

**Background, Findings, and Recommendations Relative to a  
Petition for Relief from Massachusetts Dairy Producers**

**May 10, 2007**

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## **Background, Findings, and Recommendations relative to a Petition for Relief from Massachusetts Dairy Producers**

### **Introduction**

On January 29, 2007 I received a Petition for Relief Pursuant to Massachusetts General Law (M.G.L.), Chapter 94A, §12 (“Petition”) from Massachusetts Dairy Farmers (“Petitioners”) declaring “Parties”, “Facts”, “Statutory Allegations”, and Requests for Relief (“Relief”) from the market situation resulting from events of 2005 and 2006. Accompanying the Petition were 158 Petition Signature affidavits (“Signatures”) signed by “Licensed Dairy Producing Entit[ies]”, which provided a statement of support, agreement with facts, and a request for the Relief sought in the Petition. An additional seven Signatures were received on or about 26 February 2007 bringing the total number of Signatures to 165.

As the acting Commissioner of the Massachusetts Department of Agricultural Resources (“Commissioner”; “Department”), I initiated an examination and investigation to determine whether conditions in the dairy industry met the three standards articulated in §12 of Chapter 94A (“§12”) and stated as follows: 1) that the Petition has been signed by not less than twenty-five percent of such producers who have during such a representative period, produced and delivered milk for sale or distribution as fluid milk in Massachusetts; 2) that the price to the producer established under authority of this chapter or by any agreement, license, regulation or order made or issued pursuant to any federal law, cannot otherwise be maintained; and 3) that the maintenance of such price is necessary in order to insure a regular, continuous and adequate supply of fresh pure milk sufficient to meet the requirements of said market and to protect the public health. In addition to my examination and investigation, Section 12 also requires a public hearing to ascertain the facts relative to the positions articulated in the petition.

## Background

Since the dual hurricanes of Rita and Katrina struck the Gulf of Mexico in August and September of 2005, the situation for dairy farmers in the Commonwealth, and indeed, nationally, has deteriorated. Prior to those events, costs of production were reasonably stable and milk prices remained strong since September mid-2003.<sup>1</sup> With hurricanes Katrina and Rita affecting a major energy producing area of the United States, energy prices increased significantly during the fall of 2005.<sup>2</sup> In early 2006 milk prices tumbled to historic low levels.<sup>3</sup> In addition to the low prices, unusually wet weather in New England during the spring planting season and first hay harvesting period led to a serious reduction in crop production. The impact from these three factors was significant enough that Governor Romney requested and received a declaration of a state of emergency from the U.S. Secretary of Agriculture Mike Johanns.<sup>4</sup> By that time, the situation for dairy farmers had become dire with falling milk prices and rising production costs.

Neighboring states to Massachusetts, specifically, Vermont and Connecticut provided legislative relief by passing emergency legislation.<sup>5</sup> Such legislation generally offered a direct emergency subsidy and in the case of Connecticut, additional grants and low interest loans to the dairy industry. Vermont came under pressure for not offering any long-term relief after providing a short-term subsidy and found more relief was required with little funds available.<sup>6</sup> Vermont has since provided additional funding and at the date of this writing has provided nearly \$12 million through two separate appropriations.<sup>7</sup>

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<sup>1</sup> See "Northeast Milk Marketing Area Statistical Handbook, January 2000-Present," Market Administrator, Federal Order No.1. Online at [www.fmmone.com/Northeast\\_Order/Nestatnhdbk/NEStatnhdbk.xls](http://www.fmmone.com/Northeast_Order/Nestatnhdbk/NEStatnhdbk.xls), Table A12. "Monthly Milk Cost of Production" ERS, USDA. New York, Various years online at [www.ers.usda.gov/Data/CostsAndReturns/testpick.htm#milkproduction](http://www.ers.usda.gov/Data/CostsAndReturns/testpick.htm#milkproduction)

<sup>2</sup> See "This week in Petroleum, April 25, 2007", Gasoline Prices and Distillate Prices. Energy Information Agency. U.S. Department of Energy. Online at [www.eia.doe.gov](http://www.eia.doe.gov). Natural gas prices also spiked at this time also, which lead to increases in nitrogen fertilizer prices and electricity.

<sup>3</sup> See "Northeast Milk Marketing Area Statistical Handbook," Tab A12.

<sup>4</sup> Mike Johanns, U.S. Secretary of Agriculture "USDA Designates state of Vermont a Natural Disaster Area," June 26, 2006 USDA news Release.

<sup>5</sup> "Governor Rell Unveils New Program to Help Dairy Farmers Lower Costs and Save Jobs", *State of Connecticut Press Release*, July 7, 2006. Online at [www.ct.gov/governorrell/cwp/view.asp?A=2425&Q=317394](http://www.ct.gov/governorrell/cwp/view.asp?A=2425&Q=317394)

<sup>6</sup> "Governor won't support extending dairy subsidy program," *Boston Globe*, January 17, 2007;

"Legislature looking to save more farms from going out of business," *Boston Globe*, January 29, 2007.

<sup>7</sup> "Emergency dairy assistance blows up into political firestorm" *Boston Globe*, February 1, 2007.

The Energy Policy Act of 2005 created strong incentives to increase dramatically the demand for ethanol.<sup>8</sup> It created a waiver for oxygenated fuel requirements, and it established the renewable fuels standards for the refining industry. By waiving the oxygenated fuel requirements, refineries that used MTBE viewed themselves as having a liability exposure if MTBE should show up as an environmental hazard or pollutant. So refineries began turning to ethanol. Furthermore, the renewable fuels standards created even stronger incentives for refineries to begin using ethanol, which is a renewable fuel.

In the fall of 2006, this dramatic increase in the demand for ethanol, which is primarily produced from corn grain, caused a near doubling of corn and other feed grain prices.<sup>9</sup> Feed grains are a major cost component for milk production. So while milk prices began to rebound, increasing feed grains costs stripped farmers of those gains and created an even more critical situation. Consequently, there was an increased call for action from dairy farmers to administrators and legislators that culminated in the above-reference petition.

### **Procedural Chronology**

On February 9, 2007, I issued a memorandum notifying Massachusetts dairy farmers, milk dealers, farm associations, and other interested parties of the receipt of the Petition as well as forthcoming actions relative to the Petition. The Department created a page on our web site for interested parties to obtain information regarding Petition documents and other announcements.<sup>10</sup> On March 2, 2007 I issued a Notice of Public Hearing (“Notice of Public Hearing”) pursuant to M.G.L. Chapter 94A, §§12, 17(a), and 19(a), which announced two hearing dates: March 16, 2007 at the University of Massachusetts, Amherst, and March 20, 2007 at Faneuil Hall, Boston, MA. The Notice of Public

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<sup>8</sup> Energy Policy Act of 2005, 42 USC 15801, online at [www.doi.gov/iepa/EnergyPolicyActof2005](http://www.doi.gov/iepa/EnergyPolicyActof2005). See also “Regulatory Impact Analysis: Renewable Fuel Standard Program,” p. 116, Environmental Protection Agency, April 10, 2007. Online at [www.epa.gov/otaq/renewablefuels/420r07004cover-overview.pdf](http://www.epa.gov/otaq/renewablefuels/420r07004cover-overview.pdf).

<sup>9</sup> See “Ethanol Reshapes the Corn Market,” Economic Research Service, USDA; “Federal Grains Database: Yearbook Tables,” Table 9, Economic Research Service, USDA. See various Wall Street Journal articles as well as corn grain futures markets on the Chicago Board of Trade; “Lower U.S. Corn Crop Rallies CBOT Prices Sharply,” North America Risk Management Services, January 16, 2007; “No USDA Grain Changes-Focus Now on 07/08 Prospects,” North America Risk Management Services, February 13, 2007; “Corn Market Nervous Ahead of USDA’s Ag Outlook Update,” North America Risk Management Services, February 27, 2007. See also “Are Wheat Prices Dependent On Corn Prices,” Southwest Farm Press, February 15, 2007; “For Wheat Prices, watch the CBT July Corn Contract Price,” Southwest Farm Press, April 30, 2007.

Hearing also stated that written comments would be received until 4:00 PM, March 29, 2007 with instructions on how to submit written comments to the Department.

The Notice of Public Hearing was sent to all parties stipulated in M.G.L. c. 94A, §19(a) and was published in the legal notice sections of the *Boston Herald, Worcester Telegram & Gazette, Berkshire Eagle, Lowell Sun, Daily Hampshire Gazette* of Northampton, *The Republican* of Springfield, and *The Recorder* in Greenfield. In addition, the Notice of Public Hearing was sent to each member of the General Court.

Total attendance at both hearings amounted to 173 with 90 attending the Amherst location and 83 attending the Boston hearing. Fourteen individuals attended both hearings. Attendees represented a broad spectrum of the dairy industry with not only dairy farmers, which by far were the largest category, but also farm input and service providers, processors, various farm groups, and consumers. Legislators and other local officials also attended both hearings. The number of attendees who provided oral testimony at both locations was nearly the same: 39 in Amherst and 44 at Boston. Regarding written testimony, I received 120 written comments with a major portion of the comments coming from farmers, farm input-service suppliers, and farmer support associations. The single largest category that submitted written comments was consumers. I also received written comments from legislators, local town officials, and processors, retailers, and associations of these two groups. Finally, I should note that my staff met with dairy processor and retailer representatives on March 26, 2007 to provide further information for our examination and investigation, including the presentation of significant written comment for the record.<sup>11</sup> This meeting was convened similar to other events where my staff participated with Massachusetts dairy producers.

## **Findings**

My staff and I examined the data and information collected during the two-month investigation to determine if there was sufficient information for me, as Commissioner, to take further actions consistent with the authorizing statute. Section 12 of the Massachusetts General Law Chapter 94A limits the possible actions to declaring a state

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<sup>10</sup> Online at [www.mass.gov/agr/dairy/petition.htm](http://www.mass.gov/agr/dairy/petition.htm).

<sup>11</sup> Memorandum from Kent Lage, "Dairy Farmer Petition for Relief, Meeting with Milk Dealers and Milk Dealer Associations March 26, 2007," May 4, 2007.

of emergency and to establishing a minimum retail, wholesale prices, or both. Again, the standards that must be met in order to take actions are:

- 1) the Petition has been signed by not less than twenty-five percent of such producers who have during such a representative period, produced and delivered milk for sale or distribution as fluid milk in Massachusetts (“threshold”);
- 2) the price to the producer established under authority of this chapter or by any agreement, license, regulation or order made or issued pursuant to any federal law, cannot otherwise be maintained (“price maintenance”); and
- 3) the maintenance of such price is necessary in order to insure a regular, continuous and adequate supply of fresh pure milk sufficient to meet the requirements of said market and to protect the public health (“adequate supply”).

**1) The number of signatures exceeded the threshold of 25 %.**

Section 12 requires that the petition be signed by not less than twenty-five per cent of such producers who, during April of the year preceding the petition or such subsequent month as the commissioner may find is a more representative period, produced and delivered milk for sale or distribution as fluid milk in said market. I chose September 2006 as the representative month since that month is a peak demand month for fluid milk and would be consistent with the adequate supply standard. The number of producers as of June 30, 2006 was 191, which implies that the number of signatures must exceed 25% of 191 or 47.75 farms. We found 164 of the 165 signatories held certificates to sell milk for processing in the Commonwealth of Massachusetts, pursuant to M.G.L. C.94, §16 through 16C. Of the 164, we found that 124 had delivered their milk to a fluid milk plant located in Massachusetts during September 2006. This equals 64.9% of the producers, which clearly surpasses the threshold of 25%. Therefore, I find that this petition has met this threshold.

**2) A price established under this Chapter cannot otherwise be maintained.**

Sections 10 through 12 of Chapter 94A provide wide latitude in the price-setting authority of the Commissioner. During the period of 1988 through 1991, previous commissioners attempted to exercise their authority under this chapter. Under those

circumstances the price established under that authority could not be maintained. Then in 1992 the Commissioner of the then called Department of Food and Agriculture issued an emergency declaration, similar to that sought in the current Petition and a Price Order (“Pricing Order”) that established a tax and subsidy program to help support dairy farmers.

The Pricing Order was applied to Massachusetts’s dairy processors, who used milk for the production of “fluid milk” (i.e. fluid milk consumed as a beverage). As applied, the processors would have to pay a “fee” on each gallon of milk sold in the state, regardless of the origin of the milk. Funds generated from the fee would then be used to subsidize the Commonwealth’s dairy farms. That order was challenged by dairy processors on grounds that it violated the Interstate Commerce Clause of the U.S. Constitution (“Commerce Clause”).<sup>12</sup> The case eventually wound up in the U.S. Supreme Court in *West Lynn Creamery v. Healy*.<sup>13</sup>

In a 7-2 decision the Supreme Court ruled in favor of West Lynn Creamery and decided that the Pricing Order had violated the Commerce Clause. The Court stated, “The order is clearly unconstitutional under this Court’s decisions invalidating state laws designed to benefit local producers of goods by creating tariff-like barriers that neutralized the competitive and economic advantages possessed by lower cost out-of-state producers.”<sup>14</sup> In essence, the Pricing Order was violative because, in the Court’s view, it provided in-state producers with an unfair advantage that was comparable to placing a tax or protective tariff on out-of-state milk. As a result of the *West Lynn* decision and other Commerce Clause jurisprudence, the Commissioner may not establish an order, rule, or regulation that sets a minimum price on milk that is favorable to or protective of in-state producers and neutralizes any advantage possessed by lower cost, out of state producers.<sup>15</sup>

To understand the significance of *West Lynn*’s impact, one must be familiar with the farm sources of milk used by Massachusetts processors and consumed by Massachusetts consumers. Approximately 95% of milk used for processing and consumption comes from outside the Commonwealth. Massachusetts dairy farms supply

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<sup>12</sup> U.S. Constitution, Article I, §8, Clause 3.

<sup>13</sup> *West Lynn Creamery, Inc., et al. v. Healy, Commissioner for the Massachusetts Department of Food and Agriculture*, 512 U.S. 186 (1994).

<sup>14</sup> *West Lynn*, at 186.

<sup>15</sup> See *West Lynn* at 193-194 citing *Baldwin v. G.A.F. Seelig, Inc.* 294 U.S. 511 (1935).

only approximately 5% of the milk used by Massachusetts processors. Since, by *West Lynn*, the Commissioner may only establish a minimum price paid by processors for milk produced in Massachusetts, processors, seeking the lowest priced milk, will have the ability to procure cheaper milk from non-Massachusetts dairy farms. If I were to issue an order, rule, or regulation establishing a minimum price to be paid to Massachusetts dairy farms that exceeded the price of that available elsewhere, I've learned through my investigation that most if not all processors would procure milk from non-Massachusetts farms (i.e. less costly milk), and, therefore, leave Massachusetts dairy farms with no market for their milk.

On this basis, I find that the price maintenance standard satisfied.

**3) The maintenance of a higher price to Massachusetts dairy farms is necessary to insure a regular, continuous, and adequate supply of fresh pure milk to meet the requirements of the Massachusetts market.**

Finally the statute requires a finding that the maintenance of the price of milk is necessary in order to insure a regular, continuous and adequate supply of fresh, pure milk sufficient to meet the requirements of said market and to protect the public health therein. Stated plainly, the testimony clearly indicates that the Commonwealth's dairy farmers are in a financial crisis and on the verge of or are going out of business. A clear result from the loss of these businesses would be a significant reduction in the Commonwealth's in-state supply of milk. The consequences of this would include: (1) a greater reliance on more distant supplies of milk, (2) increased retail prices, (3) increased vulnerability of retail prices due to energy cost increases, and (4) potential supply disruptions. With these consequences in mind, it is reasonable to conclude that price maintenance is necessary to insure an adequate supply of milk.

The testimony, both written and oral, provided by dairy farm operators stated that, not only had costs out-stripped the low farm milk prices during the spring and summer of 2006, but also that the increases in feed costs had surpassed, and continue to surpass, the increasing milk prices.<sup>16</sup> Many testified that not only had feed costs increased but also costs of many other items ranging from fuel and electricity to seed and fertilizer had

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<sup>16</sup> See farmer James Larkin, Amherst transcript p. 69. Tedd White of The White Farm, Amherst transcript p. 78-79; written testimony presented on March 23, 2007. William Viverios, written testimony presented on March 20, 2007 at Fanuil Hall hearing p. 93 as examples.

increased also. Testimony further indicated that unpaid bills being carried over from last year have made it difficult to obtain credit or to pay for crop inputs for the upcoming growing season.<sup>17</sup>

Agricultural service and input suppliers offered supporting evidence. These businesses consistently provided information regarding dramatic increases in accounts receivables when typically farmers prepay for the various milk production inputs.<sup>18</sup> Consultants, veterinarians, and bankers noted the financial stresses that Massachusetts dairy farmers are under. Dr. Steven Major, a large animal veterinarian, testified that the financial stress on farmers was also having a negative impact on the health of cows he treats on dairy farms in the area.<sup>19</sup>

From a statistical perspective, many dairy farmers provided cost of production numbers over the past several years, but costs of production from USDA and the Maine Milk Commission were presented also.<sup>20</sup> These statistics provide a broad statement of costs of milk production and support the statements and statistics provided by farmer testimony. Lisa A. Bragg and Timothy J. Dalton's study, "The Cost of Producing Milk in Maine: Results from the 2005 Dairy Cost of Production Survey," show that variable costs of production for those month to month bills, amounted to \$14.00 per hundredweight (cwt). However, when capital costs are added, production costs easily exceed \$20.81 per cwt far out-stripping the \$18.13 per cwt milk price to farms at that time.<sup>21</sup>

The Economic Research Service within the USDA produces a series called the Monthly Milk Cost of Production Estimates for 15 different states. The closest states to Massachusetts are New York, Pennsylvania, and Vermont. Table 1 provides a summary of the average cost of production. If farms only needed to cover operating costs, all would be well, since milk prices have generally been above those costs. However, when

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<sup>17</sup> See farmer Kathleen Herrick from Herrick Farm, Boston transcript pp. 123-124; Barbara Ferry, written testimony presented on March 27, 2007, pp. 806-807 and Gordon Smith, Boston transcript p. 30.

<sup>18</sup> See for example Paul Alexander, Boston transcript pp.19-20; Oral testimony of Michael Stachowicz, Amherst transcript p. 32; Oral testimony of Gordon L. Smith, Boston transcript pp.30-31.

<sup>19</sup> Dr. Steven Major, large animal veterinarian, Amherst transcript, p. 205.

<sup>20</sup> Bob Wellington, written comment pp. 686-688; Bruce Krupke, written comment pp. 1, 8; Michael Stumo written testimony, Exhibit A, Timothy J. Dalton and Lisa A. Bragg "The Cost of Producing Milk in Maine: Results from the 2002 Dairy Cost of Production Survey," pp. 147-148; Michael Stumo written testimony Exhibit B, Sara D. Short "Characteristics and Production Costs of U.S. Dairy Operations for the year 2000," p. 165.

<sup>21</sup> See Lisa A. Bragg and Timothy J. Dalton "The Cost of Producing Milk in Maine: Results from the 2005 Dairy Cost of Production Survey", p. 31, *The University of Maine*, September 2006.

overhead is added in, it is rare that the price of milk will cover the costs of production that amount to over \$20 per cwt.

Table 1. Summary of Average Cost of Production in Dollars per Hundredweight for New York, Pennsylvania, and Vermont for 2006.\*

State	Operating Costs \$/cwt	Overhead Costs \$/cwt	Total \$/cwt
New York	10.53	12.20	22.73
Pennsylvania	13.49	14.26	27.75
Vermont	13.19	12.72	25.91

\* Source: USDA, ERS, *Monthly Milk Cost of Production Estimates*

I would further point out that the Monthly Milk Cost of Production Estimates for each of these states includes considerable increases in feed cost beginning in January 2006. As a representative, data for New York shows feed grain costs rose from \$0.79 per cwt. in January 2006 to \$1.29 per cwt. in February of 2007. Similarly mixed grains rose to \$2.07 cwt. in February 2007 from \$1.72 per cwt. in January of 2006. Costs for fuel, electricity, and lube actually decreased slightly from January 2006 but have nearly doubled to \$0.81 per cwt. in February 2007 from the \$0.50 per cwt. in January of 2005 prior to the dual hurricanes hitting the Gulf cost.

This additional statistical data provides strong support for the testimony submitted, but I recognize that there is a range of production costs. While on average costs may be higher than farm prices, there are farms that may have considerably lower costs than the average and others that are well above it.<sup>22</sup> In any case, the financial stresses indicated in testimony and supported by this data exist.

From finding number (1) above, I know there are 124 Massachusetts dairy farms that deliver milk to fluid milk plants in Massachusetts in September 2006. If those milk supplies are lost, the unquestionable result will be an increased reliance on more distant milk supplies from New York and Vermont. Several individuals testified to this point and suggested that “milk slurry” from concentrating milk from distant producers will be

<sup>22</sup> See First Pioneer Farm Credit *Dairy Farm Summary*, various years; See Bragg and Dalton, p. 26, Table 16.

shipped here and reconstituted.<sup>23</sup> Regardless of the form, standard economics predicts a reliance on more distant milk supplies. Furthermore, since transportation costs associated with out of state milk will be passed onto the consumer, milk costs to the consumer will necessarily increase as transportation costs increase.

By itself, such cost increases to the consumer may be minimal. However, my larger concern is that energy cost increases appear to be here to stay due to shifts in global supply and demand conditions. The emerging economies of China and India, two of the world's most-populated countries, have resulted in a stronger demand for many products the most notable of which are energy and food.<sup>24</sup> As these costs rise the food supply for Massachusetts becomes more vulnerable to increased prices caused by energy prices and supply limitations.

Supply disruptions are no idle consideration. The *Boston Globe* reports that the food industry lacks disaster preparedness plans.<sup>25</sup> The article uses an outbreak of bird flu (Avian Influenza) as an example of a national disaster and notes that many people who consume food outside of the home would turn to supermarkets. The question arises whether the food industry would be able to keep staples such as bread, milk, and meat on the shelves. One need only attempt to purchase a gallon of milk or some bread in the face of a significant snow storm to understand the potential magnitude of this problem. Furthermore, if the disaster involved the transportation system infrastructure, the Commonwealth would need to rely on local food supplies for some period of time and therefore have some level of food production independence. While not being able to supply all of the milk for the Commonwealth's needs, the farms currently remaining could still provide a certain portion of such need. If prices are not maintained at an adequate level, then the Commonwealth risks losing this stable, in-state supply of milk.

Under these circumstances, price maintenance is necessary to **insure** a regular continuous and adequate supply of fresh, pure milk. As stated in Section 12, the Commissioner must determine that price maintenance is necessary to insure this supply.

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<sup>23</sup> James Koebeke, Dairy Farmer, Boston transcript p. 102; Annie Cheatham, CISA, Amherst transcript p. 25; C. Vernon Smith written testimony, March 27, 2007, p. 801; Michael Stumo Petition to Support Massachusetts Dairy Farmers with 2,184 individuals signed pp.551-682; Jessie Brumby Panek written testimony, March 28, 2007 p. 817; Alison Hunt written testimony, March 28, 2007, p. 819.

<sup>24</sup> "Crop Prices Soar, Pushing Up Cost of Food Globally," *Wall Street Journal*, April 9, 2007; "Ethanol Push Adds to Forces Lifting Food Costs," *Wall Street Journal*, April 16, 2007.

<sup>25</sup> "Food industry lacks disaster plan support: Supply disruption feared in epidemic," *Boston Globe*, February 19, 2007.

The failure or potential failure of Massachusetts dairy farms resulting from current price maintenance is a threat to the remaining in-state supply of milk which I believe represents a threat to the overall milk supply of the Commonwealth given the inherent risks that stem from reliance on out of state supplies and the potential impacts of natural disasters or intentional terrorist attacks on the transportation system. In the event of a disaster or other emergency, there is no way to ensure the continuity of an out of state supply. The in-state supply is critical to a regular, continuous and adequate supply of fresh milk. Given real risk of a loss of what may be a significant portion of the Commonwealth's in-state supply of milk because of financial stress, I find that the current price maintenance fails to insure an adequate supply.

As a demonstration of the volatility of milk pricing, milk prices to farmers began to recover during the fall of 2006. Just recently, they have even risen to historic heights and have begun to fall once again.<sup>26</sup> They remain, however, considerably higher than the historic lows of 2006.

Although recovering prices would suggest that there is currently no need for action, I conclude that there is indeed a need for immediate action for two reasons. First, farmers are currently unable to pay last years bills because of the losses they suffered. Without immediate assistance, many testified that they would be unable to plant a crop to insure an adequate feed supply or to secure needed credit to meet ongoing production costs. Second, price volatility remains a concern. As sure as the current run up will peak at some point, milk prices will eventually come back down and may fall to last year's lows while production costs will remain high.

With the above in mind and having met the three conditions necessary for the declaration of the existence of an emergency within the Massachusetts dairy industry I hereby make the following declaration:

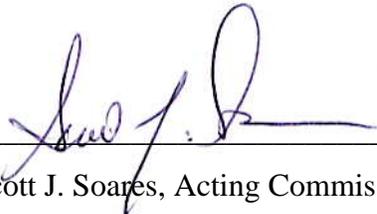
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<sup>26</sup> "Daily Dairy Report," Alan Levitt, *Chicago Mercantile Exchange*, Vol. 11, No. 83, May 7, 2007; "Daily Dairy Report," Alan Levitt, *Chicago Mercantile Exchange*, Vol.11, No.85, May 7, 2007. Online at <http://www.dailydairyreport.com>.

## Declaration of Emergency

Therefore, as Acting Commissioner of the Massachusetts Department of Agricultural Resources, having found that the standards of Massachusetts General Law, Chapter 94A, Section 12 to be met, I do hereby issue a State of Emergency in the Massachusetts Dairy industry.

Set forth this the 10<sup>th</sup> day of May, in the year 2007,

  
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Scott J. Soares, Acting Commissioner

## **Recommendations to Address the Massachusetts Dairy Industry State of Emergency**

Given the *West Lynn* case and other Supreme Court decisions interpreting the Commerce Clause of the U.S. Constitution, the options for establishing minimum wholesale or retail prices, or both, are limited and would be counterproductive regarding the purposes of Chapter 94A. Establishing a minimum wholesale price would only drive processors to purchase milk from outside of Massachusetts, and leave Massachusetts dairy farmers with little or no market for their milk. Establishing a minimum retail price has no benefit to the Massachusetts dairy farmers, since there is no direct correlation between retail price and the price paid to the farmer and, as *West Lynn* demonstrated, there is no mechanism to directly convey the collected fees to dairy producers. Therefore, in order to effect any benefit to Massachusetts dairy producers the only reasonable course of action left is legislative.

To that end, there is a need for short-term and long-term actions. The short-term action must address the financial stress in the Commonwealth's dairy farms that has carried over from 2006. They need immediate financial relief. Therefore, I recommend the provision of an emergency financial relief package in the range of \$3.6 million to \$6.6 million.

The premise supporting the emergency relief estimates is that historically low farm milk prices were coupled with increases in the cost of production, which caused the financial stresses identified in the Petition for Relief. Farm milk prices, however, were only substantially below average for about six months of 2006. The average price during those six months was \$14.06 per cwt.

Data from the examination and investigation suggested that during the six month period of low prices during 2006, the average operating costs of production ranged from \$13.00 per cwt to \$18.00 per cwt. When fixed costs are added that range increases to \$17.00 to \$26.00 per cwt. There is, of course, variability in these averages. When forming subsidy payment formulas, care must be taken to ensure that incentives are not created based upon inefficient or unusually high costs of production. Further justification to avoid the extremes is provided by economic theory that predicts that if a firm can cover its average operating costs, then it will stay in business even though fixed costs go uncovered.

With these issues in mind, an emergency support level was calculated by taking the difference between the average price of the lowest six months of 2006, that is, \$14.06 per cwt, and a measure of the cost of production. In this case, two alternative measures for the cost of production were used: \$16.25 and \$18.00 per cwt. The \$16.25 per cwt production cost is the Department's best-cost estimate for the six-month period. The \$18.00 per cwt came from dairy farmer testimony provided during the investigation and examination of the petitioned concerns. The difference between the average price of the lowest 6 months and these production cost figures was \$2.19 and \$3.94 respectively. One half of a year's (6 months) worth of milk production produced on Massachusetts farms amounts to 1.675 million cwt which, when multiplied by the difference between realized price and production costs, yields \$3.674 million using the Department's cost figure and \$6.6 million using the dairy farmers' reported cost.

If such a subsidy were to be appropriated, I propose the distribution of these funds as follows. First dairy farmers would be given an opportunity to apply for funds. They would have to provide certain information to verify eligibility for the subsidy. One piece of information would be farm milk production for the specified six-month period in 2006. After all production data has been collected, the amount of the appropriated subsidy would be divided by the total production of all those dairy farms that are eligible based upon their submitted application for the subsidy. This would yield a per cwt emergency relief payment. Each dairy farm's payment would then be calculated by multiplying the farm's six-month production by the per cwt emergency relief payment. The calculated amount for each farm would then be issued accordingly.

For the long-term, I recommend that a Dairy Farm Revitalization Task Force be established to study short- and long-term solutions to preserve and strengthen the dairy industry in Massachusetts. The Task Force should consist of an adequate representation of all interested parties who are associated with the Massachusetts dairy industry including but not limited to farmers, processors, retailers, as well as members of the General Court and the Executive branch. The mission of the Task Force should be to investigate options to promote innovation and revitalization of the Massachusetts dairy farming community. Since time is of essence, the Task Force should issue its recommendations no later than September 2007.