

**From:** CSHinsdale [mailto:CSHinsdale@gmavt.net]  
**Sent:** Friday, January 15, 2010 2:33 PM  
**To:** ATR-Agricultural Workshops  
**Subject:** Comment

Please accept the attached testimony regarding your investigation of anti-competitive practices in the dairy industry.

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Dear Vermont Attorney General Sorrell:

Two Copies To: Legal Policy Section, Anti-Trust Division  
US Department of Justice

Thank you for soliciting public input on the issue of allegations of non-competitive activity in the dairy industry. I am writing to you regarding my personal experiences with Dairy Farmers of America (DFA)

My name is Clark W. Hinsdale, III (173 State Park Road, Charlotte, Vermont, 05445 (802) 425-3008; cshinsdale@gmavt.net). I live in Charlotte, Vermont and operate a 300-cow dairy known as “Nordic Farms” there. Our farm is a member of DFA.

I have never held an elected or appointed position of any kind in DFA. I am currently not a Director or employee of any agricultural organization. I have, however, held positions in the agricultural community from 1986 through 2008. These positions include President of the Vermont Farm Bureau; Director, American Farm Bureau Federation; Director and Chairman, Farm Family Insurance Companies; Director, Yankee Farm Credit, ACA. In these capacities I have worked on Vermont and national agricultural policy issues with a significant focus on our primary agricultural activity in Vermont – the dairy industry.

No state agricultural sector, and no state economy relies more on the dairy industry than Vermont. While there are other states with larger dairy economies, in no other state is dairy as high a percentage of the overall state economy as it is here in Vermont. For that reason, and other, I appreciate the keen interest your office has taken in the health of the dairy industry and the issue of competitive markets.

Like most members of DFA, we belonged to another cooperative that became DFA through the consolidation of farmer cooperatives. In our case, we belonged to Eastern Milk Producers. In my work as President of Vermont Farm Bureau, I dealt very closely with the Directors and Staff the two main cooperatives representing Vermont dairy farmers, Agrimark and St. Albans Cooperative Creamery. These two cooperatives have been active in Vermont agricultural circles promoting the interests of their members and the Vermont agricultural community. The entrance of DFA into the northeast was very much a matter of concern to these cooperatives. Since the scope of DFA was national, one concern was that the hierarchy in DFA would be more aligned with producer interests in other parts of the country.

As Vermont Farm Bureau President and a member of the American Farm Bureau Federation Board, I was very anxious to gain a better understanding of this emerging force in the dairy cooperative world and its efforts to grow in the northeast. I learned that the DFA had regional councils and affiliations with other cooperatives in addition to direct farmer-members. I learned that our region was headquartered in Syracuse, New York and affiliated with the 100-year old Dairylea cooperative. At the time (early 2000’s) the CEO of Dairylea was a man named Rick Smith. The CEO of the national

organization was a man named Gary Hanman, who I had met at various dairy functions but never got to know very well prior to his retirement.

In an effort to understand DFA better, I invited Rick Smith to a Vermont Farm Bureau Annual meeting to meet us and to speak to us about his views of the dairy industry and where DFA fit into the mix nationally and in the northeast. We found Rick to be very easy to talk to and to be very open about his organization and the challenges facing the dairy industry. We also learned from many of his members that DairyLea/DFA Northeast had been strengthened and reinvigorated under Rick's leadership. Later, Rick invited to me speak to his board at a northeast council meeting in Syracuse, New York. I addressed some of the thorny issues about regional differences in the dairy community including pricing, competition, and market access. I found with Rick and his board that there were no "sacred cows" and open discussion of these issues was encouraged.

Meanwhile, at the national level (still early 2000s) it seemed like much of DFA's focus was on being a processor as opposed to being a marketer for producers. While some of DFA's processing enterprises were profitable to the cooperative and its members, others were not. Additionally there is the inherent conflict in being a processor profiting from low milk prices and being a producer trying to achieve the highest price possible. Since public policy impacts both producers and processors to such a significant degree, it is hard to impossible for an organization that does both to represent the best interests of either. To the extent that one can, the common overlap is in the areas of stability and predictability. One of the many lessons of the Dairy Compact era is that processors are less interested in what they pay for milk than what they pay *in relationship to their competition* (emphasis added). Additionally, excess market volatility is considered to be costly to producers and processors alike because of impacts on consumer demand, cost and availability of credit and ability to plan for the future of the enterprise. It is precisely because of the societal costs of excess volatility that governments regulate markets of many kinds in the interest of keeping market activity within socially responsible bounds.

When the DFA Board sought out and retained Rick Smith to be CEO of DFA some five years ago, many of us saw the move as a clear statement as to who the cooperative would be representing – the member farmers. It was clear that the cooperative's investments in processing entities were to be guided by their ability to secure both markets and return on investment for farmer members. It was also clear that the cooperative was moving more in the direction of strategic alliances and partnerships than in the concept of vertical integration.

The cooperative has also moved clearly in the direction of cooperation and alliances with other dairy cooperatives rather than taking the "we'll be the last one left standing" approach. Two specific examples of this are Dairy Marketing Services(DMS) and Cooperatives Working Together (CWT).

DMS allows cooperatives to work together marketing their milk while retaining the individual culture and services of their own dairy coop. This entity is where the St.

Albans Cooperative Creamery and DFA work together. It is a model arrangement in the dairy industry.

CWT, of course, is the farmer funded pool that purchases and removes excess dairy animals to reduce dairy surpluses. As America's largest dairy cooperative, such an entity could not be viable without DFA. Clearly DFA is taking a leadership role here in achieving a positive result for their members and the dairy farmers of our country.

I have found Rick Smith to be incredibly open to member input and energetic in pursuing opportunities to help the membership. In November, 2009, I was unhappy about the size of my "advance check" for milk produced in November. An advance check is an estimated payment on the milk being produced in the current month that is made to the farmer before the month is over and the final testing and pricing finalized. Then, two weeks or so after the month has ended, the farm receives a final check for the month reflecting the butterfat and protein content of the milk, quality premiums, etc that effect the actual pay price for the month's actual production. It seemed to me that the advance check was too small in a bull market, and that the cooperative should consider paying the membership as much money as possible in a year when virtually everyone in the industry was losing money rather than carrying some of that money over into 2010 when we expected higher prices and perhaps some actual income tax liability resulting from a profitable year. Rick and senior management put a great deal of effort in seeing just how much they could come up with in the form of a larger advance payment for December. Not only did DFA pay 1.50 per hundredweight out in extra advance payments (that amounted to around \$4,500 more on my 300-cow farm and DFA has nearly 18,000 member farms), but we received our check on December 22 when the check would usually come on the 28<sup>th</sup> of each month. Given that my farm is around the average size, we are talking about approximately \$80 million EXTRA dollars being infused into the farming community right at the end of the worst year most dairy farmers have ever experienced.

Recently, as I began preparing this testimony, I found myself wondering what sort of bonus program DFA had for senior management and whether or not it was aligned with the best interests of the membership. I sent an E-mail to Rick Smith posing this question and in no time at all I had a copy of his documents and a scheduled conference call to review them. Also on the conference call was our regional director, Leon Graves, who served as Commissioner of Agriculture under Governor Howard Dean. A cooperative that seeks out and hires committed and experienced farmer advocates like Leon Graves is exactly the kind of cooperative I want to belong to.

I believe that you will find DFA to be cooperative and transparent as you seek to find the truth behind the allegations of anti-competitive behavior. I can only speak to my personal experiences with DFA over the past 7 or 8 years, and to my own initial concerns and suspicions associated with the arrival of such a large and powerful organization in our little state. I am pleased that your office will be associated with this investigation as your work has a reputation of being vigorous and impartial.