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Overview of Dairy Cooperatives

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Overview of Dairy Cooperatives

SUMMARY

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Fluid milk is a unique agricultural commodity. It is highly perishable, produced on a daily basis, and challenging to store on the farm. As a result, milk must be frequently transported off the farm (e.g., every day or every other day) regardless of market conditions for milk and milk products. Partly as a result of the unique characteristics of dairy production, individual dairy producers have less market power than individual producers in other industries to negotiate the price they receive for their commodity. A dairy cooperative offers dairy producers the opportunity to collectively coordinate and negotiate prices. In general, U.S. dairy cooperatives are owned, operated, and controlled by the dairy producer members. Dairy producer members invest in and share in the profits earned by the cooperative.

Dairy cooperatives have existed since the early 1800s. Since the 1920s, the number of U.S. dairy cooperatives has declined, and as of 2022, there were 89. At the same time, the value of milk and milk products sold through U.S. dairy cooperatives, when adjusted for inflation, has increased from about $3 billion in the 1910s to over $63 billion in 2022. In addition, dairy cooperatives account for 87% of the market share for U.S. milk and milk products.

According to the U.S. Department of Agriculture (USDA), early antitrust laws made the legal authority ambiguous for agricultural producers to organize under a cooperative and slowed the development of dairy cooperatives. The Sherman Antitrust Act of 1890 (15 U.S.C. §§1-7) prohibited “every contract, combination, or conspiracy in restraint of trade” and any “monopolization, attempted monopolization, or conspiracy or combination to monopolize” for commerce that crossed state lines. In 1914, Congress passed the Clayton Act (15 U.S.C. §§12-27), which prohibited specified practices along with mergers and acquisitions whose effect “may be substantially to lessen competition, or to tend to create a monopoly.” The Clayton Act also included a provision clarifying that the antitrust laws do not prohibit the existence and operation of agricultural cooperatives. However, the Clayton Act did not indicate the types of activities in which cooperatives could lawfully engage. In 1922, Congress passed the Capper-Volstead Act, which authorized certain industries, including agriculture, to collectively organize under a cooperative. Congress also passed the Cooperative Marketing Associations Act of 1926 and the Agricultural Marketing Agreement Act of 1937, both of which expanded the provision set in the Capper-Volstead Act. Although Congress passed legislation exempting agricultural cooperatives from certain antitrust laws, those cooperatives—including dairy cooperatives—are not exempt from all antitrust lawsuits.

Dairy cooperatives may differ in their activities, organizational governance, and methods of raising capital, depending on the interests of their members. For example, a small dairy cooperative serving a local area (e.g., one or two counties) may have different interests than a dairy cooperative serving an entire state or multiple states. Examples of activities a dairy cooperative may perform include arranging for the sale of fluid milk, negotiating the price of fluid milk, and collecting payment from milk buyers. All dairy cooperatives are required by statute (7 U.S.C. §291) to operate for the mutual benefit of their members, and the majority of the milk marketed by a dairy cooperative must be from members.

Federal Milk Marketing Order (FMMO) laws and regulations require USDA to establish a minimum milk price for each geographically designated region participating in the system. The FMMOs are designed to ensure that milk producers receive fair treatment in the marketplace while consumers receive a consistent and adequate supply of dairy products. Under the FMMO system, milk buyers (also known as milk handlers) are required to pay dairy producers no less than the minimum price and adhere to other specified rules. Dairy cooperatives with members in multiple regions, or with members not delivering milk under the FMMO system, are authorized to pay all members a *reblend price*. This price is the average income from fluid milk sales across the regions in which the cooperative operates and may be lower than the minimum FMMO price.

Issues of potential interest to Congress include how dairy cooperatives vote on FMMO referendums; whether the Government Accountability Office’s findings on the effects of consolidation of dairy cooperatives warrant maintaining or amending laws governing agricultural marketing cooperatives, including dairy cooperatives; and whether to use dairy cooperatives as a mechanism for distributing supplemental disaster assistance funds.

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Introduction

Milk is a unique agricultural commodity. It is highly perishable, produced on a daily basis, and challenging to store on the farm. As a result, milk must be frequently transported off the farm (e.g., every day or every other day) regardless of market conditions for milk and milk products (e.g., cheese and yogurt). Partly as a result of these unique characteristics of dairy production, individual dairy producers have less market power to negotiate the price they receive for their commodity. A dairy cooperative offers dairy producers the opportunity to collectively coordinate and negotiate market prices. In general, U.S. dairy cooperative businesses are owned, operated, and controlled by the dairy producer members. Dairy producer members invest in and share in the profits earned by the cooperative. In 2022, there were 89 dairy cooperatives in the United States, and they accounted for 87% of the market share for U.S. milk and milk products.[1]

This report presents data on trends in the number of dairy cooperatives and the value of milk and milk products handled by dairy cooperatives and discusses the legislative history governing agricultural cooperatives, including dairy cooperatives. The report also covers different services (e.g., arranging for the sale and negotiating the price of fluid milk) that dairy cooperatives provide to their members, how dairy cooperatives are structured and organized, financing options that dairy cooperatives may use when raising capital, and provisions for dairy cooperatives in milk markets regulated by the Federal Milk Marketing Order (FMMO). Further, the report presents proposed legislation and activity related to how dairy cooperatives vote on FMMO referendums, the potential effect of dairy cooperatives consolidating and investing in processing facilities, and authorization of the U.S. Department of Agriculture (USDA) to administer disaster assistance block grants to dairy cooperatives.

Trends in Dairy Cooperatives

After enactment of the Capper-Volstead Act of 1922 and the Cooperative Marketing Associations Act of 1926 (see "Statutory Authority Governing Cooperatives"), the number of U.S. dairy cooperatives peaked in the late 1920s at more than 2,400 (**Figure 1**). Since then, the number of U.S. dairy cooperatives declined, largely because of consolidation, to 89 in 2022.[2] One reason for the consolidation of dairy cooperatives may be to achieve economies of scale, which lead to lower per-unit production costs.[3]

The value of U.S. milk and milk products sold through U.S. dairy cooperatives, when adjusted for inflation, increased from about $12 billion in 1929 to over $63 billion in 2022 (**Figure 1**).[4] This increase also reflects the increase in U.S. milk production per cow since the mid-1940s (**Figure 2**).[5] Over the past two decades, milk production has increased 33% to 226.4 billion pounds of

[1] U.S. Department of Agriculture (USDA) Rural Business-Cooperative Service (RBCS), *Agricultural Cooperatives' U.S. Market Share of Commodities and Supply Inputs*, May 2024 (hereinafter USDA RBCS, *Agricultural Cooperatives' U.S. Market Share*, 2024). This product is available on request from coopinfo@usda.gov.

[2] Ibid. Of the 51 cooperatives mergers between 1989 and 1999, 40% involved dairy cooperatives. James J. Wadsworth, *Cooperative Unification: Highlights from 1989 to Early 1999*, USDA RBCS, Research Report 174, September 1999, https://www.rd.usda.gov/sites/default/files/rr174.pdf.

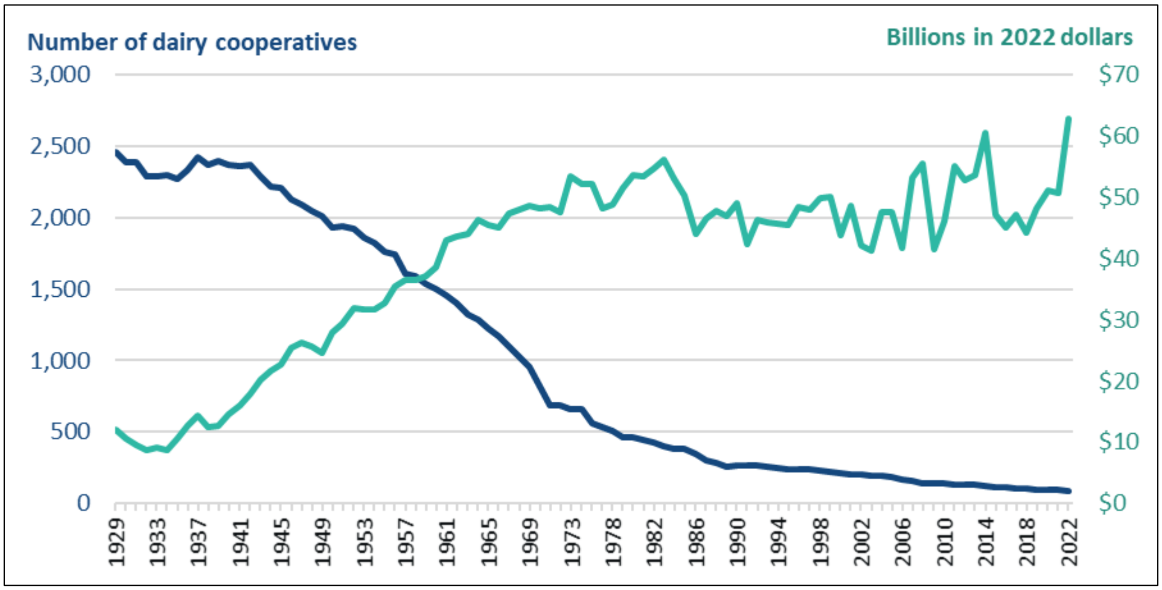
[3] Other reasons may include increases in information technology and logistics. Brian W. Gould, "Consolidation and Concentration in the U.S. Dairy Industry," *Choices*, vol. 25, no. 2 (2010), https://www.choicesmagazine.org/UserFiles/file/article_123.pdf.

[4] USDA RBCS, *Agricultural Cooperatives' U.S. Market Share*, 2024.

[5] Jeffrey Gillespie, Eric Njuki, and Angel Terán, *Structure, Costs, and Technology Used on U.S. Dairy Farms*, USDA (continued...)

milk in 2023 as the number of milk cows has stabilized and the number of licensed dairy herds has declined (by about 63% from 2003 to 2023; i.e., U.S. milk production is shifting to larger herds).[6]

Figure 1. Number of Dairy Cooperatives and Value of Milk and Milk Products Sold by Dairy Cooperatives, 1913-2022



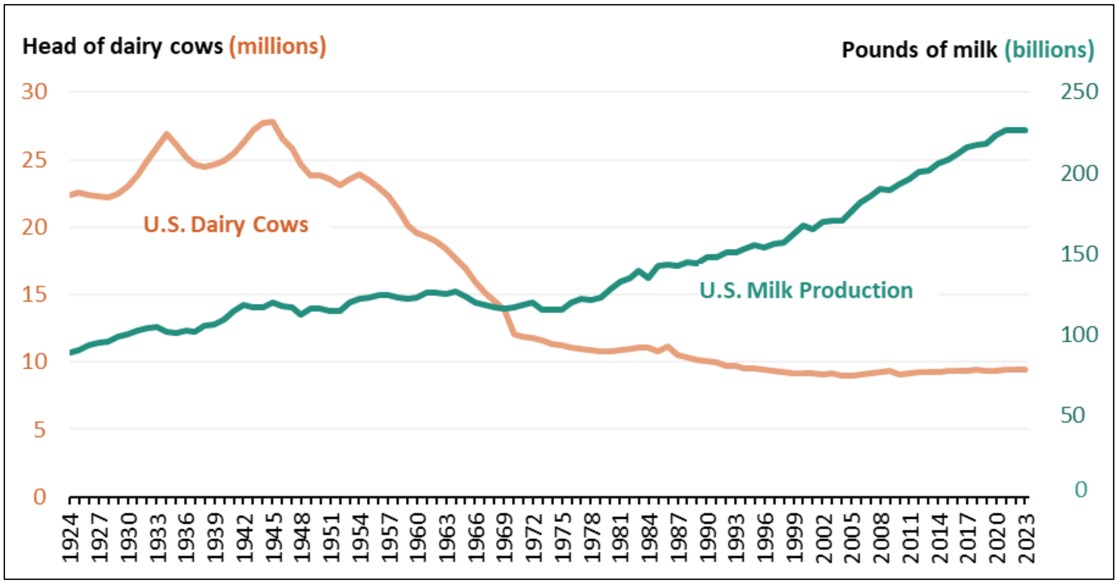
Source: CRS using data from U.S. Department of Agriculture (USDA), Rural Development, Rural Business-Cooperative Service.

Notes: All values are adjusted for inflation to 2022 dollars using the U.S. Bureau of Labor Statistics, *Consumer Price Index for All Urban Consumers: All Items in U.S. City Average*, August 2024.

Economic Research Service (ERS), ERR-334, July 2024, https://www.ers.usda.gov/webdocs/publications/109626/err-334.pdf?v=5878.1.

[6] Ibid.

Figure 2. Annual Number of U.S. Dairy Cows and U.S. Milk Production, 1924-2023



Source: CRS calculations using data from USDA, National Agricultural Statistics Service (NASS), "Quick Stats Database," downloaded October 16, 2024.

Notes: The annual number of U.S. dairy cows is the dairy cow inventory on the first of January for the given year. The NASS Quick Stats Database reports U.S. milk production starting in 1924.

Producers of other agricultural commodities also form cooperatives. **Table 1** shows agricultural cooperatives' market share of U.S. markets for 1961, 1981, 2001, and 2022.[7] Since 1961, dairy cooperatives' market share of U.S. milk and milk products has increased.[8] As of 2022, dairy cooperatives account for 87% of marketed U.S. milk and milk products. Compared to other agricultural commodity cooperatives, dairy cooperatives had the highest market share in their respective industry. Collectively, agricultural commodity cooperatives accounted for 25% of U.S. agricultural marketings in 2022.[9]

[7] USDA reported the agricultural cooperatives' market share of U.S. markets for 1961, 1981, 2001, and 2022 in the Agricultural Cooperatives' U.S. Market Share of Commodities and Supply Inputs report published in May 2024.

[8] USDA RBCS, *Agricultural Cooperatives' U.S. Market Share*, 2024.

[9] *Marketings* refers to the services involved in moving an agricultural product from the farm to the next stage in the supply chain (e.g., processor, retailer, or consumer). The term is a catchall for the entire range of supply chain operations.

Table 1. Agricultural Cooperatives' Percentage Share of U.S. Markets by Agricultural Commodity Group and Year

Commodity	1961	1981	2001	2022
Milk/milk products	58	71	83	87
Sugar crops	57	53	55	63
Grains/oil seed	33	37	38	38
Cotton/cottonseed	19	30	42	36
Fruit/vegetables	22	25	19	12
Livestock/wool/mohair	13	12	13	4
Poultry/eggs	9	9	8	1
Fish/shellfish	n/a	n/a	n/a	25
Other	13	20	12	6
U.S. market share[a]	24	30	28	25

Source: U.S. Department of Agriculture (USDA), Rural Business-Cooperative Service, *Agricultural Cooperatives' U.S. Market Share of Commodities and Supply Inputs*, May 2024.

Notes: "Other" includes specialty crops (dry beans and peas, nuts, tobacco, rice) and miscellaneous marketings.

a. The percentages in this row indicate the portion of the U.S. agricultural markets generated by U.S. agricultural commodity cooperatives; they include all of the agricultural commodity cooperatives presented in the table.

Statutory Authority Governing Cooperatives

According to the University of Wisconsin Center for Cooperatives, the first record of dairy cooperatives was in 1810.[10] Early dairy cooperatives helped establish logistics for transporting fluid milk to cities without local milk production.[11] According to USDA, early antitrust laws made legal authority ambiguous for agricultural producers to organize and act under a cooperative.[12] In the early 20th century, Congress passed legislation authorizing certain industries, including agriculture, to collectively organize under cooperatives. This section provides an overview of the statutory authorities governing the legality of agricultural producers to establish cooperatives. Congress passed legislation exempting agricultural cooperatives from certain antitrust laws;[13] agricultural cooperatives—in this case, dairy cooperatives—are not exempted from all antitrust lawsuits.[14] Antitrust lawsuits against agricultural cooperatives remain an active area of litigation.

[10] Lynn Pitman, "History of Cooperatives in the United States: An Overview," revised December 2018, https://resources.uwcc.wisc.edu/History_of_Cooperatives.pdf (hereinafter Pitman, "History of Cooperatives," 2018).

[11] USDA Rural Development (RD), *Cooperatives in the Dairy Industry*, September 2005, https://www.rd.usda.gov/files/cir1-16.pdf (hereinafter USDA RD, *Cooperatives in the Dairy Industry*, September 2005).

[12] Ibid.

[13] For more information on antitrust law, see CRS In Focus IF11234, *Antitrust Law: An Introduction*.

[14] Donald A. Frederick, *Antitrust Status of Farmer Cooperatives: The Story of the Capper-Volstead Act*, USDA RBCS, Cooperative Information Report 59, September 2002, https://www.rd.usda.gov/sites/default/files/CIR59.pdf (hereinafter Frederick, *Antitrust Status of Farmer Cooperatives*, 2002). Examples of antitrust lawsuits brought against dairy cooperatives in the 1960s include *Otto Milk Company v. United Dairy Farmers Cooperative Ass'n*, *Isaly Dairy Company of Pittsburgh v. United Dairy Farmers*, and *Bergjans Farm Dairy v. Sanitary Milk Producers*. An example from 2019 is *Sitts v. Dairy Farmers of Am., Inc*.

Sherman Antitrust Act of 1890

The Sherman Antitrust Act of 1890 (Sherman Act; 15 U.S.C. §§1-7) was the first antitrust law Congress passed.[15] The Sherman Act outlawed "every contract, combination, or conspiracy in restraint of trade" and any "monopolization, attempted monopolization, or conspiracy or combination to monopolize" for commerce that crossed state lines.[16] The Sherman Act did not exempt agricultural cooperatives. While judicial decisions construed the Sherman Act to prohibit only unreasonable restraints of trade, the statute raised liability risks for dairy farmers organized under marketing cooperative agreements that set a common price for milk and dairy products.[17] Following enactment of the Sherman Act, many states enacted similar anti-monopoly provisions and made efforts to exempt agricultural cooperatives from these provisions. The inconsistency in antitrust laws across states and opinions of the courts led to several antitrust cases involving agricultural cooperatives.[18]

Clayton Antitrust Act of 1914

Following two 1911 Supreme Court decisions involving Standard Oil and American Tobacco, which interpreted the Sherman Act as forbidding only "unreasonable" restraints of trade, Congress enacted the Clayton Antitrust Act of 1914 (Clayton Act; 15 U.S.C. §§12-27) to strengthen the antitrust laws.[19] The Clayton Act prohibited specified practices, along with mergers and acquisitions whose effect "may be substantially to lessen competition, or to tend to create a monopoly."[20] The Clayton Act also clarified that the antitrust laws do not prohibit the existence and operation of agricultural cooperatives.[21] Simultaneously, the Clayton Act did not indicate the types of activities in which cooperatives could lawfully engage.[22] The ambiguity about cooperatives' exemptions from antitrust provision under the Clayton Act contributed to mixed interpretations of the antitrust laws among the courts.[23]

Capper-Volstead Act of 1922

The Capper-Volstead Act of 1922 (7 U.S.C. §§291-292) granted agricultural cooperatives a limited exemption from federal antitrust laws.[24] According to the congressional record for the 67th Congress's House Judiciary Committee reported bill (H.R. 2373), "the object of this law was to authorize the producers of agricultural products to form associations for the purpose of collectively preparing for market and marketing their products." The hearing report further noted

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[15] Federal Trade Commission, *The Antitrust Laws*, https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/antitrust-laws. For further information, see CRS In Focus IF11234, *Antitrust Law: An Introduction*.

[16] Federal Trade Commission, *The Antitrust Laws*, https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/antitrust-laws, and Frederick, *Antitrust Status of Farmer Cooperatives*, 2002.

[17] Pitman, "History of Cooperatives," 2018.

[18] Frederick, *Antitrust Status of Farmer Cooperatives*, 2002.

[19] *Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1 (1911); *United States v. American Tobacco Co.*, 221 U.S. 106 (1911). Frederick, *Antitrust Status of Farmer Cooperatives*, 2002.

[20] Federal Trade Commission, *The Antitrust Laws*, https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/antitrust-laws.

[21] 15 U.S.C. §17.

[22] Donald A. Frederick, *Managing Cooperative Antitrust Risk*, USDA Agricultural Cooperative Service, May 1989, https://www.rd.usda.gov/sites/default/files/cir38.pdf.

[23] Frederick, *Antitrust Status of Farmer Cooperatives*, 2002.

[24] USDA RD, *Cooperatives in the Dairy Industry*, September 2005.

that "States have granted the right to form associations such as those contemplated in this bill. But these States cannot confer any right upon their organizations to engage in interstate and foreign commerce. This bill is designed to grant that right."[25]

After this law was enacted, farmers could lawfully organize and establish cooperatives to collectively market their products in interstate and foreign commerce.[26] The Capper-Volstead Act established protection only to cooperatives that operate for the mutual benefit of their members and that conduct a majority of their marketings for those members.[27] Therefore, in order for the protections to apply, the majority of the milk marketed by a dairy cooperative must be from members. In addition, the Capper-Volstead Act also requires cooperatives to conform to either one of the following requirements:

1. "No member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or,"
2. "The association does not pay dividends on stock or membership capital in excess of [8% per year]."[28]

This act also authorized the Secretary of Agriculture to serve a complaint against an agricultural cooperative "if the Secretary of Agriculture shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced by reason thereof."[29]

Cooperative Marketing Associations Act of 1926

The Cooperative Marketing Associations Act of 1926 (7 U.S.C. §§451-454) expanded agricultural cooperatives' authority beyond the provisions of the Capper-Volstead Act to act on behalf of their members.[30] The Cooperative Marketing Associations Act permitted cooperative members to "acquire, exchange, interpret, and disseminate past, present, and prospective crop, market, statistical, economic, and other similar information."[31] According to USDA, this enabled agricultural producers to legally exchange information during cooperative meetings. Therefore, an agricultural cooperative was legally able to function as a coordinated entity to purchase and market agricultural commodities. An agricultural cooperative, such as a dairy cooperative, could leverage its coordinating functions to meet market demands and negotiate prices for its members.[32]

The Cooperative Marketing Associations Act also directed USDA to establish an agency to "promote the knowledge of cooperative principles and practices and to cooperate in promoting such knowledge, with education and marketing agencies, cooperative associations, and others" and "to make special studies, in the United States and foreign countries, and to acquire and

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[25] U.S. Congress, House Judiciary Committee, *Associations of Producers of Agricultural Products*, H.Rept. 67-24 to accompany H.R. 2373, 67th Cong., 1st sess., April 12, 1921.

[26] USDA Rural Business and Cooperative Development Service, *Understanding Capper-Volstead*, Cooperative Information Report 35, June 1985, https://www.rd.usda.gov/files/cir35.pdf.

[27] 7 U.S.C. §291.

[28] Ibid.

[29] 7 U.S.C. §292.

[30] Randell E. Torgerson, "Significance of the Cooperative Marketing Act's Other Key Provisions," *Rural Cooperatives*, vol. 68, no. 4 (July/August 2001), p. 15, https://www.rd.usda.gov/sites/default/files/CoopMag-jul01.pdf (hereinafter Torgerson, "Significance of the Cooperative Marketing Act's Other Key Provisions," 2001).

[31] 7 U.S.C. §455.

[32] Torgerson, "Significance of the Cooperative Marketing Act's Other Key Provisions," 2001.

disseminate such information and findings as may be useful in the development and practice of cooperation." The Rural Business-Cooperative Service in USDA's Rural Development agency conducts the technical assistance and research activities authorized by the Cooperative Marketing Associations Act.

Agricultural Marketing Agreement Act of 1937

The Agricultural Marketing Agreement Act of 1937 (7 U.S.C. §§601 et seq.) authorized USDA to establish the Federal Milk Marketing Orders (FMMOs), which require handlers of fluid milk to pay at least a minimum price to milk producers (for a description of the FMMOs, see the section "Dairy Cooperatives and Federal Milk Marketing Orders").[33] In addition, the act allows cooperatives to vote on behalf of all of their eligible voting members on amendments and referendums to the FMMOs. This is commonly referred to as *bloc voting*.[34]

Activities, Organizational Governance, and Financing of Dairy Cooperatives

Each dairy cooperative can have different activities, organizational governance, and options for raising capital.[35] The activities and type of governance may depend on the area and dairy producers the cooperative serves. For example, a dairy cooperative serving a local area (e.g., one or two counties) may have different objectives than a dairy cooperative serving an entire state or multiple states.[36] All dairy cooperatives must operate for the mutual benefit of their members.[37]

Activities of Dairy Cooperatives

Dairy cooperatives can have different purposes and engage in different activities.[38] Such activities may include one or more of the following:

- arranging for the sale of raw milk,
- negotiating the price of raw milk,
- collecting payment from milk buyers,
- processing raw milk into a wide range of products,
- marketing their own branded product directly to consumers, or
- offering supporting services (e.g., providing field services, testing milk, selling milk production equipment and supplies, arranging milk hauling, and providing health insurance).[39]

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[33] 7 U.S.C. §602.

[34] Cooperatives can forfeit their right to bloc voting, thereby enabling all cooperatives members to vote on the referendum on their Federal Milk Marketing Order (FMMO). 7 U.S.C. §608(c)(12).

[35] USDA RD, *Understanding Cooperatives: The Structure of Cooperatives*, Cooperative Information Report 45, Section 3, October 1994, https://www.rd.usda.gov/files/CIR45_3.pdf (hereinafter USDA RD, *The Structure of Cooperatives*, 1994).

[36] Ibid.

[37] 7 U.S.C. §291.

[38] USDA RD, *The Structure of Cooperatives*, 1994.

[39] K. Charles Ling, *Cooperative Theory, Practice, and Financing: A Dairy Cooperative Case Study*, USDA Rural (continued...)

When marketing raw milk, dairy cooperatives guarantee members a market (i.e., they guarantee to purchase milk from their members). In addition, dairy producers agree to market all of their milk with the dairy cooperative.[40] Dairy cooperatives establish logistics to ensure that the milk supply from dairy producers meets the needs of manufacturers and processors.[41]

USDA has classified dairy cooperatives into four types of organizations based on the cooperatives' purpose:[42]

- *Bargaining only:* these cooperatives focus on negotiating milk prices and terms of sale for their member's raw milk.
- *Niche marketing:* these cooperatives may process all of their members' milk into specialty or branded fluid milk and dairy products at the cooperatives' dairy product manufacturing plants.
- *Fluid processing:* these cooperatives may process all of their members' milk in their plants, primarily as bottled fluid milk.
- *Diversified:* these cooperatives may perform all or most of the functions that other types of dairy cooperatives perform.

According to USDA data, the majority (62%) of U.S. dairy cooperatives in 2023 were classified as bargaining-only cooperatives (**Figure 3**). At 20%, diversified cooperatives are the next most common, then niche-marketing cooperatives (14%), followed by fluid-processing cooperatives (3%).[43]

Business and Cooperative Programs, Research Report 221, April 2011, https://www.rd.usda.gov/sites/default/files/RR221.pdf (hereinafter Ling, *Cooperative Theory*, April 2011).

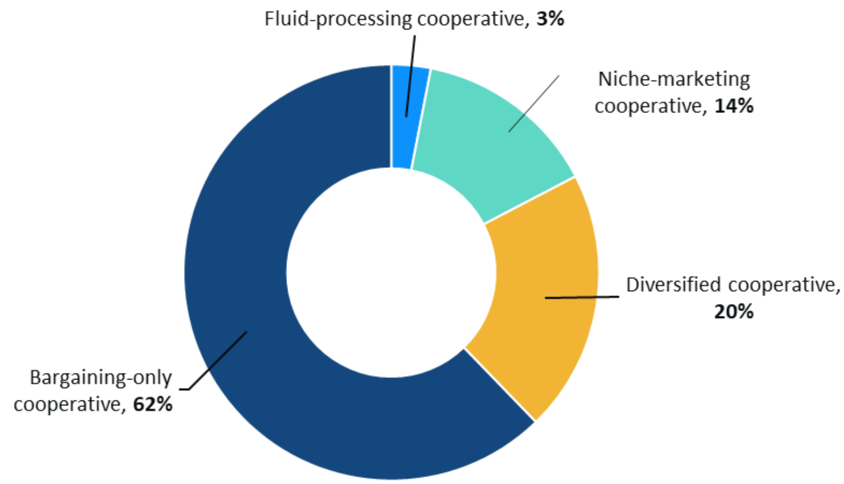
[40] K. Charles Ling and Carolyn Betts Liebrand, *Dairy Cooperatives' Role in Managing Price Risks*, USDA RBCS, Report 152, September 1996, https://www.rd.usda.gov/sites/default/files/rr152.pdf.

[41] James J. Wadsworth, *Marketing Operations of Dairy Cooperatives 2017*, USDA RD, Research Report 234, August 2019, https://www.rd.usda.gov/files/publications/RR234MarketingOperationsofDairyCooperatives2017.pdf.

[42] USDA RD, *Cooperatives in the Dairy Industry*, September 2005.

[43] USDA last reported data on the volume of milk handled by each type of dairy cooperative in 2007. See Carolyn Betts Liebrand, *Financial Profile of Dairy Cooperatives, 2007*, USDA RBCS, Research Report 219, April 2010, https://www.rd.usda.gov/sites/default/files/rr219.pdf.

Figure 3. U.S. Dairy Cooperatives by Operation Type, 2023



Source: CRS using data provided by USDA, Rural Development, Rural Business-Cooperative Service, as of August 2024.

Notes: Bargaining-only dairy cooperatives operate at the first-handler level and typically do not own dairy product manufacturing plants. Niche-marketing dairy cooperatives may process all of their members' milk into specialty or branded dairy products at the cooperatives' dairy product manufacturing plants. Fluid-processing dairy cooperatives may process all of their members' milk in their plants, primarily as bottled fluid milk. Diversified dairy cooperatives perform more than one of the functions that other types of dairy cooperatives perform.

Governance of Dairy Cooperatives

In general, dairy cooperatives are owned, operated, and controlled by dairy producers. Dairy producers exercise their control by voting for the board of directors.[44] The board of directors is responsible for making decisions, setting policy, and determining the goal and vision of the cooperative. For example, a cooperative's board of directors decides how to distribute patronage refunds.[45] *Patronage refunds* are the cooperatives' earnings, which are distributed to the members in proportion to the amount of raw milk they market through the cooperative.[46] Dairy cooperatives may use patronage refunds to raise capital from their members. For example, a dairy cooperative may retain patronage refunds that may be repaid at a later date.[47] One benefit this has for members is that retained patronage refunds increase the members' equity in the cooperative without requiring them to make a direct investment. One disadvantage of retained patronage refunds to the cooperative members is that the timeline or expected date to receive a return (i.e.,

[44] Ling, *Cooperative Theory*, April 2011.

[45] For agricultural cooperatives to be effectively exempt from federal income tax, except as otherwise provided in 11 U.S.C. §522 or 26 U.S.C. Subtitle A, Chapter 1, Subchapter T, Part I, and the regulations thereunder, federal law requires that at least 20% of the patronage refund be paid in cash. 26 U.S.C. §1388 and 26 C.F.R. §1.521-1.

[46] James J. Wadsworth and E. Eldon Eversull, *Co-ops 101: An Introduction to Cooperatives*, USDA RBCS, Cooperative Information Report 55, November 2012, https://www.rd.usda.gov/files/cir55.pdf.

[47] Ling, *Cooperative Theory*, April 2011. USDA RBCS, *Understanding Cooperatives: Financing Cooperatives*, Cooperative Information Report 45, Section 7, October 1994, https://www.rd.usda.gov/files/CIR45_7.pdf.

cash) on the members' ownership may be unknown and depend on the profitability of the cooperative.[48]

Depending on the size of the cooperative, there may be additional levels of elected internal governance, such as district delegates and district directors for each geographic region serviced by the cooperative.[49] The elected officials may disseminate information within the cooperative and have authority to make decisions on behalf of the membership.[50]

The responsibilities of the elected officials (e.g., the board of directors) may include setting policy, developing strategic plans, and making financial business operating decisions. The day-to-day operations and logistical decisions are typically made by a separate hired management team (e.g., chief executive officer, chief operating officer).[51]

In addition, dairy cooperatives can have different governance structures. According to USDA, dairy cooperatives, like other types of cooperatives, are structured in one of three ways:

1. A *centralized* cooperative is a dairy cooperative where the members are individual dairy producers.
2. A *federated* cooperative is a dairy cooperative where the members are dairy cooperatives (i.e., a cooperative for cooperatives).
3. A *mixed* cooperative is a combination of a centralized and federated cooperative. Therefore, the members are dairy cooperatives and individual dairy producers.[52]

Dairy Cooperatives and Federal Milk Marketing Orders

The Federal Milk Marketing Order (FMMO) system is another mechanism for stabilizing the supply and price of milk.[53] FMMOs require milk handlers to pay milk producers at least a minimum price for fluid milk and adhere to other specified rules. FMMOs are designed to ensure that milk producers receive fair treatment in the marketplace and that consumers receive a consistent and adequate supply of dairy products. The FMMO system governs milk marketing within explicitly defined and geographically aligned regions (i.e., *federal order markets*).[54] FMMO laws and regulations require USDA to establish a minimum milk price for each FMMO. Milk buyers (also known as milk handlers) are required to pay producers no less than the minimum price. A dairy cooperative with members in multiple federal order markets, or members delivering milk not in a market order, is authorized to pay all members a *reblend price*. The

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[48] Phil Kenkel, *Understanding Cooperative Equity*, Oklahoma State University Extension, AGEC-1087, January 2020, https://extension.okstate.edu/fact-sheets/understanding-cooperative-equity.html.

[49] Thomas W. Gray, *Organizational Control for Member Control in Cooperatives: Toward an Assessment Tool*, USDA RBCS, RB-CS Research Report 235, September 2020, https://www.rd.usda.gov/media/file/download/rr235-organizationalchartingformembercontrolincooperatives.pdf.

[50] Ling, *Cooperative Theory*, April 2011.

[51] USDA RD, *The Structure of Cooperatives*, 1994.

[52] Ibid.

[53] U.S. Congress, House Committee on Agriculture, Subcommittee on Dairy and Poultry, *Milk Marketing Orders*, 96th Cong., 1st sess., July 17, 1979, p. 29.

[54] These regions may not correspond to state boundaries.

reblend price, which may be lower than the price set under one of the FMMOs, is the average income from fluid milk sales across the federal order markets in which the cooperative operates.[55]

USDA is responsible for developing the rules to regulate each FMMO, and the dairy industry, particularly dairy cooperatives, has a role in the process of rule development. USDA's Agricultural Marketing Service establishes and amends individual FMMOs through a formal public hearing process that allows interested parties to present evidence regarding marketing and economic conditions.[56] Dairy producers, or their cooperative associations, usually initiate or amend an order by petitioning the Secretary of Agriculture to regulate the pricing of milk in their region. At least two-thirds of the affected producers must approve the proposed order through a referendum. Once established, an order is a legally binding instrument regulating all handlers or processors who dispose of fluid milk products within the specified marketing area.

Dairy farmer cooperatives can use bloc voting on behalf of their members (for the definition of bloc voting, see the section "Agricultural Marketing Agreement Act of 1937"). In addition, Congress can address issues related to the FMMO system through legislation.[57]

Issues for Congress

When voting on a referendum on the Federal Milk Marketing Order (FMMO), a dairy cooperative can cast a single vote, which represents all of their eligible voting members. According to USDA, after the enactment of the Agricultural Marketing Agreement Act of 1937, which authorized the use of bloc voting, bloc voting "led to the organization of many new cooperatives, some formed as a first step in obtaining a milk marketing order and others to represent producer views different from those of the members of existing cooperatives."[58] Given that dairy cooperatives have consolidated over the past century and may now serve a more diverse group of dairy producers, some agricultural producers have stated that the use of cooperative bloc voting may not reflect the interests of all voting members.

In previous sessions of Congress, some Members introduced the Democracy for Dairy Producers Act to change how dairy cooperatives vote on referendums to the FMMO system.[59] If enacted, the legislation would have required dairy cooperatives electing to use bloc voting to inform dairy producer members of the cooperatives' voting position before casting a vote on the members' behalf. In addition, dairy producers would have been allowed to individually vote on an FMMO referendum. If an individual dairy producer elected not to vote, the dairy cooperative could vote on the producer's behalf. This proposed system of voting on an FMMO referendum is commonly referred to as *modified bloc voting*. Since 2020, Edge Dairy Farmer Cooperative and American

[55] K. Charles Ling and Carolyn Betts Liebrand, *Dairy Cooperatives' Role in Managing Price Risks*, USDA RBCS, Report 152, September 1996, https://www.rd.usda.gov/sites/default/files/rr152.pdf.

[56] When existing milk marketing orders are amended, a similar procedure is followed as if USDA has proposed a new marketing order: (1) USDA conducts a preliminary investigation; (2) USDA holds a public hearing to allow producers, handlers, and consumers to testify; (3) USDA issues a recommended decision; (4) USDA issues a final decision; (5) producers vote in referendum to approve or reject the amendment; and (6) USDA issues a final order.

[57] For more information about the FMMOs, see CRS Report R45044, *Federal Milk Marketing Orders: An Overview*.

[58] USDA RD, *Cooperatives in the Dairy Industry*, September 2005.

[59] The seven versions of the legislation introduced are Democracy for Dairy Producers Act of 1999 (S. 1416, 106th Congress), Democracy for Dairy Producers Act of 2001 (S. 107, 107th Congress), Democracy for Dairy Producers Act of 2003 (S. 43, 108th Congress), Democracy for Dairy Producers Act of 2005 (S. 838, 109th Congress), Democracy for Dairy Producers Act of 2007 (S. 529, 110th Congress), Democracy for Dairy Producers Act of 2009 (S. 665, 111th Congress), and Democracy for Dairy Producers Act of 2011 (S. 457, 112th Congress). None of these proposals were enacted.

Farm Bureau Federation have advocated that Congress should enact legislation requiring the use of modified bloc voting.[60]

Congress could also consider various Government Accountability Office (GAO) findings, reported in 2019, related to potential competing interests within dairy cooperatives that may decrease dairy producer earnings.[61] According to statute, cooperatives must operate for the mutual benefit of their members.[62] One of GAO's findings was that as U.S. dairy cooperatives consolidate and serve larger regions of the United States, the cooperatives are more likely to represent dairy producers that have a diverse set of needs or possibly competing interests. Also, implementing a voting structure that ties voting rights to member productivity (e.g., volume of milk a producer markets through the cooperative) may create power imbalances based on farm size. These factors may lead some producers to perceive a lack of control over the vision, expectations, and goals of their cooperative.[63] Congress way wish to consider the governance structured allowed to dairy cooperatives. One option may include codifying dairy cooperative voting structures such that each member has an equal vote. It is unclear how such an approach might affect dairy cooperative members' earnings.

In the 118th Congress, some Members introduced the Agriculture Disaster Relief Supplemental Appropriations Act, 2024 (H.R. 9889), which, if enacted, would, among other provisions, authorize USDA to use block grants to administer supplemental disaster payments to dairy cooperatives that process milk for losses due to eligible natural disasters in 2023; these payments would be appropriated under emergency spending.[64] In addition, processors would make payments to producer members, as determined by the processor.

Such an approach may provide opportunities and challenges. Historically, USDA made these types of payments directly to dairy producers. Dairy cooperatives maintain producer member records, market over 80% of U.S. milk and milk products, have channels to communicate with their producer members, and have methods to disburse funds to their producer members. Therefore, cooperatives may have the systems in place to distribute supplemental disaster payments to their producer members.

Potential challenges include identifying fraud and waste through the block grant process. For example, in the Bipartisan Budget Act of 2018 (P.L. 115-123), Congress authorized USDA to administer supplemental disaster assistance in the form of block grants. USDA's Office of Inspector General found that about 20% of grant payments in their sample contained errors or lacked sufficient documentation.[65] Additional oversight mechanisms, such as requiring recipient

[60] Aaron Stauffacher, "Debate over Co-op Bloc Voting in Federal Order Reform Emerges," *Edge Dairy Farmer Cooperative*, September 23, 2020, https://www.voiceofmilk.com/news/527399/Debate-over-co-op-bloc-voting-in-federal-order-reform-emerges.htm; Farm Bureau Dairy Working Group, "Priorities, Principles and Policy Considerations for Federal Milk Marketing Order Reform (FMMO)," 2022, https://www.fb.org/files/2022_AFBFDairy_Working_Group_Report.pdf.

[61] U.S. Government Accountability Office (GAO), *Dairy Cooperatives: Potential Implications of Consolidation and Investments in Dairy Processing for Farmers*, 695R, September 27, 2019, https://www.gao.gov/assets/gao-19-695r.pdf (hereinafter GAO, *Dairy Cooperatives*, 2019).

[62] 7 U.S.C. §291.

[63] GAO, *Dairy Cooperatives*, 2019.

[64] Congress previously authorized USDA to provide appropriated ad hoc supplemental emergency assistance to sugar beet cooperative processors for losses in 2018 and 2019 (Further Consolidated Appropriations Act, 2020; P.L. 116-94).

[65] USDA Office of Inspector General, *Florida Citrus Recovery Block Grant Program*, Audit Report 03702-0001-22, June 2021, https://www.oversight.gov/sites/default/files/oig-reports/USDAOIG/03702-0001-22508FOIAredactedpublic.pdf.

cooperatives to report to USDA on how they distributed payments to their producer members, might mitigate the risk of fraud and waste.

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