BEFORE THE
UNITED STATES DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C.

In re: MILK IN THE NEW ENGLAND AND OTHER MARKETING AREAS, HEARING TO CONSIDER POSSIBLE CHANGES IN THE FEDERAL MILK MARKETING PROGRAM	)	Docket No. A0-14-A64, etc.; DA-90-017

POST HEARING BRIEF OF THE DEPARTMENT OF JUSTICE

James F. Rill
Assistant Attorney General
Antitrust Division

Mark C. Schechter
Chief
Transportation, Energy and Agriculture Section

Charles James
Deputy Assistant Attorney General
Antitrust Division

Roger W. Fones
Assistant Chief
Transportation, Energy and Agriculture Section

Susan L. Edelheit
Janet R. Urban
Attorneys
Transportation, Energy and Agriculture Section
Antitrust Division
Department of Justice
555 4th St. N.W.
Washington, D.C. 20001
(202) 307-6349

April 30, 1991

Table of Contents

INTRODUCTION 1

I. The Milk Marketing Order System is No Longer Necessary to Meet AMAA Goals and Imposes Substantial Costs on Society. 5

A. The Conditions Leading to the Passage of the AMAA No Longer Exist 5

B. Current Milk Marketing Regulation Is Costly and Inefficient 9

C. Greater Reliance On The Free Market Would Provide More Orderly Marketing Than The Current Regulatory System. 13

II. USDA Should Eliminate Down Allocation and Compensatory Payment Provisions For Reconstituted Milk. 17

A. Introduction 17

B. Reconstituted Milk Is Likely To Provide Consumers With An Important Option 18

C. Use of Reconstituted Milk Would Lower Industry Costs 21

D. The Use Of Reconstituted Milk Would Stabilize The Market 25

E. Industry Support for Removing Down Allocation and Compensatory Payment Provisions is Substantial. 28

F. Class I Differentials Should Be Lowered At The Same Time That Down Allocation And Compensatory Payment Provisions Are Removed. 29

G. Objections to the Use of Reconstituted Milk Have Little Merit 31

III. The USDA Should Eliminate Or Reduce The Distance Differentials To Lower Milk Prices And Remove Incentives For Excess Production. 34

IV. The USDA Should Eliminate Or Lower The Grade A Differential To Remove Incentives For Wasteful Production Of Grade A Milk 37

CONCLUSION 39

BEFORE THE
UNITED STATES DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C.

In re: MILK IN THE NEW ENGLAND AND OTHER MARKETING AREAS, HEARING TO CONSIDER POSSIBLE CHANGES IN THE FEDERAL MILK MARKETING PROGRAM	)	Docket No. A0-14-A64, etc.; DA-90-017

POST HEARING BRIEF OF THE DEPARTMENT OF JUSTICE

INTRODUCTION

On April 3, 1990, the United States Department of Agriculture ("USDA") announced that it would hold a national hearing to consider possible changes in the Federal milk marketing order program, and invited interested parties to submit proposals for possible inclusion in a hearing notice. 55 Fed. Reg. 12369 (1990). The Department of Justice ("Department") submitted four proposals on May 31, 1990. Three of these proposals were included in the subsequent Notice of Public Hearing on Proposed Rulemaking. 55 Fed. Reg. 29034 at 29036, 29041 (1990). Hearings commenced on September 5, 1990 and concluded on November 20, 1990.

It is a fundamental precept in the United States that, in general, free markets best determine optimal production and price levels and are the most efficient way to supply all types of goods and services. Regulation should be substituted for a

free market only where exceptional circumstances exist -- known as market failures -- and where the costs of regulation do not exceed its benefits. See generally Regulatory Program of the United States Government, Appendix V. Because the milk industry does not exhibit such exceptional circumstances, regulatory intervention is both costly and unnecessary. Thus, the best and most efficient improvement to milk market regulation would be to eliminate that system in its entirety and permit milk marketing to operate in a free market.1/

Short of eliminating the entire system, the Department of Justice urges the USDA to revise the system of milk marketing regulation in light of current market realities and adopt its three proposals. The USDA should:

(1) eliminate the down allocation and compensatory payment provisions for reconstituted milk (Proposal C-1),

(2) eliminate or significantly reduce the distance differentials (Proposal A-2), and

(3) eliminate or significantly reduce the Grade A differential (Proposal A-1).

1/ The Department submitted this proposal on May 31, 1990 but the USDA did not accept it for consideration in the hearings.

The marketing order system is designed to address conditions that ceased to exist long ago. The system no longer meets the goals of the Agricultural Marketing Agreement Act ("AMAA") to improve the plight of the dairy farmer, to assure an adequate supply of fluid milk and to avoid "unreasonable fluctuations in supplies and prices". Instead, it now hinders accomplishment of those goals and imposes significant costs on consumers, producers and taxpayers.

Current milk market regulation props up high-cost production at the expense of low-cost production by establishing high regulated prices and keeping reconstituted milk off the market. Farmers in high-cost regions are protected by a system that insulates them from competition, while farmers who can produce fresh fluid milk at a low cost are unable to reap the full competitive benefits of their efficiency. Milk can be made into fluid concentrate or dry milk powder, which can be cheaply transported, stored, and then reconstituted into a high quality fluid product. Thus, use of reconstituted milk would smooth out variations in price and supply, and go far towards assuring an adequate supply of fluid milk, year-round and nationwide. The marketing order system, however, has erected barriers that make reconstituted milk uneconomical to use. Because of these barriers, low-cost producers cannot concentrate milk and cheaply ship it to high-cost areas for reconstitution.

Those features of the marketing order system that prop up high-cost production do so at an excessive cost both to milk consumers and to society as a whole. High regulated prices and the effective ban on reconstituted milk force consumers to pay more for fresh fluid milk than they would pay in a free market. USDA regulations also deprive consumers of the opportunity to purchase reconstituted milk, a perfectly acceptable product which in many markets could be sold at a lower price than fresh milk. The system also causes excess production which is subsidized by taxpayers. Regulated prices that are higher than they would be in a free market encourage farmers to produce too much milk which is made into unneeded dairy products that the government is forced to buy.2/

The USDA should take the initial steps toward freeing the industry from the present obsolete regulatory system. First, USDA should eliminate the down allocation and compensatory payment provisions to give consumers the option of using reconstituted milk if they desire. Second, distance differentials should be eliminated or significantly reduced so that regulated prices for fluid milk do not encourage excess production. They

---

2/ In 1986, the government spent more than $2 billion to purchase surplus dairy products under the dairy price support program. Milk Marketing Orders, Options for Changes, United States Government Accounting Office (1988) at 14.

also should be lowered so that processors are not prevented from reducing prices as necessary to compete with reconstituted milk. Finally, the Grade A differential, established to encourage production of fluid-grade milk, now encourages too much of that production, and should be eliminated or significantly reduced.

Adoption of the Department's straight-forward reform proposals would result in lower prices to consumers and a greater proportion of the nation's milk supply being produced in the regions where it can be done most efficiently. These changes could represent a first step towards a smooth transition from an antiquated regulatory system to a modern and competitive environment. They also would lead to a significant improvement in the performance of the dairy industry and in the welfare of consumers.

I. The Milk Marketing Order System is No Longer Necessary to Meet AMAA Goals and Imposes Substantial Costs on Society

A. The Conditions Leading to the Passage of the AMAA No Longer Exist

The claimed justifications for milk marketing orders, that milk is a bulky and perishable commodity, plagued by seasonal variations in production and demand, are no longer valid and do not support extensive regulation. Conditions have dramatically changed since passage of the AMAA. Bulk milk or milk concentrate (fluid or powder) can be transported from areas of production to distant markets. It is no longer necessary to

protect high-cost local production to insure an adequate supply of fluid milk for local consumers.

The AMAA was enacted during the Depression to assure an adequate and dependable supply of milk, 7 U.S.C.§608c(18) (Supp. 1990), maintain "orderly marketing conditions," and to improve the plight of the farmer by avoiding unreasonable fluctuations in supplies and prices. 7 U.S.C. §601, §602(4) (1980 & Supp. 1990). At that time, refrigeration was poor as were roads throughout the nation. Jesse 9/12 Transcript ("Tr.") at 35. Thus, processors could procure milk from only a few nearby markets. Id. at 35. A large number of processors (or "handlers") distributed milk, usually by home delivery, within a small geographic area. Id. at 34-35. Under the circumstances, it is natural that the regulatory system developed in a way that protected local production. Jesse 9/12 Tr. at 34. Since milk could not be moved long distances, there would not be enough milk available to consumers if local production were inadequate.

Today, over 50 years later, the 1930s rationale for pervasive regulation has been completely undermined by modern technology and resulting economic changes. Kimmel Exhibit ("Ex.") 211 at 3. First, as discussed in Sections I.C. and II, below, fluid milk can now be made less bulky and thus more easily transportable by removing water and converting it into fluid concentrate or dry milk powder to be reconstituted after

shipment.3/ Jesse 9/12 Tr. at 36; Jesse 9/17 Tr. at 149. It can also be made less perishable because powder can be stored for significant periods of time. Haldeman 11/2 Tr. at 213, 216. Second, with improved refrigeration, which has increased the shelf life of fluid milk, and the growth of the federal highway system, even bulky and perishable fluid milk can be, and is, moved long distances to serve dispersed markets. Jesse 9/12 Tr. at 35; Kimmel Ex. 211 at 12.

Markets for bulk milk are no longer necessarily local in nature. Jesse 9/12 Tr. at 79-80. Bulk milk can now be hauled hundreds, and even thousands, of miles without deterioration. Jesse 9/12 Tr. at 35. It is not unusual for milk to move 200-300 miles within a market and more than 1000 miles from surplus to deficit areas. Christ 11/2 Tr. at 155. As it has become economical for producers to sell to more distant handlers, the number of processors has dropped dramatically. Jesse 9/12 Tr. at 35. Distribution routes are regional rather

---

3/ Reconstituted milk is any fluid milk product made by adding water to milk concentrate or powder. (Jesse, 9/12 Tr. at 28). Concentrated fluid is made by one of two methods. The reverse osmosis method uses a membrane filtration process which separates the water from the milk. (Zimmer, 10/31 Tr. at 180). The evaporation method applies heat to the milk to evaporate the water. (Zimmer, 10/31 Tr. at 184) To make powdered milk, the milk is concentrated to 40-50% concentration, usually in an evaporator and then put in a dryer for the final dehydration process. (Zimmer, 10/31 Tr. at 193)

than local. Id. Home delivery is no longer the standard: Almost all delivery is through retail outlets. Id.

Farmers are better able to market their production in distant areas than they were in the 1930s. The electrification of rural areas and the proliferation of telecommunications since the 1930s has significantly decreased the isolation of the farmer and made it practical for him to deal with distant markets. Kimmel Ex. 211 at 13; Kimmel 11/15 Tr. at 311-312. Farmers are also well educated and integrated into the national economy. Kimmel Ex. 211 at 13. An examination of the testimony given by farmers or representatives of farmers in these hearing shows without a doubt that farmers are sophisticated in the techniques of milk marketing.

The seasonality of milk production, also cited as a justification for regulation, has decreased significantly since the enactment of the AMAA. While production in the peak month exceeded production in the low month by about 50% or more until 1955, this fraction has fallen sharply and was only 12% by 1981. Kimmel Ex. 211 at 7. From 1986 to 1988 no month's daily average milk production differed from the annual daily average by more

than 10%. Id.4/ Moreover, whatever seasonal imbalances in supply do exist largely can be redressed through the use of dry milk powder. Powder could be made from milk produced in the spring, stored and then reconstituted into fluid when needed in the fall.

B. Current Milk Marketing Regulation Is Costly and Inefficient

The milk marketing order system is one of the most extreme cases of government control in agriculture in this country and imposes substantial net costs on society. The regulatory system as a whole causes consumers to pay higher than necessary prices for fluid milk, while at the same time encouraging excess production that must be purchased by the government at the taxpayers' expense.5/ The down allocation and compensatory payment provisions, by eliminating the economic incentive to use reconstituted milk, keep off the market fluid milk products that would lower costs to the industry and consumers and promote market stability.

4/ While the variation in production was much higher in 1989 than in previous years, that variation was due to exceptional weather rather than seasonality. See O'Brien 11/8 Tr. at 169. However, even the variation in 1989 was only a fraction of the regular seasonal variation of the period before 1955. Kimmel Ex. 211 at 7.

5/ The Agricultural Act of 1949, 7 U.S.C. § 1421 et seq., requires the government to purchase at a set price offered farm commodities, including manufactured dairy products, which meet statutory specifications. In 1986, the government spent more than $2 billion to purchase these surplus dairy products.

Current milk regulation encompasses a system of orders, each order representing a separate geographical area. Each order sets minimum prices that a regulated handler must pay for milk, based upon the way the milk is used. Grade A milk used for fluid purposes is Class I and has the highest price. Milk used for manufacturing purposes is assigned the lowest (usually Class III) value. Each handler pays into a pool an amount which equals the total milk used in each class multiplied by the class price. The producers receive a "blend price" from the pool which equals the average value of the milk that was pooled.

The order system is based on the Upper Midwest marketing order. That order sets the Class I price at the market-determined price for milk that is not Grade A, plus a differential ("the Grade A differential"), which unsuccessfully attempts to reflect the added cost of meeting higher sanitation standards for fluid milk. Distance differentials are added to the Class I price in the Upper Midwest Order to set Class I prices in the nation's 41 other marketing order areas.

A recent study by USDA's own Economic Research Service ("ERS"), found that by eliminating milk price regulation even while maintaining a ban on reconstituted milk, society would enjoy efficiency gains of approximately $1 billion each year. Federal Milk Marketing Orders: An Analysis of Alternative

Policies, 1988, at 30; Kimmel Ex. 211 at 5-7. These efficiency gains would stem from increased consumption of fluid milk due to lower prices, and reduction of excess production now caused by artificially high blend prices. Kimmel Ex. 211 at 6.6/ The study also found that using milk reconstituted from concentrated fluid would save society at least $183 million per year. Federal Milk Marketing Orders: An Analysis of Alternative Policies, 1988, at 30. Since this ERS study did not consider the use of powder, total cost savings from use of reconstituted milk should be even greater. Kimmel Ex. 211 at 6.

The marketing order system now encourages excess milk production. Kimmel Ex. 211 at 5; Jesse 9/12 Tr. at 26. Nonetheless, consumers continue to pay artificially inflated milk prices, while the government purchases the excess production at the taxpayers' expense. High blend prices have signalled producers to increase production beyond fluid needs even in some distant, high-cost, regions. Haldeman 11/2 Tr. at 218; Jesse 9/12 Tr. at 43. This is inefficient and wasteful. See Jesse 9/12 Tr. at 44-45; Kimmel Ex. 211 at 25-27.

6/ The ERS noted that these efficiency gains could be less if market risk and uncertainty increased in the absence of price regulation. Federal Milk Marketing Orders: An Analysis of Alternative Policies, 1988, at 22. However, as discussed below, market risk and uncertainty should actually decrease under deregulation, particularly because the use of reconstituted milk will be feasible.

The down allocation and compensatory payment provisions, which make reconstituted milk cost more than local supplies, also shield local production from a flow of concentrated milk produced in less expensive areas. Handlers importing concentrated fluid or powder must pay the equivalent of the local Class I price on the milk after it has been reconstituted.7/ With the cost of making and transporting the concentrate and then reconstituting it into fluid added to this payment, regulation makes reconstituted milk uneconomical. Nichols 9/10 Tr. at 52-53; Jesse 9/12 Tr. at 30. This barrier to the production and sale of low-cost milk works together with high Class I prices to keep milk prices unnecessarily high in many regions. Jesse 9/12 Tr. at 26; Haldeman 11/2 Tr. at 215. The high Class I prices in markets distant from the Upper Midwest and the effective ban of reconstituted milk insulate local markets from competition and "erect . . . barriers to efficient milk movement". Jesse 9/12 Tr. at 26.

7/ Down allocation requires that any concentrated milk used for Class I products is allocated to the lowest use class to the maximum extent possible and that any local producer milk received by the handler that is not already priced in Class I is correspondingly up-allocated to Class I to replace the sales of reconstituted Class I milk. If the handler has not used enough milk in lower class uses to completely offset the sales of reconstituted Class I milk, then the handler makes a compensatory payment to the pool, equalling the difference in value between Class I and the lower class. Jesse 9/12 Tr. at 31.

C. Greater Reliance On The Free Market Would Provide More Orderly Marketing Than the Current Regulatory System

Greater reliance on the free market, including the elimination of regulatory barriers to the use of reconstituted milk, would meet the goals of the AMAA more efficiently than the extensive regulation now in place. The ability to ship a product from one area to another promotes market stability by reducing dependence on particular sources of supply. Product storage also provides stability by allowing producers to smooth out seasonal or other imbalances in supply. In an unregulated market, storage and shipment would be commonplace -- under the marketing order system, storage is effectively prohibited and shipment is significantly inhibited. The shipment and storage of powder in the milk industry would go far towards assuring adequate supplies of fluid milk, year-round and nationwide, without the need for costly regulation.

Interregional shipment stabilizes markets by allowing products to be moved from areas where production costs are lower to areas where they are higher. It also allows shipments from areas with excess production to regions that are suffering from shortfalls. Kimmel Ex. 211 at 11; Jesse 9/17 Tr. at 149. Shipments also increase stability because of the "law of large numbers": The greater the number of independent producing regions the greater the chance that a shortfall or excess in one region will be balanced by the opposite occurrence in another

region. Kimmel Ex. 211 at 12. Thus, as the ability to ship a product links up otherwise isolated market areas into broader integrated market areas, the occurrence of a shortfall or excess in any one market becomes less significant. Id.8/

Storage is particularly effective in smoothing out seasonal variations in supply and demand. Crops, or other products, are stored during times of high production and shipped where they are needed during times of low production. Kimmel Ex. 211 at 9. The ability to store and ship products not only smooths out normal seasonal variations, but also provides stability at times of unexpected, larger than normal variations. Significant surpluses could put an enormous downward pressure on prices if all of the product had to be consumed at the time it was produced. Kimmel Ex. 211 at 9. However, if consumption could be delayed by storing the product, the pressure to reduce prices would not be so great. Id. Likewise, if stored product is available when

---

8/ The ability to ship worked well in the egg industry, an industry which, like milk, has a bulky, perishable product. Kimmel Ex. 211 at 11. In 1983, an outbreak of avian flu in four middle Atlantic states caused over 11 million chickens to be "depopulated" and caused local egg production in those areas to collapse. Id. at 12. Nevertheless, price increases due to the outbreak of avian flu were quite small because production increased in unaffected areas and eggs were shipped in from those areas. Id. Although there were significant increases in egg prices at the time of the avian influenza epidemic, USDA analysts concluded that the increases were due to other causes and that the increase in prices due to the avian flu was minimal. Kimmel 11/15 Tr. at 395.

production is unexpectedly decreased, for example because of bad weather or disease, the upward pressure on prices will not be so great. Id.

Current refrigeration technology and the advent of the federal highway system allows fluid milk to be shipped longer distances. Jesse 9/12 Tr. at 35; Kimmel Ex. 211 at 12. However, shipment to distant points is expensive, and fluid milk cannot be stored for long periods. Kimmel Ex. 211 at 10. Thus, a more economical method of long distance transportation is to ship the milk after the water has been removed, as fluid concentrate or powder. Nonfat dry milk powder can also be stored until it is needed during a time of lower production. Jesse 9/17 Tr. at 97. This would stabilize milk markets by smoothing out the normal seasonality which occurs between the high production season in the spring and the low production season in the fall, Williams 9/10 Tr. at 143; Jesse 9/17 Tr. at 97, as well as unexpected variations in production. Kimmel 11/15 Tr. at 295-296. Now, however, the regulatory penalties on the use of reconstitution effectively prevent storage and reduce the efficiency of shipment in the milk industry.

To the extent that milk marketing is a seasonal industry, it is not unlike other industries, agricultural and non-agricultural, in which supply and demand varies with the season or business cycle. Kimmel Ex. 211 at 8. Such industries

employ many different free market approaches to deal with seasonal fluctuations in supply and demand, many of which are equally available to dairy farmers. Id. For example, dairy farmers could enter into long-term, full supply contracts, giving them assured outlets for their production. Kimmel 11/15 Tr. at 340. Such contracts could be formulated in a manner to take into account characteristics of the milk industry.

Some supporters of the status quo argue that deregulation would result in market chaos. E.g. Carter 10/5 Tr. at 99. However, the experience in milk markets where deregulation has been tried has shown that deregulation poses no significant problems. The state of Wyoming terminated its state marketing order in early 1981. Kimmel Ex. 211 at 14. There is no evidence in the record that Wyoming has experienced problems as a result of deregulation. South Carolina was also deregulated for a period of time. Their milk regulations were challenged in 1983, completely eliminated by 1985, and not replaced until 1990. Kimmel Ex. 211 at 14-15. The data suggests that deregulation led to increased sales of fresh fluid milk in that market. Id. Per capita fluid sales rose by 12.3% from 156.8 pounds in 1983 to 176.1 pounds in 1988. Id. at 14-15. In contrast, over the same period, both in the United States as a whole and in the only Federal milk marketing order bordering South Carolina, the Georgia Marketing Order, per capita fluid sales were essentially constant: U.S. sales rose from 235.4

pounds in 1983 to 236.2 pounds in 1988 and Georgia marketing order sales rose from about 190.1 pounds in 1983 to 190.6 pounds in 1988.9/ Id.

II. USDA Should Eliminate Down Allocation and Compensatory Payment Provisions For Reconstituted Milk

A. Introduction

The down allocation and compensatory payment provisions should be eliminated so that reconstituted milk effectively can be made available in the market. The availability of reconstituted milk could provide significant benefits: it could lower industry production and transportation costs, smooth out seasonal variations in price and supply, and promote market stability. The ability to cheaply transport concentrated milk and powder from low-cost production regions, and the ability to store powder could assure adequate fluid supplies without subsidizing high-cost and inefficient local production.

The Department proposes that down allocation and compensatory payment provisions be eliminated for milk reconstituted from fluid concentrate and powder. The use to which the concentrate or powder is put would not change its classification. Class I prices should also be lowered so that

---

9/ Milk prices have historically been relatively high in the South and in South Carolina, Kimmel Ex. 211 at 14, therefore, consumption has been relatively low there.

handlers can lower the price of local fresh milk to compete with reconstituted milk. This would eliminate any economic penalties on reconstitution, result in the greatest cost savings to the industry and the lowest milk prices for consumers. Proposals to price reconstituted milk as a Class I fluid product provide fewer benefits -- because the price of reconstituted milk would be set at artificially high levels -- but even such proposals would be an improvement over the current system.

B. Reconstituted Milk Is Likely To Provide Consumers With An Important Option

Whether introduction in the market of reconstituted milk will improve industry performance depends upon its acceptance by consumers in the marketplace. The beneficial effects of allowing the sale of reconstituted milk do not turn on whether all consumers would be willing to switch to reconstituted milk at a lower price. It is sufficient if a not insignificant group of consumers would be willing to do so if reconstituted milk were available at a lower price than fresh milk. While some have argued that allowing reconstituted milk would be futile because consumers would not purchase it, such assertions are not supported by the evidence. On the contrary, the record is replete with evidence that consumers like the taste of reconstituted milk, and certainly do not reject the product, as critics have contended.

Dr. Ed Jesse, Chair of the Department of Agricultural Economics at the University of Wisconsin, introduced strong evidence that a blend of reconstituted milk and fresh milk would be a viable substitute for fresh fluid milk. In taste tests that Dr. Jesse supervised, summarized in a Report on the Consumer Preference Evaluation of Milk (Ex. 38), 200 panelists were presented with three samples of 2% milk: a blend of fresh whole milk mixed with milk reconstituted from skim-milk powder; a blend of fresh whole milk mixed with milk reconstituted from reverse osmosis concentrated skim milk; and fresh 2% milk. In two tests, one conducted the day after the reconstituted milk samples were prepared and one conducted 5 days later, consumers generally liked the reconstituted products better than the fresh milk. Ex. 38, Table 1; Jesse 9/12 Tr. at 130-133. Dr. Jesse concluded that these test results demonstrated that the reconstituted low-fat blends substituted very well for fresh milk products, and "indicate[d] a large potential market for reconstituted milk, absent the current price restriction." Jesse 9/12 Tr. at 36-37.

Other evidence in the record fully supports these taste test results. Dr. Kimmel introduced evidence that consumers have demonstrated that they will buy and drink milk reconstituted from powder. Kimmel Ex. 211 at 18, citing Appeal of Arcadia Dairy Farms, Inc., 223 S.E. 2d 323 (N.C. 1976); Kimmel 11/15 Tr. at 253. Robert Williams, Executive Director of the Trade

Association of Proprietary Plants ("TAPP") agrees that consumers will accept the taste of milk made from commercially manufactured powder. Williams 10/15 Tr. at 25-26. Indeed, when considering a proposal made by the Community Nutrition Institute to remove the down allocation and compensatory payment provisions for reconstituted milk, the USDA itself concluded that "a blended product containing 50 to 70 percent reconstituted milk [from powder] is nearly indistinguishable from fresh fluid milk, either by taste or by chemical analysis." 45 Fed. Reg. 75956 at 75960; Kimmel Ex. 211 at 10-11.

Many witnesses have testified that milk reconstituted from reverse osmosis concentrates would enjoy consumer acceptance. E.g., Rittmueller 9/6 Tr. at 125; Nichols 9/10 Tr. at 38; see also, Dropik 9/20 Tr. at 99. According to Artur Zimmer, a specialist in milk concentration technologies, no change in flavor occurs during the process of concentrating milk (either by the reverse osmosis or evaporation methods) into fluid concentrates. Zimmer 10/31 Tr. at 183-4.10/

10/ Although Zimmer also testified that the evaporators used to make powder may expose the milk to higher temperatures, the Report on the Consumer Preference Evaluation concluded that consumers in the taste test panel actually may have preferred the "cooked flavor" produced by exposure to higher heat. Ex. 38 at 13.

These commercially reconstituted products bear little resemblance to the milk consumers can make at home by combining powder and water. They taste vastly superior. Jesse 9/17 Tr. at 146; Williams 10/15 Tr. at 25-26. The machinery available to a dairy reconstituting milk is far more sophisticated than the "equipment" available at home. It is, thus, spurious to claim that consumers can now "reconstitute" their own milk. See Brink 10/1 Tr. at 39-40; Mason 10/1 Tr. at 137-38; Knott 10/19 Tr. at 92.

C. Use of Reconstituted Milk Would Lower Industry Costs

Use of reconstituted milk will lower transportation costs. At a minimum, some of the costly imports of bulk milk will be replaced by imports of concentrated milk products, which are less expensive to transport. These cost savings likely will stimulate more imports of concentrated milk products into high-cost regions. Thus, milk produced in low-cost regions will displace some of the highest cost production. This will lower production and procurement costs in high-cost regions. Consumers will enjoy savings in two ways. They will be able to buy a less expensive fluid milk product, and, if Class I prices do not act as an artificial restraint, the price of all fluid milk will drop to compete with reconstituted milk.

Processors in high-cost regions now find it uneconomical to turn to reconstituted milk even when faced with deficits. Instead, they import bulk milk, often from distant markets, and pay high transportation and "give-up" charges. Christ 11/2 Tr. at 155; Huber 9/6 Tr. at 58; Williams 9/10 Tr. at 130-131; see Williams 10/15 Tr. at 65. Using reconstituted milk to supplement supplies -- instead of costly bulk imports --would greatly reduce transportation costs. Jesse 9/17 Tr. at 149; Knott 10/19 Tr. at 92-93. Shipping fluid concentrate rather than bulk milk would cut transportation costs in half because the concentrate will be reconstituted into two times as much fluid milk. Haldeman 11/2 Tr. at 213; Christ 11/2 Tr. at 155.11/

11/ Fluid concentrate produced by the reverse osmosis method has a 2:1 concentration ratio with fresh milk. Halnon 10/18 Tr. at 100-101. Based on estimated costs of 35 cents per hundredweight to transport whole bulk milk 100 miles, Christ 11/2 Tr. at 155; Kraus 9/17 Tr. at 210, shipping reverse osmosis fluid concentrate rather than bulk milk would save 17.5 cents per hundredweight on a 100 mile haul and $2.45 per hundredweight on the 1,400 haul from Eau Claire to Southeast Florida. Although total savings are reduced by the cost of making and then reconstituting the concentrate, estimated to be between 50 cents and $1.00 per hundredweight, Jesse 9/17 Tr. at 125-26, using fluid concentrate instead of whole milk would still yield savings between $1.45 and $1.95 per hundredweight on shipments from Wisconsin to Florida. Shipping condensed milk made from an evaporation process, which has a 3:1 concentration ratio, would save even more money. Halnon 10/18 Tr. at 100-101.

Shipping powder would save even more money.12/

The ability to ship product more cheaply would likely stimulate additional imports to satisfy local demand. In some cases, where local milk production costs are high, it would be cheaper to ship in concentrate or powder for reconstitution than to use local milk. This would lead to a gradual shift in dairy farming from high-cost regions to low-cost regions. Kimmel Ex. 211 at 19; see Hammond 11/16 Tr. at 42.

Reconstituted milk would not "take over" local production, however. First, it is generally accepted that reconstituted milk would be mixed with local milk, often in equal amounts, before it is marketed. See Williams 9/10 Tr. at 196.13/ Even in the highly unlikely event that all the milk sold is a

---

12/ Powder is eleven times more compact than fluid milk, with forty seven bags of powder (each weighing 100 pounds) equalling, after reconstitution, the volume of bulk milk shipped on a 50,000 lb. tanker truck. Haldeman 11/2 Tr. at 213. It costs only 43 cents to ship what will become a hundredweight of fluid from Eau Claire to Southeast Florida. Williams 9/10 Tr. at 114. The cost of making the powder and then reconstituting it was estimated to be $1.32 per hundredweight. Williams 9/10 Tr. at 24. This brings the total cost of importing powder for reconstitution from Wisconsin to Florida to $ 1.75 per hundredweight of fluid equivalent, far cheaper than the $4.90 per hundredweight it now costs to ship bulk milk the same distance. Williams 9/10 Tr. at 114; Kraus 9/17 Tr. at 210.

13/ It takes equal parts of whole fresh milk and milk reconstituted from nonfat dry milk powder (or concentrated skim milk) to produce 2% milk.

reconstituted blend, only half of the local fresh milk would be displaced. On the other end of the spectrum, no local milk will be displaced if no one uses or buys reconstituted milk. How much local milk is actually displaced, between none and half, would depend on consumer preferences and the price of reconstituted milk relative to that of local fresh milk.14/

Consumers are also apt to save money if reconstituted milk becomes available and Class I prices are not allowed artificially to restrain the market price of fresh milk. Where reconstituted milk is sold, it will be a lower-cost alternative or the price of all milk will be lowered. If consumers have no preference between the two products, reconstituted and fresh milk would sell at the same price. Because the reconstituted milk was purchased more cheaply (it was likely imported from a lower-cost region with a lower Class I price), its price should drive down the price of fresh milk. Kimmel Ex. 211 at 19. In this case, all consumers would save money.

14/ Industry proponents believe that reconstituted milk will likely supplement supplies and not be the main source of supply. Jesse 9/17 Tr. at 167; Williams 10/15 Tr. at 90-91. However, Class I prices must not prevent the price of local fresh milk from falling to compete with reconstituted milk. Williams 10/15 Tr. at 90-91. Robert Williams testified that most handlers would prefer to buy local milk as long as it is competitive with the cheapest alternate source of milk. Williams 9/10 Tr. at 179.

If consumers prefer fresh milk, reconstituted milk -- like reconstituted orange juice today -- will sell at a lower price than its fresh alternative. Consumers will then have the option of purchasing a lower-cost product. Kimmel Ex. 211 at 20. Those who purchase reconstituted milk will clearly save money. Consumers themselves will determine the difference in price between the reconstituted and fresh products by how much more they are willing to pay for fresh milk. The availability of a lower price option may also place a ceiling on fresh milk prices. See Jesse 9/17 Tr. at 167. In that event, all milk consumers would save.

D. The Use Of Reconstituted Milk Would Stabilize The Market

Greater use of milk reconstituted from powder and fluid concentrates would efficiently solve the very problems that marketing orders were designed to remedy. Kimmel Ex. 211 at 21. The marketing order system, with its reliance on and preservation of local markets, has been justified on the basis of milk's bulk and perishability. Kimmel Ex. 211 at 4; see also Jacobson 10/4 Tr. at 21. However, reconstituted milk can solve both of these problems. Fluid and dry concentrate are far less bulky, and powder can be stored for long periods of time.

As transportation costs are reduced through the shipment of concentrates, the size of local markets will likely increase. There will be greater reliance on shipments -- from a broader

geographic area -- to satisfy local demand. As discussed earlier, this stabilizes markets by reducing dependence on particular production sources. Kimmel Ex. 211 at 11-12. Powder, because it is less expensive to ship, will widen markets further because more shipments will be brought in from more regions.

Powder also holds the unique advantage of storage. Powder can be made from milk produced during the spring flush season, stored, and then reconstituted into fluid during the fall, when supplies are short. Haldeman 11/2 Tr. at 213-14, 216. This would help smooth out seasonal, as well as regional, supply imbalances. Kimmel Ex. 211 at 20. Even Dr. Ed Jesse, who testified on behalf of the Upper Midwest Coalition, which recommended no change in the treatment of powder, agreed on cross examination that it would be more efficient in terms of balancing a deficit market to use powder produced in May for fluid use in November. Jesse 9/17 Tr. at 97.15/

Storing powder for subsequent reconstitution when supplies are short would also reduce seasonal shifts in price. Williams 9/10 Tr. at 143, 195; Jesse 9/17 Tr. at 97; Kimmel Ex. 211, at

---

15/ His testimony on cross is also supported by Dr. Jesse's previous writings where he contended that regulatory obstacles should be removed for powder as well as concentrated fluid. Jesse 9/17 Tr. at 177-178.

21; Haldeman 11/2 Tr. at 216. Such price variations have recently been substantial even with the marketing order system in place. Kimmel Ex. 211, at 10. Donald Haldeman, dairy farmer and president of the Wisconsin Farm Bureau Federation, testified that demand for milk during the fall months now drives up Class I prices everywhere. This "increases consumer prices, adversely affects consumption, and widens the difference between farm and consumer prices." Haldeman 11/2 Tr. at 216. With powder, however, there would no longer be such "a big shift from the spring to the fall". Williams 9/10 Tr. at 143; Kimmel Ex. 211, at 10, 21.

Finally, reconstituted milk would assure regions where shortfalls often occur a stable, certain and adequate source of supply. Williams 10/15 Tr. at 27. To meet demand during deficit periods, these regions now turn to costly imports of bulk milk. Sometimes, however, even these imports are uncertain. A witness from the Georgia Department of Agriculture stated that his state was unable to get enough milk at a reasonable distance three times in the recent past. Murphy 10/10 Tr. at 38. Although testifying against reconstituted milk, Mr. Murphy admitted that processors in his state have at times sought emergency authorization to reconstitute when they were short of milk. Id. at 40. Changing the regulations would avoid this type of disruption and uncertainty by making reconstitution a

routine, rather than an emergency, response to short local supplies.

E. Industry Support for Removing Down Allocation and Compensatory Payment Provisions is Substantial

Support for removing restrictions on milk reconstituted from concentrated fluid is widespread. Many parties, including all of those represented by the Upper Midwest Coalition, propose eliminating the down allocation and compensatory provisions for milk reconstituted from fluid concentrates and pricing it as a Class I product.16/ These parties provided substantial evidence that this would lower transportation costs, Nichols 9/10 Tr. at 39, lessen inefficient regional production incentives, and reduce efficiency losses. Jesse 9/12 Tr. at 26, 30, 48. Further, they introduced strong evidence that this reconstituted milk in blends with fresh milk would substitute well for fresh milk products. Jesse 9/12 Tr. at 36-37, discussing Ex. 38.

Members of the dairy industry have also proposed that the down allocation and compensatory payment provisions be removed for milk reconstituted from powder as well as fluid concentrate. These industry proponents, Robert Williams of TAPP, and Donald Haldeman of the Wisconsin Farm Bureau, along with Jerome

---

16/ See proposals C-2 through C-10 in 55 Fed. Reg. at 29041 (1990). Proposals C-2, C-4, C-6 and C-10 would also price milk reconstituted from powder as a Class I product.

Hammond, Professor of Agricultural Economics at the University of Minnesota, testified that the use of powder will lower industry costs of production and transportation, balance seasonal supply and price imbalances, and promote industry stability. Williams 9/10 Tr. at 143; Williams 10/15 Tr. at 27, 90-91; Haldeman 11/2 Tr. at 213-214, 216; Hammond 11/16 Tr. at 70-71.

Unlike the Department of Justice, however, industry proponents of reconstituted product would prefer that it be classified and priced as a Class I fluid product. Although removal of the current economic penalties on reconstitution would represent an improvement over the current system, there is no principled justification for subjecting reconstituted milk to a pricing system that would discourage its use by artificially increasing its price. Kimmel Ex. 211 at 23.

F. Class I Differentials Should Be Lowered At The Same Time That Down Allocation And Compensatory Payment Provisions Are Removed

Class I differentials should be lowered at the same time restrictions on reconstitution are removed so that Class I prices are not kept too high relative to the price of deregulated reconstituted milk. If differentials are not lowered, the regulatory system could encourage reconstitution that would not otherwise occur. Kimmel Ex. 211 at 21. In that case, consumers might purchase reconstituted milk simply because minimum Class I differentials prevent local processors from

lowering the price of fresh milk to compete with the reconstituted milk. Id. at 22. High Class I prices could also prompt local processors to dry and then reconstitute their own fresh production just to avoid paying Class I prices. This would be wasteful.

The USDA, when considering proposals made by the Community Nutrition Institute in 1980 to remove the down allocation and compensatory payment provisions for reconstituted milk, similarly addressed the potential problem of wasteful reconstitution. 45 Fed. Reg. 75956 (November 17, 1980). Under the proposals, there would have been no further classification of reconstituted milk Id. USDA concluded, however, that lowering Class I differentials would solve this problem. If local fresh fluid milk could compete with reconstituted milk, this "would remove the economic incentive to reconstitute milk simply to circumvent the regulated prices." Id. at 75973. See also, Kimmel Ex. 211 at 22.

Proposals made by the Upper Midwest Coalition, the Wisconsin Farm Bureau, and TAPP to price reconstituted milk as a Class I product also require lower Class I differentials to prevent the regulations from giving reconstituted milk an artificial competitive advantage over fresh milk. Robert Williams of TAPP proposes that Class I prices be aligned on the basis of the delivered cost of powder. Williams 9/10 Tr. at 23. He states

such a price alignment would prevent powder from "taking over" local production and keep it a supplemental source of supply. Williams 10/15 Tr. at 90-91. The Upper Midwest Coalition also proposes that Class I differentials be flattened. Leitske 9/19 Tr. at 158; Christ 11/2 Tr. at 158-9. Paul Christ stated that, otherwise, the delivered cost of concentrated milk could be less than the Class I cost of local milk in certain markets with artificially high Class I differentials. Similarly, Donald Haldeman of the Wisconsin Farm Bureau Federation testified that differentials should be lowered so that they would not be higher than the cost of transporting concentrated fluid milk ingredients. Haldeman 11/2 Tr. at 216-17.

G. Objections to the Use of Reconstituted Milk Have Little Merit

Opponents of reconstituted milk raise numerous objections to its use. They would like USDA to believe that they are concerned about consumer welfare, citing concerns about the quality and taste of the product. E.g., Mason 10/1 Tr. at 137-38; Marmillion 10/4 Tr. at 193, 207; Murphy 10/10 Tr. at 21-22. However, these arguments have little or no merit. Opponents' real concern is that reconstituted milk will displace some of their own, higher-cost, production.

The record, as discussed in Section II.B., supra, provides ample evidence that some consumers are likely to view reconstituted milk as an option. If they do not, they will not

buy it, and the status quo will remain. There is also no basis on which to claim that reconstituted milk has less nutritional value than its fresh counterpart. The USDA itself has found that reconstituted milk "is no different nutritionally from fresh milk". 45 Fed. Reg. 75956, 75960 (November 17, 1980); see also Baldus 9/5 Tr. at 31; Jesse 9/12 Tr. at 36. Reconstituted milk is not a new or untested technology. It has been used successfully from time to time in areas remote from raw milk supplies and other regions. Jesse 9/12 Tr. at 29.

Critics, seeking to preserve the barriers to reconstituted milk, raise some hypothetical arguments: What if poor tasting water makes reconstituted milk taste bad? E.g. Brink 10/1 Tr. at 39-40; Weisser 10/5 Tr. at 12. What if consumers don't like the taste? The answers to these "what if" questions are simple. If solutions to any such problems are infeasible or uneconomical in a particular market, milk will not be reconstituted there.17/ See Rittmueller 9/6 Tr. at 106.

17/ In all likelihood, however, most problems can be resolved. If some regions have problems with water quality, for example, a market solution will be found. Haldeman 11/2 Tr. at 240. This could consist of purifying the water, if necessary, by running it through a filter or using the reverse osmosis technology. Zimmer 10/31 Tr. at 204. Water could also be imported from other nearby regions.

No one seeks to force people to buy reconstituted milk. See Williams 10/15 Tr. at 63. If consumers do not like the taste of reconstituted milk, they simply will not buy the product. Nichols 9/10 Tr. at 67. If processors refrain from making reconstituted milk products because they are left lying on grocery store shelves, the status quo, with reliance on local supplies and the importation of bulk milk from distant markets, will be maintained. There is thus little to be lost by removing the down allocation and compensatory payment provisions, even absent consumer acceptance of reconstituted milk. Because reconstituted milk will be labelled and identified as a product distinct from its fresh counterpart, Halnon 10/18 Tr. at 79; Oemichen 9/20 Tr. at 76, there is no basis for claims that a negative view of reconstituted milk will taint consumer acceptance of all milk. E.g. Marmillion 10/4 Tr. at 193, 207. As in the case of orange juice, fresh and reconstituted milk should be properly labelled and offered for sale without regulatory discrimination, so that consumers can choose what they like. See Uphus 9/20 Tr. at 67; Kimmel 11/15 Tr. at 374.

The real concern of those who oppose relaxation of restrictions on reconstituted milk is that farmers in some areas will gain business at the expense of farmers in other areas. They wish to avoid displacement of some higher-cost fresh product by powder and fluid concentrates imported from low-cost production regions. E.g., Shaulis 10/2 Tr. at 213; Knott 10/19

they would be in a free market, lowering differentials will remove incentives for excess production, lower prices, and raise consumption. It will also prevent wasteful reconstitution following removal of the down allocation and compensatory payment provisions.

Distance differentials now cause the Class I price in some areas to be higher than the free market price. Kimmel Ex. 211 at 24; see also Jesse 9/12 Tr. at 26; Haldeman 11/2 Tr. at 218. In these areas, consumers pay higher than appropriate prices, which in turn causes artificially low consumption. Kimmel Ex. 211 at 24. Lowering differentials in these areas should reduce prices and increase consumption. Kimmel, Ex. 211 at 24. This would benefit consumers, who could purchase more of a product they wish to purchase.

In areas where the Class I price is now less than the free market price, lowering differentials would have no detrimental effect: Over-order premiums would continue to be used to raise prices to competitive levels.18/ Kimmel Ex. 211 at 24; Jesse 10/17 Tr. at 158. The use of over-order premiums also ensures that lowering differentials would not lead to a shortage. If

---

18/ Over-order premiums already exist in most markets. Jesse 9/17 Tr. at 83.

the Class I price in a particular area were too low to encourage production of fluid milk sufficient to meet demand, over-order premiums would increase until production reached adequate levels. Kimmel Ex. 211 at 25.

In areas where Class I prices are higher than free market prices, farmers are also encouraged to produce too much milk. Kimmel Ex. 211 at 25-26; Christ 10/23 Tr. at 17-18. As a consequence, the government must purchase excess manufactured products at taxpayers' expense. Lowering differentials will lessen the regulatory incentive for farmers to produce more milk than is needed. Now, high differentials encourage production beyond fluid needs even in high-cost areas, and manufactured products are produced in these regions. Kimmel Ex. 211 at 26-7; Gunderson 9/5 Tr. at 78-9; Haldeman 11/2 Tr. at 217-8. This is inefficient since manufactured products can be more cheaply produced in low-cost areas and shipped inexpensively to consumers anywhere in the country. Kimmel Ex. 211 at 25-6. Removing the regulatory incentives to produce too much milk in high-cost areas would replace high-cost production with low-cost production, and eliminate some surplus production of manufactured products. Kimmel Ex. 211 at 25-6; Jesse 10/17 Tr. at 158.

Two examples of the inefficiency induced by distance differentials are provided by the Southwest Plains Milk

Marketing Order and the New York-New Jersey Milk Marketing Order. Both of these orders utilize most of their milk in manufactured products even though their milk prices, and their costs of producing additional milk, are substantially higher than prices and costs in the Upper Midwest Milk Marketing Order. Federal Milk Order Market Statistics, 1989 Annual Summary, Ex. 7, at 46-7.19/ If distance differentials were lowered, farmers in these regions would have less of the incentive -- now created by regulatory prices that are higher than they would be in a free market -- to produce high-cost milk for manufactured products.

IV. The USDA Should Eliminate Or Lower The Grade A Differential To Remove Incentives For Wasteful Production Of Grade A Milk

The Class I differential in the Upper Midwest Order, which has been termed the Grade A differential, was established to encourage handlers to upgrade their equipment to meet the sanitary standards necessary for fluid milk. Milk Marketing Orders, Options for Changes, United States Government Accounting Office (1988) ("GAO Report") at 25. It is now set too high, and encourages handlers to meet Grade A standards when, in fact, the

---

19/ A farmer in a region with high Class I prices -- and, thus, high blend prices -- has the incentive to keep on producing milk until his incremental costs rise to the high price he receives. Thus, in such a region, even a farmer whose costs are initially low will continue producing milk until his costs are high. Kimmel, Ex. 211 at 25-26.

milk they produce is consumed in ways that do not benefit from that special handling. Christ 9/18 Tr. at 116.20/ As a consequence, too much Grade A milk is produced. Gunderson 9/5 Tr. at 71-2. Lowering the Grade A differential would reduce incentives to use Grade A milk in products that could equally well use cheaper Grade B milk. Kimmel Ex. 211 at 27; see also Lamers 9/12 Tr. at 230.

The amount of wasteful utilization of Grade A milk is extensive. Only 40% of the milk produced in this country is consumed in fluid form, but 90% of the milk is produced to meet fluid grade standards. Kimmel Ex. 211 at 27; Christ 9/18 Tr. at 123. Since only an additional 10% of total fluid production is needed for fluid reserves,21/ fully 40% of total production is unnecessarily handled to meet Grade A standards.

The potential cost of this waste is significant. The American Agricultural Economics Association Task Force on Dairy Marketing Orders reported estimates of the extra cost of meeting

---

20/ See also GAO Report at 26. The Government Accounting Office found that the Class I price was higher than needed to attract a sufficient amount of Grade A milk.

21/ A reserve of 25% of fluid consumption is a sufficient reserve. Lamers 9/12 Tr. at 230; Jesse 9/17 Tr. at 136; Weisser 10/5 Tr. at 91 Since 40% of total milk production is consumed in fluid form, needed fluid reserves constitute 10% of total production (i.e., 25% of 40%).

Grade A standards ranging from 0 to 50¢ per hundredweight and concluded that the actual cost is 15¢ per hundredweight or less. Ex. 39, Federal Milk Marketing Orders: A Review of Research on Their Economic Consequences, at 19. At annual milk sales of approximately 1.42 billion hundredweight, wasted costs of 15¢ per hundredweight on 40% of that milk would result in an annual waste of over $80 million. Kimmel Ex. 211 at 27.

CONCLUSION

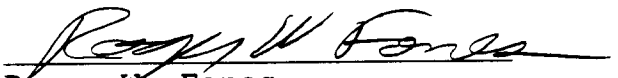
For the reasons stated above, the Department urges the USDA to adopt its proposals. Lowering price differentials and removing regulatory obstacles to the economic use of reconstituted milk would result in lower prices to consumers and a greater proportion of the nation's milk supply being produced in lower-cost regions. Use of reconstituted milk would also solve the very problems that the marketing orders were designed to remedy. It would smooth out variations in price and supply and assure an adequate supply of fluid milk, as well as lower industry costs.

The down allocation and compensatory payment provisions should be removed so that the use of reconstituted milk is feasible. The USDA should also eliminate or lower significantly the distance differentials and the Grade A differential so that excess and inefficient production of milk is not encouraged.

Adoption of these proposals would significantly improve performance in the dairy industry and be a good first step to a competitive environment.

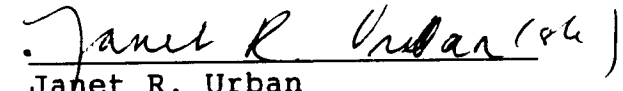
Respectfully submitted,

Mark C. Schechter
Chief



Roger W. Fones
Assistant Chief

Susan L. Edelheit
Attorney



Janet R. Urban
Attorney

Transportation, Energy and
Agriculture Section
Antitrust Division
Department of Justice
555 4th St. N.W.
Washington, D.C. 20001
(202) 307-6349

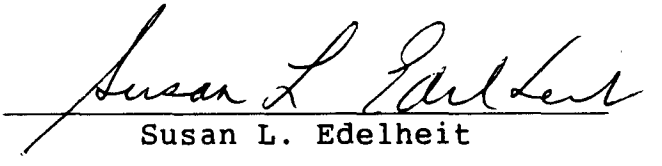
James F. Rill
Assistant Attorney General
Antitrust Division

Charles James
Deputy Assistant Attorney
General
Antitrust Division

April 30, 1991

CERTIFICATE OF SERVICE

I hereby certify that this 30th day of April, 1991, a copy of the foregoing Post Hearing Brief of the Department of Justice was served, by first class mail, postage prepaid, upon all parties on the attached service list of this proceeding.



Susan L. Edelheit

Robert J. Williams
901 Moore St. Lot 28
Baraboo, WI 53913

Vincent C. Brockman
Borden, Inc.
180 East Broad Street
Columbus, Ohio 43215

Marvin Beshore, Esq.
P.O. Box 946
126 Locust Street
Harrisburg, PA 17108

David Beren
Morningstar Foods
5956 Sherry Lane #1100
Dallas, Texas 75243

Sheldon Weiss, Esq.
225 Millburn Avenue
Millburn, New Jersey 07041

Bill Coleman, Director
Minnesota Department of
Agriculture
90 West Plato Boulevard
St. Paul, MN 55107

Andrew I. Schoenholtz, Esq.
Covington & Burling
P.O. Box 7566
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20044

William Tinklepaugh
888 16th Street, N.W.
Washington, D.C. 20006

A. J. Ortego, Dairymen, Inc.
10140 Linn Station Rd.
Louisville, Kentucky 40202

Edward T. Loughlin
National Milk Producers
1840 Wilson Blvd.
Arlington, VA 22201

Milk Marketing Inc.
P.O. Box 36050
Strongsville, Ohio 44136

Donald Ommodt
Cass Clay Creamery, Inc.
Box 2947
Fargo, North Dakota 58108

Glen Wagner, Esq.
3858 N. Cliff Road
Port Clinton, Ohio 43452

Steve Halbrook, Esq.
Suite 600
888 16th St., N.W.
Washington, D.C. 20006

James Purdy
Borden, Inc.
180 East Broad Street
Columbus, Ohio 43215

Donald F. Copeland, Esq.
One Meetinghouse Place
Norristown, Pennsylvania 19401

Charles M. English, Jr., Esq.
1200 18th Street, N.W.
Suite 710
Washington, D.C. 20026

George W. O'Brien
Box 55
N. Truro, MA 02652

Steve Rosenbaum
Covington & Burling
P.O. Box 7566
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20044

James S. Fraher
Atlantic Dairy Cooperative
1225 Industrial Highway
P.O. Box 127
Southamption, PA 18966-0127

D. Paul Alagia, Esq.
P.O. Box 1179
Louisville, Kentucky 40201

Neal R. Bjornson
AMPI
P.O. Box 790287
San Antonio, Texas 78279

Joseph C. Mathis
Eastern Milk Producers
P.O. Box 6966
Syracuse, New York 13217

Robert G. Thomas
Thomas & Thomas
6115 Brookbank
Downers Grove, IL 60515

Robert Isaacson
U.S. GAO
562 Federal Building
Ft. Snelling, Minnesota 55111

Lynn A. Hayls
Farmers' Legal Action
1301 Minnesota Bldg.
46 East Fourth Street
St. Paul, Minnesota 55101

Sue M. Taylor
Sorrento Cheese
2375 South Park Avenue
Buffalo, New York 14220

Christie L. Pittman
President, Dunn Co.
Farmers Union Milk Marketing
Cooperative, R5 Box 96
Menomonie, Wisconsin 54751

Dr. Ken Olson
225 Touhy Avenue
Parkridge, Illinois 60068

Bruce F. Wegmueller
Swiss Valley Farms
5910 Central Avenue
Dubuque, Iowa 52001

Clifford M. Carman
Dairylea Cooperative Inc.
831 James Street
Syracuse, New York 13203

Robert Wellington
Agri-Mark, Inc.
P.O. Box 5800
Lawrence, Massachusetts 01842

James Kalkofen
Rt. 1, Box 38
Cecil, Wisconsin 54111

Gary Gunderson
Agri News
801 34th Avenue, N.
St. Cloud, Minnesota 56303

John H. Vetne, Esq.
Blodgett, Makechnie & Vetne
P.O. Box 574
Peterborough, NH 03458

Joe E. Paris
P.O. Box 419
Mountoursville, PA 17754

Dennis Rosen
117 West Spring Street
Chippewa Falls, WI 54729

Rodney K. Carlson
Milk Marketing Inc.
P.O. Box 36050
Strongsville, Ohio 44136

Elvin Hollon
AMPI-MGF
1375 E. Woodfield #350
Sch , Illinois 60173

P. A. Costello
Rose Hill Consultants
1475 Sunrise Camp Road
Minocqua, Wisconsin 54548

Bob Hall
Sorrento Cheese
2375 South Park Avenue
Buffalo, New York 14220

Don Huldeman
Wisconsin Farm Bureau
Federation
P.O. Box 5550
Madison, Wisconsin 53705

Roland Morris, Esq.
One Liberty Place
Philadelphia, PA 19103-7396

Denis Donohue
P.O. Box 1146
Manitowoc, WI 54221-1146

Virgil Roberts
State Representative,
Wisconsin
308 Park Lane
Holmen, Wisconsin 54636

Eric Hillan
W8032 Plant Road
Ladysmith, Wisconsin 54848

Carol DuBard
1301 Longworth Building
Washington, D.C. 20515

David Beren
9435 Hunters Creek
Dallas, Texas 75243

Kenneth Ackerman, Esq.
P.O. Box 4967
Syracuse, New York 13221

Edward J. Johnson, Jr.
New York State Department of
Agriculture & Markets
I Winners Circle
Albany, New York 12110

Gary G. Latta
Crowley Foods, Inc.
P.O. Box 549
Binghamton, New York 13902

John Hitchell
The Kroger Co.
1014 Vine Street
Cincinnati, Ohio 45202

Jim Dickrell
6205 Earle Brown Drive
Suite 100
Brooklyn Center, MN 55430

Sydney Berde, Esq.
2800 Minnesota World Trade
Center
St. Paul, Minnesota 55101

Gary G. Latta
Crowley Foods, Inc.
P.O. Box 549
Binghamton, New York 13902

William L. Oemichen
310 West Grove Road
Hudson, Wisconsin 54016

Joe Hylton
Farm Fresh
P.O. Box 31
Mountain Grove, MO 65711

Renn Nance
MID-AM Dairymen
3253 E. Chestnut Express
Springfield, MO 65802-2584

Reid Marmillion
Road #2, Box 223
West Cr. Road
Newark Valley, New York 13811

Will Hughes, Esq.
Wisconsin Department of Agriculture
P.O. Box 8911
Madison, Wisconsin 53703

Commissioner Jim Nichols
Minnesota Department of
Agriculture
90 West Plato Boulevard
St. Paul, Minnesota 55107

Robert Cropp
Department of Agricultural
Economy
403 Taylor Hall
University of Wisconsin
Madison, Wisconsin 53706

Paul Christ
Land O' Lakes
P.O. Box 116
Minneapolis, MN 55440-0116

Alan Kraus
State of Wisconsin -
Department of Justice
D 1974 Elm Street
Stratford, Wisconsin 54484

A. W. Samofal, Esq.
U.S. Department of Agriculture
Office of General Counsel
Marketing Division
Room 2014 South Building
Washington, D.C. 20250

Richard A. Glandt
U.S. Department of Agriculture
Agricultural Marketing Service
Dairy Division
P.O. Box 96456
Washington, D.C. 20090-6456