

NEWSNOTES

Lake Placid Convention, June 1-3, 2003

Plan on attending our annual convention to be held in beautiful Lake Placid, NY at the Hilton Hotel. The event begins on Sunday June 1, with our opening ceremony cocktail reception and party at the MacKenzie Olympic Ski Jump. You will actually be transported to the site, take a chair lift to the base of the 26 story ski jump structure. Then you will take an elevator to the top and witness one of the best views in the Adirondack Mountains. You'll want to hold on because we will have a ski jumper actually make two demonstration jumps during the party. This is accomplished using high-tech grass like surfaces on the jump and landing sites.

Besides our social event, we have a spectacular line up of speakers for you to listen and learn. Invited to speak are: U.S. Senator Charles Schumer, (schedule permitting); Eleanor Jacobs, Editor, Northeast Dairy Business; George Mueller, Progressive Dairy Farmer, E. Linwood Tipton, President, IDFA; Mark Stephenson, Economist, Cornell University; Will Francis, NYS Dept. of Ag. & Markets; Jim

Muir, Canadian Food Inspection Division. More speakers and panel discussion are being finalized.

Lake Placid is set in the beautiful Adirondack Mountains in Northern NY state. Whiteface Mountain sits as a backdrop to the beautiful village filled with hundreds of stores and shops. Hiking, biking, canoeing and tours of the entire Olympic village sites are available to attendees.

Registration packets will be mailed out in mid-March. We are inviting all past directors to attend to help us celebrate our 75th anniversary. Plan now to attend, it will be a great convention you won't want to miss.

Pictured is 26 story MacKenzie Olympic double ski jump facility in Lake Placid, NY.



Celebrating our 75th Anniversary

California Milk Pricing System Challenged

US Supreme Court to Hear Argument - Attorney's General File Amicus Briefs - NY AG Office Declines to Participate

California's milk pricing system is being challenged by out-of-state milk producers as being unfair and interferes with the interstate commerce clause of the U.S. constitution. In August, 2002, a federal appeals court sided with California in denying a challenge to the milk pricing system filed by Arizona and Nevada dairy farmers.

Six states including Wisconsin, Minnesota, Montana, Arizona, Oregon and Washington joined Nevada in filing a friend of the court brief on Monday, February 24 in support of challenging the California system as unfair.

Wisconsin's Agriculture Secretary, Rod Nilsestuen said the suit, originally filed in 1997 by dairy farmers, presents an opportunity to level the playing field for dairy farmers across the country who competed against the protectionist pricing system enjoyed by California dairy producers. Continued Page 3, left Column, see Supreme Court....

Local Beverage Company Files Suit To Outlaw Soda Vending Contracts

Soda vending machines like the one shown at right in schools, may have met their match recently. A suit was filed recently in Albany County Supreme Court, by tax payers and residents who have joined American Quality Beverage Co., Syracuse, NY, (AQB), challenging vending machine contracts that could be ruled illegal. The contracts between schools and the soda companies are known as "exclusive pouring right" contracts. The contracts require all bidders to be able to supply all of the (Cont. on Page, 6)



Visit our website for up-to-date news and information at:
www.nysdfi.org



Bruce W. Krupke
Executive Vice
President Report

Well everyone, the new legislative and lobbying year is off to a wild start. There is a great deal to report to you. It doesn't matter if you are a processor, distributor, retailer or farmer, this legislative session has something in store for everyone. One of the best ways to keep track of those issues and have a say in what is going on is to visit our association's website. There we have a monthly update on legislative activities and bills of interest. I highly encourage you to check it out at www.nysdfi.org, then click Legislative Report. You'll then be able to search the bills affecting dairy products and packaging. So far there are 15 bills with far reaching problems from including milk packaging in litter and bottle bill control, to price setting laws. If you have a private label milk carton and have your milk processed and sell it in New York State, there is a law which if passed would require you to make unnecessary changes on your packaging. We are opposing this law because it simply is a very bad idea, will cost everyone a lot of money and not achieve its intended goal.

In other legislative news, just this week, I returned from the great State of Connecticut whose Environment committee held a public hearing on newly proposed legislation that will affect everyone selling milk there. In their well intentioned effort, the Connecticut legislature introduced a bill which would mimic our State's retail milk price threshold law. We oppose any price setting legislation. I testified that setting retail price maximums hurts our industry, limits our ability to survive and make a fair profit. It also doesn't help return any more money to dairy farmers. Fortunately, the dairy farm community in Connecticut, unlike here in New York State, agrees with us. In addition there was sufficient retail supermarket and milk processor support voicing their opinions opposing the bill. The Connecticut Food Association, led by veteran lobbyist Grace Nome, successfully gathered what I believe will be enough opposition to stall the bill there.

Unfortunately, a local University of Connecticut professor, Ron Cotteril testified in support of the legislation. He contends that the legislation will force dairy milk distributors and retailers to raise their prices to meet profit needs, thus allowing more money to flow back to the dairy farmer. I contend that Prof. Cotteril has never held a real job and doesn't understand the idea that competition forces prices down, not up.

Unfortunately, that is not the end of the story. Other states such as New Hampshire, Massachusetts, and Rhode Island have introduced similar legislation. It is mind boggling to think that legislators truly believe if you limit the price at the top and regulate prices at the bottom, that an industry can return more money to the dairy farmer. Nothing could be more untrue. Hopefully, our friends in New England can convince their states not to adopt such a restrictive law. I encourage everyone buying or selling milk in any of those states to contact the legislators and oppose the retail milk price setting laws.

In other news, did you here about the Russian milk being sold in NY City? That's right folks, just when you think you've heard it all. A Russian import distributor out of Brooklyn, NY has recalled 700 liters of Russian milk after NY State Agriculture inspectors found it contained prohibited drugs used to treat infected cows. What is amazing is that it made it through the many check points along the way and ended up on the retail shelves. The milk didn't have any English wording or nutrition labeling. The importers didn't have a milk license and just about broke every import rule there is in this country and our state regarding grade a milk products. Its too bad that the product made it that far. I just wonder what will be next?

Marketing

That Makes a Difference

Attention Milk Processors

MilkPEP has developed a new sales kit for drug and convenient stores to help them increase their "fill-in" shopping potential. Each kit includes a "got milk?" brochure, a PowerPoint CD-Rom and a video. The new sales materials will make it easier for processors to educate their customers that milk is an essential and profitable part of the product mix for drug and convenient stores. Research shows that by alerting customers that they carry milk, they may turn existing shoppers into food shoppers who visit more often and may bring in new customers looking for a convenient place to do their "fill-in" shopping. Milk "fill-in" shoppers tend to spend more and visit the store more often.

To order sales kits call 1-800-945-MILK. To learn more about FMSTI or the "fill-in" shopping study, contact Liz Hodges at (202) 220-3525 or at lhodges@idfa.org.

Share Your Marketing Ideas!

Do you have a promotion or marketing idea you would like to share with the industry? If so, please call our office or send us an e-mail. We'll accept stories, concepts, and pictures. Give us a call, we would like to hear from you and so would our other members as well!

Upcoming Events:

Lets play golf!

NYSDFI will be holding its 8th Annual NY State Dairy Foods Ice Cream Clambake Day Golf Tournament. The event is open to anyone interested in attending and you are welcome to entertain clients. Although it helps if you are in the dairy industry or a related supplier type company.

The tournament will be held at new site this year, Rogue's Roost Golf Club on Route 31, Bridgeport, NY on Wednesday July 9th with tee off at 8:00 a.m. The cost will be \$80.00 per individual or \$300.00 per foursome. Golf hole sponsorships are available this year for only \$50.00.

This will be a best ball tournament filled with many extra hole-in-one contests with prizes and extra surprises for everyone.

Information will be mailed in April. If you have never played before and would like to be added to our invitation list, please call our office at (315) 452-MILK, or send us an e-mail at: bkupke@nysdfi.org

**Average US Calorie Intake Up 12%
From 1985 to 2000; Dairy Intake Still
Too Low**

A large increase in average calorie intake without a corresponding increase of physical activity is the main factor in America's rapid growing rate of obesity and Type 2 diabetes, according to an article in USDA's Food Review.

The article, which was written by Judy Putman, Jane Allshouse and Linda Scott Kantor states that many Americans are eating large quantities of added fats and sugars, from the top of the pyramid and large quantities of pasta and other refined grains from the bottom of the pyramid. Which means we are "sorely lacking" in low-fat dairy products, vegetables, fruits and other foods from the middle of the pyramid.

**Supreme Court to Decide
California System, from pg. 1**

"California's program really forces the rest of the country to set its prices accordingly, and in simple terms that means lower prices for our farmers here in Wisconsin and around the country," Nilsestuen said.

California has operated under its own milk pricing system since the 1960's, which is credited with helping that state to become a leader in the dairy industry. In the last 20 years, California's milk production increased 157%. California's pricing system in effect forces out-of-state farmers to sell their milk at artificially low prices to California processors, while subsidizing California dairy farmers who produce fluid milk. The lower cost price for milk sold to California cheese plants has given them a five-cents-per pound advantage over Midwest and Northeast cheese plants. A ruling for the plaintiffs initially would help farmers from surrounding states selling fluid milk to California processors by requiring them to treat farmers the same regardless of where they are located. Dairy farmers nationwide are counting on the decision to prevent California from adding more protections for its dairy industry.

Higher prices paid for milk that goes into butter and cheese eventually would reduce the market advantage California Cheese plants have now. The case is expected to be heard on April 22, 2003.

New York State Dairy Foods, Inc. inquired and encouraged New York State Attorney General's Eliot Spitzer's office to participate in the amicus/friend of the court letter. The Attorney General declined to participate. Bruce Krupke of NY State Dairy Foods, Inc. said "it would have been a good sign for Mr. Spitzer to participate and help our dairy farmers income, and cheese manufacturers ability to compete, unfortunately he chose for some reason not to sign on."

Welcome New Member

New York State Dairy Foods, Inc. would like to officially welcome a new Booster Member!

Thermal Fluids, Inc., Easton, MA
Scot Kudcey, Account Representative

Beef Checkoff Court Date Set

The Eighth Circuit Court of Appeals will hear oral arguments in the appeal of the Livestock Marketing Association's suit against the Beef Checkoff Program on Monday, March 10, 2003, according to a news release from the Beef Board. The hearing will take place in the appeals court in St. Paul, Minn, and is on the docket to begin at 9 am.

The Beef Checkoff Program was established as part of the 1985 Farm Bill. The checkoff assesses \$1 per head on the sale of live domestic and imported cattle, in addition to comparable assessment on imported beef and beef products.

State beef councils retain up to 50 cents on the dollar and forward the other 50 cents per head to the Cattlemen's Beef Promotion and Research Board, which administers the national checkoff program, subject to USDA oversight. The checkoff assessment became mandatory when the program was approved by 79% of producers in a 1988 national referendum vote.

Checkoff revenues may be used for promotion, education and research programs to improve the marketing climate for beef.

USDA Report On Forward Contracting Pilot Program Finds That Participating Producers Lost Revenue

The U.S. Department of Agriculture's long-awaited assessment of its forward contracting pilot program has found that dairy farmers who signed the pricing agreements ended up with 49 cents per hundred-weight less than those who didn't agree to forward contract their milk.

The pilot program was authorized by dairy legislation passed by Congress in 1999. The legislation also called for USDA to study the effectiveness of the forward contracting trial run. In its report, issued earlier this month, the USDA found that the simple average price for contracted milk during the study period (Sept 2000 through March 2002) was \$14.02 per hundred-weight; the same milk would have been paid \$14.51 without contracting.

The USDA also reported that 7% of contracting producers felt obliged to sign a forward contract or lose their outlet for milk. Such a finding buttresses NMPF's long-standing concern that when the volume of milk under contract reaches a critical point, producers will be driven to accept disadvantageous contract prices under threat of losing their milk outlet.

"Because those producers who entered a forward contract suffered a clear revenue loss compared to non-contracting producers, this report is deeply disturbing to us" said Jerry Kozak, President and CEO of NMPF. "There appears to be a bias towards lower producer prices for contracting producers, even in the long run, so these findings certainly don't minimize our concerns about this test program. I think that in this important initial assessment of forward contracting, the program has failed to pass muster, and I doubt Congress will seek to extend it."

The full USDA report can be found at:
www.ams.usda.gov/dairy/for_contr_pilot.htm

Regional & National Dairy News

Subcommittee Chairman Chosen for House Agriculture Committee; New Members Added

The new chairman of the House Agriculture Committee, Rep. Bob Goodlatte (R-VA), has announced who will chair the five subcommittees that have jurisdiction over specific issues under the general agriculture umbrella. There are significant changes at the subcommittee level due to a change in the membership of the agriculture panel.

More importantly, dairy policy will now fall under the jurisdiction of the Department Operations Oversight, Nutrition and Forestry Subcommittee, chaired by Rep. Gil Gutknecht (R-MN). Dairy policy issues previously handled by the Livestock and Horticulture Subcommittee, will now be chaired by Rep. Robin Hayes (R-NC).

The other chairmen are: Frank Lucas (R-OK), who will continue to chair the Conservation, Credit, Rural Development and Research Subcommittee; Jerry Moran (R-KS), Chairman of the General Farm Commodities and Risk Management Subcommittee; and Bill Jenkins (R-TN), Chairman of the Specialty Crops and Foreign Agriculture Programs Subcommittee.

Democratic ranking members for each of these subcommittees are expected to be announced shortly.

Meanwhile, each party has added new members to the House Agriculture Committee, replacing those who either have moved to a different House panel, or who have left Congress.

New Republicans on the Agriculture Committee include: William Janklow (SD), Max Burns (GA), Jo Bonner (AL), Mike Rogers (AL), Steve King (IA), Chris Chocoma (IN), Marilyn Musgrave (CO) and Devin Nunes (CA). New Democrats on the panel include: Rodney Alexander (LA), Frank Ballance (NC), Dennis Cardoza (CA), James Marshall (GA), Ed Case (HI) and David Scott (GA).

New England States Eye Milk-Price Controls

The huge disparity between farm and retail milk prices and the lack of action at the federal level to address the problem is spurring calls for milk-price controls in some New England states. Vermont has established a milk commission to determine who is benefiting from the drop-off in farm prices and will likely recommend legislative action. Lawmakers in both Connecticut and New Hampshire are considering anti price-gouging bills. University of Connecticut agricultural economist, Ronald W. Cotteril, is pushing New England states to adopt a fair-share law. According to Cotteril "the fair-share law links consumers in the major urban areas with farmers in rural New England and New York".

Massachusetts Secretary of State, William F. Galvin, filed legislation that would make it a crime to sell milk at "unconscionably excessive" prices. By definition, any price in excess of 200 percent of what the farmer receives for his milk would be considered "unconscionably excessive". The state's commissioner of food and agriculture supports the new bill but the state's supermarket industry strongly condemns it. Christopher Flynn, president of the Massachusetts Food Association, says "we don't need new laws. The

competitive environment is handling it. You don't create competition and encourage low prices by putting in arbitrary mandates."

Douglas Gillespie, the commissioner at the Department of Food and Agriculture says he will review Galvin's bill and welcomes the prospect of a full debate on the issue.

Dairy Producers Vote In Federal Order Pricing Reforms

Producers supplying milk for each of the 11 Federal milk markets have approved amendments to the current Class III and IV Federal milk order pricing formulas, ending a three-year long process adjusting the formulas for those two milk classes.

The USDA determined producer approval by polling cooperatives in nine markets, and by conducting referenda in the Northeast and Mideast markets. The amended orders will become effective for milk marketed on or after April 1, 2003.

The final rule, published Feb. 11th culminated a process that began with the 1996 Farm Bill. As part of the comprehensive effort to consolidate and reform Federal milk marketing orders in the 1996 Farm Bill, USDA developed pricing formulas for Class III and Class IV milk based on wholesale prices of manufactured dairy products. These pricing formulas were implemented on Jan. 1, 2000.

Congress mandated that USDA review the pricing formulas following the reform effort. A public hearing, requested by NMPF, was held in May of 2000 to consider proposals to change the formulas. Effective Jan. 1, 2001, USDA issued revised formulas that were subsequently enjoined by a U.S. District Court at the end of that month. In October 2001, following the court injunction, USDA issued a recommended decision to alter the pricing formulas. A final decision altering the formulas was issued October 25, 2002, and printed in the Federal Register November 7, 2002.

In a related development, the USDA also issued an interim order amending the current pooling provisions of the Central milk marketing order. The tentative final decision for the Central order, issued November 8, 2002, was approved by dairy farmers.

This interim order amends pooling standards to prevent the inappropriate pooling of milk on the Central order. The approved amendments eliminate the ability to simultaneously pool milk on the Central Milk order and on a State-operated order that has marketwide pooling. It also tightens other pooling restrictions and requirements for the Central order. The interim order becomes effective on March 1.

Join LEAD NY, Learn Legislative Process

LEAD New York is a comprehensive leadership training and professional development program. LEAD New York is currently accepting applications for their class of 2003-2005. Their leadership curriculum is a two-year program based on a series of seminars, workshops and field trips in which participants strengthen their leadership, communication and managerial skills. The program is designed to develop new progressive leaders for New York State's food and agricultural industry. For more information to participate call (607) 255-7907 or visit www.leadny.org.

Some Good Stuff to Know...

New York State Retail Milk Threshold Price Effective March 1, 2003

	<u>Gallon</u>	<u>Half Gallon</u>	<u>Quart</u>
<i>Metro Region:</i> (NYC & Counties Of Nassau, Suffolk, Rockland, Orange, Westchester, Putnam & Dutchess)	\$2.44	\$1.27	\$.67
<i>Upstate Region:</i> (Remaining Counties)	\$2.27	\$1.19	\$.63

A retailer who sells above the threshold price may be in violation of the law unless such selling price is justified as not being unconscionably excessive. Such justification includes net invoice price paid for the milk item plus actual costs incurred in handling and selling that milk item.

Compared to the previous month, the threshold prices decreased \$0.07 a gallon; \$0.03 a half gallon; and \$0.02 a quart in both the Metro region and Upstate regions. These changes reflect the change in the underlying price for Class I (fluid) milk at 3.5% butterfat from the previous month.

Using Glycol Based Heat Transfer Fluids in Dairy Cooling and Chiller

Systems by Scot Kudcey

As most of you in the dairy industry know, Propylene Glycol based heat transfer fluids are used in the cooling and chilling process. But what is Propylene Glycol? Propylene glycol (PG) in chemical terms is known as 1,2-propanediol and is a relatively non-toxic liquid that is colorless, odorless, and tasteless. Because of its very low level of toxicity, it is used in many applications such as coolants. It is also used in many cosmetic and food products (check your shampoo bottle and food coloring bottles at home).

However, it is in the area of cooling that would be of greatest interest to the dairy industry. The two most popular types of glycol coolants are Propylene Glycol and Ethylene Glycol. However, Ethylene Glycol has a much higher level of toxicity and is found in cooling processes where there is no chance of human, beverage or food contact. This is why propylene glycol is the obvious choice for cooling and chilling applications in the dairy industry.

In order for propylene glycol to work effectively in cooling and chilling equipment, it must be blended with an inhibitor package. The inhibitor package prevents the propylene glycol from attacking and corroding the metal, plastic, rubber and pump parts in the cooling systems. This is why a fully inhibited propylene glycol heat transfer fluid must be used in the cooling system and not just pure propylene glycol. When diluting the propylene glycol heat transfer fluid, it is highly recommended that either distilled or de-ionized water be used. Municipal tap water varies greatly from one town to the next and the impurities in the untreated

tap water can degrade the inhibitor package more quickly than distilled or de-ionized (DI) water will. Remember, propylene glycol based heat transfer fluids do not last forever, but blended with the correct water and maintained properly, you should get at least 5-6 years out of a high quality heat transfer fluid. When purchasing a propylene glycol heat transfer fluid, be sure the PG is USP Grade and the inhibitor package is made with food grade ingredients.

Why should PG based heat transfer fluids be used in place of sweetwater? The main reason is that the freeze point of a PG heat transfer fluid is much lower than sweetwater. A 50/50 blend of PG heat transfer fluid and DI water will give a freeze point of -28 degrees F whereas untreated sweetwater will freeze at 32 degrees F. The freeze point of the PG heat transfer fluid can be adjusted by varying the concentration of the water used to dilute it. You should not, however, dilute the PG heat transfer fluid to less than 30% PG. When you dilute the PG heat transfer fluid, you are also diluting the inhibitor package which protects the system from corrosion.

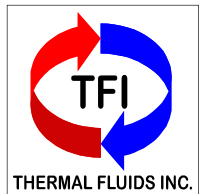
The percentage of PG heat transfer fluid can be periodically checked using an Optical Refractometer. This highly accurate piece of equipment uses light refraction to measure the concentration of PG in a PG/water solution. Occasionally, the pH and Reserve Alkalinity must also be tested to insure the operational strength of the inhibitor. Most manufacturers can do this for a minor charge and there are also many independent labs that can also provide this service.

The main points to remember are 1) use only a fully inhibited, USP Grade Propylene Glycol based, heat transfer fluid, 2) blend with distilled or deionized water at concentrations at or above 30% and 3) test the solution periodically. By following the above, you should get an efficient and long lasting heat transfer fluid that protects your cooling and chilling equipment.

Lastly, I would like to thank Mr. David Brown of the Department of Food Science at Cornell University in Ithaca, NY for all his help.

(Scot Kudcey works for Thermal Fluids, Inc. of Easton, MA, a manufacturer of glycol based heat transfer fluids)

PROPYLENE GLYCOL HEAT TRANSFER FLUIDS



Fully inhibited propylene glycol heat transfer fluids designed for use in all types of dairy processing equipment and chillers. Made with USP Grade (FDA approved) Propylene Glycol and Food Grade inhibitors.

In Western New York call: Deckman Oil Company at: 1-(800) 836-0562

For all other areas call us directly at: 1-800-640-8011 or visit our website at: www.thermalfluidsinc.biz

Thermal Fluids, Inc., Easton, MA 02334

Calendar of Events

June 1-3, 2003 75th Annual New York State Dairy Foods, Inc. and Pennsylvania Association of Milk Dealers Combined Convention. Hilton Hotel, Lake Placid, NY. Call NYSDF at 315-452-6455 for hotel reservations, name badge registration, golf tournament, & Booster tables and golf hole sponsor forms.

July 9, 2003 8th Annual NY State Dairy Foods Ice Cream Day Golf Tournament at Rogue's Roost Golf Club, Route 31, Bridgeport, NY. Shot Gun Tee Off at 8:00 a.m.

July 9, 2003 Northeast Ice Cream Suppliers Clambake, Hinerwadel's Grove, N. Syracuse, NY. call Peter Garafalo at 603-434-9512 for ticket information

Dairy Market Watch

MILK PRODUCTION: New York dairy herds produced 1.04 billion pounds of milk during January, according to the New York Agricultural Statistics Service. This total is up 0.7% from the January 2002 level. The increase was the result of more milk cows.

PRODUCTION PER COW: Milk production in New York during the calendar year 2002 totaled 12.2 billion pounds, up 3.7% from the 2001 output. National output for the year totaled 169.8 billion pounds, 2.6% above 2001. Milk producers in New York State received an average of \$12.50 per hundred-weight for milk sold during January, down 10 cents

Sales Update - Fluid Milk

The latest data from USDA show sales of packaged fluid milk through October 2002 up 0.3%. In the first ten months of 2002, whole and fat-free continue to post slight decreases while sales of lowfat trended significantly upward. Supermarket volume sales through the first week of November were down 0.6%; however, total milk sales at all supermarkets, drug stores and mass merchandisers including Wal-Mart were up a considerable 1.6% and flavored and chocolate milk continued to post significant gains of 10.6% and 11.2% respectively.

<i>Product</i>	<i>October Sales vs. YAGO</i>	<i>Year to Date (thru October)</i>
Whole Milk	-0.8	-0.1
2% Reduced Fat Milk	0.2	0.2
1% Low fat Milk	2.4	2.3
Fat Free Milk (Skim)	-1.4	-0.5
Buttermilk	-2.9	-3.4
Total Fluid Milk Products	0.6	0.3

<i>Region</i>	<i>October Sales vs. YAGO</i>	<i>Year to Date (thru October)</i>
Northeast	-1.6	-0.3
Appalachian	-0.9	-0.8
Southeast	-0.2	-0.9
Florida	0.6	1.6
Mideast	0.9	0.5
Upper Midwest	0.4	0.4
Central	-1.0	-0.1
Southwest	-2.6	0.5
Ariz.-Las Vegas	0.4	2.6
Western	0.1	0.8
Pacific Northwest	1.2	-0.5
California	3.1	1.3

YTD Supermarket Sales, ending 11/02/02 vs. same period last year. (Source IRI)

Total Fluid Milk	-0.6
White	-0.8
Whole White	-1.0
Reduced-Fat White	-0.1
Low fat White	-0.3
Fat-Free White	-2.3
Total Flavored	7.5
Chocolate	7.7

YTD Supermarket, Drug and Mass Merchandisers including Wal-Mart sales (volume), ending November 3, 2002, vs. same period last year. (Source IRI).

Total Fluid Milk	1.6
Total Flavored	10.6
Chocolate	11.2

*MilkSplash, January 2003
USDA Data*

from the previous month. Milk production in the 20 major states during January totaled 12.5 billion pounds, up 1.8% from production in these same states during January 2002. Production per cow averaged 1,608 pounds for January, 17 pounds above January 2002. The number of cows on farms in the 20 major states was 7.81 million head, 56,000 head more than a year ago, January 2002, and 4,000 head more than a month ago, December 2002.

THE NUMBER OF MILK COWS: The number of milk cows totaled 680,000, up 5,000 from January of the previous year. Milk per cow averaged 1,530 pounds, unchanged from January 2002.

Soda Contracts Illegal, From Page 1

Fluid beverages in the contract, locking out most bidders except for the two large soda companies because they can't supply the soda products. The contracts have become popular with local NY State school districts.

Milk products are exempted from the products specified in the bids because the two major soda companies don't process or sell milk. Although the contracts discourage milk companies from installing milk machines because they are not allowed to sell other products such as water or juices to the schools other than milk.

The petitioners allege the NYS Commissioner of Education's earlier determination that the contracts were legal is wrong. Thus, through administrative process, the petitioners are now able to challenge their six points of why the contracts are illegal in court. Some of the arguments include: the Commissioner's determination is contrary to Education Law governing after-hours use of school property; the NYS Constitution which prohibits public property being used to benefit a private corporation; and the state law that governs the competitive bidding of public contracts; and the regulation prohibiting commercialism on school property.

"Requiring booster clubs, parents, and members of the community using school property to purchase a product from a particular supplier violates the NY State Constitution," AQB's attorney Ross Getman argues. Getman points to cases involving yearbook photographers and class ring salesmen where the Commission of Education found that a parent could not be required to buy from a particular vendor. It is naive to think, Petitioners note, that the money is coming from a soft drink company. Instead, the money under such agreements is coming from the parents, teacher and members of the public who purchase the beverages.

Getman also argues that the NYS Constitution and Education Law embody the principle that a school district, if it chooses, may close the door to all outside organizations, but if it opens the door, it must treat alike all organizations in the same category. The parents also challenge the 6-foot-high point-of-sale displays on the vending machines which use fluorescent lighting. A decision from the court could come in 3-4 months, with appeals likely by both sides.

QUESTION OF THE MONTH

Question: How should the 12 month FMLA eligibility requirement be calculated for returning military service members?

Answer: The Uniformed Services Employment and Reemployment Rights Act requires that a person reemployed under its provisions be given credit for any months he or she would have been employed *but for* the military service in determining eligibility for FMLA leave. A person reemployed following military service should be given credit for the period of military service towards the months-of-employment eligibility requirement. This would also apply to the 1250 hours-of-service requirement.

Do you have comments regarding our newsletter, responses to our editorials or info you want to share? If so, send us your thoughts in writing to the address at the top right corner of page 1 or email us at: info@nysdfi.org