

USDA  
C. J. HIC  
JUL 17 13 4:06

Before the Secretary  
United States Department of Agriculture

Regarding Milk in the Northeast and other Marketing Areas  
Proposed Amendments to Orders

Docket No. AMS DA-09-0007-0001

July 17, 2009

By Timothy R. Harner, Esq  
General Counsel  
Upstate Niagara Cooperative, Inc.  
25 Anderson Road  
Buffalo, NY 14225

Upstate Niagara Cooperative, Inc. ("Upstate Niagara") is a New York agricultural cooperative that is a member of both International Dairy Foods Association ("IDFA") and National Milk Producers Federation ("NMPF"). Upstate Niagara supports the positions of IDFA and NMPF for the reasons that they entered into the record.

Upstate Niagara is a Capper-Volstead cooperative whose predecessor cooperatives were founded during the Great Depression. Its almost 400 dairy farm family members live in Western New York. They market 1.6 billion pounds of milk annually. Much of their milk is shipped to fluid milk plants, a cultured plant, and a balancing plant that are owned and operated by Upstate Niagara. Their milk is regulated by several federal milk orders, including Orders 1 and 33.

The existing producer-handler exemption is a classic example of a regulation that has outlived the circumstances that originally justified its existence. The exemption made sense in a dairy industry that disappeared long ago—a dairy industry that was dominated by small family farms, some of whom supplemented their income by bottling a small amount of milk for their neighbors.

Naturally, no one wanted to regulate such tiny operations. Nor were the small volumes of milk involved any threat to dairy processors that were regulated.

By the 21<sup>st</sup> century, tiny "mom and pop" producer handlers have morphed into increasingly large, sophisticated processors whose economies of scale match those of regulated processors. Yet these growing businesses complain when asked to pay the minimum prices imposed on their competitors!

The evidence entered into the record at the hearing, including the comprehensive testimony of Dr. Roger Cryan, established conclusively: (1) the unfairness of the current producer handler exemption; and (2) the fairest way to transition to updated market order provisions that will promote the orderly marketing milk in the dairy industry as it exists in the 21<sup>st</sup> century.

The uneven playing field that has been caused by the existing producer handler exemption must be leveled. Accordingly, Upstate Niagara respectfully requests that the Federal Milk Marketing Orders be amended in the ways requested by IDFA and NMPF based upon the evidence that they entered into the record.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Timothy R. Harner". The signature is written in a cursive, slightly stylized font.

Timothy R. Harner, Esq.  
General Counsel