



PennState Law

Center for Agricultural
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Quarterly Dairy Industry Legal Update Federal Milk Marketing Order Reform with Dr. Andrew Novakovic

Tuesday, April 27, 2021

12:00pm – 1:00pm (EDT)





Quarterly Dairy Legal Update

- **This webinar will be recorded**
- CLE credits:
 - Link will be posted in the chat
 - Please fill out form
 - Questions?
 - Email: jks251@psu.edu



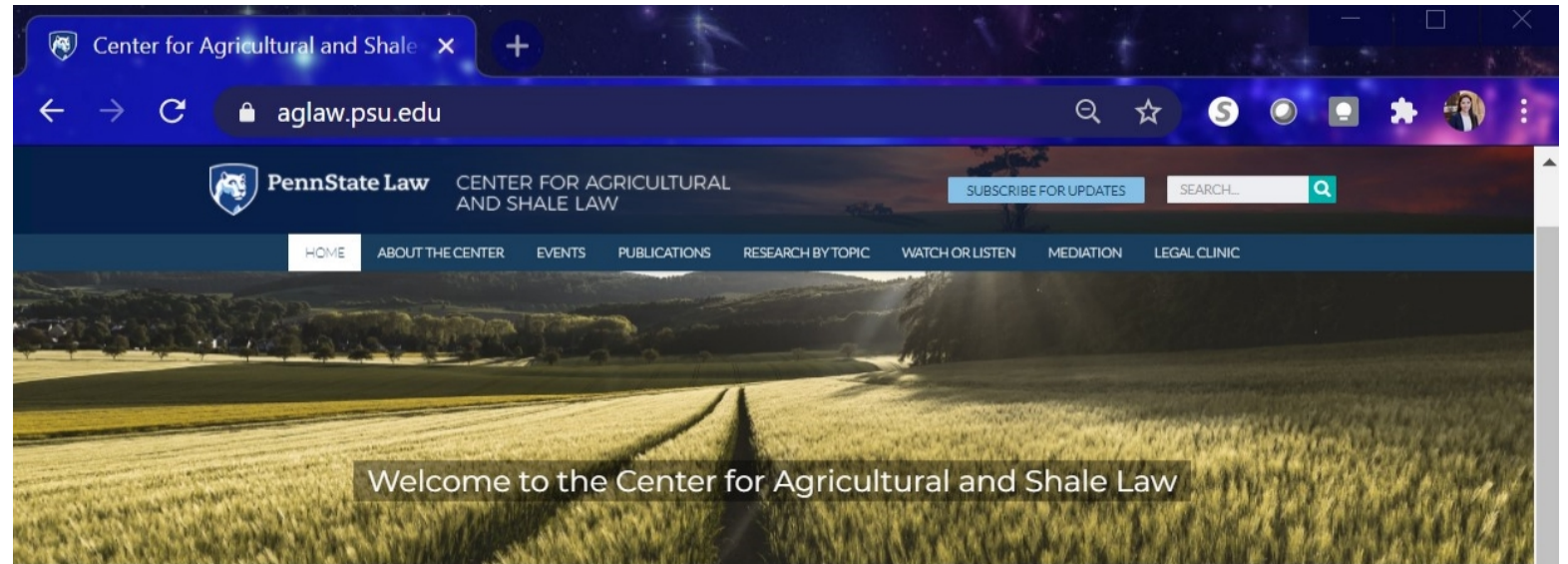
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Agricultural Law Weekly Review - Week Ending April 16, 2021

COVID-19: Farmer to Families Food Box Program Ends; Fresh Produce Box Purchases and Dairy Donation Program Planned 🌱 According to statements made by Secretary Vilsack posted to USDA's website on April 14, 2021, the Farmer to Families Food Box Program will be terminated at the close of April 2021 when the current funded vendor contracts end. On April 14, 2021, Reuters reported that USDA Communications Director Matt Herrick stated USDA is focused on different hunger initiatives, including expanding food stamp benefits and increasing food purchases through existing government food distribution programs. On April 9, 2021, USDA released a Pre-Solicitation Announcement [...]

April 21st, 2021

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Agricultural Law Weekly Review - Week Ending April 9, 2021

Antitrust: Court Approves \$58 Settlement in Peanut Class Action Suit 🌱 On April 5, 2021, the U.S. District Court for the Eastern District of Virginia approved a \$58 million settlement agreement between the plaintiff peanut farmer Settlement Class and defendant peanut shellers Birdsong Corporation and Olam Peanut Shelling Company, Inc. in a civil antitrust class action suit alleging that the defendant companies over- and under-reported peanut inventories to the U.S. Department of Agriculture (USDA) to manipulate prices. In re Peanut Farmers Antitrust Litigation, No. 2:19-cv-00463. The approval follows the court's March 2021 back-to-back orders, absent accompanying explanatory opinions, approving the [...]

Tweets by @AgShaleLaw

A screenshot of two tweets from the Twitter account @AgShaleLaw. The first tweet, posted 1 hour ago, contains a link to a 'ShaleLaw HotLink' about unrestrained shale growth and price war, with tags for @APIenergy, @BNNBloomberg, #APISmartBrief, #shale, #oilandgas, and #shaleoil #OPEC. The second tweet, also posted 1 hour ago, contains a link to an 'AgLaw HotLink' about Tyson Fresh Meats joining US CattleTrace, with tags for @MeatPoultry, #tyson #meats, and #freshmeat. Below the tweets are options to 'Embed' and 'View on Twitter'.

A snippet of a Facebook post from the Penn State Center for Agricultural and Shale Law. The post shows the center's profile picture, the name 'Penn State Center fo...', and '103 likes'. There is a 'Liked' button and a 'Send Message' button visible.

A snippet of a Facebook profile for the Penn State Center for Agricultural and Shale Law, showing the profile picture and the name.



Virtual Resource Rooms

- Agricultural Law Virtual Resource Rooms
- Shale Law Virtual Resource Rooms

Virtual Resource Rooms provide links to statutes, articles, websites, and other resources



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Case Law

The following resources represent a collection of court filings and judicial opinions regarding the Pennsylvania Right to Farm Act. Furthermore, the decisions may be viewed via an online legal database using the mentioned docket number.

This list of cases is not exhaustive.

Branton v. Nicholas Meat, LLC

Superior Court of Pennsylvania, No. 536 MDA 2016

- [Opinion](#) (Apr. 4, 2017) (holding that RTFA's "lawful" requirement under § 954(a) is satisfied if an agricultural operation "substantially complies with relevant federal, state, and local laws." The court stated that "a lawful use is not rendered unlawful simply because an owner may have been cited for an infraction for noncompliance in connection with the use." Nevertheless, the court ruled that while the application and storage of food processing waste are normal agricultural operations under RTFA, the construction of a 2,400,000-gallon storage tank was a "substantial change" to the agricultural operation. As a result, because the suit was brought within one year of the change, the case was not barred under RTFA)

Burlingame v. Dagostin

Luzerne County Court of Common Pleas, No. 2015-02092



Agricultural Law Weekly Review

- Posted weekly
- Provides overview of agricultural legal developments

The screenshot displays the website's header with the Penn State Law logo and navigation menu. The main content area features the title "Agricultural Law Weekly Review" and a brief description. Below this, there are two main sections: "Agricultural Law Weekly Review - Week Ending April 16, 2021" and "Agricultural Law Weekly Review - Week Ending April 9, 2021". Each section includes a headline, a short summary, and a "Read More" link. The right sidebar contains "OUR PUBLICATIONS" with links to "Agricultural Law in the Spotlight", "Agricultural Law Weekly Review", "News", "Shale Law in the Spotlight", "Shale Law Weekly Review", and "The CASL Ledger". At the bottom of the sidebar are three podcast and video channel icons: "AG LAW PODCAST", "SHALE LAW PODCAST", and "YOUTUBE CHANNEL".



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Agricultural Law Weekly Review

The Agricultural Law Weekly Review provides an update of recent agricultural law developments from local, state, national, and international levels. [Subscribe for updates.](#)

Agricultural Law Weekly Review – Week Ending April 16, 2021

COVID-19: Farmer to Families Food Box Program Ends; Fresh Produce Box Purchases and Dairy Donation Program Planned 🌱

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April 21st, 2021 | Tags: [Ag-Gag Statutes](#), [Biotechnology](#), [COVID-19](#), [Food Safety](#), [Packers and Stockyards Act](#), [Pennsylvania Farm Bill](#), [Water Quality](#)

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Agricultural Law Weekly Review – Week Ending April 9, 2021

Antitrust: Court Approves \$58 Settlement in Peanut Class Action Suit 🌱

On April 5, 2021, the U.S. District Court for the Eastern District of Virginia approved a \$58 million settlement agreement between the plaintiff peanut farmer Settlement Class and defendant peanut shellers Birdsong Corporation and Olam Peanut Shelling Company, Inc. in a civil antitrust class action suit alleging that the defendant companies over- and under-reported peanut inventories to the U.S. Department of Agriculture (USDA) to manipulate prices. [In re Peanut Farmers Antitrust Litigation](#), No. 2:19-cv-00463. The approval follows the court's March 2021 back-to-back orders, absent accompanying explanatory opinions, approving [...]

April 15th, 2021 | Tags: [Antitrust](#), [Conservation Programs](#), [Environmental Policy](#)

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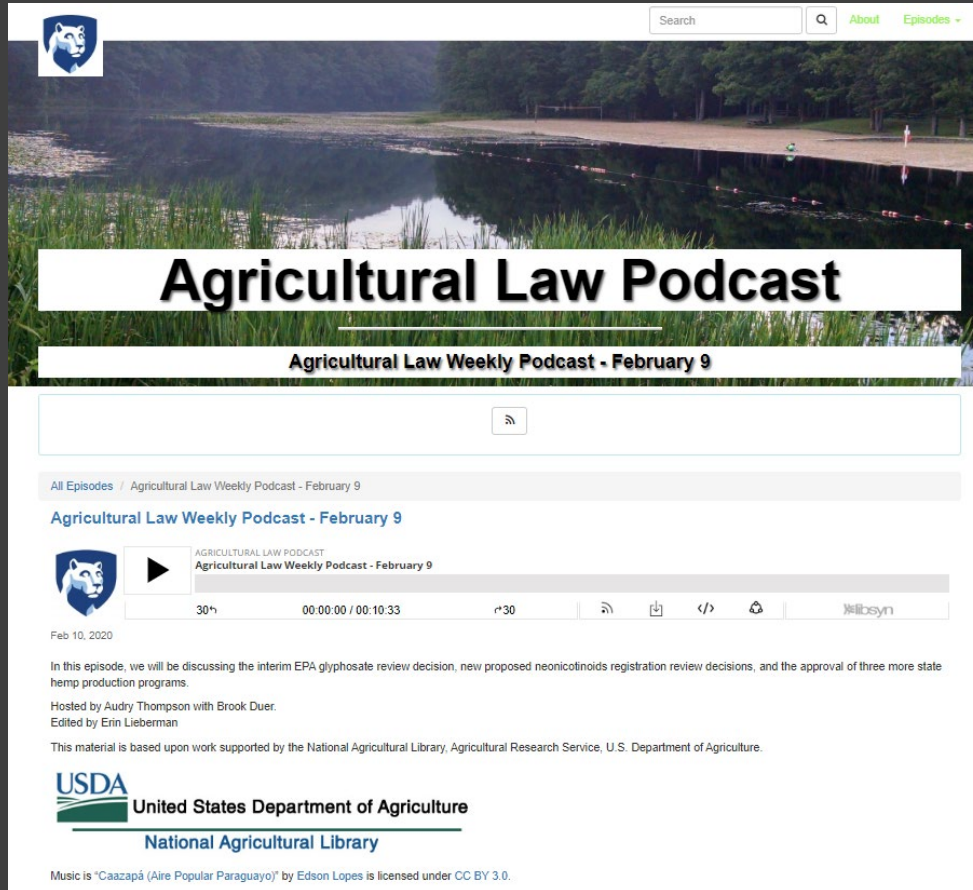
> [News](#)

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The screenshot shows the website for the Agricultural Law Podcast. At the top left is a logo featuring a blue shield with a white animal head. To the right is a search bar and navigation links for 'About' and 'Episodes'. The main header features a large image of a pond with reeds and the text 'Agricultural Law Podcast' in a white box. Below this is a sub-header 'Agricultural Law Weekly Podcast - February 9' and a feed icon. The content area includes a breadcrumb trail 'All Episodes / Agricultural Law Weekly Podcast - February 9', the episode title 'Agricultural Law Weekly Podcast - February 9', and a player interface with a play button, a progress bar showing 00:00:00 / 00:10:33, and a 30-minute duration. Below the player is the date 'Feb 10, 2020' and a paragraph of text: 'In this episode, we will be discussing the interim EPA glyphosate review decision, new proposed neonicotinoids registration review decisions, and the approval of three more state hemp production programs. Hosted by Audry Thompson with Brook Duer. Edited by Erin Lieberman. This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture.' At the bottom is the USDA logo and the text 'United States Department of Agriculture National Agricultural Library'. A small note at the very bottom states: 'Music is "Caazapá (Aire Popular Paraguayo)" by Edson Lopes is licensed under CC BY 3.0.'

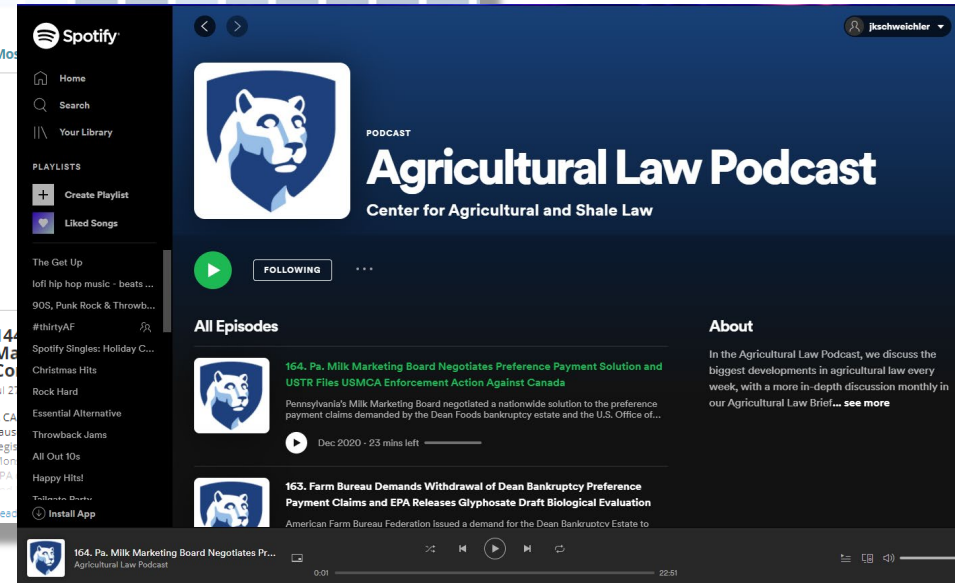
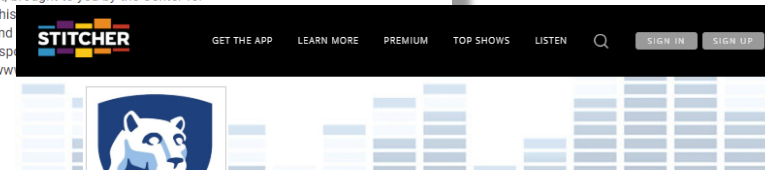
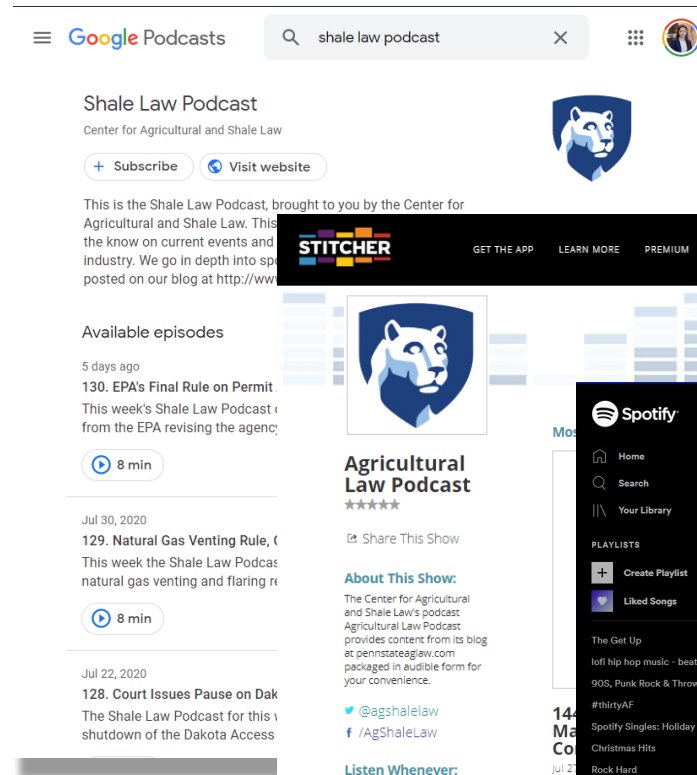


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Thanks to Our Partners

The Center for Agricultural and Shale Law is a partner of the National Agricultural Law Center (NALC) at the University of Arkansas System Division of Agriculture, which serves as the nation's leading source of agricultural and food law research and information. This material is provided as part of that partnership and is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture.





Today's Timeline

- Recent Legal Developments in the Dairy Industry
- Background on Federal Milk Marketing Orders
- Federal Milk Marketing Order Reform Discussion
 - With Dr. Andrew Novakovic
- Questions



Quarterly Dairy Industry Legal Developments

Round-Up for First Quarter of 2021

USMCA Dispute with Canada / Update: No public information is available re: the on-going confidential USMCA negotiations between the U.S. and Canada over the U.S. [objection](#) to Canada's allocation of [tariff-rate quotas](#) subsequent to the execution of the USMCA. The details of this dispute were covered in detail in Webinar #2 of the series available [here](#).

Dean Foods Bankruptcy

- Chapter 11 Bankruptcy Plan (the equivalent of a liquidation) [approved by judge](#) on March 17, 2021.
- There is no new public information about continued pursuit of Avoidance Claims against dairy producers who sold raw milk to Dean Foods during the 90-day pre-filing preference period. Presumably, the PMMB-negotiated method for producers nationwide to secure withdrawal of claims is proceeding as planned.



Dean Foods Bankruptcy (cont.)

Dean Required to Pay \$29 Million to USDA for Unpaid Federal Milk Marketing Order Pool Obligations and Federal Dairy Check-Off Program Debt

On January 15, 2021, the U.S. Bankruptcy Court for the Southern District of Texas entered a [Stipulation and Order](#) agreed to between Southern Foods Group, LLC, and its various affiliated companies in Chapter 11 bankruptcy, and the United States Department of Justice requiring Dean to pay, within thirty days, the sum of \$29,082,182, representing 90% of unpaid amounts owed for milk marketed in April and May of 2020, to USDA for Federal Milk Marketing Order (FMMO) pool obligations and marketing order program obligations to the National Dairy Promotion Board and the National Fluid Milk Processor Promotion Board. The stipulation was subsequently [announced](#) by USDA's Agricultural Marketing Service on January 19, 2021. There are post-petition debts that remained the obligation of the bankruptcy estate, not the purchasers of any assets (DFA, etc.).



Dairy Farmers of America Settles with Maryland & Virginia Dairy Cooperative, Food Lion

On February 24, 2021, the U.S. District Court for the District of Middle District of North Carolina filed an entry of settlement in a suit against Dairy Farmers of America (DFA), which sought to compel the company to divest one of the three North Carolina Dean Foods processing facilities it obtained in its April 2020 bankruptcy sale acquisition of Dean Foods. *Food Lion, LLC v. Dairy Farmers of America, Inc.*, No. [1:20-cv-00442](#). The [complaint](#), filed by Food Lion, LLC and Maryland & Virginia Milk Producers Cooperative Association (MDVA) in May 2020, claimed that the sale produced anti-competitive effects because it essentially allowed DFA regional control over both raw milk supply and markets for processed and packaged dairy products. According to a March 3, 2021 [mediator's report](#), complete settlement of the case was reached at mediation conferences held February 22 and 23, 2021. On April 2, 2021, the parties filed a Stipulation of Dismissal with Prejudice. While the mediator's report states that a settlement agreement is in preparation, no details of the settlement have been released.



DFA Sells Two Dairy Plants to Complete Antitrust Stipulation for Dean Foods Purchase

As of March 24, 2021, Dairy Farmers of America (DFA) has finalized the sale of two former Dean Foods dairy processing plants (located in De Pere, Wisconsin and Harvard, Illinois) to a partnership between New Dairy Opco and Select Milk Producers, according to an [announcement](#) by investment banking and bankruptcy restructuring firm Capstone Headwaters, who represented the buyers. New Dairy Opco is the entity which purchased the majority of Borden Dairy Company's assets out of its bankruptcy in July 2020. The sale was part of an October 2020 [stipulated judgment](#) entered in the U.S. District Court for the Northern District of Illinois [ordering the divestiture](#) as the conclusion of the [U.S. Department of Justice's](#) Antitrust Division investigation into the DFA purchase of Dean Foods assets. *United States of America v. Dairy Farmers of America, Inc.*, No. [1:20-cv-02658](#). On December 17, 2020, the stipulated judgment was [amended](#) to drop a former Dean Foods dairy plant in Franklin, Massachusetts (and ancillary facilities) from the original list of three dairy plants acquired by DFA subject to the divestiture order. The purchase price for the two sold plants was undisclosed.



USDA Announces New ‘Pandemic Assistance for Producers’ Initiative

On March 24, 2021, the U.S. Department of Agriculture announced its new \$6 billion financial assistance initiative, ***USDA Pandemic Assistance for Producers***. Combining existing programs with new spending, the initiative aims to resolve disparities in previous assistance related to COVID-19. It includes the new:

Dairy Donation Program – created by a \$400 million appropriation from the Consolidated Appropriation Act of 2021 enacted December 27, 2020.

- It will be administered in conjunction with the [2018 Farm Bill-authorized](#) existing program called the [Milk Donation Reimbursement Program](#). However, the new program is intended to reimburse at a **higher rate** than the FMMO minimum producer price.
- Funding: 2019 - \$9 million; 2020 - \$5 million; \$400 million for 2021 to reimburse processors and cooperatives for charitable food system donations of multiple dairy products. Can be for donations made retroactive to 12/27/20.
- No administrative details are released yet, but preliminary details are available here: [USDA Provides Notice of Retroactive Reimbursements Under the Dairy Donation Program, Encourages Donation of Surplus Dairy Products](#)



Pennsylvania Milk Marketing Board Releases Final Regulation on Cooperative Over-Order Premium Disclosure

On March 2, 2021, the Pennsylvania Milk Marketing Board delivered to the Pennsylvania Independent Regulatory Review Commission (IRRC) and the General Assembly Agriculture Committees the [final form regulation packet](#) for [Regulation 47-20](#), “Transactions Between Dealers and Producers; Payment.” The regulation amends 7 Pa. Code § 143.15 to require cooperatives to furnish a line item on members’ monthly statements that identifies the over-order premium (OOP) amount paid, calculated in a prescribed manner consistent with the financial structure of a dairy cooperative. By taking no action by April 14, 2021, both the Pennsylvania House and Senate Agriculture Committees are deemed to have [approved](#) the regulation. On April 15, 2021, after a hearing, the IRRC entered an [Order](#) approving the regulation. Once approved by the Pennsylvania Office of Attorney General for “form and legality,” it will become effective 120 days after PA Bulletin publication as a final form regulation.

The calculation

1. Total PA-OOP received by the cooperative \div the total cwt. of all PA-member milk marketed = Amount of PA-OOP earned by each cooperative member (per cwt.)
2. Amount of PA-OOP earned by each cooperative member \times the cwt. marketed for the cooperative member = ***The amount of PA-OOP to be stated on the milk check*** (per cwt.)



California to Hold Referendum on Discontinuing State Quota Premium System

On January 25, 2021, the California Department of Food and Agriculture (CDFA) issued an [Order](#) (adopting an administrative hearing [recommendation](#) approving a [petition](#)) requesting a producer referendum to implement a flat quota rate of \$1.43 per hundredweight (cwt) for all counties in the state and thereafter eliminate the current California state Quota Implementation Plan (QIP) as of March 1, 2025, via a proposed [Sunset Plan](#). Under the current state QIP program, California dairy farmers receive a premium, funded through California “milk pool” deductions, for quota-covered raw milk (which is unavailable for non-quota milk). [According to CDFA](#), the referendum voting period is March 4, 2021 through June 1, 2021.

- For an excellent history of California’s Quota system before and after the establishment of the California FMMO, see Hoard’s article titled [California’s quota has been 60-plus years of compromise](#).

Pennsylvania Government-supplied Farm Bulk Tank Calibration Services Phased Out

On January 27, 2021, the Pennsylvania Milk Marketing Board (PMMB) issued a bulletin (No. [1591](#)) declaring that for cooperative members it will phase out farm bulk tank calibration services beginning April 1, 2021 and will no longer perform such services by May 1, 2021. According to the bulletin, the PMMB will continue to provide this service for independent producers until the board permanently ends the farm bulk tank calibration program on December 31, 2021.



BONUS MATERIAL / SLIDES:

- The remaining slides provide additional educational information and materials for which there may not be sufficient time in this portion of the webinar.
- These slides are provided as further reference materials on dairy industry legal or other issues of note arising or becoming relevant during the first quarter of 2021.



Dairy Reports and Resources of Interest

- **Federal Milk Marketing Order Education and Reform Impacts** - Webinar by Dr. Marin Bozic (April 13 , 2021).
 - The link above Includes video of the webinar and the PowerPoint, as well access to two documents prepared by Dr. Bozic.
 - Negative Producer Price Differentials in Federal Milk Marketing Orders: Explanations, Implications and Policy Options - examines the causes of negative PPDs and policy options which could change the outcomes
 - Analysis of Producer Price Differentials for March 2021 looks at the negative PPDs in seven Federal Orders for the month of March 2021 - looks at the negative PPDs in seven Federal Orders for the month of March 2021.
- **Dairy Policy: FARM program publishes 2020 Year in Review**

On February 22, 2021, the National Dairy FARM (Farmers Assuring Responsible Management) Program announced the publication of its 2020 Year in Review. National Dairy FARM was created by the National Milk Producers Federation in partnership with Dairy Management, Inc.



AFBF Market Intel (February 26, 2021)

AFBF published [USDA Report: U.S. Dairy Farm Numbers Continue to Decline](#)

- It analyzed [USDA NASS' February 2021 Milk Production Report](#) providing **year-end data for 2020**.
- **Year-over-year decline in the number of dairy operations continues** a long trend of farmers deciding to exit the dairy business. Since 2003, the U.S. has lost more than half of its licensed dairy operations, now just shy of 32,000 dairy operations.
- USDA's Milk Production report showed that annual milk production in the United States in 2020 was 223 billion pounds, **increasing just over 2%** from the 218 billion pounds produced in 2019.
- While the **total milk cow inventory at the end of 2020 was the highest since 1995**, herd **expansion is likely to stop this year** and the cow inventory could potentially decline. In addition to a higher cow inventory at the end of 2020, the January cattle inventory report showed a **decline in heifers being retained** for milk cow replacement. The replacement heifer as a percentage total milk cows rate sits at 48.8%, the lowest level since 2009.
- Milk produced per cow in the U.S. averaged 23,777 pounds for 2020, 382 pounds above 2019's 23,395, marking a strong year-over-year gain. Unlike the fluctuating overall number of cows, **milk production per cow has steadily increased** approximately 11.5% from 2011. In 2021, USDA predicts that daily output per cow will increase nearly 1.7%, which would be the **highest rate of growth since 2014**.

Figure 1. Milk Cow Increase in 2020, Uncertainty in 2021

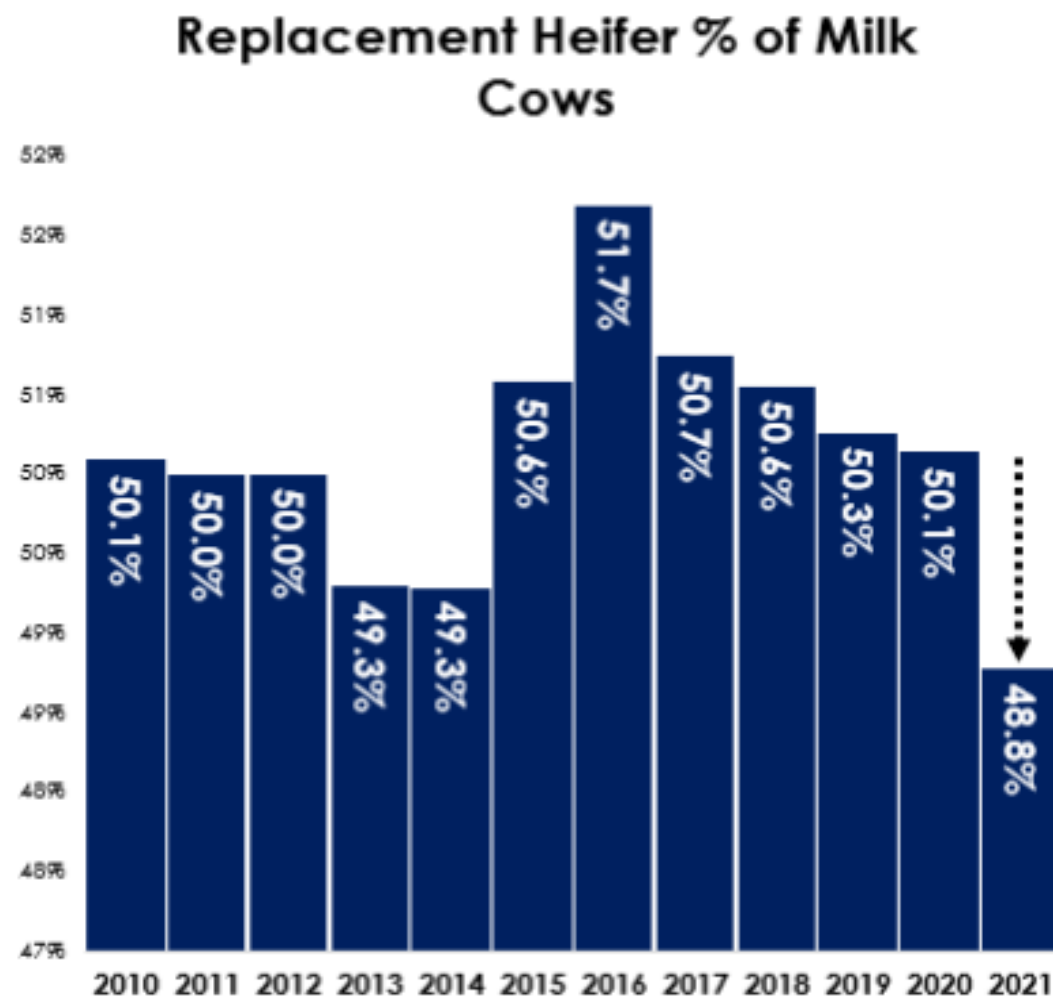
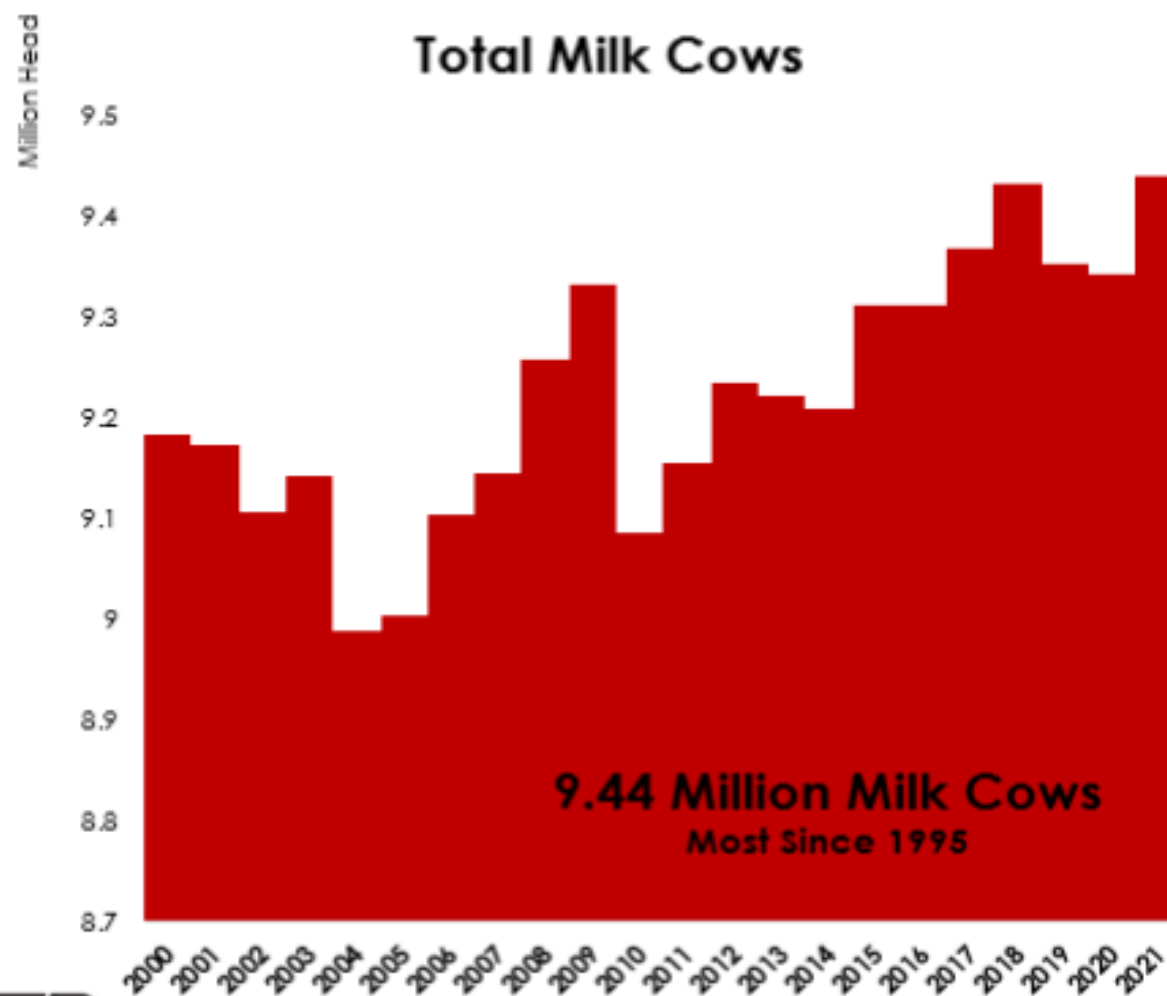


Figure 2. U.S. Milk Production by State

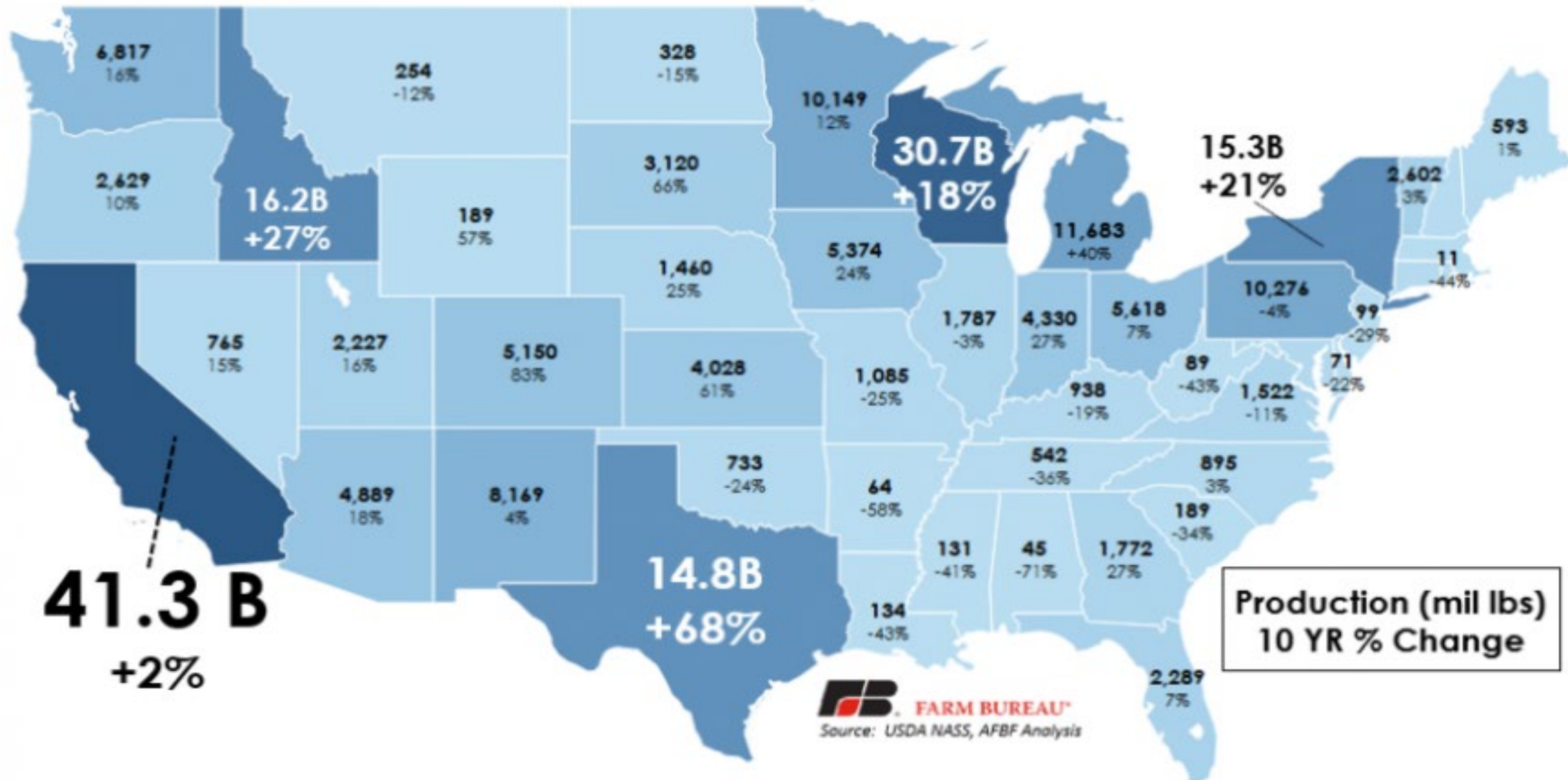


Figure 3. Declining Number of Licensed Dairy Herds

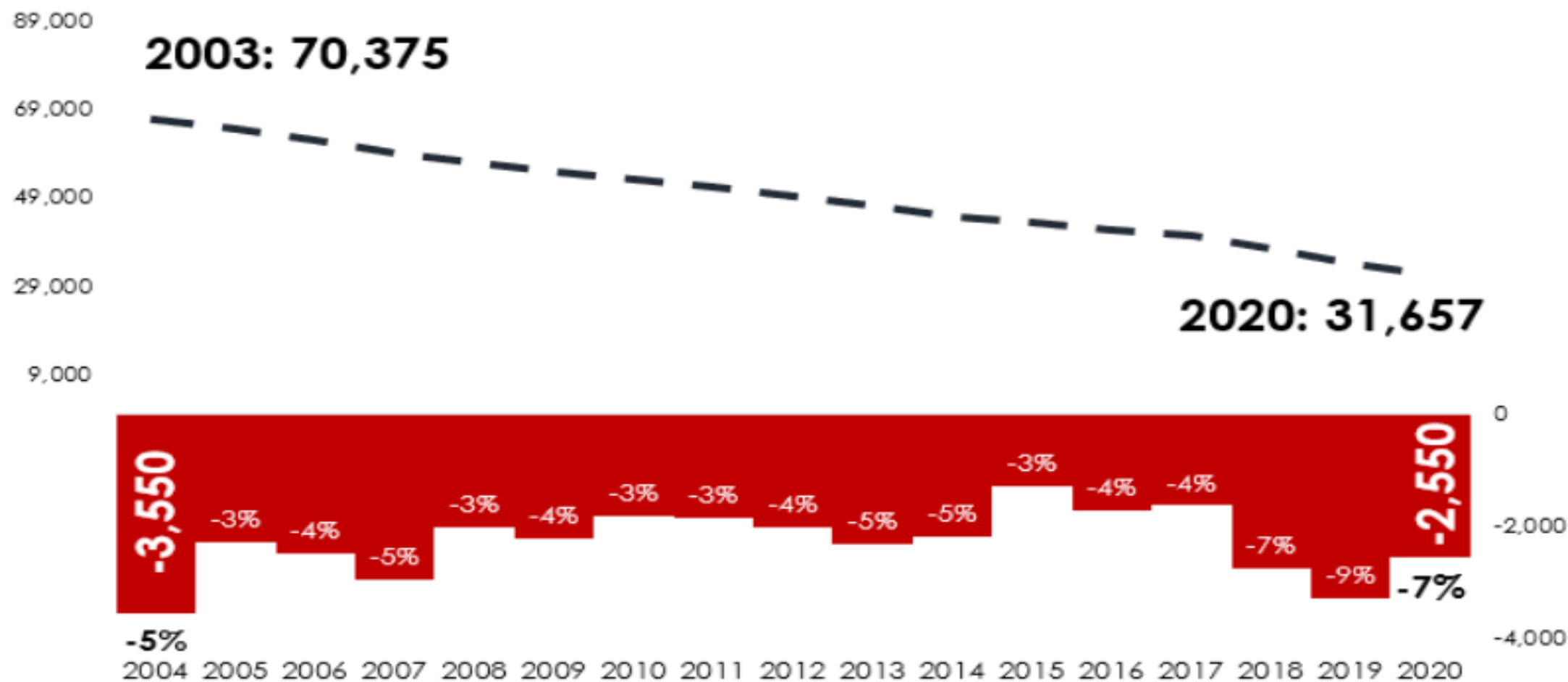
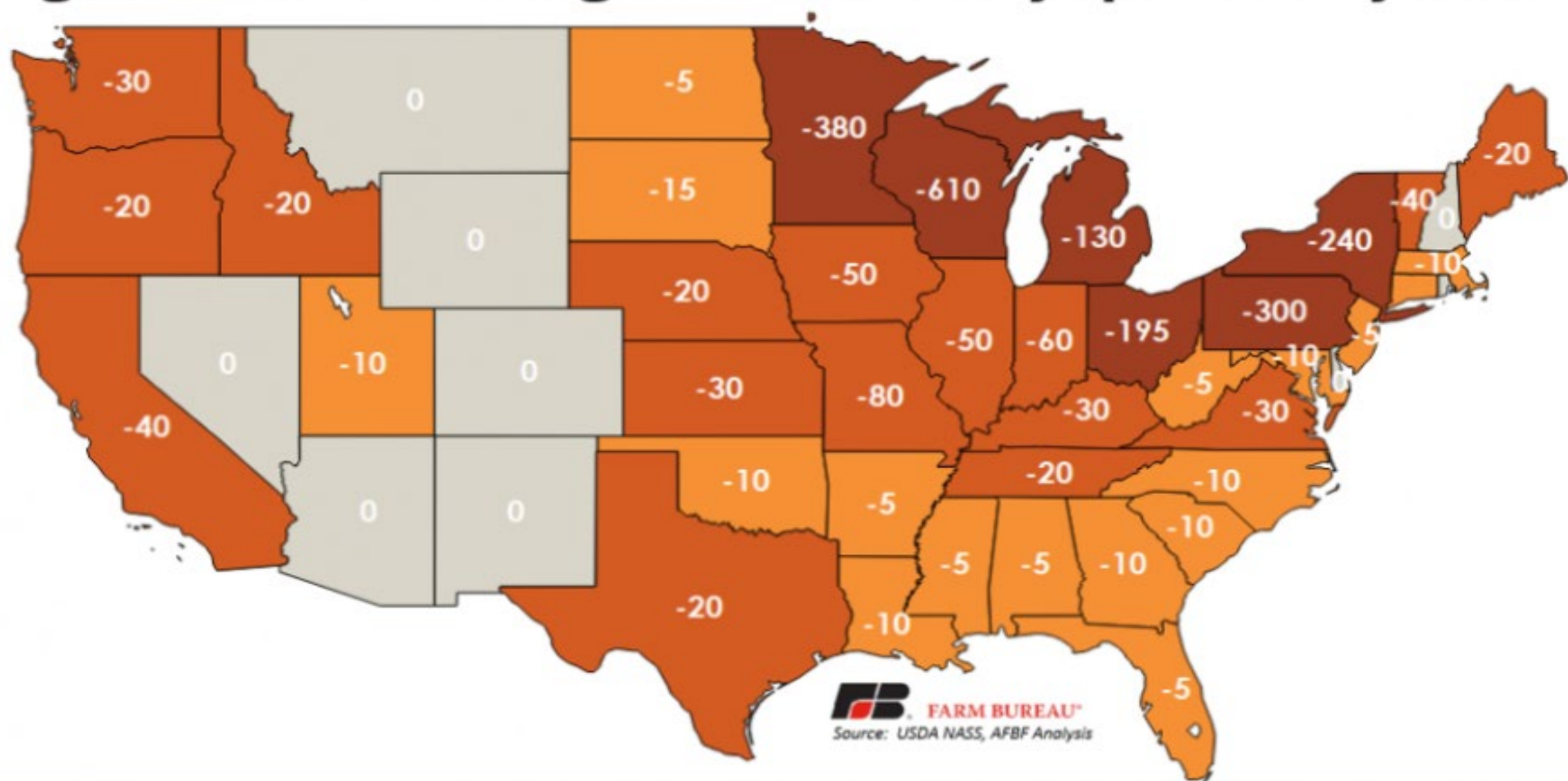


Figure 4. 2020 YOY Change In Licensed Dairy Operations By State



FARM BUREAU
Source: USDA NASS, AFBF Analysis



***ICYMI* - Miscellaneous items from 4Q 2020**

International Trade: USDA and FDA Sign MOU to Coordinate, Collaborate on Dairy Exports

On October 1, 2020, the U.S. Department of Agriculture's (USDA) Foreign Agricultural Service (FAS), Agricultural Marketing Service (AMS), and the U.S. Food and Drug Administration (FDA) [announced](#) their establishment of a Memorandum of Understanding ([MOU 225-20-017](#)), indicating their intent to cooperate and collaborate regarding the export of milk and milk products from the United States. Under the MOU, FAS will lead communications with foreign governments while AMS will facilitate exports and issue dairy sanitary certificates. Additionally, FDA will verify the regulatory standing of milk producers and processors and issue the export certificates required by the importing nations. The MOU became effective upon signature of the parties and will be evaluated at least every 5 years.

- **Update: [USDA to Launch New Electronic Trade Certification System for Dairy](#).** The U.S. Department of Agriculture (USDA) will launch the Agriculture Trade Licensing & Attestation Solution (ATLAS) on May 6, 2021. Once [ATLAS](#) is launched, dairy exporters will be able to use the portal to request and receive export certificate documents needed to engage in global trade.

Organic Agriculture: USDA-NASS 2019 Organic Survey Released

On October 22, 2020, the U.S. Department of Agriculture (USDA) National Agricultural Statistics Service (NASS) [issued](#) the results of the [2019 Organic Survey](#). The last NASS Organic Survey was performed in 2016. Among many other notable results, Pennsylvania led the nation in organic broiler chicken sales with \$360,059,291 and organic egg sales (chicken) with \$104,000,815.815. [See next slide for excerpt.](#)

Table 18. Certified Organic Livestock Products and Poultry Products Sales: 2019

[For meaning of abbreviations and symbols, see introductory text.]

Commodity and geographic area	Farms	Quantity	Dollars
MILK FROM COWS (POUNDS)			
United States	3,100	5,122,684,816	1,585,156,721
Alabama	3	2,107,322	881,000
Arizona	1	(D)	(D)
California	150	889,290,462	273,122,038
Colorado	8	276,652,358	(D)
Connecticut	1	(D)	(D)
Florida	3	8,450,000	3,556,295
Georgia	2	(D)	(D)
Idaho	29	364,524,076	124,539,806
Illinois	13	8,908,903	2,351,701
Indiana	246	142,678,892	43,428,429
Iowa	105	70,705,742	19,103,218
Kentucky	47	24,326,365	7,165,635
Louisiana	9	32,807,401	11,794,678
Maine	88	61,387,355	19,724,215
Maryland	26	34,262,091	11,872,002
Massachusetts	14	8,976,752	3,142,398
Michigan	93	66,684,699	20,019,826
Minnesota	125	138,891,803	38,244,305
Mississippi	19	56,400,333	20,487,730
Missouri	21	14,850,197	3,799,984
Montana	1	(D)	(D)
Nebraska	2	(D)	(D)
Nevada	1	(D)	(D)
New Hampshire	20	7,952,950	2,642,417
New Mexico	5	166,387,834	46,780,589
New York	607	386,732,234	121,421,791
North Carolina	9	5,181,342	1,615,203
Ohio	260	128,388,287	38,977,023
Oklahoma	1	(D)	(D)
Oregon	40	321,420,989	103,404,214
Pennsylvania	362	215,797,929	64,899,446
South Dakota	6	4,259,524	896,742
Tennessee	3	6,700,000	2,180,000
Texas	9	821,868,224	261,307,470
Utah	4	7,535,000	2,305,234
Vermont	172	202,401,003	66,720,125
Virginia	20	16,227,452	5,232,880
Washington	45	136,897,016	39,243,624
West Virginia	5	4,307,000	1,618,175
Wisconsin	525	440,963,146	125,728,786



USDA and HHS Release Dietary Guidelines for Americans 2020–2025

On December 29, 2020, the U.S. Department of Agriculture (USDA), in partnership with Health and Human Services (HHS), [announced](#) the publication of [Dietary Guidelines for Americans, 2020–2025](#).

The guidelines include, for the first time, nutrition needs for children from birth until twenty-three months and focus food choices for all age groups on nutrient-dense foods, which contain the necessary vitamins and minerals with minimal or no additional sugars, saturated fats, or sodium. For persons aged two and older, the guidelines advise that saturated fat be limited to ten percent of daily caloric intake. While the dairy guidelines for persons aged two and older call for consumption of fat-free and low-fat milk, yogurt, and cheese, and state that a cup of whole milk contains seventy-five percent more calories than a cup of fat-free milk (146 calories as opposed to 83), the recommended daily dairy servings for children ages twelve months through twenty-three months are based upon consumption of whole milk.



Quarterly Dairy Industry Legal Update

FOCUSED TOPIC:

Federal Milk Marketing Order Reform

Guest: *Dr. Andrew Novakovic* [\(CV\)](#)

Professor Emeritus of Agricultural Economics
Cornell University



Required reading - if you want to understand where we are (and test your ability to keep up):

Making Sense of Your Milk Price in the Pandemic Economy:

Negative PPDs, Depooling, and Reblending

By Mark Stephenson and Andrew Novakovic

June 26, 2020



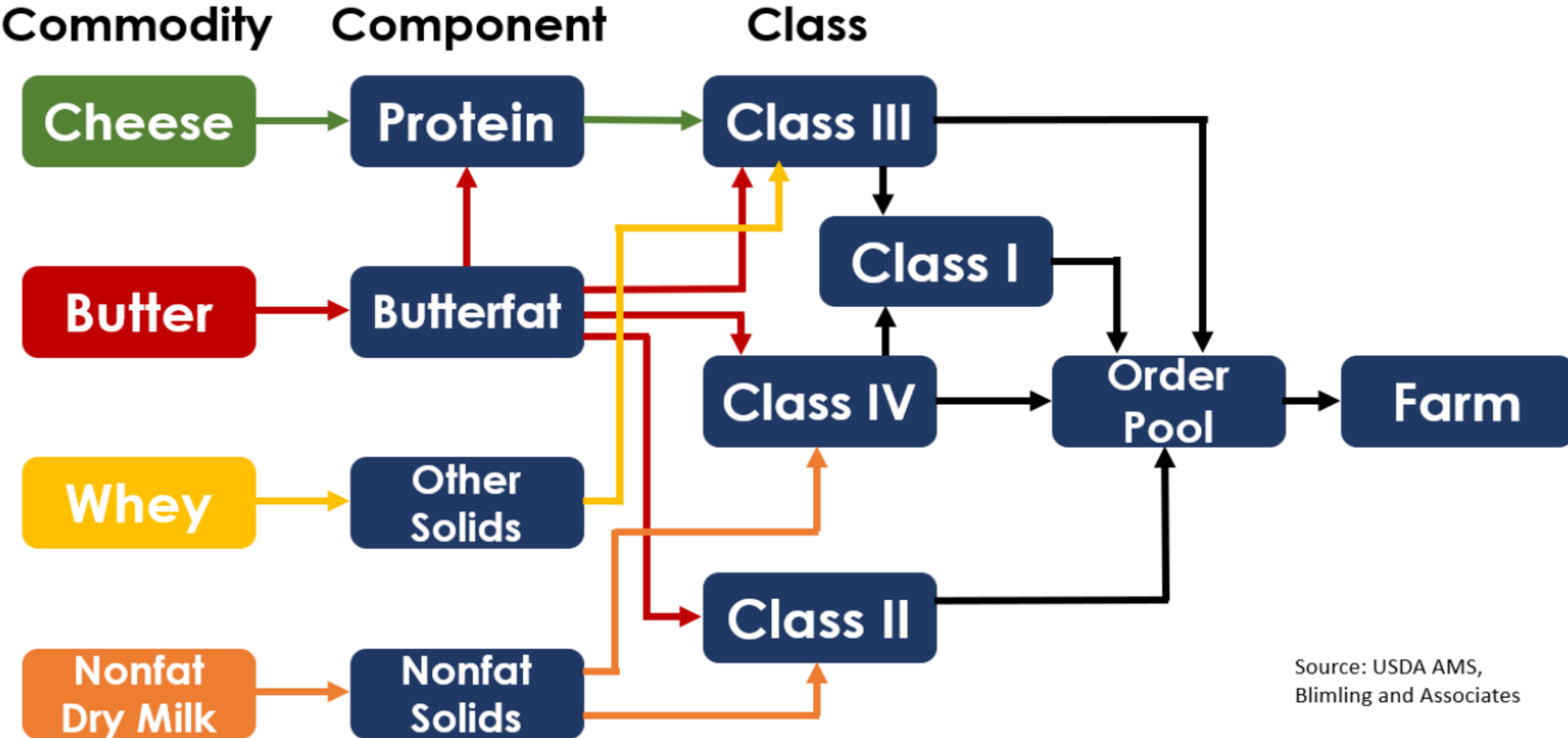
Information Letter Series



Laying a little foundation

- Advance apology for extreme over-simplification (and occasional misstatement) - we have some “dignitaries” in the audience.
- I know first-hand how “eyes can glaze over” on this topic.
- Simple FMMO Objective: Spread the benefit of higher Class I fluid milk revenues across more producers.
- Method: Market-wide mandatory “pool” of Class I revenues (and optional “eligible” Class II, III, IV revenue) through a monthly system of setting advance minimum pay prices and then “truing it up” after the market dictates the final result for the month. Participating producers (milk included in the pool) get a uniform price.

Figure 2. Commodity Value Flows in Pricing



Source: USDA AMS, Blimling and Associates

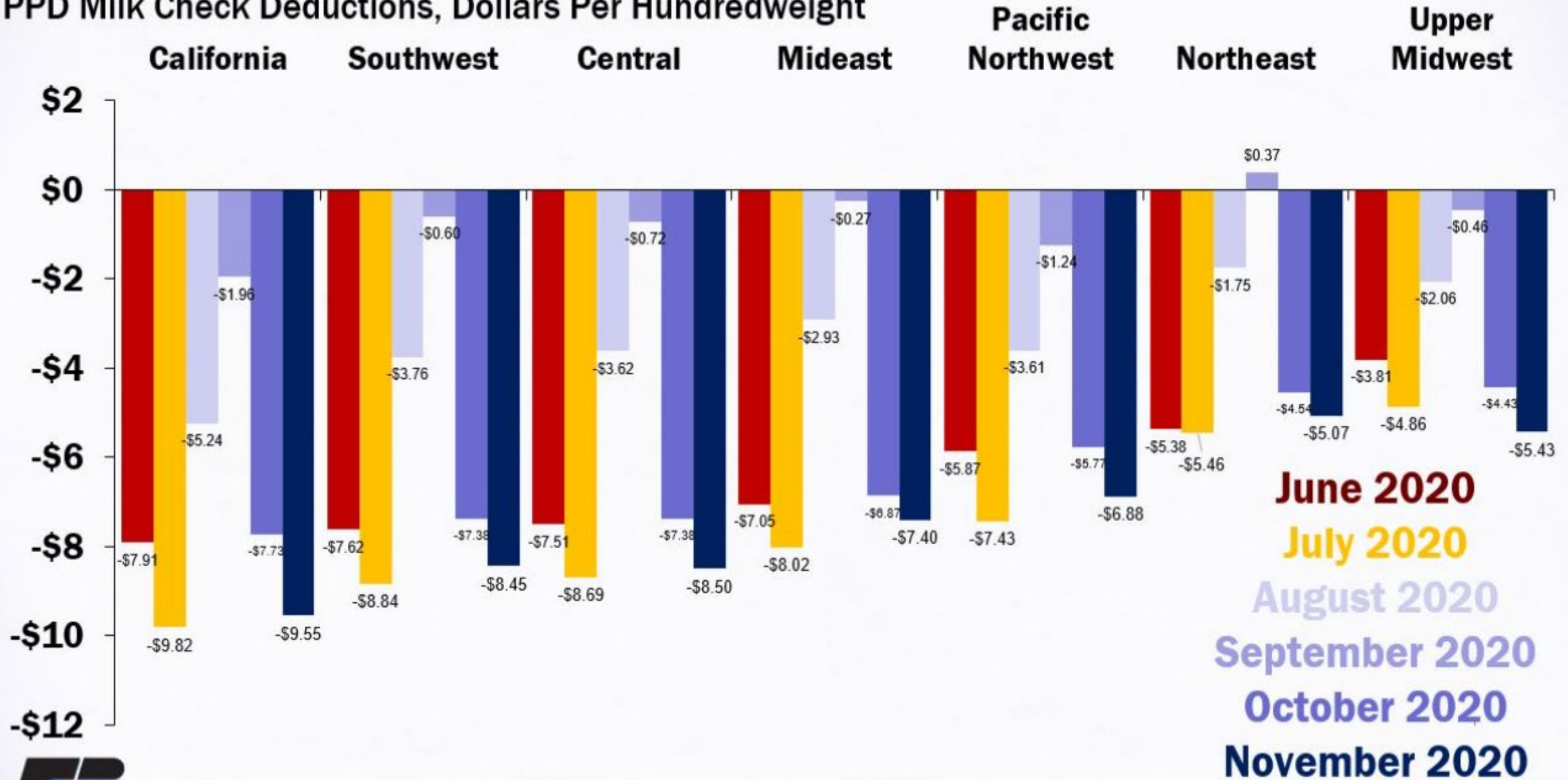


Pandemic-induced distortion of system

- Attention intensifies perception that “system broken.”
- FMMO components in play (in last slide) date back to 2000 “reform.”
 - [64 FR 70868 and](#) see USDA AMS’ dedicated [webpage](#) for adopted Orders.
- May 2019 – a change was made in calculation of the Class I “Producer Price Differential” (PPD) (pursuant to 2018 Farm Bill amendment).
- Why are we here? – next slide please

June Through November Producer Price Differentials

PPD Milk Check Deductions, Dollars Per Hundredweight





Latest Development - Producer Price Differential's "Class I Mover"

- The current sore spot in Class I Price Determination

DAIRY FARMERS TO SEEK EMERGENCY USDA HEARING ON CLASS I MOVER REFORM

April 23, 2021

The National Milk Producers Federation's Board of Directors voted today to request an emergency USDA hearing on a Federal Milk Marketing Order proposal to restore fairness for farmers in the Class I fluid milk price mover. . . The current mover was adopted in the 2018 farm bill and intended to be revenue neutral while facilitating increased price risk management by fluid milk bottlers. But the new Class I mover contributed to disorderly marketing conditions last year during the height of the pandemic and cost dairy farmers over \$725 million in lost income.





From National Milk Producers Federation (cont.):

“While the current Class I mover was designed to improve the ability of fluid milk handlers to hedge milk prices using the futures market, it was also expected to be revenue-neutral compared to the formula it replaced. But that has not been the case.

The significant gaps between Class III and IV prices that developed during the pandemic exposed dairy farmers to losses that were not experienced by processors, showing the need for a formula that better accounts for disorderly market conditions.

NMPF’s proposal would modify the current Class I mover, which adds \$0.74/cwt to the monthly average of Classes III and IV, by adjusting this amount every two years based on conditions over the prior 24 months, with the current mover remaining the floor. NMPF’s request will be to limit the hearing specifically to proposed changes to the mover, after which USDA would have 30 days to issue an action plan that would determine whether USDA would act on an emergency basis.”



“For nearly two decades the price for Class I milk, i.e., milk used to produce beverage milk products, was based on the **higher-of** the advanced Class III and Class IV skim milk price. Class III milk is used to produce cheese and Class IV milk is used to produce nonfat dry milk powders. Advanced pricing allows fluid milk processors to know their milk procurement costs up to six weeks in advance and the higher-of element ensured fluid milk prices were always based on the highest-priced manufacturing class of milk.”

Figure 1. Class I Milk Price Volatility During COVID-19

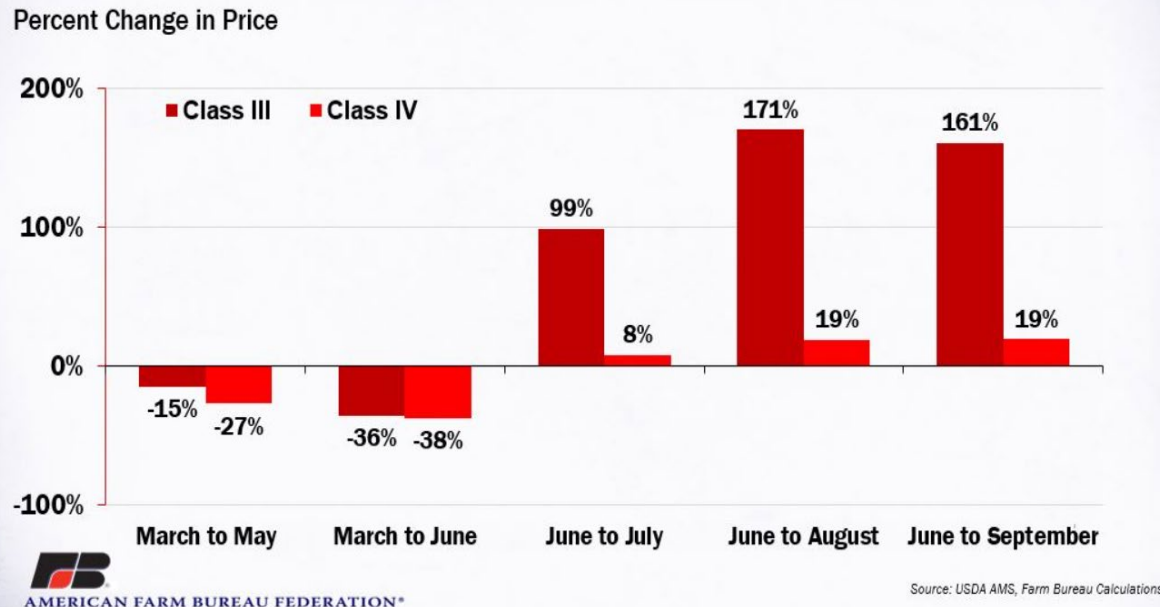
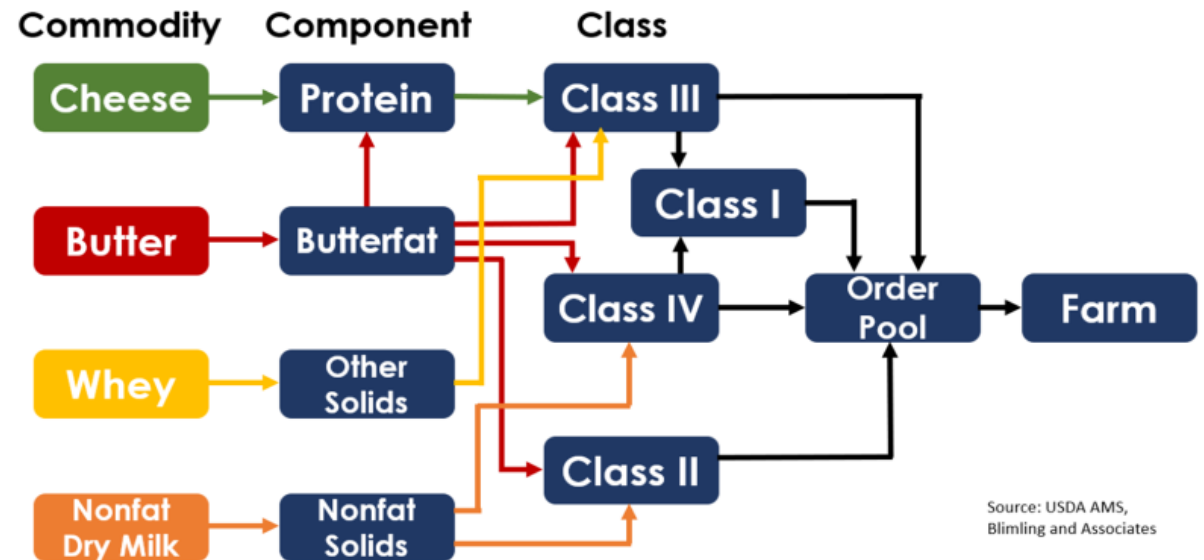


Figure 2. Commodity Value Flows in Pricing





“The 2018 farm bill eliminated the higher-of component of the Class I milk price formula and replaced it with a formula based on the simple **average of the Class III and Class IV advanced prices plus 74 cents.** The 74 cents was based on the historical difference between the Class III and IV skim prices to make dairy farmers and milk prices indifferent to this change over a long time horizon. However, anytime the spread between Class III and IV is wider than \$1.48 per hundredweight, dairy farmers will end up with a lower Class I milk price than would have been the case under the higher-of. For perspective, from January 2000 to April 2019, the spread between the advanced Class III and Class IV price was larger than \$1.48 nearly 40% of the time.”

Source : [Impact of the Farm Bill Change to the Class I Milk Price on Dairy Farm Income](#), AFBF Market Intel, 10/5/20.



Over the years, there have been various other FMMO reform proposals.

Some common reform areas/issues:

- Role of Cooperatives
- Price Determination (& its foundational elements)
- Administrative Hearing and Referendum Vote vs. Statutory Amendment of the [Agricultural Marketing Agreement Act](#).
- “All or Nothing:” To be implemented, any amendment has to be voted upon by a referendum vote of all affected producers. If the amendment is voted down, the entire FMMO is voted down.



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Thank you!

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