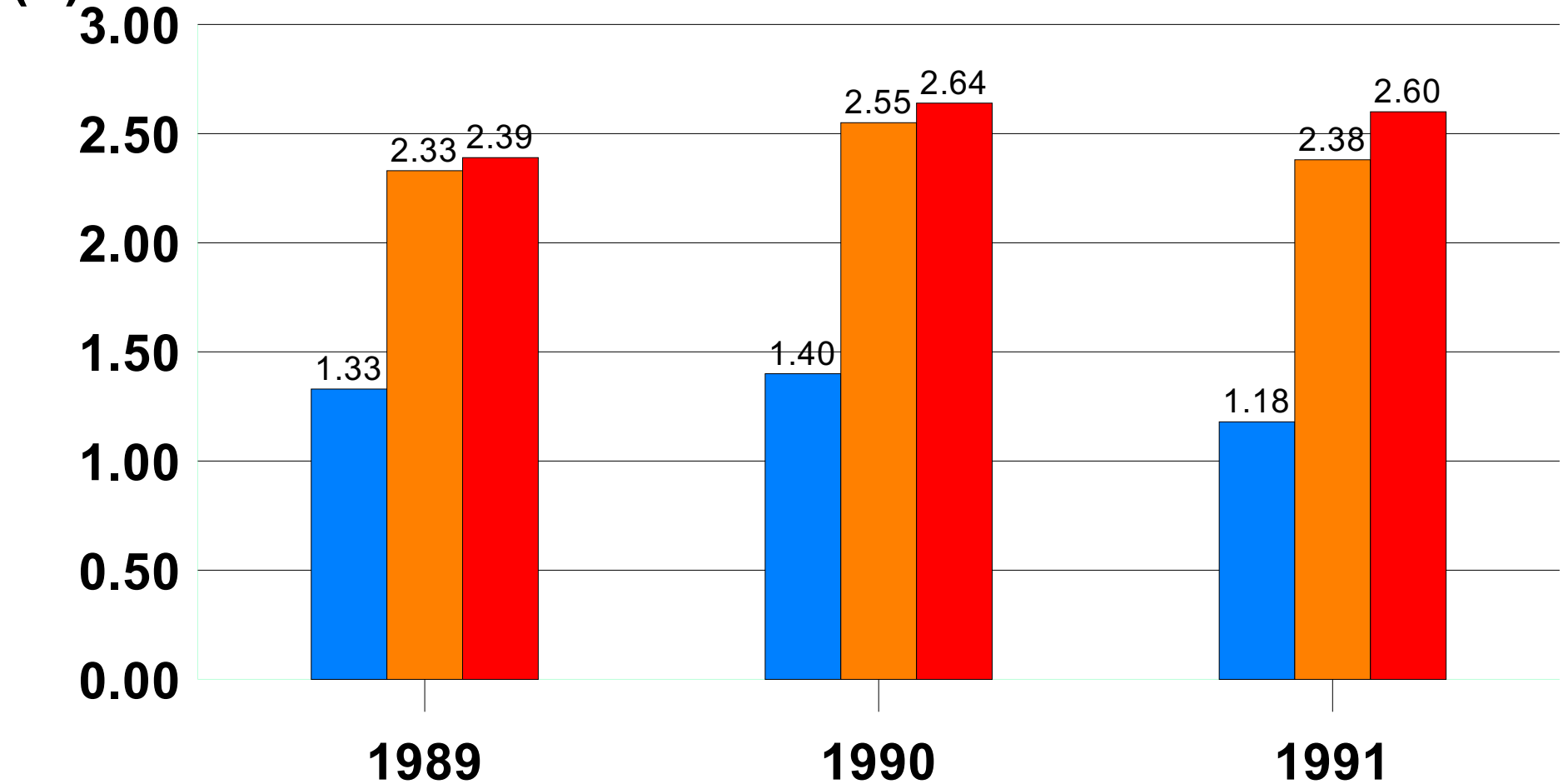


**Presentation to the
Northeast Dairy Policy and Prices Summit Meeting**
The University of Connecticut
Storrs, Connecticut
Monday, November 17, 2003

A REVIEW OF NEW YORK'S MILK PRICE GOUGING LAW

**Marty Mack
Deputy Attorney General
New York State Office of the Attorney General**

Raw Milk Cost vs. Retail Price 1989-1991



-  Raw Milk Cost
-  Upstate Retail Price
-  Metro Retail Price

**Retail Price vs Raw Milk Cost
Gallon Milk - 1989 - 1991**

	1989			1990			1991		
	Metro Retail	Upst Retail	Raw Milk Cost	Metro Retail	Upst Retail	Raw Milk Cost	Metro Retail	Upst Retail	Raw Milk Cost
J	2.34	2.28	1.38	2.63	2.60	1.57	2.62	2.39	1.13
F	2.36	2.30	1.38	2.68	2.65	1.58	2.61	2.37	1.12
M	2.36	2.30	1.34	2.69	2.63	1.49	2.60	2.36	1.11
A	2.36	2.29	1.29	2.65	2.57	1.34	2.60	2.35	1.09
M	2.36	2.29	1.25	2.61	2.54	1.32	2.59	2.33	1.09
J	2.35	2.29	1.26	2.62	2.53	1.35	2.62	2.35	1.20
J	2.36	2.29	1.27	2.62	2.52	1.38	2.59	2.35	1.20
A	2.36	2.29	1.25	2.64	2.53	1.42	2.60	2.40	1.25
S	2.38	2.31	1.30	2.64	2.52	1.44	2.60	2.41	1.25
O	2.42	2.38	1.36	2.65	2.52	1.39	2.59	2.40	1.21
N	2.49	2.43	1.43	2.63	2.50	1.33	2.60	2.41	1.26
D	2.55	2.52	1.49	2.62	2.45	1.15	2.63	2.43	1.30
AVG.	2.39	2.33	1.33	2.64	2.55	1.40	2.60	2.38	1.18

Raw milk cost = Class I price, 201-210 m.z., adj. for bf, plus estimated premium.

Prepared by NYS Department of Agriculture and Markets

Price Gouging Statute

Legislative Findings and Declarations of Policy

- The continued production is threatened by a rapid decline in the prices paid to farmers for milk. The farm gate price for milk decreased by 27% from January 1990 to January 1991. The legislature finds that this substantial decrease in farm price has not been reflected in reduced costs to consumers, and that the retail fluid milk prices have been slow to respond to raw milk price decreases.

Unconscionability

- Whether a price is unconscionably excessive is a question of law for the court. Evidence that:
 - (a) the price charged at retail represents a gross disparity between raw milk price paid to producers plus a reasonable handler's processing and distribution charge and the price at retail; or,
 - (b) increased price charged by the person was not attributable to additional charges by its suppliers, or other charges beyond the control of the person, including cost of labor

How we administer the law

- Calculate 200%, known as Threshold Price, for gallons, h-gal, qts. Do for two broad regions of the state: Upstate and Metro NYC. Based on milk at 3.5% butterfat.

STATE OF NEW YORK
DEPARTMENT OF AGRICULTURE AND MARKETS
I WINNERS CIRCLE
ALBANY, NEW YORK 12235



DIVISION OF MILK CONTROL AND DAIRY SERVICES
518-457-5731

TO : Retailers of Milk
DATE : July 18, 2003
SUBJECT : Announcement of threshold price relative to milk pricing law, **effective AUGUST 2003**

THRESHOLD PRICE

For **AUGUST 2003**, threshold prices for milk, low fat milk, or skim milk offered for retail sale in the state are:

	<u>Gallon</u>	<u>Half Gallon</u>	<u>Quart</u>
Metro Region: (NYC and Counties of Nassau, Suffolk, Rockland, Westchester, Orange, Putnam and Dutchess)	\$2.69	\$1.39	\$.73
Upstate Region: (Remaining Counties)	\$2.47	\$1.29	\$.68

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 increased \$0.21 a gallon, \$0.10 a half gallon and \$0.05 a quart in Metro NY and increased \$0.20 a gallon, \$0.10 a half gallon and \$0.005 a quart in Upstate NY. These increases reflect the underlying monthly change in the federal order Class 1 price (%3.5 butterfat) which increased \$1.20/cwt. or \$0.103/g. The threshold price is calculated by multiplying by two the total of the two components, the minimum federal order price and the premium paid for Class 1 milk.

Date: 7/18/03

THRESHOLD PRICE CALCULATION

(1) Threshold price: **AUG 2003**

	Cwt.	Cwt.	Gal	Hgal
Base price: at NYC and Syracuse	Metro	Upstate		
Class 1 at 3.5% bf	14.12	13.47		
Est. premium	1.50	0.90		
Total base	15.62	14.37		
Preliminary Threshold				
Metro	31.24		2.69	1.34
Upstate		28.74	2.47	1.24
Adjustment to align hgal & qt to gal *				0.05
Threshold				
Metro			2.69	1.39
Upstate			2.47	1.29
		Change	0.21	0.10
			0.20	0.10

Correspondence

7-Eleven

“Please accept our sincere apology regarding the enclosed incident. I can assure you this was no more than a mere oversight on our behalf.”

Amerada Hess Corporation

“The employee had mispriced the gallons of milk resulting in another employee incorrectly ringing up the correct price.”

Correspondence

Manley's Mighty Mart

“While the State’s threshold price for milk was \$2.27 per gallon, our retail margin did not exceed the .54 cent retail margin standard.”

United Refining Company of Pennsylvania

“A gallon of 2% milk retailed for \$2.59 in our store during June. Our gallon price (cost) from Meadow Brook was \$2.0848. Our margin of profit was \$0.51 resulting in a margin of 19.5%.”

Correspondence

Avon and Geneseo Hess

“We typically like to price our merchandise at a 30% margin level. After speaking with other retailers, I found that none were aware of a threshold pricing for milk.”

D’Agostino Supermarkets, Inc.

“We are not responding to your request because the Attorney General has no jurisdictional authority to initiate any milk price gouging investigation.”

Correspondence

Temples Dairy Store

“After I received your letter I looked at what we were being charged for Milk! Cost: \$2.55 gal whole milk (14% 2.99 retail) We are being charged way too much! Thanks for your help we are switching milk suppliers.”

Ameel Enterprises Inc.

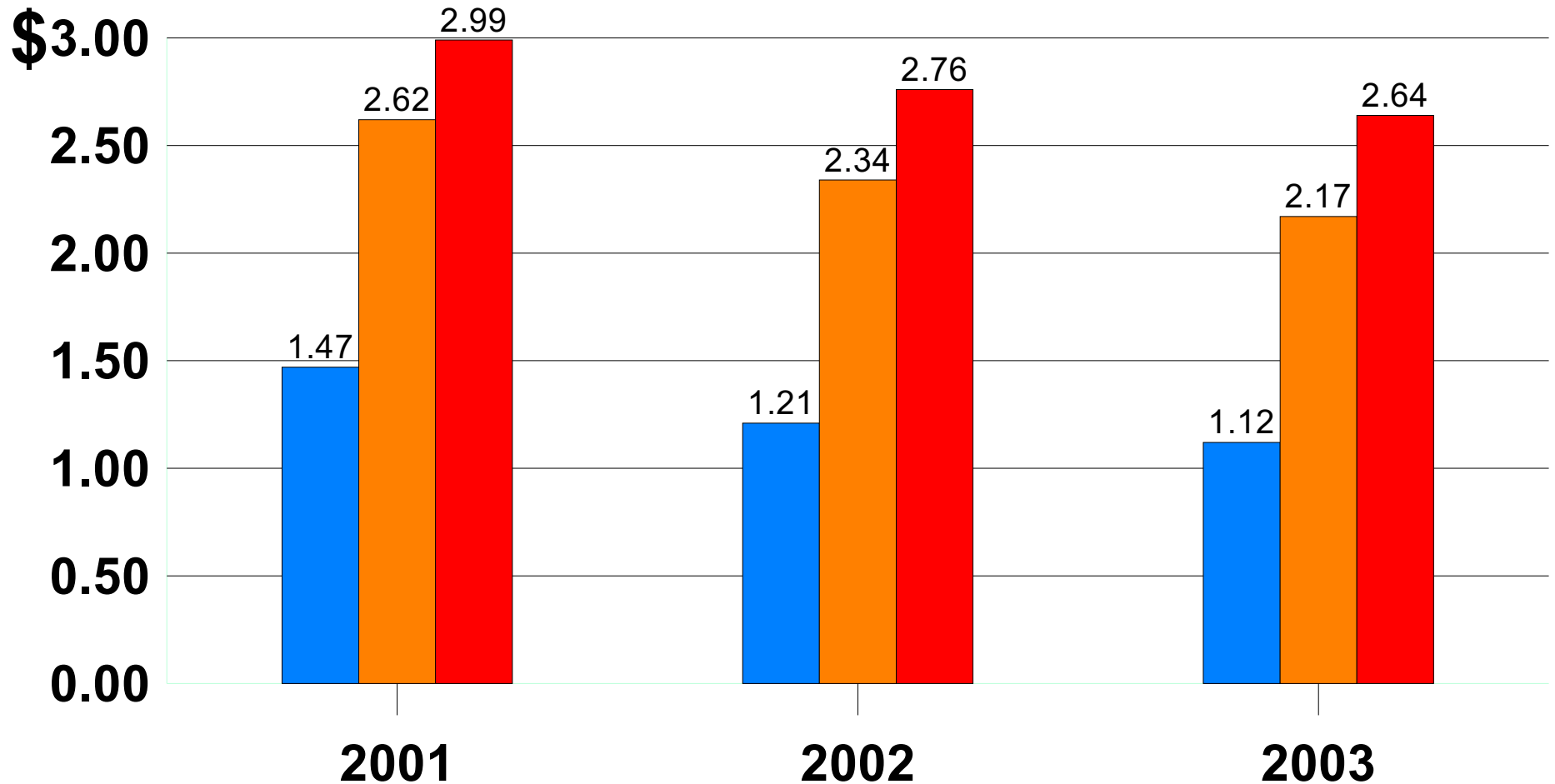
“If we cannot make a reasonable profit on these items, we will be in danger of not being able to meet costs and remain a viable business.”

Correspondence

Quickway

“Our retail price for a gallon of milk did not exceed the Department of Agriculture and Markets retail margin standard of \$0.54 per gallon.”

Raw Milk Cost vs. Retail Price 2001-2003



-  Raw Milk Cost
-  Upstate Retail Price
-  Metro Retail Price