

The Ins & Outs of Milk Pricing

*Partial
Only*

*Material Prepared By
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Director, Univ. Of WI. Center for Cooperatives,
Dairy Marketing & Policy Specialist
University of Wisconsin Cooperative Extension-Madison*

October 1997

Federal Milk Marketing

Order Reform

FAIR

Dairy Price Support Program

- Support program maintained 4 years: 1996-1999
- Support \$10.35 in 1996
- Support declines \$.15 per year:
1997 = \$10.20
1998 = \$10.05
1999 = \$ 9.90
- April 30, 1996 producer assessments ended
- Recourse loan program, Jan. 1, 2000 - 2002
* butter, nonfat dry milk and cheddar cheese
* loan at \$9.90/cwt. milk equivalent

FAIR

Federal Order Reform (Expedited Process)

- Requires USDA to consolidate to no more than 14 and no less than 10 orders by April 1999
 - * California may be one of 14 if producers petition and approve
- Pricing:
 - * USDA authorized to consider Class I utilization and multiple basing points
 - * USDA authorized to consider use of uniform multiple component pricing when developing BFP for manufacturing milk
- USDA Study: Submit a report to Congress on FMOs by April 1, 1997; review of order system in light of consolidation mandate; recommend order improvements and reforms beyond consolidations

USDA Federal Order Reform Committees

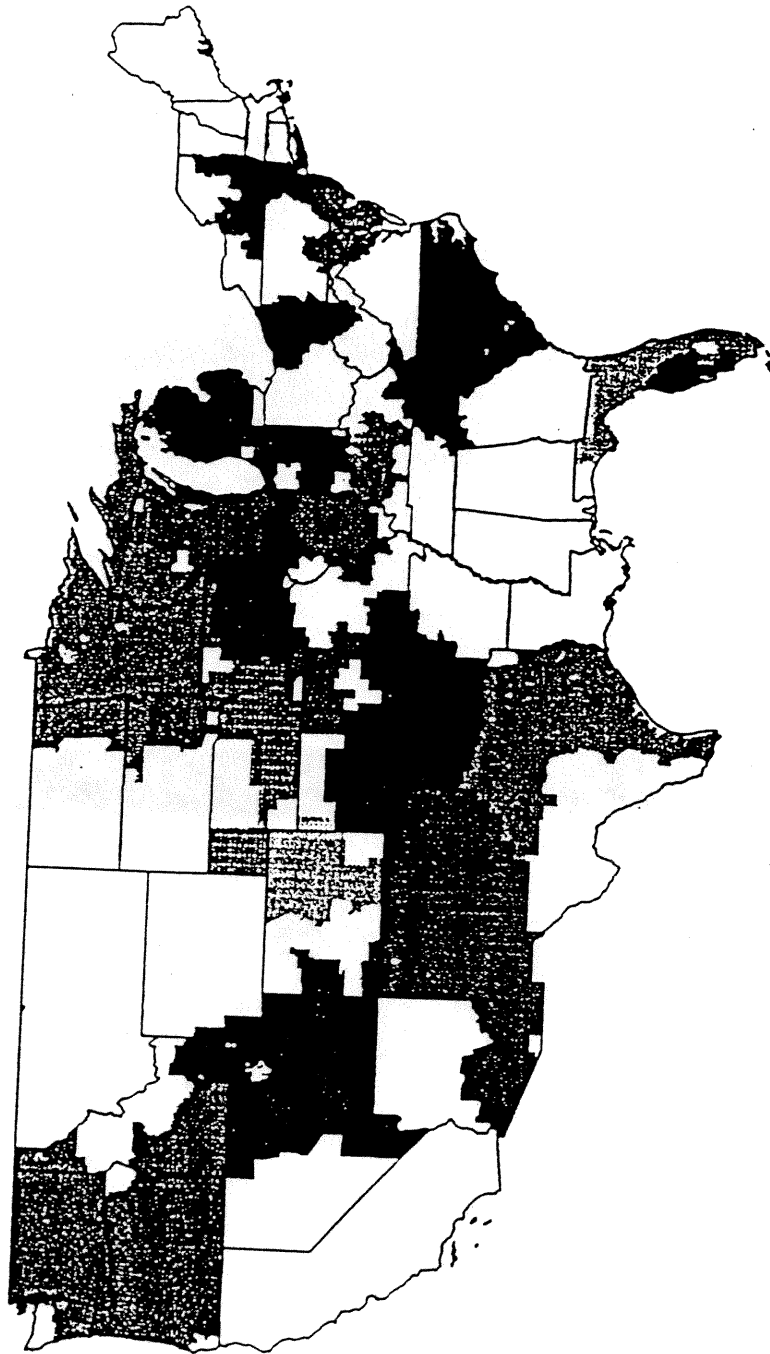
1) Basic Formula Committee

2) Classification Committee

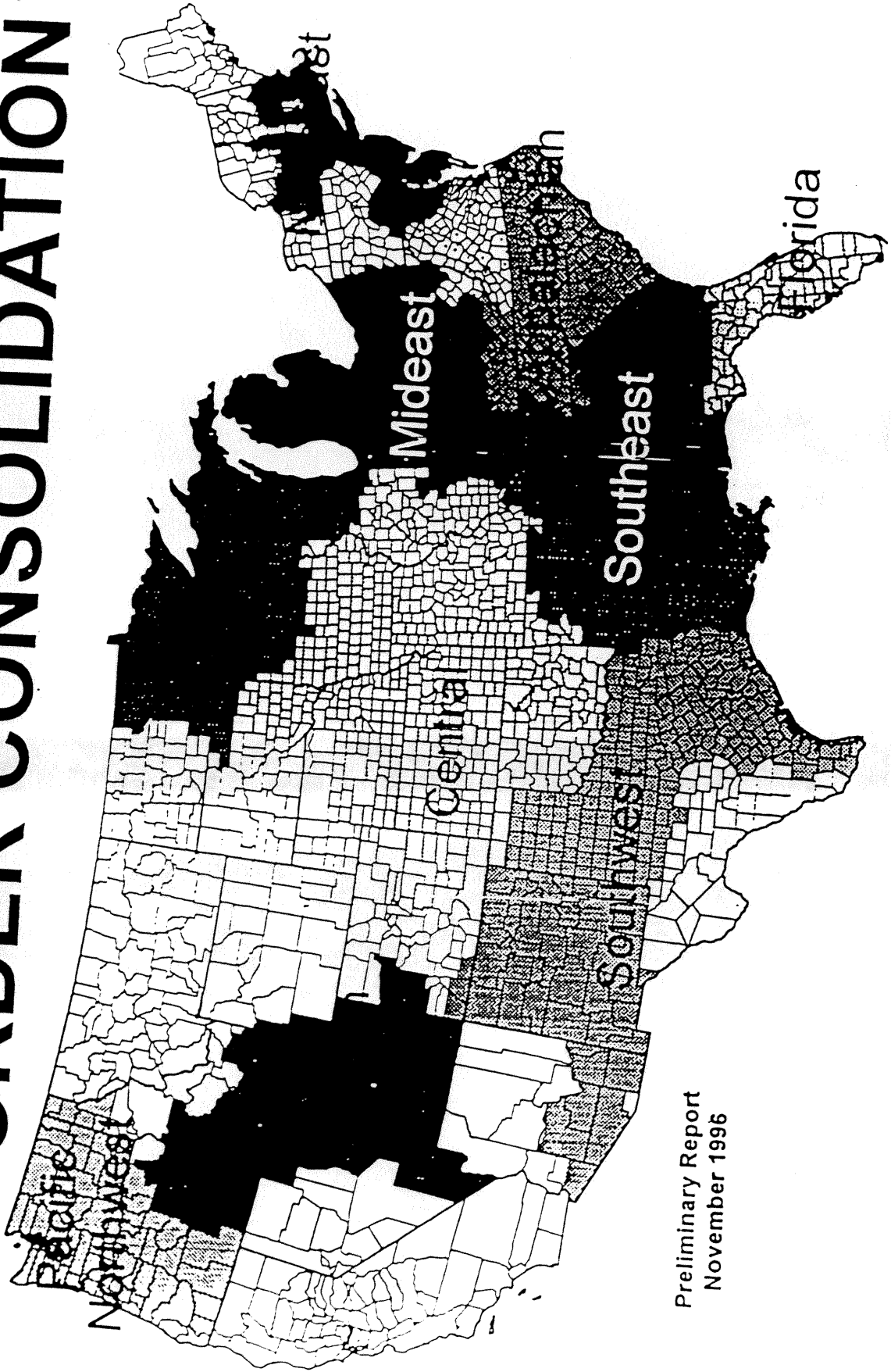
3) Identical Provisions Committee

4) Pricing Structure Committee

**Marketing Areas Under Federal Milk Orders
as of October 1, 1996**

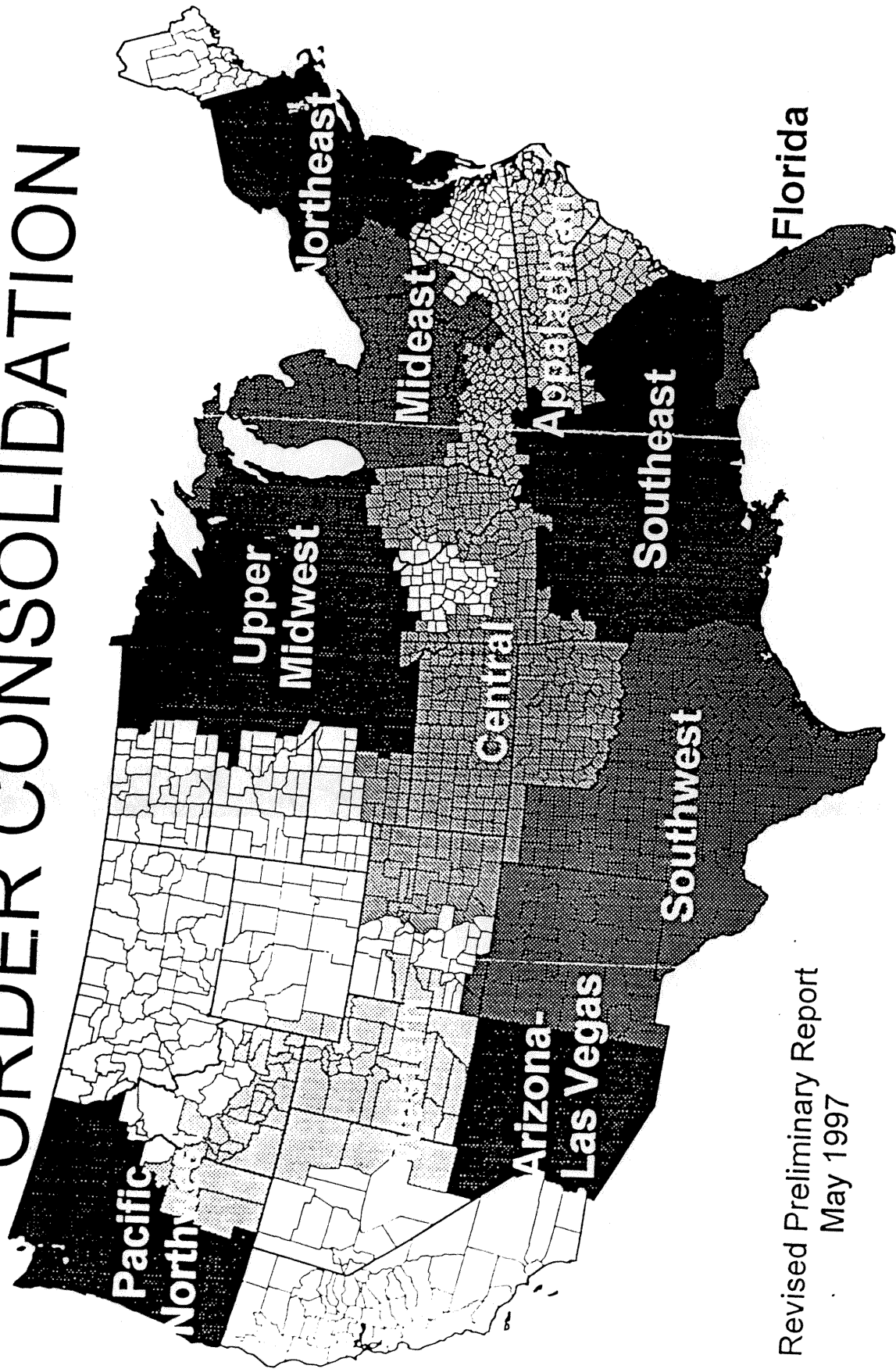


SUGGESTED ORDER CONSOLIDATION



Preliminary Report
November 1996

ORDER CONSOLIDATION



Revised Preliminary Report
May 1997

Six Class I Pricing Options

- 1A. Location Specific Differential: \$1.60 in the Upper Midwest, West, and Southwest plus an added component in other regions
- 1B. Modified Location Specific Differential: \$1.00 plus an added component that covers cost of moving bulk milk to deficit markets
2. Relative Use Differential: \$1.60 plus component based on ratio of Class I milk to other uses of milk
- 3A. Flat Differential: \$1.60 in all markets
- 3B. Flat Differential Modified by Class I Use:
 - (a) \$2.00 in markets < 70% Class I
 - (b) \$2.00 + \$0.075 (Class I % - 70%) in markets > 70% Class I
4. Demand Based Differential: \$1.00 fixed differential plus transportation credit based on location of reserve milk supplies

Changes In Classification

Eggnog from Class II to Class I

Cream Cheese from Class III to Class II

Cultured Buttermilk will be Class I

*Buttermilk biscuit mix, biscuit blend, and
blend for baking will be Class II*

*Allow diverted milk between orders to be
allocated to Class I*

Below is a projected time line for implementing the Farm Bill Federal milk marketing order reforms within the statutory deadline.

Program Announcement to interested parties advising of FAIR Act requirements and procedure to be followed.	Late Spring 1996
Announce preliminary mergers and pricing structure in an announcement to interested parties.	Late Fall 1996
Hold informal discussion sessions with the public to further develop preliminary mergers and pricing structure as requested.	Winter 1996-97
Announce revised marketing areas, pricing structure and concepts for specific order provisions.	Late Spring 1997
Hold informal discussion sessions with the public to further develop order provisions as requested.	Late Spring 1997
Issue proposed rule in <u>Federal Register</u> . Interested parties will be provided 60 days to submit written comments.	Winter 1997 Dec '97/Jan '98
Issue final rule in <u>Federal Register</u> .	Summer 1998
Conduct informational meetings with interested parties about the new orders.	Summer 1998
Conduct referendum to determine producer approval.	Fall 1998
Publish final order in <u>Federal Register</u> .	Fall 1998
New orders effective.	January 1, 1999

Matters At Issue In FMMO's

1. Continued existence of the program
2. Size and purpose of Class I differentials
3. Market, regional, or national pooling
4. Single basing point vs. multiple basing points for Class I pricing
5. Uniformity of multiple component pricing
6. Replacement for the "modified" M-W price
7. Resolving the California issue, e.g., Is Class III-A pricing an answer?



News Release

WISCONSIN FEDERATION OF COOPERATIVES • 30 West Mifflin Street, Suite 401 • Madison, WI 53703 • Phone (608) 258-4400

NOVEMBER 6, 1997

For more information, contact:
Lori Weaver, Director of Dairy
Marketing/Director of Communications,
Wisconsin Federation of
Cooperatives, (608) 258-4400

For Immediate Release

New Hope for Pricing Reform

Federation says judge's decision lends merit to Midwest's arguments for major price reforms

MADISON--A landmark decision by a U.S. District Judge stating that a major portion of the federal milk pricing system should be eliminated should bide well for Upper Midwest dairy cooperatives and others in the region pushing for change in the system, according to Rod Nilsestuen, president and CEO, Wisconsin Federation of Cooperatives (WFC).

"Yes, there might be an appeal, and yes, there will likely be repercussions felt from other regions, but more importantly I think we are seeing a shift in the dynamics of working for major federal milk marketing order reform," says Nilsestuen. "And I think that's a shift in our favor."

-more-

Decision - 2

Nilsestuen's comments followed the release of a Minnesota judge's ruling that U.S. Secretary of Agriculture Dan Glickman must eliminate Class I price differentials because the system discriminates against farmers in the Upper Midwest. The decision stems from a lawsuit filed eight years ago by the Minnesota Milk Producers Association, an effort supported by both the states of Minnesota and Wisconsin.

"This is not the time for guessing what this may ultimately mean in terms of milk price," says Lori Weaver, WFC's director of dairy marketing. "I think the bigger focus right now should be on how this can positively impact our ongoing push with USDA for price restructuring."

The Wisconsin Federation of Cooperatives serves as coordinator for the Upper Midwest Dairy Coalition, a group of dairy cooperatives, farm organizations and state agencies that have been pressing a proposal that would, among other things, make Class I differentials much more uniform across the U.S. and eliminate Eau Claire as the single basing point. The coalition worked for major dairy reform in the 1996 Farm Bill and has since pushed for change through provisions in that legislation that direct the USDA to consider changes to the milk pricing system. The coalition has provided USDA with written comments and met face-to-face with USDA officials to advance its proposals on behalf of its Upper Midwest members over the past year.

-more-

Decision - 3

"We commend the Minnesota Milk Producers Association and their counsel--Farmers' Legal Action--for their persistence on this issue," says Weaver. "Their seemingly tireless pursuit in bringing this issue to a head has been to the benefit of all dairy farmers in the Upper Midwest.

"Now perhaps the Upper Midwest Dairy Coalition and its supporters will get the attention deserved from the USDA to implement an economically sound and fair pricing system for all dairy farmers in the U.S."

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(NOTE TO EDITORS/NEWS DIRECTORS: The following is a summary of the pricing reforms sought by the region's dairy cooperatives through the efforts of the Upper Midwest Dairy Coalition.)

NOV 14 1997



WISCONSIN LEGISLATURE

P.O. Box 7882 • Madison, WI 53707-7882

November 6, 1997

Dan Glickman
Secretary of Agriculture
200-A Whitten Bldg.
1400 Independence Ave., S.W.
Washington, D.C. 20250

Dear Secretary Glickman:

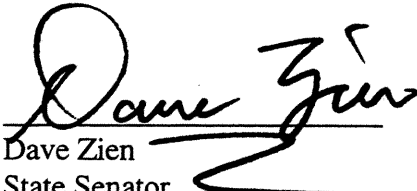
After 60 years of federally managed market manipulation that has made Wisconsin's dairy farmers work harder for less than farmers in any other region of this country, a federal judge has finally ordered a level playing field. In ruling major portions of the current federal milk pricing system "arbitrary and capricious" and "unlawful," U.S. District Judge David S. Doty has ordered what Wisconsin farmers have demanded for generations: a fair chance to turn their sweat into a decent living for their families.

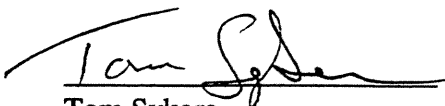
These families, their parents and their parents' parents have been penalized for the proud tradition of dairy farming they have built through hard work, dedication and innovation. They are not asking for the special treatment other regions have received. They ask only for what the judge has ordered: an immediate end to federal discrimination and a level playing field in the United States dairy industry. Our farmers don't want to be handed the American dream, they want only a fair chance to earn it.

We, elected members of the Wisconsin Legislature, ask that you accept Judge Doty's decision and immediately end the indefensible practice of discriminating against dairy farmers based on their proximity to Eau Claire, Wisconsin. As you know, this court case has already been dragged out for eight years. We cannot undo the hardships wrought on our dairy farmers over those years. But, we can prevent the untold hardship that an appeal and further court battles would cause.

Wisconsin has lost 100,000 dairy cows over the last year. We are losing 1,500 dairy farms per year. Any delay in implementing Judge Doty's decision should be counted not in years, but in thousands of Wisconsin families forced from their way of life.

Sincerely,


Dave Zien
State Senator
23rd Senate District

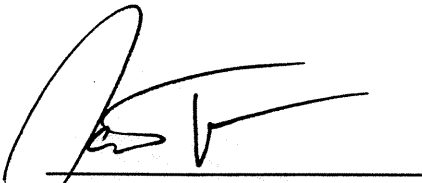

Tom Sykora
State Representative
67th Assembly District



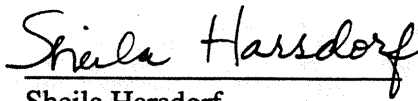
Mary Hubler
State Representative
75th Assembly District



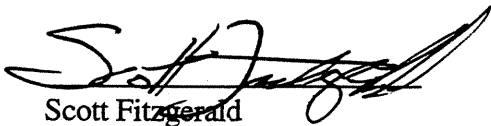
Alan Lasee
State Senator
1st Senate District



Scott Walker
State Representative
14th Assembly District



Sheila Harsdorf
State Representative
30th Assembly District



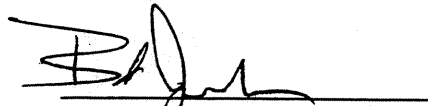
Scott Fitzgerald
State Senator
13th Senate District



Clifford Otte
State Representative
27th Assembly District



Robert Welch
State Senator
14th Senate District



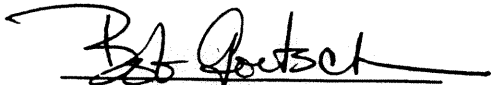
Robert Jauch
State Senator
25th Senate District



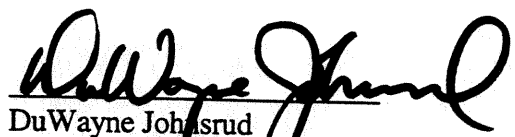
Carol Owens
State Representative
53rd Assembly District



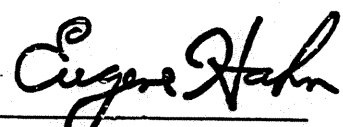
Sheryl Albers
State Representative
50th Assembly District



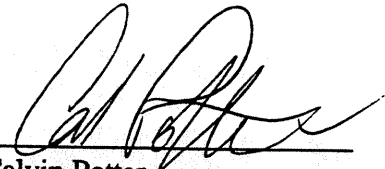
Robert Goetsch
State Representative
39th Assembly District



DuWayne Johasrud
State Representative
96th Assembly District



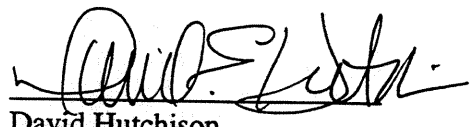
Eugene Hahn
State Representative
47th Assembly District



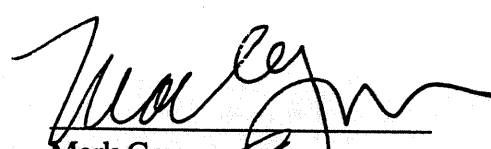
Calvin Potter
State Senator
9th Senate District



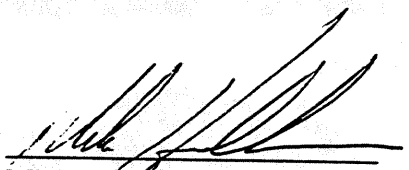
Rebecca Young
State Representative
76th Assembly District



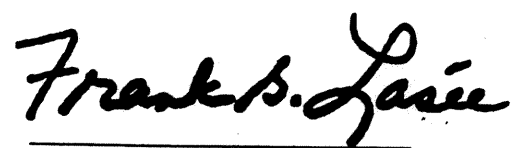
David Hutchison
State Representative
1st Assembly District



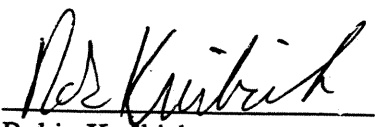
Mark Green
State Representative
4th Assembly District



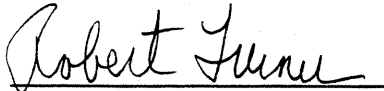
Michael Huebsch
State Representative
94th Assembly District



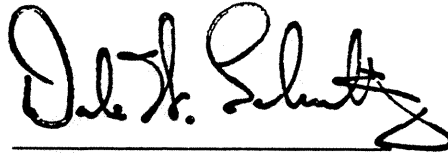
Frank Lasee
State Representative
2nd Assembly District



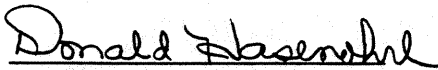
Robin Kreibich
State Representative
93rd Assembly District



Robert Turner
State Representative
61st Assembly District



Dale Schultz
State Senator
17th Senate District



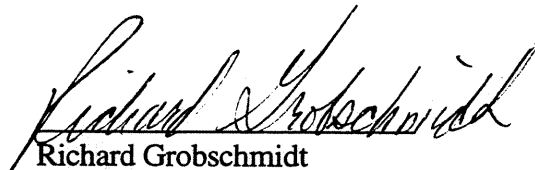
Donald Hasenohrl
State Representative
70th Assembly District



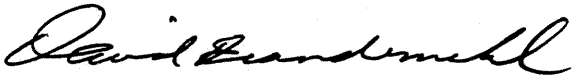
Alvin Ott
State Representative
3rd Assembly District



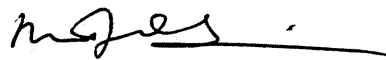
Barbara Gronemus
State Representative
91st Assembly District



Richard Grobschmidt
State Senator
7th Senate District



David Brandemuehl
State Representative
49th Assembly District



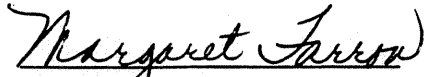
Glenn Grothman
State Representative
59th Assembly District



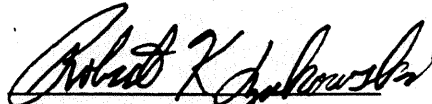
John Dobyms
State Representative
52nd Assembly District



Brian Rude
State Senator
32nd Senate District



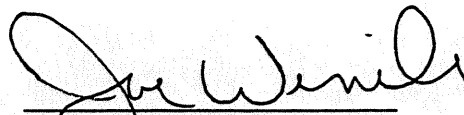
Margaret Farrow
State Senator
33rd Senate District



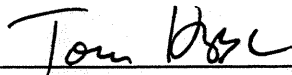
Robert Zukowski
State Representative
69th Assembly District



Robert Dueholm
State Representative
28th Assembly District



Joseph Wineke
State Senator
27th Assembly District



Tom Hebl
State Representative
46th Assembly District

At- in case you haven't seen this



News from

HERB KOHL

J.

Mausler

**United States Senator
Democrat of Wisconsin**

330 Hart Senate Office Building • Washington, D.C. 20510 • (202) 224- 5653

FOR IMMEDIATE RELEASE:

Contact: Brad Fitch or Lynn Becker

November 7, 1997

Phone: (202) 224-5653

KOHL SAYS COURT RULING CONFIRMS MILK PRICING SYSTEM UNFAIR TO WISCONSIN FARMERS

Glickman tells Kohl ruling will have "profound" impact

WASHINGTON -- Following a U.S. District Court decision to ban enforcement of the country's milk market order system, U.S. Senator Herb Kohl called on Secretary of Agriculture Dan Glickman to propose a more equitable pricing system. Senator Kohl praised the judge's decision forcing the U.S. Department of Agriculture not to enforce the outdated and unfair milk market order system. Senator Kohl called Secretary Glickman today since events will move quickly, and received assurance that milk prices will remain stable over the next few months. During their conversation, the Secretary told Senator Kohl that the ruling will have a "profound" impact on the nation's milk pricing system.

"The Judicial system finally ran out of patience with the USDA efforts to explain why milk in Florida should be priced higher than in Wisconsin. The courts have decided that they need to be involved to make sure that USDA does the right thing for the Wisconsin dairy farmer, because the USDA has been unwilling or unable to justify the existence of the federal milk pricing system. While I'm pleased with the court's decision, we must act quickly to ensure that Wisconsin's dairy farmers are treated fairly in the final outcome of this debate," Senator Kohl said.

Senator Kohl and members of the Wisconsin Congressional delegation met with Secretary Glickman on Tuesday to press for elimination of the milk market order system which has been in place since the 1930's. The system disadvantaged Wisconsin and upper Midwest dairy farmers by calculating milk prices based on farmers' distance from Eau Claire, a structure established to encourage milk production across the country before the advent of modern, refrigerated transportation.

#



Thompson opposes appeal of milk ruling

By Meg Jones
of the Journal Sentinel staff

November 13, 1997

Gov. Tommy Thompson is urging U.S. Agriculture Secretary Dan Glickman not to appeal a federal judge's ruling that struck down a provision of the federal milk pricing system that sets lower prices for Midwestern dairy farmers.

Glickman said last week that his agency would seek to temporarily suspend the judge's decision.

Wednesday, Thompson asked Glickman to drop the appeal because the price system discriminates against Wisconsin dairy farmers. Because farmers are paid more for their milk the farther they are from Eau Claire, farmers in Florida and New Mexico earn substantially more for their milk than Wisconsin farmers.

Thompson's plea to Glickman is just one of many from officials in the upper Midwest, said Bill Oemichen, administrator of the Division of Consumer Protection of the state Department of Agriculture, Trade and Consumer Protection.

"We're not trying to put any dairy farmer out of business. We want to reduce the artificial pricing advantage," said Bill Oemichen. "They have to build cheese plants (in New Mexico) to take care of the milk or they're dumping it in the Midwest at bargain basement prices."

Because the system paid lower differentials to dairy farmers in Wisconsin and other Midwest states near Eau Claire, a lawsuit was filed in 1989 by Minnesota challenging the system. Wisconsin, along with other states, soon joined in the legal action.

Oemichen, chief attorney for the Minnesota Department of Agriculture in 1989, was one of the lawyers who initiated the lawsuit.

[Send a letter to the editor](#)

REC'D NOV 5 1997

Post-It Fax Note	7671	Date	11/14
To	Bill O	From	Paul S
County		Co.	Paul S
Phone #		Phone #	612-247-4511
Fax #		Fax #	

DISTRICT COURT
 OF MINNESOTA
 CIVIL DIVISION
 Civil No. 4-90-31 (DSD/JMK)

Minnesota Milk Producers, et al.,

Plaintiffs,

v.

ORDER

Dan Glickman, Secretary, United States
 Department of Agriculture,

Defendant.

Lynn A. Hayes, Esq., Patricia A. Jensen, Esq., Eric N. Olsen, Esq. and Farmers Legal Action Group, 1301 Main Building, 46 East Fourth Street, St. Paul, MN 55101 and James T. Massey, Esq., Farmers Legal Action Group, Inc., 360 S.W. Cascade Street, P.O. Box 1689, Sisters, OR 97759, counsel for plaintiffs.

Mary Jean Atmore, Assistant U.S. Attorney and Robert M. Small, Assistant U.S. Attorney, 600 U.S. Courthouse, 300 South Fourth Street South, Minneapolis, MN 55415 and Herbert E. Forrest, Room 3326, U.S. Department of Justice, Civil Division, 10th & Pennsylvania Avenue N.W., Washington, D.C. 20004, counsel for defendants.

This matter is before the court on plaintiffs' motion for summary judgment. Based on a review of the file, record, and proceedings herein, the court grants plaintiffs' motion with regard to the Class I differentials in the 28 surplus and balanced milk marketing orders and any deficit order that does not rely directly

FILED
 FRANCIS S. DOSAR, CLERK
 2nd Floor East

or indirectly on alternative supplies from the Upper Midwest orders.

BACKGROUND

This case has a lengthy procedural history. Currently before the court is plaintiffs' fourth motion for summary judgment. On two prior occasions this case has come before judges of this court, and on both occasions proposed amendments to the Class I pricing scheme of the federal milk marketing orders promulgated by the Secretary of Agriculture (hereafter "Secretary") under the Agricultural Marketing Agreement Act, 7 U.S.C. § 608c(1) et seq., (hereafter the "Act") have been found arbitrary and capricious. On each occasion the court found that the Secretary had failed to consider the statutory factors required by § 608c(18) of the Act and remanded for further consideration. In its two prior orders in this case, the court has attempted to explain the different components making up the price of milk and how that price is determined. To the extent relevant here, the court refers to the discussion in those orders.

The court's first order concerning the final decision of the Secretary was issued on April 14, 1994. In evaluating the Secretary's final decision, the court held that

[t]he Secretary's decision to retain the existing Class I pricing structure is tantamount to a finding that it continues to satisfy the requirements of the AMAA as set out in § 608c(18). This conclusion may or may not be supported by substantial evidence from the administrative hearing, but since explicit findings and explanations were not issued relative to the 608c(18) factors, the court is unable to make that determination.

Order of April 14, 1994 (Docket No. 122) at 19. In finding the Secretary's decision to be arbitrary and capricious, the court remanded the final decision to the Secretary for 120 days, during which time the Secretary was ordered to conduct any necessary hearings or other proceedings and then issue an amplified decision articulating the statutory bases of his decision to retain Class I differentials in the federal milk pricing program. In response, the Secretary issued his first amplified decision on August 17, 1994, in which he attempted to respond to the court's concerns and provide further explanation of why he did not change the Class I pricing structure and how this decision complied with § 608c(18).

Plaintiffs, however, again challenged the Secretary's decision, and faced again with the question of whether the Secretary had adequately considered the requisite factors, the court on May 16, 1996, again found that he had not done so. Specifically, the court determined that "[a]lthough the differentials are not intended to fully cover transportation costs,

there is one irreducible fact implicit in the Secretary's analysis: a point of origin." Order of May 17, 1996 (Docket No. 147) at 6. The court held that the Secretary may not enforce such a single basing-point system without explaining "how it reflects full and reasoned consideration of the statutory factors." *Id.* at 7. The court remanded this matter a second time to the Secretary so he could, rather than simply restating his decision to retain the differentials, "make such findings and conclusions as reflect reasoned consideration of the § 608c(18) factors." *Id.* at 9. The court also remanded the case because the secretary had not complied with the court's initial order that the Secretary consider the relevant factors with respect to the use of the M-W price. On remand, the court specifically asked the Secretary to: (1) make such findings and conclusions as reflect reasoned consideration of the § 608c(18) factors concerning the decision to retain the Class I differentials; and (2) explain how the § 608c(18) factors relate to the actual price received as the M-W price and how the M-W price reflects market-specific economic conditions.

The Secretary's second amplified decision was issued on September 10, 1996, and on March 3, 1997, plaintiffs brought this, their fourth motion for summary judgment. Plaintiffs again challenge various aspects of the federal milk pricing program and

argue that the three decisions of the Secretary are arbitrary and capricious and not supported by record evidence.

DISCUSSION

The court, in its two prior orders in this case, set out the standard for reviewing the Secretary's decisions. To repeat, review of an agency's construction of a statute requires a two-part analysis. If Congress has spoken to the precise issue, its intent must be given effect. Chevron, USA, Inc. v. Nat'l Resources Council, Inc., 467 U.S. 837, 842-43 (1984); Sierra Club v. Davies, 955 F.2d 1188, 1193 (8th Cir. 1992). If Congress has not spoken directly to the issue, the question is whether the agency's construction is permissible. Id.

As the court has already determined on two prior occasions, Congress has spoken to the precise issue in this case. In 7 U.S.C. § 608c(18), Congress provided that when the Secretary establishes a pricing system, such prices

shall ... be adjusted to reflect the price of feeds, the available supply of feeds, and other economic conditions which affect market supply and demand for milk or its products in the marketing area to which the contemplated marketing agreement, order, or amendment relates. Whenever the Secretary finds, upon the basis of the evidence adduced at the hearing required by section 608b of this title or this section, as the case may be, that parity prices of such commodities are not

reasonable in view of the price of feeds, the available supply of feeds, and other economic conditions which affect market supply and demand for milk and its products in the marketing area to which the contemplated agreement, order, or amendment relates, he shall fix such prices as he finds will reflect such factors, insure a sufficient quantity of pure and wholesome milk to meet current needs and further to assure a level of farm income adequate to maintain productive capacity sufficient to meet anticipated future needs, and be in the public interest.

7 U.S.C. § 608c(18). While the Act mandates that each milk marketing order's price reflect economic conditions affecting supply and demand in that particular marketing order, the court previously found that no record evidence was presented by the Secretary in his final or first amplified decisions to show that he had considered the requisite statutory factors of § 608c(18) in promulgating the Class I prices.

In determining whether an agency decision is arbitrary and capricious, "the reviewing court must determine whether the decision was based on the relevant factors and whether there has been a clear error of judgment." Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971). The scope of review is a narrow one and the court should not substitute its judgment for that of the agency. Motor Vehicle Mfgs. Ass'n v. State Farm Mutual, 463 U.S. 29, 43 (1983). As stated previously,

Normally an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, failed to consider an important aspect of the problem, offered an explanation for its decision which runs contrary to the evidence before the agency or is so implausible that it could not be ascribed to a difference in view of the product of agency expertise.

Id.

1. The Class I Differentials

Plaintiffs contend that the Secretary's second amplified decision is still deficient with regard to the Class I differentials. They argue that while the court in its second remand order directed the Secretary to make specific findings and conclusions that demonstrate reasoned consideration of all the pricing factors mandated by the Act, the Secretary has failed to do so. Instead of providing administrative record evidence to demonstrate why distance from Eau Claire, Wisconsin, is a relevant consideration in setting the level of each marketing order's Class I differential, plaintiffs argue the Secretary merely rephrases propositions the court used as the basis for its finding of a single-basing point. Pls.' Mot. for Summ. J. After Second Remand Order (Docket No. 153) at 8 (hereafter "Plaintiffs' Memo.>"). Plaintiffs also contend that the Secretary's findings with regard

to the twenty-eight surplus or balanced marketing orders' belie any rational connection between the supply and demand conditions of these orders' markets and the Secretary's explanation for the level of their Class I differentials. Plaintiffs argue that the Secretary's explanation that the Class I differentials reflect the cost of transporting milk does not support the level of differential in these markets in light of local supply and demand conditions.

Defendant responds by pointing out that the differentials deal only with the transportation costs of milk. The M-W, on the other hand, deals with the many supply and demand factors referenced in § 608c(18). Because the rulemaking at issue here dealt only with the differentials, the § 608c(18) factors were not considered and there is no record to which the Secretary can point.

After reviewing the second amplified decision, the court comes to the conclusion that the Secretary again has failed to fulfill his statutory mandate. Much of the Secretary's latest effort is dedicated to a review of the historical development of the classified pricing system, the realities of the dairy industry as

Of the forty marketing orders analyzed in the final administrative decision, twenty-one were found to be balanced markets and seven were found to carry surplus milk supplies. A balanced market is one with sufficient milk to meet demand plus a 10% reserve. A surplus market produces milk in excess of the demand and reserve percentage.

it relates to the marketing of milk, the precise nature of the rulemaking underlying this litigation, and the current status of the classified pricing system. While this proves useful as background information, it does nothing to satisfy the court that the Secretary has considered the § 608c(18) factors in setting the Class I differentials.

The Secretary's response to the court's request that he make such findings and conclusions as reflect reasoned consideration of the § 608c(18) factors concerning the decision to retain the Class I differentials is inadequate. The Secretary's efforts are spent trying to debunk the court's conclusion that a single-basing point system is being used. While the Secretary goes to great lengths to show that distance from Eau Claire is not a priority in setting the Class I differentials, and that in fact a South-North "ripple effect" is at work, nowhere in the second amplified decision does the Secretary point to record evidence that supports his consideration of the relevant factors. As plaintiff points out, the Secretary "does not mention the actual level of a single order's class I differential, much less show how a specific differential is in any way related to the local market's need to attract Class I milk." Plaintiffs' Memo. at 7. Even if the Secretary has shown that no single basing point is being used, he

still has not justified, using record evidence, the "ripple effect" leading to the Upper Midwest.

This lack of evidence convinces the court that the Secretary is either unwilling to explain why the Class I differentials are set at their current level or is unable to do so with record evidence. Whichever is the case, the Secretary's conclusory statements explaining why the marketing orders' Class I differentials are set at their current levels is insufficient. No record evidence has been provided demonstrating that these differentials are set at levels reflecting the supply and demand conditions and other required considerations in each order. If, as the Secretary contends, no record evidence is available because the Rulemaking at issue did not consider the factors, then the Secretary should have conducted further proceedings to build such a record.

The court is especially wary of the Secretary's explanation for the level of Class I differentials in the twenty-eight balanced and surplus orders. In these orders, the Secretary has found that sufficient milk supplies exist to meet the demand for milk within that order and to cover all shipments out of the order to meet Class I demands in other order areas. Yet, the Secretary contends that these orders' class I differentials are set to attract supplies from the Upper Midwest to either meet Class I demand in

that order or replace milk shipped out of the order to meet the demand for Class I milk in other orders. If the order is a balanced or surplus market, however, by the Secretary's own definition no alternative supplies are required. Therefore, the Secretary's explanation for the Class I differentials in the balanced and surplus orders does not reflect his findings regarding supply and demand conditions there. This is in violation of § 608c(18), which, as already discussed, dictates that the price of milk be set to reflect local supply and demand conditions.

Because the differentials go against the express intent of Congress, as codified in § 608c(18), that the price of milk reflect market-specific supply and demand conditions in each order, the court will not defer to the agency in this case.

2. The M-W Price

In its second remand order, the court explicitly directed the Secretary to explain how the § 608c(18) factors relate to the actual price received as the M-W price and how the M-W price reflects market-specific economic decisions. In that order, the court stated that "it is clear that the Secretary simply assumes that the M-W price 'captures' (the price and supply of feeds and other factors) without providing any evidence that this actually is the case." Order of May 17, 1996 at 6. In the second amplified decision, the Secretary responds by pointing to the national

hearing held in 1992 to address the M-W price. At this separate hearing, the Department of Agriculture addressed the M-W price and ten different proposals for change in light of the supply and demand factors contained in § 608c(18). In evaluating the proposals submitted as part of this proceeding, the Secretary indicated that any proposal to change the M-W would have to be justified under the § 608c(18) factors. As a result of this hearing, the Secretary has determined that a modified M-W price, now referred to as the Basic Formula Price ("BFP"), satisfies the statutory pricing criteria of the Act.

The court finds that the Secretary's reference to the second administrative hearing, as discussed in the second amplified decision, deals with the § 608c(18) factors and the M-W price. Accordingly, the court finds that the Secretary has fulfilled his burden with respect to this aspect of the Class I price of milk. In so holding, the court notes that the M-W has never been the focus of plaintiffs' challenge and that plaintiffs do not seek any form of injunctive relief related to the M-W. Indeed, even in arguing against the M-W, plaintiffs return to their argument that excessively high Class I differentials are dictating supply. See Plaintiffs' Memo. at 21.

While the court recognizes that the issues of relevance here may become moot after the Secretary promulgates his new milk

marketing order plan pursuant to the 1996 Farm Bill, such possibility does not justify further delay by this court. The Secretary has done nothing more than provide a series of conclusory statements explaining the levels of the marketing orders' Class I differentials. No record evidence has been provided to demonstrate compliance with the § 608c(18) requirement that the differentials reflect each order's specific supply and demand conditions, and the levels set in the twenty-eight balanced and surplus orders appear to be in conflict with the Secretary's own evidentiary findings. The second amplified decision is therefore found arbitrary and capricious and further consideration by the Agency is again required. The court, however, concludes that no purpose will be served in remanding this case yet again to the Secretary to give him a third opportunity to explain his decision. The Secretary seems either unwilling or unable to comply with this court's remand orders, and the court will not delay action yet again.

CONCLUSION

Based on a review of the file, record and proceedings herein, the court concludes that plaintiffs are entitled to summary judgment with regard to the Class I differentials in the 28 surplus and balanced milk marketing orders and any deficit order that does

not rely directly or indirectly on alternative supplies from the Upper Midwest orders. Therefore, IT IS HEREBY ORDERED that:

1. The Class I differentials in all surplus and balanced marketing orders and all deficit orders that do not rely on direct shipments of alternative milk supplies from the Upper Midwest or from other deficit orders which in turn rely on the Upper Midwest for replacement supplies are unlawful due to the Secretary's failure to consider the factors mandated by the Agricultural Marketing Agreement Act, codified at 7 U.S.C. § 608c(18);

2. The Secretary is enjoined from enforcing these differentials;

3. The final, first amplified and second amplified decisions regarding Class I differentials are found to be arbitrary and capricious because they are not supported by substantial evidence in the record and do not describe findings regarding all of the § 608c(18) factors.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: November 3, 1997



David S., Doty, Judge
United States District Court

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[Return to Star Tribune Online front page](#)

[Return to Metro front page](#)

Published Thursday, November 6, 1997

Federal judge finds milk pricing rules arbitrary, capricious

Associated Press

MINNEAPOLIS (AP) -- A federal judge has ordered the U.S. Agriculture Department to eliminate a part of the federal milk pricing system that farmers in the Upper Midwest had complained was discriminatory.

U.S. District Judge David Doty ruled this week that the milk pricing rules were "arbitrary and capricious." He ordered U.S. Agriculture Secretary Dan Glickman to eliminate Class I price differentials.

Farmers in the Upper Midwest have complained for many years that the differentials are unfair because they give farmers higher prices for milk the farther they live from Eau Claire, Wis.

"Judge Doty's decision recognizes what we've known for a long time: the federal pricing system discriminates against farmers in Wisconsin and the Upper Midwest," Wisconsin Gov. Tommy Thompson said.

The decision means the milk pricing system must be restructured, because "it cannot discriminate against Wisconsin farmers as it has in the past," Thompson said in a statement released Wednesday night.

The policy was established in the 1930s to offset transportation costs and to encourage the growth of dairy farming in the South, the West and other regions far from Wisconsin.

"This could be one of the most important moments for Wisconsin dairy farmers in decades," said U.S. Sen. Russ Feingold, D-Wis., said of Doty's ruling.

Bill Oemichen of the Wisconsin Department of Agriculture, Trade and Consumer Protection, said the ruling eliminated a good portion of the milk pricing system.

"This decision went way beyond what anyone contemplated," he said.

Glickman could appeal Doty's decision, or he could ignore it until he puts together a new federal milk pricing system, which is planned by

Federal judge finds milk pricing rules arbitr...

the end of the year.

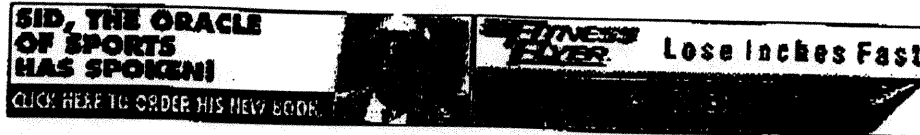
Joe Paris of the National Farmers Organization in Ames, Iowa, said the ruling could affect farm milk prices as early as next month.

"It's not a good ruling in my opinion," Paris said. "Our dairy members in the Northeast and South will take a blood bath" through reduced prices. "It only pits farmers against farmers, and it could hurt Midwestern states such as Ohio and Indiana."

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Metro

Published Thursday, November 6, 1997

Federal judge orders USDA to dump much of milk pricing rules

Associated Press

MINNEAPOLIS (AP) -- A judge has ordered the government to eliminate part of a federal milk pricing system that has been fought for years by Upper Midwest dairymen.

The system sets higher prices the farther the producer is from Eau Claire, Wis., because that was considered the nation's center of dairy production when the policy was established six decades ago.

U.S. District Judge David Doty ruled in a decision released Wednesday that the milk pricing rules were "arbitrary and capricious." He ordered U.S. Agriculture Secretary Dan Glickman to eliminate Class I price differentials.

The pricing system was established in the 1930s to offset transportation costs and to encourage the growth of dairy farming in the South, the West and other regions far from Wisconsin.

For example, the maximum subsidy, or differential, for a Wisconsin farmer was \$1.20 per 100 pounds of milk (about 12 gallons), while a southern Florida farmer got \$4.18 per 100 pounds.

"Judge Doty's decision recognizes what we've known for a long time: the federal pricing system discriminates against farmers in Wisconsin and the Upper Midwest," Wisconsin Gov. Tommy Thompson said.

The decision means the milk pricing system must be restructured, because "it cannot discriminate against Wisconsin farmers as it has in the past," Thompson said in a statement released Wednesday night.

The judge's decision had dairy groups and companies in the Upper Midwest scrambling to anticipate what will happen next.

Tom Cox, an economist with the University of Wisconsin-Madison, said he has researched what is likely to happen to farm and consumer milk prices should the farmers prevail.

Minnesota and Wisconsin dairy farmers would likely see an increase

Federal judge orders USDA to dump much of mil...

Page 2 of 2

of up to \$5 for 100 pounds of milk -- an increase of up to 39 percent on the current price of about \$12.80 -- if the drinking milk price differentials remain outlawed, according to Cox.

"This could be one of the most important moments for Wisconsin dairy farmers in decades," said U.S. Sen. Russ Feingold, D-Wis., said of Doty's ruling.

But Bill Oemichen of the Wisconsin Department of Agriculture, Trade and Consumer Protection, said Wisconsin milk prices were more in line with the market and not so dependent on federal supports as prices elsewhere.

Also, only about 15 percent of Wisconsin milk is bottled -- most is made into cheese -- so dairy farmers in the state do not receive the full differential, he said.

But the ruling will have a significant impact on milk prices in other states, like Texas and New Mexico, where their differentials are much higher and more of their milk is bottled," he said.

Oemichen did say, however, that the ruling eliminated a good portion of the milk pricing system.

"This decision went way beyond what anyone contemplated," he said.

"We think this levels the playing field," added Ben Brancel, Wisconsin's agriculture secretary, "and, ultimately, our farmers in Wisconsin will be getting a better price for their product, and Wisconsin milk will be more in demand."

Glickman could appeal Doty's decision, or he could ignore it until he puts together a new federal milk pricing system, which is planned by the end of the year.

Joe Paris of the National Farmers Organization in Ames, Iowa, said the ruling could affect farm milk prices as early as next month.

"It's not a good ruling in my opinion," Paris said. "Our dairy members in the Northeast and South will take a blood bath" through reduced prices. "It only pits farmers against farmers, and it could hurt Midwestern states such as Ohio and Indiana."

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Metra

U.S. judge overturns milk price provision

Government wrong to pay based on distance from Eau Claire, he rules

**By Amy Rinard
of the Journal Sentinel
November 6, 1997**

"It goes way beyond what any of us attorneys who worked on the case thought (the judge) would do."...

--Bill Oemichen, Wisconsin official, on ruling

Madison -- In a ruling officials hailed a major victory for Wisconsin's dairy industry, a federal judge Wednesday declared illegal a 60-year-old provision of the federal milk pricing system that set lower prices for Midwestern dairy farmers.

"This is wonderful news," state Secretary of Agriculture Ben Brancel said. "We think this levels the playing field, and, ultimately, our farmers in Wisconsin will be getting a better price for their product, and Wisconsin milk will be more in demand."

The ruling in U.S. District Court in Minneapolis may end an eight-year legal battle between Midwestern states and the U.S. Department of Agriculture over the aspect of the federal milk pricing system that sets federal price subsidies based on distance from Eau Claire. It was unknown Wednesday whether the decision would be appealed.

Under the system established in the 1930s, the farther a state was from Eau Claire, the higher were the federal price subsidies paid to its dairy farmers on milk sold for bottling.

For example, the maximum subsidy, or differential, paid to Wisconsin dairy farmers is \$1.20 per 100 pounds of milk, while farmers in southern Florida are paid \$4.18 per 100 pounds.

Because the system paid lower differentials to dairy farmers in Wisconsin and other Midwest states near Eau Claire, a lawsuit was filed in 1989 by Minnesota challenging the system. Other states, including Wisconsin, Iowa, North Dakota and South Dakota, soon joined in the legal

action.

Bill Oemichen, administrator of the Division of Consumer Protection of the Wisconsin Department of Agriculture, Trade and Consumer Protection, was chief attorney for the Minnesota Department of Agriculture in 1989 and was one of the lawyers who initiated the lawsuit.

He said Wednesday he was "shocked" at the broad scope of the judge's ruling.

"It goes way beyond what any of us attorneys who worked on the case thought he would do," Oemichen said.

U.S. District Judge David S. Doty ruled late Wednesday afternoon that, over the eight years during which the lawsuit dragged on, U.S. Agriculture Secretary Dan Glickman had failed to adequately justify using Eau Claire as the base point for setting the milk price differentials.

Doty found the system was "arbitrary and capricious" and "unlawful," and he ordered Glickman to cease administering the system.

U.S. Sen. Russ Feingold (D-Wis.), who as a state senator pushed Wisconsin's government to join the lawsuit, said the ruling was "one of the best pieces of news for Wisconsin farmers in a long time.

"The effect of this is that part of the federal system, which really hurts Wisconsin farmers, will be changed," Feingold said by telephone from his Washington office.

The U.S. Department of Agriculture, under orders from Congress, is revamping the entire federal milk pricing system. During this process, Midwestern states have argued that the use of Eau Claire as a base point should be eliminated because it is discriminatory.

Gov. Tommy Thompson said Wednesday that Doty's ruling sends unambiguous direction to Glickman on the structure of the new system.

"It cannot discriminate against Wisconsin farmers as it has in the past," Thompson said.

"Judge Doty's decision recognizes what we've known for a long time: The federal pricing system discriminates against farmers in Wisconsin and the Upper Midwest."

However, Brancel, Oemichen and other dairy experts said they do not think the ruling would have an immediate impact on what is paid to Wisconsin dairy farmers.

Oemichen said Wisconsin milk prices are more in line with the market and not so dependent on federal supports as prices elsewhere. In addition, only about 15% of Wisconsin milk is bottled -- most is made into cheese -- so dairy farmers here do not receive the full differential.

"But it will have a significant impact on milk prices in other states, like Texas and New Mexico, where their differentials are much higher and more of their milk is bottled," he said.

The Eau Claire system was originally intended to ensure an adequate supply of fresh milk around the country by encouraging the growth of dairy industries in states where there were few dairy farmers.

The result of the 60-year-old system has been to boost milk prices artificially and encourage rampant growth in dairy industries in southern and southwestern states, Brancel said.

New Mexico now has the fastest-growing dairy industry in the country, he said.

Brancel said the effect of Wednesday's ruling will be to cut subsidies for states such as New Mexico and reduce the growth in their dairy industries.

Eventually, when the nation's dairy economy is more closely tied to supply and demand, Wisconsin milk will be more in demand because there will not be so much milk in the marketplace.

Wisconsin dairy farmers then will be able to compete on a more equal basis with the rest of the country, Brancel said.

It was not known Wednesday whether Glickman would appeal the ruling or at least ask to delay its implementation.

But Feingold, who said he talked to Glickman on Wednesday about the ruling, said Glickman would have to act quickly in seeking a stay of the judge's ruling because it appears to take effect immediately.

Hubbard, Gregory

From: Tuttle, Chris
Sent: Friday, January 23, 1998 10:57 AM
To: Anderson, Nicole; Schulze, John; Carey, Ray; Pirlot, R.J.; Hubbard, Gregory
Subject: This just moved on the wires.

Glickman Backs Dairy Pricing Reform

By CURT ANDERSON AP Farm Writer

WASHINGTON (AP) -- The nation's arcane, 60-year-old system of pricing milk would be streamlined and made more market-oriented under a proposal unveiled today by Agriculture Secretary Dan Glickman. For consumers, the bottom line is almost negligible: officials estimate milk prices would fall about 3 cents per gallon over a six-year period. But for farmers and dairy processors, the changes would be profound. The complex rules would consolidate the existing 31 federal milk marketing orders -- which determine the prices paid by processors to farmers -- into just 11. The differential paid for fluid milk would no longer be based in distance from Eau Claire, Wis., traditionally the top dairy region.

Instead, the new orders would attempt to set prices based more on local market and transportation conditions. In some cases such as the Upper Midwest, that could translate into somewhat higher milk prices than farmers are paid currently, but in areas such as the Southeast the price could fall as much as 40 cents per hundred pounds.

As part of the 1996 farm law, Congress directed the Agriculture Department to make the dairy program more market-oriented by April 1999. Glickman said the proposal, which ultimately must be voted on by the nation's 127,000 dairy farmers, was aimed at finding balance between government protection and free markets.

Glickman said 70 percent of dairy farmers would not see great fluctuations in prices they are paid, although he acknowledged "there may be difficulty in pockets" where the reforms could bring prices down.

For that reason, Glickman is proposing either a two-year transition period in which prices paid to farmers would remain artificially high or a three- to five-year phase-in period for the new system.

"This is a big change for some," he said. "There has to be a transition."

In addition, Glickman announced a Feb. 17 hearing at the Agriculture Department in Washington to consider establishing a temporary floor price for milk producers until the reforms are final. A petition from the Mid-America Dairymen cooperative seeks a floor of \$13.50 per hundred pounds.

The reforms were already in the works before a Minnesota federal judge struck down much of the old system last year. Glickman said the ruling had little effect on the new proposal.

position, Initial reaction today from producers was cautious. The National Milk Producers Federation took no saying it needed time to examine the complex proposal.

was E. Linwood Tipton, president of the International Dairy Foods Association, said the processors group compared disappointed that so much government control would remain in place and keep prices relatively high to a total free market.

"It's more regulation, not less," Tipton said.

that, a The Agriculture Department will take public comment on the proposed rule through March 31. After series of hearings will be held around the country before a final rule is proposed in the fall.

take Then, farmers in each marketing region must vote on the order, which requires a two-thirds majority to effect. If an order fails, that region would become unregulated and subject to extreme price volatility.

~AP-NY-01-23-98 1116EST

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01/23



U.S. Senator Rod Grams

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**To equalize the minimum adjustments to prices for fluid milk under milk marketing orders.
(Introduced in the Senate)**

S 1982 IS

105th CONGRESS

2d Session

S. 1982

To equalize the minimum adjustments to prices for fluid milk under milk marketing orders.

IN THE SENATE OF THE UNITED STATES

April 24, 1998

Mr. GRAMS introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To equalize the minimum adjustments to prices for fluid milk under milk marketing orders.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EQUALIZATION OF MINIMUM PRICE ADJUSTMENT FOR CLASS I MILK FOR ALL MARKETING AREAS.

(a) USE OF SAME PRICE- Section 8c(5) of the Agricultural Adjustment Act (7 U.S.C. 608c(5)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended in paragraph (A)--

(1) in the third sentence--

(A) by striking 'Throughout' and all that follows through 'order involved), the' and inserting 'The'; and

(b) by striking 'on the date' and all that follows through the end of the table in that

sentence and inserting 'shall be the same for each marketing area subject to an order and shall be \$1.80 per hundredweight of milk having 3.5 percent milkfat, with a transportation surcharge determined by the Secretary to compensate handlers for the actual cost of moving milk within and between orders.'; and

(2) by striking the fourth sentence.

(b) EFFECTIVE DATE- The amendments made by subsection (a) take effect on the first day of the first month beginning more than 120 days after the date of enactment of this Act.

THE DAIRY REFORM ACT OF 1998
Floor Statement of Senator Rod Grams
April 23, 1998

Mr. President, I rise today to introduce legislation that seeks to restore fairness to the nation's dairy system.... fairness that has long been missing, particularly in the Upper Midwest and especially in my home state of Minnesota.

When Minnesotans are asked to name my state's leading industries, agriculture will certainly be at or near the top of most every list. Farming and farm-related business plays a critical role in Minnesota's economy. One out of every four Minnesota jobs is tied in some way to agriculture, and 25% of the state's economy is dependent upon farmers and agri-business, most of it focused in the dairy industry.

What many people don't realize is that, despite, those statistics, our state's dairy industry is in real trouble.

Since dropping to number five in milk production — behind Wisconsin, California, Pennsylvania, and New York — Minnesota has been slowly but steadily losing its clout among the top dairy states in the nation. We've lost over 10,000 dairy farms in just the last decade, and today, dairy farms are drying up at a rate of about three every single day. Milk production has dropped significantly as a result — nearly 20% in the last decade.

What makes this especially troubling is that much of the decline in Minnesota's dairy industry can be traced directly to farm policies mandated outside of Minnesota's control, in Washington. And the outdated federal milk marketing orders program is a serious part of our dairy problems.

The milk marketing orders is yet another example of a well-intentioned scheme dreamed up by Washington bureaucrats that has gone seriously awry. Instead of helping Minnesotans, the milk orders actually hurt the state's economy, penalizes its taxpayers, while benefiting dairy farmers outside the Midwest.

The problem can be traced back to 1937, when Congress enacted the "Agricultural

Marketing Agreement Act." The legislation was created to encourage the milk production near the nation's major population centers and set a minimum price paid to dairy farmers for Class I milk. That federal "nudge" was necessary in some instances, because without refrigerated trucks, fluid milk could not be transported over long distances.

In 1985, as part of that year's farm bill, Congress expanded the milk orders program to aid the dairy industry outside the Midwest by increasing the minimum price for Class I milk based on a ridiculous formula.

This basically helps producers outside the Upper Midwest, while making dairy production less profitable for producers inside the Upper Midwest region. This process is unfair and archaic. Above all, it is opposite in every way to the free market.

The Upper Midwest dairy industry, one of the most efficient in the world, is only asking for a fair shake in this process. And so, Mr. President, the legislation I introduce today will amend one of the most inequitable components of the Agricultural Marketing Act of 1937 — the Class I milk price differentials.

USDA is currently in the process of reforming its system of Federal Milk Marketing Orders. Unfortunately, the Class I differentials proposal released earlier this year was disappointing. Two options have been offered under the proposal. Option "1A" — the status quo option — is plainly unacceptable. Option "1B" does take a small step in the right direction, but it doesn't go far enough. However, a small step for reform is most certainly preferable to a step backward.

As **short-term** progress, I support Option "1B" because, as I've said, it is the only option USDA is currently considering that makes a move toward fairness in federal dairy policy. My bill would continue the reform beyond the small gains for equity that "1B" establishes. We cannot allow ourselves to become satisfied until we secure substantive federal dairy reform.

Common sense would tell us that USDA's proposal of a small step toward market-policy is the compromise position for dairy reform. However, as you can imagine, there has been the typical, standard-fare outcry against any sort of reform — even the minimal reform that was offered in the form of Option "1B." And surely *that* is little more than an