

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<b>SELECT MILK PRODUCERS, INC.,</b>	:	
<b>ELITE MILK PRODUCERS, INC.,</b>	:	
<b>CONTINENTAL DAIRY PRODUCTS, INC.,</b>	:	
	:	
<b>Plaintiffs,</b>	:	
<b>v.</b>	:	<b>Civil Action No. 1:01-CV-00060 (RCL)</b>
	:	
<b>ANN VENEMAN, SECRETARY,</b>	:	
<b>UNITED STATES DEPARTMENT</b>	:	
<b>OF AGRICULTURE,</b>	:	
	:	
<b>Defendant.</b>	:	

**DECLARATION OF ELVIN HOLLON IN SUPPORT OF  
THE PLAINTIFFS' REQUEST FOR A PRELIMINARY INJUNCTION**

Elvin Hollon, being of lawful age, declares under penalty of perjury pursuant to 28 U.S.C. 1746:

1. I am employed by Dairy Farmers of America (DFA) as an agricultural economist. My job responsibilities include general economic analysis in the dairy industry and with respect to federal milk marketing orders in particular. I have responsibilities in the daily marketing of milk and milk products for DFA.

2. On behalf of DFA and the Association of Dairy Cooperatives in the Northeast (ADCNE) of which DFA is a member, I attended the hearing held May 8 to 12, 2000, in Alexandria, Virginia, by the United States Department of Agriculture to consider proposals to amend federal milk marketing orders. I testified at the hearing.

3. The proposal adopted in the tentative final order which changes the manner of calculation of the value of butterfat and protein in Class III was not discussed at the five (5) day

hearing. Dr. Barbano of Cornell University testified to a somewhat similar proposal, which had not been published in the notice of hearing, and his proposal was ruled beyond the scope of the hearing notice by the Administrative Law Judge. After that ruling, I understood that there could be no change in the method of calculating the value of butterfat and protein in Class III as a result of the hearing. Consequently, I did not testify concerning this subject and did not file any post-hearing comments upon the subject.

4. If the proposed rule is not stayed it will lead to immediate disruptions and disorderly marketing with respect to Class III butterfat and skim milk, which will include losses to producers which are irreparable and cannot be recovered. Manufacturers of cheese have several options where to acquire the basic ingredients ---- butterfat and milk protein ---- for making cheese. Raw milk delivered by dairy farmers is the most common source of these ingredients, but cheese can also be made from purchased components. The cost will ultimately determine what source of ingredients the manufacturer will use. The tentative final rule tilts the comparative costs away from producer milk as a source of butterfat. I have calculated that in calendar year 2000, comparing butter as an alternative source of butterfat to fresh milk, butter would have been a cheaper source of Class III fat in eight of 12 months. The annual average cost advantage was 7.36 cents per pound of fat; and in seven months the advantage was more than 15 cents per pound. We expect this pattern to continue in 2001. These cost differences are sufficient to cause cheesemakers to reduce purchases of fresh butterfat; and some customers have already informed DFA that they will do so. Furthermore, we expect that every customer will perform the same evaluation since there is an opportunity to do so. This substitution has never before been an issue in the federal order prices because the butterfat price was the same for Class III and Class IV milk and, thus, no arbitrage or ingredient substitution incentive existed.

5. Furthermore, there will be a very substantial and irreparable loss of money by dairy farmers if the new Class III price becomes effective as the base price for Class I milk. Because our analysis of calendar year 2000 prices, and 2001 projected prices, shows that the price of Class III butterfat is expected to be greater than the price of Class IV butterfat most of the time, the price of Class III skim milk ---- milk without butterfat ---- will be much lower than Class IV skim milk. Consequently, since the majority of Class I milk is partially skimmed (the average drinking milk sold is about 2% butterfat, compared with the raw milk average of 3.67%), when the Class III price sets or “moves” the Class I price under the new rule (this occurs when the Class III price at 3.5% butterfat is higher than the Class IV price at 3.5% butterfat), the price for Class I milk (2% fat) will actually be less than if Class IV were the “mover” or base price. The difference in these values is a result of the different methods used to compute the Class III and Class IV butterfat prices. When the butterfat values in Class III and IV were the same, as they have been, this valuation inversion could not occur. When it does, there is no opportunity for producers to recover this value. Had this proposal been noticed and addressed at the hearing we would have opposed such a change because of its effect on dairy farmer income.

6. Because the hearing process did not include discussion of this proposal and analysis of its impact, the tentative final decision reflects no explicit consideration of these impacts. The substitution impact, in particular, which is an immediate effect and could mean long term loss of markets for Class III milk to federal order dairy farmers was not discussed in the tentative final decision or the economic impact analysis. If the proposal had been known at the hearing, its impact could have been debated, analyzed and discussed. Because it was not, neither DFA nor other participants had the opportunity to present evidence of our concerns.

Executed on 1/30/2001

/s/ Elvin Hollon