

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

<b>SELECT MILK PRODUCERS, Inc., et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>Civil Action No. 1:01CV00060(RCL)</b>
	)	
<b>DAN GLICKMAN, SECRETARY</b>	)	
<b>UNITED STATES DEPARTMENT OF</b>	)	
<b>AGRICULTURE</b>	)	
	)	
<b>Defendant.</b>	)	

**MOTION FOR TEMPORARY RESTRAINING ORDER  
AND/OR PRELIMINARY INJUNCTION AND FOR EXPEDITED HEARING**

Plaintiffs Select Milk Producers, Inc., et al. (“Milk Producers”), by and through their undersigned counsel, respectfully file this Motion for Temporary Restraining Order and/or Preliminary Injunction and for Expedited Hearing (the “Motion”). As more fully set forth in the accompanying Memorandum, Milk Producers request that this Court: (i) enter an Order granting a Temporary Restraining Order pursuant to Rule 65 of the Federal Rules of Civil Procedure and Rule 65 .1(a) of the Local Rules for this Court; (ii) enter an Order for Preliminary Injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure and Rule 65.1(c) of the Local Rules of this Court; and (iii) enter an order granting an expedited hearing on the request for Preliminary Injunction pursuant to Rule 71.(f) of the Local Rules for this Court.

Milk Producers seek to enjoin the Secretary of Agriculture (the “Secretary”) from implementing a proposed amendment to the nation’s Federal Milk Marketing Orders which would create a new separate Class III Butterfat Price. Milk Producers seek to maintain the status quo regarding the pricing of milk under the Federal Milk Marketing Orders until this Court has

time to fully review the Milk Producers' challenges to the Secretary's conduct. The recent amendments at issue are contained in 65 Fed. Reg. 76832 (December 7, 2000) (the "Tentative Final Decision") and 65 Fed. Reg. 82832 (December 28, 2000) (the "Interim Amendment of Orders") that amends 7 C.F.R. Parts 1000 to 1135. Unless enjoined by this Court, the Secretary will implement the Tentative Final Decision on February 2, 2001, and the new Class III Butterfat Price will thereafter operate to adversely influence the minimum prices for milk under the Federal Milk Market Orders.

As more fully explained in the accompanying Memorandum of Points and Authorities, Milk Producers are entitled to the relief requested herein because:

1. The Secretary violated § 608c(5) of the Agriculture Marketing Agreement Act of 1937, as amended, 7 U.S.C. §§ 601 et seq. (the "AMAA") by constructing a separate Class III Butterfat provision without the requisite notice, due process and an opportunity to be heard.

2. The creation of the separate Class III Butterfat Price was promulgated in a manner that: (1) exceeded the authority of the Secretary in setting the prices for milk; (2) was arbitrary, capricious, and not in accordance with law; and (3) was promulgated without observing the procedures required by law and should be struck down in accordance with § 706(2) of the Administrative Procedure Act, 5 U.S.C. §§ 556 et seq.

3. In creating a separate Class III Buttermilk Price, the Secretary also violated his own procedures and regulations set forth at 7 C.F.R. §§ 900.1-900.18.

As described in the accompanying Memorandum, a temporary restraining order and/or a preliminary injunction is necessary because: (1) Milk Producers will suffer irreparable harm unless the Secretary is enjoined and/or restrained from implementing a separate Class III Butterfat Price in the nation's Federal milk order system; (2) Milk Producers are likely to succeed

on the merits of their claims; (3) neither the Secretary nor his agents will suffer irreparable harm if the Secretary is restrained and/or enjoined; and (4) the public interest will be served if the Court maintains the status quo with respect to the Class III Butterfat Price until it has resolved the underlying claims presented by the Milk Producers' Complaint.

Milk Producers face imminent, permanent and irreparable injury if the Secretary implements the Tentative Final Decision on February 2, 2001. Accordingly, good cause exists to set a hearing on the Motion at the earliest possible time.

Milk Producers' counsel has contacted opposing counsel Susan K. Ullman, Trial Attorney, Federal Programs Branch, U.S. Department of Justice, pursuant to Local Rule 7.1(m) and Defendant did not consent to any of the relief requested in this Motion.

WHEREFORE, Milk Producers, pray for relief as follows: (i) for entry of an Order that temporarily enjoins the Secretary, his officers, agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of this Order, from implementing the provisions for a new Class III Butterfat Price in amended regulations at 7 C.F.R. Parts 1000-1135 FAR at Fed. Reg. 76832 (December 7, 2000) and 65 Fed. Reg. 82832 (December 28, 2000); and (ii) for entry of an Order that enjoins, temporarily until the final determination of this action, the Secretary, his officers, agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of this Order, from implementing the provisions for a new Class III Butterfat Price in amended regulations at 7 C.F.R. Parts 1000-1135 FAR at Fed. Reg. 76832 (December 7, 2000) and 65 Fed. Reg. 82832 (December 28, 2000); and (iii) for entry of an Order granting an expedited hearing on this Motion; and (iv) for such other relief the court may deem appropriate.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS

Dated: January 19, 2001

**CERTIFICATE OF SERVICE**

I hereby certify that on this 19<sup>th</sup> day of January, 2001, copies of the foregoing Motion for Temporary Restraining Order and/or Preliminary Injunction and for Expedited Hearing, accompanying Memorandum together with proposed Orders and Certificate of Compliance With FRCP 65(b)(2) and Local Rule 65.1(a) were delivered by hand and first class United States mail, postage prepaid to:

Thomas Millett, Esquire  
Assistant Director, Federal Programs Branch  
Susan K. Ullman, Esquire  
Trial Attorney, Federal Programs Branch  
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and were sent by first class United States mail, postage prepaid to:

The Honorable Dan Glickman  
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The Honorable Janet Reno  
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