

## **Before the United States Departments of Justice and Agriculture**

*In the matter of*

### **Workshops to Explore Competition and Regulatory Issues in the Agricultural Industry**

#### **Comments of the Greater Northeast Milk Marketing Agency**

##### **Introduction**

The Greater Northeast Milk Marketing Agency (GNEMMA) hereby submits comments with respect to the 2010 workshops to be held jointly by the United States Departments of Justice and Agriculture concerning competition and regulatory issues in the agricultural industry. GNEMMA is a common marketing agency of eight (8) dairy farmer cooperatives operating in the northeast United States. The members of GNEMMA are: Agrimark, Inc.; Dairy Farmers of America, Inc.; Dairylea Cooperative Inc.; Dairy Marketing Services, LLC; Land O'Lakes, Inc.; Maryland and Virginia Milk Producers Cooperative Association, Inc.; St. Albans Cooperative Creamery, Inc.; and Upstate Niagara Cooperative, Inc. GNEMMA is a common marketing agency as authorized by the Capper-Volstead Act, 7 U.S.C. §§291 (producer "associations may have marketing agencies in common. . ."). It was formed for the mutual benefit of the GNEMMA dairy farmers in the northeast United States, specifically throughout the milk marketing area of Federal Milk Marketing Order 1, 7 C.F.R. §1001.

GNEMMA joins in the comments submitted by the National Milk Producers Federation (NMPF). GNEMMA in addition, offers these comments with respect to the particular competitive characteristics of the dairy industry in the northeast.

##### **The Dairy Industry in the Northeast United States**

The northeast United States is the largest Class I milk sales area in the Federal Milk Market Order system, representing more than 23% of the total Class I sales in the 10 federal milk orders in 2008.<sup>1</sup> It is also one of the largest areas for production of Class II and Class IV products in the country.<sup>2</sup> The northeast, in addition, has a substantial Class III, cheese production, sector.

The region's diverse cooperative sector plays a major role in preserving and enhancing milk marketing opportunities for the northeast's more than 13,000 dairy farms.<sup>3</sup> At December 31, 2008, there were 53 cooperatives marketing milk in Order 1.<sup>4</sup> During that month, these cooperatives marketed milk for 75.5% of the dairies in the region, a share which has been essentially constant since 2000 when Order 1 was formed.<sup>5</sup> (In 2000, 75.7% of farmers in Order 1 marketed through cooperatives.<sup>6</sup>) More than 3,300 dairy farms in Order 1 marketed their milk as independents in December 2008.

Dairy farming in the northeast is dominated by small to medium size family operations

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<sup>1</sup> Federal Milk Order Marketing and Utilization Summary, Annual 2008 at: <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5075225> (Published by USDA, AMS)

<sup>2</sup> Id.

<sup>3</sup> Order 1 Market Administrator's Annual Statistical Bulletin, 2008, at page 16: (published at [http://www.fmmone.com/Northeast\\_Order/MA\\_Bulletin/annual2008.pdf](http://www.fmmone.com/Northeast_Order/MA_Bulletin/annual2008.pdf)).

<sup>4</sup> Id. at p. 39.

<sup>5</sup> Northeast Order 1 Statistical Handbook, Table A28-b (Available at: <http://www.fmmone.com/>)

<sup>6</sup> Id.

with a regional average of approximately 80 cows per herd, using Order 1 data.<sup>7</sup> These farms are located throughout the region, in every state. The largest states in terms of farm numbers and production are New York, Pennsylvania, and Vermont which in 2008 had, respectively, 4,918; 5,902; and 1,054 farms marketing on Order 1.

### **The Cooperative Role in Milk Marketing in the Northeast**

Dairy farmers have, in general, two options for marketing their milk: independently to proprietary dairy firms or through a cooperative. The options for independent marketing to proprietary firms are constrained by the limited interest of those firms in assuming the responsibility for marketing milk from dairy farms 365 days a year. Cooperatives, on the other hand, are always available because they are farmer-owned, self-help, mutual benefit organizations. Cooperatives will always market the milk of dairy farm families.

The NMPF comments with respect to the cooperative role in balancing the dairy marketplace are particularly relevant in the northeast. Class IV milk utilization represents the market of last resort for milk: It is the balancing use. Milk goes first to all “demand” uses, Class I – fluid; Class II – yogurt, ice cream, cottage cheese, candy and other ‘soft’ products; and Class III – hard cheeses. Only after those demands have been met is milk available for manufacture into nonfat dry milk and butter, the Class IV products. The volumes of milk available in the northeast for Class IV use vary astronomically, on a daily, weekly, monthly and annual basis. Data is not available with respect to daily and weekly fluctuations, but the Market Administrator’s published data shows that since January 2000 monthly volumes for Class IV

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<sup>7</sup> Id. at Table A2 (Average production per farm per day of 4806 for 2008). Number of cows estimated at production of 60 lbs per cow per day. At 70 lbs per cow per day, the average herd size would be less than 70 cows.

have varied from a low of 59.4 million pounds in September 2003 to 370.0 million pounds in May 2008, a more than six-fold variation.<sup>8</sup> Since January 2000, the proportion of milk in Order 1 available for Class IV production has varied from 3.2% at the low, to 18.1% at peak.<sup>9</sup> The proprietary sector, which buys milk directly from independent dairy farmers, does so for processing almost entirely into Class I, II, and III products. Because of the unpredictability of supply and challenging profitability in Class IV production, the proprietary sector has not made, or retained, substantial investment in Class IV facilities in the northeast. The GNEMMA cooperatives, however, have invested in the plant facilities and the personnel and related infrastructure necessary to absorb these incredible fluctuations in supply, thereby servicing the marketplace in the region to the benefit of all.

The importance of the Capper-Volstead authorization for the formation of dairy farmer cooperatives and common marketing agencies of dairy farmer cooperatives cannot be over emphasized. It is literally true that without cooperatives many dairy farmers would not have a market for their milk production. Common marketing agencies of cooperatives, such as GNEMMA, provide critical coordination in the milk marketing efforts of individual cooperatives. The authorization for cooperative marketing agencies allows dairy farmers to affiliate in cooperatives of their choice while allowing those cooperatives to work together in milk marketing in ways that would not be possible without the Capper-Volstead exemption from the antitrust laws.

Cooperatives in the Northeast have a manifestly pro-competitive impact in the region in

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<sup>8</sup> Northeast Order 1 Statistical Handbook at Table A7. URL at n. 5 supra.

<sup>9</sup> Id. at Table A11.

