on grass. And the products that are made from their milk have a very low input cost because of that relatively inexpensive feed source, and I would guess their cost of milk to a manufacture plant would be half of what our cost would be. So if we are going to have free and open markets, and if we are the market of choice, are we looking at and do we have to deal with and be competitive with seven dollar milk. That's not what we are talking about. That's not what we need to plan for. We need to look at how do we stack up in the world as far as cost of production, and then can we compete in a different world environment. And I think as our planners put DFA together that was the future that they saw, and that we've got to learn how to not only compete at home, but we've also got to learn how to be an exporter and a participant in the world market ourselves.

Where is DFA today. What are we doing today in order to fulfill the mission, the vision the DFA leaders had at that time. You already heard Clyde and Rick talk about how we have all come together to be one when we go to the marketplace. We recognize, I think all of us recognize that it is going to be impossible to get all dairy farmers in the United States into one single marketing organization. If there is not an alternative, history tells me, and I've been at it for 42 years, farmers will create an alternative at the farm. Farmers will have a choice at the farm barn yard gate. And that's not where it is important that we be together. Where it is important that we be together is when that milk arrives or starts toward a market or when products made from your milk starts to compete in the marketplace. And in order to have the maximum effect on price, to do the best job in the marketplace, the more of that milk that we can collectively market together the better off we will be. And so you can see how we have changed DFA's approach to representation and marketing.

Our first recognition I think was with Dairylea and St. Albans when we invited them, we asked them would they consider becoming a member of DFA for marketing purposes to where we could go hand in hand to market together. Not to merge. Be separate in the country, but be together when we went to town. Then we had an option, an opportunity to take more market responsibility for the dairy farmers who were selling their milk, proprietary handlers, not through cooperatives but as what we would call nonmembers. And we organized a system whereby we could represent those farmers in the marketplace where it counted for a price and terms of sale were decided we needed to be one. And so we created DMS, and we are very proud of that and we need to give Rick and Greg and Clyde a lot of credit and our Northeast council and Harold and Ralph and Leon for putting this altogether and keeping it altogether. That was no small matter. Within a period of 90 days they reached out and assumed market supply responsibility for in excess of 3,000 individual dairy farms, picking up the milk, to dispatch the milk, to move that milk to market, to bill it, to price it, and to pay the member. And we did that. With a few hitches, but we did that all within a very short period of time, and you can thank Rick for doing that.

Then we also created what we call common marketing agencies. Under the Capper-Volstead Act it allows farmers not only to come together as cooperatives into cooperatives, but also lets those cooperatives create what the Act calls agencies in common, which means that farmers get together and market through cooperatives. They can ask those cooperatives to do things together without being in violation of any trust laws. The Capper-Volstead exemptions lets us do that, create agencies in common. We now call them common marketing agencies. What you see on the map are common marketing agencies that we are a part of that markets milk collectively with multiple cooperatives being a part of that agency.

Some of these agencies are fairly primitive or basic in that all we do, and that's significant, is we meet, we have a board meeting, we all assess the supply and demand for milk in that large bracket area, and we decide collectively what we should charge for milk for the next period of time, whether it is a month or a quarter or whatever, and then we go home and charge it ourselves. We do what we say we will do in that agency.

There are other agencies that are much more formal and tough and complete and what you might call comprehensive, such as the one in the Southwest or the one in the Southeast. In that case, those cooperatives set down, they agree on a price, they agree on what costs to supply that market they are going to share, and in fact they've agreed they are to share them all. Whether it is going outside the market and bringing in supplemental milk and if that cost money, share that cost. If it means getting rid of surplus within that area, milk that is produced that we can't sell locally, those costs are also shared in that agency. They have also harmonized the producer program, what their members, our members, their members receive in the country relative to all types of producer programs so that we are giving the right signals to members in the country to produce the kind of milk, the volume of milk, the quality of milk, the hauling situation so that we are all the same.

And then they've taken another step just recently. And you probably have read in the Dairy Press we are building a very large cheese plant outside -- five miles outside of Clovis, New Mexico, in partnership with an Irish cooperative, and as a result of that decision Glanbia and the dairy farmer had to each raise $30 million in equity capital to build this plant, and that agency in the Southwest is raising those dollars for that equity base from that super pool program in the Southwest. So they really have taken a larger step in pricing and pooling and sharing costs and distributing dollars and now in equity generation. But what we see on this map are all types of agencies. They all work. Some are more comprehensive than others and some of them might work better than others.

Federal order reform, we kept Federal orders when the law was passed, if you remember, but we still have some problems as we look today. Dana Coale is here as Dwight has indicated. She is the new boss of Federal milk marketing orders. We are glad to have her. And what I've shown on the screen as deficiencies in the program are not her fault, but they are something she and us have to solve. It takes too long for us to have a hearing, to get a hearing in the first place, build a record, and then get the results of that record into place. We need some way to help her make that decision sooner. We think in our case that we have too much participation in some of these fluid pools from milk sources that do not intend to satisfy that market demand. They are not in there to sell milk for the fluid market, which is what the Federal orders are designed to price, but they are in there really to just siphon some milk out of the pool. And so in our case and I think in DMS' case, our goal is to tighten those pools and ask that if you participate in the pool you've got to perform.

We have a major problem with what we call producer handlers. You may call it producer distributors. As these dairy farmers have gotten larger, they have looked at selling their milk off of the farm in gallon jugs or half gallon jugs instead of in 5600-gallon tankers, and they have gone to some major supermarkets and have cut some deals on gallons and half gallons of milk. And as a result of that, Federal milk orders do not price their sales. They are exempt. When the Federal orders were passed in the early or the late '30s, when we got the authority for

Federal orders, there were a lot of small farms that were selling milk out the back door of their milk house and they were excluded. Producer distributors, producer handlers were excluded from regulations under order, and since that time we have not been able to cause regulations to apply. And so now we have a lot -- they are like a Dean Foods who has to comply with an order in a classified system of pricing. It means that his milk that he puts in a bottle he gets class one cost for that, and if his competitor is a producer handler, a dairy farmer, who is looking at a less of a return his cost might be less for his milk in a jug, in a gallon jug, than Dean. So we have to be -- as an industry, we have to help Dana and the Federal milk order program make regulations totally applicable, whether producer distributors or whether they are regulated handlers like Dean. If we don't, and if we can't get that done, and that will take new legislation, the classified system of pricing that we've known will go away.

And then we have to deal with negative EPDs. That is the most difficult Federal order feature that you have ever asked us to explain. And I'm not sure that I can do an adequate job in doing that. How in the world can you sell your milk in a month in a market and then wind up getting a bill for it. We have to sit down with Dana and work on how we eliminate under the orders negative EPDs without, without giving up the value that we got out of the marketplace for things that we made from that milk. We think it can be done. Some of our problems.

DFA, I think I have told you before, believes in being a market maker. We believe it is not only running businesses for profits and running businesses for market access, but if possible using those businesses for price enhancement to you and your milk check. Each year prior to our -- the start of our fiscal year, which is January to December, we sit down with all of our manufacturing plants and we total up what we think we will make for the next year, just like the people in New Zealand do. And we, by design, plan to make, to manufacture less American style cheese than we sell, so we will be a buyer of cheese. To be a buyer of cheese we think that puts us in a position to put upward pressure on price, assuming that our company can stay with it, such as our Gordon cheese company. And so this last year our plan was to be 400 loads of cheese deficit and to buy some of that cheese on the CME. Chicago Merchantile Exchange is the tide that moves all hopes up or down. As that market moves, since that market is the basis on which all people sell cheese, if you can have a positive influence on that market, you can have a positive influence on that price.

And what I've got here on this map is a very busy chart, but across the bottom of it are times from January 5 to September 27. Up the left axis of this chart are numbers that represent the number of loads of cheese that were purchased on that day, 45,000 pounds, 40-pound blocks of cheddar cheese. On the right hand axis of this graph are dollars per pound for a block, 40-pound block of cheddar cheese. The red line through the middle is the price that occurred that day on the CME. And the spikes at the bottom are -- indicate whether DFA was a buyer or somebody else was a buyer. So you can see when we went into this February 2 to about the 26th of April we were not a buyer. We were not in the market. We were not in the CME. We were not involved. We did not put cheese to $2.20 a pound which is the peak that you see of that red line that occurred there in April, the middle of April. The market started to collapse. That company that moved that market to 2.20 we think were Schreiber Foods. Apparently they had missed their guesses on sales and inventory, so they were in the market looking for cheese to satisfy their customer needs with. And as that market started to fall we interceded some. You can see at the first level of $2.00 we made a stand and backed off. We did make a long significant stand at 1.80 a block. And you will note all along the bottom the big spikes each day, we were the main buyer of cheese on the CME trying to make a statement to the trade that we thought 1.80 was about the right price for 40-pound blocks of cheddar cheese. And notice on one day, about the 7th of June, we, DFA, bought 52 loads of cheese on that market that day, a record number of transaction. After we had bought the cheese that we needed for our market, for our customers, for our demand, we backed out, and when we did the market you can see it fell to about 1.36. What we are trying to show with this gray area in the middle is what effect we had on milk prices as a result of that. I would also call your attention to our activity since about the 16th of August when that market fell and then recovered some, and our sales improved. We needed about another 100 loads of cheese. We were back in the market holding that market roughly at 1.55. But our guys have made some estimates of what that has meant to you and to DFA members based on those months and based on the difference between $1.80 cheese and $1.36

cheese, CME. Our estimate is that that action, our planning and our ability to be a market maker, our ability to buy cheese on the exchange for our customers put $1.3 billion in the dairy farmers' pockets, and to the DFA members that was $278 million, our estimate of that activity. Our ability to be in the cheese business, to be a market maker, and then to fulfill our needs in the marketplace is what caused, what led to that price enhancement. This is the market since we stepped out. We quit buying on October the 4th, and you can see that as a result of DFA not being there, that market adjusted very significantly. That was lately. Incidentally, it did go up today, 40-pound blocks are up two, I believe, two and three-quarters today.

The question is where will this market be, is 1.35, 1.36 the right level. I don't know. You can see the CWT trigger points 1.40 for 40-pound blocks of cheddar cheese and I would guess that we have seen the peak for this year at least for 40-pound blocks, and I think you will see CWT kick in and start doing some export of cheese. I was visiting with Jerry Kozak at lunch today. We have between 12 and $15 million left in the CWT coffers to help with exports of cheese.

Part of the plan of DFA when our organizers put it together was to put together facilities, plants, some of which buy milk, some of which just use dairy ingredients in the process. You saw Rick's map of Dairylea's spattering around where their customers are. These are our own either wholly owned or joint venture locations of facilities. The green ones are those that are balancing plants, plants that we have to run because we have milk. Balance plants are those that take surplus milk when the fluid market doesn't need it and give it up when the demand in the marketplace is there. Those are area council responsibilities. The yellow spots that you see are the ones that we run because we have a market for what they make, whether that's American cheese, whether that's mozzarella whether that's Frappachino, whether that's Enfamil. The joint ventures are in red, and our joint ventures are those that we have with Fonterra, those that we have with Dean -- excuse me, with Hood, with MBH, with Wilcox, with Stremik in California, with dairy farms in the middle of the country. Those bottling plants that we joint venture with others are now about 60 plants. We have a joint venture with LOL. Jack Garrity will be here with them on a cheese plant in Minnesota. We have a joint venture with some butter operations with some partners in Hotel R. Keller. We like joint ventures.

It let's us specialize in specific management for that kind of an operation and it helps us leverage our balance sheet. That DFA plant system was what our organizers wanted, created so that they could be involved in the markets across the United States on a national basis.

Where are we going to be tomorrow. Well, we said we needed to be in the export business. These are the products that we have exported in the year '01, '02, '03. We don't have '02 on here yet. I would say that most of our nonfat domestically -- no, let me say it a different way. All of the nonfat dry milk that we produce, and we produce quite a bit in all of our balancing plants, is sold through DairyAmerica, a cooperative of cooperatives, a common marketing agency for nonfat dry milk. And DairyAmerica has taken one more step and they have said to Fonterra, this New Zealand cooperative, you know how to market nonfat in the world. If we get out there selling a dab of nonfat, we are liable to screw up your major market nonfat. Why don't you be our agent offshore and let's create another common agency for our sales offshore. And so not only are the cooperatives collectively using DairyAmerica that sells together domestically, but we are using Fonterra to sell internationally. And if you '04 talk to Rich Louis at DairyAmerica who is the manager of DairyAmerica, he will tell you that he believes that relationship with Fonterra offshore has meant at least a nickel a hundredweight higher nonfat prices than if we were out there doing it ourselves.

We are big business in export. Last year we exported about $64 million worth of products offshore. Again remember when we said we were organizing a company to get ourselves ready to be able to export or be able to compete domestically. It doesn't mean we are going to give up. We are still asking for some regulations, tariff regulations, on a loophole in the WTO agreement that we negotiated. A product called milk protein concentrate wasn't even around when we negotiated the deal and it is starting to roll in on an increasing quantity. That's the one on the left you see there. And casein, which is the one on the right which is nothing more than the milk fraction of the milk protein that you have in skim milk. We have not been able to get the tariff commission or the commerce commission to get that defined as a dairy product. It is called a food ingredient, so there's no way under present rules to put a quota on it. But we now have as you can see 37 members of the Senate and 198 members of the House who have agreed to co-sponsor this legislation. And we are not asking for full total elimination of this import. We are just asking for a cap. Put a cap on it so it doesn't continue to grow or sky rocket. You will see us continuing to partner not only with you and Dairylea, but you will see us partnering internationally with Fonterra, and I mentioned a minute ago our chief plant in Clovis, New Mexico, with a co-op out of Ireland called Glanbia. You will see us partnering with processors where they bring something unique to a business, either money or management skills or technology. And we're even partnering as you know, as Rick just said, with dairy farmers who choose not to be a member of Dairylea or St. Albans or DFA, but will allow us to market their milk as it leaves their barn yard gate, which is what is important. DFA also had a plan and still has a plan to retire and return to members earnings and retains that we have retained in their business. This is an expression of those different kinds of equity retirements since we started. If you total all those bars up we have early equity retirement for age, we have estate settlement for sure, we have tenure certain, we have had an early equity retirement on a good basis. We have lots of different kinds of equity retirement. And since we started in 1998 we have