

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

SELECT MILK PRODUCERS, INC.,)	
ELITE MILK PRODUCERS, INC., AND)	
CONTINENTAL DAIRY PRODUCTS, INC.)	
)	CIVIL CASE NO. 1:01CV00060
--PLAINTIFFS,)	
VS.)	
)	
DAN GLICKMAN, SECRETARY)	
UNITED STATES DEPARTMENT OF)	
AGRICULTURE)	
)	
--DEFENDANT.)	

**COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs, Elite Milk Producers, Inc., Select Milk Producers, Inc., and Continental Dairy Products, Inc. (collectively “Milk Producers”) for their complaint state as follows:

SUMMARY OF ACTION

1. Milk Producers challenge certain milk pricing rules (“Tentative Final Decision” and “Interim Amendment of Orders”) promulgated by the Defendant, Secretary of Agriculture, under the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. §§601 *et seq.* (“AMAA”) and the Consolidated Appropriations Act, 2000, Pub.L. 106-113, Div. B, §1000(a)(8), Nov. 29, 1999, 113 Stat. 1536, 1501A-518 (“2000 Act”). Milk Producers specifically challenge those rules promulgated to create a separate Class III butterfat price formula as found at 65 Fed. Reg. 76831 (December 7, 2000) (Tentative Final Decision), and 65 Fed. Reg. 82832 (December 28, 2000) (Interim Amendment of Orders) that amend 7 C.F.R. Parts 1000 to 1135 (milk marketing orders).

2. The 2000 Act required the Secretary to hold a formal, on-the-record rulemaking hearing on manufacturing allowances and yields used in establishing component prices. The challenge is that the Secretary not only modified make allowances and yields, but also established a separate Class III butterfat price even though there were no proposals for such change, one proposal made at the hearing was ruled out of order, and the Secretary gave no notice of an intent to establish a separate Class III butterfat price under the circumstances.
3. The Secretary made this significant change in pricing despite the fact that the Administrative Law Judge, with support and urging from the Secretary's delegates, had held that proposals to modify the Class III butterfat formula were out of order and no one, including the Secretary, challenged that ruling.
4. Milk Producers seek a declaration that the establishment of a separate Class III butterfat price in the Tentative Final Decision and Interim Amendment of Orders is unlawful and should be set aside by the Court pursuant to the Administrative Procedure Act, 5 U.S.C. §706, on the grounds that it was promulgated in a manner that (1) exceeded the authority of the Secretary in setting prices for milk; (2) was arbitrary, capricious and not in accordance with law; and/or (3) was promulgated without observing the procedures required by law.
5. Milk Producers face imminent and permanent irreparable injury if injunctive relief (temporary, preliminary, and permanent) is not granted. The injury includes irretrievable losses of income as well as a denial of due process to effectively participate in a Congressionally mandated rulemaking proceeding.

JURISDICTION AND VENUE

6. This Court has jurisdiction of this action pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1337 as this action arises under the laws of the United States and because the complaint is based exclusively upon interpretation of federal law (to wit: Agricultural Marketing Agreement Act, 7 U.S.C. §§601-674; the Administrative Procedure Act, 5 U.S.C. §701 *et seq.*; Consolidated Appropriations Act, 2000, Pub.L. 106-113, Div. B, § 1000(a)(8), Nov. 29, 1999, 113 Stat. 1536, 1501A-518).
7. This Court also has jurisdiction under the Declaratory Judgment Act, 28 U.S.C. §§2201 to settle an actual controversy between the Milk Producers and the Defendant involving an interpretation of federal law and regulations.
8. Pursuant to 28 U.S.C. §2202 and Fed. R. Civ. P. 57, this Court can grant relief in addition to the declaration of rights.
9. Venue in this Court is proper as an agency of the United States is a defendant and its primary office is located in the District of Columbia. 28 U.S.C. §1391(b)&(e).

PARTIES

10. Elite Milk Producers, Inc. is a milk marketing cooperative organized under the laws of Texas. All of its members are located in the state of Texas. Its offices are located at Rt.2 Box 32 A, Dublin, Erath County, Texas 76446. It markets the milk of its members in interstate commerce on the Southwest Milk Marketing Order and occasionally other Federal Milk Marketing Orders.
11. Select Milk Producers, Inc. is a milk marketing cooperative organized under the laws of New Mexico. Its members are located in New Mexico and West Texas. Its offices are located at 401 Commerce Drive, Artesia, Edy County, New Mexico 88210. It markets the

milk of its members in interstate commerce in the Southwest Milk Marketing Order and occasionally other Federal Milk Marketing Orders.

12. Continental Dairy Products, Inc. is a milk marketing cooperative organized under the laws of Ohio. Its members are located in Indiana, Michigan, and Ohio. Its corporate offices are located at 401 Commerce Drive, Artesia, Edy County, New Mexico 88210. It markets the milk of its members in interstate commerce in the Appalachia, Mid-East and Southeast Milk Marketing Orders.
13. Each of the named marketing cooperatives is an “association of producers” certified to market milk on behalf of its members under the terms of Federal Milk Marketing Orders in accordance with 7 C.F.R. §§900.350-357. As a result, they are deemed “producers” in terms of the various Federal Milk Marketing Orders and are entitled to receive all payments under, or in accordance with, said Federal Milk Marketing Orders, including the minimum uniform blend prices.
14. Each of the named Plaintiffs are “cooperative associations” as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) and referenced at 28 U.S.C. §2412(d)(2)(B).
15. Each and every Plaintiff named is subject to immediate, irreparable injury as a result of the Secretary’s Tentative Final Rule.
16. Defendant, Dan Glickman is the Secretary of the United States Department of Agriculture and is authorized by law to promulgate regulations under the AMAA. This suit is brought against him in that official capacity.

STATUTORY BACKGROUND

17. Pursuant to the Agricultural Marketing Agreement Act of 1937, 7 U.S.C. §601 *et seq.* (AMAA), the Secretary of Agriculture formulates and administers Federal Milk Marketing Orders in various regions throughout the United States to regulate the “minimum price” of milk to be paid to producers.
18. The purpose of the Federal Milk Marketing Orders is to raise producer income by promoting stable, orderly marketing conditions among and between dairy farmers and milk buyers (commonly referred to as “handlers”) in local, regional marketing areas. The basic mechanisms for promotion of market stability are the establishment and enforcement of minimum prices which handlers must pay to producers and their cooperatives and the operation of a “pool” of milk proceeds to be shared equally by all producers supplying the market. The pooling mechanism allows every farmer to receive a uniform minimum price (called the “blend price” or “uniform price”) regardless of the specific buyer to whom his milk is marketed or the use to which his own milk production is put. 7 U.S.C. §608c(5)(A) and (18).
19. There are currently eleven (11) Federal Milk Marketing Orders being administered by the Secretary throughout the United States. These orders are described at 7 C.F.R. Parts 1001 through 1135 and these marketing areas encompass virtually all major metropolitan areas in the continental United States except for those in California.
20. Federal Milk Marketing Orders divide milk into four uses. Class I is primarily fluid milk for beverage (bottled) use; Class II is for soft products such as creams and yogurt; Class III is for cheese; and Class IV is non fat dry milk and butter.
21. These minimum prices change monthly to correspond to changes in market prices for dairy products such as cheese, butter, non-fat dry milk, and dry whey. No taxpayer

money is used to supplement or subsidize these prices. Even the cost of administration of the Federal Milk Marketing Orders is paid by the industry. Rather, the Secretary establishes formulas that use these commodity prices to derive the minimum prices that plants must pay for the milk.

22. Under the AMAA the Defendant has the responsibility to promulgate and administer regulations that make up these Federal Milk Marketing Orders.

23. The AMAA requires that, whenever the Secretary of Agriculture has reason to believe that the issuance of an amendment to an order will tend to effectuate the declared policy of the AMAA, he shall give due notice and an opportunity for a hearing upon the proposed amendment. The scope of the hearing is determined by the Secretary; and the hearing is presided over by his agent, typically an Administrative Law Judge. 5 U.S.C. §553(b)(3), 7 C.F.R. §§900.6, 8.

24. The law requires that the Secretary use formal, on the record, rulemaking hearings that comply with the specific rulemaking provisions under the AMAA, 7 U.S.C. §608c(3)-(4), the Administrative Procedure Act, 5 U.S.C. §§ 556 and 557, as well as regulations he has promulgated to govern the process. 7 C.F.R. Part 900, 7 U.S.C. §608c(3)-(4) and 5 U.S.C. §§556 and 557.

25. It is customary for the Secretary to include multiple, and sometimes competing, proposals that touch on the same subject matter for consideration in these hearings. These proposals as noticed define the scope of the hearing and rulemaking.

26. At the close of the hearing, parties typically have an opportunity to brief their respective positions.

27. After the briefs are submitted and the hearing record is closed, the Secretary reviews the hearing record and issues a proposed rule.

RULEMAKING HISTORY

28. The instant challenge has its origins in an earlier, similarly flawed, rulemaking proceeding.

29. In 1996, the Congress directed the Secretary to undertake a major revision of the Federal Milk Marketing Orders. Federal Agricultural Improvement and Reform Act of 1996, 7 U.S.C. § 7253(a) (Supp.1999) (“FAIR Act”).

30. Over the next several years, the Secretary solicited proposed changes from throughout the Dairy Industry as to how to meet the Congressional mandate. 63 Fed. Reg. 4802 (January 30, 1998). (History of the rulemaking process from effective date of FAIR Act until the Proposed Rule).

31. On January 30, 1998, the Secretary issued a Proposed Rule, 63 Fed. Reg. 4802 (January 30, 1998). The Proposed Rule would have consolidated the then existing Federal Milk Marketing Orders into 11 orders as required by the FAIR Act. It also considered seven Class I pricing methods, rejected five, and narrowed the choices to “two options [1A and 1B] for consideration as a replacement for the Class I price structure” of the Federal Milk Marketing Orders system. 63 Fed. Reg. 4802, (1999).

32. The proposed rule also contained changes in setting manufacturing grade (Classes III and IV) milk prices and the “mover” or base price for Class I. The Class III and IV price formulas were based upon a product price formula that incorporated product yields and manufacturing allowances.

33. The Secretary’s decision would have drastically reduced producer income.

34. Producers throughout the Nation commenced litigation challenging this rulemaking and Final Rule (including the inappropriateness of the prices set for Class III and IV) under the Administrative Procedure Act, 5 U.S.C. §706, as, *inter alia*, arbitrary and capricious and not in accordance with law.
35. Some of that litigation was in this Court. *Southeast Dairy Farmers Association, v. Dan Glickman*, (Civ. No. 1:99-CV-02459 (EGS)); dismissed as moot due to passage of the 2000 Act noted, *infra*).
36. In one of the cases, the court enjoined implementation of the Final Rule. *St. Albans Cooperative Creamery, Inc., v. Dan Glickman*, 68 F. Supp.2d 380 (D. VT. 1999).
37. In the midst of this litigation, Congress itself addressed the producers' concerns legislatively.
38. In the 2000 Act Congress specifically found that the Secretary had, *inter alia*, erred in promulgating the Class III and IV prices. As a result, it ordered the Secretary to: a) conduct formal rulemaking to reconsider these prices; b) publish a "final decision" in the Federal Register "on December 1, 2000," and implement it by January 1, 2001.
39. H.R. 3428, the legislative directive, as part of Consolidated Appropriations Act, 2000, Pub.L. 106-113, Div. B, §1000(a)(8) [§2], Nov. 29, 1999, 113 Stat. 1536, 1501A-518 (2000 Act) states in relevant part:

SEC. 2. FURTHER RULEMAKING TO DEVELOP PRICING METHODS FOR CLASS III AND CLASS IV MILK UNDER MARKETING ORDERS.

(a) CONGRESSIONAL FINDING- The Class III and Class IV milk pricing formulas included in the final decision for the consolidation and reform of Federal milk marketing orders, as published in the Federal Register on

April 2, 1999 (64 Fed. Reg. 16025), do not adequately reflect public comment on the original proposed rule published in the Federal Register on January 30, 1998 (63 Fed. Reg. 4802), and are sufficiently different from the proposed rule and any comments submitted with regard to the proposed rule that further emergency rulemaking is merited.

(b) RULEMAKING REQUIRED- The Secretary of Agriculture shall conduct rulemaking, on the record after an opportunity for an agency hearing, to reconsider the Class III and Class IV milk pricing formulas included in the final rule for the consolidation and reform of Federal milk marketing orders that was published in the Federal Register on September 1, 1999 (64 Fed. Reg. 47897-48021).

(c) TIME PERIOD FOR RULEMAKING- On December 1, 2000, the Secretary of Agriculture shall publish in the Federal Register a final decision on the Class III and Class IV milk pricing formulas. The resulting formulas shall take effect, and be implemented by the Secretary, on January 1, 2001.

(d) EFFECT OF COURT ORDER- The actions authorized by subsections (b) and (c) are intended to ensure the timely publication and implementation of new pricing formulas for Class III and Class IV milk. In the event that the Secretary of Agriculture is enjoined or otherwise restrained by a court order from implementing a final decision within the time period specified in subsection (c), the length of time for which that injunction or other restraining order is effective shall be added to the time limitations specified in subsection (c) thereby extending those time limitations by a period of time equal to the period of time for which the injunction or other restraining order is effective.

(e) FAILURE TO TIMELY COMPLETE RULEMAKING- If the Secretary of Agriculture fails to implement new Class III and Class IV milk pricing formulas within the time period required under subsection (c) (plus any additional period provided under subsection (d)), the Secretary may not assess or collect assessments from milk producers or handlers under

section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, for marketing order administration and services provided under such section after the end of that period until the pricing formulas are implemented. The Secretary may not reduce the level of services provided under that section on account of the prohibition against assessments, but shall rather cover the cost of marketing order administration and services through funds available for the Agricultural Marketing Service of the Department.

40. Under the Regulations in effect for the year 2000, there were 4 classes of milk which all used the same butterfat price formula. This butterfat formula was sometimes referred to as “Class IV Butterfat”.

41. In response to the 2000 Act, the Secretary on January 31, 2000, requested proposals for changes in the Class III and IV pricing formulas which the Secretary could, after review, consider for inclusion in a subsequent notice of proposed rulemaking and hearing.

42. In requesting these proposals the Secretary stated as follows:

Consequently, USDA is requesting that interested parties submit proposals to modify the computation of Class III and Class IV prices adopted in the final rule published in the Federal Register on September 1, 1999 (64 Fed. Reg. 47897-48021) by February 29, 2000. It is anticipated that such a hearing would be held in late April or early May 2000.

* * *

In addition to the Class III and Class IV prices adopted in the final rule, the hearing will consider proposals that address changes to any of the factors such as the specification of the products whose prices are identified, the yield factors, and the make allowances included in the computation of the component prices.

43. Members of the industry, including the Plaintiffs, submitted proposals to change the specification of product prices, yield factors, and make allowances included in the computation of the component prices.

44. Except to the degree that changes in product prices, yield factors, and make allowances would impact the Class III and IV prices, no one suggested that the use of one butterfat formula for all classes be abandoned and that the butterfat price for Class III milk be computed different from butterfat price for Class IV milk.
45. After review and rejection of some proposals, the Secretary issued a Notice of Hearing on those proposals that would be considered at the hearing. 64 Fed Reg 20094-20104 (April 14, 2000) (Notice of Hearing).
46. This Notice of Hearing included 31 numbered proposals from the industry and the Secretary's own proposal number 32. 65 Fed. Reg. 200094.
47. Of the 31 industry proposals and the Secretary's own proposal 32, *none* proposed a separate Class III Butterfat Price.
48. Also accompanying the Notice of Hearing was the report of an economic study on the economic impact of some of the proposed changes on producer income, consumer prices, and production. This economic analysis *did not* consider changes in the Federal Milk Marketing Orders that would establish a separate Class III Butterfat Price.
49. Almost two months after the February 29th proposal deadline, and after the Notice of Hearing, one new proposal to create a separate Class III butterfat price surfaced. On April 24, 2000, Dr. David Barbano, a Cornell University professor with expertise in cheese production published on the Internet his own proposal for a separate Class III Butterfat Price.
50. The rulemaking hearing convened on May 8, 2000 in Alexandria, Virginia.
51. On May 9, 2000, Dr. Barbano took the stand to testify on behalf of himself and his own proposal. Several parties objected to his proposal and testimony and moved to strike his testimony as being outside the scope of the hearing.

52. The ALJ stated that “we don't have unlimited discretion to testify to anything that somebody wants to testify. It has to be within the scope of the hearing.” Hearing Transcript at 510.

53. Gregory Cooper, Esq., Office of General Counsel for USDA described Barbano's proposal when he stated “And to the extent that there may be proposal that wasn't noticed and is not just a modification of the other proposal, I agree that we can strike it at the end to that extent.” Hearing Transcript 511.

54. After Dr. Barbano's testimony and submission of his proposed separate Class III Butterfat formula, numerous parties moved to strike. Transcript at 790.

55. The Administrative Law Judge ruled as follows:

16 JUDGE HUNT: I'm going to rule that Dr. Barbano's
17 pricing formula is not one of the proposals being considered
18 at this hearing. Although there's a lot of testimony and
19 comments on it, that is not a proposal being considered.
20 However, he has provided information in his
21 testimony that's germane to the proposals being considered,
22 and so I will allow Dr. Barbano's testimony to remain in the
23 record and, as Mr. Cooper suggested earlier, leave it to the
24 Secretary's representatives who will make the determination
25 on the final rule to disregard that part of Dr. Barbano's
1 testimony that's not pertinent to the proposals under
2 consideration.

[Transcript at 790-791 (Emphasis added)].

56. Dr. Barbano's proposal was the only one that in any manner suggested that the Secretary adopt a separate Class III Butterfat Price.

57. When Judge Hunt struck Dr. Barbano's proposal with the consent of the Department's counsel, *it was abundantly clear to all participants at the hearing, that there would be no separate Class III Butterfat Price.* Nor was there any need to provide any further testimony in favor of, against, or regarding a separate Class III Butterfat Price.

58. **All other proposals and testimony for and against the proposals to adjust make allowances and yields were based upon the unchallenged assumption that the Class III butterfat price would not be separated from the Class IV butterfat price.**

59. On December 7, 2000, six days after the statutory deadline set by Congress in the 2000 Act, §2(c), the Secretary issued a "Tentative Decision on Proposed Amendments and Opportunity To File Written Exceptions to Tentative Marketing Agreements and to Orders" ("Tentative Decision"), which to the surprise of the Milk Producers, included, among other changes, the establishment of a separate Class III Butterfat Price. 65 Fed. Reg. 76832 (December 7, 2000).

60. The Tentative Decision rejected all proposals to create a lower Class IV Butterfat Price. This rejection of these proposals is significant because the Secretary discussed in the Notice of Hearing a separate Class III Butterfat Price only in conjunction with the proposals to reduce the value of Class IV Butterfat.

61. This fabrication of a Class III Butterfat Price was done without any due process, did not comply with statutory and regulatory procedural requirements, and is otherwise arbitrary and capricious.

62. Both the National Cheese Institute (“NCI”) and Milk Producers immediately filed motions with the Secretary requesting an Administrative Stay only of that portion of the Tentative Decision which adopted a separate Class III Butterfat Price (a proposal determined at the hearing to be outside the scope of the hearing notice).

63. The Secretary denied the NCI request on December 21, 2000.

64. The Secretary denied the Milk Producers’ request on January 5, 2001 (received on January 11, 2001).

65. The Secretary has issued an Interim Amendment of Rules, 65 Fed. Reg. 82832 (December 28, 2000), calling for implementation of the Tentative Decision.

66. The denial of the Milk Producers’ request for an administrative stay makes this case necessary.

NEED FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

67. The Milk Producers will be irreparably harmed if the Secretary implements the Tentative Final Rule on the Class III Butterfat Price.

68. Based upon the actual marketing conditions in the year 2000, the implementation of the Class III Butterfat Price would have deprived the Milk Producers of over \$2 million per year. Based upon projected, future marketing conditions, the implementation of the Class III Butterfat Price will cost the Milk Producers in excess of \$1 million a month. Due to the regulatory structure of the Federal Milk Marketing Orders this loss of income cannot be recovered by judgment or otherwise and, if the change is implemented, will be irretrievably lost.

69. Each Friday the Secretary announces the survey prices and volumes of the previous week’s sales of certain cheeses, butter, powder, and dry whey. These prices are

used to compute the component and class prices under the Federal Milk Marketing Orders. 7 C.F.R. §1000.50, *Dairy Market News*, Vol 68, No. 49.

70. The component and class prices are based upon the monthly weighted averages of these commodities. For example January 2001's values will be the weighted averages for all the survey prices announced for the weeks ending January 6, 13, 20 and 27. These values will be announced, respectively, on January 12, 19, 26, and February 2. *Dairy Market News*, Vol 68, No. 49. (*Dairy Market News* is an official publication of the USDA and official price information, as well as other information, is published there as public notice to the dairy industry).

71. The final Class III and IV prices as well as the Class III Butterfat Price for a given month will be announced by the fifth of the immediately following month. 7 C.F.R. §1000.50.

72. Thus, implementation of the Tentative Final Decision for the Class III Butterfat Price will take place on February 2 when the Secretary will announce the retroactive prices effective January 1, 2001 for all milk delivered that month.

73. Thereafter, Milk Producers will be paid based upon these new formulas.

74. The estimated impact of the Class III Butterfat Price on Milk Producers is approximately \$2 million - \$9 million per year through reduced minimum prices under the Federal Milk Marketing Orders.

75. These reduced prices and income cannot be recovered fully in the market place nor can this Court in a subsequent order compel the third party purchasers (handlers) to pay additional money for milk purchased months before at prices then announced by the Secretary.

76. Plaintiffs have a very high likelihood of success on the merits, because the uncontroverted facts show that the Secretary acted arbitrarily, capriciously, and contrary to law.
77. The balance of equities favors issuing an injunction because the Secretary's Tentative Final Rule will permanently harm Milk Producers and their members. Delay of the Portion of the Tentative Final Rule regarding the Class III Butterfat Price will not affect the status quo and will further the Congressional policy of the AMAA.
78. An injunction will be in the public interest since continuation of the status quo will provide an adequate supply of good and wholesome milk to the consuming public at a reasonable cost.
79. A stay is needed now to preserve the status quo pending resolution of this claim.

FIRST CAUSE OF ACTION

[Declaratory Relief]

80. The Plaintiffs incorporate, as if fully rewritten herein, the allegations previously made in paragraphs numbered 1- 79. The Plaintiffs are entitled to judgment declaring the actions of the Secretary in promulgating the separate Class III Butterfat Price in the Tentative Final Rule void because the Secretary exceeded his statutory authority, established price formulas in an illegal matter, and otherwise acted in an arbitrary and capricious manner in violation of the APA, 7 U.S.C. §608c, and in violation of his own procedures and regulations set forth at 7 C.F.R. §§900.1 - 900.18.

SECOND CAUSE OF ACTION

[Preliminary and Permanent Injunctive Relief]

81. The Plaintiffs incorporate, as if fully rewritten herein, the allegations previously made in paragraphs numbered 1- 79. Plaintiffs are entitled to a preliminary and a permanent injunction prohibiting the Secretary from implementing the separate Class III Butterfat Price in the Tentative Final Decision.

82. The Court should strike those portions of the Interim Amendment of Orders in 7 C.F.R. Part 1000 that compute a separate Class III Butterfat Price and those provisions of 7 C.F.R. Parts 1001-1135 that incorporate the separate Class III Butterfat Price into specific Federal Milk Marketing Orders.

THIRD CAUSE OF ACTION

[Equal Access to Justice Claim]

83. The Plaintiffs incorporate, as if fully rewritten herein, the allegations previously made in paragraphs numbered 1- 82.

84. The Secretary's position in establishing a separate Class III Butterfat Price is not substantially in compliance with the law.

85. The Secretary's action in establishing a separate Class III Butterfat Price was arbitrary, capricious and not in accordance with the law and the Secretary's position was not substantially justified.

86. The Milk Producers are entitled to attorneys fees, costs, and reimbursement in accordance with the Equal Access to Justice Act, 28 U.S.C. §2412.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs hereby pray for relief as follows:

A) An Order declaring that the Secretary, in issuing the regulations found at 7 C.F.R.

Parts 1000 - 1135 and at 65 Fed. Reg. 76832 (December 7, 2000) and 65 Fed. Reg. 82832

(December 28, 2000), in so far as they define and establish a new Class III Butterfat Price formula acted arbitrarily, capriciously, and contrary to law and that such regulations are null and void.

B) An Order preliminarily and permanently enjoining the Secretary, his agents and attorneys and those persons in active concert or participation with them who receive actual notice of the order from implementing the provisions for a new Class III Butterfat Price in amended regulations at 7 C.F.R. Parts 1000 - 1135 as found at 65 Fed. Reg. 76832 (December 7, 2000) and 65 Fed. Reg. 82832 (December 28, 2000) until he complies with the AMAA, 7 U.S.C. §608c and the APA, 5 U.S.C. §§ 556 et seq. and issues a rule in conformance thereto.

C) An Order declaring that the Secretary's actions violated the Equal Access to Justice Act, 28 U.S.C. §2412; and

D) A judgment for interest, attorneys fees, costs, and such other and further relief as the Court deems just and proper.

Respectfully submitted,

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