

BEFORE THE UNITED STATES DEPARTMENT OF AGRICULTURE

In the Matter of:

MILK IN THE NORTHEAST AND

OTHER MARKETING AREAS

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**DOCKET NO. AO-14-A74, et al.
DA-06-01**

**COMMENTS AND EXCEPTIONS TO THE TENTATIVE FINAL DECISION
SUBMITTED ON BEHALF OF:**

**SELECT MILK PRODUCERS, INC.,
CONTINENTAL DAIRY PRODUCTS, INC.,
LONE STAR MILK PRODUCERS, INC.,
ZIA MILK PRODUCERS, INC., AND
DAIRY PRODUCERS OF NEW MEXICO**

January 22, 2007

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As this matter is now in litigation, with the parties to these comments (except Dairy Producers of New Mexico) as Plaintiffs, these comments will be somewhat more brief than would otherwise be submitted. Select Milk Producers, Inc., Lone Star Milk Producers, Inc., Zia Milk Producers, Inc., Continental Dairy Products, Inc., and Dairy Producers of New Mexico, take exception with the findings and conclusions of the Department in the following respects:

- The hearing record does not contain sufficient evidence for the Department to consider all factors required by 7 U.S.C. § 608c(18), and the Department has not considered all required factors in reaching its decision.
- The Department's failure to ascertain the need for minimum price formula adjustments on an order-by-order basis, by considering the differing regional economic conditions of each marketing area is a violation of the AMAA.
- The narrow focus of the hearing only on "make allowances" and USDA's acknowledged failure to consider the complete pricing formulas is arbitrary and capricious, and no lawful regulation can be derived from a proceeding that fails to address all aspects of the issue before the Department.
- The Department's decision to incorporate California plant costs with the Cornell study is contrary to the intent and design of the Cornell study and contrary to the charge of the AMAA.
- There is no emergency situation demanding that the Department drastically reduce producer prices. Rather, there is evidence that with falling commodity prices, supply and demand will result in market responses sufficient to address the concerns presented by proponent witnesses. Arbitrary reductions to producer income will exacerbate supply reductions and crush producers in all regions and of all sizes. Instead of an emergency decision, the Department should have issued a recommended decision and waited until all other

proceedings concerning the minimum pricing formulas were concluded before issuing a consolidated Final Decision.

We request that USDA voluntarily rescind its Tentative Final Decision and re-evaluate its determination in light of a full consideration of all factors required by the AMAA, regional marketing conditions, and an examination of all relevant aspects of the minimum price formulas.

Respectfully Submitted
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/s/ Benjamin F. Yale

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