

**BEFORE THE UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE**

In the Matter of	:	
	:	
MILK IN THE NORTHEAST AND OTHER MARKETING AREAS	:	Docket Nos.: AO-14-A77 et al.;
	:	DA-07-02-A
	:	

**REQUEST TO MAKE INTERIM ORDER FINAL AND TO TERMINATE
PROCEEDING WITH RESPECT TO ALL OTHER ISSUES**

The Greater Northeast Milk Marketing Agency (“GNEMMA”) hereby requests that the Secretary (1) make the Interim Order herein final and (2) terminate the proceeding with respect to all other issues for the following reasons and as more fully set forth hereafter.

GNEMMA is a marketing agency in common which consists of the following member dairy cooperatives: Agri-Mark, 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. The members of GNEMMA market in excess of 65 percent of the milk in Order 1, the federal order regulating the marketing of milk in the Northeast marketing area. Order 1, in turn, represents more than 20 percent of the milk in the Federal Milk Marketing Order system. Each of the GNEMMA member cooperatives is a Capper-Volstead qualified cooperative recognized to represent its members in federal milk market orders.

GNEMMA first requests that the Interim Order, which has now been effective for more than 3 years -- operating as a *de facto* final, permanent Order – should be made final. This will

involve the issuance of a final decision and final order upon the issues addressed in the Interim Order and the holding of referenda in each order. Such action is appropriate so that any future changes to this *de facto* final order can be made upon a new record with timely data and in a proceeding subject to the time limitations now embodied in the Agricultural Marketing Agreement Act.¹

GNEMMA secondly requests that the remainder of the proceeding be terminated without further action by the Department. At this date it will serve no purpose for the Department and the industry to go through a recommended and, possibly, final order process with respect to the numerous issues framed in a hearing record which is more than 4 years old. The ongoing challenge of fashioning appropriate minimum price formulas for Class III and IV use in the federal order system needs to go forward on the basis of industry conditions in 2012, and not be constrained by conditions litigated in 2007.

Importantly, terminating this hearing (and the hearing at AO-14-A74 et al. which is the subject of a separate request by GNEMMA) will free the Department and the industry from the constraints of the *ex parte* rules² which inhibit free interchange of data and views and constrict open communication between the Department and the industry on all the important issues touched on in these still-open dockets. Closing out the dockets will be a great service to all in the industry and serve the public interest as well.

¹ See 7 U.S.C. § 608c(17) as amended by the Food, Conservation, and Energy Act of 2008; Act of June 18, 2008, PL 110-246, § 1504; implemented by regulations at 7 C.F.R. § 900.21-33 (2011).

² 7 C.F.R. § 900.16.

BACKGROUND OF PROCEEDING

These hearings were initiated by the hearing notice published February 9, 2007, at 72 Fed. Reg.6179. This notice was supplemented by a second notice published February 20, 2007, at 72 Fed. Reg.7753. The hearing notices contained a total of 20 proposals for a wide variety of amendments to the product price formulas and make allowances which establish minimum prices for milk used to produce Class III and IV products under all Federal Orders.

Hearings were held upon the proposals on February 26 through March 2; April 9 through 13; and July 9 through 11, 2007. A Tentative Partial Final decision was published June 20, 2008, at 73 Fed. Reg.35306. An Interim Final Rule was published July 31, 2008, at 73 Fed. Reg.44617 which implemented the Interim Partial Final Decision. This Interim Final Rule was scheduled to be effective September 1, 2007. By notice published September 3, 2008 at 73 Fed. Reg.51532 the effective date of the Interim Final Rule was delayed one month until October 1, 2008, because of a lawsuit filed in the United States District Court for the District of Columbia.

The Interim Final Order, effective October 1, 2008, adjusted the make allowances for cheese, butter, NFDM, and dry whey – the same make allowances which had been adjusted by an Order effective February 1, 2007, entered in the hearing at docket numbers AO-14-A77, et al. The make allowance adjustments effective October 1, 2008 superceded the adjustments in the Order of February 1, 2007, and continue to be the effective make allowances in the federal orders.

The Tentative Partial Final Decision of June 20, 2008, summarized and described the array of hearing proposals and their subject matter as follows at 73 Fed. Reg.35309:

1. Make Allowances: Proposals 1, 2 and 3
2. Product Yields and Butterfat Recovery Percentage: Proposals 6, 7 and 8

3. Value of Butterfat in Whey: Proposals 9 and 10
4. Barrel Cheese Price: Proposals 12 and 13
5. Product Price Series: Proposals 14, 15 and 18
6. Other Solids Price: Proposal 16

Proposal 17, put forward by the National Milk Producers Federation for an energy adjuster to Class III and IV make allowances, was identified as a proposal “which will be addressed in a separate decision,” but that decision has not been made. Similarly, proposal 20, sponsored by Dairylea Cooperative, was accorded the same ‘to-be-addressed-in-a-separate-decision’ status.

The Tentative Partial Final Decision addressed some or all of proposals 1, 2, 3 and 6, leaving all of the issues involved in the balance of those proposals and all the other proposals to another day. That day, however, has not arrived while its timeliness has come and gone and the docket has remained open and *ex parte* rules have remained in effect.

THE INTERIM ORDER SHOULD BE MADE FINAL

The first action that needs to be taken with respect to this docket is that the Interim Order needs to be made final; a final order needs to be issued; and producer referenda held so that, if approved by producers, those provisions are permanent parts of the orders. This will require that the Department address appropriately in a partial final decision the comments and exceptions filed to the Interim Order.

Final action will simply make formal what has been in fact the actual operating day-to-day regulation for more than 3 years. National Milk Producers Federation does not oppose this request which would terminate this proceeding without a decision being issued on the energy adjuster proposal.

THE PROCEEDING SHOULD BE TERMINATED WITH RESPECT TO ALL OTHER ISSUES.

There are several clear reasons which support termination of this proceeding without formal action by the Department on the various proposals which were not addressed in the Tentative Partial Final Decision.

The data in this record is clearly stale, having been taken five years ago, and there is no good reason to utilize it in making any decisions now.

Eliminating the operation of the *ex parte* rules is important so that the industry and Department may move forward in determining rules for Class III and IV pricing in the future.

Finally, decision-making on these issues, if made in a new rulemaking docket, will be subject to the procedural requirements of the AMAA adopted in 2008. The unfortunate event of a record open for four or five years can not reoccur. The discipline required of both the industry and the Department under these rules will assure that the issues not being addressed in this hearing will be addressed efficiently, if necessary, on a fresh record in the future.

CONCLUSION

For all the forgoing reasons, GNEMMA respectfully requests that the Interim Rule entered be made final and that the proceeding be terminated with respect to all other issues.

Respectfully Submitted,

/s/

Dated: March 26, 2012

By _____
Marvin Beshore, Esquire
130 State Street, P.O. Box 946
Harrisburg, PA 17108-0946
(717) 236-0781
MBeshore@beshorelaw.com
Attorney for GNEMMA