

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

SELECT MILK PRODUCERS, Inc., et al.,	:
	:
Plaintiffs,	:
	:
v.	: Civil Action No. 1:01-CV-00060 (RCL)
	:
ANN VENEMAN, SECRETARY	:
UNITED STATES DEPARTMENT OF	:
AGRICULTURE,	:
	:
Defendant.	:

DECLARATION OF HERBERT E. SHEPARD

Herbert E. Shepard declares under penalty of perjury pursuant to 28 U.S.C. 1746:

1. My name is Herbert E. Shepard. I am a milk marketing consultant for St. Albans Cooperative Creamery of St. Albans, Vermont. My address is 98 Nagog Hill Road, Acton, Massachusetts 01720.

2. I am making this Declaration upon my personal knowledge and in support of the brief of the Association of Dairy Cooperatives in the Northeast (ADCNE) as amicus curiae in support of plaintiffs' request for a temporary restraining order and a preliminary injunction with respect to a limited portion of the tentative final order of the Secretary of Agriculture.

3. I have served as a consultant to St. Albans Cooperative since July 1996. I have advised the Cooperative on issues relating to the federal milk order regulatory matters including review and evaluation of proposal for changes to the orders. I am familiar with the tentative final rule which has been published by the Secretary.

4. From 1953 to 1990 I was employed in the office of the Federal Milk Market Administrator at Boston, Massachusetts. From May 1985 through September 1990 I was

Administrator of the Federal Milk Marketing Order for the New England Marketing Area. For twelve years prior to my appointment as Market Administrator I was the Assistant Market Administrator and before that time I had the position of Agricultural Economist. I have a Bachelor's degree in Agriculture from the University of Massachusetts and a Master's degree in Public Administration from Harvard University.

5. In preparation for this Declaration I have reviewed the hearing notice, the tentative final decision and the tentative final order with particular focus on the change in the calculation of the butterfat price for Class III (cheese) milk.

6. The tentative final decision departs from settled and longstanding USDA policies by establishing a price for butterfat on the basis of its value in a product other than butter (or cream). For more than forty (40) years in the federal milk order system the value of butterfat in milk (used for all classes) has been calculated on the basis of the value of butter. Over those years there has been some fine-tuning of the factors used in deriving the price of butterfat in milk from the price of butter. However, never before this rule has the value of another commodity, in this case cheese, been used to determine the value of butterfat in milk.

7. The notice for this hearing did not announce consideration of proposals to use the price of cheese as the reference for the value of butterfat in Class III milk. If such proposals had been announced prior to the hearing or debated at the hearing, I would have been able to evaluate the implications of such an important change in longstanding milk pricing practices in order to advise my client, St. Albans, with respect to the impact and desirability of any such proposed regulations. To illustrate the type of changes in milk pricing which the rule makes, and which we did not have the opportunity to consider or comment upon, I would like to describe briefly its

impact upon some of St. Albans' operations.

7. St. Albans is a cooperative of about 600 family dairy farmers in Vermont and northern New York who together, through their cooperative, own and operate a creamery in St. Albans Vermont to which their daily milk production is delivered for processing and reshipment. There, a portion of the milk is separated into cream and skim. The cream is sold to customers such as Ben and Jerry's Ice Cream in Burlington Vermont (for whom St. Albans is the exclusive supplier of milk and cream for ice cream production). St. Albans also sells cream, skim milk, and whole milk to cheese manufacturers, fluid milk processors and others. Prior to the subject rule, the federal order minimum price of butterfat in milk and cream sold for processing into butter, cheese, or ice cream was determined by the price of butter (as established on the Chicago Mercantile Exchange, a national cash market for bulk butter). Now, if the tentative final rule goes into effect, the minimum price of butterfat to be used in cheese production has been changed and will be calculated on the basis of the price of cheddar cheese. As a result, the price of butterfat for cheese will go up dramatically. This will immediately threaten the viability of St. Albans' markets for milk and cream for cheese production because alternate sources of milkfat for cheesemaking will be less expensive. At the same time, the minimum federal order price of skim milk (in the form of its key component, milk protein) for use in cheese production will go down dramatically. This will substantially reduce the price of skim milk which St. Albans sells to makers of low fat cheese, such as mozzarella. The immediate and irreparable result of the implementation of the rule changing the pricing of Class III will be marketing disruptions and disorder, and loss of sales and/or income to St. Albans and its dairy farmers and other cooperatives and dairy farmers throughout the federal order system.

I declare under penalty of perjury that the foregoing Declaration is true and correct.

Executed on _____

Herbert E. Shepard