

Testimony to the public hearing to consider proposals seeking to amend or remove the producer handler provisions and revise the exempt plant provisions applicable to all Federal milk marketing order

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Testimony by Rick Segalla

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My name is Rick Segalla and I operate my family's 900-acre farm in Canaan Connecticut, milking 115 cows and raising an equal number of young stock. At this time there are 140 dairy farms remaining in the state. The farm has been in the family since the early 1900's and today it is a corporation owned by me and my siblings. The farm consists of 300 acres wooded land, and the remaining tillable/open land is used for corn silage (65A), Alfalfa (76A), grass hay (200A) and pasture (160A). I started transitioning to organic dairy in 1997 when I gave up the use of synthetic fertilizers and started using more sustainable practices such as crop rotations, green manures and mined minerals for my soil health and management. My farm was certified organic in 1999, but I did not have a market for my organic milk. A couple of options were in the making, however, and eventually I decided to sell my milk to Colabro Cheese and have been shipping to them ever since. Colabro Cheese is a 43-year-old Italian cheese company located in East Haven, CT that specializes in producing Ricotta, Ricotta Impastata, Mozzarella Fior Di Latte, Grated Parmesan and Romano and a line of select specialty cheeses. Along with the dairy cows, I have been raising some Hereford dairy crosses for a small, but growing organic beef market.

I am Vice-President of the Northeast Organic Dairy Producers Alliance (NODPA) and today I'm speaking on behalf of NODPA and the Federation of Organic Dairy Farmers(FOOD Farmers). I am one of the original NODPA members who descended upon Roman Stoltzfoos's farm in Lititz, Pennsylvania for the first Annual (2001) NODPA Field Days.

NODPA represents 820 organic dairy farmers in the East of the USA. The mission of the Northeast Organic Dairy Producers Alliance is to enable organic dairy family farmers, situated across an extensive area, to have informed discussion about matters critical to the well being of the organic dairy industry as a whole, with particular emphasis on:

1. Establishing a fair and sustainable price for their product at the wholesale level.
2. Promoting ethical, ecological and economically sustainable farming practices.
3. Developing networks with producers and processors of other organic commodities to strengthen the infrastructure within the industry.
4. Establishing open dialogue with organic dairy processors and retailers in order to better influence producer pay price and to contribute to marketing efforts.

FOOD Farmers is the umbrella organization of the Northeast Organic Dairy Producers Alliance (NODPA), the Midwest Organic Dairy Producers Alliance (MODPA), and the Western Organic Dairy Producers Alliance (WODPA), which represents over two thirds of organic dairy farmers across the country. **MODPA's** mission is to promote communication and networking for the

betterment of all Midwest dairy producers and enhance a sustainable farmgate price. WODPA's mission is to preserve, protect, and ensure the sustainability and integrity of organic dairy farming across the west.

Organic dairy farmers have many different production methods including seasonal grass based dairies and more traditional production methods that combine pasture, conserved forage and grain. They also market their milk in many different ways, selling to the major brands including Horizon Organic, Organic Valley, HP Hood, Humboldt Dairy, Clover Stornetta as well as through smaller cooperatives including Upstate Niagara Cooperative, Organic Choice and LOFCO, and producer-handlers of organic dairy products marketing direct to the consumer.

We support proposals retaining the producer handler exemption with a monthly **hard** production cap at 450,000 pounds for any existing producer handlers and a monthly **hard** production cap at 450,000 for any new producer handlers coming into the market, over which level they would be regulated. This honors the original intent and purpose of the exemption, makes allowance for existing small, usually owner-operated, family-owned, businesses who have made capital investments and it takes into account the size of organic dairy herds in the twenty first century.

We also believe that the small plant exemption level should have a monthly **hard** production cap of 450,000 to ensure a level playing field. This will allow small family farm operations to work cooperatively to process and market their own milk to their local community. This is particularly applicable to the organic dairy market as processing in a community plant would allow family farms to combine their equity to maximize their return for their product which has higher production costs. It is well documented that consumers of organic products value knowing the farmer that produces the product and that it is packaged locally. The production cap would allow a farm producing 15,000 pounds of milk per cow per year to have about 350 cows and still be exempt from pool requirements. It would also allow a number of small operations to process their milk together and still fall under the small plant exemption, which is not possible with the producer handler exemption.

We find no justification for a "soft cap" approach in any proposal. A soft cap will encourage abuse of the exemption and involve extraordinary policing to ensure compliance. If "small" is the criterion, then there simply is NO basis for the so-called "soft cap" approaches put forth in various proposals. Those proposals seek an advantage for a processor which (by definition) would be larger than the exemption threshold for "small" businesses, by allowing them to be larger than that threshold while still enjoying preferential pricing on milk from their own farm in quantities up to that threshold. Whatever rationales will be offered in support of those "soft cap" proposals, promoting small business cannot be an acceptable rationale because there is no size limitation in the proposals.

We do not support any "grandfathering" of existing operations as such "grandfathering" represents unusually special treatment. As Federal Order changes are made through the years, plants become subject to those changes which may impact their profitability. The same happens with make allowances; – manufacturing plants are subject to reduced profitability or even forced losses if make allowances are not increased to match increases in production costs (even though the plant investments may have been made when economic conditions were more favorable); and

similarly, every producer is subject to reduced profitability whenever the pay prices are reduced (even though their farm investments may have been made when economic conditions were more promising). The Federal Order system simply can't, and, in general has not, protected producers or plants from economic change by "grandfathering" their status.

On the organic side, the largest example of abuse of the producer handler exemption is Aurora Organic Dairy with 12,600 or more cows, headquartered in Platteville, Colorado, but with herds in Colorado and Texas. When we say "12,600 cows or more," we are being conservative with our figures because some material in the media has indicated they had intended to milk 19,000 cows by the end of 2008. They are a producer-handler that distributes their Ultra High Pasteurized (UHT) packaged products nationally primarily selling their fluid milk directly to big-box stores, supermarket chains and national distributors as private label. This milk is being brought into all the Federal Orders without producer-handler production caps, and on store shelves competes with locally or regionally produced organic milk at a significant economic advantage. The economies of scale that allow for bulk purchasing of feed and other inputs by large dairies that are financed by private equity firms already place Aurora at a significant advantage to the average family farm. When you add the competitive advantage of not having paid the pooling costs, Aurora and other large producer handlers have a significant and unfair economic advantage that undermines the negotiating ability of the brands representing the vast majority of organic dairy producers. This situation threatens the viability of organic dairy producers as it drives down the wholesale price for packaged organic milk which then translates into a drop in pay price for producers. Without the economies of scale, family farms cannot pay their bills at these low pay prices and their long term economic future is threatened.

This downward pressure on pricing is already forcing some organic producers to exit the industry--a first since the commercialization of organic dairy approximately 23 years ago.

The large scale producer handler is a business model designed to produce packaged milk at low cost. They should not also have an unfair economic advantage by being exempt from paying into the Federal pool that provides for the long term stability of the milk market for all producers. We support the true intent of the producer handler and exempt plant status that rewards the entrepreneurial work of a single producer or producers working together to benefit each other and their community. We believe a hard cap will ensure that the true intent of these exemptions from the Federal Pool can be enforced which will maintain a level playing field in the marketing of organic milk.

I thank everybody for listening to this testimony. I am prepared to answer questions.

Submitted by Rick Segalla on behalf of the Northeast Organic Dairy Producers Alliance and the Federation of Organic Dairy Farmers

Testimony by Kathie Arnold

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My name is Kathie Arnold and I own and operate Twin Oaks Dairy LLC in Truxton, NY, in partnership with my husband and his brother. We are in our 30th year in business together. We have built and expanded on the farm business that was started by their parents in the 1930's. We have been shipping certified organic milk since 1998 and currently have approximately 250 head of certified livestock, milking about 130, with over 700 acres of certified cropland and pastures. To make the transition to organic production, our farm had to make numerous changes in our infrastructure, requiring investment of time and financial resources to enable us to meet the organic standards.

Over these last ten years, I have been extensively involved in helping to build the organic industry from the farmer side, mentoring numerous transitioning and new entry organic dairy farms, hosting many farm tours, and giving several presentations around the county on organic dairy production. I have been involved in organizing and building the Northeast Organic Dairy Producers Alliance from its initial meeting in 2001, carrying roles from Board member, President, newsletter editor and writer to Policy Committee work; and I have been active in the formation and development of FOOD Farmers. I have written numerous articles on organic dairy production for other publications as well. I've been active with the National Organic Coalition and am a participant on the New York State Organic Dairy Task Force. New York's Commissioner of Ag & Markets has appointed me to be on the New York Milk Marketing Advisory Council, the Northeast Dairy Leadership Team, and appointed me as Chair of the New York's Organic Task Force to advise his Department. I lay out this partial listing as a reflection of the time and effort, most all of it gratis, that I have invested in endeavoring to help develop, grow, and strengthen the organic dairy sector. I want to see more farms across the country continue to have the opportunity to transition to organic production and have a viable market--one that is not outcompeted by large producer handlers that are given a substantial competitive advantage by their exemption from pooling costs.

I am here today not only to speak on behalf of our own farm, but also to represent NODPA and FOOD Farmers, and to represent the New York State Organic Dairy Task Force. The mission of the Task Force is to "provide a venue to discuss and develop strategies to grow a sustainable organic dairy industry for New York State. This dialogue will help clarify opportunities and the barriers in the organic dairy industry. The members will represent diverse perspectives from all points of the value chain. The primary outcome of the Task Force will be to identify and advocate for needed communication, education, research and policy initiatives to allow for the production and marketing of New York's organic dairy products in a fashion which is economically, socially, and environmentally sustainable." The members of the Task Force include organic dairy and grain farmers, processors, certifiers, educators, and a representative from the NY Farm Viability Institute.

The detrimental effect of no producer / handler production cap on the organic market was first identified by the New York Organic Dairy Task Force in July of 2007, noting the volume of milk

being sold in the Northeast that originated from a producer handler in Colorado. The Task Force then worked with representatives from NODPA and FOOD Farmers on this issue.

One of the basic principles of the Federal Milk Marketing Order system is to provide equity between producers. That principle is being compromised with the current producer handler exemption, in most orders, of all producer handlers from paying into the FFMO system, when some of today's producer handlers are milking many thousands of cows. The economic advantage they have by not paying pooling costs creates an inequitable playing field.

In the organic dairy industry, we have at least one such example where an organic producer handler, Aurora Organic Dairy, has multiple operations milking a total of 12,600 or more cows and likely has as many or more cows than all of the State of Vermont¹ and its 210 organic dairy farms. Their milk is on store shelves around the country as private label / store brand fluid milk, competing at an economic advantage when most of the rest of the organic milk has had to reflect the additional price of paying pooling costs.

When the producer handler exemption was first put into place, there was no conception of the huge numbers of cows that would come to be part of some of today's producer handler operations. Their economies of scale, their vertical integration, and their use of ultra high temperature pasteurization, which provides weeks of shelf life allowing nationwide distribution of milk from a single producer handler plant. This ability to ship packaged milk around the country severely disrupts the organic marketplace and impacts every organic processor and every organic farmer whose processor does have to pay into the pool, as well as all the small organic producer handlers that this exemption was meant for.

When the federal milk marketing orders were first created in the 1930's, there was no conception that a pasteurization process would be developed that would allow milk processed in one plant to be distributed nationwide, from coast to coast, rather than just providing milk for a neighborhood, a community, or at most a region, as producers handlers would have done in the 1930's. Aurora began processing organic milk in the latter half of 2004. In less than five years time, they have grown to have approximately 17%² of the organic fluid market. Aurora has taken the producer handler model to a whole new unprecedented dimension—and is continuing to grow their business and gobble up market share from their competitors. Their ultra pasteurized private label fluid beverages are distributed nationwide to large, national retail chain customers, and Aurora's exempt status gives them an economic advantage over all their competitors in the private label/store brand marketplace who are regulated handlers and over their major brand name competitors who are regulated handlers as well.

¹ The State of Vermont has approximately 210 organic dairy herds with an average herd size of 56 cows. The 2005-2006 study by Vermont Extension, University of Maine Extension, NOFA-VT and the Maine Organic Milk Producers showed that the average size of an organic herd in Vermont was 56 cows.

² The USDA AMS data show national sales of organic fluid milk sales at 1,263 million pounds for 2008. Aurora Dairy has 12,600 cows producing an average of 17,000 pounds of milk a year for a total of 214.2 million pounds approximately 17% of total fluid sales for 2008. Aurora Herd manager and veterinarian stated that the average production for Aurora Dairy cows is 17,000 lb per year on a tour of the Dairy by FOOD Farmers in 2007.

How would the institution of a producer handler production cap benefit organic dairy producers? By leveling the playing field, it would ensure that the pool could function more efficiently and maintain the profitability of handlers and processors. Processors competing with exempted plants that have a national distribution would not be at a competitive disadvantage. For the hundreds of organic dairy producers in the US that negotiate price directly with their processor, the unfair advantage that exempted plants have in the marketplace restricts the margins of those processors and inevitably lessens their ability to pay their farmers a fair pay price. Organic dairy is only approximately 4% of total milk production but is growing, with nearly 2,000 family farms now involved in organic dairy. Putting a cap on the exemption will benefit many while only impacting those few that are abusing the intent of the exemption for their personal gain.

Times have changed--from size of some operations to processing techniques--that makes it imperative to change the regulations that were put in place 72 years ago. Without the institution of a 450,000 pound production cap, organic farmers face the real risk of continued growth of existing large producer handlers and the start-up of new ones who are economically advantaged by their exempt status. This unfair circumstance would continue to drive disruption of our marketplace to the extreme.

Thank you for listening to this testimony and I stand ready to answer questions.

Submitted by Kathie Arnold on behalf of the Northeast Organic Dairy Producers Alliance, the Federation of Organic Dairy Farmers, and the NYS Organic Dairy Task Force