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Upstate Farms Cooperative, Inc.

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January 9, 2006

Division of Dockets Management (HFA-305)
Food and Drug Administration
5630 Fishers Lane, Room 1061
Rockville, Maryland 20852

Re: Proposed Rulemaking to Amend Standards of Identity for Ice Cream

Dear FDA:

As President of Upstate Farms Cooperative, Inc., I am writing on behalf of our almost 300 dairy farm families in Western New York. We own and operate three dairy plants with over 500 employees, to market more than a billion pounds of milk each year. Our products include fluid milk, cottage cheese, ice cream mix and yogurt.

My comments express our opposition to a number of items in the IICA petition to amend the standards of identity for ice cream:

The use of any safe and suitable milk derived ingredients in the manufacture of frozen desserts. This appears to be an attempt to allow the use of cheaper, and potentially inferior, ingredients in ice cream manufacturing. Upstate Farms has great concern that cheaper ingredients will displace use of appropriate ingredients with inferior ingredients which will lead to product quality issues. In addition, FDA's more recent allowance for alternate ingredients in standardized foods (as outlined in 21 CFR 130.10) has been to allow for ingredients that are necessary to achieve a functional effect which does not appear to be the reason for the IICA petition.

The use of "alternate make" procedures. Upstate Farms strongly believes that "alternate make" allows for the use of alternate manufacturing procedures, but not alternate ingredients. The "alternate make" process has allowed for innovation in technology in the manufacture of cheese, and Upstate Farms understands how an "alternate make" process for the manufacture of ice cream products could allow for innovation in the marketplace; however the IICA petition makes no mention of any alternate processing technologies. This appears to be an attempt to allow the use of cheaper, and potentially inferior, ingredients in ice cream manufacturing.

A minimum milk-derived protein requirement based on the amount of fat. Ice cream contains a minimal level of protein and, in fact, is not even a "good source" of protein as defined by FDA nutrition labeling regulations. Establishing minimum protein content as the identifier for ice cream is not appropriate. The current standards of nonfat solids and fat levels is much more appropriate and ensures that the basic nature of ice cream is maintained, provided the ingredients list is not altered to allow for inappropriate sources of dairy ingredients (see next two points).

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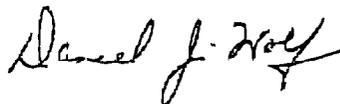
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Removing the maximum 25% restriction on whey solids. While whey is a valuable source of protein and can be sourced as a high-quality ingredient, to establish the ability to use 100% whey in ice cream would not meet consumer expectations or the basic nature of ice cream. The product that consumers know as ice cream has always been comprised primarily of milk and cream, with other ingredients being used for functional effects. Removing this whey limitation is a drastic measure that will change both the basic nature of the product and the consumer satisfaction when consuming ice cream.

Establishing categories of ingredients for label declaration. Upstate Farms opposes the proposed establishment of categories of ingredients to be declared under common names because this would be in direct conflict with 21 CFR 101.4 Food; *designation of ingredients*. Such a proposal appears to be significantly deceptive to the consumer and potentially threatening to the integrity and image of the product. Again, this appears to be an attempt to allow the use of cheaper, and potentially inferior, ingredients in ice cream manufacturing.

Thank you for your attention to the problems that we perceive in amending the standards of identity for ice cream.

Very truly yours,



Daniel J. Wolf
President