

Hearing Clerk
Room 1081
South Building USDA
Washington DC 20250

USDA
OALJ/HCO

2001 FEB -9 P 4: 01

Re: Docket Number AO-14-A69, et al. :DA-00-03

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Submitted by Dairy Farmers of America, Inc.

Dairy Farmers of America (DFA) was a proponent in the hearing, testified on multiple proposals and submitted briefs to USDA. DFA was appreciative of the hearing and the opportunity that the hearing presented to correct an unwarranted decrease in producer prices – specifically a too low Class III price caused by several components of the product formulas as devised by Federal Order Reform. DFA and other producer groups petitioned Congress to address this problem.

DFA is concerned that the recent events which resulted in the Briefing Dates being altered will not provide for the best record and will not provide for all parties including DFA to have equal access to file their comments and views. When the extension was announced resources and staff efforts were directed away from this issue to other pressing business issues.

We, and others, interpreted the delay as a "good faith" effort by the Secretary to allow the industry time to review the action of the Judge and further quantify the effect of the Tentative Rule and the possible alternatives for change presented by the judicial action. We made plans to do exactly that by setting up calls with other cooperatives and industry representatives to review possible alternatives and were caught off guard by the reinstatement of the original deadline. Others in the industry have a similar view.

The reversal should be extended by no less than ten days, if for no other reason than to prevent the claim of undue influence on the decision-making process from being made by any party.

Dairy Farmers of America is a member of the Association of Dairy Cooperatives in the Northeast (ADCNE) and fully supports the brief filed through that organization. There are three positions that DFA endorses that the ADCNE brief does not address, and those positions will be outlined in this brief. In general the ADCNE group reviewed the issues involved in this hearing and attempted to develop a consensus position. For those positions that a consensus cannot be developed, each member may choose to address them separately.

Three issues that the group did not develop a consensus position on and will be addressed by DFA are:

- 1) DFA supports the Non-Fat Dry Milk (NFDM) yield factor as outlined in the Final Rule.
- 2) DFA supports a higher factor representing the recovery of butterfat in the cheese formula.
- 3) DFA supports the elimination of barrels from the cheese formula calculation if the three cents and moisture adjustments are not made.

Non-Fat Dry Milk Yield Factor

In the Tentative Rule the Secretary noted that there are two extremes to be considered in determining this yield factor: either develop and maintain a more complex formula and the resulting data that is necessary to operate it, or attempt to reach some middle ground that might strike a balance between a reasonable and defensible result and the effort needed to maintain the formula. The Tentative Rule after several pages of explanation offered the 1.0 NFDM yield as the best alternative. We agree that a more precise formulation can be determined but would result in a more complex equation and require the industry to develop another price series (buttermilk powder) and develop additional make allowance formulas and review more yield factors and data. We believe that the position taken in the Tentative Rule is a reasonable alternative to these objections and endorse that position.

Butterfat Recovery in Cheese

We would urge the Secretary to review the position taken with regard to the butterfat recovery in cheese. The current factor 1.582 undervalues the recovery of fat in the cheese make process. We, and others, testified that we recover more fat in our own plants than the use of this constant allows for, thus understating the milk price. Furthermore, Dr. Barbano, in response to questions on this issue, noted that cheese plants in the 1890's (when the Van Slyke formula was initially derived) were able to recover fat at a 90% or better rate. He further noted that many plants today achieve recovery rates of better than 90%.

Use of a 1.6 factor would be a better constant for the formula. The Tentative Rule was silent on this point – even though there was evidence in the record supporting a change. Thus, there should and can be an opportunity for the Secretary to make this change prior to issuing a Final Rule.

Use of Barrel Cheese Prices in the Computation

DFA would oppose the use of barrel cheese prices in the Class III price calculations if the three-cent adjustment and the moisture adjustment were not made. The data and logic that support these adjustments are fully outlined in the ADCNE brief and will not be repeated here. However, if those adjustments become altered we would favor eliminating barrel pricing from the calculation. The stated purpose for making both adjustments are to reflect market conditions. If those conditions cannot accurately be determined or agreed to then perhaps the Secretary should consider reverting back to the "BFP formula" that used only blocks in the calculation. It would be simpler, require less data and certainly be free from the debate about adjustments. It was discussed in the hearing and thus is a part of the record.

What to Do About Butterfat Pricing

There are several options concerning the present state of butterfat pricing. Clearly the Secretary had producer interest in mind in the Tentative Rule by finding for a solution that would ease or eliminate a perplexing producer pricing issue relative to fat and protein pricing. Equally clear is that after detailed examination of the "proposed solution" the "fix" presents more issues than the initial problem. Thus the question, "What is the best choice available to the Secretary to deal with this issue?"

Our first choice is that the Secretary adopt the position offered by the Court. That position combines most of the findings of the Tentative Rule and results in the elimination of the dual butterfat prices that causes the industry much concern. It also agrees with the intent of Congress that the Secretary review the product formulas instituted by Reform that unduly depress Class III prices.

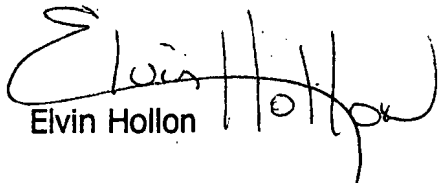
Our second choice would be to adopt the position of the court on the dual butterfat prices – have only one. Then review the formula factors that will be debated in this briefing period. This position was fully outlined in the National All Jersey brief and which we endorse. Note that that Brief did not take a position on formula constants but did propose a solution that eliminated the dual butterfat price concerns of the industry. Choosing the constants proposed by the court (except to raise the 1.582 constant to 1.60) would be a reasonable result of this briefing process.

Our third choice would be for the Secretary to choose to further litigate the Court's decision through an appeal. This would be costly and a waste of time and resources, considering that the Briefing Process allows the same issues to be debated and conclusions to be reached. However, the litigation route would be narrowly defined and the debate would be focused to the singular issue of dual butterfat pricing.

Finally, the worst alternative would be to reopen the hearing to discuss the issue further. This would be costly in terms of preparation time for the industry. Furthermore, the hearing notice, if to generate a successful hearing, would have to be narrowly written – a task that was proven not to be possible in this proceeding. Finally, the National All Jersey brief provides an extremely broad industry consensus on this issue and could clearly be used by the Secretary to decide the "two butterfat pricing" issue as a part of the briefing process.

Thank you for the opportunity to present our position.

Sincerely,

A handwritten signature in black ink, appearing to read "Elvin Hollon". The signature is stylized with a large initial "E" and a long horizontal stroke.

Elvin Hollon

Director of Economic Analysis and Fluid Marketing
Dairy Farmers of America