



**International Dairy Foods Association**  
Milk Industry Foundation  
National Cheese Institute  
International Ice Cream Association



**Statement of Richard D. Draper  
CEO & Co-Founder  
The Ice Cream Club, Inc.**

**on behalf of  
International Dairy Foods Association**

**Before the Committee on Small Business  
United States House of Representatives**

**March 30, 2011**

Good afternoon, my name is Rich Draper from The Ice Cream Club®.

Thank you Chairman Graves, Ranking Member Velazquez, and members of the Committee for the invitation to testify today. And, particular thanks to my Congressman, Allen West from Florida's 22nd District, who is so committed to the success of small businesses. I also want to thank the International Dairy Foods Association, the leading voice of the dairy industry, for their help with today's hearing. And I would be remiss if I did not mention my wife and business partner Heather who is with me today.

In 1982, I opened an ice cream store, along with a buddy from University of Illinois, Tom Jackson, in a little town called Manalapan in south Florida, near Palm Beach. Those were the good ole days when you could come across an opportunity and just pack up and go. We started making ice cream in the back of the store and shortly thereafter began wholesaling. We named our business, the Ice Cream Club®, Inc.

We steadily grew to become the leading regional manufacturer and distributor of premium parlor style ice cream, yogurt and related products in the Southeast. The Ice Cream Club® now distributes ice cream and mixes to over 500 ice cream shops, retirement communities, restaurants, food service accounts and wholesale accounts throughout the Southeastern US and the Caribbean. About 7% of our business is export and that percentage is growing. In order to ensure the success of our long-term customers, our company's award-winning products are only found in select dipping stores and food service accounts. The secret to the company's success is our unbeatable taste along with our creative and unique selection of over 120 premium flavors.

We now employ 50 people and operate from an 18,000 square foot factory and we continue to grow. In fact, we hired seven new employees this year. We produce and distribute over 1 million gallons of finished product per year. We still have our original store and Tom is still our Partner.

We deal with regulations at the local, state, and federal levels by multiple agencies, so we are very interested in today's hearing topic and supportive of all efforts the

government makes to streamline and make regulations as efficient and least burdensome as possible.

Because this committee is interested in how the Regulatory Flexibility Act (RFA) could be improved to be more tailored to better assure that federal agencies consider the impact that regulations have on small businesses like the Ice Cream Club®, I would like to mention some regulatory areas particularly important to us, where we would like to see the RFA fully enforced or improved. These areas are food safety, federal procurement, and dairy policy.

There is nothing more important to the success of our small business than the confidence our customers have in the safety and quality of our products. The food recalls in recent years have heightened consumer awareness over food safety and in response Congress just passed comprehensive new food safety legislation. We understand the concern but are wary of how new federal regulations will be developed and implemented

As the dairy industry is already subjected to significant regulation, we are worried about duplicative regulatory efforts by various levels of government. For example, we are inspected regularly by the US Department of Agriculture (USDA), working with the Florida Department of Agriculture, and also the US Food and Drug Administration (FDA). We have four major inspections by the Florida Department of Agriculture each year as well as numerous other visits to collect samples and calibrate equipment. The new bill calls for even more inspections for food manufacturers, so it will be particularly important that the FDA utilize existing inspections in the dairy industry as much as possible.

We are also concerned that instead of targeting increased inspection to high risk areas as is required by the bill, there is a perception by the government that food companies are cutting corners and they will take a “once size fits all” approach over the entire food sector. We hope that there is not an adversarial “gotcha” stance coming down the pike.

Our view is that the vast majority of food producers adheres to strict food safety procedures and is working very hard to provide safe, quality and consistent products to the public. We welcome government regulation, inspection and education when it is utilized as a partnership between industry and government to further enhance the safety of food production. We pride ourselves on 29+ years of consistently producing quality products and strictly adhere to food safety standards, utilizing Hazard Analysis and Critical Point Plans and Good Manufacturing Practices, Preventative Maintenance Programs, Proactive In-House Training and employing a full-time Quality Control Director with over 25 years of experience in the dairy industry. So my concern about the prospect of additional regulations, absent a comprehensive understanding of the ultimate impact to small businesses, is that the effects could ultimately make the cost of doing business prohibitive, especially to small business.

An example of a one-size-does-not-fit-all when it comes to regulations is selling to the government. My experience is that only a few of the larger companies sell ice cream to government facilities. The reason for this is that the bids we see require supplying all dairy products and we only produce ice cream. We would like the opportunity to go in with our product line and see if the facility would have an interest, especially if we have products not available from other producers. For example, we produce over 20 awesome flavors of no-sugar-added ice cream. That is a great selection (and priced right) and might be welcomed at a VA Hospital.

Another example is the Environmental Protection Agency's (EPA) oil spill prevention rule. As you may know, the EPA has recognized that including milk under its oil spill prevention rule is unsound and is working to prevent the oil spill rule from applying to milk and dairy product containers. As a manufacturer of ice cream mixes, we receive cream in 300 gallon containers, well above the 55 gallon minimum to be covered under the oil spill rule. As such, those containers of cream would be subject to the oil spill rule unless they are also included in the exemption for dairy products. Although we believe that the EPA is working to define the milk and dairy product exemption in a way that those containers are treated equitably, we are unsure if these containers will ultimately be in or out of the rule.

I would also like to suggest more small business involvement and input at the inception of new regulation. This process has worked successfully in my industry. In May of 2009, the International Dairy Foods Association participated in a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel on OSHA's intended regulation of foods containing diacetyl. Prior to the convening of the panel, the Occupational Health and Safety Administration (OSHA) publicly stated it was ready to regulate foods containing diacetyl which would include dairy products such as yogurt, cottage cheese, some ice creams and other dairy products. Thankfully, the SBREFA process gave our industry an opportunity to offer our insights to OSHA and in response OSHA altered its regulatory process and has pursued businesses that use diacetyl under the National Emphasis Program rather than companies that make food products.

It's my understanding that currently only the EPA and OSHA are required to convene SBREFA review panels to consult with small entities on regulations expected to have a significant impact on them. Regulations from other agencies, such as FDA and USDA could benefit from this practice and I'm sure small business people like myself would volunteer for a period to help out with these reviews. This would not be a way to create short cuts or gain a competitive edge, just real world input from folks in the front line.

Since milk is the primary ingredient we use in our business, I want to say that no area of regulation should be outside the scope of the Regulatory Flexibility Act and other safeguards Congress has put in place to require agencies to measure small business impact. Although we do not buy milk directly from producers, we are indirectly impacted by the milk pricing system. While USDA puts great emphasis on having a safety net in place for dairy farmers, their price regulations can be a stranglehold especially for small dairy businesses.

In conclusion, I would like to say that I feel very fortunate that we are in a country where we are free to grow our business. Most of the world's population is under an oppressive or restrictive regime of some kind so it is hard for us to complain too much. I will take reasonable regulation over the alternative. Thank you again for inviting us here today to review this very important topic.