



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

USDA
OALJ/HCO

2001 JAN -9 P 12:46

JAN 5 2001

RECEIVED

Benjamin F. Yale, Esq.
Benjamin F. Yale & Assoc. Co., LPA
102 W. Wapakoneta
Post Office Box 100
Waynesfield, Ohio 45896

Dear Mr. Yale:

We have received your motion on behalf of Select Milk Producers, Inc., Continental Dairy Products, Inc., and Elite Milk Producers, Inc., to stay implementation of the portion of the tentative final decision that provides for a separate Class III butterfat price, and have determined that the motion should be denied. As stated in the decision, the current butterfat price does not reflect the value of butterfat used in cheese, and our attempt to adjust for that shortcoming in Federal order reform by incorporating a differential value for butterfat in the protein price formula results in a protein price that fails to reflect the value of protein in cheese. The Class III butterfat and protein price formulas in the tentative final decision do reflect the role of these components in contributing to cheese yield. We believe that the process used to develop the tentative final decision was entirely within the scope of the regulations governing formal rulemaking.

As we continue to be under *ex parte* rules, we cannot discuss the merits of the decision beyond the reasons stated for adoption of the tentatively adopted formulas in the decision. The period during which interested parties have been invited to submit comments on the decision is in effect until February 5, 2001. Your motion and our response will be filed with the Hearing Clerk as a comment, and we look forward to receiving your further comments.

Sincerely,

/s/ Enrique E. Figueroa, Ph.D.

ENRIQUE E. FIGUEROA, Ph.D.
Deputy Under Secretary
Marketing and Regulatory Programs

AMS:DP:OFB:CBrenner:cmb:jmm:720-2357:12/29/00
My docs:Yaleltr-denial.wpd

Acting Chief
Order Formulation Branch

Kenneth C. Clayton

RMM
1/02/01
RICHARD M. McKEE
DEPUTY ADMINISTRATOR
DAIRY