UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

JAN 31 2001

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

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

ORDER GRANTING PRELIMINARY INJUNCTION

UPON consideration of the Motion for Temporary Restraining Order and/or Preliminary Injunction (the "Motion") filed by Select Milk Producers, Inc., et al. ("Milk Producers"), any opposition thereto and having heard oral argument from all parties, and it appearing that Milk Producers have filed a Complaint and supporting Affidavits alleging that the Secretary of Agriculture (the "Secretary") has engaged in certain unlawful conduct, the Court hereby finds that:

1. Milk Producers will suffer immediate and irreparable harm unless the Secretary is enjoined 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 harm if the Secretary is enjoined from implementing a separate Class III Butterfat Price in the nation's Federal Milk Order System;

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;

5. Milk Producers provided actual notice of its application for the relief set forth in the Motion, and copies of all pleadings and papers filed in this action have been furnished to the Defendant; and

6. For the reasons stated on the record at the conclusion of the hearing good cause exists for granting a Preliminary Injunction.

NOW THEREFORE, it is this 31ST day of January, 2001 by the United States District Court for the District of Columbia

ORDERED that 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 by personal service or otherwise are ENJOINED from implementing the provisions for a new Class III Butterfat Price in amended regulations found at 7 C.F.R. Parts 1000-1135 and at Fed. Reg. 76832 (December 7, 2000) and 65 Fed. Reg. 82832 (December 28, 2000). In compliance with this Order, the Secretary is directed to make necessary changes to the Interim Final Order as specified in Attachment 1 hereto.

IT IS SO ORDERED.

Royce C. Lamberth
UNITED STATES DISTRICT JUDGE

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Attachment 1

The following changes shall be made to the order language appearing at 65 Fed. Reg. 82832:

1000.50 Class prices, component prices and advanced pricing factors.

Remove the changes made in the tentative decision to the introductory text and paragraphs (a), (b), (c), (g), (h), (j), (p)(1),

Leave the changes made in the tentative decision to paragraphs (m) and (o),

Do not add the tentative decision paragraph (q)(4), and

Make the following changes to the tentative decision paragraphs (l), (n), and (q)(3):

(l) Butterfat price. The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA Butter survey price reported by the Department for the month less 11.5 cents, with the result divided by 0.82.

(n) Protein Price. The protein price per pound, rounded to the nearest one-hundredth cent, shall be computed as follows:

1. Compute a weighted average of the amounts described in paragraphs (n) (1) (i) and (ii) of this section:

(i) The U.S. average NASS survey price for 40-lb. block cheese reported by the Department for the month; and

(ii) The U.S. average NASS survey price for 500-pound barrel cheddar cheese (38 percent moisture) reported by the Department for the month plus 3 cents;

2. Subtract 16.5 cents from the price computed pursuant to paragraph (n) (1) of this section and multiply the result by 1.405;

3. Add to the amount computed pursuant to paragraph (n) (2) of this section an amount computed as follows:

(i) Subtract 16.5 cents from the price computed pursuant to paragraph (n) (1) of this section and multiply the result by 1.582;

(ii) Subtract the butterfat price computed pursuant to paragraph (1) of this section from the amount computed pursuant to paragraph (n) (3) (i) of this section; and

(iii) Multiply the amount computed pursuant to paragraph (n) (3) (ii) of this section by 1.28.

(q)(3) An advanced butterfat price per pound, rounded to the nearest one-hundredth cent, shall be calculated by computing a weighted average of the 2 most recent U.S. average NASS AA Butter survey prices announced before the 24th day of the month, subtracting 11.5 cents from this average, and dividing the result by 0.82.

In addition, the Secretary shall not make those proposed amendatory changes to the provisions of individual orders regarding payments to farmers that resulted from the provision of a separate butterfat price for Class III.