

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
))
Milk in the Northeast)
and other Marketing Areas)
))
_____))

Docket Nos. AO-14-69, et. al.,
DA-00-03

**PROPOSED FINDINGS, CONCLUSIONS
AND SUPPORTING BRIEF**

I. INTRODUCTION

A. The Congressional Mandate.

The Consolidated Appropriations Act of 2000, P.L. 106-113, was signed into law on November 29, 1999. Section 1000(a)(8) of the Act enacted H.R. 3428. Section 2(a) of H.R. 3428, which provides for: "Further Rulemaking To Develop Pricing Methods For Class III And Class IV Milk Under Marketing Orders" states as a "Congressional Finding":

The Class III and Class IV milk pricing formulas included in the final decision for consolidation and reform of Federal milk marketing orders as published in the [Final decision] . . . do not adequately reflect public comment on the original proposed rule . . . and are sufficiently different from the proposed rule . . . that further emergency rulemaking is merited.

Section 2(b) of H.R. 3428 orders the Secretary to conduct an on the record formal

rulemaking hearing “to reconsider the Class III and IV milk pricing formula included in the final rule....”

The Notice of Hearing published in response to the Congressional mandate notes, specifically, that the “hearing is being held in response to a mandate from Congress . . . to reconsider the Class III and IV milk pricing formulas included in the final rule” The sole “purpose of the hearing”, as stated in the Notice, “is to receive evidence with respect to the economic and marketing conditions which relate to re-consideration of the Class III and Class IV milk formulas included in the final rule for the consolidation and reform of Federal milk orders. . . .”

B. Background of the Congressional Mandate

The April 2, 1999 Final decision disclosed to producers that the change from the proposed to the Final rule in the formula for determining the Class III price would decrease the Class III price over the 60 month period January 1994-December 1998 on average 47 cents per hundredweight relative to the basic formula price that was in effect prior to January 1, 2000. 64 Fed. Reg. 16107-16108. That disclosure prompted a reaction from producers throughout the Federal order system that generated a political groundswell sufficient to influence a Congressional response in the form of a mandate to the Secretary to reexamine and “reconsider” the basis upon which he had developed his Class III formula.

What Congress – and most of the affected dairy industry – was not aware of, however, was a June 1999 analysis by the USDA Office of the Chief Economist that

established that the 47 cent decrease in the Class III price under the new Class III formula from the price that would have been yielded by the BFP over the 1994-1998 60-month period was in error. As the Chief Economist's analysis explained:

One reason the comparison is inaccurate are the data used to examine the Class III price did not come from the survey of dairy product prices that will be used to compute the Class III price. USDA's Class III price formula will be computed from a weekly survey of prices of cheese, butter and whey published by . . . NASS. NASS began publishing those price series. . . in October 1998. . . Thus, for nearly the entire 60-month period . . . no NASS data were available to determine the Class III price.

A more valid test of the performance of the Class III price formula is to compare the Class III price formula with the BFP starting in September 1998, when NASS began publishing all the data needed to compute the Class III price under USDA's final decision.

On the basis of the June, 1999 analysis, using NASS data and the Final decision Class III price formula, the Office of the Chief Economist determined that over the nine month period September 1998-May 1999 there was no statistically significant difference between the monthly average Class III price computed under the Final decision and the BFP.

C. The Final Rule Class III Formula Over-Compensates Cheese Plants

It is indisputably clear that the Secretary would not have convened a hearing to "reconsider" the Final decision Class III and Class IV price formulas – in operation for only four months – but for the Congressional mandate that ordered the Secretary to

undertake such a process. Since the Final rule Class III price formula closely approximates what the BFP Class III price would have been, there is no basis for the kind of upward adjustment in the current make allowance that IDFA, NCI and the other proponents of Proposal 20 support.

Indeed, experience under the current Class III price formula, coupled with hearing record evidence that the Final rule Class III formula fails to reflect the true yield of cheese from a hundredweight of milk, would support a downward adjustment in the Class III make allowance as proposed by NMPF, LOL, DFA and the other proponents of Proposal 8.

The hearing record establishes, beyond controversy, that premiums over the Federal order minimum Class III price are paid to producers and their cooperatives as a virtually uniform practice throughout the Federal order system. That fact, coupled with uncontroverted testimony of Dr. Barbano that the current Class III formula under estimates the true yield of cheese from a hundredweight of milk (Barbano, Tr. 541-542) compels a rejection of all proposals for an increase in make allowance and supports the Proposal 8 downward adjustment proposed by NMPF.

II The NMPF Proposals Should Be Adopted.

UDA joins in and supports the NMPF Proposals 6, 8, 14, 21, 23 and incorporate herein by reference the testimony of the NMPF, LOL and DFA witnesses supporting the NMPF proposals. UDA opposes all proposals designed to change or affect Class I or II prices on the grounds that Federal order prices other than Class III and IV prices are beyond the scope of the purpose for

which Congress mandated that the hearing should be convened. UDA objects, specifically, to Proposals 30 and 31 as constituting an indirect attempt to amend the Class I and Class II price structure of the orders, proposals which are beyond the scope of the purpose for which the hearing was convened.

II Conclusion.

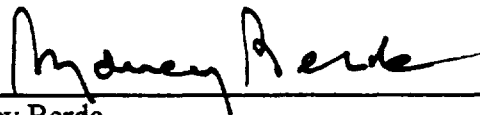
The AMAA authorizes the Secretary to classify milk in accordance with the form in which or purpose for which it is used by handlers and directs the Secretary to fix a price which all handlers shall pay for each use classification. Section 608c(18) directs that the prices to producers fixed by the Secretary shall reflect the cost and supply of feeds, and other economic conditions in the marketing area to which the milk order relates. That pricing standard imposes on the Secretary the duty and responsibility to develop a price discovery system that will yield a price to producers that accords with the price standards of § 608c(18).

The Final decision's product price formula system of pricing, that derives a producer price by applying the average (simple or weighted) cost incurred by cheese plants, of varying age and efficiency, operating at varying levels of processing capacity, to convert a hundredweight of milk into cheese can at best only approximate what a direct market driven fluid milk pricing system, comparable to the M-W price series, would yield. Under the product price formula system of pricing, as incorporated in the Final rule, no one can state, with precision, what the "true" plant cost allowances should be or what yield factors should be applied to reflect the "true" value of milk supplied to all regulated

plants in the Federal order system.

For the Secretary to “err on the side of a higher rather than a lower make allowance” (Yonkers, Tr. 262), as urged by the IDFA witness, would be contrary to, and would not serve, the purpose and policy of the AMAA. The AMAA was not adopted to provide a “support program” for cheese plant operators. The product price formula that the Secretary adopts – no matter how structured – will either overcompensate or undercompensate some plants. A formula that overcompensates the cheese plants will, necessarily lower the minimum order prices received by producers. The Secretary must, therefore, address the question: Who should bear the risk that the make allowance adopted by the Secretary is too high or too low? Consistent with the purpose and policy of the AMAA, that question must be resolved by the Secretary in favor of producers for whose benefit the AMAA was adopted. Should the product price formula or make allowance that the Secretary adopts be disclosed, after a period of operation, to be inadequate for the “average” plant, the AMAA provides the means to correct the problem.

Respectfully submitted,



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