UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES DEPARTMENT OF AGRICULTURE

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Public Workshops Exploring

Competition Issues in Agriculture

DAIRY WORKSHOP

A Dialogue on Competition Issues Facing Farmers in

Today's Agricultural Marketplace

University of Wisconsin-Madison

Union Theater

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TRANSCRIPT OF PROCEEDINGS

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Date: Friday, June 25, 2010

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Reported by NANCY L. DELANEY

I N D E X

I N D E X (Continued)

Public Testimony

Moderated by: John Ferrell, Deputy Undersecretary for Marketing and Regulatory Programs, U.S. Department of Agriculture;
Mark Tobey, Special Counsel for Agriculture and State Relations, Antitrust Division, U.S. Department of Justice;

Panel I: Trends in the Dairy Industry

Moderated by: Josh Soven, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice;

Panelists: Peter Carstensen, Professor of Law, University of Wisconsin;
Ron Cotterill, Professor of Agricultural and Resource Economics, University of Connecticut;
Bob Cropp, Emeritus Professor of Agricultural and Applied Economics, University of Wisconsin;
Jim Goodman, Organic Dairy Farmer, Wonewoc, Wisconsin;
Jerrel Heatwole, Dairy Farmer, Greenwood, Delaware;
Pete Kappelman, Chairman of the Board of Directors, Land O' Lakes Cooperative;
Marcus Peperzak, Chief Executive Officer, Aurora Organic Dairy.

Panel II: Market Consolidation

Moderated by: James MacDonald, Chief, Agricultural Structure and Productivity Branch, Economic Research Service;

Panelists: Calvin Covington, Retired Dairy Industry Executive, King, North Carolina;
Brian Gould, Associate Professor, Department of Agricultural and Applied Economics, University of Wisconsin-Madison;
Louise Hemstead, Chief Operating Officer, Organic Valley Cooperative;
Daniel Smith, Esq., former administrator, Northeast Dairy Compact Commission;
John Wilson, Senior Vice President, Dairy Farmers of America.

I N D E X (Continued)

MR. VILSACK: Good morning, everyone. I'm Tom Vilsack, Secretary of Agriculture and I want to thank all of you for being here today, especially I want to thank Chancellor Martin and the University of Wisconsin for giving us this opportunity to have this beautiful facility. Dean Molly Jahn, who was formerly associated with the USDA, it's good to see her back as the Dean of the College of Agriculture and Life Sciences. I want to thank the participants who obviously for those in Wisconsin need very little, if any, introduction, but I appreciate the senators being here, the Governor and the Secretary of Agriculture.

I want to acknowledge the fact that Attorney General Eric Holder would normally be here, but for the death of a very close and dear friend whose funeral is today. He sends his regards and apologies, but we have Assistant Attorney General Christine Varney here who I will introduce in just a little bit. This is the third of a series of five hearings that are being conducted throughout the United States.

We started in Ankeny, Iowa discussing seed issues and consolidation and competition in basic seed. We then traveled to Normal, Alabama, where we had an extensive conversation about poultry. We're here today to obviously talk about an issue that's extraordinarily important to Wisconsin and to the country and that's our dairy industry. We travel to Fort Collins, Colorado on August 27 to discuss in more detail livestock issues and these hearings will conclude on December 8 in Washington, D.C. where we'll look at the financial aspects of margins.

The reason we are here in connection with the dairy industry is that Senator Kohl and Senator Feingold have requested that given the significance of the dairy industry to the Wisconsin economy and given the importance that Wisconsin plays in the dairy industry generally, they felt that it was an appropriate place for us to have a hearing of this kind and the Governor was certainly supportive of that as well.

10 years ago, we had 111,000 dairy farms in the United States. Today, we only have 65,000 farms. The revenues for the top 10 processors have grown from 65 percent 10 years ago

to 82 percent and the size of processing plants generally have increased by 70 percent. This is a set of statistics that we've seen in other aspects of agriculture which led to us conclude that we needed to begin giving a forum for the conversations that have been taking place in the countryside for some time in this country about precisely whether the playing field, the marketplace is as fair and balanced as it needs to be.

When we lose farming operations, it not only impacts that specific family, but it also has a significant impact on rural America. As I've traveled around the country last year during the rural tour and this year, I have a growing concern about the condition of rural America. It is a place of higher poverty than the rest of the United States. In fact, 90 percent of the persistent poverty counties in America are located in rural America. It is a place that is aging. It is a place that is losing population.

It is a place where there's a significant difference between per capita income of those who work and raise their families in rural America and those who work and raise their families elsewhere. It is not only the source of our food and our fiber and our water, but it is also the source of the importance of the value system that this country depends on. Only one sixth of America's population lives in rural communities, but 45 percent of those who serve us in uniform, who are serving us bravely in Afghanistan and Iraq right now, come from rural America.

And so it's important for us to have these hearings and so that you know that we are listening and in fact acting following the seed discussions in Ankeny, we began a process at USDA to begin asking the question what happens when patents expire on seed technology and how can we create a generic seed industry that gives farmers a fair shake at getting the seed they need to plant their crops. Following the poultry hearings in Alabama, we announced significant revision to the GIPSA rules, leveling, in our view, the playing field.

It's now open for comment and we will be looking at those comments and hopefully finalizing those rules by the end of the year, the most significant change in those rules probably since the Great Depression. And so we come today fully recognizing the struggles the dairy industry has experienced over the long haul and certainly over the last couple of years. We at USDA have been sensitive to the concerns of dairy producers. Have attempted to provide some degree of temporary help, but recognize that there needs to be a more permanent solution.

For that reason, we put together the Dairy Council which has met twice already in Washington, D.C. and will continue its deliberations and discussions through this year to try to determine how we might reach a consensus position among dairy producers as to what we can do to insure greater price stability and greater prosperity for those who are in the industry.

I want to say one thing before I turn it over to Assistant Attorney General Varney and that is, I want to be clear about what these hearings are not. There's been some concern that these hearings are focused on doing damage to the important work that cooperatives do throughout the United States and particularly in agriculture. That is certainly not the case. We recognize the important role that cooperatives play in giving farmers the capacity to come together in order to have some more balance and fairness in the marketplace and we expect and anticipate that we'll continue to be supportive of cooperative efforts throughout the United States.

With that, I want to explain just briefly the process that we'll follow today. I'm going to turn it over to the Assistant Attorney General for her comments. That will be followed by welcoming comments from Governor Doyle who because of his schedule will have to leave after those comments. Then I'll basically direct a general question and start with Senator Kohl. I want you to know, Governor, you put me on the spot here. Now, as a former governor, I love governors, but these guys are in charge of my budget and Senator Kohl is really in charge of my budget.

So you know, you put me on the spot asking to go first, so Senator, I hope you don't -- Mr. Chairman, I hope you don't take that against me in the budget. It's his fault, not mine. We will follow that conversation with the political leaders who are here today with an opportunity for a number of farmers from across the country to visit with us, but during the course of this hearing today, we will give as best we can everyone an opportunity to comment and participate. We are here very much to listen.

With that, I want to turn it over to the Assistant Attorney General who has been at every single one of these hearings and has been engaged and involved very much in this listening opportunity. The Assistant Attorney General comes with a broad degree of experience in the private sector and one of Washington's leading law firms where she was engaged and involved in antitrust litigation and review for about a decade.

Prior to that, she served as a commissioner on the Federal Trade Commission with obviously a keen eye towards competition and a fair marketplace and prior to that, she served in the Clinton administration in cabinet affairs, so she has a broad array of interests and has been a good partner in these hearings. So with that I'll turn it over to Christine Varney.

MS. VARNEY: Thank you very much, Secretary. It's a great pleasure to be here today. Dairy farming has been vital to America since before there was an antitrust vision and we are -- division and we are here to learn about what is going on in this industry from you, those who have worked on dairy farms and in the industry. As importantly, I am here to learn how DOJ, working with the USDA, can improve competition in the dairy industry.

I am disappointed, of course, that Attorney General Holder could not join us, but not as disappointed as the Attorney General himself. He asked me to convey his most sincere regrets that he could not be here personally to thank you all, both for welcoming us to America's Dairyland and for sharing your knowledge with us about the important issues confronting the dairy industry. As the Secretary said, unfortunately, a close friend of his passed away this week and the funeral is being held today. He would surely be here otherwise.

I know how important a priority these workshops have been for General Holder and how much he values hearing from and learning from the people on the ground, the people who live daily with the market forces that we have assembled these workshops to better understand. It is clear, of course, why he values these workshops so much. In our prior sessions, we have heard personally from so many farmers struggling to maintain a way of life that their family and this nation has known for generations.

American agriculture provides the livelihood for an enormous portion of the work force and sustenance for the rest of us. For us, the experience and insights of those of you who work tremendously hard to make a living in these fields are crucial not only to keep this great nation healthy and strong, but to help us at the Department of Justice get our job right. As the Secretary said, this is the third session of these joint workshops and from our perspective, they are a major success and an important example of government collaboration.

We have been working closely with the Department of Agriculture and based on what we've heard at prior workshops, we've formed a task force to examine how we can better work together to promote healthy competition in all agriculture sectors. One focus of this working group will be to review the enforcement of the Packers and Stockyard Act, one of this Nation's essential and historic competition laws. We have been gathering information, building more time in each session to hear from farmers about the issues and industry dynamics that affect them the most.

This is leading to more fruitful understanding and more successful cooperation between our agencies than historically has ever occurred. Today is a particular highlight for us. Our discussion and panels will focus on bringing together officials not only from the Department of Justice and Agriculture, but from Congress, the Commodity Futures Trading Commission and the states, all of whom have a strong interest in insuring the competitiveness of the dairy markets.

These diverse panels of farmers, academic and industry representatives will be discussing the important trends affecting the industry, the prevalence and increase in concentration in the market for raw milk and issues surrounding the way in which prices to dairy farmers are set. We expect that what we learn today will help us immeasurably as we consider the ways in which government can help to insure efficiency and competition in dairy markets with low prices to consumers, from school children to family pizza shops with a fair return to those who run our nation's dairy farms.

We have taken some important steps to protect consumers from undo consolidation in the dairy industry. In January, we at the Department of Justice filed a lawsuit against Dean Foods, alleging that it had violated the antitrust laws in its acquisition of Foremost Farms. As we said in our complaint, we believe the transaction will lead to higher milk prices for both school children and everyday fluid milk consumers here in Wisconsin, as well as Michigan and Illinois.

I have traveled with Senators Leahy, Sanders and Schumer to Vermont and to New York to speak with dairy farmers and we are keeping a watchful eye on this industry, mindful of the various comments we have heard. We know that dairy farmers are concerned about a lack of choices for buyers and about the way their milk is priced, as well as a year of dispiriting returns for their labors. It is my hope that today's conversation will allow us to bring attention and clarity to these issues and help us think hard about the role the Department of Justice can play with the Department of Agriculture in promoting and protecting the health and competitiveness of America's dairy farms.

Let me just say on a personal note, you have no better champions in Washington than Senator Kohl and Senator Feingold. Every time I see them, they want to know what I'm doing about dairy, so they keep the pressure on and I'm doing my best to live up to it.

MR. VILSACK: Thank you very much. I want to take this opportunity to just briefly introduce the Governor. Obviously, he's no stranger to Madison. He's a native of Madison and elected to this position as Governor of Wisconsin in 2002 and reelected in 2006. Prior to that, he served as Wisconsin's Attorney General. To me, Jim Doyle is a friend. He is someone who passionately cares about the economy of Wisconsin and is constantly talking to me about ways in which the USDA can use its rural development resources to provide expanded job opportunities.

He has been very proud of the work that's been done in Wisconsin on energy issues and has positioned Wisconsin to be a national leader in this energy revolution that we are seeing in this country. So it's my pleasure to turn the podium over to my good friend Governor Doyle.

MR. DOYLE: Well, good morning, everyone. I really, truly want to thank the Secretary for being here today. I believe this is his third trip to Wisconsin and he has come here to listen carefully every time, particularly in the last year when our dairy farmers were facing some of the most difficult economic circumstances that they have faced in many, many years and I want to extend my deep appreciation to the Secretary. He came here and listened and I will tell you, he pulled every lever available to him to help the dairy industry during that very, very difficult time, of which we're not out of yet, although things are a little bit better, but we're not out of and I deeply thank the Secretary for what he has done.

I also really want to welcome Chris Varney here. I've known her for many years in my days as Attorney General. She has a tremendous national reputation in antitrust, somebody who understands markets, somebody who fights for consumers and somebody who I know will listen carefully and take to heart the comments that are made here today. We have the two greatest dairy senators in the country and they are both here with us today, who have fought tirelessly for dairy, the dairy industry in this country, which of course affects Wisconsin in many ways and so to Senators Kohl and Feingold, I thank them.

I can't tell you the number of times I've called on each of them with issues that have come up in this state and as they relate to all things, but certainly as they relate to dairy, they have been with us every step of the way. Rod Nilsestuen will participate today and Rod, I think most people recognize in seven and a half years has been an extraordinary Secretary of Agriculture here in Wisconsin and in many ways, Rod has had a vision that we have been able to carry out together that has strengthened and built the dairy industry in Wisconsin.

You know, there's probably no area of our economy in which the interplay between the Federal government and State government and Federal policy and State policy is more intertwined than it is in dairy. We are obviously a state that benefits from a great dairy industry. Mr. Secretary, the agriculture and dairy, but the back bone is dairy in Wisconsin, is a $60 billion a year industry in Wisconsin. One out of ten employees, workers in this state are employed in some way in the agricultural and particularly the dairy industry. So it is critical for us to have a strong and growing dairy economy.

I'm very proud, you'll hear, I think, today from a number of people, we've done some really great things in the last seven and a half years. When I came in, our milk production had been falling for 20 plus years. California's had been growing and they had surpassed us in milk production. Everybody told us that California, given where the vectors were going, was soon going to pass us in cheese production, which was something that we all decided in the dairy world and agricultural community in Wisconsin we weren't going to allow to happen.

So with the use of dairy modernization tax credits, we have spurred the investment of over a half a billion dollars in our dairies in this state. With the added processing tax credits that have been provided as well, we now have spurred the investment of over $2.2 billion in farm operations and processing firms in this state. What that has done is turned around dramatically our milk production, where we are now on the rise. California is on the decline. We hope that those vectors will pass soon, but even more importantly, the great threat to us that's supposedly California was going to overtake us in cheese not only didn't happen, but our cheese production has stepped up dramatically while California's has run into a few issues and is going in the other direction.

And I wouldn't say we are safely secure as the cheese making capital of the country and of the world, but we are solidly there and moving in the right direction, but we have some very big challenges as well. Obviously, protecting our great farmland is critically important and the Secretary, I know, cares deeply about the rural economy, as his comments have mentioned, and part of that is making sure we have a strong rural economy.

There's so many pieces to it, but it's to make sure that there is good farmland in our rural areas. And we have in the last year significantly modernized our farm protection, farmland protection programs in this state, taken some old, outdated programs and consolidated and moved them in a way to really help people be able to stay on the farms and be able to -- to be able to use that farmland for what God gave it to us for, which is to farm.

We have also worked hard at regulatory reform and with the work of many people in this room, we passed major citing reform legislation that has allowed our dairy farms to be able to grow and expand and we understand, and, again, thank the Secretary for all the work he's done, that one of our great strengths is diversification. So whether it is managed grazing and now over 20 percent of our dairy farmers do some form of managed grazing, value added and particularly biofuels are areas of enormous opportunity for us in Wisconsin. So doing everything we can to get this -- to get the economic incentives lined up correctly and to make sure that all farm operations, big and small, that's our motto in Wisconsin. We're not for big farms or small farms, we're for making sure that every farm, big and small, can make money and profit here in this state. And so we really thank you for your attention on this very, very critical issue. I'm sorry that I have to leave, but

Secretary Nilsestuen will be here and I look forward to hearing the results of this conversation that you'll have in the course of the day and once again, to the Assistant Attorney General and to you, Mr. Secretary, we really, really thank you for the attention that you've given this very crucial issue. Thank you.

MR. VILSACK: Thanks, Governor, thank you very much. Thank you, Governor, appreciate you taking time to be here this morning. I want to turn the podium over now to our two senators and I'll start with Chairman Kohl, again, someone who doesn't need a great deal of introduction, but prior to his successful public career, as everyone knows he has a small grocery store operation, at least it was small at one time. I'm told it sells a lot of milk and cheese, which I'm sure it does.

He served on the senate appropriations committee, he is the chair of the agriculture appropriations subcommittee, is on the judicial committee where he is the chair of the subcommittee on antitrust competition policy and consumer rights. I will tell you that the senator is passionately interested in all things relating to agriculture. When I appear before his committee, the questions are insightful, comprehensive, well thought out and with a deep concern about the future of rural America.

So Senator Kohl, I'd like to give you the opportunity to make a few comments and then I'll turn it over to Senator Feingold.

SENATOR KOHL: Thank you very much, Mr. Secretary, Tom Vilsack, we so much appreciate that you and the U.S. Assistant Attorney General, Christine Varney, are here with us today. As we all know, the agricultural industry is the state's biggest industry and that dairy is the biggest part of agriculture. It produces over $26 billion of business a year here in our state and so ensuring a fully competitive dairy marketplace is crucial.

We appreciate that the Department of Justice as well as the Department of Agriculture are holding this workshop here in Madison today. Recent years have been very difficult for dairy farmers, not only here, but throughout our country. Record high farm prices quickly turned to record lows and while farm prices plummeted, the price consumers paid for dairy products saw only a modest price decline. This discrepancy in price changes forces us to ask whether or not consolidation in the industry is leading to excess market power by some firms.

We need to ask, in other words, if our farmers are getting a fair shake. Over the last several years, the dairy industry, like many sectors in agriculture that we have looked at, has seen considerable consolidation in marketing, processing and retail. The growing market power by some firms leaves family farmers with few bidders for their milk and very tough terms of sale. This consolidation means that we need strong antitrust enforcement now more than ever.

That's why it's encouraging to see the Department of Justice and USDA here today. They need to hear and learn from farmers, like many of you who are here today, where the consolidation is hurting our ability to receive a fair price for the milk that you produce. We've worked hard to preserve and enhance a competitive marketplace in agriculture through the subcommittee on antitrust, which I chair. We've held several hearings to review competition in agricultural markets.

In 2008, we conducted an investigation on the proposed JBS/Swift meat packing acquisition to expose the danger that consolidation would have in meat packing. We urged that the deal be blocked. A recommendation that the Bush Justice Department followed in large part. The lessons we learned from that investigation apply equally to dairy. When processors gain too much market power and too much leverage, farmers suffer and lose the benefits of a competitive market and that is not acceptable.

That is why we're planning to develop a working group here in Wisconsin to further analyze and make policy recommendations to address competition, consolidation and other issues impacting the dairy industry in our state. We also must make sure that dairy pricing is transparent. In 1997, the spot market for cheese was moved from Green Bay, Wisconsin due to concerns that it was thinly traded with only a small number of buyers and sellers who could potentially manipulate the market. The spot cheese market is now housed at the Chicago Mercantile Exchange, but the concerns about potential market manipulation persist.

The Commodity Futures Trading Commission has reported that the volume of cheese traded in Chicago generally represents less than 1 percent of all the cheese produced in the United States. Now, why is this so important? Because that spot market sets the price directly and indirectly for almost all the cheese and milk in our country. This is a situation where the tail controlled by a few traders in Chicago can and often does wag the dog of the market for milk all across our country.

At a time when Americans' trust in financial markets is so low, relying on a market that can be easily manipulated should worry all of us. I call on the CFTC and the CME to strongly monitor the spot cheese market, because we must have market transparency that insures a fair price for farmers. Additionally, we could get better market transparencies through more frequent pricing reporting and expanding the number of products USDA uses to set prices on the federal milk marketing order to include a more representative sample of products sold in the commercial markets.

Secretary Vilsack, I believe you

have the authority to help do these things and in doing so, it would give our farmers a fairer price for their milk and I would like very much to work with you to implement some of these changes. As the chairman of two committees with direct jurisdiction over competition in agriculture, I'm worried about the consolidation happening in agriculture. Strong competition for farmers' milk is the best insurance that they will get a fair price. Today's session needs to determine whether competition is healthy enough in the dairy industry to protect farmers and if not, what we need to do about it.

The farmers here have a lot to tell us about the health of the market and we are looking forward to hearing from them. We thank each of you for being here today to share your views and we particularly appreciate Secretary Vilsack and Assistant Attorney General Varney being here with us today.

MR. VILSACK: Thank you, Senator. Now I'd like to give Senator Feingold an opportunity to speak. As folks know, he was first elected to the senate here in Wisconsin in 1992. Prior to that, he was a member of the Wisconsin

State Senate. In the U.S. Senate, he serves on a variety of committees, including the budget committee, the judiciary committee where he serves as the chair of the subcommittee on the constitution. He's also on the foreign relations committee where he's the chair of the subcommittee on African affairs and he's a member of the intelligence committee as well.

I think everyone in Wisconsin and certainly many of us around the country appreciate his legislative focus on campaign finance reform and fair competition, fair trade and jobs. But he also has, as has been expressed before, a keen interest in agriculture, understanding the important role that it plays in the Wisconsin economy and the important role that it plays in the United States economy, with one out of every 12 jobs connected in this country to agriculture. So Senator Feingold, we appreciate you being here today and taking your time.

SENATOR FEINGOLD: Thank you, Mr. Secretary. I'd like to start by echoing the words, obviously, of Senator Kohl and Governor Doyle and thanking you, Secretary Vilsack, and Assistant Attorney General Varney for coming to

Wisconsin, America's Dairyland, to have this important workshop, and Secretary, despite the advertising campaign, I know that our cows are actually happier than the California cows. I do recognize, though, that this is a national forum on dairy, and I'll tell you, I've noticed the increase in interest in the United States Senate of numbers of senators that are vitally concerned about this issue.

At the meeting you held, there were like 25 senators there from all over the country. Some of the -- Al Franken teased Tom Udall of New Mexico whether he really thought there were any cows down there, but it was a very strong demonstration of what an incredibly important part of our nation's economy it is and of course, no place is it more important than here in Wisconsin and I want to particularly thank you and Ms. Varney for agreeing to have two public comment sessions.

This was a specific request of mine that this be done at this session today and I look forward to returning for the second public comment session so I can just hear that directly myself, because I find the unfiltered stories I hear directly from farmers and cheese makers and others to be especially valuable. Senator Kohl mentioned the Green Bay Cheese Exchange, my actions to deal with that, that were very exciting to be able to get that done, had to do with the fact that people came to me on that at town meetings and I hear these stories in every one of Wisconsin's 72 counties every year as I do my listening sessions.

And I have to say, we kept hearing it even when the previous administration was turning a blind eye to the issue and I am very encouraged by the turnaround in the Department of Justice and Agriculture after years of inaction and there is a new willingness to reach across agency jurisdictions. I've been particularly impressed by the turnaround that began when President Obama took office and the team he put in place at the Justice Department.

I raised similar concerns with the previous administration, but frankly, they essentially completely ignored anticompetitive behavior in the agriculture community. They even came up with extreme interpretations of antitrust law that were so skewed in favor of giant corporations that a majority of the Federal Trade Commission had to take them to task. So I'm very glad that the Obama administration reversed course and has been working to address our long-standing concerns to make sure that dairy farmers and small processors and consumers are treated fairly in the marketplace.

Now, during Ms. Varney's confirmation hearing, I asked you to look into the Bush administration's questionable decisions in this area. This administration has already responded, as shown by the decision to block Dean Foods from acquiring two bottling plants of Foremost Farms, as well as the decision to hold these workshops. I was especially pleased by the Antitrust Division's willingness to dig into this complex issue from day one. At my suggestion and even before the full senate confirmed it, in fact I asked Ms. Varney to come to my office and said I am so concerned about so many areas of antitrust across the board, mega mergers in the media industry and so on, I said, but today all we're going to talk about is dairy.

And I asked you to meet with our Wisconsin experts. I asked you to meet with

University of Wisconsin law professor Peter Carstensen, an expert on antitrust law and particularly the dairy industry and you did exactly that, and your willingness to listen, of your staff to listen has been even greater. With other people, such as Pete Harden of the Milkweed, whose come to my listening sessions almost every year, you folks were willing to listen and learn when it came to him and that has shown me your seriousness about this.

Secretary Vilsack, I should also note the Antitrust Division isn't the only cop on the beat after a period of serious neglect. I agree with Senator Kohl, you've shown exceptional leadership and accessibility and a willingness to use what powers you have in these areas. Just last week, for example, I was glad to see your announcement of a rule implementing a major improvement to farmer protections under the Packers and Stockyards Act, a recent issue that Senator Grassley and I pushed with regard to beef contracts that you have now implemented.

And while this rule is focused on improving fairness in the livestock and poultry markets, with cull cows going to slaughter being a significant part of a dairy farmer's cash flow, this is important news for us as well. So I again want to thank you for your responsiveness. Now, I'm pleased that Department of Justice and Department of Ag are collaborating to hold these workshops and also have shown an openness toward involving other agencies, such as the FTC and the CFTC.

It's good to see that the CFTC will be part of a panel on market transparency later in the day. I believe this is the only way this is going to work, if there is this kind of cooperation and frankly, I've rarely seen this level of cooperation between different agencies in the years that I've been involved with these kinds of issues. This is really high on the charts.

Finally, I've been following two trends for years now with growing concern. First, the growing concentration at the cooperative processor and retailer level and second, the widening gap between what farmers are paid for milk and what consumers pay for dairy products. I remember way back when I was a state senator, just a few blocks away here in my office I had a chart that showed -- a graph that showed the growing gap between what consumers paid for milk and cheese at the market and the lower prices that farmers got for the milk and cheese and that trend has continued to get worse over the years.

The farmers' share has continued to shrink and many farmers and other dairy industry observers suspect that someone between the farm and the consumer is taking a bigger slice than they really should and I know that dairy farmers agree with me on this. We are coming off a year when dairy farmers were losing $100 per cow per month for many months in a row while consumers were often not seeing a drop in prices at the store.

At the same time, some of the entities in the middle of this supply chain were posting massive profits and certainly no one was struggling to the degree that farmers were. I've had farmers just ask me at my listening sessions if consumers are still paying about the same and it isn't showing up in their milk check, where is the money going. Well, dairy farmers and competition experts like Peter Carstensen make it clear that something is amiss. It is true, the dairy industry is very complex and it's difficult to target a specific culprit behind this unfair situation.

This is where you folks come into the picture and I agree with the Secretary about the outcome that should come from this workshop. This is not about assessing blame. The first goal is to educate the agencies. After years of neglect, getting out and hearing from individuals on the ground is an important step. Secondly, the workshops are not an end in themselves. I expect to see each of those agencies use the information from the workshop as a springboard for improved investigations and enforcement to address anticompetitive practices across agriculture.

And finally, we need to figure out the answer to the question not only that I posed, but so many of you have posed to me, what happens between the farm and the consumer to cause such a price spread. It's important to see whether better enforcement of our current basic antitrust and competition laws can solve this, whether we need stronger laws in this area or whether it's going to be a combination of that and reform of the milk marketing orders and other pricing systems.

But we need to make that determination and then we need to act on it. Again, my gratitude, this is a great thing for us to be able to host this here and we are grateful to you. Thanks so much.

MR. VILSACK: Thank you, Senator. We're going to turn it over now to Wisconsin Secretary of Agriculture Rod Nilsestuen. Rod, I appreciate you being here today. As everyone knows, he was appointed by Governor Doyle in January of 2003 as the Wisconsin Secretary of Agriculture, Trade and Consumer Production. Prior to that he served as president and CEO of the Wisconsin Federation of Cooperatives from 1993 to 2003.

He served a pivotal role in the creation and establishment of the Wisconsin Milk Marketing Board, as well as the Wisconsin Corn Promotion Board and the Wisconsin Soybean Board. The Secretary is also involved with the Wisconsin Dairy 2020 program, the National Rural Cooperative Development Task Force. He is past chair and board member of the National Cooperative Business Association. That is just a few of the things he has done in his distinguished career.

I will tell you that every month at USDA, we have a phone call with the state ag secretaries and commissioners and I will tell you, Wisconsin is well represented during those calls. There is a constant level of communication between the Secretary's office and my office. He is very, very tuned to the concerns that his farmers are expressing to him and he in turn expresses it to us and we appreciate you being here today.

MR. NILSESTUEN: Thank you very much for that very kind and overly generous introduction, but as a Scandahoovian, I believe every word, who said it will remember them always, but having -- and that's the extent of the levity for today, but I would echo the appreciation shown to you, Mr. Secretary, and the great work that you're doing and Assistant AG Varney for teeing up this issue of competition and consolidation and antitrust in Food and Ag.

It's certainly time to have a vigorous national discussion about the structure and direction of the industry which provides Americans with their food, the nation with its most consistently positive element in balance of trade, our rural communities with most of their jobs and with stewardship of the country's productive land and natural resource base. The meltdown that we saw in Wall Street, the massive oil spill in the Gulf, the loss of lives of coal miners in West Virginia have made crystal clear to, I think most of us across this country, that the lack of balanced and enforceable regulations can exact a very, very high cost, both immediate and long-term, to citizens, to our communities and to our economy.

And as with the big banks and big oil and big mining, it's long been evident that meaningful enforcement of antitrust and anticoncentration policy regs in our food and ag industry have been sadly missing in recent decades, as both senators have just clearly indicated and their role in moving this forward is very important and very timely and I know appreciated by all of us in agriculture.

In terms of the trends, we've already touched on a number here in this panel, but clearly, the result of the lack of enforcement, we've seen massive consolidation and widespread vertical integration in poultry, in pork, in beef, with packers and processors exercising near total control over those markets and the farmers who produce the livestock for them. And so Mr. Secretary, we very much applaud the work that you've done on the Packers and Stockyards Act, in advancing this as a part of the administration's overall approach in this area.

It may be the most significant change in this since the Depression era and that is no small statement. It's a beginning to level the playing field, to provide some basic protection for independent livestock farmers, and as you said earlier, the picture in the seed industry is similar, where the chemical or life science companies have seized near total control and they're extracting huge prices.

In just the last nine years, the price for seed worn has gone up 135 percent while the consumer price index 20 percent, and in the process, the hundreds and hundreds of multi generational, small seed companies that we've had across rural America have largely evaporated. These ongoing developments not only affect crop producers, but also dairy and livestock, because our farmers are major growers and users of seed and crop inputs and so this policy area needs a lot of attention, as well as dairy.

As the Governor said, dairy, particularly in the Upper Midwest, has been the most resistant and resilient against the consolidation trend and vertical integration, the oligopolies. This may be a result of our long-term heritage of family sized farms, together with perhaps the most robust system of farmer owned co-ops in the country. Our co-ops now market over 80 percent of the milk in the nation, a higher percentage than any of the commodities that I just mentioned and I think that's significant.

Cooperatives can provide farmers with a proven mechanism to aggregate marketing power while still staying free of those very restrictive entanglements which are almost inescapable components of total vertical integration. But nonetheless, given that fact, even the largest of our marketing co-ops are small businesses when compared to the retail giants. If you take Land O' Lakes as an example which is both in farm supply and dairy, it's $10.4 billion, only $3.2 in dairy.

If you compare that with Wal*Mart,

which has $408 billion in revenues this year, Kroger at $77 billion, Kraft at $40 billion and so I think the emergence of the big box retailer is radically and has radically changed the food business from the farm to the food shelf and that includes the dairy sector. And so no longer -- for a long time we knew that manufacturers or processors called the tune, but with their huge buying power, the big box retailers can exert incredible leverage and these retailers, given their size, seldom want the inconvenience of dealing with lots of small dairy processors or ingredient suppliers.

Rather, they'd like a small number of large suppliers and so as a result of that, a predictable dynamic happens. If the co-op or dairy processor wants access to that dominant big box, they need to be able to become significantly larger or exit and I've been to a lot of co-op annual meetings and I've heard a lot of management say it, and this is not a criticism, but a lot of them say that we've got to become either number one, two or three in our particular sector if we're going to survive long-term and it becomes a self-fulfilling prophecy.

So the Justices' charge in the Dean suit of purchase of Foremost fluid operations significantly can reduce the competition there via acquisition, even though that may have been not the intent of the seller. So Dean now has eliminated a major food competitor, has 57 percent of the marketshare in fluid milk in the Chicago area and Wisconsin and the UP. That is a market leverage change.

So in addition, the very existence of long-term purchasing contracts with very few big box retailers exerts an additional kind of leverage there. It makes suppliers very reluctant and tentative in pursuing any actions that might jeopardize a contract which represents a big part of their business. And so for these and other reasons, we urge full consideration of creation of antitrust guidelines and regulations which force greater attention and active enforcement on the buyer's side of the equation.

We think attention should be also given to remedying the FTC's near nonexistent role in the food marketplace and the need for a more proactive, prospective approach there, with better guidelines and more consistent and robust enforcement. Dairy producers and their industry, without those may be in jeopardy of going the way of the other commodity sectors, whether it's poultry or pork or beef that I've said and in Wisconsin, as has been said here several times, dairy is the biggest part of our ag economy, our $59 billion economy and erosion of the size and the number of sector participants is a blow to dairy farmers of all sizes, but also to the rural communities and the main streets that they support.

And so one last point, while there's widespread agreement in many sectors in the dairy industry that we need better price discovery, as Senator Kohl and Senator Feingold clearly indicated, to determine the federal order milk price formula, whether it's for cheese or non-fat or whey or butter or other commodities. Currently, and this has been true for too long, that the product price formulas of the CME which is very thin, lightly traded, have just too much price volatility and it drives the federal order system, distorts that and drives prices across the country.

And so any market that's that

thinly traded is vulnerable to intentional or unintentional manipulation and distortion and so however -- so we really need serious exploration of improved mechanism as was suggested to correct that. There's a longer list here, but that's for the rest of these panels, and, again, we greatly appreciate the presence and the opportunity to be a part of this.

MR. VILSACK: Thank you very much, Mr. Secretary. I think what I'd like to do is direct a question to General Varney for just a second. I think it would be helpful for folks who are here to better understand what the Justice Department can do. If you're a struggling dairy farmer and you want to know what your opportunities or your remedies or your protections are, what will the Department of Justice be able to do, what can it do?

MS. VARNEY: Sure, let me take it from the higher level and then bring it down to specifics for people in this room. We at the Antitrust Division basically have a couple of baskets of activity that we do. It all centers around blocking mergers that substantially lessen competition or prosecuting combinations or conspiracies that would restrain trade.

So the first thing we do and we take very seriously is we put people in jail. If there's price fixing going on, we will prosecute it and you will go to jail. In the past decade, we've brought over 100 school milk bid rigging cases, so if you are aware or suspect that there is bid rigging going on, let us know, we will prosecute it. We work very closely also with the U.S. Attorney's Office and they are here today and I know they would also want to know if you've got any evidence of any illegal price fixing going on, whether it's at a corporate level or at a smaller level.

The second thing we do is we examine mergers very carefully and as everybody has mentioned, we recently sued to unwind the Dean Foods acquisition of Foremost. Should a merger arise in this industry and you have concerns about it, a merger, an acquisition, we want to know. We can work on that and we will go to court and we will block mergers that substantially lessen competition, which we believe the more competition there is for your product, the better price you're going to be, the more competitive the marketplace is going to be, the more we're going to get good quality, safe product out there.

Our third basket of activity that we do is we investigate conduct and I think this is probably something at heart for many, many of you. Big is not necessarily bad under the antitrust laws, but if you have a substantial share of the market, you have a special obligation to vigorously adhere to the pro-competitive antitrust rules that have been clearly established by the Supreme Court. So we investigate anticompetitive or predatory conduct on either the buyer's side or the seller's side.

So we will look at both and that's why we're always concerned when there's concentration in any industry, in any part of the industry. Many of America's dairy farmers have come to us and said we are concerned about the level of consolidation and we take those concerns seriously and I have a number of staff people here today whose principal job in Washington is to be looking at consolidation that's happened in the agriculture sector and in dairy in particular and trying to determine whether or not all the rules and laws are being fully adhered to.

And finally, Mr. Secretary, what we have been doing is an unprecedented cooperation, as you know, with your staff. We have lawyers who are now sitting together on a day-to-day basis looking at these very important issues with your expertise that your staff brings to the marketplace and the competition expertise that our staff has. We're very interested in hearing from you about issues that confront you on a day-to-day basis that maybe in previous years people thought well, there's not too much the government can do about that.

I think what you're hearing from us is we take pretty seriously our obligation to enforce the laws and if we find that we're limited by the current structure of the law, I've got two people here I can go to and say this isn't working and here's why and I know they're committed to helping us make sure we can get the authority that we need to make sure that you are protected as you earn a living and bring food to our tables every day.

MR. VILSACK: Thank you. I'd like to direct a question to both of the senators. In taking a look at the ag census that was published last year, it was fairly obvious that the average age of American farmers is continually and rapidly aging. Today, the average age of a farmer across the country is 57. It aged two years in the last five years and so one can expect that five years from now, the average age will be 60.

As we deal with the aging population, the question then is how do we help what needs to be done in terms of the market, market trends, market structures, pricing mechanisms or other ideas that you might have that would encourage younger people to be able to consider an opportunity in dairy instead of seeing this contraction which we've seen over the last 10 years. Are there ways that this hearing can inform how USDA and the government can provide assistance to expand the number of farmers rather than seeing a contraction? Senator Kohl?

SENATOR KOHL: Well, there are many aspects of farming and dairy farming that are enormously attractive to young people today. The opportunity to be your own boss, to live out where you can experience all the joys of living with fresh air and a lot of open land. To raise your family in that kind of an environment is extremely attractive. I think particularly today with all the difficulties that we find afflicting our urban areas. So in a very basic way, farming can be attractive to young people.

But, among other things, it has to be profitable. When young people decide what they're going to do with their lives, if they want to either enter farming or stay in the farming business which has been a part of their families, in many cases, for generations, they want to see a future financially for themselves as well as quality of life. And as we're discussing it here today, with the decline in the number of farms and with the increasing difficulty of farmers to make a decent profit, farming becomes less of a desirable option.

And that is, in a sense, what we're here today to discuss, is ways and means in which we can insure that people who are operating farms are getting a fair price for their product, seeing to it that the markets operate in a way so that they are decently compensated for all of their work. I think in our country historically, there's been an imbalance for many reasons, but one reason is that we have so few farmers relative to all of the consumers across the country.

So that when people in public life make decisions, fairly or not, you know, they look to satisfy consumers perhaps first and the producers a close second. And I think that predisposition to favor consumers over producers over the years has made farming less attractive. We have to try and turn that around, because as has been said by many people here today, it's the farmers, but it's also the rural areas all across our state and all across our country that are directly impacted by the decline in the number of people who want to operate farms.

So we have our work cut out for us, Mr. Secretary, and I think one of the reasons we're here today is because we want to face it and we want to do something about it.

SENATOR FEINGOLD: Senator Kohl, obviously, I've seen this trend as well and it's disturbing, but there are -- I'm sure Senator Kohl has had this experience, too, there are groups of young farmers that do come to visit with us in Washington as well as here and I happened to be next to one on the plane out here on Monday and after he had a chance to hear me snore for a while, he had said he remembered that I had been out to his farm in Washington County and we just talked about how much he loved doing this.

He was taking over for his dad, he's got three sisters, two of them probably aren't going to go into it, but one of his sisters might. And you know, I just said what do you think about this. He said I just love it. I mean, you could tell the way Senator Kohl described it, the passion for being there and doing this. But you know, these are really tough days for people in any part of our economy. People are going to make a rational decision about their futures.

So they have to believe not only, obviously, that they can make a profit, but they're not going to suddenly get undercut by some decisions or trade agreements or something else that is going to cause them to have the rug pulled out from under them, so that has to do with the pricing systems. That has to do with trade agreements, such as let's say if somebody thought it would be a good idea to have a trade agreement with New Zealand, you know, young farmers have to know that they're not going to suddenly put all of this investment into this and then have themselves having put that effort and all that education into it. We have to make sure that there's some stability and pricing stability, having a belief that you can actually get somewhere near the cost of production.

At some point, that this could actually be something you could rely on, you're not going to have a situation where one year it's over $20, the next year it's under $10 and then it gets a little higher and you expect dairy farmers to be happy, when in fact they're not even getting their cost of production. So I think these policy matters would have a great deal to do with letting people trying to make a good decision for their family or their future families and I think that will have a particular impact on young people.

MR. VILSACK: You know, it's interesting, Senator, I've watched folks in Washington over the course of the last number of years talk about the necessity of having 100,000 police officers and 100,000 new teachers. Why not 100,000 new farmers as a goal. (Applause) It's interesting, when I -- in my lifetime, the number of farmers as a percentage of our population has gone from 15 percent -- when I was born in 1950, 15 percent of our population were farmers. Today it's less than 1 percent and I suspect when I was born that the other 85 percent were probably only a generation removed from the farm.

Today there are, Mr. Secretary, there are multiple generations removed. I'm sure you see this, where people don't fully appreciate and understand where their food comes from. So your thoughts -- I would be interested to hear your thoughts. You know, 10 years from now, if we convene again, what would you hope it would look like in the dairy industry and what kinds of hope can you provide, would you want to provide to young people interested in getting into this business?

MR. NILSESTUEN: Well, I would think that my hope would be, and I think many producers and certainly younger producers would be to see a future where they and their family members have an opportunity to have a good lifestyle and to be able to choose alternatives to them in production. One of the reasons that you heard the Governor talk a lot about the various initiatives that he undertook here was that we do have a vision here in this state of trying to have a diversified, growing dairy industry.

One of the -- for several decades, we didn't see reinvestment, we saw a lack, a stagnation, both in investment at the farm level and at the plant. Many of our cheese plants were 70 percent full. You can't operate that way, you can't reinvest that way. We were losing marketshare and a lot of farm parents were telling their kids you better think twice about whether you want to do that and that's a hard thing to say for all the reasons stated here.

With the right time in dairying and a lot of other things and a partnership in this state, that picture turned around radically and we did see growth, not only at the high side of the market in the larger farms, but diversification. We have the largest organic marketshare. We have over 50 percent of our new entering farmers are grazers at this point. We've gone into specialty cheeses in a big way. We now produce over 600 varieties of cheese in this state, more than any country in the world.

That's important from a producer's standpoint because many of those are artisan farms, are farmstead cheeses or people that are selling to that and so our marketshare has grown about one to one and a half percent per year for the last seven years. That is important. We're now at 46 percent of all the specialty cheese that the nation produces. That's the result of a very -- of a balanced opportunity ,and so before Wall Street crashed this whole economy, for two years running at the World Dairy Expo at our little booth there, the number one question that we got, to my surprise, was from young farmers from out of state asking how can we come to Wisconsin to dairy farm. In my lifetime, that has never happened before.

Now, if this recession and if the other changes that we have, there's no guarantees in this game, but the actions that you are trying to take here and that are trying to be taken for this economy can make that picture bright again. Farmers don't want guarantees, but they want greater predictability and less volatility. And the commission that -- the dairy committee that you appointed me to, and I felt a little like Mark Twain's thing there, if it weren't for the honor, I'd just as soon pass, after 30 years of dairy policy.

But I think what you are trying to put together is a coherent single approach to a mish-mash and what I hear from dairy farmers from across the country is a greater will to get that done.

MR. VILSACK: Thank you. I see we've been joined by another distinguished member of our panel. Congresswoman, thank you very much for being here. We appreciate you taking time from your busy schedule. I wanted to give you an opportunity to do what the other elected officials have been able to do, which is to make a few comments. As folks from this area know, Congresswoman Baldwin has represented Wisconsin's Second Congressional District since January of 1999. Madison, obviously, is in her congressional district.

She serves on a variety of committees as well, including energy and commerce and judiciary, where she has also worked on antitrust issues in dairy and has been focused on providing freight rail to provide relief to consumers. Prior to her service in Congress, she served in the Wisconsin State Assembly and also as a Dane County supervisor. So Congresswoman, thank you for being here.

CONGRESSWOMAN BALDWIN: Thank you, and I apologize for my tardiness, the airlines were not cooperating this morning. Let me begin by thanking you, Mr. Secretary, for coming here and Assistant Secretary Varney, we're delighted to have you here and focusing some really needed attention on competition issues facing our dairy farmers. I really can't think of a more fitting location for you to have this workshop than America's Dairyland.

You will hear from people who have generations of knowledge handed down and to be on this campus at this fine University where also so much knowledge is located is very fitting. I would be remiss if I didn't start with some reflections about how difficult the last year and some months have been in this area. You know, dairy farmers are very familiar with price volatility, but the historic low prices that were experienced over the last year were really something that was very drastic.

I remember reading an article in the Milwaukee Journal Sentinel last August indicating that on average, or the average dairy farm was losing roughly $100 per cow per month in their operation because of the historic low prices, and you know, while they're accustomed to this volatility, this crisis feels like it threatened the industry unlike others that they've experienced in the past.

I know that during the same time period, I didn't see any relief at the grocery store when I was picking out my dairy products. So during this time, family farmers and their advocates have told me truly heartbreaking stories of their struggles to stay in business, to pay bills, to get credit, some cashing out their savings and sadly, for too many, losing their whole farms and Mr. Secretary, as you know, many of these farms have been in families for generations and so losing a farm is not just losing a small business, but it's a homestead and the ripple effect goes through.

I particularly am troubled by the human toll that it's taken. I am in contact with those who take calls from folks in crisis. The Wisconsin Farm Center certainly has been inundated with requests for assistance, including suicide prevention and I can furnish you with a lot more information, but anyhow, to the topic of the day, much of the concern about the dairy crisis rests with the lack of competition in the dairy industry and the effect that that has particularly on small dairy farmers.

Now, I want to be clear, farming cooperatives do play a really important role in rural communities by improving farmers' bargaining position with milk handlers and farmers have long joined cooperatives to better market their products and access farm related supplies and services. And so I was pleased, Mr. Secretary, to see your recent comments that the antitrust focus is not so much on Capper-Volstead Act, but more Sherman and Clayton Act issues.

That said, competition is necessary in the dairy industry and I applaud the Department of Justice's action and review of Dean Foods for its acquisition of two plants formerly owned by Foremost Farms. We certainly have a concern that this acquisition will lead to increased consolidation in the processing industry and more limited competition in Wisconsin at the expense of farm families. As a result of this acquisition, Dean Foods now controls approximately 57 percent of the market for processed milk in northeastern Illinois, Wisconsin and the UP.

And while Dean Foods' bottom line grows, dairy farmers struggle, you know, to avoid hitting rock bottom. I am also interested in consolidation and competitiveness issues, not only among processors, but among retailers and those in the food delivery business. Giants like Wal*Mart and new changes that we see with discount mass merchandisers and warehouse club stores are of concern, but quite frankly, anticompetitive practices have been around for a long time, but until recently, I don't think enough attention has been paid to this important issue.

And as I got a chance to tell Assistant Secretary Varney when we talked on the phone last year, I'm really glad that you're giving it the attention that you are. We really do need your emphasis on these issues. Today's event is extremely important, in that farmers will have a chance to be heard and express their concerns about the declining number of family farms, the fewer market options that they have and less competition among processors, retailers and food distributors, artificially depressed prices and the possibility of price manipulation and the resulting toll that this takes in our community. Farming and family farming in particular is really the back bone of the Wisconsin economy and we're just so glad to have you here today calling attention to these issues.

MR. VILSACK: Thank you. To the Congresswoman and the two senators, one of the issues that you've touched on in your comments is the need for expanded market opportunities. And as we look at consumption of dairy products, notwithstanding all the specialty cheeses that are being produced, we see especially among young children less interest in dairy products and particularly milk.

I'm interested in knowing your thoughts about how we might be able to encourage more consumption. I know that the Institute of Medicine has suggested that with reference to our school lunch and school breakfast programs, that there could be greater focus on low fat dairy products and greater consumption of that as a possibility. Is that something that might provide some degree of assistance and help to these farmers if we expand markets in consumption, comments or thoughts about that?

SENATOR FEINGOLD: Well, you know, in my conversations with young people, I think there's a lot of opportunity here. You know, particularly given the number of people that are -- unfortunately, if you're in other parts of the agriculture industry choosing alternative ways for diets, vegetarian, other diets, this is an area that I find people pursuing. I find people very interested in various dairy products. Yes, the low fat helps, but also, you know, given the fact that people are talking about making sure that kids aren't drinking soda all the time, and you know, that's a big change from when I was a kid.

It was like any opportunity to get at soda or pop, as we call it here in Wisconsin. People don't believe that it's called pop, but it is. So you know, you're right, there are trends out there that would be potentially negative, but if people are given the proper information about not only the short-term, but the long-term benefit of dairy products for people, obviously, for your bones and your health later in life. If you really are being educated as a young person about the way to have a good diet, I think we can counter some of these trends through some of the strengths we really have in the dairy industry.

MR. VILSACK: Senator Kohl, do you have any thoughts about that?

SENATOR KOHL: Yes, well, I think the rise of the organic movement has had some positive impact on dairy, because there are increasing numbers of dairy farms that produce organic and have attracted a real following, of course producing more low fat, as Russ pointed out, low fat dairy products is a positive in the marketplace and of course, the marketers themselves have to do a better job, I think, as marketers in ever industry have seen to it that their particular products are always more attractive to consumers who have increasingly more choices.

I happen to operate a milk stand at the State Fair every summer. I've been doing it for many, many years and we sell just flavored milk and we have five different flavors every summer and mothers can't wait to get their kids to come to our milk stand, because the kids go wild over the flavors and I've often wondered why more marketers don't produce more flavored milks, because young people in particular really like that.

So marketing is a big aspect of it and I think really, Mr. Secretary, if we can make farming, dairy farming more attractive and more profitable as a lifestyle for young people, there will always be enough customers for dairy products in our country. It has been that way since the very beginning and I think it will continue to be that way, but I believe our number one challenge is to see to it that dairy farming can be economically attractive to young people.

MR. VILSACK: Congresswoman?

CONGRESSWOMAN BALDWIN: Your question leads me in a lot of different directions and I don't want to talk too long, but I think there's a new focus on this issue that is -- that provides an opportunity for dairy farmers, I think about the lack of nutritional literacy, the childhood obesity epidemic that has gotten new attention. It's now going to be, among others, championed by our First Lady, and also as the recession has deeply hit folks, poverty and food choices are issues we need to understand more deeply.

If the grocery store in your neighborhood closes because you live in a poor neighborhood, as many have in even our own community here, the options, the array of options you have, if there's only a 7-11 or a convenience store in your immediate neighborhood and in order to go to a grocery store, you're taking a taxi or multiple buses, these affect people's food choices and their nutritional health.

And as we pay more attention to it, I think that clearly, educating people about a balanced diet and things that are truly affordable would absolutely include dairy products as a cornerstone of that.

MR. VILSACK: General, I'd like to ask you, we've only got a few more minutes here, but the Congresswoman mentioned cooperatives and the focus, I just thought it might be helpful for folks to get your take on this, to reinforce the fact that what this is and what this isn't.

MS. VARNEY: Sure, we understand that co-ops are essential to the livelihood of many of America's farmers and we are very, very supportive of the mission of co-ops and of Capper-Volstead. We have heard an alternative view here and there, that sometimes some of the larger co-ops are not as accessible to their members as some of their members would like to be and in particular, I've heard from one of the larger co-ops that they are trying to become more transparent and more responsive to their members' needs.

So we're -- we don't have an agenda here that is in any way anti co-op. We have a pro farmer agenda and we're going to take that wherever it leads us and just to assure you, Secretary, we're very supportive of Capper-Volstead.

MR. VILSACK: All right, thank you. We have probably time for sort of one minute summations, if anyone wants to have any additional thoughts. Mr. Secretary, I'll start with you and just kind of move down the line.

MR. NILSESTUEN: Well, hopefully, this open session, Mr. Secretary, is teed up and just touched the -- touched quickly on the variety of the issues and their complexity here, that there aren't any silver bullets, but to me, the one takeaway that I have here is the recognition by the Obama administration and you and leadership in agriculture together with Justice that market transparency, balance that well designed, modernized, effective regulation and oversight enforcement is good for markets and good for producers and good for all the participants within them.

And if we can do that, the other things that producers and marketers and co-ops do so well, we can have that bright future that you're talking about, but if there is dislocation, if we have a blind eye to structure, as boring as sometimes those topics seem to be to the general public, we'll have great dislocation and continue to see the kind of consolidation that we've had in too many sectors and I think the dairy industry does not want to go down that road.

SENATOR FEINGOLD: I guess the point I want to make is I've seen some changes in terms of the emphasis on the issues in the dairy industry. I'll tell you, some of the bloodiest battles I've ever seen are the regional battles between the Midwest and New England. Usually, we often vote together on many issues and there's some good natured joshing that goes on. It turns out that Ben & Jerry's actually wanted to come to Wisconsin, but their car broke down, so they stayed in Vermont. They knew where to come.

But you know, there was great ugliness and frankly tension not only between, but even within our dairy community. What we're talking about here today are things that bring us together that unify dairy farmers across the country and that is exciting to me, because I saw us as not getting anywhere for years until, frankly, you and Ms. Varney and others came in and started to move us in this direction.

So I want to thank you and particularly urge you on in the area of trying to resolve this problem of where is the money going that is being paid by consumers and not being received by farmers.

SENATOR KOHL: Yes, I think it's not hard for me and I think many people to understand how many aspects of farming are enormously attractive to young people as a potential way of life. We've talked about some of those characteristics this morning, so I need not enumerate, but I would wager anything that if all of a sudden federal policies were more aligned with the need for people in agriculture to make a good living and if that became apparent to young people, then they would flock to farming for all the obviously attractive qualities of life that it does offer.

As I've said earlier, federal policies over the years have favored consumers, I believe, over farm producers because there are so many, many, many more people at that level of consumer, but I think we need to change that. Secretary Vilsack pointed out, which is true, that we have so many fewer farms today than in decades and centuries past, but the most important reason for that is that our farms are so much more productive and ever more productive, so that a farm unit, a farm acre produces so much more product than was true in times earlier.

But I think with a little help from our people at the federal level, we can make farming in the next generation something that young people really are attracted to and I think with people like Tom Vilsack and Christine Varney, we're going to accomplish that.

CONGRESSWOMAN BALDWIN: Thank you.

Well, the focus of today's workshops are so critical to us as we move forward and Wisconsin is America's Dairyland, it is our tradition and we want it to be our future, too. And so getting it right, as we know, some aspects of consolidation, some aspects of concentration are positive, but not all and that's where the policing function needs to come in and it's been absent for, I think, too long and we are just really delighted that you are giving new attention to some of the more disturbing trends that we're seeing that we think will make it more difficult for our dairy farmers.

MS. VARNEY: I'm here principally to listen and there are a couple things that if our panelists and others could talk about, this is my third time visiting dairy country, although I may have been in enemy territory a few times, and what I'm very interested in is there are as many views of the problems as there are potential solutions.

And I've heard a lot about over production, I've heard a lot about lack of demand. I've heard about manipulation of pricing. I've heard about consolidation and concentration and I'm very interested in what the people who are going to be talking to us today have to say about those issues as we continue to figure out our strategy.

MR. VILSACK: I want to thank the first panel. I know that Senator Feingold has to leave for a little while, but will be back, so we appreciate you being here. I would encourage the other panelists to sit tight and we're going now to invite up to the stage a number of dairy farmers now. This will be interesting, given the pro Wisconsin bent of this conversation so far. We are going to have folks from California and New Mexico and New York and Minnesota come up here and I think they may potentially have a slightly different take on some issues, but we hope to have a vigorous conversation, so I'd invite the farm panelists to come on up.

We've got the panelists assembled, if we could realize that this is a panel that's following a panel that we didn't take a break, but we will take a break after this panel for about a half an hour, so I'm looking forward to this conversation. I think what I'll do is introduce the panelists, all of them at once and then ask each of them to make a couple of comments starting to my right and just moving to my left, and then we'll have an opportunity for dialogue and I certainly would encourage Senator Kohl and Congresswoman Baldwin to ask any questions that you might have, as well as the Assistant Attorney General.

Let me start with Darin Von Ruden, who is a third generation organic farmer. He is to my immediate right, to the far right. Darin was elected president of the Wisconsin Farmers Union this year and has served in several capacities for the organization, a patron member of the Westby Cooperative Creamery, a founding member of the Wisconsin Farmers Union, specialty cheese chair of the Wisconsin Dairy Farmers Guild and is a founding member of the Upper Midwest Milk Producers Association.

Sitting next to Darin, and hopefully they'll get along, is Jamie Bledsoe who is a dairy farmer from Riverdale, California. He served -- currently serves as president, board president of the Western United Dairymen and is on the board of directors of his cooperative, California Dairies, Inc. He currently has 1200

Holstein cows in two facilities and feeds over 2500 replacement heifers and 500 bulls for breeding purposes, a third generation dairyman and farms with his family.

Next to the Secretary of Agriculture is Christine Sukalski. She is a partner and dairy manager in Reiland Farms, LLP. The farm consists of 360 dairy cows, 300 head of young stock and about 1500 acres of crops. She earned producer of the year from both the Minnesota Milk Producers Association and the National Dairy Shrine, as well as an excellence award from the Minnesota Department of Agriculture.

Sitting next to Christine is Joaquin Contente, who served as president of the California Farmers Union since he was elected to that post in January of 2000. He owns and operates a dairy farm with his brother and family in Hanford which is in the central valley of California. Joaquin and his family have owned and operated this dairy farm since the late 1920s. He is also a board member of the California Dairy Campaign.

To my left sitting next to the

Congresswoman is Frances Horton. She's a third generation farmer from New Mexico. Frances and her husband own -- what I'm not going to get this right, Las Uvas Valley Dairy, which consists of 14,000 milk cows. Additionally, they have a heifer feed lot, black angus beef cattle and grow alfalfa. She serves as a council representative for the Dairy Farmers of America and is a board member of the Dairy Producers of New Mexico.

Sitting next to Frances is Ed King. He's been farming on a family farm since 1963. Since that time, the farm has grown to 2180 acres and 900 registered Holstein cows. The farm founded by his grandfather is more than 100 years old and is currently managed by two of Ed's sons. In addition to his duties on the farm, he has served as the director of the Dairylea Cooperative since 1993, also as vice chair of the New England Dairy Promotion Board and has recently been named by the President Obama to chair the Federal Farm Service Agency's New York State Committee.

And finally next to Ed is Joel Greeno, who is a dairy farmer from Kendall, Wisconsin, where he milks 48 cows on a 160-acre farm with his family. His farm was purchased in

1990 and he began milking cows there in 1993, has a sustainable forming operation using rotational grazing, no chemicals or commercial fertilizers.

He is the president of the American Raw Milk Producers Pricing Association, the vice-president of the Family Farm Defenders and serves on the executive committee of the National Family Farm Coalition. He's one of the founding producers of Scenic and Central Milk Producers, a midwest cooperative marketing milk to many processes in the last 12 years. So as you can tell from the introduction, it's a fairly representative sampling both in geography and in size and in concept here today.

So with that, Darin, I'm going to ask you to start, if that's okay and we'll just move right down the line with any comments that you all have. We have about five minutes each for each of you and then we'll open it up for questions.

MR. VON RUDEN: Thank you, Mr. Secretary, and thank you, Assistant Attorney General Varney for being here today. I thank you, Senator Kohl, Senator Feingold, Congresswoman Baldwin, thank you much for being here today.

This is a critical issue that needs to be addressed. I've been involved in dairy pricing issues now for the better part of 20 years, since I've taken over the family farm from my folks. In 1996, I was part of a group of farmers that organized the Upper Midwest Milk Producers Association and we were actually brought to the Attorney General's office here in the State of Wisconsin for price fixing, trying to get a decent price for our friends and ourselves, basically.

No action was taken off that, because we did form the Upper Midwest Milk Producers Cooperative because of that, but because of that, I was also put on former Governor Tommy Thompson's cheese pricing task force and in that process, I tried to introduce some form of a formula that would include cost of production in the formula, which at that time was being discussed for the 1996 farm. We ended up losing the battle to get that included in that, so the recommendations that that task force took to the Attorney General at that time did not include the cost of production, which was a disappointment to me.

Then in the following years, or in

the following months, I should say, the Wisconsin Assembly or Wisconsin Senate introduced a bill and I'm not sure what the number is on that right offhand, I haven't had time to look it up, but they introduced a bill that would regulate the Green Bay Cheese Exchange on trading against interests. It was trading against interests rule of 1996 or 1997, one of those two years, but anyway, the senate passed 28 to five and the assembly got held up in ag committee a little bit and then pretty soon, the Green Bay Cheese Exchange was announcing that they were going to move out of the state. They didn't want to be regulated.

And I think this is something that needs to be looked at, because if the CME, which is the old Green Bay Cheese Exchange, it's all the same players, nothing has really changed there. If they run away from being regulated in one state they're going to and they move to another state, if that state adopts the same type of regulation, they're going to move to another state, they will go to Kansas City or New York.

So this is something that has to be done on the federal level to address that issue of trading against interests. What trading against interests is, really, is that a net buyer of cheese, somebody that buys cheese all the time cannot sell on that market or if they're a net seller on that market, they can't be a net buyer and that's what's happening on this market, is somebody will buy too much product at a low price and when prices start coming up which will reflect a higher price for farmers, they sell it to drop the price to the farmers.

Whereas if they were on their own side of the block at all times, we'd have a, you know, I think a more stable price for our product. So that's one thing I think that, you know, we really need to address.

Some of the other concerns that we heard from the panel this morning, and just the general feeling that I'm getting, my folks didn't want me to farm because of the economics. It's all about economics.

It's a great place to grow a family. I've got a 16 year old son and an 11 year old daughter and I knew this was going to happen, but you know, I would like to see one of them take over the farm, I really would, but can they. I've had real good friends that their folks sold the farm lock, stock and barrel just so they couldn't farm and why, you know, they want to.

We're going into this period of time in our lives where we're going to be looking at non-Americans producing our food right in our own territory. It's happening already today. And I think with that sentiment, you get so much of the working public that doesn't have the tie to ownership and when you've got the tie to ownership, you actually care about things.

But when you're there just working an eight-hour day for a salary, you really don't care about the animals and the land the way the people that actually own it do, and if we keep going down this road of larger and larger the way the system is taking us, I think we're going to be where Russia was 20 years ago where they and Assemblywoman Baldwin or Congresswoman Baldwin already said that there's local grocery stores being closed up.

In 1992, we hosted a Russian at our place and if they weren't in line by 8:00 on Monday or Thursday mornings at the local grocery stores, they didn't have food for the next three or four days and if we've already got grocery stores that are closing, local grocery stores that are closing down, what's it going to be like here in 10 or 15 years, are we going to be in that same situation.

We're supposed to be the bread basket of the world, but I think part of the problem is the concentration. We're seeing it in all the other aspects of agriculture, where more and more people -- or I shouldn't say more and more people, less and less people are controlling the system and we need to move beyond that point.

Just one last comment, you know, I think some of the things that we're going to hear throughout today, I was rather encouraged by the panel before us, because they're looking at let's get back to controlling, you know, our own destiny, basically.

And I hope that the panels this afternoon are going to have some of that same tone, but you know, I've sat in so many meetings like this and come out of it with the same general consensus, that there's nothing wrong and there is something wrong, you know, and it needs to be changed. Thank you.

MR. BLEDSOE: Good morning, Secretary Vilsack and Assistant Attorney General Holder and other elected officials at the table today. I've prepared a statement because I'm nervous, particularly because I don't do this every day. I take care of cows and the other reason is I'm from California. Some of the comments I heard this morning, I'm glad Joaquin Contente's here because that leaves two targets for you. I want to thank you for holding this workshop to examine competition in agricultural markets.

The Secretary kind of gave me a brief introduction, but I wanted to tell you my wife's name is Elizabeth and we have four children, and Liz is a third generation dairy farmer, but I'm the first and my son came from Cal-Poly last June to join us on the farm and help run the farm and I have three daughters that are finishing various degrees at state colleges in California.

My experience has been many and varied in this industry, including managing dairy operations, the development of the lead dairy cattle genetics, marketing of live cattle semen and embryos all over the world, but my first love is to develop a profitable dairy herd and my wife and I started that in 2003 with 120 cows and as you heard earlier today, I milk 1200 cows and have a diversified farming operation. Our operation supports my family as well as provides food and shelter for 20 employees and their families.

I wanted to say that the dairy industry is a competitive industry and that has provided my family a chance to grow our operations to where we are today, and our prices are not set as many like to claim. Our farm prices are responsive to market signals, but do not have -- but do have processes in place to pay uniform prices to farmers recognizing the perishability of the product we have. In California, the dairy industry has a huge impact, just like Wisconsin.

Milk production is the largest sector of the largest industry in the state. The California dairy industry is responsible for more than 443,000 jobs and a typical dairy, which is a dairy my size, can generate $33 million a year in economic activity and provides 232 jobs in the state. In total, the dairy industry in the state of California contributed $63 billion in economic impact in 2008.

The economic situation facing the California dairy industry this past year was ruinous. While things have improved slightly, dairy farmers are still experiencing negative margins. In fact, June marks the 19th consecutive month of low milk prices and high input costs. Farm milk prices and feed commodity prices tend to be cyclical in nature. However, producers have never witnessed such dramatically low milk prices combined with skyrocketing production costs as they did for all of 2009. People, margins just haven't been low, they just simply haven't existed.

The crash came earlier to California. The California milk pricing system responds more quickly to current market conditions because it corresponds to the Chicago Mercantile Exchange. In contrast, price reporting procedures for federal milk marketing orders usually result in a one or two-month delay. The U.S. has a huge impact on the competitiveness. It's been the world's low-cost volume milk producer for many years. Unlike some other countries that may beat us on price, we also have the advantage of the most lucrative domestic dairy market in the world.

New Zealand, for example, produces roughly the same amount of milk as we do in California, but has a domestic market of just 10 percent the size of the State of California. Our competitiveness is borne out by the number of companies based elsewhere that have come here in search of milk and our markets, companies like Nestle, Saputo, LALA, Fonterra and Glambia, just to name a few.

Productivity gains on the U.S. dairy farms for the past several decades are nothing short of astonishing. However, all U.S. producers will be higher cost producers in the years to come as a result of the additional debt load taken on to survive these negative operating margins, and in my case, the last 25 years I've built an equity. I lost it all in 2009.

Industry consolidation is occurring at all levels of the dairy industry. Fewer farms, fewer cows and more milk have been trends for decades. The upside for consumers has been better quality milk. You only have to look at how much longer the sell by dates are on milk in retail stores to know improvements in quality are being made every day in this business. There are also fewer cooperatives, fewer processors and fewer larger retailers that always seem to want larger suppliers.

Everybody works to squeeze costs out of the system and every link in the chain. Farmers, we tinker with our feed rations. We'll milk more cows so the premium cost of production goes down. Cooperatives get more efficient hauling milk to reduce fuel use and miles on the road. And if you ask any processor today what it's like dealing with retailers these days from a cost standpoint, you'll want to be prepared to spend some time.

Through all these consolidations and quality improvements, however, it is undeniable that farmers have seen their share of what the consumer pays for milk and other dairy products go down significantly. The farm price for a gallon of milk today is now roughly 30 percent of what you pay in the retail store. Dairy farming is becoming unique in the livestock industry. That was mentioned earlier, in that milk production is controlled by the families who own the land, the facilities and the cows.

We buy the feed, we make the breeding decisions, we decide who buys our milk and when it's time to cull a cow. Every farmer I know wants to keep it that way and that's what I want this hearing to be about. Here's a few suggestions to keep it that way that I believe will help. We need to insure transparency in all markets accessed by producers. We need to build a federal economic safety net and not in the traditional terms we think of, for farmers that recognize our significantly higher input costs.

We need to provide risk management tools that work for farmers. We need to keep our marketing options open, for example, for farmers. For example, artisan cheese making has been a real advantage for some of the families that have chosen to diversify into it. Raw milk sales to the public, however, pose a real health risk to consumers and recurring consumer confidence crisis to our industry and should not be allowed.

Keep farmers in control of the regulatory system. Farmers have the right to determine how and by which agency milk marketing is regulated in their state and region and it should stay that way. The last thing is to make sure it's milk. Regulatory industries must, at a minimum, ensure that products labeled milk meet the federal descriptor to be called milk. And while on the subject of minimum standards, I just want to mention that we have a state requirement in California that fluid milk be fortified with additional milk solids in the form of condensed skim. Dairy producers pay for that.

Our milk tastes better and at the same time provides 30 percent more calcium per serving and the most important thing is it's all milk. That is a policy that's good for farmers. It's good for the public health and it's one that I hope the federal government will consider taking nationwide. With that, I thank you for the opportunity to be here today and talk about the competitiveness and I look forward to answering any questions. Thank you.

MS. SUKALSKI: I'm honored to be here today. Thank you, Secretary Vilsack and Assistant Attorney General Varney. After the most difficult financial year I've ever known as a dairy farmer, these discussions are appreciated. I graduated from the University of Minnesota with a degree in animal science and was working for a dairy magazine in Ohio when my father indicated he was going to sell his dairy herd and just crop farm.

I returned home in 1988 and have been managing the dairy herd ever since. Instead of being dispersed, the herd has grown and now supports three partner families, my parents, my brother and his family, myself and my family and 13 employees. All through high school and college, whenever I would push my father to adopt some new tool or technology, his constant answer was you come home and we'll do things your way. I'm thankful my father was true to his word and let me make changes, allowing me to see firsthand the results of the tools and innovations I chose.

I appreciate having choices and being able to do what I feel is right for my cows, my farm, my family and my business and to watch milk production per cow more than double in the last 20 years.

This brings me to my first concern, the mountain of misinformation and mis-perception circulating about conventional agriculture. Contrary to popular belief, conventional agriculture is very sustainable. The first measure of the sustainability must be financial, which is the main reason we are here today.

But beyond that, utilizing science-backed innovations to produce an abundant food supply using continuously fewer and fewer resources is sustainability. For example, since 1944, the carbon footprint of milk has actually fallen by 63 percent. In spite of that, it seems that everything about conventional agriculture from size to science is being demonized by the media, internet and books, while organic agriculture, which accounts for a tiny portion of total food, has been given some big green stamp of approval with no science to prove that it is truly produced with less total pressure on the environment or is necessarily safer or healthier.

The constant barrage of mistruths gets depressing to those of us who take such pride in what we do. I wish U.S. consumers could come to my farm and realize our care and commitment for our cattle and our world. The average U.S. consumer is generations removed from ever having tasted hunger. I hope it doesn't take that extreme for people to realize that food doesn't just appear on shelves.

Please don't misunderstand me. There is room for all types of farms. I appreciate diversity in agriculture and I want U.S. consumers to have as many food choices and our grocery shelves can allow, but I want consumers to have complete confidence in all food choices and not be making decisions based on misguided fears. Ultimately, my real concern is that propaganda will influence policy, policy that could potentially limit the U.S. ability in agriculture to compete in a global marketplace, a strength that I feel is critical to our economy, food safety and even national security.

I also fear that the threat of lawsuits or consumer backlash may inhibit future agricultural research and innovation. Innovations that we may need to feed a hungry world may go undiscovered. I believe that only a well fed world has any prayer of every being a peaceful world. I'm relieved by the U.S. Supreme Court's favorable decision on Roundup Ready alfalfa. While others kept it in courtrooms, we actually watched Roundup Ready alfalfa prove itself on our farm.

From that one planting during the narrow window of availability, we've harvested continuously for five years. It has been by far the best stand of alfalfa we've ever seen in our farming lives, but we are losing hope to plant it again in 2010. I hope the science based truth is always upheld. Of course, like everyone else here, I'm concerned about milk price and all the other topics that go into it, many of which will be thoroughly discussed later today.

Farmers are the eternal optimists. Even after the dismal prices of 2009, just 3.8 percent exited the industry. Only three of the last 17 years had lower exit rates. If farmers made decisions based solely on numbers, we probably all would have quit by the end of 2009, but there's always our belief that things will get better. I hope our never give up attitude isn't being taken advantage of by others in the industry.

In that respect, I am thankful for dairy cooperatives. Before cooperatives, farmers were being taken advantage of. The book, "Men to Remember," outlines how farmers came together in 1921 to form Land O' Lakes cooperative. It's a great read for anyone who eats. As I read this book, I felt the personal connection to the farmers in it as they struggled and strived just to put top quality butter on to the tables of consumers at a fair price for all.

Today most of our challenges are different, but I realized how the commitment and passion that founded Land O' Lakes is still alive and well on our farms today. I can't imagine feeling this committed to producing a quality end product if I wasn't a part owner of the company. Most importantly, co-ops allow farmers a collective place at the marketing table and a collective voice on policies that affect our farms. Co-ops allow farmers to pool their equity and jointly own what none of us could own alone and hopefully garner a fair price for milk.

Maybe I'm biased, but I think the dairy's cooperative system is the epitome of all the facets of agriculture and perhaps why there's less vertical integration in the dairy industry. Even though it's almost 100 years old, the cooperative system is the best marketing tool farmers have. However, I am concerned that there may be too much consolidation beyond our cooperatives. The clear example is how dairy farmers' share of the retail dollar has fallen from 52 percent in 1980 down to 27 percent in 2006.

It seems that retail prices never fall as rapidly or as far as prices on the farm and I am concerned that this prolongs our lows, because there is no price incentive for consumers to increase consumption. Thank you for the opportunity to share my concerns.

MR. CONTENTE: Good morning, Mr. Secretary and Assistant Attorney General and members of the panel and the audience. I'm a second generation dairyman from Hanford, California. My uncle and my dad originally started the operation. My uncle started back in the '20s, late '20s and my dad joined in later, in the early '50s. Then my brother and myself now have the farm. I have a son and a daughter that are also participating there with us, and hopefully, they can continue the endeavors that we've worked so hard for.

What I'm going to do is go over some of the things in my testimony and then just try to come up with a visual of what happened in this last year for the dairy farmers in America. My topics that I'm going to be talking about are dealing with the lack of a functioning marketplace and I think the best way to address that is to go back and see what happened in 2009.

In 2009, the consumption according to the USDA data in the United States was 186 billion pounds. The exports on the fat basis was 4 billion pounds. There's one category that's not mentioned in these numbers or in this data that needs to be included in there. The unregulated proteins that come into this country do not get included in any of this data. Those unregulated proteins, casein, caseinates and MPC.

Last year in 2009, those imports were down significantly from the year before, almost 40 percent down. However, they still came in at a high rate. In my testimony, I provide a chart that shows how much that volume is. That equates to over 6 billion pounds of milk equivalent on casein, caseinates and over 2 billion pounds in MPC that still came in and was utilized.

After you sum up all the product that was consumed including these unregulated proteins, it's a figure of nearly 200 billion pounds that was needed to satisfy the market in the United States, which is, by the way, the largest market in the world. We only produced 189 billion pounds of milk in 2009 and yet, the price, the average price for 2009 in the United States as an average was around $12.80. In my area, it was actually a lot lower than that.

We all needed at least $18. We had just come off of some extremely high feed costs due to some of the speculations that had driven up the commodity markets and yet we received 50 percent below cost of production in 2009 unnecessarily. The system is broken. We don't even produce enough for our own needs and we were receiving 50 percent below cost of production.

Let's compare another commodity. In my area, where there's a lot of almonds grown in my area. In 1995, the almond industry produced 400 million pounds of almonds. By 2008, 13 years later, that production grew to a billion and 600 million. That's four fold that the almond industry expanded their production four times in 13 years and by the way, over 50 percent of those almonds cannot be consumed in the United States because there's not enough market for them in the United States.

In September of '08, we had a financial collapse that was heard around the world. Credit markets around the world collapsed. They kept saying that the reason why our milk prices are collapsing is because the credit markets collapsed and people can't move product around the world as easily. So I had discussions with the almond industry people over the last several months, and this is what they tell me.

In 2009, the average price for all the almonds produced, because there's some almonds that are worth more depending upon size than others, but the average price for 2009 almonds was $1.60 something. The cost of production for almonds as a general rule is about $1 a pound. So the almond industry that does not have a market for all their product in the United States that has to export over half of their product, that has quadrupled their production in 13 years, received 60 percent above the cost of production. We in our dairy industry received 50 percent for most of '09.

The system is broken. Now, what do we do about it? By the way, this forum that we're having here is an exercise in democracy. This provides the issues to come to the table to be discussed and to be aired and to have these distinguished people, these two secretaries, assistant secretary, that are here with us today provides the credibility of what this country is all about.

It's democracy that creates prosperity. It's not trade or it's not resources, it's democracy, because the democracy, you have the ability to empower yourself. We as producers now have this ability here through this exercise that we're going through to empower ourselves to gain a piece of what the consumer is putting on the table when she goes to the store and lays down that grocery dollar for dairy products.

This last year, if you look at what the consumer was paying for milk, there's 11.6 gallons of milk in a 100 pounds and if the average price for milk was $3 and it was around that figure, give or take, some areas higher, some areas a little lower, that's $35 a hundred weight that the consumer was paying for that fluid milk.

We were getting $9 in California. Cheese that sells for an average across the United States for about $4.50 or $5, cheddar cheese yields are about 10 to 1, so 100 pounds of milk will make 10 pounds of cheddar cheese.

A $4.50 pound of cheddar cheese will yield $45 a hundred weight, $5 will yield $50 a hundred weight. The consumer is putting $35 to $50 down a hundred weight, which, by the way, the CPI consumer price for '09 dropped seven and a half percent while our producer price went from $18 plus the year before to $12 something. That's a five percent drop and the CPI for consumers only dropped seven and a half percent. The system is broken.

Either we do nothing and watch our industry follow the pork and poultry industry and wind up with a totally vertically integrated -- I disagree that we will not have dairy products. We will have those dairy products. Some of the panelists here mentioned that the food will have to come from other countries. That's not true. It will be produced here. It will not be produced here by families, at least the majority of families. It could be just a few small families.

In California, we have one family that produces most of the chicken. It's called Foster Farms, and the rest of you know what it's like on the east coast. So what I'm saying here, this is the opportunity for we as dairy farmers to empower ourselves to reach out and get a piece of that rock for us through this forum that we're having here and this discussion and I thank the Secretary and the assistant. Thank you.

MR. VILSACK: Thank you. Frances, your thoughts?

MS. HORTON: Good morning, Secretary and Assistant Attorney General. My name is Frances Horton and I'm very pleased to be here today to tell you a little bit about dairying in the southwest, and I wish Senator Feingold was here because I can assure him there are cows in New Mexico. I was born in New Mexico and grew up in Arizona. My grandfather was a cotton ginner. My father grew cotton and had a small beef feed lot.

In 1980, we started our first dairy with 200 cows. Today, my husband Dean and I with the help of our son Loren are milking 14,000 head. We are a closed herd and use sex semen to provide our replacements. We employ over 200 people from the local community and buy most of our silage and alfalfa from local farmers. To be as efficient as we can in today's economy, we use technology to help improve our income, such as drip irrigation to conserve our precious water.

We use low till farming practices with GPS equipment to save fuel. Every day, we strive to improve our business by producing the very best milk that we can, by testing for somatic cell levels and antibiotics. We use best management practices to provide top quality care for our animals. We also use the latest computer programs to maximize our feed usage and efficiency. We keep records of all our cattle with RFID tags to minimize use of medicine and to improve breeding results.

We also use computers and satellites to keep track of milk and feed markets and weather reports. Our labor force comes from the local community and includes many women and high school students who work after school. We have a bonus program for quality milk, a perfect attendance reward program and a college scholarship program. In spite of our size, our business is totally family owned, and the only other person who has a say in its operation is our banker.

We are a family that supports other families, those of our employees, our local merchants and our local farmers. As everyone in this room knows, and I hope they do, the dairy industry is not in good shape. In the 32 years we have been dairying, there have been ups and downs and now there's only down. I am not an economist or a statistician. I can't spout numbers or show you charts with lots of colored lines. I can tell you that my main job is taking care of the money in our business.

I used to be able to make the payroll, pay for the hay and feed, pay the bills on time and pay my debt down in time to borrow it again. Right now, I am lucky to pay the employees and maybe part of the bills. Our debt is three times what it was two years ago. I'm not sure what the problem is. We attend many meetings and I've listened to many experts say what the problems are and I'm sure they're all right. I don't think there is one perfect solution.

I don't want the government to run

my business or my industry. I think that the government and my family each has an important job to do. My job is to pay taxes, to protect the environment where I farm, produce the best quality milk possible, provide the best care for our animals and have the best working conditions for our employees. My government's job to protect me from enemies, to enforce fair and reasonable rules for the environment, to protect our animals from abuse and make sure that my employees are treated fairly.

I also think the government should keep the playing field level, so that anyone who works harder and smarter and is willing to make sacrifices and take risks should be able to make a success and provide for their families and future generations.

I believe in co-ops. They help us. They transport and market my milk so that we can concentrate on doing what we do best. They also have a job to do to help keep the dairy industry strong and have unity in the give and take of dealing with processors.

I have no problems with the processing company being large. I do have a problem with companies that take unfair or dishonest advantage because they can. The government's job is to set rules and limits and enforce them fairly. The dairy industry is not in good shape. However, I don't believe that drastic changes will help with the government controlling supply.

I want my government to do a better job of regulating and enforcing the rules we already have, such as improving the standards of the pasturized milk ordinance and increasing solids in milk. This would use more milk and create a better product that would compete in the world market. I also feel that we need to be more careful on allowing imports into our market which are incorrectly labeled, and these compete with pure, wholesome American milk for the processors' dollar.

I know that processors and food companies need to make a profit. However, they also need to pay the American dairyman a fair share of the consumer's dollar unless they want to end up buying their product from places that do not guarantee the quality or safety of the milk supply. U.S. dairymen are the best in the world at what they do, but they are being squeezed by the high cost of imports. This cannot last forever.

We need a better system for pricing milk that cannot be manipulated by thinly traded CME markets. I think all dairymen in the United States are united in their goals. They want to provide the highest quality milk in the world. They want to have a clean, unpolluted environment for their families and their farms and they are proud of their farming lifestyle and they want to secure it for their families and future generations. Thank you.

MR. KING: Secretary Vilsack, General Varney, it's a pleasure to be here this morning. I take some -- with all of the chatter about Wisconsin and I have a lot of great friends in Wisconsin and California. I feel a connection with both of you because I know both of you, I believe both of you had some educational experience in New York. So any other way I can bond with you? That's the way.

At any rate, I'm Ed King. My wife and I and our sons, sons are very important, and their families own and operate King's Ransom Farm, a 900-cow dairy which is located in Saratoga County, New York. It's about 30 miles north of Albany, our capital. For those of you who like thoroughbred horses, this is where the oldest thoroughbred track in the country is located. Thoroughbred racing reigns supreme there in July and August each year. Okay. Now, on to the dairy issues.

I consider it a privilege to be invited to present my views on the challenges facing our industry today. As you've already heard, dairy producers are hurting. I can attest to that. There are a number of issues which we face as we struggle to survive in hopes of restoring our businesses to profitability. Let me identify just three of those issues. Number one, the lack of market power. Number two, our share of the retail dollar, and, number three, the lack of market transparency.

Let me detail my concerns. First, as I said, producers lack market power. We need our cooperatives. Our family has marketed milk through the Dairylea Cooperative for 20 years. It's been a great relationship. We're invested in them and they're invested in us and we will continue to rely on the cooperative's expertise into the foreseeable future. Because of this, I want to personally thank both the Secretary and the General for the comments that they've made this morning and have made previously in the support of the Capper-Volstead Act.

And we know now that it's not a real focus of this endeavor, so I want to thank both of you personally for those comments and that support. It means a lot to me. Second, the producers' share of the consumer dollar has shrunk substantially in recent years. USDA's Economic Research Service, and you've heard this spoken to before, has confirmed this by reporting that the farmer's share of the retail dairy price fell dramatically in the past two years to about 25 percent in '09 from about almost 38 percent in 2007.

This is particularly evident in the fluid milk market, because consolidation in the retail food marketing industry has reached the point where major chain marketers can flex their buying power muscle and demand price concessions from processors in the name of keeping them competitive. All of these price concession demands quickly end up on the producers' doorstep as we become the target of this feeding frenzy for lower prices. Yet we producers have no place to turn to apply pressure to keep us competitive.

Attention must be given to bringing an end to the demands for inclusion of competitiveness provisions in contracts. Additionally, significant consolidation at the retail level is seemingly making it easier for retailers to capture an inordinate share of the total margin on milk. Bottom line, farmers have no control over this part of the equation. It might be interesting for you to know that as a result of this, our family has, after careful analysis, coupled with our access to a very unique consumer market opportunity, we've embarked on a new business venture that includes weekly delivery of fluid milk.

Our goal is to recapture some of that retail dollar. We're encouraged, as in just eight short weeks, this is a very new venture, we have a growing customer list and apparently, many opportunities ahead of us.

Finally, I would like to address the lack of market transparency. Dairy producers have a particular need to access market reconnaissance from all regions of the country where milk prices are more competitive.

Today, the market signals we receive can be affected by the activity of a handful of buyers on the cheese exchange, and frankly, sometimes that activity does not fairly represent true marketplace dynamics across our nation and, yes, even the world. We need a change in policy and the systems that we use that will help to provide price stability for our industry for the long term.

As I close, I want to thank USDA and the Department of Justice for allowing me to express just a few of my thoughts. Thank you very much.

MR. VILSACK: Joel?

MR. GREENO: It's good to be here. I'd like to thank Ag Secretary Vilsack and Assistant Attorney General Varney for being here and holding this session and you've been asked to do a lot of things here today and I was just wondering, my farm has seen 17 inches of rain in the last four weeks and if you could call somebody and just turn it off for two weeks, it would be appreciated.

MR. VILSACK: That would be Governor Doyle.

MR. GREENO: I'd just like to start with the Greeno family has farmed in Monroe County, Wisconsin for 150 years now and I'm the last one, and that's unfortunate. And I guess I'm here today to be a voice for the voiceless. I've waited 17 years for this opportunity and I'm glad to be here. My mom and dad's 29th wedding anniversary present was a farm foreclosure and their 30th wedding anniversary present was a Sheriff's auction on the courthouse steps.

That forced me to move my dairy operation out of their facility into an abandoned FSA property that I had purchased in 1990. The house and barn had all been completely vandalized, no doors and windows in the house, no electricity, and we had to set up shop and go into operation in a matter of days, and the family pulled together and came through and I've been milking cows there now 17 years. You know, my dad battled through polio, a debilitating back injury, cancer, but he couldn't beat low milk prices and something has to be done.

In mid January, a New York State dairy farmer shot 51 of his cows and then himself. We know of nearly 100 dairy farmers that have committed suicide to date since the '08 crash. It's got to stop. Many of ours, a dear friend, a Korean farmer by the name of Mr. Lee was on his family's farm for 1000 years and he committed suicide at the World Trade Organization ministerial meeting in Cancun, Mexico and his last words were WTO kills farmers as he shoved a dagger in his chest and bled to death. These people's lives had value. The work they did had value and the products they produced had value and corporate America didn't allow them to have that.

The crisis in dairy is real. The problems in dairy are manmade. It's easy to do nothing. Do we have the will to fix it? Dairy pricing has a beginning and the beginning is the Chicago Mercantile Exchange. Primarily, block cheddar trading. The Chicago Mercantile Exchange decides everything in dairy pricing.

When companies report cheddar prices through the NASS survey, 30 of the companies that report always report the CME cash block market. CME block trading has a near perfect correlation to dairy farmer's Class III price. If supply and demand were true indicators of the market, there should be a strong relationship between American cheese stocks and the price of block cheddar on the CME. There is not. All volatility in milk pricing is caused by the CME.

The CME cheese trading is a highly leveraged, thinly traded market with few players. Currently, two players mainly control CME block cheddar trading, in Davisco being the main seller and Schreiber's being the main buyer. Two players do not make a market, and at least not a true market indicator. All of the industry marches in lock step with CME prices. With a history of price fixing, the CME block trading cannot be the deciding factor in milk pricing.

Commodity Futures Trading Commission needs immediate jurisdiction over the CME trading. DOJ needs to take swift action on the ongoing dairy industry investigation began by Ali Ramadan into the actions of DFA, Deans and National Dairy Holdings, swift action on market manipulation and price fixing of dairy commodities and USDA needs to strongly reconsider relying on the NASS survey, which is the vehicle of all fabricated market information going to USDA that is used in the milk pricing formula.

DOJ needs to move forward on the creation of the food and ag unit with field offices. Is the Antitrust Division the appropriate division to investigate milk prices or should it be shared or handed over to the racketeering division?

Dairy farmers deserve dignity. They deserve justice. They deserve cost of production plus a profit. A friend of mine recently had a position with Caterpillar and he said that if farmers ran their farms like corporate America ran their businesses, we'd all be bankrupt.

And he's moved back to Pennsylvania to take up his ag job again, and you know, it's just a scenario that's went on far too long and let's hope that today is the beginning of the end and that we restore fair prices to our farmers. Thank you.

MR. VILSACK: Well, in order to keep on schedule, we're going to have to be sort of quick on these -- on the Q&A, but I don't know if the Senator or the Congresswoman have any specific questions that they'd like to ask the panel. If they do, I'd be happy to give them that first opportunity.

CONGRESSWOMAN BALDWIN: I will be an accomplice in being brief and maybe can get some follow-up afterwards, but I would say I'd be interested in knowing from Jamie particularly a listing of some of the risk management tools that you were talking about earlier and also a couple of people talked about -- I think it was Christine Sukalski and Ed King talked about the farmer's share of retail price and the lag time in seeing any sort of reflection of that in the grocery store, and also often times not seeing it ever appear.

I'm really interested in -- because to me, those are signals of anticompetitiveness and to sort of drill down -- not a good expression to use these days, but to understand a little bit more why the signals of a healthy competitive market aren't occurring.

MR. BLEDSOE: So on risk management tools, your question is how do we make them available or educate farmers?

CONGRESSWOMAN BALDWIN: When you were talking about policy recommendations to us and since a couple of us are -- you said we need better risk management tools and I figured there was a lot more behind that sentence.

MR. BLEDSOE: Yeah, those are -- risk management tools are things that aren't as familiar to us in California and I think they've been used a lot more out in the Midwest and even as you look at -- from my perspective, if you look at the whole policy, the whole dairy policy, risk management, even if we love the CME or don't love the CME or we like buying puts or calls or not, risk management is something farmers can do today to protect their margin.

We're not good at it. We're learning about it. The program is thinly traded, so you have to be right there and -- but I think, you know, we have to educate farmers on how to use those tools better. Perhaps, and we look at further down the road discussions, perhaps when I talk about safety net, there may be a possibility to help fund or -- I'm trying to think of the word right now, to help farmers buy puts.

Rather than just give them money to

produce milk when we don't need the milk, let's help them manage their risk in some way. These are things that we need to educate and are actually talking about in the industry today, but as a dairy farmer today, I know we lost a lot of milk last year and a lot of money last year and nobody did it, but in California, we had the opportunity, as well as in the Midwest, having contracted our milk in that brief period of time, it was there for $19 or $18.

I wouldn't have lost as much money as I did, but I need more education. I need to learn how to use those totals and those tools need to be affordable.

MS. SUKALSKI: On the reducing share of consumer prices, you know, farmers we buy all of our inputs retail which keeps a lot of other industries in business and none of those costs have gone down, but we sell our products wholesale and so we're constantly in this crosshairs of where we see what it is in the grocery store and see it not coming down and I'm on promotion boards. My number one passion is promoting dairy products and I would just like to see the opportunity for consumers to consume more.

When we have a surplus, why can't the store price reflect our price and perhaps the consumers will consume more.

MR. BLEDSOE: Can I add to that? I just have a real cute little story and in economic terms, it's called elasticity and demand, but the story, we have -- our family has a house on the beach and one day we're having a barbecue and my wife sent me down to the store to buy butter and this is in 2003 when we started the cows. When I started my cows, I was getting $9.25 a hundred weight, that was my price.

So I went in to buy butter, it was $5 a pound. So I asked the store owner, I go you know, I'm a dairyman from the valley, why are you -- I'm only getting $1 a pound for my butter, why are you charging $5 a pound, and he said well, you know, if I lower it every time your price lowers, then one day the customers come in and he's buying it for $2.50, the next time he has to buy it for $5. Every time I raise that price, he won't buy it.

He goes, it's not my fault you're dumb enough to sell your milk to the processor for

$1 a hundred weight, $1 a pound. So that's from a retailer's side, that's a small mom and pop store, but that's maybe how they look at it.

SENATOR KOHL: I thought we all feel that the testimony that we received here this morning from these various producers across the country has been very, very important and stimulating and informative. Personally, I feel that as a result of this workshop, if one thing came out of it, it would be very productive, Mr. Secretary and Christine Varney, that we would undertake to do everything that's necessary to see to it that the Chicago Mercantile Exchange and the CFTC is really operating effectively in terms of producing a national market price.

There probably isn't a producer in the country that doesn't feel that it's not operating correctly. I think they have a right to expect us at the federal level to guarantee them that either it is operating effectively or that we see to it that we install procedures to accomplish that goal. We owe it, I think, to the producers of this country.

MR. VILSACK: I have a question for all of the panelists. As you all provided your testimony, you had a series of ideas and thoughts and obviously very different geographic locations and different types of operations. Do you believe that there is sufficient interest across the country, across dairy operators of all sizes and kinds for some significant change in the way in which we do business so that we have greater stability, or do you think we will evolve back into protecting our own regional turf?

I'd be just curious, do you think the time is right or do you think we're going to slide back to business as usual? Who wants to take that?

MR. VON RUDEN: I might as well start, being I started it, I guess, but we've only got a minute, so I'll keep it short. I think right now with the desperation that's among dairy farmers, I think we're ready for something that's going to be constructive. If we go back to the same old song and dance of not having a mechanism to raise our price with -- and that boils down to the CME, you know. We've got to change that mechanism.

And I would personally like to see a consumer pricing index in that formula, whether it's 100 percent or 50 percent. 50 percent of the CPI in our pricing formula would certainly give us a lot more money today than what we've receiving, although I'd like to see that used as 100 percent with the current market or any time you go in the grocery store today, the grocery item runs across a bar code, so that system is automatic. The numbers are there on a daily basis.

It isn't like it was 40 years ago when you'd buy a carrot and there would be a little sticker on there that said 20 cents and the clerk had to push it in for each carrot. You know, everything today is so much faster, so that information is there and I don't know why they can't use the consumer pricing index as a part of our pricing formula to allow us to receive our fair share.

MR. BLEDSOE: And also to add to that, we're in a different kind of a marketing order in California, but I know the country is looking now at that federal marketing order reforms and I think there's things that you can do in there, although I'm not an expert, that can actually give you forward pricing, send signals to dairymen ahead of time of what may be the price of powder, what may be the price of cheese, as well as things that are coming up as the dairy industry globalizes.

We're looking at things like the global dairy trade, which can actually give us forward pricing. Rather than always looking back, we can look ahead and I think that would help dairy farmers as well and yes, the answer to your question is dairymen want change and I know in California, we're working for that change regardless of what happens?

MR. VILSACK: How about dairywomen?

MS. SUKALSKI: Dairywomen want change even more. I do appreciate the foundation for the future plan that I've seen come out of National Milk Producers Federation. It's a good start. There's definitely areas that we have to discuss on it, though, and we are going to have regional differences. Some of us in the Midwest, we'd like to kind catch up to California.

MR. CONTENTE: Mr. Secretary, the question was are producers ready to come together, is that basically it? Yeah, all right. The problem that we have as producers is that we really don't have a strong voice for dairy producers across the country. National Milk has a tendency to lean more towards the processing sector, which is understandable due to all the plants that have the processing element in it.

The make allow structure that decouples the plants from the marketplace is a little bit of that problem and so we producers across the country, and I talk to a lot of people around the country, and people do want to change. Of course, all you have to do is look at their milk checks to figure that out. But the problem is, is that we don't have the voice that carries the producers' wishes.

MR. VILSACK: Frances, what do you think?

MS. HORTON: Yes, I think we are ready for a change and what I've seen from this crises is that a lot of different groups, like your trade associations, have found out that the only way they're going to survive is to come together for political power and within their co-ops. And I know when we first got into the dairy business, there was a lot of discord between south and the west and everything and I think people have found out you're either going to hang together or you're going to hang by yourself, and necessity, I think, will cause dairymen to work together. And we need to change, because what we're doing now is not very good.

MR. KING: The short answer is yes, I think producers are ready to come together and we need to do it quickly. I don't know, from our farm operation, we've bled long enough and I'm not sure how long the banker wants to hang on to anybody's hand any more and those are just cold, hard, brutal economic facts. So we can't afford the time to debate and debate and debate and debate and wait for whatever time period, two or three more years.

I just can't imagine the credit community sticking with farmers that long, so we need to move. We need to come to consensus and if we want to be -- elevate the issues of regionalism and all of those kind of things, we're just shooting ourselves in the foot.

MR. VILSACK: Joel, your thoughts?

MR. GREENO: I think more than ever before, farmers have come together. The availability of conference calls has helped us a lot. You know, I've been 13 years now with farmers all across the U.S. on calls and as Joaquin said, we lack the vehicle to convey our message to you folks in Washington, and hopefully, this meeting has kind of created that bridge and opportunity. I've worked a lot with farmers around the globe, attending ag policy meetings in Spain and Portugal and have met Ajmer Singh from India, from the BKU who has 20 million members in his cooperative, which is an organization similar to the Farmers Union here.

And I recently had the president of Family Farm Defenders and a board member of ARMCO over in Germany for a worldwide dairy policy meeting of which there was a dairy manifesto put together which was just recently mailed to Secretary Vilsack, Attorney General Holder, the President, and that was farm organizations from all over the world that were there and worked on that document and, you know, it refers to dumping practices and stable prices and, you know, we were talking a minute ago about risk, risk management and volatility and, again, it all goes back to the CME.

The volatility is created, because

we have a stable milk supply. We have a stable consuming public and all of the factors are relatively predictable and stable. It is only the, you know, act of, you know, a market where -- I lost that word I was looking for, but a lot of speculation and in speculation, you use risk management, because that's where you make the money. So this volatility that's being created by the CME is the source of our problem.

And risk management makes them money, but for dairy farmers, it doesn't work, because we can't have a roller coaster milk price like we've had and it has all begun since cheese trading went to the CME. Never before, because you can look at the graph of the last 60 years of milk price and it went from fairly stable ups and downs to looking like a heart monitor and it can't look like a heart attack.

MR. VILSACK: We're going to take a break, but before we do, I just want to -- just a couple of closing comments. One, again, I want to thank the panelists for their participation. Secretary, thank you for being here. Senator, thank you so much for spending time, Congresswoman, thank you for being with us as well. We're going to take a break.

We're going to come back after the break for an hour of public testimony, people who have comments. That will be recorded by folks from the Justice Department as well as the Department of Agriculture. There will be a brief lunch break and we will then come back and have several panels, one, trends in dairy industry which will focus on regulation and enforcement that will be moderated by a Justice Department official.

We'll have an ag program focused on farm size. That's going to be moderated by someone from ERS. We'll have a panel discussion on farm prices and farm trends and then there will be another public opportunity. I do also want to acknowledge the folks -- it's hard to see with these bright lights, but I can see a lot of yellow shirts, so I'm assuming there's a lot of UFCW folks here. Thank you for being here. So we'll take about a half hour break and come back at 11:45.

(A short recess is taken)

MR. FERRELL: Folks, I think we will go ahead and get started with the public comment portion of today. For this comment period. It will run one hour. We have two comment periods today. This first one will run one hour and then we'll pick it up again in the -- later in the afternoon. If you would like to provide a comment, when you came in the doors today, there was a ticket that you should have picked up and what we're going to try to do is when you come forward, there's a microphone on each side in the aisle, and when you come forward, we're going to have someone that will pick the ticket up from you.

We're going to have two minutes for anyone to be able to come forward and to provide their comments, and we're going to do everything we can to try to work through as many people as possible, but I do need your cooperation. If you can limit your comments to two minutes, that ensures we get as many people as possible to be able to come forward and provide their comments.

So with that, I think we will go ahead and get started. If you would like to provide a public comment, just come ahead and line up along each side of the aisle by the microphone and you can go ahead and get started. If everyone could take their seats. Thank you.

AUDIENCE MEMBER: Hello, my name is Ken Turner and I really appreciate the opportunity given by USDA, Department of Justice for this workshop. My comments will be exceedingly brief. I just want to point out something that many of us know here. Something is wrong here in America when market manipulation is condoned by our government. Something is wrong when market manipulation closes processing plants and markets to family farms.

Something is wrong when market manipulation leads to the death of family farms and rural communities, displacing family farms. Something is wrong when corporate agriculture is subsidized as it displaces family farms. Something is wrong when corporate agriculture is responsible for a redistribution of wealth from rural communities to the hands of very few. Recently, in America, many people are rethinking the concept of acceptable risk.

From the coal mines in West Virginia to the Gulf Coast and the oil spill, we have problems with acceptable risk. Something is wrong when corporate ag is above the concept of acceptable risk. Is it acceptable today in northwestern Illinois to place 43 acres of manure pits leaking 40,000 gallons of untreated waste per day, by their own engineer's witness and testify, less than five feet above an aquifer that is the drinking water for thousands.

Something is wrong in America, our America, when this is allowed to happen. Thank you.

AUDIENCE MEMBER: Hello, my name is Sarah Lloyd and I'm a dairy farmer from the Wisconsin Dells. My husband Nelson and I milk 300 cows with his brother and brother's family and my in-laws, and we ship our milk to Foremost Farms. I appreciate this ability to speak today. There is something very wrong in the dairy industry. It's been devastating to my friends in the dairy farming community. This year, we have many people on the verge of bankruptcy.

I know many farmers that have their children on free and reduced lunch at schools, so I urge the Department of Justice to take action now. There are things that can be done on existing enforcement actions and investigations and you need to take action now. We need a fair price. To give you an example of what could happen in Wisconsin, we are the dairy state, but not just on production, we actually have 12,500 dairy farms in the state, probably a little bit more than that, but that's pretty phenomenal, when you consider our friends in California have about 1900 dairy farms.

We have 12,500, but we produced 25 billion pounds of milk last year in Wisconsin and we could actually do that with 250 5000-cow dairies instead of 12,500 100-cow dairies and I really think that it's important for communities, for our schools, for our churches, for our land that we keep a distributed production system and so -- but we need a price that will support families.

So I ask that the DOJ take action immediately to make sure that a fair price can be given to farmers for their production. We need cost of production plus a reasonable amount of money to make a living. Thank you.

AUDIENCE MEMBER: Hello, my name is Irv Conley and I'm a member of the United Food and Commercial Workers Union. I'm here on behalf of about 3000 dairy workers within our union who are part of 1.3 million nationwide in the meat packing, food processing and retailing. We appreciate the opportunity to speak to you today and our concerns go beyond the relationship between the dairy processing companies and the farmers.

We want you to consider the state of consolidation in the dairy industry, but also into other agricultural markets in general. We urge the administration to include in its investigation the assessment of the role of the retail grocer in this sector for playing and driving consolidation in various agricultural markets. The means of the involvement -- this means the involvement of the Federal Trade Commission in this process is critical. We're concerned by their absence here today.

The market prior to these large grocery retailers has grown dramatically in the last two decades. Retail consolidation has had a dramatic impact on the food supply chain and everybody here knows the single most powerful entity in food production in the world, single largest retailer is Wal*Mart. Wal*Mart's relentless quest for larger marketshare throughout the nations of the world and its growing marketshare provides it with the power to apply increasing pressure on the food processors and to lower price and cut costs, which in turn passes losses down the food supply chain.

This drives down workers' wages and farmers' prices. Caught in the vice of Wal*Mart, many of our colleagues and friends and neighbors have found themselves unable to support their families and have lost their livelihoods and their American dream. One of our members, a dairy processing worker, was going to speak to you here today. In the area where he works, Wal*Mart has more than 30 percent of the grocery marketshare in seven of eight markets. In one area, Wal*Mart has 50 percent of the grocery marketshare.

Until recently, Wal*Mart was the major consumer of his dairy processing company, but then without warning, Wal*Mart dropped the company as a supplier because of a cheaper price from a national conglomerate. Now his company is threatening workers at the plant to work harder and to produce faster products at a reduced cost. We know that the quest to woo Wal*Mart back is going to force concessions, wage reductions, healthcare reductions can't be far behind.

This worker with his job and the jobs of his co-workers are on the line. Understandably, he was unwilling to speak in this public audience, but I ask that this panel consider him and his family, the farmers involved in this, his ability to make a living and to keep his lifestyle as he sees it today and look into the pressure that retail consolidation and Wal*Mart has put on the dairy industry as a whole, that many of us here today depend on for our livelihoods. This is urgent and I ask for you to move on this immediately. Thank you.

AUDIENCE MEMBER: Yes, my name is Howard Roeth(phonetic), I'm from southwest Wisconsin. I'm a pork producer here in this great dairy state, but I wanted to bring my views here instead of traveling to Colorado or somewhere else. The decline in the number of pigs whose price is negotiated each day concerns me, but I do not believe government intervention is the answer to that problem. Focus on better information systems and expanding markets for more information.

The mandatory price reporting law

needs to be reauthorized in a timely manner. The last time it expired in 2004, it took more than 18 months to get the reauthorization. The percentage of all wholesale cuts reported to USDA under the current voluntary system is between three and four percent. Most weeks, that is so low that it casts doubt about whether USDA's published count value accurately represents U.S. carcasses value as a whole.

It also leaves me and many others uncomfortable using the published USDA cutout value to price my hogs. In summary, I am more -- I think more market information on hogs and cuts and values are needed. Incentives, like tax credits or low interest loans to medium and small market retailers and processors would be helpful. I also think to help young farmers get into the business there, needs fob more education and money spent in that process. Thank you.

AUDIENCE MEMBER: Hello, my name is Ruth Simpson and I am on the board of the Family Farm Defenders. I have been working on dairy issues for over 20 years and it all has -- bottoms down to farmers getting a fair price, and they just aren't in the marketplace, they just -- it is just not happening. There obviously are multiple reasons for that that have been explained.

I want to have a couple of comments that are a little bit off, but -- the pricing, but have to do with farmer control and one is the allowance of block voting in the dairy industry. I don't think most farmers understand what's happening with their pricing system because it's done by block voting and they're not notified or know anything about it and I think block voting is very undemocratic and it should be -- should not be allowed to happen.

Secondly, we all -- I think a lot of us remember the farm crisis in the 1980s when farm foreclosures were happening much too often and that is obviously going to be happening again very soon if we don't fix the farm system. You have heard people say they have been losing money and taking on debt. Well, what happened in the 1980s is very similar. We went through a financial crisis in the early 1980s and within two years, the farm sector was devastated. And we are going to be seeing that happen again if the United States government does not do something to help set a fair price for dairy farmers, so I urge action immediately to try and correct this situation.

AUDIENCE MEMBER: Hi, my name is Scott Schultz, I'm the executive director of the Wisconsin Farmers Union. Before coming to the Wisconsin Farmers Union, I spent about 35 years in the newspaper industry, including 22 of them at one of Wisconsin's leading rural publications, The Country Today. Throughout my career, one thing has become clear and in this day of technology, it's becoming even more clear.

We're sitting in this room talking about the effects of the -- of antitrust issues on farmers. I believe fully that we have to take that argument beyond this room of farmers. I say that because if we read the online feedback from the newspaper stories about this today, you will quickly see from the people commenting about this that they don't give a damn about farmers out in the community. Non farmers just don't give a damn about us, folks. That's a fact. A very small handful do.

This has come down to an overall economic development question, this issue of consolidation. When I was a child growing up in

Clark County, Wisconsin, I was raised on a small dairy farm, you know, diversified operation with a few hogs and the like. There was a field representative at our door from a small dairy almost every day of the week, it seemed. Someone wanted to offer my father a higher price for milk. My dad in his earlier years used to sit and tell me, someday when it gets narrowed down to just a few players, we're going to get what we deserve.

Little did he know how his words were going to ring true, but in the total opposite way than he had anticipated. It seems the dairy farmers are getting what they deserve. In many counties, including Darin Von Ruden's home county of Vernon and my county of Clark County, there used to be a dairy plant literally in every township. There was competition. The competition is gone. The competition is owned by one or two players with the likes of Dean Foods leading the way.

Now, we can say that really affects us, but as I said before, until we take this issue out and make it a rural economic issue, we aren't going to hear very much progress. That same home place where I grew up in Clark County virtually no longer exists. It's a small bedroom community. It used to be a thriving, economic place. Loyal, Wisconsin, the chamber of commerce, used to tout itself as the shopping center city and that no longer is. It can't be, because there are no retail stores, including a grocery store, left in that town.

I can easily trace, and I think the Department of Justice can easily trace the economic losses that occurred in that small community and other small rural communities and bigger ones, as far as that goes, all the way around in a circle to what's going on with the consolidation and antitrust problems in our industry and we have to as an industry get out and tell people, this affects everybody.

So I think that when we get that argument made, the Department of Justice and USDA are going to hear on a much bigger scale that we have to do something to control the consolidation and control of the industry by one or two players.

AUDIENCE MEMBER: My name is Jim Brown and I'm from Springfield, Illinois now, but I spent my life as a corn, soybean and hog farmer in north central Iowa and though I agree with the stance of the farmer's union in Wisconsin and Iowa and Illinois, I want to disagree with the gentleman who just says that the consumers and the cities don't care about farmers. When I went to Illinois and began the work that I'm doing now, when I got up into Chicago and got with the people in Chicago, it's as though they wanted to touch me because I had spent my life as a family farmer.

Farmers today are less than one percent of the population. The urban dwellers love the family farm. We do not have the political power to change this, but those urban consumers do and if you want to make a change, go to the urban consumers, because they're going to help us do this.

Now, back to the issue of consolidation and concentration. This meeting here today reminds me of the hundreds and hundreds of meetings that I attended in the mid '90s when the pork industry, my industry, was being consolidated.

And we couldn't get it done. I met with Joel Klein, President Clinton's special appointee on antitrust and at a dinner meeting one night when he and I were talking, he said Jim, everything you are saying is true. We're going after Microsoft and if we can't get Microsoft for what they're doing, we ain't going to get anybody. We've got a problem in the United States that we need enforcement of the antitrust laws. The laws are on the books. We have to strengthen those laws and do what Teddy Roosevelt did to break up the monopolies.

I'd like to cut through the Creeping Charlie on the top to get down to the heart of this issue and the heart of this issue is really what is capitalism. This is the definition of capitalism from the American Heritage dictionary. It says, "An economic system in which the means of production and distribution are privately or corporately owned and development is proportionate to the accumulation and reinvestment of profits gained in a free market."

We keep hearing that word today, free market, free market. What is a free market? And I have two questions that I'd like to have you ponder. I'm not looking for answers here today. What control of a marketshare can an individual or a monopoly or a conspiring group of individuals, an oligopoly, have? What proportion of a marketshare can any of these individuals hold before it is no longer a free market?

The second question is, it is -- capitalism is the investment in reinvestment of money that is gained in a free market. What happens to the free markets that are around the consolidated markets that are no longer free when the profits that are gained from a monopolized or oligopolized market suddenly are invested into the free market? How can we have free markets according to capitalism if the capital that's flowing around is all coming from monopolies and oligopolies?

That destroys the whole free market system and if we're going to get down to the heart of the problem that's being discussed here today, we're going to have to stop cutting the Creeping Charlie off above the ground and we're going to have to get down at the root of what the problem is. This is the foundation of capital -- Adam Smith capitalism itself and the foundation of Adam Smith capitalism is that there has to be the invisible hand of the marketplace that is out of the control of any human or humans conspiring together to manipulate or be able to control that market.

And the only way we are going to do that is not by having investigations over the surface, we're going to have to get down to what it requires to create an Adam Smith capitalistic economy and that is a large number of unrelated producers of a product enacting transactions with a large number of unrelated purchasers of that product and in that negotiation that's taking place where nobody is able to control anything except the price that is set in that small transaction at that time.

Until we get this opening up where there are so many producers of a product and so many purchasers of a product that nobody can control it, we are not going to have Adam Smith capitalism.

Confucius said the breakdown of a society begins when we mis-label reality with words. A centrally controlled economy is a centrally controlled economy. What is the difference between the centralized control of the U.S. economy by a few firms and oligopolies that we label capitalism and what was going on with the centralized control by a few individuals who were living under the hammer and sickle in the former Soviet Union?

We need to come to recognize that we do not have Adam Smith capitalism at work in America today and it's up to you folks. I'm glad you're doing this. The time has changed. Joel did what he could, but the time has changed and hopefully we can raise the community's awareness across America that we are living in an illusion when we think that we are living in an Adam Smith economy, because we are not. Thank you.

MR. TOBEY: Two minutes. We want to give people an opportunity to talk. We also want to have as many people who want to talk be able to talk, so it's a balancing act and we would ask everyone to please cooperate with us as much as possible, because we want to hear you.

AUDIENCE MEMBER: Good morning, Larry Bailey, partners in a family farm, thousand cow dairy up in Upstate New York. I came here today because I was under the impression and I'm glad to hear that the Capper-Volstead Act has taken a little bit more of a back burner, as I would say. I'm glad to hear that we're focusing not so much on the cooperatives, but I'm still going to give my view on our cooperative that we're members of.

We're members of Dairy Farmers of America and, you know, it's a family -- it's member owned, 9500 cows and I'm proud to be a member of that cooperative, because it is one large family. Some of the things that the -- our family does, our membership does provide, you know, is that we elect our own board members and others to represent us and we're very proud to do that. We do that in a very democratic way.

Then also, many services that DFA provides, buying groups helps farmers with buying tires, fuel, other sorts of supplies, dairy supplies. They have programs for the young farmers, we talked a lot about today. We heard the panel talk about young farmers and getting young farmers involved. That's very important to DFA in continuing their membership to bring in the next generation of farmers, and then also contracting programs for both milk and feed.

DFA has provided us a fair and equitable market for over 10 or 11 years that we've been their members. All right. they've helped us reduce our somatic cell count in 1000 cows to 135,000 mls. or lower and our bacteria count low. All right. We also work with dairies to make truck routes a lot more efficient. DFA is always willing to educate their member owners in all aspects of the industry, whether it's the processors, the producers or the trucking operations and they're never afraid to recognize their dairies have success.

Over the past 18 months, we all know the price has been low and I'm going to equate it, this spring we wanted to by a new tractor. Our newest tractor is five years old. Our next newest tractor is eight years old and has 16,000 hours on it. That's about 175,000 miles to the average consumer of a car. Consumers trade their cars every four to five years. Dairy farmers this past few years haven't been able to buy new equipment. It all equates to higher repair costs.

Everybody says that we don't have a choice. We do have a choice. Every year, 60 days before my anniversary date, I send DFA a letter of resignation and say I'm going to find a new market. For 10 years, I've done this and for 10 years, I've remained with DFA because they are a higher competitive, they are a very competitive market and last year alone, in addition to the $500,000 that we had to borrow to stay in business, we would have lost an additional $250,000 if we switched away from DFA.

Cooperatives are important. We're glad to hear that the Assistant Attorney General has taken a little back burner on the cooperatives and focusing more. We do need a better system. We do need more money for our milk and I appreciate your time. Thank you.

AUDIENCE MEMBER: I want to thank Ron Kind for being here. I don't see my representatives here, Lee Nerison or Dan Kapanke in attendance. That's because they're reactive and not proactive. I'm here to tell the powers that be to enforce the antitrust laws for the world of agriculture. I live in Viroqua, Wisconsin in Vernon County, which has more organic farms per capita than any place in the U.S. of A.

If the government subsidized organic farms as they do factory farms, we'd be eating organic food at an affordable price. So I say to the Justice Department to enforce the antitrust laws. As Bob Marley sang, dem belly full, but we hungry. And as the founder of Earth Day, Wisconsin's own Gaylord Nelson would say, don't forget to have a beer or three. Thank you.

AUDIENCE MEMBER: I'm Mike Ferguson from Senatobia, Mississippi. It's about 30 miles south of Memphis, Tennessee. I had to come a long way to get here, but I appreciate the opportunity to speak before this group. There's a perception out there that in my part of the world, there's not a lot of opportunity to market your milk. Well, even though my state has 125 producers, that's all we've got in the whole state, I've got four different choices.

I choose DFA. The reason I choose DFA is it gives me a piece of mind of marketing my milk that I don't have to -- I mean, when you work 16, 18 hours day on the farm, the last thing you need is a call in the middle of the night saying well, we're not going to take your milk tomorrow and DFA provides us with a stable market. The services that we receive from things such as healthcare that's provided -- naturally, we have to pay for it, but healthcare is an issue for a lot of people. We have a group policy that is offered to every member.

Things such as loans, that Larry said just a minute ago, the quality issues. We have a first rate lab, a first rate field staff. If you have problems on your farm, they're there to help, and I can tell you firsthand, over the course of the last six to seven years, I have firsthand knowledge of how they responded during Hurricane Katrina. The caring that they -- the employees worked 7 days a week, 24 hours a day. You know, in the last five to six years, we've had a lot of things thrown out there at us.

I've got firsthand knowledge about the change in the culture that has taken place at DFA, you know, the transparency, the honesty, the caring for the producers out there and that's why I market my milk with DFA and if that changes back to a negative, I won't be marketing my milk with them any longer. Thank you.

AUDIENCE MEMBER: My name is Alfred Wanner, Jr., I'm from Lancaster County, Pennsylvania, so I also came a long distance. I want to thank Secretary Vilsack and Assistant Attorney General Varney for their public statements in support of cooperatives and the

Capper-Volstead Act. It's been very good to be here today to hear all the different comments and I'm thankful for the opportunity.

I also want to say that I think we need to support all segments of agriculture, not just organic or small farmers, not just large farmers, all farmers. We have room for everybody in our country. To answer Secretary Vilsack's question in the last session, now is the most opportune time in my 45-year career for changing the way milk is priced. Farmers are talking with each other and coming together more than ever.

Farming for the future is a good first step. We can build on that. We need transparent price discovery, stable prices and a fair share of the consumer dollar for the farm families that are working.

AUDIENCE MEMBER: Good morning. I'm Doug Wolf, a hog producer from Lancaster, Wisconsin. I came here today because I, too, was trying to save a trip to Colorado. My point being today is on the proposed GIPSA rules. I have just a little bit of concern I want to talk to you about the unintended consequences of writing a generic rule that's going to incorporate all the livestock industries, especially the pork industry with the chicken industry.

Contracting has been important to the pork industry. It's been a way to allow young people and other farmers to get involved, a large means of sharing risk and allowing for the pork industry to grow and continue on. Some of the proposed changes in the contracting, I would caution, are not in the best favor of hog production. The other area of concern is some of the pork market purchasing programs proposed for the packers.

Be careful there that you don't go overboard and in the end, cause a bigger problem than what we have to today by eliminating the packer to packer purchasing, which is exposed on the market reporting service, could cause an increase in concentration. So I would just caution that during this, be careful on trying to do something generic. Thank you.

AUDIENCE MEMBER: Hi there, my name is Bill Anderson, I'm an apprentice Wisconsin cheese maker. I'm very interested in making artisanal cheeses, especially artisanal raw milk cheeses. I was very disappointed recently in

Governor Doyle's veto of the raw milk bill. It seems that our Department of Agriculture has taken it upon themselves to tell consumers and small family farmers that they don't have a right to have a transaction to allow the dairy farmers to connect directly with the consumers and sell high quality milk directly to the consumers.

As a cheese maker, I think the quality of the milk directly influences the quality of the cheese and having a diverse and high quality milk supply is critical to what I want to do as a cheese maker. I also feel that our regulatory system is geared towards medium and large scale processors. The rules are just not written to be conducive to encouraging small artisanal agriculture.

Now, if you look at any country which consumes a large proportion of dairy products -- I like to use the example of France, Switzerland, Italy -- there are long and respected traditions of people consuming raw dairy products, raw milk cheeses, artisanal, and they value their artisanal agricultural products in those countries. If we want that in this country, we need to value it as well and I feel that there's been -- rather than valuing, there's been hostility from our regulators, hostility from the large processors towards people that want to do things that are unique, special and high quality.

So I just feel that that's something that needs to be taken into account, too, is creating a regulatory framework that is conducive towards artisanal skill agriculture. Thank you.

AUDIENCE MEMBER: Hi, my name is Paula Maven(phonetic), I'm a dairy farmer from Pennsylvania. September of '77 I said I do, I got a husband and I got a dairy farm. It was on the job training and I've been training ever since. The last 18 months have been really tough, as everybody knows, but one of the first decisions that my husband and I made, and we do work together, we make our decisions together, and that was, where are we going to market our milk.

In northwest Pennsylvania, we have four or five different places that we can market. The one we chose was Dairy Farmers of America and for a lot of reasons. It was because that was one less stress we had to worry about. We knew they were going to pick up our milk, they could do it better than what we could as an individual, by working as a family and they really are our family.

My husband is an amputee. With them, you get health insurance, you get workman's comp. There are a lot of things that DFA has in working with a family. Our milk hauler is my brother-in-law. My brother-in-law married my sister. When he has problems with the 14-hour wait, he calls us. We call people at the plant and say okay, what's the problem, can you fix this, can you help us out and they do. That's what is working with a family, is working with a cooperative.

And as a member, I just want to say thank you to DFA, thank you for the Capper-Volstead and for having us here, but we do have a problem as dairy farmers and the problem needs to be fixed or we won't have dairy farmers.

AUDIENCE MEMBER: Hello, my name is Jennifer Nelson and I am a farmer from Crawford County in the Driftless area of Wisconsin, an area uniquely suited to small farms and dairy farming and grazing. Unfortunately, in my township, I was studying some of the demographics and in a ten-year period, we have lost 75 percent of our farmers. It seems to be a consensus here today that the price of dairy is too low and that needs to be fixed.

But I'd like to speak to another issue that the Department of Justice perhaps might investigate and that is the proliferation of these giant mega dairies in the state and where the money is coming from, who is financing these dairies. I would like the Department of Justice to follow the money. We have heard rumors that one of the largest mega dairy owner groups is being financed by one of the retailers and if that isn't illegal, it should be.

And so I'd like the Department of Justice to look into this, specifically because this does impact all of the producers, the medium and small that are going out of business, and as a consumer, I'm concerned about the supply of food and the fact that this large scale-ness of our agriculture is quite a vulnerable system and we need to be looking at more fair and more equitable ways of diversifying the food system. Thank you.

AUDIENCE MEMBER: My name is Steve Hanson and I own and operate a family dairy farm in Clovis, New Mexico with my three sons. Our family has been in the dairy business now for 70 years. We milk 3500 cows and raise all our own replacements. Previously, you mentioned the figures of losing $100 per cow per month. It even -- on large dairies, it works out to that and you can figure out the numbers.

We had to refinance the facility that we'd be paying down for many years. We went in and refinanced and to get $6 million just to stay in business and hopefully, we've seen the end of that. The sad part was when we built the large facility, I built that so that my sons would have a place to dairy and I had a sigh of relief recently when one of my sons decided he's going to go ahead and stay in college and get his Ph.D. and probably won't be returning to the farm.

It was a sad day, but it was a sigh of relief and I know a lot of farms are going through the same experience, large, small, medium, it doesn't seem to matter what size. Nobody is making any money right now. I would like to say we do ship to DFA. In our area, we have choices. There's roughly four co-ops we can ship to. DFA has also been instrumental in starting up --

Hilmar Cheese came into our area and we balance them when they started up and so I don't feel that they're trying to monopolize our area. If anything, they've created choices for us.

There's no reason for me to go on and talk about all the other services, they've all been mentioned, but that's all I have.

AUDIENCE MEMBER: I'm Maria Nye(phonetic). My family and I dairy in west central Utah and despite the 3000 cows, it is a family farm. We relocated from the northeast and we have always been cooperative members and when we relocated, we chose cooperatives again and it is truly a relief to hear the change of direction, perhaps, that we've heard that Capper-Volstead is not under the gun as we have been told earlier.

I'd like to -- I do welcome to the fight the Department of Justice and the USDA. We need every farm that we have in this country. We need people who milk 50 cows, we need people who milk 5000 cows. We have to have that to feed our country, to field our world. Our membership in our marketing and supply co-op supports our family by finding the best price for our product and low costs for our inputs and both of those are equally important, as we found out in spades in the last year and a half.

As dairy producers, we are tremendously good at what we do. We're not so good at marketing most of the time and that's where the strength of our cooperatives really helps our business in particular. We need to have that marketing expertise to get the best price for our product. My concern, as I've heard from many other people here today, is with the pricing mechanism that we have. Our system is convoluted, unduly complicated and antique.

And I told someone earlier that in a lot of places, antiques are worth a lot of money. This one is not. We really need to change the way that we price milk in this country. Our system worked well when it was created. That was nearly a hundred years ago and things have changed just a wee bit since then. We need to have a system that values our product and our contribution to our communities and our consumers. I appreciate the opportunity to visit with you today. Thank you.

AUDIENCE MEMBER: Thank you for the opportunity to speak. My name is Bob

Cran(phonetic), I farm 650 acres and milk 165 cows in Michigan. I'm a member of Michigan Milk Producers Cooperative and those numbers are about the average size of our membership. I'm here today because my family and I strongly believe in the cooperative principles and the business framework that has been the backbone of American agriculture for nearly a century.

My family and I choose to be members of MMPA because we know belonging to a milk marketing cooperative is the best way for us to get a fair price for our product and have a consistent market for the milk we produce 365 days a year. In Michigan, there's an opportunity to belong to one of 12 different cooperatives. Our cooperative is owned by approximately 2200 members with farms in Michigan, Indiana, Wisconsin and Ohio.

MMPA members are family farm operations. The average membership is approximately 240 thousand pounds of milk every month. MMPA was formed in 1916 in order for dairy farmers to find a stable, reliable way to market their milk. While many things have changed since 1916, the need still exists for the cooperative market. Marketing cooperatives remain vital to the success of our family farm and dairy farmers in our country. MMPA's mission statement to market MMPA's members' milk to the greatest advantage possible is one of the main reasons why our family depends on MMPA.

The primary advantage we receive as members of a dairy cooperative is a guarantee of market and a guarantee of payment for the milk our family farm produces. Cooperatives do not guarantee a profit for the milk sold, but rather, the cooperative finds a market for a product and collects the payments which are then passed to us, the members. By providing this marketing function to our farm, we can concentrate our efforts on our animal care and farm operations while the cooperative markets our product.

MMPA and the majority of other dairy cooperatives own manufacturing plants that turn the perishable fluid milk into stable shelf dairy ingredients like condensed milk, powder and butter. The ability to convert the fresh milk to dairy ingredients helps balance the milk supply when production out steps demand, especially on weekends and holidays. The dairy ingredients produced at the plants are vital ingredients produced in a variety of food products, like yogurt, baked goods, candy, cheese, pudding, infant formula.

Our cooperative owns two milk processing plants in its partnership arrangement with a cheese manufacturer. Operations in the cooperative plants fluctuate dramatically day to day, week to week, season to season. During a typical week, milk received at MMPA's plants on Saturday and Sunday can exceed the daily intake of the other five days of the week by more than a million pounds each day. Our cooperative plants also experience tremendous variability in plant volume due to seasonal changes in demand from bottling plants.

Operating during manufacturing plants is just one example of the opportunities dairy farmers have in the marketplace when they can join together through a cooperative. It would be unrealistic for individual members to have the processing capacity on their farm to handle milk not needed in fluid form and to meet the demands of other dairy products. While producing a solid market for milk is an important function of MMPA, our farm relies on the cooperative to keep our farm running efficiently.

MMPA offers a long list of member services and programs that can help us to be better dairy farmers and to meet state and federal rules and regulations. I'd end with one question, will we ever collect the dairy import assessment? Thank you.

AUDIENCE MEMBER: Hello, my name is Frank Ontario(phonetic). I farm in west central Wisconsin. I have -- my wife and myself operate a 125-cow dairy farm, Holstein. Thank you for the Justice Department for coming here.

Two points I'd like to make to the Justice Department is, one, there is competition for my milk out in the countryside. I presently sell to Dairy Farmers of America. I have the opportunity to sell to Foremost Farms.

I have the opportunity to sell my milk to Land O' Lakes and I also have an opportunity to sell my milk to AMPI and I also have independent buyers of milk that would be interested or milk if I would like to make that choice. So as far as I'm feeling, there's nothing for you guys to look there.

If there's anything that you folks at the Justice Department need to address, it is what is happening to the consumer that is buying milk in the grocery store. Where is the difference in this price? I think we've heard it this morning. What the price of milk is, what the dairy farmer gets and then the cooperative sells it to these retailers and look at the margin they're taking and none of it went down through this great recession of '09 that we went through. If that money could at least have been passed through to the consumer, maybe we could have turned this economy around a lot quicker.

Somewhere, somebody made a lot of money in this last year and it wasn't the dairy farmers and it wasn't the consumers that are buying the milk. I think that's where the Justice Department should be looking. Thank you.

AUDIENCE MEMBER: Thank you for the opportunity to speak. My name is Clement Gervais, I'm a dairy farmer from Enosburgh, Vermont. I'm also vice chair of the St. Albans Cooperative young cooperators executive committee. Our farm consists of myself and three brothers and my parents. We milk a thousand cows. Our family farm was consolidated in 1995 when we started milking in one larger barn.

We now crop around 2000 acres of grass and corn and our farm now employs ten family members and 12 non-family employees. In northern Vermont, I have choices where I can sell my milk. We are proud to send our milk to St. Albans Cooperative Creamery. I believe my cooperative is fair in its dealings and has competitive premiums. I also am very appreciative of the role St. Albans plays in both the local and national leadership for the dairy industry.

As a dairy farmer, I am always busy with my daily chores and responsibilities. I don't have time to always keep track of the changing happenings in the dairy industry. St. Albans through its farm report, its management is always keeping its farmers informed as well as impacting legislation and programs for the best interests of its farmers. Without the cooperative information conduit for its farmers and its involvement and guidance of industry changes, I believe the average farmer would not be able to be heard on most of the industry changing events.

St. Albans has formed a partnership

with Dairy Farmers of America. This partnership helps both cooperatives work together in the marketplace. As well as having access to the largest markets in the northeast, this partnership helps all farmers by everyone working together and not driving down premiums that can benefit the farmers. I am concerned with the market consolidation in processing and manufacturing and the retail end of the industry.

As a result from this consolidation, there are fewer markets for my milk. There are several challenges that are faced in the dairy industry today. The volatility in the federal pricing policy we currently have makes planning and budgeting very hard. The increasing cost of production and fluctuating profit margin are also uncontrollable factors. The pricing mechanism needs to be examined and revamped.

My co-op is working with other co-ops to come up with solutions to these problems to help all dairymen. It is my belief that the cooperative structure absolutely provides value to me as a dairy farmer. With a busy daily schedule, I feel the leadership from all the co-ops that is driving the dairy industry is the best and most effective with a for our dairy farmers' voice and their concerns to ultimately come up with solutions in the industry.

As our suffering dairy industry is looking for answers to the current price volatility, I want to ask all the dairymen and the cooperative representatives here to not let regional differences stop the much needed change for our industry. We all need to stop worrying about other regions' prices and look for a fair price for everyone to work together. Thank you.

MR. TOBEY: I just want to say, we'll probably take one more from each microphone at this session, so that we can end on time, so that people can get a little bite of lunch before we do the panels this afternoon, but we'll have another session this evening. I think it's at 5:00 and it will be the same process and we'll be happy to be here for however long it takes.

AUDIENCE MEMBER: I want to first thank the USDA and the Department of Justice for bing here. I'm a certified public accountant. I also want to state right away that I agree that the free market system needs to continue to prosper in America and that in the dairy industry and in the farming industry, it does not prosper in that way. I have been studying the profitability of small dairy and diversified farms for 10 years.

My former career path was in manufacturing firms and the stark difference was that they have to make a profit to stay in business. The question was raised this morning, how do we get younger farmers, since the average age at this point is 57. Younger farmers have to start small. They can't start with mega dairies or large farms and often, they have to buy their land, their buildings, their equipment. None of that is given to them. Sometimes it is, but not always.

Farming cannot be a volunteer, not for profit career choice, needing an off farm job, which everybody just is -- just of course you need an off farm job, to support the family while it is considered profitable if they just break even. Since the 1970s, the USDA policy has been to increase disposable income by reducing retail food costs. This helps people have more disposable money to buy other goods. However, it's at the price of the farmer, because by reducing the cost over and over as people have said, nobody passes the buck past the farmer. It ends on their land.

Creating -- and this policy has created an institutionalized, not for profit business model that we even hear phrases like coming close to covering operational costs or well, this is without regard to labor and capital. There are no other businesses I know that can operate without labor or capital. 89 percent of farms in Wisconsin and the majority in the U.S., approximately 65 percent, are small farms.

I notice that 71 percent of your farmer panel today was not made up of that group. From -- I'd like to take it from macro to micro, that the anti-competition clauses in the contracts with the co-ops, even the most progressive ones who you might say, if you believe that, from say Organic Valley, that says that you cannot sell to anybody else. That includes small, it's not just fluid sales to other customers, it's also fluid sales to small, unique cheese makers that don't need a whole bulk tank's worth every single day, that might only need one day's worth or one tankful.

But these clauses keep them in a serfdom type thing where they cannot exit, because those producers hold their grade A dairy license and without them, they do not have a grade A dairy anymore and cannot sell to anybody and in fact, in Wisconsin, the producer applies for and pays for and holds your license. So if you don't agree to their terms and you don't keep agreeing to their terms, you not only no longer have them as your customer, I mean as your buyer, you have nobody, unless you now agree to another person's terms, without any choice in the matter.

As time goes on, yes, you can switch from one co-op to another, but that's a small handful of options. The USDA/ERS study has stated that small dairies will continue to decline, large dairies will continue to grow because of the economies of scale that they represent, and unless you're able to have a value-added product or do a premium price, which right now is outlawed in most states and in contracts, specifically, even if it's allowed in the state, the contract outlaws it through contract law.

Therefore, the farmer is held completely captive to these slave like prices that are keeping them from even having a living, much less staying in business and many are going bankrupt. Thank you.

AUDIENCE MEMBER: I'm Mike Hinkley(phonetic), I'm a dairy farmer with a family dairy farm from Stearns County, Minnesota. Stearns County is the leading dairy producing county in Minnesota. I used to have six bulk trucks that passed my farm every day. Now we only have five and the reason for that is two of the cooperatives decided that, you know, it's really wise for us to put the milk in the same truck.

And why I bring that up is because I think as we listened this morning and as we had some testimony, the problem of our price is not between the competition of the cooperatives. I don't think there's anybody in this room that can say that the problem with our milk price is the competition from the cooperatives or a lack of competition. What we did hear earlier was that there's a big discrepancy from what the consumer pays and to what the farmer receives.

In my opinion, the more farmers work together in their cooperatives, and we don't have to all be in one cooperative to do that, the closer we can become -- the closer we can come to the consumer and get part of that price. I think that should be our objective as we work together and go ahead and then this consolidation that we talk about, it's not the consolidation of the cooperatives or the farmers.

The consolidation is in the Wal*Marts of the world, if you will, who probably at this point would really like us all to come with our individual trucks to their store and say, hey, this is what we have for you this week and they'll tell us this is what we pay you. I think if we got together as farmers and took our trucks together to a Wal*Mart, for example, and said this is what we have, what are you going to pay us and if it's not enough, let's go down the road to the next person.

That we can only do if we put ourselves together and that's should be our objective today, thank you.

MR. TOBEY: Last one, thank you.

AUDIENCE MEMBER: Hi, I'll be fast, it's lunchtime. My name is Patty Lavera(phonetic) and I work for a group called Food and Water Watch and our members and supporters are consumers and we've heard a lot about consumers today and I just wanted to say a few things about what consumers think and what they're trying to understand about this farm to retail price spread.

It is an important issue across our food supply. It's particularly acute, I think, and obvious in dairy and there's the obvious economic issues of if the price goes down for a processor, why does that not pass on to consumers, but the bigger issues that consumers are starting to understand is that this really breaks with what they've been taught about how our market is supposed to work. If we're supposed to be voting with our dollars, which we're told to all of the time, how do we do that when the dollar doesn't reach the people producing the food?

And so as people get more and more interested in our food supply, where our food comes from, how it's produced, they can't do that if their dollar doesn't reach the whole way through the chain in an equitable way. And more and more consumers want to vote with their dollars and they want to vote against specific things they see happening in the food supply that they're learning about and they don't have good options to do so when their dollar gets stuck in the middle.

So I would just say as a last couple points, this interest in local food, buying direct from farmers is also one way consumers are starting to reject that spread. They're looking for a way to give their dollar to farmers, because they do support farmers and I think that that's a trend that can't be ignored as we talk about the marketplace.

And finally, we hear a lot -- when we're talking about consumers, we hear a lot about choice and how we're so lucky to have all these choices. And we have these grocery stores that are brimming over with options, but when it comes to the dairy case, what we often have is a lot of marketing. We have small regional dairies that used to exist that have been bought up by larger operators, but those labels are still there. That's not choice and it's not competition, it is marketing and when we explain that to our members and supporters and they learn about it, they're outraged and they ask how it got this bad.

So I would just end by saying that consumers want action, too. They want it for farmers so they can stay in business, but they also want it for themselves and they want it now. Thank you.

MR. TOBEY: Thank you all very much. We're going to break for lunch, it's a short lunch. We need to let our court reporter take a rest and there are lots of options in this building and in the area, so we'll see you back at 1:15. Thanks.

(Noon recess is taken)

(12:47 p.m. to 1:20 p.m.)

MR. SOVEN: Ladies and gentlemen, if I could ask you to take your seats, we'll get started in just a few minutes, thank you. Good afternoon. We're now going to start the afternoon session. We'll be doing three panels and we're going to first begin -- the first panel will be on trends in the dairy industry. I'm going to briefly introduce myself and then set the stage and then get out of the way of the very experienced and distinguished panelists we have up here today.

My name is Josh Soven. I run the group at the Antitrust Division that prosecutes antitrust violations in the dairy sector, and as the Assistant Attorney General talked about this morning, that involves reviews of mergers such as the Dean acquisition of the Foremost Farms consumer products division, as well as investigations of anticompetitive conduct by firms with market power.

It is a special privilege for me as an antitrust enforcer to be here today. Sound competition policy requires an excellent understanding of how markets work and we can't get that in Washington. We actually have to go out into the market and talk to people such as yourself to understand the on the ground reality and how it really works. So with that, let me briefly introduce our panelists. Again, they are very experienced and we'll get going.

The topics we're going to cover and try to leave some time for questions are briefly, we're going to talk about the co-op structure and regulation. We're going to talk about the well-known trend amongst all of you about the decline in the number of small farms. We'll then move a little bit more into the regulatory structure with a focus on the producer/handler exception and, more generally, the milk marketing order system.

And then we'll finish, most likely,

with a discussion about a topic that was a big issue this morning, which is consolidation, concentration and market behavior in the downstream processing and the retailer markets.

So very briefly, our panelists first are Ron Cotterill, he's an agricultural economist at the University of Connecticut. Peter Carstensen probably needs no introduction to many of you. He's a law professor at the University of Wisconsin.

Bob Cropp, also an agricultural economist at the University of Wisconsin. Jerrel Heatwole, he's a farmer from Delaware. Marc Peperzak, he is the -- just to make sure I've his title correctly, chief executive officer of Aurora Organic Dairy, Pete Kappelman, who is the Chairman of the Board of directors of Land O' Lakes cooperative and then last but not least, Jim Goodman who is an organic dairy farmer from here in Wisconsin.

So let me begin with co-ops. As the Assistant Attorney General said this morning and the Secretary of Agriculture said this morning, there appears to be widespread consensus about the benefits and the value of co-ops in the market. However, there does appear to be sort of a healthy debate as to how, if at all, those co-ops should be regulated or not. Peter Carstensen has given a fair amount of thought and devoted a fair amount of research to that topic, so I will begin with one of our hosts and turn it over to Peter.

MR. CARSTENSEN: Thank you very much. Before I turn to the co-op thing, I want to flag everyone that at our 3:45 break, the law school has made a treaty with the ice cream department of the University to bring over some ice cream for you all to have during your break. It will be right outside here on the patio. You're in Wisconsin, it's dairy month, what better than to have some University ice cream on top of that.

It is 10 -- well, almost 15 years ago I began to get into some dairy and other competition issues. It's taken 10 to 15 years to get those issues on the front burner. I'm hoping it doesn't take quite that long to get some of the issues that I see as really important with respect to especially large cooperatives. Capper-Volstead and related statutes, the most recent, I think, was adopted about 1934, the world has changed.

We need to think a lot more about where and how to deal with cooperatives and especially large cooperatives. A co-op often represents the second or third largest investment that a farm family has after their farm itself. It is an investment that, unfortunately, in many circumstances, it seems to me, does not have the transparency, the governance rules, the kind of oversight that is necessary.

You heard, and I want to second this, co-ops are very, very important. But they need, again, I think, especially large ones, a different kind of oversight. Before the 1930s, we had a public capital market in which corporations were -- large corporations were not accountable for their false reports of earnings and profits. They were not required to disclose information. They were not required to have a governance system which allowed their shareholders actively to participate in the governance of the corporation.

With some cooperatives having thousands of members and billions of dollars, they look an awful lot like those early American corporations. What we have found with the public capital market is when you regulate in terms of transparency, governance rules and a national oversight of the internal activities of the corporation, it improves the behavior of the corporation. It provides the investors, the owners of those corporations a degree of certainty, a degree of reliability as to what's going on.

I think that the classic economics talks about this is the separation of ownership and control of a corporation. The same thing happens with cooperatives. We have seen in recent history some fairly serious problems of sweetheart deals, of funds suddenly moving out from the cooperative without appropriate approval, so I've had calls from various co-op members of large co-ops specifically, worrying about what management is up to, how do they get the information. We do not have a systematic way of assuring the owners of co-ops that they have that information.

So the number one reform that I think ought to come is to put the large co-ops under some -- either under the '34 Securities Act which is the basis on which the SEC would regulate, or some comparable in terms of reporting, disclosure and an oversight to make sure that the books are being honestly kept, that they are being audited by appropriate federal officials.

Right now, USDA has no authority to do that, and there are civil and criminal liabilities for managers who misuse the resources of the enterprise. That got highlighted very recently by a Supreme Court decision that cut back on one of our few other criminal statutes that can be used to deal with misappropriation, so we really need to make sure that there is that kind of governance oversight for corporations. I think for co-ops, you probably want a somewhat different governance system than you use for ordinary corporations.

I also think as a second level that the no outside investor eight percent, no outside equity investor, the eight percent maximum return ought to be revisited. I think there are important tax laws that need to be retained, but large co-ops need the flexibility in their capital structure that comes from revisiting, again, rules that were adopted in 1922. They may have made sense then, I don't think they make sense now.

Lastly, there is this little antitrust thing that seems to worry a lot of folks, that somehow they're all going to go to jail if the Capper-Volstead antitrust exemption is repealed. I know a lot about antitrust law and I've been trying to figure out what it is that co-op managers are up to that is, but for this exemption, a felony and would send them to prison.

I'd like that disclosure, because I don't think they're doing that and if they are, the other question then would be why are not farmers doing a whole lot better, if these guys are committing price fixing felonies out there, raising prices, extorting money in some way.

Bottom line, though, the way the antitrust laws impact with co-ops, anyway, doesn't really matter a whole lot whether there is an exemption or not. There are a couple of places where it would be important. I'd like to have it rethought.

If it's the holy grail, if it is the bible of the co-op movement that they must be exempt from antitrust law, given the way Capper-

Volstead has been interpreted, I could live with that. I do want to deal with the Agricultural Marketing Agreement Act, but that's a question that will come up a little bit later.

MR. SOVEN: Pete Kappelman, Professor Carstensen appears to see some room for some regulatory changes, do you agree or how do you think about the subject?

MR. KAPPELMAN: Well, first of all, let me express my appreciation for the invitation today. My family milks 400 cows. In addition to being chairman of the Land O' Lakes board, my primary job in life is to farm and my family milks 400 cows on the land purchased by my great-grandfather. It's great to be back at the UW. My oldest two children are here and are now the fourth generation of UW-Madison attendees. I'm proud of the job they're doing here.

When I get asked about co-ops being big, I wonder about who gets to decide what big is or too big or big enough and I wonder about what you might use for criteria. But what I think that what really matters to farmers is whether their cooperative is effective, truly valuable to them in a business world where farmers seem to continue to lose margin in the value chain of food production.

Cooperatives are one of the last vestiges of hope left for dairy farmers as they attempt to bargain effectively with the burgeoning size of processors and retailers. I've been told that Land O' Lakes is big. The dairy side of our business in a typical year is about $4 billion of sales. Some might say that's big.

When our -- one of the customers we deal with is called Wal*Mart. They are approximately 100 times larger than we are. Kroger's is 20 times larger than we are. We do not feel the power of big as they negotiate to bring down the price of food and we are wrangling to negotiate the best price we can for our members' products.

So I ask all of you, who is big and what is big enough? According to a 2007 USDA cooperative development report, 83 percent of all U.S. milk is marketed through -- was marketed through 155 cooperatives. That number has grown steadily over the years, yet co-op membership is not mandatory.

As a dairy producer, there is no

inherent home for my milk. I have to find a market for it. I chose a market where I invest my equity in value added, branded products that allow me to share in the manufacturing and marketing margins of the milk I produce, sharing in that value chain, down the value chain. So how do producers ensure that their co-op remains relevant and beneficial?

The answer is simple, but it involves a lot of hard work. Good governance, good governance is not dictated by size, be it big or small. It's a function of effectiveness. Most co-ops use a form of representative democracy and they do it pretty well. Public companies are regulated by the SEC in an attempt to protect investors by dictating accounting and financial reporting procedures and those companies are also required to use sound judgment -- or legally required to use sound judgment, sound governance and moral business practices. It's tough to legislate morality.

A cooperative business is our stockholders' business. The member's engaged, their livelihood and their equity investment depends on it. We hold numerous member meetings.

I can't tell you how many chicken dinners I've had over the years, but I can tell you who serves the best chicken around the state. At those meetings, we elect delegates. We choose the director candidates versus a public company where most director candidates are hand picked by management.

So at our member meetings, we choose the director candidates. We elect directors. We discuss the policy affecting our producers and we update the members on their business. In fact, when Land O' Lakes was a public registrant, our governance system was less effective, because we could only discuss our members' business with them after we had made a public release of that information. We had less information for our producers and as a result, discussions with members about their business became less relevant.

The fiduciary role of elected co-op leaders is a tremendous responsibility. It's not one that I take lightly. Our members expect sound financial reporting and auditing. It's the board members' responsibility to deliver on that expectation. Other fiduciary roles include oversight of management, policy setting and communication with members. I get judged on the job I'm doing at every member meeting, but especially at election time. It's quite simple. If I'm not delivering on member expectations, I get replaced.

So in summary, I think co-op governance is alive and well. It's our business and we own it.

MR. SOVEN: Thank you. Jerrel Heatwole, we'll talk some more with specificity about the situation for small farmers, but before we turn to that topic in general, your thoughts on more regulation, less regulation, different regulation for co-ops.

MR. HEATWOLE: Well, Josh, I concur with everything that Pete just said and let me say in terms of governance and information, I think if you look at -- and we had here on the panel this morning members of Congress and the Senate. I think at the cooperative level, we have a much more robust representation system than we do in our country and our democracy and I don't think any of us want to change that.

Let me just pick at a few things in

a little different angle from what Pete just said. Look, I'm a small dairy farmer. My wife and partner this morning milked 61 cows on the 82-acre farmstead that her grandfather started. Our business is sustained through use of about five different cooperatives in various aspects of our business. Over the years, I've marketed my milk from the farm through four different cooperatives, two small local cooperatives over the years and then a bigger regional cooperative and now through a national cooperative and they all operated under Capper-Volstead.

Their method was the same, the difference is the effectiveness that we can have working together in a bigger mass, bigger scope. You know, I have great respect for these professors. My brother is a professor at Virginia Tech, Ph.D. and research professor and he'll tell me that you can take two professors that are equally qualified and come up with three opinions that are on different ends of the spectrum.

What I will say is that as a dairy farmer, my life, my income depends on the choices that are made, and the professor's choices don't impact his income or his tenure or his future. So you know, from a standpoint of the impact that it has to me as a farmer, I'm very intense and farmers are very intensely committed and tied into what goes on in these kinds of forums.

You know, like Pete, I'd say what defines a large cooperative. We tend to just think about numbers of farmers, but we've got farm cooperatives in this country that produce, that market billions of pounds of milk and you can count their members by the tens or the hundreds. We have cooperatives that market the same billions of pounds of milk in this country and you can count their members by the thousands. You've got cooperatives that market their milk through further processing, a large percentage of their milk versus cooperatives that just take it directly from the farm to a different customer.

So what defines a large cooperative. We work in a world that many -- several countries have one cooperative, effectively, for the whole country. So you know, I think that you'll find that no matter what the cooperative structure we have here in the U.S., the members that own and are a part of those cooperatives all find value in those organizations or they wouldn't stay. In fact, you know, in our organization, each year members have an option.

In the Lancaster County, Pennsylvania area, one of the areas that I represent, I just counted last night, there's 16 different people that will pick up milk, procure milk or market milk from any farm in that area, about six or seven cooperatives and eight to ten proprietary companies. Despite this -- and that's just not unique to Lancaster County area, but despite this, for every two farmers that chose to market their milk elsewhere for whatever reason, seven chose to market with us.

Let me put the size in just a little different context. In the top six dairy states, two in the west coast, California and Idaho, two here in the heartland of -- beautiful heartland of the country, Wisconsin and Minnesota, two in the northeast where I'm from, Pennsylvania and New York, DFA's marketshare, member share of milk is -- runs from six percent to 14 percent. There's lots of choices, lots of opportunities.

Contrast that with the number one cheese retailer, that's number one in market after market after market with no close second, but --

and operates under different structure, different governance structure, and look at the retailer that is number one in market after market after market with few markets where there's even a close number two and tell me where you think the market power is.

These companies, no matter how you measure them, as Pete said, are many, many times larger than even the largest cooperative and growing, getting larger. Who do you think needs the regulation the most? Do I think that we need more regulation as cooperatives which is just by extension us as farmers? I think the answer is clearly no, no matter what size the cooperative is.

MR. SOVEN: Thank you. Marc Peperzak, as the head of Aurora, what is your perspective on the topic?

MR. PEPERZAK: I've been a dairy producer since the 1970s, and since then, Aurora has been a producer member of several cooperatives across the country, big and large, and quite frankly, after this nearly 40 years of experience, I would say that cooperatives generally failed us. I think they stifle competition, I think they stifle innovation.

The fact of the matter is that if you want to do anything on your own, if you, for example, in the early 1990s when I decided that we had to take one of our farms and make it organic, so I went with the concept of organic to our co-ops, more than one, I might add, they basically said don't do it, we'll fight you. Anything that's innovative, anything that's out of the box, no, can't do it.

I remember at that time asking for a list of members, I'd like to talk to them directly. They wouldn't give me the list of members. I remember trying to approach the board of directors meeting, they shut down the board of directors meeting before I showed up. Having said all that, co-ops play a good role, but what really surprised me from this morning is people kept talking about how the system is broken, the system is broken, but at the same time, they're saying co-ops are fine.

Well, co-ops are very much part of the system. I don't think they've done a pretty good job, frankly. Somebody said something about that they didn't feel like they had an ear in

Washington, didn't have a spokesman. What's the co-op doing, where are the co-ops? Contrary to Jerrel's experience, when I think about Colorado, we have 160 or 170 producers, 20 processors, one co-op, one choice.

If you want to go to any of those 20 producer processors, you're out of luck. It happens that way in much of the country. It may be different in Lancaster County. Anyway, so in 2003 -- what we are today is Aurora Organic today is five farms with 4900 acres of pasture and we are vertically integrated. We have our own plant, we have our own farms and quite frankly, we don't have a lot of choice. It's the only way we can operate the business. The co-ops wouldn't help us get the milk, never mind keeping us out of the processing channels.

It wasn't a choice. I do think there should be some regulatory changes in terms of how cooperatives are treated. I think it's necessary to get co-ops in the basket of facilitating innovation and competition as opposed to the opposite, because effectively, that's what they've done in my experience with us.

MR. SOVEN: At the Antitrust

Division, we have many, many lawyers and I'm one of those, so I'd like to think we're doing a pretty good job, but we also have many, many economists and when we get stuck, we always turn to the economists to bail us out or to wrap us up, so with that, I will turn to Professor Cropp to offer his perspective on the co-op regulation issue.

MR. CROPP: Well, I don't think we need a great change in regulation. The Capper-Volstead Act passed way back in 1922 and the purpose was to try to equal out the end balance of economic power between farmers and their buyers and that's just -- all the Capper-Volstead Act does is give limited exemption to antitrust, not total. They're still subject to any predatory practices and basically it allows farmers to organize, to bargain, process and market on their behalf to try to bring some balance of economic power.

And there's been a lot of consolidation of co-ops, mergers, consolidation through time and the reason that has happened is, well, farmers have changed, modern transportation, processing markets have changed. The size of processing plants has changed, so the board of directors of co-ops have been responsible to change their structure to respond to the changes in the market conditions.

The thing is, that the concentration of the food industry has been much greater beyond the farm and co-op level, so really, the imbalance today between say farmers and their buyers is probably greater than it was back in 1922. So they still need a protection, the right to organize and bargain.

There was talk this morning about what's big, you know, co-ops are small business. There is about 155 co-ops in existence today and of those 155, 109 are pure bargaining, relatively small bargaining co-ops. There's only 25 that actually operate processing facilities and they don't dominate any real aspect of the dairy industry. I mean, they have about 71 percent of the butter and 96 percent of the powder, but when it comes to the cheese, we heard about that drives milk prices, actually, their marketshare has declined to about 26 percent back in 2002, about 34 percent.

So if you compare dairy

cooperatives to their customers or their customers' customers, they're really small businesses. We mentioned the Wal*Mart, you know, business this morning, number one on Fortune 500 company. They have about 230 or so billion dollars on the food side, but if you take our largest agriculture co-ops, there's only two that appear on Fortune 500 lists. One is CHS, the largest co-op, number 91, with sales of about $26 billion, but that's a diversified farm supply petroleum.

One in dairy, and that's Land O' Lakes, about $10 billion. They list 226, but I think dairy, as Pete Kappelman said, is only about $4 billion of that. So you can look at Kroger's and Super Value, Kraft, everybody is on Fortune 500 with revenues much greater. If I take all the dairy co-ops and add the total revenue together, it's less than $40 billion, all of them together. And one way like to measure concentration is what does the top four do.

If I take the top four dairy co-ops and the top four market a little over 6 billion pounds of million a year annually. That's a lot of milk, but not a lot. There's another range between three to six billion, but over half market less than 500 billion pounds of milk in a year. Take the 10 largest dairy co-ops thrown together, they'd have about 57 percent marketshare. If you take, you know, DFA, which is the largest co-op, has around 20 percent of the market.

California dairies, number two drops down about nine percent, Land O' Lakes is about seven percent of the total market, so pretty small. Any one co-op by themselves do not have the sufficient market power to really influence that market and so under the Capper-Volstead Act we allow market agency in common, where co-ops go together and bargain together to have an influence on that market. And that's been successful.

If I look last year at federal order data, the over order premiums that co-ops have been able to negotiate with the buyers, it averaged about $2.45 a hundred weight of additional revenue. And why is that? Well, a lot of the focus is on the fluid side of this business. Cows are milked every day, but milk is seasonal, demand is seasonal. Even within the year, when you have holidays, school is in, school is out, the amount of milk needed by a bottler varies considerably.

Early in the history of dairy co-ops, they've taken on the responsibility of coordinating this needed milk for fluid versus other uses. That's why they're heavier in the manufacturing side. To move the milk around, to balance it, that is a market wide service that makes the whole marketing system more efficient, benefits farmers, processors and, believe it or not, consumers. So some of this over order money that is bargained for is needed to pay for to compensate the co-ops providing market wide service, balancing the market, moving milk around where it is best needed.

And it does result in higher prices to farmers and our position is in some cases here, is that co-ops are going to pay farmers. Again, if you look at mailbox prices, which is the actual price that farmers get and compare it to federal order prices, believe it or not they average higher in all markets except a couple. All markets last year, it averaged about 30 cents higher, some markets $1 or more higher for mailbox prices.

It means competition is there,

they're paying farmers more than the minimum prices that are required under federal orders. Another topic, and this to -- or a lot of the criticism, I think, is the relationship of co-ops say with a bottler, full supply arrangements, that keeps out others that participate in federal orders. Well, that may be true, but the full supply arrangement, that benefits the market. The difficulty is today that 97 percent of the milk is grade A.

The major purpose of the federal order is to assure consumers have milk to drink. Not all that milk is needed for that purpose. The average utilizational orders is 37 percent. There's only three orders that have utilizations over 45 percent. There's more grade A milk available than is needed, but yet everybody wants to participate in the federal orders, because the fluid milk price is the highest, the manufacturing price is lower.

There's a weighted average, so the fluid leaves some money in and the manufacturers draw it out. It's not all needed. So some of the criticism of those relationships between co-ops and their buyers maybe is really a federal order issue to look at. Some changes need to be made there or what have you, but if we allow everybody to participate in the federal order, it kind of waters down the pool or whatever.

So that's kind of a complicated thing, but I think there's a lack of understanding of this milking system and pricing system that criticized co-ops more and it really is not a co-op issue. And one last thing as far as governance, every member of the co-op has one member and one vote at some level. The larger co-ops naturally will -- they have districts, elect delegates, what have you, then vote for a board of directors, who are very accountable.

They're active dairy farmers, they're very accountable, they're accountable for the co-op, held responsible for the co-op and to protect members' equity. They hire management, they set policy and they show management accountable. So the governance I think is pretty good. It's to get qualified people to run for those boards of directors on these co-ops, but I have no difficulty with that.

There's always communication problems with members and that, as you communicate what's going on for transparency and co-ops are trying to do a good job with that, with websites, newsletters, district meetings, et cetera, so anyway, I think I see no need for change in the regulation.

MR. SOVEN: All right, thank you. Unambiguously, one of the most profound and dynamic trends in the dairy industry, of course, is the reduction in the number of small farms. The statistics were referred to this morning. They're well known to people in this audience. Jim Goodman is a small dairy farmer and your thoughts on that topic, please.

Well, let me actually do a little bit more of a segue to put a sharper point on it. At the end of the day, the bottom line, what do you think is driving it? Are those trends consistent and what should be done about it from a regulatory standpoint or a competition standpoint?

MR. GOODMAN: Well, that's -- I guess that's really easy to answer in just a few words, and I don't think it's just a small farmer's point of view either. The milk price is too low. I mean, why are you going to continue to farm if you can't make a living doing it. If somebody told a lawyer, well, I'm only going to pay you $2 an hour for your work, they'd probably say well, I'm sorry, I can't do it for that.

Many farmers don't have that option. They have loans to pay off and from my point of view as a small farmer, it's maybe a little bit more critical, because there is some truth to the size of scale, the economy of scale. Credit is sometimes more difficult for small farms to get. I know I went in our local bank, it's probably been five or six years ago, to borrow money for fertilizer and they said well, you've got a pretty good credit rating and that shouldn't be a problem, but you know, we're really getting away from making farm loans.

And I thought well, this is a community of 1500 people, most of whom -- most of the businesses in town depend on farmers and they aren't going to make farm loans anymore? So that's a problem for a small farmer and it can be a problem for large farmers, too. I know a couple of panelists this morning and some of the public comments said that they hope to get their debts paid off so they can borrow more and I thought well, that's an awful way to have to live, isn't it?

I mean, if you can't even do a job that you enjoy doing with your family, supporting the community and you live from one loan to another, there's something really wrong with that. A couple of the people this morning mentioned the reduction in milk prices at 50 percent. Well, that's quite a loss when you think about having your income cut in half and I don't care what job you have, think about if that were you. If tomorrow morning, suddenly your paycheck was half of what it had been.

We've talked and it's been mentioned on this panel, too, about consolidation in the industry. I think that has a lot to do with small farms going out of business. Now, I'm not a legal expert, I don't know a lot about the Capper-Volstead Act, but it seems to me from what I've read about it that paying volume premiums for milk is illegal under that Act, and when you're getting more money just because you're big, that's not, as the Act states, operated for the mutual benefit of all members. It's more benefit to the big members, because they're getting paid more just because they're big, so that's a problem being small.

Now, I'm glad to hear that there are a lot of choices where farmers can send their milk in some places, and Wisconsin is probably one of those places where there are still a lot of options, but a lot of parts of United States, that's not the case. If you're not big enough, they're not going to come and pick you up.

People would say, well, you know, that's not a good place for you to farm then, but that's not -- that's really not true, because at one point, there were options in most parts of Wisconsin, the northern part of the United States, everywhere, to send milk. Somebody mentioned this morning there was literally a processing plant in every township and a lot of people said that wasn't efficient, but it employed a lot of people. It produced local products.

They were differentiated on different parts of the state and it made small farmers and small communities a lot of money, and now we see this trend going back to this artisanal production, Swiss cheese from Monroe, Wisconsin, Italian cheeses from other parts of the state.

But when that system was taken away from us when farmers lost their local processing plants, we lost our options. We lost the ability for competition.

I remember when I was a kid, my cousins, one day the Carnation truck would pick their milk up and the next day it was the cheese factory down the road a few miles. Now, they had a pretty good idea what their milk was worth, because two separate entities were buying their milk. They got a test from each one on butterfat and protein. That's not allowed anymore and someone earlier addressed the grade A licensing.

Small farmers need an honest accounting of what they're producing. They need to get paid fairly, whether they're small or large, but they can't be discriminated against because they're small. I read an article the other night from the Iowa Independent, I think it was last week's issue, and it said government and industry experts are talking about volatility in the milk market and they said it's because there's too much supply, and their solution for a remedy was that, in time, enough producers will be forced out of business and the market will correct itself without government intervention.

Now, I've been hearing that for 30 years that I've been farming, well, eventually, we'll get enough farmers out of business and then everything will be okay for everybody, and folks, it just hasn't worked yet. It just hasn't worked. True, a lot of small farmers went out of business, but from what we've heard to today, the big farmers aren't doing too well either.

And I guess I base a lot of it on the fact that the retail spread between farmer and consumer is not at all accurate anymore. There's no relationship between what consumers pay and what farmers get paid. Small farmers, you know, are trying to find ways to stay in business. We got certified organic because we didn't want to get bigger, we wanted to stay small. We found a local cheese plant that we can send our milk to. We started direct marketing beef and soon we'll be doing cheese.

A lot of small farmers are trying to figure out a way to stay in business because they actually like farming. They actually like milking cows. Some farmers don't and maybe their choice is to get big and hire people to do that for them. The land that we farm has been in our family since 1848 and so that means something to a lot of farmers, too.

I think imports is another issue that we haven't hit on yet on this panel, but it was mentioned this morning and that doesn't just hurt small farmers, it hurts all farmers.

When farm milk prices began to fall in 2008, they said well, there's just too much milk and that's why they're going down, but if you look at the government figures for imports, they were actually going up in 2008, whether it was powdered milk, butter, milk fat. Cheese imports were actually increasing from the end of 2007 into 2008 and the amount of milk consumed in the United States, commercial disappearance actually increased as well.

So we are actually in a milk deficit situation and they're making more imports, but they said well, there's too much milk and the price is going down. Now, somebody is lying to us and it needs to be investigated as to why they keep importing more and telling us we're producing too much.

Now, we've been a milk deficit

nation since 1996 and the trend has been, as was mentioned, small farmers are going to go out of business. We'll get weeded out first, but eventually, it's going to get everybody. Eventually, big farms are going to suffer, too, and we have to make room for everybody.

Now, people have talked a lot about price volatility. Well, you know, that can be a problem. It's nice to have steady income, but as long as that volatility never drops below a cost of production, below a point where you can make money, it doesn't really concern me that much. You know, if it wants to go really high, that's fine, but just don't let it go too low.

We've talked about protecting, farmers protecting themselves, with -- what do they call it, price stabilization. We're supposed to sell our milk on the futures contracts. Well, you know, USDA did a study of that, I think it was a couple, three years ago and they found out that the farmers that sold their milk on futures contracts actually came out 50 cents a hundred weight behind those that didn't. The farmers that didn't sell on contracts had more volatility, but in the end, they made more money.

I guess I started to look at it, it's kind like Las Vegas, you know, that town wasn't built on winners and the industry seems to have a little bit better handle on milk and what it's going to be used for and how much of it there is than farmers do, so we're supposed to be competing against them and betting that we'll be smarter than they are and it generally doesn't work.

I think that -- and there's a few people mentioned it this morning in the public comments about local food, and I think this is something that small farmers are all sort of looking to as a strategy. USDA has come out with a know your farmer, know your food program. A lot of people say well, you can't feed the world that way and that's fine. We don't really need to feed the world, they can feed themselves if we let them, if we don't have too many wars and too many droughts and we don't send our corporations there and take all their natural resources and land base. I think we need to feed ourselves first and until we do that, they're not going to be able to feed themselves.

I guess the final point that I'd

like to mention is I think something that Pete mentioned about Wal*Mart and I've heard a few people in the hallways talking about how processors are really at the mercy of these huge grocery buyers and that's probably true. That's probably true, that they tell you this is what you sell to me for or we will not buy from you, but I don't think we're going to get ahead. We're not going to help farmers, we're not going to help consumers if we let our cooperatives play the same game as the big processors.

I think we have to be better than that and I think cooperatives, instead of saying, well, we got to play the game, I think cooperatives need to look back to the principles of cooperatives, fair treatment of all members and the sixth principle of cooperatives, cooperation among cooperatives. I think we need to -- I think they need to work together to say we're not going to drag ourselves down in the gutter like you.

We're not going to put profit on top of the heap, because farmers are people. Their lives have value and so do consumers and that's who we need to look out for.

MR. SOVEN: Professor Cotterill?

At the Division, we spend a lot of time actually thinking about the size of firms. It comes up in various contexts, obviously it's often -- the argument is frequently made to us that a merger of firms will produce a larger firm that's more efficient, but it's also clear at times that the innovation and the entrepreneurship and the new ideas come from small farms and you will frequently see in companies' documents that look, if we get too big, a lot of that spark will go away.

So as an economist, your thoughts on big, small, where we're going, where we're headed.

MR. COTTERILL: Well, actually, I'm going to do you a favor and I'm going to not say anything right now, because I'm going to consolidate my comments on that very question under channel consolidation at the end, so I'll let other people go ahead.

MR. SOVEN: All right, very good. That's a clear sign we're definitely going to get to the consolidation topic. Jerrel Heatwole, very quickly, I'm going to sort of enforce the two-minute rule.

MR. HEATWOLE: Two minutes. I think this is a good question and as a small farmer, I think there's several ways with boots on the ground that I would say are trends that we need to look at.

One is the cost, we all experience this. I bought the farm in '84 from my wife's brother, milked 29 cows then, just my family. Now with a partner, we milked 61 cows this morning, two families. My farm insurance is up 300 percent. Nitrogen costs up 400 percent, county taxes up 500 percent, seed corn was 56 pounds -- units in '85, I paid about $40 for. I paid $173 a unit average on my 80,000 unit corn seed, y'all know about that. So economic costs are a huge driver in this, and I think that's something, whether it's your grocery store or your hardware, we need to look at as a society.

The second driver that I would see is regulations. We're about regulated to death and I'm disappointed that regulation is the first thing that we think of in terms of a solution. But you know, nutrient management, nutrient management classes, recordkeeping, pesticide, herbicide classes, licenses, crop reporting, special requirements such as Chesapeake Bay, and I know you all have other things here, animal care requirements. Now it's EU requirements. Customers, large customers have special PI somatic cell requirements above that that's required in our PMO. Did I mention recordkeeping?

You know, as a dairy farmer that's on the ground and does my work with my wife and partner, you know, I have a hard time getting done everything I need to do from 4:30 a.m. in the morning until 7:00 at night, seven days a week, every week of the year.

And then, you know, I envy families that have multiple families on the farm and they can put this recordkeeping on one person and spread it out, because as a small farm, if you're required to do all these things, it becomes an impossibility.

The last thing I'd say is this hellish volatility that we're -- that's been increasing since the mid '90s, and I know, you know, if there was an easy solution, somebody would have solved it and we'd be glad to send them to the French Riviera or some other opulent place that, you know, I don't know about.

We'd be glad to pay for their lavish lifestyle because ours would be so much better, but it's not and only by working together as cooperatives of all sizes, of all types, coming together, coming together through organizations, such as National Milk or National Council of Farmer Cooperatives, working together with the USDA and the Secretary and others that are -- that have a vital interest in rural America and agriculture will we have a chance to solve this.

I as an individual dairy farmer, small dairy farmer have zero percent chance, that's a guarantee, of making it in this kind of an environment.

MR. SOVEN: Bob Cropp?

MR. CROPP: Well, quickly, what's small, what's large, I guess is part of definition, but if you look at 2009 dairy farm structure provided by ERS, we find that farms that have less than 29 milk cows still constitutes over 30 percent of the dairy farms and then under 50 cows actually added up about 49 percent of the dairy farms that have less than 50 milk cows, so we have a lot of small farms.

We did lose about 38 percent of our

farms between 2000 and 2009. If you take less than 50, that declined 34 percent less. There's actually been a bigger decline in that time period, though, between 50 to 99 cows. They actually went down about 45 percent. What's driving this? The trends are -- one is we've got a lot of small farms, older farmers are going to retire.

They've got facilities that if somebody is going to milk on, it needs to be fixed up. There's some of that going on. We got some of those that say milk at 75, 90 cows, they're going to stay in business and they have a son or daughter that's wants to come in. They're going to modernize, fix it up, facilities are outdated, probably put a free stall milking parlor in which means they're going to go 175, 200, maybe 300, 400 cows, not all thousand cow operations.

And I guess the other is a change in lifestyle. I think that's important. There's a lot of young people who talk about getting into farming. I teach a farm short course class. A lot of kids that are going back to farm, most of them say well, I'd like to have time off, vacation and be more involved in the community, so a larger farm operation that supports more than one family allows some of that.

But I think the bottom line is, and you heard that this morning from our Secretary of Agriculture of Wisconsin, diversity, and that's really the strength in Wisconsin. There are opportunities for small farms where there's 50 cows or so, but they probably have to do something different than just produce milk. Either they're grazers, maybe they're an organic, maybe they're selling to one of the specialty cheese plants that add value, rather than just selling milk.

And if that's what they want to do and do not want to invest a lot of capital and machinery and that, you can do that and we have the larger farms that can do it as well. So diversity, I think, is our key, but whatever you do, it's a business. It's got to be well managed, what have you and to assist some of the smaller farms, this is something we do in Wisconsin with business planning grants for farmers to do business planning, grants for value added, things of this sort, so support activities for them to make a change in their operation.

But the trend will be fewer farms.

The average size farm in Wisconsin is still only 91 cows, nationwide it's about 145 cows.

MR. SOVEN: This spring, the Department of Agriculture made a change to the producer/handler regulations in a manner that reduced the number of farms that qualified for that part of the regulatory structure. Obviously, how that plays out remains to be seen, but I will ask Marc Peperzak to offer his thoughts on that topic.

MR. PEPERZAK: Well, unfortunately, I've had a firsthand lesson that rather than innovating, adapting to meet evolving market demand, the dominant cooperatives and processors use the federal order system in anticompetitive ways to advance their interests, reduce competition and protect their marketshare through this action. As both dairy farmer and processors, in other words, as a producer/handler, doing both, we're well positioned to innovate and compete to satisfy market demand, transfer differentiated products, such as organic milk, traceable milk, high Omega 3 milk, whatever.

The marketplace wants fully traceable, innovative milk products at consistently high quality. The dairy industry is a traditional producer to cooperatives, to processors or bottlers has a hard time satisfying this demand for full traceability, something that producer/handlers can do. We became a producer/handler in order to assume control of both the milk supply and conditions under which it was processed.

There were limited supplies of organic milk in Colorado. There's a pooling cost issue, of course, and we assumed that risk and we bear the cost of balancing ourselves, but most importantly, we were able to control the quality all the way to the customers. The producer/handler option let us operate independently from the federal milk order pricing and pulling requirements, which frankly don't mean anything in the organic world except that they charge us. Being a producer/handler allowed us to devote our resources to serving our market rather than burdening our customers with the cost of pooling.

The federal order system is controlled by and benefits a very small number of very large, powerful cooperatives and processors through the use of full supply contracts, arcane and non transparent milk pricing structures, byzantine pool access requirements and block voting.

Basically, they've got the scope and scale to make the thing work. People think we're large, we're relatively small. We don't have that scope and scale. We can't play the game. At the demand of the dominant cooperatives and processors, USDA recently eliminated producer/handler status for producers like us and frankly, new, innovative future competitors that could use the same system to bring to market differentiated products. The producer/handlers' experience shows that dairy's dominant market participants will not tolerate economic competition.

So in summary, what I'm saying is the dominant processors and co-ops, quite frankly, brought about the change. They've been there for seven years because they didn't like the competition. It was anticompetition as its best.

MR. SOVEN: Jim Goodman, your perspective on the issue?

MR. GOODMAN: I think I'll just

pass, because I talked quite a while on my last thing, but I guess the one comment I would make is that I'm a fan of small, you know, I think that that's, as Dr. Cropp said, one of the things that we need to look at and if a producer and the producer/handler situation can be more competitive, if he can make more money putting it into the community, you know, I guess that's good.

So but really, it's not an issue that I put a lot of time into thinking about, so I'll just move that on to someone else who can talk about it a little more.

MR. SOVEN: Fair enough. I'm going to do what moderators sometimes do with some trepidation, but I'm going to call a little bit of an audible on my panel, because I do want to make sure Professor Cotterill has time to talk about the channel and I'll give a brief segue and then turn it over to the experts. The bulk of the discussion thus far, obviously, has been on what as antitrust enforcers we would call the upstream market or the producer market, how that's structured and how it's regulated or not regulated, the role of USDA, et cetera, et cetera.

We've talked very little thus far on this panel about the role of the downstream market, which are is what's going on in the processing structure and what's going on in the retailing structure. And here I'll turn it over to Professor Cotterill and then segue over into Professor Carstensen and some of the other panelists where we can both talk about the regulatory issues and also give the panelists a chance to turn the focus on the moderator and talk about the antitrust issue. Professor Cotterill?

MR. COTTERILL: Thank you. That was a good signal he picked up from me. Well, I'd like to thank everyone for being here and also listening to everybody and I like to interact with people that have come before me to give you a perspective on some of these issues, because not everybody agrees with everybody here. So I'm going to highlight some of the differences and I'll say some things that are perhaps new.

First of all, I'd like to motivate my talk of channel consolidation with a notion of efficiency. It's always amazed me how in the dairy marketing channel, the dairy farmer is probably the most efficient member of that channel, having tremendous efficiency gains over the last 30 or 40 years, absolutely amazing efficiency gains. But has the dairy farmer been able to capture any of that in terms of any kind of stable return, and the answer is no.

And then the processors and the retailers look at the dairy farmer and say, well, you're not making any money because you're not efficient and then these same people go to the Justice Department and say you should allow our mergers, you should allow us to combine and do these different things, because they are efficiency enhancing. We are efficient. And the answer there is show us, please.

Because the antitrust laws say that they not only have to show you that they're efficient, they also have to show that they pass it on, either to consumers or farmers, the two ends of the system. They're supposed to be competitive and they're supposed to reward people at both ends of the channel. They should show us where the money is.

So my advice to the Justice Department on channel consolidation is that merger policy has been broken for at least 10 years, if not 20 or 30. Fix it first is a description of when somebody comes for a merger, you allow them to negotiate and spin off and divest. Fix it first doesn't work, because the Justice Department has no good way of evaluating what the spin-off assets are. They should look carefully at fix it first and in the first instance, they shouldn't do it.

The other thing that they should enforce going forward is what I call no second bite. The idea of no second bite is that the -- these companies come before Justice and the Federal Trade Commission like a Stop&Shop retailer in New England acquired its horizontal competitor in '96 and that was part of a fix it first. It spun off $500 million of grocery stores that we thought would preserve competition and they promised that, in fact, they would lower prices.

Well, the fix it first didn't work and three years later, they come back to the Federal Trade Commission in New York City and want to acquire Pathmark. And we went and looked at what happened to prices after the '96 one and we found that prices went up, not down, after the merger in New England and we said to the Federal Trade Commission, no second bite at the apple. They can't come to you and argue efficiency and we're going to pass it on to the consumer when they didn't do it the last time.

And if Justice just instituted that rule, somebody like Dean or Suiza, we wouldn't have the mergers that we've had in the last 10 years, we would not have them. I believe that firmly, if they just introduced a no second bite rule against that company.

Okay. Then with regards to justice, one of the things in antitrust is they have to define the market. It's absolutely critical in a monopolization case or a merger case to define the market.

And we've had just on this panel two very radical, different, implicit definitions of the market. Bob Cropp has told you cooperatives don't have a big share of the market, they only have 14 percent, 9 percent or whatever else. Implicit in Bob's market shares is a national market for fluid milk, a national market for cheese, and then Marc from Colorado says we only have one buyer. Implicit in his definition is the State of Colorado is a market, one buyer. Why can't Marc go sell to somebody in Chicago or New York or Boston, you know.

So my point is, is that the Justice Department needs to very carefully define these markets and with all due respect, we don't have a national fluid market for fluid milk in this country. Markets are still regional. Cheese, butter, perhaps, okay, but that would be it.

Then let's go on to the issue -- another thing that everybody has said here is we hate the -- we really, gee, we really don't like the processors. We really don't like their retailers.

Farm prices are low and retail prices don't respond and we really -- what is going on? And then we've also heard that cooperatives are the countervailing power, that cooperatives are a farmer's last hope for exercising power against these powerful people. Well, let's take that to task. First of all, generally, in economic theory the notion of countervailing power has been disproved in many theoretical contexts and in some practical empirical ones.

Countervailing power, where you have two say monopolists going against each other head to head in a market, a buyer and a seller crashing heads, that's supposed to be countervailing power. But what happens is they coalesce and they exploit the two ends, the consumers and the farmers. There's coalescing power as well and it's a distinct possibility in theory and in practice in the dairy industry. I think we've seen that in many of our regional markets.

One of the more unsettling things I've ever had in my professional career as an agricultural marketing economist is in 2003, I was at the federal marketing orders administrators conference in Newport, Rhode Island and I spoke about these kinds of issues to probably 200 people in the room.

And afterwards, Rick Smith got up, who was at the time the CEO of Dairylea and the head of DMS, it had just been formed and Smith basically said to the group, he said, look, that is not the way co-ops are going to behave in the future. We are not going to fight with these people in the channel. We are going to go for a channel efficiency. We're going to work with these people for efficiency. Think about that for a minute, and where does that leave the idea of a cooperative as a farmer's representative. Just think about it.

So let's go next to the issue of cheap food policy in this country. I would submit that cheap food policy is bankrupt. Who is food cheap for? Cheap food is a notion that the farm price and the market is low because possibly of federal subsidies, also because of possibly buyer power against them. Farmers are getting low prices, so cheap for who?

Well, I would submit that the lion's share of that cheapness and the low market price that you're receiving stays with the processor and the retailer. You're quite right there in that the retail prices are not responsive. So it's cheap, by and large, for corporate America and now let's think about that for a minute. Cheap food for them, that means they get a raw commodity that they can innovate on and how have they innovated compared to you on farm?

You've produced a wholesome product

at a low price. They've innovated by massive product differentiation and a great number of different varieties of products, and quite frankly, the result has been expensive food to the American consumer. Food is not cheap and we have an obesity epidemic. Corporate America produces food that makes us fat. We have health costs that are everybody's damaging charge. Overweight people are less healthy.

So what does this mean? It means that farmers have a natural ally with consumers for healthy, low-cost product that generates health. I think that you need to look forward all the way to the White House and the woman that's in the White House as an ally for the kind of things you're saying.

Another thing about the market channel, in supermarkets over the last 20 years there's been a massive shift in the way milk is priced. It's commonly known -- 20 years ago, milk was often a loss leader, something that was sold low to bring people into the store. Now milk is a cash cow. Milk is the largest product in the American supermarket by sales volume in dollars, it is. It's also the most profitable in many supermarkets. They have margins of 40 percent now, 45 percent are common, whereas 20 years ago, the margins were 20 percent. You're quite right, that in fact, that the margin has expanded in those areas more than costs have justified it. It's fundamentally a shift in the way they price milk.

Well, what else? Flat milk pricing, you've probably never heard of that, but at the University of Connecticut we've watched it for several years in the northeast. The idea that supermarkets in the northeast charge the same price for a gallon of skim milk as one percent, two percent and whole. They're all like $3.49 a gallon. Now, what does that tell you about competition, if competition is based on cost?

Because every farmer in this room knows skim milk is much cheaper than whole milk. There is no competition. That pricing is not competitive pricing. That should stop, because it does not reward the consumer or give the opportunity for them to buy lower cost, healthier milk. Flat milk pricing is a policy that should stop.

Well, what do we see? Basically,

another thing I see here that's been talked about a lot is the notion that the last year and a half, we've had low prices and before that we had very high prices and the idea of a cycle that's getting progressively more violent in terms of the swings. I think that's related to the change in the structure of America's dairy farms.

I don't have clear evidence, I'm not a production function economist, but I would raise the issue of the over production trap. It's a classic area in ag policy, that if a dairy farmer has a lot of say leverage on the farm or if the dairy farmer has a lot of cash inputs and is being squeezed because of higher costs and these kind of phenomena might be very true on a 5000 or a 10,000-cow farm, where the banker is an integral part in the operation. It could also be true on a small farm where the banker is part of the operation.

But I think by and large, a lot of the leverage is on the larger farms. A lot of the larger farms also buy a lot of their inputs and unless they're very savvy in futures market hedging of corn and soybeans, they're going to get stuck a year ago on that kind of high price cycle there and that probably is exacerbated in dairy, because these people have no choice but to cover their cash costs by expanding production, not shrinking.

So I think the shift in the structure of the industry towards more leverage and more input costs in these larger industrialized farms has created the kind of swing that we see. That's a hypothesis, I don't have hard research on it, but it should be looked at. Another thing that I would say, earlier people have said that the CME needs to be fixed. If just if the CME were fixed, dairy's problems would be solved. Now, that might be true if you're producing for the cheese market in Wisconsin.

Okay, but coming from the east coast where we're mostly for the fluid market, it's not true at all, because quite frankly, the CME does not set the fluid market price. Since 1987, with the relaxation of federal market orders to a minimum floor, the fluid market price every month is basically the class minimum plus what Bob has mentioned and everybody knows is the over order premium.

The co-ops bargain or coalesce with

the processors to set the fluid market price in all the markets in the United States today. It's been that way since '87, and for better or for worse, that's how that price is set. So fixing the CME is not going to fix the fluid milk market price, because it's the CME plus the over order premium, the CME as is reflected into the class I mover, all right. So just understand that, you know, fixing the CME is not everything to the dairy farmer.

So where are we at? It's clear we need a higher price via a larger share of the consumer's dollar. There's no doubt about that. The question is just how to do it. We also need a more stable price. There's no question about that as well. I think that the -- we need a competitive market channel for efficiency in that. Antitrust can give us a competitive market channel, it can, through increased enforcement. I'm a skeptic of enforcement.

I think frankly the Justice Department could bring 10 cases in this industry and they'd probably lose eight. It's very, very hard in federal courts to prevail. I think there's probably going to need to be changes in the underlying antitrust law, so I was very encouraged to hear Senator Kohl and Feingold say they're willing to do that, because I think we're going to be there quicker, and the quicker the better, than you think.

So what else? There's the issue of social justice or the issue of the health u of rural America. It was interesting to hear Secretary Vilsack say that 10 percent of the population is rural and 45 percent of the people serving in our military are rural people. I think rural people do have a very fundamental, American set of values beyond even serving in the military. I think it's worth keeping, because I think we raise good people in rural America.

Not that we don't in urban America, urban America raises tougher people. I think rural America raises more moral people or people with more of a notion of what's good or bad. That is -- so if you want a cynic, look for a kid from Brooklyn. If you want a greenhorn, look for a kid from a farm in Upstate New York. So that's it.

On fair trade for rural America, I think there's still a role for something like the milk program that provides subsidies for smaller farms, farms with less than 150 cows. I think there's a place for that until we figure out a lot of this other thing. I think there's a place for organic milk, to protect small farms that want to do that.

And I think that in terms of policies for a market channel, I've suggested something that politically is probably extremely unpalatable, because IDFA has fought it tooth and nail in Vermont and is now fighting it in New Jersey and probably would fight it elsewhere. That's the notion of collecting some kind of a fee from the retailer and paying it back to the milk shed. If the retailer or the processor have such a wide margin, 30 cents a gallon times 11.6, you figure it out, on fluid milk, that's over $3 a hundred weight.

You could do it nationwide, okay. If you want to go after the margin in the channel, that's one thing, and you would put it with something like the New York State price gouging law which says that retail prices can be no more than something like 200 percent of the farm price and it's not a fixed thing. It's just that if they are above that, then the agency is empowered to go to the retailer and say please justify your costs, because if you're a retailer in Manhattan, perhaps maybe more than twice the farm price is justified because of the extremely high retailing costs.

But it gives the retailers on notice, that in fact, somebody is looking at margins and so that is an option. And if you are really talking about going after the margin kind of thing, you're going to have to do something like that and like I said, the International Dairy Foods will fight that tooth and nail, as well as some people like the Food Marketing Institute, and I want to tell you how powerful they are. This is the last thing and then I'll be quiet.

In 2003, Peter and I were invited by Senator Kohl and Senator Leahy down to the senate judiciary committee to testify on the issue of buyer power against farmers. And you know, Peter and I, we had a great day. We went in there and we went forwards and backwards on this. If you read my testimony, it reads like a road map for what's happened since with the issues of vertical power and exercising of corporate power against farmers and consumers.

After the senators had gotten done bouncing us around, Peter and I got up and turned around and looked at the room and there were about 200 people in this hearing and if looks could kill, every one of them would have had a knife through our heart and I turned to Peter and said Peter, we just filled their political contribution coffers. There was nobody there from farmers, there was nobody there from consumers. The room was full of lobbyists for the food industry.

That's how hard a battle you will have, because they are extremely powerful, but it is ultimately in dairy a political answer. It's not an economic answer, to get these markets to work better for you and for the American economy. Thank you.

MR. SOVEN: Well, predictably, given the level of talent and experience on the panel today, we did not cover everything, but their answers did a terrific job of weaving in all of the issues and demonstrating that, in fact, look, these issues are not unitary or insular or singular, they are in fact related. All of these gentleman took substantial time to come here today, so I'd just like to express our appreciation to them and turn it over to the next panel. Thank you.

(A short recess is taken)

MR. MacDONALD: Good afternoon, it's time for our next session, and as soon as we get done with that, we get the free ice cream. My name is James McDonald. I'm with USDA's Economic Research Service. This panel is on market consolidation.

Now, before we get started, I want to make one other brief announcement. If you see the kids in the halls, in the aisles here wearing their colors that say Wisconsin Association on the back, they're with Future Farmers of America.

They handle questions, if you have questions for the panelists. They have index cards with them. If you think of a question you want to pass up to us, signal one of those kids in the aisle, get an index card from them, fill it out with your question. They'll bring it up to our DOJ staffer at the end of the table here and they'll pass it down to me and we'll see if we can work these in.

Now, as I said, the -- today's panel is on market consolidation. Our charge, I'll just briefly tell you, is the following: Firms that produce, process and sell milk and milk products have grown dramatically in certain geographic regions throughout the United States. While the growth of cooperatives and processors has almost certainly lowered production costs, in some regions there are concerns that there may be so few cooperatives and processors that the remaining firms can exercise market power against their customers.

You've heard of that touched on throughout the past few sessions. Processors may also achieve sufficient size in some regions to exercise power against cooperatives and farmers. This panel will explore how such changes in farms and firm size are affecting both farmers and consumers.

Now, to address those issues, I have a panel of five distinguished experts. All the way to my right is Brian Gould, an associate professor in the Department of Agricultural and Applied Economics here at the University of Wisconsin. He's an expert on dairy marketing and dairy price risk management. To my immediate right is Calvin Covington. Calvin is a former chief executive officer of Southeast Milk, whose members are in four states, most dairies in Florida and approximately half in Georgia are SMI members. SMI also has members in Alabama and Tennessee.

To my immediate left is Louise Hemstead, who serves as chief operating officer at the Crop Cooperative in La Farge, Wisconsin, better known as Organic Valley, which is the nation's largest organic dairy cooperative. Louise is also a graduate of the University of Wisconsin where she appeared on this stage.

MS. HEMSTEAD: Let's not go into that.

MR. MacDONALD: All right. Next on my left is Daniel Smith, an attorney in sole practice in Montpelier, Vermont with specialization in state and federal milk market regulation. Dan, between 1992 and 2001, was the founding executive director of the Northeast Dairy Compact. Finally, to my far left is John Wilson, senior vice-president for marketing and industry affairs of Dairy Farmers of America. In that position, he oversees DFA's governmental and public affairs, regulatory initiatives and national milk marketing activities, including customer relations and economic analysis.

Now, what I'd like to do is get a series of questions focused on three broad topics. First, I want to quiz the panel members and get some interaction among them on the factors behind changes in cooperative organization and business practices over the last couple of decades. Secondly, we're going to talk about changes in the organization of processing, and finally, we're going to talk about some interaction between those and particularly, we're going to talk about competition and market relationships in fluid and manufactured product markets.

Let me start then with our section on changes in cooperative organization and what I'd like to do is toss the first question over to Brian Gould and ask him if he could briefly summarize for us the major changes that he's seen in the organization of dairy cooperatives over the last 20 years. Brian?

MR. GOULD: Thank you very much and I hope with such an esteemed panel that I'm going to learn quite a bit today, because I think I'm the rookie on the panel. There's been mention made throughout today about trends in terms of consolidation, both at the processing level and the co-op level. What I'd like to do now in terms of this first topic is just to bring some basic statistics and through my discussion not only on this topic, but as we go throughout the panel, I'm going to emphasize what information we have and what information we do not have in terms of trying to evaluate the competitive environment facing not only dairy producers, but also dairy manufacturers.

Just in general, dairy co-ops maxed out in terms of number during World War II. There was over 2300 dairy cooperatives. Those 2300 represented about 48 percent of the marketed milk in the U.S. at that time. By 1980, that 2300 had gone down to 435, but that 435 had accounted for 77 percent of marketed milk, so again, they were getting larger with fewer numbers around. In 2007, as Dr. Cropp indicated in the last panel, there were 155 dairy cooperatives representing about 82 to 83 percent of marketed milk.

What happened over the '60s and '70s in terms of the consolidation of cooperatives, there was a trend towards local cooperatives merging and trying to get large from a regional perspective and then there was a regional federation established. But again, '60s and '70s was a period of consolidation with a regional focus. After the '70s, during the '80s and '90s, there was a change in that into a consolidation trend of national focus.

That is, multi regional cooperatives came into existence and, again, I'm not going to go through in detail, but I think it's in 2001, the GAO, the Government Accountability Office, did a great study on the market structure in the dairy industry, and they reviewed the growth of DFA and LOL in terms of going from basically nothing in terms of DFA's case to a multi national cooperative. I'd really suggest you take a look at that, because there's an example of a growth in a cooperative, not organically, but through purchasing of existing or merging of existing firms, but again, a very, very interesting story.

In terms of why there is mergers, again, there's a variety of theories. Professor Cropp has noted a couple of them in his talk and he also had a 2001 publication where he gave three or four reasons why cooperatives may want to merge and I thought I'd briefly go through those and provide some current examples of why they may be relevant, and some of these are obvious and some of them may not be.

The first reason, possible reason for a merger or consolidation may be to look for gains in efficiency in procurement, processing, just the fact that you're dealing with volumes. Volumes is a non linear relationship, so the larger you get, the more volume you can deal with, the lower the cost per unit. Again, the reason behind this, again, is the fact that dairy cooperatives are trying to hold their place at the bargaining table with the larger sized processors and other processors are then dealing with larger retail establishments.

I want to quote somebody from 2009, this really illustrates this point, and this has been referenced a couple of times so far today and this is with respect to the purchase by Dean Foods of the two bottling plants in Wisconsin that is currently the subject of litigation. I'm going to quote Dave Fuhrmann, who's president of Foremost

Farms, to give -- he gave a Wisconsin State -- I don't know if it was the State Journal or Milwaukee Sentinel article or quote in terms of why they decided to sell those plants and I'm going to quote him, it's from April 2009.

"As food retailers consolidate to gain marketshare and operating efficiency, Foremost Farms has been challenged to efficiently supply customers who have a significant regional or national presence and prefer to have a sole supplier." Again, that really illustrates that first point about needing to meet the needs of larger processors as well as final purchasers.

The second reason why mergers may be appropriate for cooperatives historically is that there are tight marketing margins and capital constraints and one way to get around those constraints is through purchasing other firms that may have less tight margins and may have additional capital to bring into the operation.

A third reason may be market entry. Market entry is expensive, that is entering a new market and you can enter a new market relatively cheaply by finding a firm that's currently in that market.

Rapid advances in information technology, we all know how automated dairy farms are getting as well as obviously cheese plants. Again, with advances in information technology, it's much easier to coordinate production activities, whether for larger operations, whether you're talking at the farm level or at the cheese plant.

And finally, changes in Federal dairy product support policies, again, we've had an increase in volatility in dairy markets. Everyone knows that. One way to minimize the risk, whether you're an investor or a plant, is to diversify your portfolio of products and one way to do is that is to buy operations that maybe make a different product than you're currently getting involved in. So again, those are possible reasons and there's a whole slew of other ones that may be the reasons behind a lot of these mergers.

In terms of size distribution of cooperatives, using publicly available data, and I have to emphasize that I only have access to publicly available data, looking at 1987, there were only two firms or two cooperatives with more than 6 billion pounds marketed a year and those two firms accounted for 24 percent of the co-op milk and 17 percent of U.S. milk. By 2008, there were four firms with greater than 6 billion pounds of marketed milk and they accounted for 48 percent of the co-op milk and 40 percent of the U.S. milk.

And again, there's a great publication that comes out, I think, around October every year in Hoard's Dairyman. They list the marketings of all the largest top 50 dairy cooperatives. I suggest you get ahold of that, it's a great resource in terms of looking at trends in the industry. I'm almost done, sir, just a couple more things here.

Economists like to use numbers, as you know, and there's several ways of measuring concentration. One of them is what's known as a concentration ratio, which is simply the sum of the percentage of whatever market you're looking at, whether you're looking at the value of sales of the marketing of raw milk.

You sum up the marketing share of the total marketings in that commodity by the firms of interest and we call that the concentration ratio value. The greater the value, the more concentrated that market. In 1987, in terms of CR values, again, getting back to that size distribution of the co-op firms that I just reviewed, the CR4, that is the four largest cooperatives, accounted for 33.4, that's CR4 values of 33.4 and, again, that was 48.7 by 2008. Again, an increase, showing an increase in concentration.

Another measure economists like to use is what's known as the -- we call it the HHI index, that's what I'm going to say. I can say that. The HHI index, which is simply the square of the sum of the marketshare of the firms that you're studying in the industry of concern. And why we take the square is because it weights more the larger the firms. The DOJ uses the HHI scores as a measure of concentration of an industry.

In 1987, I calculated using publicly available data the HHI scores for co-op milk. That is, I'm trying to see how concentrated co-op milk is in terms of the marketing of that raw milk. In 1987, the HHI was 546.1. Anything over a thousand is considered to be a moderately concentrated market. Anything over 1800 is a very concentrated market. So in 1987, again, 546. In

2008, we have a HHI value of 981, so almost up to that 1000 value. Again, I'm not trying to make any judgments, this is just a matter of looking at the values.

As has been alluded to throughout the day, when one looks at concentration, one of the key things to define is market. What's the extent of the market, and I just gave you numbers pertaining to the total U.S. market. That may not be very relevant, especially on the fluid side, when you're dealing with say bottled milk, because a lot of those markets are local markets. There's a 2001 GAO report that looked at deliveries by the four largest dairy co-ops in 11 of the existing marketing orders and remember those CR4 values I gave you.

U.S. CR4 in 1997 was 35.8 and in 2002 was 40.2. In looking at individual cities, the CR4 values ranged from 63.5 in Minneapolis to 97.1 in Dallas, so again, giving evidence that we need -- in terms of information, we need something other than national numbers to really do an analysis of whether there's an increase in concentration in the industry and unfortunately, that GAO study had access to confidential data that I as an academic do not have access to.

As Professor Cropp indicated, there's been significant changes in the importance of cooperatives in various products, a loss on the cheese side and we've lost since '87 half of the production of fluid milk by dairy cooperatives and we're going to be revisiting that issue in a minute. I've overextended my time.

MR. MacDONALD: Thanks, Brian. All right. We've gotten mergers towards much larger cooperatives, somewhat higher concentration among cooperatives, as a quick summary. Let me turn to John Wilson from DFA to talk about that a little bit. As I see from your website, DFA members milk about 1.8 million cows. By my calculation, that's about 20 percent of all the cows in the country. What do you get from being so big?

MR. WILSON: Well, thank you, Jim. Let me start by stating five indisputable facts. First, we do have about 17,000 farm families, all dairy farmers, that belong to DFA. They live on about 9500 dairy farms across the United States. These members own, govern and control the organization. Second, while DFA has a diverse membership, you've heard from some of them this morning and this afternoon, we have large and small dairy farms. Over 70 percent of our members milk less than 100 cows.

Third, of all the milk produced in the United States, 20 percent, to reconfirm your fact, Jim, 20 percent is produced by DFA members. Fourth, and this has been well documented today, DFA members, as well as all dairy farmers, have suffered badly because of low milk prices and high costs. Fifth and final point, DFA is a voluntary organization. Every dairy farmer and every member has the opportunity to leave or join DFA every year.

Now, to get to the specifics of your question, we have to remember back in 1998, four cooperatives voluntarily came together and the members of each of those four cooperatives voted to create DFA. They knew that in a world of consolidating retailers and consolidating processors, that in order to help themselves, they would be better off coming together and working as one cooperative. Some of the things that happened back then which kind of goes to the benefits of the size, some of the things that happened immediately when DFA was created, we eliminated inefficiencies.

Specifically, one easy one, really, is hauling inefficiencies, because clearly, when you have multiple cooperatives, you run the risk of having milk trucks meeting each other on the road, going essentially down the same roads, picking up neighbors. Lots of diesel fuel gets saved when you take away that inefficiency in procurement and hauling. Our members realized there was a much better opportunity to get a fair price when you have one organization competing for sales rather than four organizations in our case, and the critical mass is important as well.

Today, we're able to provide services nationwide to dairy farmers, including health insurance, I think that was alluded to earlier, price risk management which is to many of our members a very, very important piece and the way to avoid disasters like 2009, farm supply purchase programs, just to name a few of the services that we provide our members, which we wouldn't be able to do without the critical mass that we have.

Another significant piece is the capital. Yes, we have a large balance sheet, but our members utilize that large balance sheet to be in business in marketing things like Borden cheese, so we can not just sell raw milk, we can sell finished products, in some cases directly to consumers. So I think there's -- our members firmly believe that size does matter and it can work to their benefit.

MR. MacDONALD: Thanks, John. Let me direct a question related to this to Louise. You have the largest organic cooperative, but your members are spread widely across the country. I guess I'd like to wonder, given the discussion that we've had so far, how you manage to aggregate that volume and particularly, if you could talk a little bit about co-processing agreements and whether that's a way for you to aggregate your organic volumes.

MS. HEMSTEAD: Certainly, thank you, appreciate the opportunity to be here. I am also a dairy farmer. My husband and I operate a fourth generation dairy farm about 90 miles northwest of here, so in addition to my day job, I do milk cows on occasion. That being said, Crop was founded or Organic Valley is our brand name, in 1988 by seven dairymen in western Wisconsin.

And the goal was to return a sustainable pay price to the farm by means of organic production.

Now, nobody really knew what organic production was about and they went away and really studied and came up with a process that ultimately there was action in D.C. to establish an organic rule and in some sense, it's an artisanal sale of milk. And last year, we returned a premium to our farmers of $14 a hundred over conventional price by the artisanal sale of their milk. Now, of course, that artisanal work starts on the farm.

And so over the years, we started with our seven farmers and we were so small, we couldn't, A, get a milk hauler to pick up the milk, so the chairman of the board went out and signed a note to buy a milk truck which we ran every other day and then we found a cheese manufacturer in La Crosse, Wisconsin who was willing to make cheese out of our milk and then we started knocking on doors and trying to sell that and it was brutal and it was ugly.

The farmers established what they considered a fair pay price for the milk and if they were able to sell it organically, it received that pay price and if they had to sell it conventionally, it went on the conventional market. It was not blended down. The price was blended back to the farmers based on how effective the organization was.

Over the years, we've elected to stay out of the brick and mortar business. We have one processing plant where we manufacture cultured butter and we have a cutting room where we convert pounds of cheese into retail product. That, too, born out of necessity because nobody would do it, we were so small. And we had part-time employees when I started in 1993 that would come in and convert 40-pound blocks of cheese for us once or twice a week and that's how we got started, so very small.

And then over the years, we developed customers for bulk milk, we developed customers for powdered milk, we developed our brand. We didn't have a brand back in 1988, that came a couple years later and we gradually moved out of Wisconsin into Minnesota. That was a big decision. Then we went to Oregon, we went to New York and today, we have 1300 members in 30 states. We have one processing plant. We work with co-processors all over the country, big folks like HP Hood, who's a name I haven't heard yet today, to small folks like Guida Dairy in Connecticut, Byrne Dairy in New York, family owned dairy processors who manufacture products, our products, for us.

Smith Dairy, another family dairy in Indiana, Schroeder Milk in Minneapolis-St. Paul which is now part of Agropur, a Canadian owned company, Borden down in Texas owned by LALA in Mexico, Dairy Gold, a co-op in the northwest. Those are just a few of the 70 co-processors that manufacture our products to our specifications. They have to follow organic rules. They have to receive our milk in a clean pipe, a clean unloading. They have to process it first of the day. We take a line lost hit for the entire plant because we're running at the beginning of the day and those things add up and build the cost of goods.

But the model has worked well for us because it's allowed us to come up with a diversified product line for the customers. If we had to sell all our milk as fluid milk, we would truly suffer. The other thing we haven't talked much about today, Dr. Cropp mentioned it, is the seasonality of milk. There's a seasonality of milk consumption. There's a seasonality of milk production and they are not the same season. As co-ops, we all deal with that, how we balance that.

Typically, in May and June and July, there's more milk coming off the farms and consumer consumption in the fluid milk market drops significantly. It doesn't matter if it's conventional or organic, folks, go look at the stats. It's the same. So this balancing of milk, not only is it the fluid milk market, but it's the cheese market. We've talked quite a bit about the CME and the way the price of milk is set, and there is a challenge there and we do need to address it. Thank you.

MR. MacDONALD: Thanks, Louise. That mention of seasonality both in production and demand gives me an opening to shift a question over to Calvin. At this stage, what we're trying to do is get some warm-ups on cooperative structure. Calvin has been an executive with two southern dairy enterprises and I'd like, Calvin, to see if you can give me your reactions on how you think organization of cooperatives and business for southern dairy production has changed in your career.

MR. COVINGTON: Well, I'll speak to Southeast Milk where I served as chief executive officer for the previous 10 years and during that 10 years, because of changes in the marketplace, Southeast Milk had to make a major change in its strategy. When I went to Southeast Milk, Southeast Milk was basically a marketing cooperative. It owned no brick or mortar. Its job was to get the milk picked up, market that milk to the best of its ability, collect the money, pay that money back to its dairy farmer members.

Then when the Dean/Suiza merger took place, which I consider to be one of the most significant changes in the fluid dairy industry in modern times, that really changed things at Southeast Milk, because our main challenge turned into finding fluid markets for our milk production. It became a major challenge. Because of that and then because of some other processors in our marketing area who were almost forced to sell because of things happening in the marketplace, Southeast Milk had to end up buying those processing plants in order to have local markets for its milk production.

And so just in a short period of time, Southeast Milk, because of changes in the market through consolidation of processors, had to move from being a marketing cooperative to a processing cooperative. Also because of changes in other structure in the southeast, you've heard Louise talk about balancing, which is a major function, balancing the market, its supply with demand, especially in the southeast part of the country with its seasonal milk production, we had to end up building our own balancing plant in a short period of time.

So our strategy really changed because of consolidation, from being a marketing cooperative to a processing cooperative and when I left, it was probably handling about 25 to 30 percent of its own milk through its own processing plants. So that's a major change that Southeast Milk had to make during the past 10 years.

MR. MacDONALD: Thanks, Calvin. Our last warm-up with Dan Smith, you've been involved in northeastern dairy markets, what are the major changes that you've seen in dairy cooperatives and dairy markets in the northeast in your career?

MR. SMITH: I'd just like to say thank you to Jim for putting me on the panel. It gave me a reason to come back to Wisconsin, I also am a graduate here and it's always nice to return and see the campus. I would like to basically follow up on Brian's sort of macro description of changes in the industry. I think this question speaks directly to the issue that Ms. Varney posed to panelists, which is to address the questions of manipulation and concentration in the marketplace.

From the perspective of my training in law school with Professor Carstensen, actually, her question relates to market structure on the one hand, in terms of concentration, and market conduct in terms of manipulation, with the design being that the -- how a market is structured dictates how the participants in the market will conduct themselves. So from my observation and in listening to Brian's description, often those two parts of the puzzle get combined and it's important to pull them apart to begin with.

The other piece of the puzzle that needs to get pulled apart is the clear distinction between fluid markets and the manufactured market which has been spoken to about all day. I think most of most concern, as Brian alluded to, the fluid markets tend to be very pronounced in their regional configuration in terms of market structures compared to the manufactured dairy industry, which is really more of a national and increasingly an international market. So at least from the basic definition of their structure, they're quite distinct markets.

The third piece of market structure that tends to get bundled in is the function of the federal order system, and as Professor Cropp said earlier this afternoon, a lot of issues that relate to conduct by market participants are really dictated by the structured presence of the federal order system and are not really a function of just free market forces in terms of processors and how they interact with each other. It's strictly dictated to them by the presence and requirements of the federal order system.

That being said and in terms of the big picture response to Brian's initial discussion, I'd just like to put a face on what's happened in the fluid market in the northeast in more direct response to Jim's question. Back in 1991, I did a market structure conduct and performance which is the resulting price of conduct analysis of the New England and Vermont fluid milk markets, primarily to look at Senator Feingold's question in our market of where was the money going between the farm and the supermarket.

So I had the opportunity and then in my work with the Compact to follow up on sort of a direct, in between participant and observers view of the market structuring conduct. Back in '91, there were seven cooperatives in place. The top two cooperatives had roughly 60 percent of the market, the top three something on the order of 65 percent of the market. The other four co-ops were very active participants in the market on a very pronounced smaller scale.

There was the Massachusetts Milk Producers Federation, obviously working in Massachusetts, the Independent Dairymen's Association working in Vermont, so producers had access to two regional co-ops primarily in New England and then a variety of smaller co-ops operating within each state. It goes without saying all of the smaller cooperatives at this point are basically gone in New England. We're down to Agri-Mark and St. Albans remain and DFA is also on the scene.

DFA didn't swallow up the other cooperatives and that's the other piece, I think, of the puzzle that actually hasn't been talked about too much today, which is the presence of Dairy Market Service, Dairy Marketing Service, which has essentially taken on the function of representing what used to be the smaller, independent marketing co-ops that were present in New England. So we're down to a much smaller number of operating cooperative entities, consistent with what Brian said.

I think here it's pivotal, as has been also said, and I'll just put a face on it, most recently by John, is that the concentration at the processor level in large part was a direct response to concentration at the retail level, and there, the picture is completely transformed. Back in the '90s, we had roughly 20 supermarkets in operation. Most of them are long gone. There were a series of very active convenience stores that had their own labels for milk, in some cases processed their own milk.

For the most part, those are all gone. Seward's Dairy remains, Cumberland Farms was bought out by Dean Foods. They still sell milk. It changes a lot, as far as who's putting up their milk, I can't say, but in essence, the concentration at the supermarket level has really transformed what the New England retail market looks like. The other piece, as has been alluded to is the emergence of the big box stores has really pushed out the convenience stores in terms of being a retail outlet.

So we had initial concentration at the retail level followed by concentration at the processor level followed by concentration at the farm level. Again, function of market structure in terms of what we have now, it's important to keep the concentration at the farm level within the context of concentration at the processor and retail level.

Just to finish with the processor level, we had roughly 30 processing firms in operation in New England back in 1990. The top eight firms had roughly 80 percent of the market at that time and there was vibrant competition, different types of processing firms, in large part in response to the retail market being a vibrant and much more differentiated market. Essentially, all of the processing firms at this point in New England are gone. Guida is still there, Hood is still there, but basically, other than that, Dean Foods has swallowed up most of the plants and either shut down other plants or the other plants have basically gone out of business.

There was also a vertically integrated supermarket in our market back at that time which played a pivotal role, had a lot of milk, direct relationship with one of the co-ops so that there was an additional competitive dynamic in the marketplace that both disciplined the market on the retail level and offered pressure up in terms of premiums to the farmers on the other end. That's gone. So transformation in the industry, not just on the farm level, but at every sector of the industry.

As far what is this means, I was struck this morning in terms of discussion about bringing young farmers into the industry. My observation over the 25 odd years I've been doing this is that when there were more commercial relationships, farmers among themselves and co-ops, co-ops and all these different customers that used to exist with all the characters that were in the industry that are mostly gone from the scene now. It's mostly suits that show up at meetings, and there's much less room, I think, for young farmers in the industry than there used to be.

Not just because of the milk price, which certainly can't be gainsay, but also I think the farmer from Wisconsin, and I apologize for not remembering his name, in terms of direct ownership in the business, that is one thing that's gone by in terms of market concentration. There are just fewer companies operating in the dairy marketplace of which different people have an ownership interest in.

MR. MacDONALD: Thanks. Let me follow up on points both that actually, I think, came out of each panel member and I want to direct a couple of questions across the panel on the organization of processing. The first thing I'd like to get at is changes in fluid processing and fluid milk markets as distinct from manufactured markets. I'll start with Brian, because you may have something on this, but can we say that we have far fewer processors today than we had two decades ago in local markets and do you have any information on that?

MR. GOULD: Again, this is an information problem not at the local level, but if you look at the national numbers, if you were to compare 1973 versus 2008 and you say put that in a little graph where you have a line graph showing the number of plants and the other lines showing the number of pounds throughput per plant, per year, it looks like an X. The number of plants are substantially reduced and the throughput is substantially increased.

For example, in 1973, there were 1627 fluid bottling plants in the U.S. putting out about 32.3 million pounds of milk a year. By '08, it was 319, so we have about an 80 percent -- about 75 percent reduction in the number of plants, but that production went up from 32.9 to 195 million pounds a plant, so that's six times as much throughput per plant. Now, obviously, with the fluid milk and the standards of identity that are required, there's obviously limited milk sheds that can go to those plants.

So I don't have any direct knowledge in terms of the ability to service those plants from a competitive perspective, but again, getting back to this little bit dated GAO study in December '99, they again used confidential data and they looked at the CR value, CR4 values for fluid milk across the federal orders and they ranged from 52.4 in New Orleans to 97.4 in Phoenix and Boston, Dan's market was 88.1, and the national CR4 value in 2002 was 42.6.

So again, you need information below the national level and, again, that's usually proprietary, so as analysts we're very -- don't have the ability to answer specific questions.

MR. MacDONALD: Let me come back then to specific experience and I'll start with Calvin and I'm going to ask other panel members if in their experience we've had substantial increases in concentration, that is declines in the number of buyers in fluid markets.

MR. COVINGTON: Well, I'm going to speak more to the southeast and Brian, if you don't mind, I'm going to give you just a round number I always try to keep in my head about fluid milk plants. If you look back at the census numbers, back in 1985 which wasn't all that long ago, there was about 1000 fluid milk plants in the United States. If you look at the most recent census, that number is down to about 350 and you've got one organization that probably has about 100 of those, so the number has significantly dropped.

If you look in my part of the world in the south and southeast, if you set aside any on-farm operations, which are generally, you know, strictly family operations, there's really only one milk processing family left in the southeast. All the others have either gone out of business or been sold, so it has, you know, got a whole lot less. Really, what's creating a lot of the challenge, as I see it, in the fluid milk business, is that our pie is not getting any bigger.

Unfortunately, we're selling the same amount of fluid milk in this country today as we were back in 1970. And so you've got everybody chasing that same pie. The pie is not getting any bigger and with margins getting smaller and the kind of pressure being put on by retailers for small margins, the only way you can make your plant bigger is to take it away from somebody else and that's really created a lot of the challenges in the processing business and why it's made it so difficult for the smaller processors.

You know, I can attest to that with our cooperative, we consider ourselves a small processor. Why it's so difficult to compete and especially with your big retailers who want to buy across regions and your plant is not big enough to supply them, but again, since we're not increasing fluid milk sales, that's creating a major challenge in the fluid industry.

MR. MacDONALD: Let me pass it down here for anybody that wants to respond. Do we have -- do you see in your markets significant declines in the number of buyers for fluid milk? Keep it to that side.

MR. SMITH: Just very quickly, just to tie up, in '91 there were 16 buyers, basically 100 percent, 98 percent, so there were 27, of the 27, 16 had 98 percent, what did you say Brian, we're at 80 --

MR. GOULD: 88.1.

MR. SMITH: And that's basically three companies at this point, so we've gone from essentially 18 at 100 percent to three.

MR. MacDONALD: What do you see, John?

MR. WILSON: There's no doubt, it's happening nationwide. There's been consolidation, sure, certainly.

MR. MacDONALD: I see Louise shaking her head.

MS. HEMSTEAD: Absolutely, I go out and look for processors and there's a lot less of them than there used to be.

MR. MacDONALD: Let me follow up on one other point that I think was in Brian's quote regarding the merger in Wisconsin which was the argument that you needed to get large in order to deal with contract requirements for retailers. What do you think, is that a driver? Are retailers' volume requirements and their interest in dealing with a sole source supplier, is that a driver in concentration on the processing side? Anybody want to take that?

MS. HEMSTEAD: I absolutely think it is. Before I started working for Crop, 17 years ago I worked for AMPI for 10 years. It was an issue there and it's an issue here. People want to -- retailers want to one stop shop. They want to place one purchase order and not only do they want to get all their dairy products, they want to get anything that's sold in the dairy case and that takes some muscle.

MR. COVINGTON: It's definitely, yes, I know from experience at Southeast Milk with our processing plants, it's very, very difficult to get any business from the large retailers because they wanted you -- if you got their business, they wanted you to serve such a big geographical area and your plant wasn't that big, nor did you have enough products to meet all their needs, whereas your larger processors can draw from more than one plant and have different plants that make different products, so yes.

MR. MacDONALD: Let me quick jump, before getting to competition, we've talked a little here and we've jumped into fluid markets, let me ask if anybody on the panel wants to respond, do we see similar changes on the manufactured product side in terms of the number of buyers or do we still have significant competition? And I know as Louise mentioned, we have what looks like national markets rather than local markets in cheese.

Do we have significant changes in -- or declines in competition or the number of buyers on the manufactured products side? Anybody want to take a shot at that?

MR. WILSON: I think there are certainly fewer plants, by the statistics. I don't have solid statistics in front of me here, but I'd have to say that one of the things -- and certainly the average plant has gotten larger. One of the things I think, Jim, that has partly driven that, particularly in cheese, you know, cheese has been the growth engine really in the past 30 years of the industry and the new cheese plants that get built, typically, are big ones and so that by its very nature brings the average plant up.

There certainly has been some shifting geographically of the cheese business in the last many years and I have to say there's still really quite a lot of competition out there I believe, from my experience.

MR. GOULD: Just to follow up on

that, if you look at -- remember I talked about this HHI value. Again, that's anything above a thousand is concentrated. For the cheese industry using census data, the HHI has actually gone down since '87, which means there's more competition. It's surprising, I was -- those are national numbers. Again, that could be very -- it could be due to the fact that I'm looking at national numbers.

I was very surprised to see that. In contrast, again, just to put sort of a nail in this, in terms of fluid milk, again, at the national level, we know that fluid milk markets are really local in nature, so this could be considered a lower bound in terms of local concentration.

From '87 to '02, and this is data -- again, I collected the data for 50 plants and, again, it's from a publication called Dairy Foods. From '87 to '02, the HHI went up from 195, so extremely low, very competitive environment, up to 1060 in 2002, so that's six years ago and I think that's a lower bound in terms of what we've got today nationally as well, so quite different markets, cheese versus fluid.

MR. MacDONALD: We've talked a little about structure and organization of cooperatives and of processing. What I'd like to do now is shift over to outcomes, to prices, competition and market relationships, and the way I want to set this up is I want to start it off with a hypothetical for John. Suppose instead of having DFA, your members belonged to five different cooperatives instead of one large one. Would they have received a lower price from fluid processors, do you think?

MR. WILSON: Yes. I think I want to -- you have to look back, again, at when DFA was created. 1998, go back to 1996, '97, that period, it's really what drove the decision of the dairy farmers that came together and created DFA, was some of the dynamics that they got into by having really at that time four regional cooperatives. There were times where dairy farmers through their cooperatives, okay, they would fight over sales and that is never good for price.

And so one of the things that drove our guys together was the prospect of being able to make sure that they didn't compete against each other, put them all under one roof and they could have a better opportunity to maintain premiums for all sales, for that matter, class I, II, III, IV. Collaboration can take place through common marketing agencies of course, but one of the weaknesses of a common marketing agency is it's not permanent.

You can have cases where cooperatives can work together one day, one year, one decade sometimes and yet something happens, another day comes along and somewhere in the marketplace, something gets sideways and the cooperatives are then at odds and so certainly in our case, it's very proven that membership is better off as one large cooperative rather than four or five.

MR. MacDONALD: Let me move this question along a little bit, because the flip side of it is with fewer processors, do we get lower prices. So let me come back to Dan, you've been involved in dairy markets in the northeast. We've just gone through a discussion of a large decline in the number of processors, do you think they've been able to reduce premiums paid for their milk as a result of having fewer processors in the northeast?

MR. SMITH: I can't help but say that we've gone from four co-ops to one. At least the way Cal says pie, you know, when I started and there were the four co-ops available, at least that still exists today. The accent is different when you go around the country, that could never understand -- it took me to figure out what pie -- I got it, though, okay.

MR. COVINGTON: Maybe everybody else will get it now.

MR. SMITH: I think what's most confounding is this question. If there were more co-ops, you would expect more competition for milk and higher premiums, but again, if you just -- you can't look at it in the vacuum, because now we have four co-ops and at least in New England, three processing plants and basically three or four supermarkets. This is where market structure with the federal orders starts to intrude itself.

In contrast to what everybody understands as an opaque operation on the manufactured pricing side, the fluid pricing, regulated fluid pricing side is extremely transparent. Everybody in the industry knows what the basic class I price is from supermarkets down through the commercial channel to the dairy farmer. The class I price is the class I price. However it's arrived at, it is the class I price that everybody is subject to.

So in terms of the size of the downstream market processor to supermarkets, given their size, they have the ability tremendously to discipline this supplier of the raw milk, so there's tremendous pressure not to pay premiums. The supermarket contracts are the governing wheel of the industry, very few of them, and there's very little room to maneuver. So it's not necessarily the case that with consolidation or without consolidation that farmers would see higher premiums.

The other piece of the puzzle with the federal order system is, as has been said more than once, with milk used for manufacturing purposes representing surplus product for the fluid dairy industry, in the very few markets that exist with high class -- there really aren't any markets really that have high class I utilization at this point, other than the one market in Cal's market.

There's always plenty of milk to serve the fluid plants, so the basic market dynamic that should push a premium with consolidation of the federal orders has been diluted, so that there's increasing downward pressure, again, from market structure of the federal order system on premiums.

MR. MacDONALD: Let me follow this just a little bit more with a question for Louise, and I'll try a related hypothetical with you. Suppose a large buyer of organic milk from your organization, whether it's a retailer or processor -- well, you use co-processors, so let me put it as a retailer. Suppose they sought to reduce the price they're paying to you by five percent, what options would you have, what do you think you'd do in response to that?

MS. HEMSTEAD: It's a tough one and I would say we've met that before. We do sell bulk milk and so sometimes that comes up with the bulk milk side, oh, no, you know, my market is too small. We consider the farm price sacred, so if the farm price for organic milk is X, that's what goes into the jug, that's what goes into the bulk tank, it doesn't matter, it's X and we build up a cost of goods from there and there isn't any five percent in our business.

There's not five percent profit in our business that you can just take it down and say zero and so we will look at it. We will look at everything we can take out. Sometimes it's a tenth of a percent and we will go back and say this is what we have and, you know, this is what it is, and they will either stay or they will go. On the flip side, a few years ago when we were very short on organic milk in the country, which most of the last decade, we've been short of organic milk.

We were faced with the opposite bit of a problem and we took a unique stance to it. We built our business with a lot of small customers over the years and then when organic got so big, the supermarkets got in and Wal*Mart got in and they were buying a substantial portion and we were faced with a day we called black Friday in our business. We could tell that in the near term for the upcoming, at that point seven or eight months, we wouldn't meet the demands of the marketplace and we could short everyone and have everyone mad at us or we could elect to drop some customers.

We dropped some customers. We dropped Wal*Mart and we stayed with all the small customers that built us up to that point.

MR. MacDONALD: Let me just quickly follow up and see if anybody on the panel has anything else they want to say about pricing and competition in fluid markets and local markets. Your reactions?

MR. COVINGTON: Well, I'll just add, if you look at the over order premiums and you look at over order premiums across the country and especially in the southeast, over order premiums are probably about the highest they've been in a long, long time, maybe setting record levels. The reason that's been able to happen is because cooperatives have been able to walk together through common marketing agencies which I think is a very, very critical.

But even though premiums might be up, we need to take a look at actually how much of that is getting back to the dairy farmer and that's one factor I'd like to look at. We can have a high over premium, but if we're not getting it back to the dairy farmer, it doesn't mean a whole lot. And we are starting to see a challenge now in the southeast, as the processors are bigger, have multiple plants, you're starting to see pressure on those over order premiums, because they get to a certain size that they can even start doing some of the things since they're so big, balancing functions and those types of things that cooperatives were doing.

They think they can do them cheaper and plus, if we as cooperatives don't get a high percent of that premium back to the dairy farmers, then that gives those processors even greater incentive to go out and procure their own milk, and so I think that's something we have to be very aware of.

MR. MacDONALD: Let me shift the question slightly here. In an earlier panel, one panel member said that in Lancaster County and in that region, producers there had 16 options for where they send their milk. We had a panelist from Colorado who said there was one option for where you could send your milk. Let me throw out to the panel, that's a pretty wide range. Are there areas of the country where farmers have little choice regarding where to sell their milk?

Now, this is a question, in a sense, about both cooperative and processor consolidation. Any reactions, how do you guys react to that range of numbers, one to 16, do you have a sense that there are substantial parts of dairy country where you have very limited options for who might able to take your milk?

MR. WILSON: Well, let me take a crack. Certainly, there are some sparsely populated areas where probably, if it weren't for the cooperative, the dairy farmer might have a hard time finding anywhere to market his milk, particularly smaller farmers that don't -- that can't put together a load of milk, but you know, for the most part, all over the country, anywhere there's any significant critical mass of milk volume, there's competition.

MR. COVINGTON: In the southeast, most of the majority of the milk is marketed by cooperatives, and again, I probably might look at it a little bit different than my good friend John on the end down there, but you've got Southeast Milk or you can market your milk through another cooperative who's a member of the Southern Marketing Agency. They work together, I think there's three or four cooperatives in that, so that is basically your choice, Southeast Milk or a cooperative member of the Southern Marketing Agency.

And you are now seeing one large processor start taking on some independent milk, but they're being selective on what they take on.

MR. MacDONALD: Let me shift from there a little bit and we're getting towards the ice cream, so let me focus a little bit on supply contracts for milk. It's been mentioned a couple of times here, let me ask, I'll throw it out to the panel, but ask -- I think probably ask my -- our cooperative panelists to think about this and give us their response.

What advantages would a cooperative gain from writing a long-term supply contract with a processor or retailer, whether it's exclusive or non exclusive, anybody want to take a shot at that?

MR. SMITH: I'm getting out of the way on that one.

MR. COVINGTON: Well, I can speak for the members of Southeast Milk, it's security and long-term planning. You know, dairy farmers make such a large investment in our operation and especially if you have dairy farmers that want to expand, add facilities or whatever, it sure adds them a lot of comfort and especially a lot of comfort to their bankers if they know that they're going to have a market for their milk longer than six months or a year, hopefully three years or five years.

So with our membership, when I was there, it sure was important to me, boy, Calvin, you get them as long as you can, because we want to know we're going to have a market for our milk for a period of time so we can put investment back in our facilities.

MR. WILSON: I'll take a crack. You know, we have situations around the country where we have full supplies for given plants. We don't have very many, if any, full supplies for the entire company, but for given plants, one of the -- I think your specific question was what's the benefit?

MR. MacDONALD: Yes.

MR. WILSON: One of the benefits to the members is, and this really goes back to the co-op, is the planning capability. It's much easier to plan on a full supply arrangement as opposed to a partial supply arrangement when you're going to be the balancer, because when you're the balancer, you're going up and down, all over the place and so -- and I would say we get -- through negotiation, we end up with all kinds of arrangements, partial, full, some cases probably the easiest way to do it is to just have a flat buy.

But there aren't many people that really want to buy just on a flat volume, because they want to buy based on their demand, so it invariably gets around to either a percentage of the plant or a full supply or something along those lines, but it all goes back to having predictability and market security for the members.

I mean, that's ultimately -- you've got to have a reasonably local place to sell your milk and that's probably one of the biggies in many parts of the country where we have full supply arrangements with customers.

MS. HEMSTEAD: Likewise, we have arrangements of supplying milk and you go into a region and supply milk for that particular customer over a period of time. Our farmers have a lot invested, as all farmers do, but with the organic feed and the organic grain and the organic cost of production, they have a great deal invested and if we're not able to return that to them because we've lost a place to market their milk, it deeply hurts them in the pocketbook.

And so some longer term contracts allow us to secure that over a period of time and we work with supply forecasting models of the customers, of what they think they're going to need and our contracts actually come ahead of our internal branded sales.

MR. MacDONALD: We've talked with the focus group, most of this section, on fluid milk markets. What I'd like to wrap up with is a question on competition and markets for manufactured products, particularly cheese, and I think the question there is, is buyer market power, that is concentration on the buyer's side, a significant issue in pricing -- in manufactured product markets or is the regulated price system what is driving that side of the market? Is competition an important issue on the manufactured product side? Do you want to take a shot?

MR. WILSON: Are you referring to milk sales to manufacturing plants?

MR. MacDONALD: Yes.

MR. WILSON: Raw milk sales. I guess I feel like competition is alive and well there. I think that prices on manufactured products, not unlike fluid, to be honest with you, it's largely based on local supply and demand and what it costs to get a milk supply there and what the competitive price is in the local market and so I think that one, it seems to work pretty well and we've so -- I guess that's basically my answer. It works pretty well and I think there's plenty of competition there.

MS. HEMSTEAD: I would agree, there's competition there and we deal with this seasonal, I've mentioned it a couple of times, it's a huge part of our business, but in the spring then we're contracting also for selling some of our milk conventionally, because it's more than we can use organically and there's some good competition if you're doing some planning ahead.

MR. COVINGTON: I'll just give you a personal example. The balancing plant that Southeast Milk has is a filtration plant. It basically makes liquid MPC for cheese plants. When we market that product, we can find a lot more buyers for that through cheese plants. In fact, we can get some cheese plants bidding on that product than we can for fluid milk. So based upon that, a lot more competition in manufacturing than fluids.

MR. MacDONALD: My watch shows us at 3:45, which is the scheduled end of this and the scheduled time for ice cream outside, so I think what I'll do is bring this panel to a close and ask us to give a hand to each of our panelists for their participation.

(A short recess is taken)

MR. TOBEY: All right. We're going to get started I think on the market transparency panel. And there may be other people that drift in, but the ice cream is a big attraction, so I'm not taking this too personally. Anyway, my name is Mark Tobey, I am the special counsel for agriculture and state relations at the U.S. Justice Department Antitrust Division and this panel is on market transparency. We heard a lot about this subject this morning.

We're going to talk about the CME.

So we have a very distinguished panel of experts and people that know about the market by participating in it and I want to start off maybe by introducing each one a little bit and then making some introductory comments to put this topic into some context, because the issue of price discovery and market transparency is an issue that is not unique to milk or to dairy and I want to talk about it a little bit.

And I think, you know, one or another of our panelists will also likely talk about it a little bit in terms of how this issue manifests itself in other industries so that we can compare it, or other parts of agriculture. But on our panel today and we'll sort of work from my immediate left to the end, we have a very distinguished group. First we have Tanya Rushing, who is a third generation dairy farmer from Walthall, Mississippi which is the cream --

MS. RUSHING: The cream pitcher.

MR. TOBEY: The cream pitcher of Mississippi, and she'll talk a little bit about her farming operation and her views on this issue which is, you know, subject to a lot of experts talking about it, but also as we heard this morning, has a lot of effects on, you know, average dairy farmers, even small dairy farmers.

Next we have Bob Yonkers who is the vice-president and chief economist of the International Dairy Foods Association where he oversees research and analysis about the economic impact of marketing conditions, government regulations and alternative policies on both U.S. and international dairy industries.

Next to him is Andy Pauline who is an assistant director with the U.S. Government Accountability Office, the GAO. He's based in Chicago. The GAO as you probably know is a legislative agency that assists Congress in carrying out its legislative and oversight responsibilities.

Next we have Dennis Wolff, well, actually the order is flipped here. Dennis Wolff is next to the end there and he is the former agriculture secretary for the state of Pennsylvania and he is currently a partner at Versant Strategies where he represents a group called the Dairy Policy Action Coalition.

Next to him on his right we have Steve Obie. Steve is the acting director of the

Division of Enforcement of the U.S. Commodity Future Trading Commission, the CFTC as we've heard described this morning, and this is the second time that we've been graced to have Steve's presence on a panel and he'll talk about the CFTC's activities and doing oversight of these dairy markets, including the CME.

And last but certainly not least is Dan Smith, who you may recognize. Yes, it's the same Dan Smith from the last panel, but he is representing a little different role for this panel. In this panel, he is going to talk about some work that he's doing on behalf of the Maine Dairy Industry Association, so thanks to all of our panelists for being here. Let me make my introductory comments which I hope will help to put this topic in a little bit of context.

I'll talk a little bit about the -- what we're trying to do here. We're not trying to make a point. We're trying to explore the concerns that we heard about this morning, about the ability of certain dairy industry participants, particularly producers, or the need of those people to get accurate, up to date, i.e., timely and relevant information about prices and I think that's what the concerns are about potential manipulation of price.

And we'll explore what the concerns have been about how elements of the milk price might be manipulated or subject to strategic trading, particularly on the CME. The bigger picture is that agriculture markets of all different types tend to use a reference price and here we're talking maybe the cheese price, the spot cheese price as a reference price in dairy, but it's also true we heard from some hog farmers this morning.

In hogs there's a formula price that's used and in that -- in those kinds of contracts where hogs are sold based on a formula contract, there's usually a reference price and that might be say the western corn belt price and that price is actually reported twice a day by the USDA, so that's the way price transparency happens in hogs. In grains, we talked about grains at the Iowa workshop that we did, which was our first one, and there, grain futures, there were concerns expressed about potential speculation or manipulation of grain futures.

Our last workshop that we did, we

talked about poultry and in poultry, there was very little need for a discussion about price discovery, because as we've heard and as has been discussed and you all probably know, the poultry industry is largely or completely vertically integrated, so there is basically no open market for the sale of broilers and so the issue of price discovery is not as significant there.

In the next workshop that we're going to do which will be at the ends of August in Fort Collins, Colorado, we're going to talk about livestock and in those areas, too, the issue of price transparency and price discovery are important because a lot of cattle are sold by formulas or sold on what's called the grid. So these concerns about market transparency and price discovery are real and they permeate all kinds of agriculture markets.

Now, in dairy, the linkage is a little more direct, because this reference price not only is important for contracts between people that manufacture or sell cheese, and it is certainly the CME spot cheese price is used for that. But as we know, this price is also used by USDA as a component for pricing the class I and class II milk and there is no way -- and there is no price that you can look at as a direct market reference price for fluid milk.

So this is how the issue of price discovery or market transparency manifests itself in milk, so that's the subject of the panel. Again, we will endeavor, and I do apologize, I know that people have submitted questions in response to some of the questions or comments in the last panels. We haven't got to them. This is a one-hour panel. I'm going to talk as fast as I can and see if we can get to at least one question and then after this panel, we will go into the public participation session.

But let's start at the beginning. Tanya Rushing, would you mind telling us a little bit about your dairy operation down there in Mississippi and then tell us what concerns you may have about how the current system works in terms of fluid milk prices.

MS. RUSHING: Certainly. We have approximately a 70-cow dairy. We milk twice a day. We have 200 acres of quality grassland. We've always been grass based. We feed a little bit of feed in the barn for our cows, but overall, we're very reliant upon the fields and the hay that we produce off those fields. We have two employees and I was told earlier that because I didn't have to bring them with me, I have to mention them and if it weren't for good employees, we would not still be in existence. They spoil our cows just like babies and so we're all one big happy family.

Now, when it comes to the difference in price, when I started looking, trying to find the price of my milk at the milk plant, I had some issues. I did call -- we have two milk plants in our area, I did call both of them. I identified myself as a producer that sent milk to their plant. They have lists of these people, they should know exactly who I am.

The first plant, basically three or four different people told us that they were not allowed to give out that price that they paid per truckload of milk or per hundred weight, all of us dairy people count everything in 100-pound terms. The second plant gave us a real sweet runaround and sent us from one extension to another, to another department, to another extension and finally, we got an extension that didn't even exist.

Now, lucky for us, we do know a few people in our co-op and we actually found out the price, which it was for last month, because they don't have this month's prices out yet, another fallback to that discovery. Currently, I say, which is May for us, the price that my milk was paid at the bottling plant was $20.65. The price that I got on my check was $15.16. That's $5.49 difference. Now, our pay price is contrived from the butter, powder and block cheese markets on the Chicago Mercantile and they also add in a hauling differential and they also have a class I mover in there.

My hauling cost is approximately $1 per hundred weight, and the way I see it and the way a lot of my fellow local dairy farmers see it is if we have to pay hauling costs for our milk to go from the farm to the plant, then any milk that's shipped in, which is called supplemental milk, to our area, should have to do the same and I'll talk a little more about that in just a few minutes. But that $5.49, that goes to pay for supplemental milk coming into our area, because we are now a deficit area in the southeast.

If even a little bit of that milk, money could have gone back into dairy farmer pockets and even as much as half, it would have kept hundreds of farms in Mississippi from going out of business. It would also have helped out a whole lot with problems that we've all faced since the tragedies of Hurricane Katrina and I can firmly attest that there's still damage on my farm from five years ago from that hurricane that I can't pay to fix.

Now, from some of the other panels, I got curious and started figuring in between. That price that they paid to bottling plant is 1.36 times more than I get on my farm. If local milk by the gallon, and all of us farmers look at it in the store, runs about $3.59 around our house which figures out to be $41.80 per hundred weight. That is 2.76 times more than I get paid for my milk, so that's a large difference and that, like I said, was something that has kind of been brought up earlier today.

Over the last 20 years that I've been involved in dairy, excessive milk production from larger and larger farms has created the world's lowest cost milk. There's been no market cultivated for this excessive milk production in surplus areas of the country because of current federal price supports. They guarantee a place for it to go. The over supply usually severely depresses the price of butter, powder and cheese on the Chicago Mercantile Exchange.

In 1990 when I entered the market, local producers in our area amounted for 85 percent of the class I needs in the New Orleans market. Today, we only produce 35 percent of that market. The other 65 percent belongs to supplemental milk, which I mentioned earlier. Most of this milk travels from over 900 miles away, crosses multiple state lines and is placing just a tremendous burden on the local dairy farmers as well as providing an extra carbon footprint on our nation's food supply, and that is also becoming an issue.

But for every truckload of milk that enters the southeast, there are a few more dairy farmers that go out and the ones that are left have to pay a larger amount of that hauling charge to get that milk brought into the southeast. Like I said earlier, if we didn't have to pay those hauling charges, then it probably wouldn't be so tough on us.

MR. TOBEY: Thank you very much, Tanya. I think that gives a good basis for us to now turn to Bob Yonkers. Bob is somebody who's studied these markets for decades and now at the International Dairy Foods Association. Can you put Ms. Rushing's concerns into some context for us and can you explain a little bit more than I already did about what economists mean when they talk about market transparency or price discovery?

MR. YONKERS: Sure, Mark. In economic terms, the concept of price discovery requires both market participants, you usually think of those as buyers and sellers, and it also requires a marketplace and for many commodities and products, that is an exchange of some kind. The CME group would be one that's been talked about. There's other exchanges where people can go to buy and sell, not necessarily spot markets or cash markets prices, but also in the futures markets where much of that price is discovered for many agricultural commodities.

Just because -- obviously, when you have more buyers and sellers in a particular marketplace, you're going to have a more robust price discovery, more market activity leading to that price discovery, but it's not always an indication of how the price discovery process is working, because if there's only a few buyers or a few sellers of any particular commodity or product that you're looking at and they're all participating in the market, that's a very robust price discovery market and I'd like to talk more about that in a little bit.

A lot of the attention in the dairy industry has been focused on the marketplaces or these exchanges where products are made, but one point I'd like to make is in the dairy industry, unlike most other agricultural commodities, we really don't have price discovery for farm milk. We have price discovery for cheddar cheese. We have price discovery for dry whey. We have some for butter and some for non fat dry milk and those are used in the federal milk marketing order and under state milk marketing orders that regulate prices for their price discovery.

And they take a weighted average of each of those individual markets, but when you start to segment those marketplaces, there's fewer buyers and sellers in each of those individual marketplaces than there would be in the marketplace for farm milk overall. And particularly, at the CME group spot market for cheddar cheese, as an example, there really aren't that many buyers on a regular basis that want to buy commodity spec cheddar from an unknown supplier.

Most purchasers of cheese types today want it to certain specifications that may be a little different, usually more exacting than that that the CME specifications may have and they want to know which supplier is supplying it, where it is in the country may make a difference also, it's very important and at the CME, it could be sourced out of any region in the country.

In addition, there's not that many sellers, because in today's marketplace, most of the sellers and manufacturers of cheddar cheese actually are producing for their regular customers and because this market is not widely traded at the CME, because there's just not that many buyers, there's not that many sellers that want to be producing more cheese than they need to serve their existing customer contracts and, therefore, have it available to bring.

So it may be that all the buyers and sellers who could participate in that market are. I'll let others talk about whether that's true or not, but I mean, that's -- the government regulations on milk prices are really driving us down to that.

Now, related to price discovery is the need for transparency in having market information and in dairy markets, we have price data from the CME, you know, in virtually real time. Anyone can access what is traded on the spot market as it's being traded.

And in the futures contracts for dairy, you can access those as they trade throughout the day, because they do trade in a much longer period. In addition, USDA collects and publishes data on dairy product prices that represent transactions from across the country, not just those that are localized to the Chicago market area like the CME group specifications require, that they be localized to that. And those are the products that we limit to our price discovery because, again, the federal order regulation is cheddar cheese, dry whey, butter and non fat dry milk.

Some have argued that to improve -- and I know some of the panel will suggest that to improve price discovery, we need more data more frequently on those products in particular, but remember that milk prices, as they are set by the government, only change once a month and we're already publishing that data weekly. I admit there is a time lag that I'd like to see reduced from USDA, also with the NASS data collection, but we only really are changing our regulated farm milk prices monthly.

And again, if you were to think about trying to collect more data on other dairy products, we're going to run into the same problem with price discovery in that there's not that many buyers and sellers in those markets for those other dairy products either. We're getting farther and farther away from our more -- most robust numbers of buyers and sellers, which would really be in the market for farm milk similar to the way they are for other commodities.

MR. TOBEY: Thank you, Bob. Before we move on, and I will move on next to Andy Pauline from the Government Accountability Office, but I just want to ask if anybody else on the panel would like to comment or add to what Bob said about sort of classic market transparency or price discovery or price transparency. Well, then we'll move on.

Andy Pauline, Andy, you studied the Chicago Mercantile Exchange, the spot cheddar cheese market extensively in connection with a 2007 report that the Government Accountability Office published. What did the GAO find regarding whether or not the concerns that Ms. Rushing and a lot of the farmers that we heard from this morning expressed, what did you find with regard to whether those concerns are widely shared and what did you find with regard to regulatory and enforcement oversight of the CME dairy markets?

MR. PAULINE: Sure, thanks very much. In 2007, we conducted a report where we were really looking at three issues. One was the structure and operations of the Chicago Mercantile Exchange spot cheese market, in particular as it compared to the kind of prior incarnation of that cheese market at the National Cheese Exchange. Second, as was mentioned, how the market was regulated and efforts to address potential manipulation, and third was how those CME spot cheese market prices impact milk pricing.

The spot cheese markets at the CME came there in 1997 and that was in the context of concerns about potential manipulation of prices at the prior market at the National Cheese Exchange. Factors, you know, that are associated with the potential for price manipulation, a thin market, you know, low trading volume, a small number of traders making the majority of trades existed at the National Cheese Exchange and we found that they still exist at the Chicago Mercantile Exchange spot cheese market.

Just to give a few numbers and Robert was making some reference to just how small the sort of trading volume is, between 1997 and 2006, there were less than three trades per day of the barrel cheese market. In between 1997 and 2007, in terms of sort of majority of buyers, there were two buyers that represented 74 percent of the purchases on the market in that same time frame. I think generally, it's agreed and not particularly argued as a point that it is a thin market.

In terms of sort of the extent of

concerns about the potential manipulation, we really heard about a variety of views on that. You know, certainly, there were the fair share of folks who believed that there is potential manipulation occurring there. We also spoke to a number of industry participants who were not really particularly concerned about manipulation in the market. They said that they, you know, sort of have faith in that market. They use the CME spot cheese prices in setting their prices.

They've never stopped using those prices out of any concern about manipulation, so there was really a wide variety of views on that. As has been mentioned, you know, the minimum prices for raw milk bought by cheese manufacturers are set using the USDA pricing formula. The most significant component in that formula is the weekly average of cheddar cheese prices. At the University of Wisconsin, they conducted a study where they showed that between 2000 and 2007, upwards of 83 percent of the USDA price of class III milk was coming from that cheese component.

We found that the CME spot cheese market prices, as I mentioned, are used by the dairy industry in establishing their prices to set contracts between market participants. There is, as many of you know, the NASS survey of cheese prices. Generally, what we found is that although that survey was created specifically in the context of attempting to address concerns about potential manipulation at the spot cheese market, there really isn't much of a difference between the NASS survey of cheese price and the CME spot cheese price.

Also in a University of Wisconsin study, they found that there was a 98 percent correlation between NASS cheese prices and CME spot cheese prices. The USDA itself conducted an analysis in which they used NASS -- they used, excuse me, CME spot cheese prices instead of NASS survey prices, going back historically into the class III milk pricing and they found that there was, again, a very small difference, they called it a difference of little significance.

This was all leading us to conclude that there is not a big difference between these prices, the CME spot cheese price and the NASS survey price and that USDA should give some consideration to alternative proposals, including using CME prices directly, just understanding that there's not a big difference between those two things. As has been mentioned, future contracts for milk pricing are used in -- that are used in manufacturing cheese are settled at expiration using that same minimum price for milk price.

At the time of our report in 2007, CFTC had received several complaints of allegations or allegations from industry participants about potential price manipulation on the market and in the context of our looking at the oversight of the market, we found that CFTC and the Mercantile Exchange itself were providing oversight of the market and that it was a substantial and significant increase of oversight as it related to the oversight that occurred at the National Cheese Exchange.

CFTC, and I imagine Steve will be talking about this in a moment, they're interested in the spot cheese market in the context of how those CME spot cheese prices could impact prices in the related futures market. Specifically, I'm just going to sort of share a few findings about what the CFTC oversight and the Mercantile Exchange itself, what their oversight consists of as it relates to this market.

It was interesting in conducting this work, it just seemed as though a lot of folks didn't really appreciate or sort of fully understand the extent to which there is oversight of this market, independent of whether or not manipulation is occurring, just that there is a fair amount of oversight that's ongoing. At CFTC specifically, we found that as of 2007, they had prepared summary documents analyzing the spot cheese market four times, including analysis to participants, volume, price fluctuations.

Since 1999, CFTC had done nine special reviews of trading activity at the market in response to specific complaints. None of those reviews resulted in any legal action taken against a market participant. I think most people are familiar with the DFA case, I'll just leave that for Stephen to address, but clearly, CFTC is engaged in overseeing this market.

From the CME oversight perspective, they're conducting daily oversight of the market through their market regulation division. They have enforcement rules that prohibit price manipulation. They have a market analyst who daily is monitoring trading, maintaining familiarity with industry trends, reviewing large price changes and they have market regulation staff who are reviewing traders' positions on the spot cheese market as well as the relationship to the class III futures market to determine if a future -- a trader's future position would benefit from price changes on the spot cheese market.

Just in conclusion, broadly, we found that while not guaranteeing, of course, that price manipulation would be detected or prevented in terms of the extent of oversight that is there, that regular and targeted reviews of this market may help to insure the integrity and confidence in the market. We had two recommendations in this report, one, as I believe I mentioned earlier, was for USDA to seriously consider alternatives to the NASS survey as a component to the milk pricing formula, including CME, given that there's not much difference there.

We also had a concern that at that time, the NASS survey of cheese prices was not being audited. It's my understanding that USDA has now implemented an auditing program and that that is under way. Those are the comments.

MR. TOBEY: I'm trying to

understand this myself and so I've seen this stated repeatedly about the correlation between the NASS survey price and the CME price and I'm trying to figure out what the significance of that is and what I've been able to come up with is that it just shows that the CME price is used in pricing transactions involving cheese and it shows that it is -- that it highly influences the market, but I guess what I'm struck with, looking at all these other markets, is that you need a price, you know.

In order to have a functioning market, you need some sort of price, a reference price, and there have been a lot of questions about whether this CME price is in fact a good reflection of supply and demand or other things that Bob talked about in terms of whether it can do the job as a price and maybe we'll get to that later, but is that right, about why that correlation is significant, it shows that people are in fact using the CME price?

MR. PAULINE: It was certainly the case that very consistently, we heard from industry participants that they do in fact use the CME price. The difference between CME price and

NASS survey of cheese prices, as we were told, is largely due to sort of discounts or premiums that might be attached to that CME price in the context of individual contracts.

There is also a time lag issue, so the NASS survey of cheese prices can be sort of one to two weeks behind the pricing of the CME spot cheese market, but without question, the industry, you know, folks that we spoke to were using the CME price to establish their contract prices in the market.

MR. TOBEY: So let me reiterate, I think perhaps it's late enough in the afternoon that we've lost our FFA volunteers, so if people do have questions or comments, you can just bring them up directly to Patrick here and we'll try to work them in. But let's move now to Steve Obie, and Steve, as the acting director of enforcement at the CFTC, what is the CFTC doing to ensure that the dairy markets are free of manipulation?

MR. OBIE: Thank you very much, Mark, and I really appreciate the opportunity to be here. I think you've been an incredible audience. You've been very patient and I appreciate that. And I think one of the things to take away is that federal agencies are cooperating like never before. I mean, the partnership between USDA, DOJ and involving the CFTC in this discussion is very important, because we all have a unique introspective into this marketplace.

We conduct very vigorous surveillance of the dairy markets. The CFTC has a very active surveillance program. You heard Andy talk about it. We routinely get information in the spot market. An interesting thing that occurs with this marketplace is that the Commission is in charge of regulating the futures markets. The spot market is something that I have enforcement authority over if there's a manipulation and I think folks could see that we've been taking allegations of misconduct very seriously.

We have, obviously, the DFA case that came out. We have any number of active investigations in these marketplaces. You heard from prior panels, though, that the law is very difficult in this area, in order to bring a case, and so while we as an enforcement arm of the CFTC can investigate and make cases, any problems in pricing really are going to come about through a partnership involving USDA, DOJ and coming up with different pricing measures or improvements into the marketplace.

I do want to add a couple things, though. One of the important parts that enforcement can play here, particularly with CFTC, is to have regular dialogue with market participants so that when you see areas of concern, when you see prices that are abnormal, I'd be very grateful if people would give us a call. We have a toll free number, we have investigators that will take your information and it will enable us to continue to vigorously police these markets.

Our number is 866-FON-CFTC and we rely to a great extent on leads from local communities, because you have your ears to the ground and your leads enable us to be the cop on the beat.

The other point that I think is interesting to note here is that people are really itching for price discovery and real time information, and I note that the CME just started a cheese futures contract that just started trading on Tuesday and maybe that will be able to add additional information into the marketplace.

Obviously, we try to be as vigorous as possible with surveillance, but even if there's a perception that a marketplace is not functioning properly, we want to be alerted to that, because perceptions themselves can really undermine the confidence that is needed by you, the farmers and the public, in the marketplaces that we oversee. This is not a marketplace that is actively traded. We've heard that it's a thinly traded market.

And from an enforcement perspective, that concerns me, because it means that it will only take a little bit of nefarious activity to move a marketplace and so, you know, we devote substantial resources into our investigations in order to determine whether that nefarious conduct has occurred.

MR. TOBEY: Let me ask you this, is there a distinction between the intensity of the regulation or oversight that you do with future markets and what you can do with the spot cheese market?

MR. OBIE: Yes, thank you for bringing that up. In the futures markets, we have very, very strict regulations about the design of contracts. One of the factors is that they cannot be susceptible to price manipulation, so there are core principles that apply to futures contracts. The Commission does not oversee the trading in the spot marketplace. The enforcement arm, when we get leads, will investigate it, because obviously, the spot marketplace greatly affects the futures prices and so that's how we get involved from an enforcement perspective.

And one of the great things about this partnership now between USDA, CFTC and DOJ is that we're getting a much greater understanding of the problems in the area and the weaknesses where nefarious conduct can occur. Last -- I guess this morning, the conference in the House and the Senate came to an agreement for financial reform and that bill, which still now needs to go back to the House and then to the Senate.

But it looks like that bill will be passing very shortly, will provide additional enforcement powers for the CFTC and provide extensive rule making powers for the CFTC so that additional oversight and additional efforts can be utilized to insure that the marketplace is free of manipulation and responding properly.

MR. TOBEY: Thank you very much. We're going to talk in a minute about enhanced reporting, which is what Denny Wolff is going to talk about and alternatives, all together, a competitive pay price alternative to the use of a measurer or an indicator like the CME spot cheese price when Dan Smith talks, but let me pause for a minute and just say does anybody want to comment or elaborate on anything that we've talked about so far? Okay.

So to Dennis Wolff, Denny, you've thought a lot about price discovery and market transparency, both as the former agriculture commissioner in Pennsylvania and in connection with the work that you're doing with the Dairy Policy Action Coalition. What do you think should be done to improve price discovery and market transparency?

MR. WOLFF: Well, Mark I've thought about it for a longer period of time than when I was secretary and now representing DPAC, because my entire adult life I was a dairy farmer and I still am, but it didn't matter during the last six or seven years with the many round table dairy discussions that we held in Pennsylvania, whether it was when I was at the department or whether it was through the DPAC organization that represents several thousand dairy producers today.

Transparency and price discovery easily floated to the top every time we were talking about how we may be able to reform federal dairy policy and federal dairy pricing. We really think it's the cornerstone of any changes that happen going forward in federal policy reform. And we think that you need to do that by diluting the influence of the CME. We need the CME, that's a given with the futures market and also having a place to go and market product.

But we think for the small volume of product that is exchanged on the CME, it has way too much impact, and when you look at four-tenths of one percent of the cheese processed in the United States being marketed on the CME or less than two percent of the butter, having that large of an impact on setting the price for a $30 million to $40 billion industry, and that's at farmgate, on milk prices, that is concerning.

We do not think that it necessarily reflects current market conditions and we do not think that it necessarily accurately reflects supply and demand. We think it is often used as a market of last resort and of course, as mentioned, a very small amount of product trading there. We think that in diluting this, there's one specific way that you can do that and that's electronic daily reporting. Congress recognized this when they were writing the last farm bill and they wrote a section in, 1510, that says electronic reporting on a more frequent basis shall be implemented by the Secretary of Agriculture, with the key word, pending funding.

So we've been working on that in terms of trying to move that forward. We have circulated letters in both the House and the Senate and sent them to Senator Kohl and Congresswoman DeLauro. They chair the House and the Senate ag appropriations committee, to see that that funding is included in the next appropriations bill for 2011. So why do you need that, and I think the NASS survey is important information and it's good information.

But if you take and use a real life example, if yesterday, which was June 24, and I was going to negotiate a price for -- say I'm a cheese manufacturer and I'm going to sell 100 barrels of cheddar to a customer. The information I have is the CME or NASS survey. If you look at NASS survey, the information for NASS survey that I would have had available yesterday, June 24, would have been from June 7 to the 11th, starting back 17 days ago.

So how do you get what the current market of a product is with that kind of lag? Electronic reporting on a daily basis takes that away and much aligns with, as was mentioned earlier, the pork industry, the beef industry have daily electronic reporting and sometimes more than once a day, so that is very important in terms of making sure that we have accurate reporting, timely reporting every day and then to build from that, include more products and include all manufactured products, not just the four products that are currently used in the NASS survey.

So I think when you get that, you certainly start to get much closer to having better price discovery and that's what our dairy farmers want. They do not trust the way that it is currently being handled and that goes mainly to how thinly it's traded and as was mentioned earlier, if two buyers have been responsible for buying 74 percent of the products over the last 10 years, you just hope they haven't had coffee together that morning when they go in and make their decisions on what they're buying and what they're paying.

I'd just like to read one statement here and then make a few comments on it. The statement goes like this: This reform brings 100 percent transparency to the market with real time reporting. There will no longer -- they will no longer be able to make excessive profits by operating in the dark. Exposing these markets to the light of day will put the money where it belongs. Now, I'm not talking about the CME.

I'm talking about the first bullet point that was written on a section by section analysis of House Resolution 4173 that passed out of conference committee late last night, which is better known as Restoring America's Financial Stability Act and it's basically reforming Wall Street and the banking industry as it correlates to the derivatives market.

So that is -- that is a fundamental rule, you know, that's just not a rule we're talking about here in the dairy industry that the dairy farmers are concerned about today. It's a fundamental rule in price discovery and it's a fundamental rule in transparency.

MR. TOBEY: Thank you very much, Denny. All right. So now -- and now for something completely different. We've asked Dan Smith to join us on this panel. Dan is here subbing at the last minute, and I'm very grateful to him, for our panelist that was going to be on this panel, Paul Christ who had a death in the family this week and our condolences go out to Paul and his family. But Dan, you and Paul have been working with the Maine Dairy Association on a proposal that, among other things, provides for direct price discovery of dairy prices based on actual market transactions in certain geographic areas.

I do not know, because I forgot to check, but I think that we at least had every intention of taking some charts and maps that Paul Christ and Dan Smith have developed and copying them and putting them out on the tables outside, but if we haven't done it by now, we'll certainly make them available and you can go to the USDA dairy industry advisory committee website and find the entire presentation that Dan and Paul did that has these maps.

But with that preface, let me ask you, Dan, if you would describe your ideas about how to arrive at a price that can be used for market transparency and price discovery in milk, and maybe since people might be familiar with the old MW price, the old Minnesota Wisconsin price, maybe you could kind of compare it a little bit to that.

MR. SMITH: Okay, thank you, Mark. I reiterate what you said, our thoughts are with Paul's family. It's been a real privilege, I think many people in the room are likely familiar with Paul working as long as he did with Land O' Lakes. Paul is really the mechanic of our proposal and I'm sort of the broader architect of it, so you'll get a little bit of the context of where it came from from me and if you'd like, we can have Paul submit something for the record in terms of more of the details of the mechanics.

As Mark said, Paul and I made a presentation to Secretary Vilsack's dairy advisory committee a couple weeks ago and you can find more information there. The proposal also has been through one round of AMS hearing and that's available on their website, Paul's testimony and cross, including did -- Bob, did you cross Paul or -- I can't remember, I guess the attorney for IDFA crossed Paul. But in any event, the proposal has been through one round of hearing process, so there is a fair amount of information available at this point.

Just to back up where we started from, really, the essential premise stems from Senator Feingold's comments this morning about trying to find something around which the industry might be able to find consensus. My work with fluid milk market and class I prices and the value of the class I price truly does prove to be quite divisive.

This work has been quite different. There is a general consensus throughout the industry that end product pricing, which is used for both class III and IV pricing is not working, not only not working as it was intended with 2000 order reform, but just plain not working and needs to be replaced. In all the years I've been doing this, I've never seen such consensus not only within different groups in the industry, but across groups in the industry, producers and processors both in general concurrence that end product pricing is not working.

And the common refrain is twofold. One, what has been repeated all day is the CME is too thin a market to base a pricing proposal around, and the second is that where the -- to start with you, where the farmer sells his or her milk to a processor, that's what should be priced, not what happens to the milk once the processor takes possession of the milk, turns it into cheese or butter or whatever the processor turns it into. As Bob said, that's not a price discovery mechanism for milk.

So doing some initial research into how end product pricing emerged out of the 2000 order reform, I discovered that consensus of opinion right at the outset, that if there was an ability to come up with a proposal that would price the transaction between the producer and the processor, rather than the processor and his or her customer downstream, that that would be a proposal for price discovery that the industry might embrace with some consensus.

So at that point, I hooked up with

Paul, because Paul had been working on an alternative which he dubbed a competitive pay price for a number of years and we framed the proposal and submitted it to USDA and went to hearing on the proposal in 2007. Just to back up one step further, in terms of the other important participant in this process is the Maine Dairy Industry Association, which is really the sponsor of this, that Paul and I went to hearing on behalf and this ties into Mark's question about the MW.

As I get along, I find virtually no advantages to getting older, other than some experience and hopefully wisdom. I think at my age, wisdom is still -- I'm too not only humble to think that I'm accruing any wisdom, but I haven't seen it yet, so hopefully that comes, but the experience is definitely there and one of the advantages also of the aging of the dairy industry is you work with people who have a lot of experience and wisdom, so the Maine Dairy Industry Association board represents both of those.

And the constant refrain about this new end product pricing proposal, pricing formula being non transparent, we batted that around in the boardroom before we developed our proposal and there was an understanding among the dairymen, mostly dairymen in the room, that 25 and 40 years ago leading to 2000, from 1960 to 2000 with pricing off the MW, you had a manufactured price that tracked off of the surplus price for grade B milk, plus a class I differential blended against the utilization was the farmer's pay price.

And that was for the farm community itself transparent, so all of this opaqueness that's involved with end product, downstream product pricing wasn't even in view for the basic understanding that all these guys had grown up with. They knew what their milk price was. They may not have liked the milk price, but they knew what the milk price was and where it came from. So that was built in as really a fundamental point, that if we can get back to pricing the transaction between the farmer and the processor, in addition to focusing on what ought to be focused on, just from sort of a common sense standpoint, that ought to lend further transparency to the pricing structure. Because when Denny sells his milk to his processor, that's what ought to be priced.

So those were the two original

starting points. Then when I dug into it a little bit more and thought about it a little bit other, we batted it around a little bit more, come to find out that the volatility in the marketplace that we deal with, everybody deals with in the marketplace in a fluid organized market, because the class I mover tracks off the manufactured price, the volatility that emerges in the class I which has moved anywhere from $11, $9 at the bottom to upwards of $25, I'm mixing, from $13 on a class I price to $25 on the class I price.

It's moved $12 and it moved $9 in about nine months. That volatility on fluid market, which generates all the discussion of where is that money going, that bottom is tied to the class I mover. So the volatility in the market can on some level also be attributed to that manufactured price, so if we can deal with consensus, transparency and volatility, we're focused on that end product price and whether there's something that can be done differently.

So that's really where we started with. We developed a body of data that was really organized around the Midwest, because there's clearly competition for milk in the manufactured market here. The question was whether that was enough milk and that's really where the proposal foundered at the hearing, that it was too limited a volume of milk. USDA, quite understandably, said based on that limited volume of milk, it's not really representative enough to build a proposal around.

But given the industry's embracing of the idea at the hearing, despite asking a lot of questions, Paul and I and MDIA decided to go forward with the proposal, so we're now basically four years into a fairly extensive discussion around the industry and with USDA about the proposal. As Mark indicated, there are a series of maps that we actually didn't put together, USDA put together through a fairly extensive analysis of milk across the federal order system to answer the question as to whether there is sufficient milk in the system that is being competitively traded that might be used as the basis for the proposal.

As Brian in the previous panel talked about, we use the HH -- the Herfindahl Index which measures competition in the industry. We went looking for areas of the country where competition exists, both using that index and using a threshold of five or six processors bidding for milk and asked USDA to analyze the volume of milk and its distribution geographically, its dis-aggregation in terms of amount of milk and its distribution.

What came back was a surprise to Paul, that there was more milk than he thought there would be. Measured against the threshold of numbers of processors, roughly 60 percent of the milk in the country, at least by that measure is competed for. Measured against the Herfindahl Index which roughly represents what the Department of Justice looks into, uses as its benchmark for whether there are competitive problems, that number dropped to 50 percent.

So at our second look, roughly half the milk in the country is available to be used as the basis for framing a replacement model for end product pricing, so we're now -- based on that available data, we're developing, further developing our proposal. It would work somewhat like this, we would look for representative zones across that 50 percent of the milk where the transaction between the processor and the farmer in those zones could be deregulated, removed from the federal order minimum pricing regimen and just based on that competitive transaction, based on those representative numbers.

MR. TOBEY: Dan --

MR. SMITH: I'm almost done, if that's where you're getting. Instead of a NASS survey, it would just be a reporting of that pricing across those competitive zones and that's the proposal.

MR. TOBEY: And again, I will commend the full presentation of this to interested members of our audience. We want to go ahead and move on to the last public participation phase of the workshop and try to stay a little bit near on time. And we are joined again, as he had promised earlier, by Senator Feingold for this part of the session.

MR. SMITH: You should have told me that sooner.

MR. TOBEY: You're very far down there, so I couldn't signal too much, but thanks to the members of this panel and we'll -- my colleague Josh Soven and John Ferrell will, as well as the Senator, will now take your comments.

If you have red tickets and would like to line up again, we'll move to that phase of the workshop. Thanks.

MR. FERRELL: Well, folks, I think we will go ahead and get started with the other comment period. And same format as before, two minutes, and then bring -- you can go ahead and line up to the microphone as you're doing and we're going to try to get as many people that want to provide comments to be able to talk to us and before we do that, though, I'd like the turn it over to Senator Feingold for any remarks you would like to make.

SENATOR FEINGOLD: Thank you, I'll just do two minutes. I wanted to come back because I had asked for these public comment periods and I will have to leave by about 5:45, but I wanted a chance to just hear unfiltered directly from many of you, so I'd like to do that, but I want to first thank all the farmers for taking the time to come today. I know it's a sacrifice for you and you all have a long list of things you could have been doing today in what is essentially a 24-hour a day job.

But it is especially important for

agency leaders in Washington to hear from you and even though Secretary Vilsack and Assistant Attorney General Varney are not sitting in the room right now, I'm sure that they'll both hear what you have to say. In fact, in many ways, these senior staffers on stage and in the audience are often the most critical people to hear from you for the agencies so we can really get it at all levels.

Finally, I just want to say I've noticed these young men and women in their FFA jackets and know they've been volunteering today. I'm always encouraged to see FFA members and always feel optimistic about the future when I do see them or have a chance to talk with them as I did in Washington this week, so I just wanted to ask if everybody would give a round of applause for them and the rest of the staff.

MR. FERRELL: I think we will go ahead and get started and we'll start right over here.

AUDIENCE MEMBER: Thank you, good afternoon. I'm Warren Taylor and I'm the owner of Snowville Creamery in southeastern Ohio. We began operation about 30 months ago. We now have a payroll of half a million dollars per year in Ohio's poorest county. We pay our farmers a 30-percent premium over the blend price. Our business has been doubling every year. Unfortunately, there is only one dairy industry in America and it intends to keep it that way.

It has spent the last 30 years finding out how cheaply milk can be made and it is fundamentally anticompetitive in not allowing even a discussion of the possibility of differentiated premium drinking milk. In grocery stores, I offer taste samples of our old fashioned, grass grazed, minimally processed fresh milk and hear people say I haven't tasted milk like that since I left home. I didn't know there was bad milk until I came to America.

These are people from developing countries like Africa, Central and South America, India, Europe, Russia. And, you know, these kinds of comments galvanize me in what I'm trying to do in making better milk. America's mediocre milk is perpetuated by our USDA's federal milk market order system, based on the obvious lie that all milk is the same and so it's only fair that all dairy farmers are paid the same. There's no incentive to make better drinking milk since the premium received in the marketplace must be shared with the competitors making the cheapest milk.

I write a check for about $5,000 a month right now, equal to our total profits, into the FMMOS. This is not just un-American, it's anticompetitive and it's not functional for smaller dairy farmers who want to make better milk and for consumers who appreciate really good milk. I heard comments today from California that we should institute higher solids standards all over the country like they have in California. Our non fat and low fat milk meets California standards from our cows. It doesn't have to have condensed milk put in it. It's extraordinarily delicious milk.

Last year, USDA was requested by National Milk Producers Federation and IDFA to triple the volume that a small plant like ours could process while remaining exempt from having to pay into the FMMOS. In a year of hearings, no one spoke against doing so, but USDA left it at the uneconomically small 150,000 pounds a month it has been at for decades without really explaining why.

Snowville Creamery is trying to help our Secretary of Agriculture, Tom Vilsack, achieve his goals of revitalizing rural America with innovative, entrepreneurial, small local business. But until the exempt plant limit is raised, dairy cannot be part of that better future he envisions. When his time comes to leave Washington, there may still only be one commodity, lowest cost, cheapest milk dairy industry in this country, to the detriment of our children's health.

We receive dozens of unendorsed or unsolicited endorsements from parents telling us about children that wouldn't drink milk or drank very little milk who are drinking gobs of our fresh, high quality, extraordinarily delicious milk. If that commodity industry continues to stifle competition and innovation, I'm afraid that America, once a land of diversity, opportunity and continuous improvement driven by the vitality of free and open markets will be gone. Thank you very much.

AUDIENCE MEMBER: My name is Charles Knuetz(phonetic). I'm a dairy producer from about 20 miles east of here and my son and I have a corporate dairy, so we're large and one of those bad ones, that's my son and I. We milk 140 cows, do all the work ourselves, manage 800 acres. We've had the pleasure of sitting here all day today listening to all the negatives of the dairy industry, what's wrong with it, where it is, what's happening, why are we doing it, but I haven't heard too much about what we can do to change it.

And I think one of the biggest things we can do in the dairy industry has worked hard at it for the last six, eight, nine months, and that's put together a system where the dairy industry runs itself. And I think it's time that the producers get together, co-ops, non co-ops, all of them get together and start determining how much milk we actually produce to fill this market. Nobody has complained about the prices of 2008 when they were wonderful and we were all making money. It's when it fell apart that we started to complain about it.

The reality of it is in 2008, we had good money, everybody expanded to produce more milk. It's a simple equation of supply and demand. We need to control supply and demand at the producer level in this country before we will be making a genuine profit in the dairy industry. Thank you.

AUDIENCE MEMBER: I'm Bill Hobbins(phonetic), I'm not a farmer. I've been here all day and this gentleman said it all. Milk is our best product and we're ruining it with homogenization and it's causing hardening of the arteries, it's causing other diseases and it is not a cause of infections and it should be allowed to be purchased like all other produce from the local farmer without any restraint.

I don't question their watermelon as to the irrigation, I don't question their eggs as to the feed to the chickens and I can tell you that milk is so dominant, but you're destroying it with your homogenization. Now, you can pasteurize it if you're worried about it, but it's the dirtiness afterwards that makes it get infected and more importantly, we can use X-ray very simply, a machine developed here at the University in 1937 that will sterilize the milk rapidly with no damage. Now, this man made my day, thank you.

AUDIENCE MEMBER: Hello, my name is Charlotte Williams and I work with the Center for

New Community. We're out of Chicago and it's a national organization that works towards equality, building community and justice. I'm the director for their national program that looks at a food justice initiative, so we'll be looking to see what's going on in the U.S. food processing system and looking for the same issues that people have talked about here today.

As a consumer, as a person from Chicago, I know a lot about injustice, corruption, safety issues on the street, whatever, I mean, that's just what's happening with us, that's what it is. But I also know about being hoodwinked, bamboozled, you can't just pee on us and tell us it's raining. It's just not going to happen. As a consumer, people are getting educated now about what's going on and I can tell you what he said earlier about people being moral and tough, what I've heard from farmers, they some pretty tough people, you know, to be able to deal with what's going on.

And the moral fiber, it is out there in consumers. Consumers are being educated through advocacy groups, non-profit organizations to tell them just what's happening here. People would be pretty pissed if they knew that what they pay at the market and the people that struggle to put those products on the shelves, the disparity in what's going on with what people are getting paid. It's just something people wouldn't tolerate in other industries.

And as a consumer, you need to know there are people out there that are out there that are trying to understand this. Yes, it's really hard being in the urban area where, you know, they're shooting people and things like that are happening and the process of life is real stressful, but it's stressful for you all and if we can all get together and understand, somebody is getting the money and it ain't us, then I we got a long way that we can go together. Thank you.

AUDIENCE MEMBER: Yeah, my name is Ron Kliebenstein, I farm down by Darlington, Wisconsin. My son Nathan is the fourth generation on our farm. I'm very proud of him for taking up the challenge. I read a statement in a book just recently by a fellow by the name of Felix Rohatyn, he was a financier. I'm not just sure when he was alive, but it goes like this: Market capitalism is the best economic system ever invented for the creation of wealth, but it must be fair, it must be regulated and it must be ethical.

And I think we're a long way from living up to this standard of what this guy just said. Now, the question I have is maybe somewhat -- I don't know, it doesn't necessarily -- it isn't necessarily measured by statistics. I would go like this, something like this, does ownership matter, does ownership of the ability to own resources by which we produce the goods and services that it takes to satisfy the requirements of the human existence, does the ownership of those resources matter.

And when you consider this market capitalism that is the basis of our economic system that we have been living since the founding of the Union back in the 1700s and the fact that individuals come to this country and they had the ability to own the resources and through the many years of the American historical experience, they have taken that ability and just done wondrous things with it.

Now, I read an article in Hoard's Dairyman a couple month's ago and the author by the name of Bill Rowell used some numbers in terms of dairy producers in the country just since 1970. In 1970, we had 648,000 dairy producers. Today, we have somewhere in the neighborhood of 50,000 and he suggested the potential in a given -- he didn't give a specific time frame of having perhaps 800 10,000-cow dairies producing all the milk in this country.

Now, my question is, well, the reality is this, just when you go from them 648,000 to 50,000, how much of that ownership haven't we already lost? And if we were to go to those 800 large farms, what would the consequences be? In truth, we can't really say for sure what the consequences would be, but we do know one thing, that independent, entrepreneurial system of ownership of dairy farmers in the dairy industry has well served the dairy industry for many years in this country and I would suggest it's a huge mistake to abandon that, but that's exactly what we're doing.

And we're doing it by our own free will, and I would totally agree with that gentleman that got up a couple minutes ago and said that we can fix this as producers, because as long as the producers own the product, they have the ability to come together and fix it and we choose not to do so. For whatever reason, we choose to let our cooperatives represent us and quite frankly, the numbers speak for themselves. They're not representing us.

We need to take the bull by the horns as producers and get the job done and I believe it can be done or I wouldn't be here today and I sure would not have allowed my son to dairy farm. Thank you.

AUDIENCE MEMBER: My name is Bill Averbeck, I'm a dairy farmer in Fond du Lac, Wisconsin. My family has operated this farm since 1848. I'm the fifth generation. I have two sons that will be the sixth generation. I have three grandchildren and if their mothers have anything to say about it, they'll try to keep them on the farm, too. Yesterday when I left, there were four generations of Averbecks working on that farm, my father, who's 83, myself, three of my sons and my grandchildren were there also.

I couldn't get them to move concrete, because they were -- the youngest one was three months old, but I think what I'm trying to get at is that every dairy farmer, every small businessman in this room brings something to the table and in my belief, my personal belief as a member of Dairy Farmers of America is that the dynamic of bringing small businessmen together, albeit being dairymen, is a very important function of cooperatives. It's how we work.

Now, democracy is a beautiful thing. It's not perfect. Cooperatives are run democratically. They're not perfect, but we make an attempt as individual businessmen in a cooperative environment to try to make things better for our fellow producers and in the end, make an attempt to make it better for other people in the industry that are producing milk also. There are times when we succeed and there are times when the circumstances overwhelm.

I believe those are the times that we're in right now. We have moved in this dairy industry in this country from a domestic dairy industry to an industry, and by design, that talkede about if the industry is going to grow, we're going to have to export. Well, if you look at the numbers, we're exporting almost 10 percent of our milk equivalent a year. That's a position we weren't in 10 or 12 years ago. So when the economy slowed down, difficult times came for milk producers. When the economy improved, I'm talking about the domestic economy in this country, milk prices improved.

Now we're in a world economy. The dynamics have changed and I think we and DFA are trying to recognize that, trying to deal with that. We're working very hard, because we're dairy farmers. It's ludicrous to believe that any dairy co-op, I believe any dairy co-op would work in not in the best interests of their very owners, the people that supply them the milk, the people that have a -- take a part in the selection of management and how the co-op is supposed to proceed.

We have a challenge in front of us and I think cooperatives are part of the answer. They're not the whole answer, but I appreciate the fact that the Justice Department and the Secretary was here and I thank you, Senator, for being here, because I think it was very positive. We have varying views out here, as you can see from the testimony, but I think in the end, the solutions are there. It's just a question of whether we can all get together and find them. Thank you.

AUDIENCE MEMBER: Hi there, my name is Sarah Carlson, I'm a consumer and kind of a media maker from Chicago. I wanted to comment to sort of talk about the consumer end of this milk issue and how consumers, obviously, nowadays are really wanting choice and they're wanting a variety in their product and you have a movement in Chicago that's very strong to get local products, high quality products, a variety of products, whether it be produce or milk or whatever.

The CSAs in the Chicago area, the Community Supported Agriculture, CSAs, and some of the milk shares have sold out. The demand exceeds the supply. There is a strong demand for high quality alternatives to the dominant market nowadays and so I guess what I'm saying is that the consumer is not a passive consumer anymore. They are taking action to try and get their needs met, whether it's to get healthy food for their children, whether it's to get healthy produce in areas where they don't have access to it.

And that leads me to another issue, which is that many of our communities in rural areas and in urban areas have some of the same issues happening. They have a lack of economic development, a lack of access to fresh and healthy food and communities need to -- we need to work together as consumers and farmers. As many people have mentioned today, consumers and farmers are both getting squeezed. We're paying a lot of money at the store, but we're not getting the products that we want, very often, and farmers are not getting their share of the food dollar.

And I'm here to say that I've talked to a lot of consumers and we do care about the farmers. A lot of consumers don't know what's going on with agriculture and how little of the food dollar farmers are actually getting, but when they start to understand that, they care and they want to support farmers with their food choices. And they also want to be able to make food choices that support their families and their belief system. They want to produce in a way that they support and that reaches the workers in a way that they feel is equitable.

So I just want to say that I hope that the USDA and Congress and the Attorney General can support consumers in having a choice, because this system is burgeoning and growing and demand is very ripe, but we have to have support from the laws of this country, because obviously, we live in a world governed by laws. We have to have support from the regulations and laws of this country in order to be able to meet the demand for these alternative supplies, which will naturally balance the monopolization or the consolidation that's happening right now.

Consumers want choice and if we support that market, that market of choice, then we can provide a natural balance to the consolidation that's happening in the industry. So I would also suggest that along with everything else that's been suggested today, support the natural flow, the natural demand that's coming from the ground for better products, for more direct sales to farmers or for more diversity in products and for more local products, because that's already happening.

You've got support for it. All you have to do is support that and it's not that hard and people really want that. Thank you for hearing me out.

AUDIENCE MEMBER: I'm Ken

Burkert(phonetic) from Vinton, Iowa, near Cedar Rapids, family farm milking 300 cows. I have to say I'm a proud member of DFA. It does a lot of things for my milk production. We market our stuff kind of in a local area and we have seven councils that keep the milk that's produced there and marketed by DFA in that local area, but the combination of a larger co-op gives me a lot of opportunities to market on a national and international market on those levels.

We represent the average dairyman, because we are the average dairyman. We stretch all the way across the country. It allows us to be very active in government affairs, what's going on in Washington, D.C. and our state capitals. It allows us to be a lot of brand names, we have as our subsidiaries such as Borden, Keller's, and it allows me to market my milk in a fluid market.

We are able to provide markets -- production to these larger companies that are spread across the country. I feel like at all times I have a say in the way my co-op is run. I'm very grassroots oriented and I really think I get a fair value out of my milk.

The second thing is I'm glad to see

that we're talking a lot about the producer to the retail spread. I believe that the co-ops and the processors are kind of pass through companies and the milk, every bit of milk that's produced every day has to be marketed and somewhere along the line, we are missing out by not being able to get rid of our surplus supplies.

It's burdened our markets for a long, long time and we have had low prices for way too long and then the only way we finally do it is when people run out of equity and go out of farming, then we're short, creating volatility. I think we've got to address this and I'll even make the point that today, we talked about volatility being bad. The problem today is we don't have enough volatility to get the market back upstairs.

We're down here in the trenches, it seems like, and until somebody says we're short of milk or something happens that we increase our demand, that's what our problem is. So I would say volatility is not all that bad, it's needed right now. Thank you.

AUDIENCE MEMBER: Hi, my name is Alice Schneiderman and I'm from Madison, Wisconsin. Thank you very much for being here. I'm a concerned mother and a concerned consumer. I want to thank -- so I say thank you to Secretary Vilsack, because he asked some really important questions which pertain to my health and to the health of the planet. He asked about, you know, why are we in this contraction situation of dairy farmers, why aren't we in this expansion innovation mode.

Second of all, how can we get younger people into farming. Third of all, how can we increase consumption of milk, and fourth of all, how can we create 100,000 new farms.

Well, I understand -- all right, I don't understand the dairy industry. It is a very complex, industrial giants, but what I do understand is my relationship to my farmer. And I think that in order to answer these four questions, we need to be able to go to our farmer and have a direct, on farm sale relationship with our farmer because we want access to whole, healthy, natural, real foods.

I'm tired of going to the supermarket and not having any choices. I'm tired of reading labels. I'm tired of not trusting what -- where the food source is coming from. I appreciate that the USDA is asking us to know our farmer, know our food sources. I do know my farmer, but right now, there's a whole room of people and legislation that's standing between me and my farmer to give me foods to feed to my children that I know will bring them health and wholeness and healing.

I want to be able to go to my farmer and buy the foods that I want to buy. I'm not saying everybody wants to do that, I'm not saying everybody has to do that, but it's my right. It's my right to have the freedom to choose what foods I feed to myself and to my children. I can smoke cigarettes, I can drink alcohol, I can ride a motorcycle, but yet I can't go and have a relationship with my farmer and buy products from my farmer because of laws that are stopping me and people that are stopping me right here in the State of Wisconsin. Thank you for being here and thank you for listening.

AUDIENCE MEMBER: I'm Don Reifer(phonetic) from Dodgeville, Wisconsin, just down the street here 40 miles to the west. I farm with my wife Pauline who is at home doing the work that needs to be done every day. We run about 80 cows, and a lot of times the farm runs us. I came here today because I feel that we need to do something in the dairy industry and I thank the workshop committee for putting this together to listen to us.

We need a supply management plan because of what comes off in the dairy industry, is that when we get a high price, we produce more. When we get a low price, we produce more and then we got bankers to say that you have to pay for them free stall barns that you couldn't pay for the last free stall barn, because you couldn't pay for last free stall barn that you built before that one, so we would have more and more and more and we keep shooting ourselves in the foot.

And what that being said, I'd say that we do need a supply management plan. Here in the Midwest, doesn't think that we need one, but I do think that we need one. I think that we need to develop something that's called a parallel marketing, is the term that I've come up with, where we sell our milk for the same price off the farm as what they do in the marketplace on a parallel line like a railroad track.

We've got questions about Chicago. I think that the first and foremost thing, I'm not sure just how well the co-ops work for us. In my opinion, if it's working so well, I question why we're standing here today with our poor milk prices. Have they been doing the job that they're supposed to have been doing? Farmers need price, but not only do we need price, we need a profit.

We bought our place in 1981 from my dad, he moved there in '55. The place has been paid for for 10 years. This last year has been pretty tough, just borrowing from what we've gone through in the past. The industry needs change. The reason it needs change is because when they pull the cheese out of storage when the price rallies, there goes flops the market. You got a problem with Chicago manipulating prices.

We got exports not getting the job done, we got imports bringing it in, uninspected bunch of slop, farmers co-ops' boards really don't do what the farmers are supposed to do for the farmers. We all get bled dry until we can't go no more and then just here comes another safety net in to save the ones we all just got squeezed out and then we've got this real soft topic that nobody wants to touch on in every meeting I go to, but they all agreed with me on the sidelines.

We've got an awful lot of illegal labor force milking an awful lot of cows, putting me out of business every day of the week. They don't belong here. The law's already in place and they're putting me out of business every day of the week and I don't care if the rest of the community wants to have them here, that's fine and cool, but don't take me down with you. Thank you.

AUDIENCE MEMBER: Hello my name is John Peck, I work with Family Farm Defenders. I also grew up on a farm in central Minnesota, Stearns County, which is one of the top dairy counties in the country and I was there last week working on my folks' farm and there's hardly any dairy farms left around me. I grew up with all sorts of farmers who are dairy farm members, neighbors. Now there's only one left and it's really sad that dairy farmers are in that straight.

We have more prisoners than farmers in the United States now and that should not be the future of this country. I think we should have more farmers, not less, and I've been down to the Chicago Mercantile Exchange many times with dairy farmers to try figure out where their prices are set and it's really disturbing to meet some of the traders there. These are people that are dictating our lives every day, many of them not even been to a dairy farm.

And they're deciding prices around the world, not only in the United States, but around the world. They're being set in Chicago and we heard some very good testimony from economists here today. I actually have a degree in economics, that's why I came to UW-Madison. I now teach economics at the technical college here. It's really hard to explain to my students why that's no connection between what farmers get at the farm gate and what consumers pay at the store.

That's not what I'm supposed to be teaching in economics. That's not a free market, that's a corporate controlled market. That's what we call an oligopoly or monopoly. That's not a real free market system, and it's really sad that we've heard that less than two percent of that cheese market is wagging the dog, basically, down in Chicago. That's not a fair market situation at all. It's rife for corruption, speculation, manipulation.

And I remember years ago I was first exposed to this as a student here at UW-Madison. I was up at the capital and there was farmers stomping on boxes of Velveeta Cheese in the state capital, some of you here might remember that. That was when the Green Bay Cheese Exchange was still operating. Tommy Thompson said okay, this is enough, but then they just moved it to Chicago. It didn't go away, it just went to a worse scenario, worse -- it's gotten worse since then, in my estimation.

So we deserve a fair market, we don't deserve a manipulated market. I mean, we've heard some excellent proposals here today, why is the fluid milk price pegged to cheddar cheese? Why not mozzarella? Mozzarella is the top cheese in the country now, not cheddar. Shouldn't we be talking to the pizza dealers to set the milk price? That's what we ought to do. Why don't we have a direct pricing function?

The DOJ and the USDA need to deal with current lawsuits that are pending. We've had rafts of them waiting to be dealt with, and the $12 million fine against DFA is not enough. That's a slap on the wrist for a very corrupt co-op, which some of my farmer members have to deal with. That's just a slap on the wrist. They'll continue doing -- they have been continuing to do that, what they've done before.

We're dealing with a captive supply situation, very similar to poultry or beef, where basically, these companies and these corrupt co-ops are basically saying we own that milk as soon as it hits the bulk tank. We buy it or you dump it. I mean, that's the only choice. That's not a fair market situation at all, not fair at all.

And my dad used to tell me whenever you got too big for your britches, there's a problem. These co-ops and these corporations are getting too big for their britches. They're controlling the majority of the market. They've gotten too much power. They need to be reigned in. When you're big, you can be the gorilla in the room. Someone talked about volatility is profitability for these people. They don't want a stable market, they want to watch it bounce.

That's how they make money. That's what they're doing.

So I'm really hoping that the DOJ and the USDA at these hearings will listen to the testimony you've heard, listen to the farmers who are here, not just the corporate representatives and co-ops who may or may not be speaking for their members, actually listen to the farmers who are here and the consumers who are here about what needs to be fair in the marketplace. It's absolutely wrong that corporations and corrupt co-ops are paying their farmer -- their CEOs millions of dollars and consumers and farmers are going bankrupt or being price gouged at the store.

It's just unfair and, you know, young people going into farming, they should be allowed to make it in farming. I want to encourage people to go into farming, not discourage them, so I'm hoping that you'll listen to the testimony today and take it seriously and that we actually see some action from DOJ. Thank you.

AUDIENCE MEMBER: Hi there, I'm Kathy Ozer, I'm the director of the National

Family Farm Coalition and for more than 20 years, I've been working in D.C. on behalf of family farmers, many of whom -- some of their powerful voices, of Joel Greeno and John Peck just said and other farmers are saying, and I would just say that there are many dairy farmers around the country watching very closely what is happening not just today, but what happens in terms of immediate action.

They're on their farms working day in and day -- all day, all night, many on conference calls light at night on an almost weekly basis trying to figure out how to survive the current crisis, how to access credit, how to make sure that there is a real change in the system that has to come from the top with real action by DOJ and by USDA.

I just want to reiterate the importance of the pending investigation or the investigation that's been under way at the Department of Justice for there to be action on that case. And I know Senator Feingold a couple years ago asked in a senate judiciary committee hearing about that investigation and Professor Carstensen was there in the audience as a witness and responded to it and I would just say that that senate judiciary committee hearing helped elevate the issues. And today's hearing is a really important step in just it being so clear how important it is for there to be action taken at this level.

The one other point I would just make is that it was a really busy week in Washington this past week on many of the issues we work on and both the publication of the Packers and the GIPSA rule that was part of the 2008 farm bill is an important opportunity this next 60 days for there to be public comment, to make sure that we strengthen that rule, that we take the pieces that are really great, that are part of the poultry provisions, we hopefully strengthen some of the livestock provisions and that we have real changes in the law that has not been implemented for many decades.

And then the other issue is that the Supreme Court ruled also earlier this week around GE alfalfa and a comment was made earlier on one of the panels and for family farmers and the farmers we work with, while it was a 7 to 1 decision, it's really a victory for farmers, for

USDA to have to go through environmental impact statement and really review pending applications for genetically engineered seeds and crops.

And so these are all issues that take all of us and consumers who've spoken out joined with us as farmers and everyone else to make a difference in our food supply and a difference from the ground up so that farmers can make a decent living, stay on their farms and consumers can have access to the kinds of quality food that they deserve as well. Thank you.

AUDIENCE MEMBER: Russell, thank you for listening. My name is Pete Hardin. I edit and publish the Milkweed newspaper and in 40 years as a dairy journalist, I have never seen such an inequitable mess in an economic sense as we've got in dairy. One overview and then three specific suggestions. We're really -- we're not just in the milk business or the cheese business, we're in the protein business.

And in my opinion, there's an evolving global scarcity of human quality protein. We see the oceans fished out, we see the U.S. beef cattle herd at its lowest level since 1952. Human quality protein is scarcer and scarcer and I can think of no finer, complete protein than dairy based proteins for those who enjoy dairy products as part of their daily diet, to provide this daily necessity for our bodily and brain function. So we're really in the protein business, let's remember that.

Now, three specific suggestions. I think the U.S. Senate and Congress ought to revise the Capper-Volstead Act to include limited exemptions for agricultural co-ops only for the original procurement, transportation and marketing of the raw product. In every other sector of cooperative endeavor, let the co-ops compete on the same basis as the rest of the world, in finance and ideally, financial transparency, et cetera. But I think the 90 year old Capper-Volstead Act needs to be pulled in for an overhaul and that's the bailiwick of the legislators.

Secondly, as Dr. Cotterill from U-Conn suggested today, if we track the money in the marketplace as we have been discussing all day, I think we ought to consider a surtax on dairy case profits at the retail level. When I was in Washington last fall, I bought a six-ounce cup of yogurt for $1.59, plain yogurt including milk protein concentrate as the second leading ingredient.

That's $400 per hundred weight farm milk value for a product which only has a little culture added to it. It might have cost them $14 a hundred weight in milk cost, but by the time that six-ounce container of yogurt hit the supermarket shelf in the Washington, D.C. area, $400 a hundred weight if you value it back to the farm. That's where the money is, at the supermarket level.

And finally, I think as a result of what the DOJ and legislators are hearing, I think the DOJ Antitrust Division needs the financial and personnel resources to establish regional offices staffed with investigators and lawyers so that you can field complaints on a more localized basis where competition issues included in agriculture are of concern. Thank you.

AUDIENCE MEMBER: If it's not working, I'll just scream, is that okay?

MR. FERRELL: Just talk as loud as you can.

AUDIENCE MEMBER: For 25 years, I've been honored to work with Willie Nelson at

Farm Aid and to work under his leadership and number one, we have learned the importance of listening. Willie has led us in the practice of listening and we have listened to family farmers for 25 years and taken their leadership. I want to say that I feel like at times, Farm Aid's hotline, which has been existing every day since the very first Farm Aid in 1985 is the canary in the mine.

And about a year and half ago, we realized how bad it was to the dairy farmers and without any question, the urgency of the dairy farmer right now is the greatest urgency of family farmers in this country and I want to speak to the urgency of this moment and the opportunity of this moment also, because we recognized -- yesterday Mr. Heffernan said in one of our workshops that we have an opportunity now that we haven't had for years in Washington and we recognize that and we recognize how important it is to move in this period of time.

So I want to say that Farm Aid stands with family farmers. We are here to both listen and we also believe, as Willie believes, that family farmers have the solutions. We realize that the consequences of a revitalized dairy policy can lead to a revitalized economy. Farm Aid just did a study on the economic stimulus that a family farm economy gives to everyone when you invest in a family farm system of agriculture and we have a report here which I'd love to share with anybody that is interested in it.

I asked the Secretary if he was interested when we told him we were doing it a year ago and I think he's very interested in it and I'd like to share it with everybody. So thank you. It's very important that you're all here listening and it's very important that many people -- I want -- of course you know that for the many people here today, so many couldn't be here, especially dairy farmers. Thank you.

AUDIENCE MEMBER: My name is Lisa Jacobson, I'm from Milwaukee, Wisconsin and I'm a consumer of unpasturized milk. Senator Feingold, thank you for coming back to listen to us. The reason I'm here is to support my farmer and in being a consumer of raw, unpasturized, healthy milk, I guess I am a criminal because I'm aiding and abetting in a criminal act by purchasing illegally sold milk.

That being said, my hope from this public meeting is it could be instrumental in helping to end or reverse the statewide and federal interference of farms that provide healthy, health minded, conscious citizens with pure, wholesome, healthy, unpasturized milk. It appears blatant to me that prohibiting farms to consumer unpasturized milk sales is an illegal and anticompetitive practice by regulators and big dairy industry, by only allowing dairy processors and plants to obtain raw milk using pasturization as the key to safety and control.

I would argue that consumers can also pasturize or heat the milk at 165 degrees for 15 seconds, if that's the argument. Big dairies, regulators and lobbyists use mainstream media for smear campaigns that all unpasturized milk is unsafe. Yes, I would agree, factory farm milk, raw milk from cows who suffer from mastitis, their tails are cut off for efficiency and they can't swat flies, they're never allowed to live outside or graze naturally, but instead, fed unnatural grain based diets infused with antibiotics and growth hormones, wallowing in their own feces on concrete, bedded on recycled manure and living in factory farms or calf huts with manure lagoons replacing pastures, polluting the air with hydrogen sulfide, ammonia for surrounding neighbors and communities and whose milk is then co-mingled into silo milk and shipped across the country, I would agree that might be unsafe raw milk.

So if pasturization by conventional dairy industry standards with this type of frightening logic is the answer to sanitizing milk, then I don't want industrial dairy products or want to feed to it my children. All I want and hope for is safe, healthy, wholesome, unpasturized milk from healthy dairy cows grazing on healthy pasture from my small farmer who uses sustainable agricultural practices.

And to rephrase a quote by Joel Salatin of Polyface Farms in Virginia, my wish is that a consumer group will grow to advocate legalizing unpasturized milk to be at least as big as the National Rifle Association. And I also wanted to say I went to the hearing for legalizing raw milk in Wisconsin and there was 658 people present that were in support. They went all the way to Eau Claire to support the legalization of raw milk and there was about 20 people against it at this hearing that represented big dairy regulators.

And unfortunately, the lobbyists got to Governor Doyle to veto this when all the assembly or the majority of the assembly and almost unanimously the Senate voted to legalize the raw milk. Thank you.

AUDIENCE MEMBER: Good afternoon. My name is Diego Calderon and I'm an immigrant, a veterinarian, a dairy researcher, a dairy consultant. I have been really sad to witness how the farmers and especially the dairy farmers are disappearing little by little from the countryside at such a high pace that they are going to be soon in a high rank in the least of the endangered species close to extinction. If there is going to be a set of laws that are going to allow the farmers to get out of the endangered species list, it has to be a law focused in giving the farmers their independence back.

And I mean by independence the freedom to produce and use their own clean and renewable sources of energy, farmers free to buy, plant, grow, harvest their own crops and seeds, buy their supplies from wherever they want and sell their produce to whomever they want, dairy farmers free to produce and sell their top quality milk in the way they decide to do, raw, pasturized, in the form of cheese or a wide variety of dairy products.

On the other hand, for avoiding a crisis in the future, those laws also have to address and take into account two actors in the play, the immigrant workers and the cows. Dairy farmers can't hire an immigrant worker for more than six months right now legally. Animal welfare has to be taken very seriously, because we have seen already if an animal is mistreated, it's not that animal who is going to suffer. It's the whole dairy industry and the dairy farmers. Thank you.

AUDIENCE MEMBER: My name is Ken Boyd from McFarland, Wisconsin. I'm here as a consumer and a taxpayer and I first want to comment on a few things I've observed here today. The first one is it would be the object of a cheese buyer at the market to buy the cheese at the absolute lowest price he can get it for. I don't understand how the price of milk can be based on an absolute lowest possible price of cheddar cheese.

Second observation is on the co-ops, if these co-ops claim to be helping these farmers so much, why aren't they all getting together, teaming up, going to these processors and saying this is how much you will pay us for our milk. The processor will then have to go to Wal*Mart and say this is how much you will pay us for our milk. Everybody gets a fair share.

I'm here to comment on a severe blow to the -- some small farmers of Wisconsin. There's a huge, rapidly growing interest in going back to the thousands of years tradition of drinking unadulterated, safe, healthy, raw milk. Mr. Doyle's veto of that bill that our legislators, yes, our employees, passed because we the people of this state asked and demanded that they do so. Government works for us, the people.

The governor of this state bowed down to pressures from mega corporate farms and their associations and refused to give us, the people, what we demanded. I assume he thinks that we're too stupid as a people to know what is best for the better good. We the people of this country are rising up against corporations running this government, controlling our politicians and our judges with their campaign donations.

Mr. Doyle's veto is forcing many farms out of business, such as Vernon Hershberger farm, most recently attacked, also the Trautman farm and many, many others that are only providing an educated, well informed, hugely growing group of a dairy product that they want to consume and will consume, veto or no veto. I understand that there's a fear that if someone should get sick from raw milk that our dairy image would be tarnished.

This is unfounded fear propagated by mega-corporate farm to squash out the fast growing competitor who are selling a product that they cannot provide because of their size and dynamics. Consumption of raw milk is not some new idea that nobody knows the risks of like BGH and growing levels of antibiotics in some products. It has been tested for thousands of years and has been proven to be safe and the fact that raw milk is consumed all over the world still today.

Will someone get sick from raw milk? Yes, just the same as no one in this room can deny people also get sick from pasturized milk. As you in the news have probably -- as you should see on the news, people in this country are getting agitated. We are get sick and tired of corporations running the government. The Constitution of the United States says we, the people, not we, the corporations. We, the people of this state spoke on the raw milk issue. Our legislators listened and agreed.

We will continue to fight with more, bigger and conviction than ever before for our right to consume raw milk and to save the countless farmers who have survived by finding this niche market and for the opportunity for young farmers to start up new farms for this demanded product. Thank you.

AUDIENCE MEMBER: Hello, my name is Mary Koepke, I'm from Oconomowoc, Wisconsin. I've been here with my husband today and it's been most interesting and I do appreciate your coming from Washington to listen and as you can hear, we have very divergent views on what a farm is, what food should be, what we should get for milk prices and I appreciate your listening to us.

I'm one of these families that's a

family corporate farm. It was started by my husband's parents about 60 years ago and it was the typical mom and pop operation with a little over 100 acres of 30, 40 cows, you know, 20 to 40. When Al came back from college, he decided after graduating from Madison he wanted to be a farmer and that he could do it. One of his teachers said, you want to be a farmer? What are you doing, you know, with all the other things out there, but this is what he wanted to do. His brother came back five years later, he joined the farm.

So this farm changed from, you know, just mom and dad milking the cows to a family farm where there's now the three brothers, a nephew and there's some great nephews coming along so that we hope that they will be a part of the operation, too. We do now milk around 300 cows. We do market that through DFA and it's been a challenge to be a good steward of the soil, to be a good corporate member of the community and to be innovative as it comes along. The opportunities are there.

AndI think today, there's so many other farmers in the audience I met who do, too.

The family farm in many cases has changed a lot. I sat next to a gentleman from near Sheboygan who I think there was two or three generations going together. There was nine family members who are full-time employees as well as, you know, other employees and in our farm, too, there are four family members, but there's also seven other full-time employees.

So the land may be more, there's maybe smaller -- you know, the farm is only one, but it's encompassing a lot of people working together and I do believe in the dairy industry in the United States and Wisconsin. Thank you for listening.

AUDIENCE MEMBER: Good afternoon. My name is Tom Kriegl, I'm with the University of Wisconsin Center for Dairy Profitability and first let me thank Senators Feingold, Kohl, Secretary Vilsack, Assistant Attorney General Varney and all the other folks from those agencies that are here today to listen to concerns from people in the dairy industry.

I don't do research on market structure, but I do work with dairy farmers on their cost of production and so forth and I'm very much aware of the intense environment that's been going on the last 18 months all around the country with dairy farms. And I do understand some economic theory and have some empirical evidence that I can talk about and tie in a little bit of my own research as well.

Economic theory says that a perfectly competitive market provides the greatest good to the greatest number in the economy and it further says that a perfectly competitive market is one in which there's many buyers and sellers, none of which has more influence than anyone else on setting the price.

We do not have a perfectly competitive market anywhere. I don't know that we ever had, but at one time, we were a lot closer to it than we are today, in most of our industries, and that would include the food industry. Too much power concentrated in any single place is bad for the economy and society, and when most people think about too much power concentrated in one place, they think of it being concentrated in government and that can certainly be a problem, but too much power concentrated in a large company can be equally bad.

And those that didn't understand that or forgot that, the great recession that we're still suffering from and the BP oil spill demonstrates what can happen and how costly it can be when perfect competition isn't maintained and when there's too little government regulation of things that go on. I could hear comments earlier today that I think a lot of people associate government regulation in regard to the dairy industry as being supply management.

And that can be one form of government regulation, but certainly, the government has an important role in regulating the market, which doesn't necessarily -- it can mean supply management, but it certainly doesn't have to and that's not what I'm talking about here in my testimony. I'm talking about regulating the markets so that there is market transparency, providing good information to everyone and antitrust enforcement, which is one of the focuses of today's hearing.

Nobel laureate economist Joe Stiglitz at Columbia University wrote an article about 18 months ago regarding the financial crisis called, "The Five Mistakes of the Capitalist

Fools." And it was quite a lengthy article, but well written and so forth, but he summarized the mistake down to one sentence, which I'll quote it, is the financial crisis or the great recession was caused by, quote, "A belief that markets are self-regulating and that the role of government should be minimized," unquote.

Another Nobel laureate economist by the name of Paul Krugman from Princeton University recently put out a chart in which he divided the post World War II period into two periods, so from 1947 to 1980 and then from 1980 on. And he showed in his chart that the economic activity, that the performance of the economy was far better from 1947 to 1980, a period that is often criticized as a period of over regulation, and of course, since 1980, has been a period of much less government regulation.

As we heard this afternoon, there is a greater concentration of power, market power and imbalance of market power in many industries in our economy and that would include the food industry. How bad is it? I'm not the expert on that, but I do know that the imbalance is worse than it was say back before 1980. In my memory, I think the recent antitrust action against the Dean/Foremost sales is the first one I can remember in my memory, not that I followed it that closely, that any kind of a merger of any set of companies has been opposed by the Antitrust Division since 1980.

I can remember a lot of mega-mergers in a lot of other industries that have happened that have allowed a lot of concentration of market power. So as an economist and believing in perfect competition, I find it appalling that our antitrust enforcement has not been more vigorous than it has been in the past and I certainly encourage that it become more vigorous again.

Dr. Ron Cotterill from U-Conn who was on the panel this afternoon made several recommendations that I won't try to repeat, but they were excellent suggestions that I would encourage the Department to pursue. I'd like to make one or two more comments before I finish here. We heard on our panel -- we had a panel that ranged in size from 48 cows from Kendall, Wisconsin to 14,000 cows from Las Cruces, New Mexico, I think, and all of the farmers that were in front of us indicated that they were bleeding.

And so if economies of scale is the answer in production agriculture, how much bigger than 14,000 cows does one have to get to support a family? Actually, my own research indicates that the economies of scale in the production side occurs at a much smaller level than most people think.

So I guess in summary, I'd certainly encourage that USDA and the Department of Justice take seriously their roles in creating a level playing field in the food industry so that our smaller players are not disadvantaged as they often have been in the past. Thank you.

AUDIENCE MEMBER: Hello, my name is Steve Horstman from west central Wisconsin. I would like to thank everybody who took their time from Washington to come out and show their interest in the dairy and the food industry, especially to Senator Feingold for taking the time to come back to listen to us. I would comment on a few things that I've heard here today. First, to Professor Carstensen, the main reason I chose my co-op, which is DFA, by the way, was for their transparency of governance and for their policy on milk pricing and their attempt to return more dollars to the farmers.

My second point to those of you who claim that your dairy co-op doesn't care, go to your local meeting. Speak up, change it. If you don't like it, pick a different one. Find one that will work for you and your philosophy on dairy production and marketing. To Mr. Peperzak, when you went to your milk marketer, why did you think they were going to give you a list of producers with which you were going to use against them? No other company, no matter what structure they're under, whether it's sole proprietorship, corporation, cooperative, is going to give you the bullets to put in the gun to use against them.

And the people who have brought their fight for raw milk to a venue that wasn't listed as a fight for raw milk, you've had your shot. I consume raw milk. I've done so for over 45 years. My family still does, but I also had a family friend whose son visited me and stayed with our family for an overnight to spend some time with my son.

He became very sick. Are you ready to do that to your children or to your friend's children? I don't see why you would. It is a very simple and it is a healthy process to take care of this milk and to eliminate those unnecessary risks. I graze my cows. I use antibiotics on very limited, as-needed basis. I ensure that there's no antibiotics going back into my -- into the milk supply chain and I strive to replicate an environment when they're not on grass that simulates a day on the beach under an umbrella with an all you can eat buffet.

I take care of my cows. There is not a single dairy farmer out there in all the videos that you can find on You-Tube, there's not a single owner of a cow abusing his cattle. Those are employees who don't care. They're unsupervised, they're there for the check. I believe very much that the dairy farmers in this country care for their cattle. They care for the consumers and they care for the American people. Thank you.

AUDIENCE MEMBER: I guess you saved the best for last, at least I hope I am. Doug Tate, Winnebago County, Wisconsin. My wife Debbie and I farm 120 acres. We milk 40 cows. We're small by all standards. We started 40 years ago almost. I don't feel that old, but I guess I'm getting there. My knees are shot. I thought by now I'd be able to start to wind it down and think about retirement.

The last couple of years have been really difficult for us. We did manage to get our farm paid for. We still have a lot of debt in personal machinery and cattle yet. Like I said, my knees are shot. I belonged to a number of co-ops over the years. I'm a dyed and blue co-op member. They've been there for us many times through the thick and the thin. I started out with a local co-op to ship my milk to, then went to a regional co-op and now I'm with a national co-op and that national co-op has helped me realize a little better pay price.

We've had trouble in the past with some events. My co-op now and I'm proud to say about it is DFA. We've had some problems, but we are a very transparent co-op. When I leave the farm to go to anything that involves the co-op, I'm also working. I'm not just there for fun. I work for the co-op, I come back and I report to my members that I represent. I'm on the resolutions committee for DFA on the corporate level and I do not mind it.

Some of the farmers in our organization don't want anything to do with the management of the co-op or they're too busy on their farms working for it. I like it. I like to know what's going on in our co-op. I like to know how we manage it. In the future, I'm going to stay more involved with the co-op, because like I say, I'm proud of them.

And then in the future, I'm thinking that what we need to do is not just address DOJ issues to realize a better pay price for members. We need to start to think about revising the federal orders, because I think they're the things that are stymieing us, in a way. They're archaic, they're old and it just doesn't -- like you heard, two percent of the milk gets the -- determines part of our pay price, we need to look at that real seriously. And again, I'm a proud member of DFA. Thank you.

AUDIENCE MEMBER: Thank you, I'm also proud to be a member of DFA. However, my concern today is this raw milk issue. My wife and I have raised six daughters, four sons, two foster sons, they all got raw milk out of the tank as we did, you know, for years. I have -- about 10 years ago, I discovered I had a high cholesterol count, very high, and I subsequently decided I should drink -- or the doctor decided I should drink skim milk.

We even tried getting the little gallon jug with a spigot on the side and we would drink the skim milk and feed the cream to the dogs. It didn't work, there was nothing under two percent. So I started buying my skim milk from the store, it happened to be pasturized, about seven years ago. I have not had a sore throat since. That's what I'll say about raw milk. It's not worth the risk. Thank you.

AUDIENCE MEMBER: Hello, my name is Randy Kohler. I'm from western Wisconsin and I believe in co-ops, used to sell my milk to AMPI years ago, became a member of DFA -- well, at MidAmerican Dairies, now DFA, 15, 20 years ago, and I couldn't be happier with the leadership of DFA. I believe they're very transparent these days and they give us a lot of knowledge that we can use. We come to things like this, we're encouraged to go to things like this, be active, grass roots.

I go back home and I have neighbors that sell to other co-ops, I have neighbors that sell to the local, family owned cheese plant that is 10 miles from my place and they ask me what's going on, what did you learn at that meeting you went to, and I tell them and they say, yeah, we'd find that stuff out, but it would be a month later and, you know, I wish more people would come to things like this. I think this has been a great day.

I thank everybody from the government that came and listened and put this on, and hopefully we can get something done to raise the milk price for farmers. I'm not going to make a suggestion, because you've heard about every suggestion there is today, so thank you.

AUDIENCE MEMBER: I'm going to watch that green light up there, because I'm from Ohio and I know two minutes is pretty quick. I'll try to do it in one. On the raw issue, on raw milk, my wife's first cousin, very good friend, 15 years ago helped us on the farm for a while. I have tons of friends that have been to the house that's drank my whole milk out of the tank. I milk about 130 cows.

She got deathly sick heading to New York for her summer job, spent three or four days in the hospital and they out of the blue, did you drink any raw milk products. It was a disaster. She was really sick. 10 years later, my oldest son's sister-in-law, the same exact thing. She was 14, a little younger. They're not used to the pathogens in the milk and all I'll say is she got deathly sick for about a day. If you drink raw milk, and my kids -- I'm -- almost every farmer, ever, Amish, there's tons of Amish that do it to all their families, but you're at risk.

And I think the DOJ and our government has -- we should have standards to live by. I won't let my granddaughter start drinking my milk yet. She's four years old, because it's -- I mean, I've had 100 people drink it and one or two instances, but it's not worth the risk, ladies and gentlemen.

MR. FERRELL: Is there anyone else who would like to make a comment? Well, with that --

AUDIENCE MEMBER: My name is Joan Diers(phonetic) and I'm a resident of Madison. I've had many jobs in my life and one of the worst jobs I've ever had is working in a supermarket in Madison, Wisconsin. That supermarket was originally founded by Senator Kohl's family and back in the day, it may have been a reputable institution that treated all of its workers well. That supermarket was sold to the A&P, right? My paychecks came from Montville, New Jersey.

I saw the shrink, I saw the waste, I saw workers not being cared for and I saw all of your products being stretched to the max and it was very easy for me to see why you don't get the dollar that you deserve. My request is that every milk product served to the U.S. military or any soldier serving in the U.S. military in any form, be it milk powder or whatever, that you work to make sure that these folks get their dollar, that any contractor to the U.S. military for food, you can do it that way, you can stipulate that they buy their milk from people who give these farmers their dollar.

AUDIENCE MEMBER: My name is Kevin Coles(phonetic) and I grew up on a dairy farm in southwest Wisconsin, Crawford County, and recently after 70 years of dairy farming, my sister milking 35 to 40 cows a few months ago sold at the bottom of the market. She should have gotten out of it quite some time ago, because not only was there no profit to be made, it was not even break even. It was just working and basically borrowing money and cutting the timber off it.

So the thing is, now, what does she do, and she's only one of many. So here, you cannot not do something, because there is a socioeconomic cost to all this. We can talk about economics until the Gulf of Mexico freezes over, but it's a socioeconomic problem that's out there and there needs to be policies designed to assist people who want to get into organic farming. The transition is way too difficult.

And maybe there's a place here for 14,000-cow herds and 48-cow herds, but one thing after 70 years in my family and so many other community families, they drank the milk raw and we had no problem, so if we can't drink raw milk now from some of these herds, then there must be something wrong.

But anyway, the issue is, one is rural economic development in this country. Now, I invite a lot of people to go out and take a look at rural Wisconsin and other rural places and see what it's like. Thank you.

AUDIENCE MEMBER: I'd just like to add that smoking, there are risks to that, too, but it's legal. This is about anticompetition. These raw milk farmers have a product that is in demand. People want it. It's our right to have it, so they should not be squashed out of competing for that market. There are risks just like smoking, yes.

MR. FERRELL: Well, I want to thank everybody for coming here today and I think this workshop has been very informative and I think we've learned a lot and it will help us with our work that we do each and every day and I think I can probably speak for the Department of Justice in saying that as well.

I want to thank the University of Wisconsin-Madison for helping us make this workshop possible, especially Chancellor Martin for helping, for putting everything together.

I want to thank Senator Feingold and Kohl for attending and Senator Feingold for coming back and listening for additional comments. I also want to thank Congresswoman Baldwin for attending, Governor Doyle, the

Wisconsin Secretary of Agriculture who also attended.

I want to thank all the panelists who took the time out of their busy schedules to be here today with us and I want to thank all of you who came to the microphone and provided comments and we really appreciate you doing that.

I want to thank the FFA members who took time today to volunteer, and lastly, I'd just like to say that this concludes our third competition workshop and our next workshop will be held on August 27 in Fort Collins, Colorado and I will turn it over to Mark Tobey for any remarks he would like to make.

MR. TOBEY: Sure, I underscore everything that John Ferrell just said. I think we've been going on for more than eight hours today. We had a terrific and extremely well -- okay, I'm over my time. So with that, let me just simply say this is an ongoing process and please understand that we are still asking people to submit comments, if you would like to do so at our website at agriculturalworkshops@usdoj.gov, that our poor overworked, I can't believe she's typed this long court reporter will produce a transcript of this entire workshop.

And we also have video of everything that's gone on today and we will put a video transcript, make it available over the web in a few weeks as part of the record. We are making a record and we will use that record to do an evaluation of what we need to do in the future to address the many problems that people have been so patient and eloquent in bringing to us today. And with that, I'd like to say thank you and have a nice evening.

MR. FERRELL: Thank you.

MR. SOVEN: Thank you.

(6:30 p.m.)

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DAIRY WORKSHOP

A Dialogue on Competition Issues Facing Farmers in

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C E R T I F I C A T E

I, NANCY L. DELANEY, hereby certify that as the duly-appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on June 25, 2010 commencing at 8:45 o'clock a.m., and that the attached is a transcription of the proceedings so taken.

Dated at Madison, Wisconsin this 30th day of June, 2010.

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