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**Case Note: Adjusting the Minimum Price of
Milk: The Secretary of Agriculture's Sweeping
Powers After *Lansing Dairy, Inc. v. ESPY*,
39F. F.3D 1339 (6th Cir. 1994)**

by

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ADJUSTING THE MINIMUM PRICE OF MILK: THE SECRETARY OF AGRICULTURE'S SWEEPING POWERS AFTER *LANSING DAIRY, INC. V. ESPY*, 39 F.3D 1339 (6TH CIR. 1994).

I. INTRODUCTION

Political change has a way of forcing alteration in original design while insisting it is only working out the true purposes for which the agency or program was intended; the consequence is that the purposes and objectives invariably move in the direction of greater ambiguity.¹

The Department of Agriculture is an agency that is commonly viewed as a model of consistency among administrative agencies.² By giving farmers cabinet-level recognition, the Department of Agriculture became a model of the true representative agency, formed for the purpose of serving the interests of farmers.³ Dairy farmers have relied on the Department of Agriculture to act in their interest. Unfortunately, a recent decision of the Sixth Circuit Court of Appeals has shaken this reliance.

In *Lansing Dairy, Inc. v. Espy*,⁴ the Federal Court of Appeals for the Sixth Circuit held that the Secretary of Agriculture ("Secretary") may adjust the minimum price of milk without considering the economic criteria specifically enumerated in the Agricultural Marketing Agreement Act of 1937 ("AMAA").⁵ The court of appeals thus reversed the district court's holding in *Farmers Union Milk Marketing Coop v. Madigan*,⁶ which had determined that the Secretary must consider the economic factors enumerated in the AMAA before making any adjustments to the minimum price of milk.⁷ The court of appeals determined that despite the Secretary's prior interpretation of the Act, which required consideration of the economic criteria enumerated in the statute, this novel interpretation was acceptable.⁸ As a result of this decision, dairy farmers and producers face the prospect of increased uncertainty in a business already engulfed in a large number of uncertainties.

The holding in *Lansing Dairy* raises interesting issues relevant to the interpretation of the AMAA and its delegation of authority to the Secretary of Agriculture. One is the interpretation of what constitutes the "minimum price" of milk. Before attempting to change the minimum price of milk, the Secretary is bound by statute to consider certain economic factors. However, if the Secre-

1. GLENN ROBINSON, AMERICAN BUREAUCRACY: PUBLIC CHOICE & PUBLIC LAW 13 (1991).

2. *Id.* at 14.

3. *Id.* at 13 n. 14. For a more complete discussion on the history of the Department of Agriculture, see CENTENIAL COMMITTEE, U.S. DEPT. OF AGRICULTURE, CENTURY OF SERVICE: THE FIRST 100 YEARS OF THE UNITED STATES DEPARTMENT OF AGRICULTURE (1963).

4. *Lansing Dairy, Inc. v. Espy*, 39 F.3d 1339 (6th Cir. 1994).

5. Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. §§ 601-674 (1994).

6. Nos. 1:89-CV-281, 5:91-CV-104, 1992 WL 71372 *1 (W.D. Mich. Mar. 30, 1992).

7. *Id.* at *9.

8. *Lansing Dairy*, 39 F.3d at 1353-54.

tary's action does not change the minimum price of milk, there are no such requirements. Another issue is the implication this decision will have on the dairy industry in light of the prior interpretations of the AMAA by the Secretary. Not only will this decision cause increased uncertainty among dairy farmers, it also removes an important boundary placed on the Secretary's decision-making authority. After the *Lansing Dairy* decision, the Secretary of Agriculture will enjoy a degree of discretion to regulate the marketing and pricing of milk, never before seen in the industry. This will make it extremely difficult, if not impossible, for dairy farmers and distributors, who are adversely affected by a marketing order, to successfully challenge the actions of the Secretary.

This Note will examine the AMAA, its purposes, and the case law relied upon by the court of appeals in *Lansing Dairy*. This Note will argue that the court of appeals interpreted the AMAA erroneously, as applied to adjustments in the minimum prices of milk. Finally, this Note will examine and criticize the impact of this decision on the dairy industry and on the credibility of the Department of Agriculture.

II. STATEMENT OF THE CASE

A. Background to the Facts

Prior to enactment of the AMAA, the dairy industry was in a state of serious disarray.⁹ Two conditions unique to the production of milk led to the adoption of the AMAA to bring order to the dairy industry.¹⁰ First, raw milk has only two end uses: as fluid milk and as an ingredient in products such as cheese and yogurt. Because fluid milk brings the highest price,¹¹ dairy farmers ("producers") would prefer to sell their milk for only fluid uses. Second, dairy cows produce more milk in the spring than they do at any other time of the year.¹² This condition results in milk distributors ("handlers") paying producers low prices during the spring season when the milk supply is plentiful.¹³

The AMAA was enacted for the specific purpose of regulating the price of milk so that producers would receive a uniform price, whether the handler was going to sell it as fluid product or turn it into another product.¹⁴ In response to fluctuations in supply and demand caused by the seasonality of milk production, section 602 of the AMAA indicates that it is Congress' policy to stabilize the marketing conditions of dairy products for the benefit of both consumers and dairy farmers.¹⁵ Thus, a broad purpose of the AMAA is to level the playing

9. See *Defiance Milk Prods. Co. v. Lyng*, 857 F.2d 1965, 1066-67 (6th Cir. 1988), *United States v. Rock Royal Coop., Inc.*, 307 U.S. 533, 542-50 (1939), *Zuber v. Allen*, 396 U.S. 168, 172-79 (1969).

10. *Defiance*, 857 F.2d at 1066.

11. 7 C.F.R. § 1040.50(a) (1994).

12. *Defiance*, 857 F.2d at 1066.

13. *Id.*

14. Milk varies in price according to the use to which it is put. 7 C.F.R. § 1040.40 (1994). Milk which is to be used in fluid form is Class I milk and commands the highest price. 7 C.F.R. § 1040.50(a). Milk that is to be used for soft products such as yogurt and cottage cheese is Class II milk and commands a lower price. 7 C.F.R. § 1040.50(b) (1994). Milk used to produce products with a longer shelf life such as cheese and butter is Class III milk and commands the lowest price. 7 C.F.R. § 1040.50(c) (1994).

15. 7 U.S.C. § 602(4) (1994).

field among dairy farmers in order to combat the destructive competition that can occur in the industry.¹⁶

Producers are paid an average ("blend") price of milk that is used for both fluid and other uses.¹⁷ While producers in a given market area are paid a uniform price, handlers pay a uniform price for milk subject to adjustments based on how they use the milk. Because the price the handlers pay is an average price, some end up paying too much and some not enough, based on the value of the milk as determined by its intended use.¹⁸ This condition is rectified through the use of a settlement fund.¹⁹ Handlers pay into the fund if they use milk to produce products that command the highest price. They receive money if the milk they purchase is used to produce products that command the lowest price.²⁰

Although the price paid to producers does not vary according to the use to which the milk is put, other factors affect the price producers are paid for their milk.²¹ At issue in *Lansing Dairy* were changes in the minimum price of milk paid to producers brought about by "location adjustments" (or "differentials").²² Location adjustments have been defined as "adjustments to the base minimum price of milk, which are used as economic incentives to encourage the movement of producer milk from rural population centers, and to align prices among neighboring markets."²³ Simply stated, milk that is produced far from market is not as valuable as milk produced close to where it is sold, because the handler must spend more money to get the milk to markets that are farther away. The "location adjustment" corrects this by adjusting price downward as the distance between market and producer increases.²⁴

The AMAA authorizes the Secretary to enact "orders" which have the effect of regulating the price of milk paid to producers.²⁵ However, the Secretary may implement milk marketing orders only after formal rulemaking proceedings take place.²⁶ Orders can include changes in how the minimum price of milk is calculated and are usually promulgated as circumstances warrant.²⁷ The purpose of issuing an order is to ensure that dairy farmers in a given area all share the benefits and burdens of that market area.²⁸

16. *Lehigh Valley Coop. Farmers, Inc. v. United States*, 370 U.S. 76 (1962). The Court stated that the purpose of the AMAA was to put all dairy farmers on even terms. *Id.* at 78-81.

17. 7 C.F.R. § 1040.61 (1994).

18. *Lansing Dairy*, 39 F.3d at 1344.

19. This fund is referred to as the "producer settlement fund." 7 C.F.R. § 1040.70 (1994).

20. Handlers who purchase Class I milk have paid too little and must pay into the fund. 7 C.F.R. § 1040.71 (1994). Handlers who purchase Class III milk have paid too much and receive payments from the fund. 7 C.F.R. § 1040.72 (1994).

21. The uniform minimum price of milk is subject to adjustment for:

(1) volume, market, and production differentials customarily applied by the handlers subject to such order.

(2) the grade or quality of the milk purchased, and

(3) the locations at which delivery of such milk, or any use classification thereof, is made to such handlers.

7 U.S.C. § 608c(5)(A) (1994).

22. *Lansing Dairy*, 39 F.3d at 1342. See also 7 U.S.C. § 608c(5)(A)(3) (1994).

23. *Lansing Dairy*, 39 F.3d at 1344 (citing *Walmsley v. Block*, 719 F.2d 1414, 1418-19 (8th Cir. 1983)).

24. *Farmers Union Milk Mktg.*, 1992 WL 71372, at *2.

25. 7 U.S.C. § 608c(5) (1994). The regulations pertaining to these milk orders are found at 7 C.F.R. §§ 1040.1-.78 (1994).

26. 7 U.S.C. § 608c(3)-(4) (1994).

27. *Id.*

28. *Id.*

B. The Facts

In 1988, a group of producers, the Producers Equalization Committee ("PEC"),²⁹ presented two amendments to the Secretary of Agriculture, Mike Espy, that would change the existing location adjustments contained in the marketing order for the lower peninsula of Michigan ("Order 40").³⁰ The overall effect of these amendments was to increase the price which members of the PEC received for their milk.³¹ The Secretary adopted the amendments after completing the formal rulemaking procedure set forth in the AMAA.³² However, the amendments had an adverse effect on a number of handlers and producers.³³ Specifically, the aggrieved handlers and producers have lost and continue to lose as much as \$50,000 per month as a result of the amendments.³⁴

C. The Case

1. The Handlers' Action

A group of handlers who were adversely affected by the amended location adjustments filed suit in the United States District Court for the Western District of Michigan, seeking review of the Secretary's decision to adopt the proposed amendments.³⁵ The handlers alleged that the Secretary should not have adopted the amendments proposed by PEC without first taking into consideration the economic factors enumerated in section 608c(18) of the AMAA.³⁶ The court consolidated the handlers' action with the action of the producers. However, the court dismissed the handlers' action for failure to exhaust available administrative remedies.³⁷ Instead of appealing this decision, the handlers initiated a proceeding for administrative review.³⁸ The Administrative Law Judge ruled that the Order 40 amendments were "not in accordance with the law."³⁹

The Secretary appealed the ruling to the Judicial Officer.⁴⁰ The Judicial Officer reversed the decision of the Administrative Law Judge, and rejected the handlers' challenges to the amendments.⁴¹ The Judicial Officer held that the

29. The Producers Equalization Committee is comprised of four cooperatives from the southern peninsula of Michigan - Independent Cooperative Milk Producers Association, Michigan Milk Producers Association, National Farmers Organization, Inc. and Southern Milk Sales, Inc. These cooperatives market over 85% of the milk pooled under Order 40. Telephone Interview with Benjamin Yale, Attorney for the Plaintiffs (Jan. 25, 1995).

30. *Lansing Dairy*, 39 F.3d at 1345. The amendments were to 7 C.F.R. §§ 1010.1-86 (1994) ("Order 40") and are codified at 7 C.F.R. § 1040.52(a)-(b) (1994). See also 53 Fed. Reg. 15,851 (proposed May 4, 1988) (discussing the substance of the proposals).

31. *Lansing Dairy*, 39 F.3d at 1345.

32. Before an amendment may become effective the handlers of at least 50% of the milk in the affected region and at least two-thirds of the affected dairy producers in the region must approve the amendment. 7 U.S.C. § 608c(8) (1994).

33. *Lansing Dairy*, 39 F.3d at 1345-46.

34. Telephone Interview with Benjamin Yale, Attorney for the Plaintiffs (Jan. 25, 1995). See also Appellant's Brief on Petition for Rehearing at 3, Manitowoc Milk Producers Ass'n v. Espy (6th Cir. 1995) (Nos. 92-2231, 92-2232, 92-2233, 92-2448, 92-2449).

35. *Lansing Dairy*, 39 F.3d at 1346.

36. *Id.* See also *infra* note 87 and accompanying text.

37. *Id.* at 1346 (citing *Block v. Community Nutrition Inst.*, 467 U.S. 340 (1984); *United States v. Ruzicka*, 329 U.S. 287 (1946) (stating that a handler must exhaust administrative remedies before seeking review of a marketing order)).

38. *Lansing Dairy*, 39 F.3d at 1346. Administrative review of the Secretary's actions under the AMAA is made pursuant to 7 U.S.C. § 608c(15) (1994).

39. *Lansing Dairy*, 39 F.3d at 1346.

40. *Id.* Appeal of an adverse determination of an Administrative Law Judge is made pursuant to 7 C.F.R. § 900.65-71 (1994).

41. *Lansing Dairy*, 39 F.3d at 1516. See *In re Lansing Dairy Inc.*, 50 Agric. Dec. 1453, 1991 WL 314838 (Dec. 12, 1991).

amendments were proper and that the Secretary did not need to consider the economic factors enumerated in section 608c(18) before making an amendment pursuant to his delegated authority under section 608c(5) of the AMAA.⁴²

In response to the Judicial Officer's decision, the handlers sought judicial review in district court.⁴³ In addition to challenging the Secretary's authority to promulgate amendments that had an effect on minimum milk prices, the handlers challenged the procedural rulemaking that led to the adoption of the amendments.⁴⁴ Shortly thereafter, the court consolidated the handlers' action with the producers' action on January 22, 1992.⁴⁵

2. *The Producers' Action*

The producers sought review of the Secretary's adoption of the location adjustment amendments pursuant to the Administrative Procedure Act.⁴⁶ Initially, the district court dismissed the action on the grounds that the producers lacked standing to challenge the location adjustments.⁴⁷ However, the Sixth Circuit Court of Appeals reversed the dismissal, holding that the district court had jurisdiction to hear the case.⁴⁸ Consequently, the court of appeals remanded the producers' action to the district court and consolidated it with the handlers' action.⁴⁹

3. *The United States District Court*

The handlers and producers ("Plaintiffs") brought their consolidated case to the district court and made a motion for summary judgment.⁵⁰ The Plaintiffs contended that the AMAA requires that the Secretary consider the economic factors in section 608c(18) of the AMAA, before amending any rule that affects the price of milk.⁵¹ In other words, the Plaintiffs argued that the Secretary must have first determined that the supply was inadequate to meet the demand in the milk market before amending Order 40.⁵² The Secretary admitted that supply was adequate to meet the demand in the lower peninsula of Michigan before adopting the amendments.⁵³ Therefore, the Plaintiffs argued, the requirements of section 608c(18) had not been fulfilled and the amendments to Order 40 which affected the minimum price of milk were unlawful.⁵⁴

The Secretary countered that the amendments were adopted and promul-

42. *Lansing Dairy*, 39 F.3d at 1346.

43. *Id.* Handlers have standing pursuant to 7 U.S.C. § 608c(15)(A) (1994).

44. *Lansing Dairy*, 39 F.3d at 1346. 7 U.S.C. § 608c(3)-(4) provide the rulemaking procedure.

45. *Lansing Dairy*, 39 F.3d at 1346.

46. *Id.*; Administrative Procedure Act, 5 U.S.C. §§ 701-706 (1994); 28 U.S.C. §§ 1331, 1337 (1988).

47. *Lansing Dairy*, 39 F.3d at 1346.

48. *Farmers Union Milk Mktg. Coop. v. Yeutter*, 930 F.2d 466 (6th Cir. 1991). In its holding the court stated "that the purpose of the statutory scheme - raising the price that milk producers receive for their milk - would be undermined if producers could not challenge regulations of this type in federal court . . ." *Id.* at 467.

49. *Lansing Dairy*, 39 F.3d at 1346.

50. *Farmers Union Milk Mktg. Coop. v. Madigan*, Nos. 1:89-CV-281, 5:91-CV-104, 1992 WL 71372, *1 (W.D. Mich., Mar. 30, 1992).

51. *Id.* at *6.

52. *Id.*

53. *Id.* See also 54 Fed. Reg. 26,768, 26,778 (proposed June 26, 1989).

54. *Farmers Union Milk Mktg.*, 1992 WL 71372 at *6.

gated under section 608c(5), which gives the Secretary broad power to make location adjustments.⁵⁵ Further, the Secretary argued that section 608c(5) does not require consideration of the economic criteria contained in section 608c(18) because the amended location adjustment did not fix the "minimum price" of milk.⁵⁶ Therefore, the Secretary asserted, the location adjustments were made in accordance with the law.⁵⁷

The district court characterized the problem as one of interpretation of the term "minimum prices."⁵⁸ Neither party disputed that section 608c(18) requires the Secretary to consider certain economic factors before making an amendment that "fix[es] minimum prices."⁵⁹ The Plaintiffs contended that because the location adjustments affect the minimum price of milk, the Secretary is limited by the economic factors enumerated in section 608c(18) as to when he can change a location adjustment.⁶⁰ Thus, the Plaintiffs acknowledged the Secretary's power to make location adjustments pursuant to section 608c(5), with the qualification that they be made in conjunction with, and only if warranted by, the economic criteria found in section 608c(18).⁶¹

The Secretary argued that "minimum price" is the unadjusted original, or base price of milk that is set for the region.⁶² The Secretary asserted that the location adjustments at issue did not fix the minimum price to be paid to producers.⁶³ Rather, the amendments at issue "merely altered the adjustments that were made to the minimum price."⁶⁴ Therefore, the Secretary argued, because the amendments were not adjustments to the minimum price of milk, he was not required to consider the economic factors set forth in section 608c(18).⁶⁵

Despite the Secretary's argument, the district court agreed with the Plaintiffs' interpretation of "minimum prices" and held that section 608c(18) required the Secretary to consider the economic factors contained therein before amending location adjustments.⁶⁶ The court stated that "[a]fter examining the phrase in the context of the rest of the statute, applying traditional canons of statutory interpretation, and viewing the legislative history and the Secretary's own use of the phrase [minimum prices] . . .", the Plaintiffs were correct in their interpretation.⁶⁷ The court ruled that the location adjustments

55. *Id.*

56. *Id.*

57. *Id.*

58. *Farmers Union Milk Mktg.*, 1992 WL 71372 at *6.

59. *Id.* The court cited section 608c(18) which states:

The Secretary of Agriculture, prior to prescribing any term in any marketing agreement of order, or amendment thereto, relating to milk or its products, if such term is to fix minimum prices to be paid to producers . . . The prices which it is the policy of Congress to establish in section 602 of this title shall, . . . be adjusted to reflect . . . economic conditions which affect market supply and demand for milk or its products . . .

7 U.S.C. § 608c(18) (1994).

60. *Farmers Union Milk Mktg.*, 1992 WL 71372 at *6.

61. *Farmers Union Milk Mktg.*, 1992 WL 71372 at *6.

62. *Id.* The Secretary's contention was that "minimum prices" were the prices of milk according to its end use and the average price to be paid to producers before location adjustments were made. *Id.* at *6.

63. *Farmers Union Milk Mktg.*, 1992 WL 71372 at *6.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Farmers Union Milk Mktg.*, 1992 WL 71372 at *6.

were unlawful because they were not promulgated in accordance with the requirements of the AMAA and must, therefore, be overturned.⁶⁸

4. The Court of Appeals

The Secretary appealed the decision of the district court to the Sixth Circuit Court of Appeals.⁶⁹ The court of appeals noted that determining the interplay between section 608c(18) and section 608c(5) was a case of first impression in the federal courts.⁷⁰ The court of appeals first determined that, despite the district court's ruling, the language of the statute was ambiguous and susceptible to at least two interpretations.⁷¹ The court went on to state that it would defer to the Secretary's interpretation unless that interpretation frustrated the policy Congress had attempted to implement.⁷² The court examined the legislative history of the AMAA and sections 608c(5) and 608c(18) the AMAA.⁷³ It stated that Congress' intent was not clear with respect to the application of the section 608c(18) factors in location adjustments made pursuant to section 608c(5).⁷⁴

The court also chose to disregard the fact that the Secretary has, as a matter of agency policy, traditionally required that any location adjustment made pursuant to section 608c(5) be supported, indeed justified, by the economic factors enumerated in section 608c(18).⁷⁵ Despite the past practice of the Secretary, the court held, that the Secretary's unexplained, novel interpretation would be upheld unless it was both unreasonable and conflicted with "the unambiguously expressed intent of Congress."⁷⁶ The court stated that because the AMAA was ambiguous and because the Secretary's interpretation was reasonable, his interpretation of the AMAA would be upheld.⁷⁷ In conclusion, the court held that the Secretary's action was reasonable and adequately supported by the evidence, and was not arbitrary or capricious.⁷⁸ The court reversed the decision of the district court and let the new location adjustments stand. This decision gives the Secretary of Agriculture the ability to make changes in marketing orders that inevitably have an effect on the minimum price of milk, without requiring a reasoned economic analysis to justify the changes.⁷⁹

68. *Id.* at *9. Specifically, the court stated that the amendments were "not based on statutorily mandated factors," did "not comply with the prerequisites established by the AMAA," and therefore "must be overturned" *Id.*

69. *Lansing Dairy, Inc. v. Espy*, 39 F.3d 1339, 1342 (6th Cir. 1994).

70. *Id.* at 1347.

71. *Id.* at 1351.

72. *Id.* (quoting *Federal Election Comm'n v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 32 (1981)).

73. *Lansing Dairy*, 39 F.3d at 1353.

74. *Id.*

75. *Id.*

76. *Id.* at 1354. The court cited a speech given by United States Supreme Court Justice Scalia at Duke University Law School on the theory of judicial deference to administrative theories of law. Antonin Scalia, *Judicial Deference to Administrative Interpretations of Law*, 1989 DUKE L.J. 511, 517 (1989). The court also relied on U.S. Supreme Court cases, citing *Rust v. Sullivan*, 500 U.S. 173 (1991) and *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) (holding that an agency's reasonable interpretation of its enabling statute will be given a certain degree of deference).

77. *Lansing Dairy*, 39 F.3d at 1354.

78. *Id.*

79. Telephone Interview with Benjamin Yale, Attorney for the Plaintiffs (Jan. 25, 1995); Telephone Interview with John Vetne, Attorney for the Plaintiffs (Jan. 28, 1995).

III. BACKGROUND

Although the Secretary of Agriculture and other federal courts have interpreted the term "minimum prices" to include location adjustments,⁸⁰ the Sixth Circuit did not defer to those interpretations in *Lansing Dairy*. No other court has ever specifically considered whether section 608c(5) location adjustments require consideration of section 608c(18) economic factors.⁸¹ This background section will examine the history of the AMAA, its development, the standards used to determine what Congress intended when it enacted the AMAA, and the historical interpretation of the term "minimum prices," including the interaction and interplay of sections 608c(5) and 608c(18) of the AMAA.

A. *The Agricultural Marketing Agreement of 1937*

In response to the turbulent nature of the dairy industry during the 1920s and 1930s, Congress enacted the Agricultural Adjustment Act ("AAA") in 1933.⁸² However, the Supreme Court's concern over the broad delegation of power to administrative agencies led Congress to make changes in the AAA to curb the Secretary's broad powers.⁸³ Congress amended the AAA in 1935 by the addition of section 608c(5).⁸⁴ Section 608c(5) gives the Secretary the authority to administer milk marketing regulations, called orders, in regions throughout the United States, which set the price that is to be paid for milk.⁸⁵

Not satisfied with the guidance provided by section 608c(5), Congress adopted section 608c(18) two years later, in 1937. With the 1937 amendments, the AAA became what is currently known as the AMAA.⁸⁶ Section 608c(18) provides, in pertinent part:

The Secretary of Agriculture, prior to prescribing *any* term in any marketing agreement or order, or amendment thereto, relating to milk or its products, *if such term is to fix minimum prices to be paid to producers . . . shall ascertain the parity prices of such commodities. The prices which it is declared to be the policy of Congress*

80. See, e.g., *Jones v. Bergland*, 456 F. Supp. 635 (E.D. Pa. 1978); *Zuber v. Allen*, 396 U.S. 168 (1969).

81. *Lansing Dairy*, 39 F.3d at 1347.

82. Agricultural Adjustment Act of 1933. The Act gave the Secretary broad powers to regulate the marketing of commodities.

83. See *Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935); *United States v. Butler*, 297 U.S. 1 (1936).

84. Act of Aug. 24, 1935, Pub. L. No. 320 § 5, 49 Stat. 750, 753-57. Section 608c(5) states, in pertinent part:
(5) In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following . . .

(A) Classifying milk in accordance with the form for which it is used, and fixing, or providing a method for fixing, minimum prices for each use classification which all handlers shall pay, and the time when payments shall be made, for milk . . . *Such prices shall be uniform as to all handlers, subject to adjustments for*

(1) volume, market, and production differentials customarily applied by the handlers subject to such order,

(2) the grade or quality of the milk purchased, and

(3) the locations at which delivery of such milk . . . is made to such handlers.

7 U.S.C. § 608c(5)(1994) (emphasis added).

85. 7 U.S.C. § 608c(5).

86. Section 608c(18) was adopted in 1937 along with other amendments to become what is currently known as the Agricultural Marketing Agreement Act of 1937. Act of June 3, 1937, Pub. L. No. 137, § 2(f), 50 Stat. 246, 247.

to establish in section 602 of this title shall . . . be adjusted to reflect . . . economic conditions which affect market supply and demand for milk⁸⁷

Thus, according to section 608c(18), the Secretary must undertake an economic analysis before setting the minimum price that is to be paid to producers.

The legislative history reveals that Congress adopted section 608c(18) to provide additional guidance to the Secretary in setting the price of milk.⁸⁸ Both the Senate and House reports provide insight into the purpose of section 608c(18). The House Report states, in part:

Milk is the only commodity for which producer prices for interstate milk may be fixed by orders of the Secretary . . . under the Agricultural Adjustment Act. . . . Marketing agreements and orders for milk ordinarily involve pooling and price plans which, to be effective, must continue with the up and down swings of economic factors which relate to price. . . . The proposed amendment further provides that as the Secretary finds necessary on account of changed circumstances, he shall make adjustments in such prices. Such adjustments are to be made in accordance with the same standards as are provided for the initial fixing of prices under this subsection.⁸⁹

In addition, the Senate Report states the following:

Subsection (18) . . . provides a more workable standard for the guidance of the Secretary in fixing milk prices in an order issued for a particular marketing area. . . . [T]he Secretary shall fix prices as will reflect these [economic] conditions, insure a sufficient quantity of pure and wholesome milk, and be in the public interest. . . . The Secretary is to use the same standard in adjusting prices as is to be used in fixing of prices initially in the regulation of any marketing area.⁹⁰

The plain language of section 608c(18) requires that the Secretary undertake an economic analysis before fixing “minimum prices to be paid” to dairy farmers.⁹¹ Section 608c(5) authorizes the Secretary to fix a price based upon the use to which the milk will be put, subject to adjustments for the location to which the milk is delivered.⁹² In addition, section 604c(4) authorizes the Secretary to issue an order only “if he finds . . . that the issuance of such order and

87. 7 U.S.C. § 608c(18) (1994) (emphasis added).

88. S. REP. NO. 565, 75th Cong., 1st Sess. 3 (1937).

89. H.R. REP. NO. 468, 75th Cong., 1st Sess. (1937).

90. S. REP. NO. 565, 75th Cong., 1st Sess. 3 (1937).

91. 7 U.S.C. § 608c(18).

92. 7 U.S.C. § 608c(5).

all of the terms and conditions thereof will tend to effectuate the declared policy of [the Act] with respect to [the] commodity."⁹³

Nowhere in the statute or in the legislative history, however, is the term "minimum price" defined. Consequently, the issue arose: did the Secretary fix a "minimum price" to be paid to producers or did the Secretary only make an adjustment to an already existing "minimum price?"⁹⁴ The answer to this question is a significant one. If the Secretary's decision did not fix the minimum price to be paid to producers, he may well have been within his discretionary powers under the AMAA. If, however, his action had the effect of fixing the minimum price of milk, he exceeded his discretionary powers under the AMAA because he failed to consider the statutorily mandated economic factors enumerated in section 608c(18).

1. Review of an Administrative Decision and Judicial Deference

The court is authorized and guided by the AMAA and the Administrative Procedure Act ("APA") when reviewing an action of the Secretary to determine whether it is lawful.⁹⁵ When adversely affected plaintiffs assert that the Secretary's actions are not proper because of misinterpretation of a statute, the court must necessarily review the Secretary's interpretation of that statute.⁹⁶

The United States Supreme Court in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*,⁹⁷ and *Rust v. Sullivan*,⁹⁸ set out the factors which a court must consider when reviewing an administrative decision. First, if the statute and intent of Congress are clear, that is the end of the matter, because clear legislative intent cannot be changed by the agency or the courts.⁹⁹ Second, if the language of the statute and intent of Congress are ambiguous then the courts must defer to the agency's reasonable interpretation.¹⁰⁰ In both *Chevron* and *Rust*, the Court deferred to the agencies' interpretations because the language and legislative intent of the statutes were not clear, and because the agencies' interpretations were reasonable.¹⁰¹ The reviewing court should first determine Congress' intent with respect to the statute in question.¹⁰² Here, the court should apply "traditional tools" of statutory interpretation in an attempt to discern Congress' intent.¹⁰³ If the intent of Congress is clear on the issue then the court need not go any further, since full effect

93. 7 U.S.C. § 608c(4) (1994).

94. *Lansing Dairy*, 39 F.3d at 1347-49.

95. The AMAA authorizes judicial review of a ruling made by the Secretary. 7 U.S.C. § 608c(15)(B) (1994). The APA governs administrative procedures for all governmental agencies. 5 U.S.C. § 706(2) (1994).

96. *Id.* See also *Farmers Union Milk Mktg. Coop. v. Madigan*, Nos. 1:89-CV-281, 5:91-CV-104, 1992 WL 71372 *1 (W.D. Mich. Mar. 30, 1992).

97. 467 U.S. 837 (1984). The Court faced the task of reviewing an action of the Environmental Protection Agency. *Id.*

98. 500 U.S. 173 (1991). The Court reviewed an action of the Department of Health and Human Services. Both the Department of Health and Human Services and the Environmental Protection Agency have been granted broad discretion in interpreting their respective enabling statutes. See *infra* notes 216-222.

99. *Chevron*, 467 U.S. at 842-43.

100. *Id.* at 842-45.

101. *Id.* at 837; *Rust*, 500 U.S. 173.

102. *Chevron*, 467 U.S. at 842-45.

103. *NLRB v. United Food & Commercial Control Workers Union, Local 23*, 484 U.S. 112, 123 (1987) (quoting *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987)).

must be given to the unambiguous intent of Congress.¹⁰⁴ To ascertain the plain meaning of a statute, the statute must be read as a whole, as it is not proper to restrict interpretation to the section being construed.¹⁰⁵ However, if Congress' intent is not clear, or if the statute is ambiguous, the Supreme Court has indicated that it will defer to an administrative interpretation of the statute unless it is not based on a permissible interpretation of the statute.¹⁰⁶ When determining if a regulation (in this case the location adjustment amendments) is based on a permissible interpretation of a statute, the court should determine whether the regulation is in harmony with the statute's language, origin, and purpose.¹⁰⁷ Among the factors that the court should consider are the length of time the regulation has been in effect, the degree of reliance placed upon it, and the consistency of the Secretary's interpretation over time.¹⁰⁸

The reviewing court usually accords substantial deference to the administrative interpretation of the statute.¹⁰⁹ However, an agency's interpretation which is inconsistent with earlier interpretations should receive less deference than a consistently held agency view.¹¹⁰ Further, the Supreme Court, in *Chevron* and *Rust*, stated that an agency may revise its interpretation of a statute so long as it is consistent with legislative authority.¹¹¹ However, the agency must announce its revised position and provide a reasoned analysis justifying the revision.¹¹²

2. Historical Interpretation of the Term "Minimum Prices"

A number of sources indicate that the Secretary has historically relied on an interpretation of the term "minimum prices" which is inconsistent with the new approach the Secretary adopted in *Lansing Dairy*.¹¹³ Among these sources are federal cases,¹¹⁴ the words of the Secretary's Judicial Officer,¹¹⁵ a publication put out by the Department of Agriculture ("USDA pamphlet"),¹¹⁶ and the common meaning given to the term "minimum prices" by dairy farmers.¹¹⁷ In addition, the court of appeals found further evidence of the Secretary's historical interpretation in the Secretary's Proposed Rules.¹¹⁸

104. *Chevron*, 467 U.S. at 842-43.

105. 2A SUTHERLAND STAT. CONST. § 46.05 (5th Ed. 1992).

106. *Chevron*, 467 U.S. at 843; see also *Rust*, 500 U.S. at 184 (stating that if a court finds the language of a statute to be ambiguous, the agency's interpretation will be upheld unless it is not a reasonable construction of the statute and conflicts with Congress' intent).

107. *National Muffler Dealers Ass'n v. United States*, 440 U.S. 472, 477 (1979).

108. *Id.*

109. *Rust*, 500 U.S. at 184 (stating that "substantial deference is accorded to the interpretation of the authorizing statute by the agency authorized to administering it.")

110. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 446 n. 30 (1987) (quoting *Watt v. Alaska*, 451 U.S. 259, 273 (1981)).

111. *Chevron*, 467 U.S. at 843; see also *Rust*, 500 U.S. at 184.

112. *Id.*

113. See *Lansing Dairy*, 39 F.3d at 1354-55.

114. *Schepps Dairy, Inc. v. Bergland*, 628 F.2d 11 (D.C. Cir. 1979); *Jones v. Bergland*, 456 F. Supp. 635 (E.D. Pa. 1978).

115. *Lansing Dairy*, 39 F.3d at 1353. The Court cited a case in which the Judicial Officer acknowledged that he had a duty to comply with section 608c(18) when making location adjustments. *In re Borden, Inc., Southland Corp. & Carpaton Co.*, 46 Agric. Dec. 1315, 1987 WL 119801 (U.S.D.A.) (Sept. 30, 1987).

116. *Lansing Dairy*, 39 F.3d at 1353 (quoting QUESTIONS AND ANSWERS ON FEDERAL MILK MARKETING ORDERS, (AMS-559)).

117. Telephone interviews with Bill Dropnik and Bill Meyer, Minn. dairy farmers (Jan. 25 & 26, 1995).

118. *Lansing Dairy*, 39 F.3d at 1353-54 (citing 54 Fed. Reg. 26,768 (proposed June 26, 1989)).

In *Jones v. Bergland*,¹¹⁹ the District Court for the Eastern District of Pennsylvania implicitly determined that location adjustments are necessarily part of "minimum prices."¹²⁰ In *Jones*, the Plaintiffs (handlers and producers) challenged certain marketing orders promulgated by the Secretary.¹²¹ Among the issues in dispute were location adjustments that had an adverse impact on how much the producers were paid for their milk.¹²² The court indicated that because the proposed amendments may have reduced the minimum price that they received for milk, the producers had standing to challenge the action.¹²³ Implicit in this decision is the idea that location adjustments are necessarily an element in the "minimum price" of milk and that any change in location adjustments will inevitably result in the price that a producer gets for milk.

The Department of Agriculture has itself indicated that minimum prices necessarily include location adjustments. In the USDA pamphlet, "minimum price" is defined as "the least amount that proprietary handlers can pay producers for milk."¹²⁴ The *Lansing Dairy* court held that this definition must, out of necessity, assume "that location adjustments are part of the minimum price" paid for milk.¹²⁵ After all, the least amount that producers can be paid for their milk includes adjustments for, among other things, location.¹²⁶

The amended milk marketing order at issue in *Lansing Dairy* contains a definition of "minimum prices" that is consistent with the Secretary's historical interpretation of the term. The amended Order 40 indicates that the minimum price that is to be paid to producers is the average blend price in addition to adjustments for location.¹²⁷

Finally, it must be noted that Minnesota dairy farmers have historically interpreted the meaning of the term "minimum prices" consistently with the Secretary's historical interpretation. According to one Minnesota dairy farmer, the minimum price that dairy farmers are paid for their milk is the base "average" or blend price plus any adjustments made to that price for location, butterfat content or other factors.¹²⁸ Further, he indicated, any location adjustment would certainly change the price of milk.¹²⁹ Another dairy farmer stated that every time he gets paid for the milk he produces, the price that he receives from the handler includes location adjustments.¹³⁰

119. 456 F. Supp. 635 (E.D. Pa. 1978).

120. *Id.* at 649.

121. *Id.* at 637-38.

122. *Id.*

123. *Bergland*, 456 F. Supp. at 640.

124. *Lansing Dairy*, 39 F.3d at 1353; see also *supra* note 116 and accompanying text.

125. *Lansing Dairy*, 39 F.3d at 1353. The court went on to say that this is the case because if not, "it would violate the marketing scheme for handlers in outlying zones to pay less than the adjusted price." *Id.*

126. *Id.*

127. Order 40 indicates:

(a) Except [when paying a cooperative of producers] . . . each handler . . . shall pay each producer for milk . . . not less than the applicable uniform prices . . . adjusted by the location and butterfat differentials

7 C.F.R. § 1040.73 (1994) (emphasis added).

128. Telephone Interview with Bill Meyer, Owner of Meyer Brothers Dairy, Inc. (Jan. 26, 1995).

129. *Id.*

130. Telephone Interview with Bill Dropnik, dairy farmer from Alexandria, Minn. (Jan. 25, 1995).

3. *The Historical Interpretation of the AMAA as a Restriction on the Secretary's Power to Make Location Adjustments*

The United States Supreme Court, the Courts of Appeals, and the Secretary of Agriculture have all interpreted the AMAA as a restriction on the Secretary's delegated authority.

The Secretary of Agriculture has indicated that changes in location adjustments may only be made when the economic factors enumerated in section 608c(18) warrant the changes (i.e., supply is inadequate to meet demand).¹³¹ In *Schepps Dairy, Inc. v. Bergland*,¹³² a handler challenged a marketing order for a Texas milk marketing region. In upholding the Secretary's actions, the court held that the Secretary may only authorize location adjustments "to the extent that they are 'required to accomplish the broad purposes of the Act'".¹³³ One of the broad purposes of the AMAA that the court alluded to, contained in section 608c(18), is to ensure an adequate supply of milk.¹³⁴ In his brief the Secretary stated that use of location adjustments "is governed by" section 608c(18) of the AMAA, requiring the Secretary to "set prices that insure an adequate supply of milk."¹³⁵

The Secretary's Judicial Officer has implied that location adjustments must be promulgated pursuant to section 608c(18). In the case *In re Borden*,¹³⁶ the Judicial Officer plainly stated that section 608c(18) mandates that the Secretary "set milk prices, including location adjustments," at a level that will ensure an adequate supply of milk.¹³⁷ He went on to say that section 608c(18) requires the Secretary to make certain that location adjustments are at a level that will ensure milk is available throughout the marketing area.¹³⁸

The Secretary has also personally indicated that section 608c(18) is a restriction as to when location adjustments may be made pursuant to section 608c(5).¹³⁹ The Secretary apparently wrote three letters to handlers who had requested location adjustments.¹⁴⁰ In these letters the Secretary responded to the handlers' request for a location adjustment by stating that he could not make the amendments because the economic factors in section 608c(18) prevented him from doing so.¹⁴¹ Additionally, in announcing the proposed changes to Order 40, the Secretary stated that in order to promulgate the proposed amendments, which included location adjustments, a hearing would be held to determine if the changes were necessary to reflect market and economic condi-

131. *Lansing Dairy*, 39 F.3d at 1353.

132. 628 F.2d 11 (D.C. Cir. 1979).

133. *Id.* at 19 (citing *Sunny Hill Farms Dairy Co. v. Hardin*, 446 F.2d 1124, 1130 (8th Cir. 1971), cert. denied 405 U.S. 917 (1972) The court stated that one of the purposes of the AMAA was to ensure "a sufficient quantity of pure and wholesome milk." *Id.* (citing 7 U.S.C. § 608c(18)).

134. *Schepps Dairy*, 628 F.2d at 19.

135. *Id.* Although in *Lansing Dairy* the court did not consider the decision in *Schepps Dairy* helpful to the Plaintiffs' case, it referred to the Secretary's brief from the case as "interesting." *Lansing Dairy*, 39 F.3d at 1354.

136. *In re Borden*, 46 Agric. Dec. 1315, 1987 WL 119801 (U.S.D.A.) (Sept. 30, 1987).

137. *Id.* at 1459-60.

138. *Lansing Dairy*, 39 F.3d at 1353.

139. *Id.* at 1353-54 (citing 54 Fed. Reg. 26,768 (proposed June 26, 1989)).

140. *Id.* at 1353

141. *Id.* The Secretary stated that the economic conditions did not warrant the proposed changed location adjustments. *Id.*

tions.¹⁴²

The United States Supreme Court, as well as the Sixth and Third Circuits, have recognized that the AMAA is to be interpreted narrowly. In *Zuber v. Allen*,¹⁴³ the Supreme Court indicated that the Secretary does not have broad dispensing power under the AMAA.¹⁴⁴ Rather, the Court held that it was Congress' intent to restrict the Secretary's delegated authority under the AMAA.¹⁴⁵ Further, the Court suggested that location adjustments were subject to the limitations provided in the AMAA.¹⁴⁶

The Court of Appeals for the Third Circuit, in *Smyser v. Block*,¹⁴⁷ also implied that the Secretary of Agriculture must act within the bounds provided by the AMAA. In reversing the Secretary's amendments to a milk marketing order, the court held that the Secretary exceeded his statutory authority.¹⁴⁸ The *Smyser* court based its conclusion on legislative history which indicates that the AMAA contains the entire procedure to be used by the Secretary in promulgating milk marketing orders pursuant to the AMAA.¹⁴⁹

The Sixth Circuit, prior to its decision in *Lansing Dairy*, had also interpreted the AMAA as a restriction on the Secretary's delegated authority.¹⁵⁰ In *Defiance Milk Products*,¹⁵¹ this court indicated that Congress' intent behind the AMAA was to limit the Secretary's delegated authority when it enacted the 1935 amendments.¹⁵² The court also indicated that the Secretary was incorrect in believing that his interpretation of the AMAA should receive broad deference.¹⁵³ Rather, the court's holding implied that the Secretary must not interpret the AMAA broadly.¹⁵⁴

The Secretary of Agriculture has traditionally and historically required that section 608c(18) economic factors be considered before promulgating a change in location adjustments. Additionally, the Supreme Court, as well as the

142. The notice stated: "The [P.E.C.] claim[s] the proposed changes are needed to reflect current market conditions The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments . . ." 53 Fed. Reg. 15,851, 15,851 (proposed May 4, 1988).

143. 396 U.S. 168 (1969).

144. *Id.* at 183.

145. *Id.*

146. *Id.* at 181-82. The Court stated that the "legislative history strongly suggests that 'market differentials' . . . contemplated particular understood economic adjustments." The Court went on to define a "market differential" as "a location differential, for delivery to the primary market." *Id.*

147. 760 F.2d 514 (3rd Cir. 1985).

148. *Id.* at 522.

149. The *Smyser* Court cited a passage from both the House and Senate reports that was also relied upon by the Supreme Court in *Zuber*. That passage provides:

To eliminate questions of improper delegation of legislative authority raised by the decision in *Schechter et al. v. United States*, the provisions relating to orders enumerate the commodities to which orders issued by the Secretary of Agriculture may be applicable, prescribe fully the administrative procedure to be followed by the Secretary in issuing, enforcing, and terminating orders, and specify the terms which may be included in orders dealing with the enumerated commodities.

Smyser, 760 F.2d at 520 (citing S. Rep. No. 1011, 74th Cong., 1st Sess. 8 (1935); H.R. REP. No. 1241, 74th Cong., 1st Sess. 8 (1935)) (emphasis in original).

150. See *Defiance Milk Products Co. v. Lyng*, 857 F.2d 1065 (6th Cir. 1988).

151. 857 F.2d 1065 (6th Cir. 1988).

152. *Id.* at 1070 (citing *Zuber*, 396 U.S. at 185). The Supreme Court in *Zuber* stated, "It is clear that Congress was not conferring untrammelled discretion on the Secretary and authorizing him to proceed in a vacuum. This was the very evil condemned by the courts that the 1935 amendments sought to eradicate." *Zuber*, 396 U.S. at 185.

153. *Defiance*, 857 F.2d at 1070.

154. *Id.* The court stated that the Secretary must not "augment his powers beyond those contemplated by the Act" and indicated that the Secretary "misperceives the limited extent of his administrative powers under the Act." *Id.*

Sixth and Third Circuits, have interpreted the AMAA as a restriction on the Secretary's delegated authority. The Secretary's present position, that economic factors do not need to be considered before promulgating a change in a location adjustment, is a break from the commonly accepted meaning of the AMAA.

IV. ANALYSIS

In *Lansing Dairy*, the Court of Appeals for the Sixth Circuit reversed the district court's holding that the Secretary must consider the economic factors in section 608c(18) before promulgating a location adjustment.¹⁵⁵ The Secretary now has an unprecedented amount of discretion in making changes to milk marketing schemes which may adversely affect a great number of dairy farmers and milk distributors. In fact, this decision has the effect of enlarging the authority of the Secretary that was defined by the United States Supreme Court.¹⁵⁶ This holding undermines the very purpose of the AMAA by removing an important restriction on the Secretary's powers. Moreover, adversely affected dairy farmers and distributors will find it more difficult, if not impossible, to challenge an arbitrary act of the Secretary. This Note proposes a common sense reading of the AMAA that is consistent with the AMAA's history and true to the notion that the Department of Agriculture is one of the few representative agencies in the United States.

A. The Interplay and Interaction of Section 608c(18) and Section 608c(5): A Common Sense Approach

The Secretary must make an economic analysis pursuant to section 608c(18), before acting to fix the minimum price that is to be paid to producers for their milk.¹⁵⁷ An interesting question arises when the Secretary amends an existing milk marketing order by changing location adjustments pursuant to his authority under section 608c(5): has the Secretary changed the minimum price of milk? Although the effect of the order will likely produce a change in the minimum price producers are paid for their milk, the answer, after *Lansing Dairy*, is "no." The court of appeals in *Lansing Dairy* held that the term "minimum prices" was ambiguous, and therefore upheld the Secretary's interpretation - that he does not have to undertake an economic analysis when making location adjustments.¹⁵⁸

The court of appeals misinterpreted the meaning of the term "minimum prices" by disregarding the plain meaning of the term, and the legislative intent of the AMAA.¹⁵⁹ As a result, the Secretary has unbridled authority to promulgate changes that affect the minimum price paid to producers for their milk, without justification, reason, or explanation. A common sense approach

155. *Lansing Dairy*, 39 F.3d at 1354-55; see also *supra* notes 69-79 and accompanying text.

156. *Zuber v. Allen*, 396 U.S. 168 (1969); see also *supra* notes 143-145 and accompanying text.

157. 7 U.S.C. § 608c(18) (1994); see also *supra* notes 86-93 and accompanying text.

158. See *supra* notes 69-79 and accompanying text.

159. See *supra* notes 86-93 and accompanying text.

that interprets the plain meaning of the statute, in light of the Secretary's own interpretation, is necessary to bring the intended meaning of the statute back to life.

1. *The Plain Meaning of the AMAA and the Term "Minimum Prices"*

The term "minimum prices" is the price that producers receive for their milk. This was made clear from the plain language of the AMAA, the past and present interpretations of the Secretary, the implied language and reasoning of the courts of appeals, and by the common meaning given to the term by participants in the dairy industry.¹⁶⁰

The crux of the problem in *Lansing Dairy* lies in the court's interpretation of the term "minimum prices." A reviewing court should first determine whether Congress has spoken on the precise issue at hand.¹⁶¹ In its decision, the court of appeals did not closely scrutinize the language of section 608c(18) for its plain meaning. Instead, it read section 608c(5) and section 608c(18) together from the outset, making it difficult to interpret the plain meaning of section 608c(18).¹⁶²

When the interpretation of a term is at issue, it makes sense to look to the plain meaning of the term first.¹⁶³ Section 608c(18) clearly states that before the Secretary may act to "fix minimum prices to be paid to producers," he must first determine that the economic conditions warrant the changes.¹⁶⁴ Standing alone, the term "minimum prices" may be misleading. It is possible to think of the term "minimum prices" as either the uniform unadjusted price of milk, as the Secretary contended in *Lansing*, or as the minimum adjusted price of milk that producers are paid, as the Plaintiffs contended.¹⁶⁵ However, a common sense reading of the entire section makes the Secretary's interpretation unreasonable.

A reviewing court must read the term "minimum prices," for purposes of the statute, in context with the rest of the sentence. The sentence states that handlers are to pay producers a minimum price for milk.¹⁶⁶ The price that producers are paid includes adjustments for, among other things, location. A handler cannot pay a producer the uniform, unadjusted price of milk. Rather, the only price a handler can possibly pay is an adjusted price. As the district court indicated in its decision, the minimum prices that are to be paid to producers necessarily include adjustments to the uniform price of milk made pursuant to section 608c(5).¹⁶⁷

Despite the Secretary's assertions that the term "minimum prices" does

160. See *supra* notes 128-130 and accompanying text.

161. *Chevron*, 467 U.S. at 842-43; see *supra* notes 102-04 and accompanying text.

162. *Lansing Dairy*, 39 F.3d at 1351; see also *supra* notes 69-79 and accompanying text.

163. See *supra* notes 102-104 and accompanying text.

164. 7 U.S.C. § 608c(18); see also *supra* notes 86-93 and accompanying text.

165. *Lansing Dairy*, 39 F.3d at 1350-51; see also *supra* notes 48-65 and accompanying text.

166. 7 U.S.C. § 608c(18); see also *supra* notes 86-93 and accompanying text.

167. *Farmers Union Milk Mktg. Coop. v. Madigan*, Nos. 1:89-CV-281, 5:91-CV-104, 1992 WL 71372 *1, *7 (W.D. Mich. Mar. 30, 1992); see also *supra* notes 64-68 and accompanying text.

not include location adjustments, he has, in the very regulation that he amended, defined the term to include location adjustments.¹⁶⁸ Order 40 defines the minimum price to be paid to producers as the uniform (base) price adjusted by location.¹⁶⁹ In light of this, the Secretary's interpretation of the term "minimum prices" asserted in the instant case is inconsistent with an interpretation presently contained in the very milk marketing order that was amended.

Not only does a common sense reading of the term "minimum prices" make intuitive sense, it is consistent with the interpretation given by dairy farmers in Minnesota.¹⁷⁰ Dairy farmers have come to rely on the term "minimum prices" to mean the price that they are paid for their milk. As previously indicated, Minnesota dairy farmers have stated that any location adjustments that are made will have an effect on the minimum price handlers pay them for their milk.¹⁷¹ The price dairy farmers are paid necessarily includes location adjustments.¹⁷² Thus, dairy farmers have come to rely on the term "minimum prices" to mean the adjusted price that they are paid for their milk.

When examining the meaning of a particular section of a statute, the statute should be read as a whole.¹⁷³ The statute, read as a whole, further demonstrates that the Secretary's interpretation is unreasonable. The district court made a reasonable interpretation of the AMAA, under this theory, that the court of appeals disregarded.¹⁷⁴ According to the district court, the AMAA specifically indicates that it is the policy of Congress to adjust all prices, not only uniform or base prices, to reflect economic conditions.¹⁷⁵ The court reached this conclusion by inferring that the terms of section 602, as stated in section 608c(18), must necessarily include adjustments in price made pursuant to section 608c(5).¹⁷⁶ An adjustment in the price of milk via a location adjustment is undoubtedly part of the pricing scheme of the Act.¹⁷⁷ This interpretation is reasonable. After all, nowhere in the AMAA is section 608c(5) held immune from its general policy of regulating pricing schemes.¹⁷⁸ The express policy of the AMAA requires consideration of economic factors before promulgating a change in milk prices.¹⁷⁹ Because section 608c(5) location adjustments change the price of milk, economic criteria must be considered before implementing

168. 7 C.F.R. § 1040.73 (1994); see also *supra* note 127 and accompanying text.

169. See *supra* note 127 and accompanying text.

170. See *supra* notes 128-130 and accompanying text.

171. See *supra* notes 128-130 and accompanying text.

172. *Lansing Dairy*, 39 F.3d at 1353; see also *supra* notes 124-126 and accompanying text.

173. SUTHERLAND, *supra* note 105, at § 46.05; see also *supra* notes 105-112 and accompanying text.

174. *Farmers Union Milk Mktg.*, 1992 WL 71372 at *7.

175. *Id.*

176. *Id.* Section 602 is a general section of the AMAA which declares the policy of the Act. Section 602(4) refers specifically to milk marketing. It provides that it is the policy of Congress, through the Secretary to:

[E]stablish and maintain such orderly marketing conditions for any agricultural commodity enumerated in section 608c(2) [7 U.S.C. § 608c(2)] of this title as will provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout its normal marketing season to avoid unreasonable fluctuations in supplies in prices.

7 U.S.C. § 602(4) (1994).

177. See *supra* notes 86-93 and accompanying text.

178. See generally 7 U.S.C. § 602 (1994); see also *supra* note 176 and accompanying text.

179. See *supra* notes 86-93 and accompanying text.

them.

Every reasonable effort must be made to effectuate the intent of Congress from the entire statute.¹⁸⁰ The Secretary cannot ignore section 602 of the AMAA. As such, the entire pricing scheme is subject to the requirement of the AMAA, that an economic analysis must take place before adjusting the minimum price that handlers can pay producers for their milk. The only reasonable interpretation is one that requires the Secretary to consider the economic criteria in section 608c(18) before making a location adjustment pursuant to section 608c(5). Location adjustments necessarily affect the minimum price that producers are paid for their milk and are part of the pricing scheme under the AMAA.

2. *The Purpose of the Act and the Express Intent of Congress*

The court of appeals started deliberation of the issue before it with the "contested provisions" of sections 608c(5) and 608c(18).¹⁸¹ This is not the proper place to begin an analysis of congressional intent. Rather, it makes more sense to begin the overall statutory analysis with an examination of the broad policies and purposes of the AMAA itself. There is a presumption that Congress "has a definite purpose in every enactment and has adapted and formulated the subsidiary provisions in harmony with that purpose."¹⁸²

In the instant case, the broad purpose of the AMAA is clear. The *Lansing Dairy* court acknowledged that Congress enacted the AMAA, in response to Supreme Court decisions disapproving of the broad delegation of power, in order to "eliminate" excessive delegation of powers.¹⁸³ In fact, the express purpose of section 608c(18) is to provide guidance to the Secretary in setting milk prices.¹⁸⁴ The purpose of the AMAA is to place limits on the Secretary's discretion by providing the office with tools to help guide decision making. Thus, any subsidiary provisions, in this case both section 608c(5) and 608c(18), require interpretation in harmony with the underlying purpose of the Act to reduce the Secretary's discretionary powers.

The United States Supreme Court, at least one other federal court, and the Sixth Circuit itself have all interpreted the AMAA as a restriction on the Secretary's delegated authority.¹⁸⁵ In *Zuber v. Allen*,¹⁸⁶ the Supreme Court specifically held that the Secretary of Agriculture was prohibited from interpreting the Act broadly.¹⁸⁷ The *Zuber* court recognized Congress' intent to "confine the boundaries of the Secretary's delegated authority," and stated that under such circumstances the Secretary "does not have 'broad dispensing power.'"¹⁸⁸ To

180. SUTHERLAND, *supra* note 105, at § 46.05.

181. *Lansing Dairy*, 39 F.3d at 1351.

182. SUTHERLAND, *supra* note 105, at § 46.05.

183. *Lansing Dairy*, 39 F.3d at 1343.

184. S. REP. NO. 565, 75th Cong., 1st Sess. 3 (1937).

185. See *supra* notes 143-154 and accompanying text.

186. 396 U.S. 168 (1969).

187. *Id.* at 183. See also *supra* notes 143-146 and accompanying text.

188. *Zuber*, 396 U.S. at 183; see also *supra* notes 143-146 and accompanying text.

this end, the Court specifically indicated that location adjustments, as well as other adjustments to the price of milk, were subject to the limitations provided in the Act.¹⁸⁹ One such limitation is section 608c(18).

Similarly, in *Smyser v. Block*,¹⁹⁰ the Third Circuit held that the Secretary went beyond his authority under the AMAA to promulgate certain provisions of a milk marketing order.¹⁹¹ The court relied heavily on the *Zuber* court's interpretation of the legislative history of the Act to overturn the Secretary's action.¹⁹² The *Smyser* court's decision implied that the Secretary may not step outside of the bounds provided by the Act when setting a term in a milk marketing order. A location adjustment is a term in a milk marketing order.¹⁹³ Therefore, the Secretary steps outside of his delegated authority upon setting a term without considering the factors specifically enumerated in the statute. This must be the case where the factors are placed in the statute for the express purpose of providing guidance to the Secretary in setting the price that producers are to be paid for their milk.¹⁹⁴

Prior to its decision in *Lansing Dairy*, the Sixth Circuit had itself interpreted the AMAA as a restriction on the Secretary's delegated authority.¹⁹⁵ In *Defiance Milk Products Co. v. Lyng*,¹⁹⁶ the court chastised the Secretary for attempting to "augment his powers beyond those contemplated by the Act" and stated that the Secretary "misperceives the limited extent of his administrative powers under the Act."¹⁹⁷ In *Defiance*, the court upheld an amendment to a marketing order because the Secretary's action was in response to unusual market conditions.¹⁹⁸ It cautioned the Secretary, however, by indicating that judicial deference is not due his administrative discretion, because Congress sought to limit the Secretary's delegated authority when it passed the 1935 amendments to the AMAA.¹⁹⁹ Thus, the Sixth Circuit recognized the unique nature of the Department of Agriculture as one of the few agencies which has not been granted broad discretion to interpret its enabling statute.²⁰⁰ Rather, the court suggested, the Secretary's delegated authority under the AMAA is extremely limited.²⁰¹

The interpretation of the interaction and interplay of sections 608c(18) and 608c(5) expounded by the Secretary, and reaffirmed by the Sixth Circuit's decision in *Lansing Dairy*, is not in harmony with the broad purpose of the AMAA. The broad purpose of the AMAA is to provide guidance to the Secretary

189. *Zuber*, 396 U.S. at 181-83 (discussing Secretary being limited to the intent of Congress); see also *supra* notes 143-46 and accompanying text.

190. 760 F.2d 514 (3rd Cir. 1985).

191. See *supra* notes 147-149 and accompanying text.

192. *Smyser*, 760 F.2d at 520; see also *supra* notes 147-149 and accompanying text.

193. 7 C.F.R. § 1040.73.

194. See *supra* notes 86-91 and accompanying text.

195. *Defiance Milk Prods. Co. v. Lyng*, 857 F.2d 1065 (6th Cir. 1988).

196. *Id.*

197. *Id.* at 1070; see also *supra* notes 150-154 and accompanying text.

198. *Defiance*, 857 F.2d at 1070; see also *supra* notes 150-154 and accompanying text.

199. *Defiance*, 857 F.2d at 1070.

200. *Id.*

201. *Id.*

of Agriculture.²⁰² The Secretary's refusal to consider the economic criteria in section 608c(18) before making a location adjustment to the minimum price of milk amounts to a disregard of the "guidance" that Congress mandated when it enacted section 608c(18).

Such disregard undermines the very purpose of the AMAA, by allowing the Secretary to change the minimum price that dairy farmers receive for their milk, even if the changes are not warranted by economic factors. In other words, the *Lansing Dairy* decision gives the Secretary broad discretion to change or replace existing marketing orders that amply fulfill the purpose of the Act. According to one Minnesota dairy farmer, such a result has the potential to create unfair disparity among regions in pricing, may destabilize production, and is simply not fair.²⁰³

B. Improper Expansion of Judicial Deference

In *Lansing Dairy*, the court gave the Secretary's unusual and inconsistent interpretation of the AMAA²⁰⁴ an impermissible amount of deference inconsistent with the principles the Supreme Court has set forth regarding review of agency actions. First, the court flatly rejected the Secretary's assertions that his present interpretation is consistent with his historical interpretation of the AMAA.²⁰⁵ Yet, the court went on to hold that despite the Secretary's historical interpretation of the AMAA, the Secretary's present interpretation deserved deference because "an initial agency interpretation is not instantly carved in stone" and "the agency . . . must consider varying interpretations and the wisdom of its policy on a continuing basis."²⁰⁶

The *Lansing Dairy* court failed to consider all of the factors necessary in reviewing an administrative action pursuant to the Supreme Court's decisions in *Chevron* and *Rust*.²⁰⁷ Had it done so, the court would have properly determined that the Secretary failed to satisfy the standard of administrative review set forth by the United State Supreme Court. This is the case because not only did the Secretary make an extreme break from past interpretations of the AMAA in *Lansing Dairy*, he did so without even attempting to explain his revised interpretation.²⁰⁸

Initially, it must be noted that the plain meaning of the term "minimum prices" does not allow the Secretary to change the clear intent of the AMAA.²⁰⁹ As previously shown, a location adjustment is a term which "fix[es] minimum

202. See *supra* notes 86-93 and accompanying text.

203. Telephone interview with Bill Dropnik, Dairy Farmer from Alexandria, Minn. (Jan. 25, 1995).

204. For the Secretary's historical interpretation of the AMAA and the term "minimum prices", see *supra* notes 113-130 and accompanying text.

205. *Lansing Dairy*, 39 F.3d at 1353-54. The court stated that it did not find "credible the Secretary's assertions that the interpretation of the Act he advances in this litigation is the same that he has adhered to for the last fifty years." *Id.* at 1354.

206. *Id.* (quoting *Chevron, U.S.A. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 863-64 (1984)).

207. *Chevron, U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837; *Rust v. Sullivan*, 500 U.S. 173 (1991); see also *supra* notes 97-112 and accompanying text.

208. See *supra* note 79 and accompanying text.

209. See *supra* note 99 and accompanying text.

prices to be paid to producers."²¹⁰ Therefore, the Secretary may not make a change in location adjustments without first taking into consideration the economic factors enumerated in section 608c(18) of the AMAA.²¹¹ A common sense approach to the plain meaning of the term should end the matter because the Secretary is not permitted to change the intent of the AMAA.

Assuming, *arguendo*, that the statute is ambiguous with respect to the term "minimum prices," the Secretary's present interpretation is not reasonable pursuant to the *Chevron* doctrine. In *Chevron* and *Rust*, the Supreme Court held that an administrator could change his or her position, but that he or she must do so by announcing the change and giving a reasoned explanation for the change.²¹² In *Rust*, the Court held that the Secretary of Health and Human Services sufficiently justified his changed interpretation with a "reasoned analysis."²¹³ Specifically, the Court found that the Secretary's new interpretation was reasonable because the prior interpretation failed to properly implement the Public Health Service Act and the new interpretation was necessary to provide greater "guidance" in the Act's implementation.²¹⁴

In the instant case, the Secretary did not provide a "reasoned analysis" to sufficiently justify his revised interpretation of the AMAA. In fact, the Secretary did not provide any justification for his revised interpretation.²¹⁵ The Secretary's failure to justify his reasons for changing his interpretation violates the *Chevron* doctrine. In addition, the Secretary not only failed to justify his new position, he denied the fact he was interpreting the Act inconsistently with past interpretations.²¹⁶ Consequently, the *Lansing Dairy* decision permits the Secretary to reverse a long-standing statutory interpretation without explanation and after being less than forthright with the reviewing court.

In any event, the Secretary could provide no reasonable justification for his revised interpretation of the term "minimum prices." First, there is no indication that the Secretary's historical interpretation of the interplay between sections 608c(18) and 608c(5) fails to properly implement the AMAA. Because the purpose of the AMAA is to ensure a sufficient quantity of wholesome milk to markets, and to provide stability in pricing for dairy farmers,²¹⁷ consideration of the economic factors in section 608c(18) amply fulfills the purpose of the AMAA. Location adjustments, which affect the minimum price that dairy farmers are paid for their milk, necessarily have an effect on the supply of milk. Inevitably, the price that producers are paid for their milk will have an effect on the supply of milk to certain areas. Dairy farmers will be less likely to sell their milk to handlers in areas where their milk is not as valuable due to location adjustments. Thus, before making amendments to location adjust-

210. 7 U.S.C. § 608c(18); see also *supra* notes 160-180 and accompanying text.

211. See *supra* notes 87-92 and accompanying text.

212. *Chevron*, 467 U.S. at 843; *Rust*, 500 U.S. at 187; see *supra* notes 111-112 and accompanying text.

213. *Rust*, 500 U.S. at 187 (citing *Motor Vehicle Mfgs. Ass'n of U.S., Inc. v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 42 (1983)).

214. *Id.*

215. *Lansing Dairy*, 39 F.3d at 1354-55.

216. *Id.* at 1353.

217. See generally 7 U.S.C. § 608c (1994); see also *supra* notes 15-16 and accompanying text.

ments, the Secretary must determine that the amendments are necessary to ensure an adequate supply of milk.

Second, the revised interpretation of the AMAA will not provide the Secretary with greater guidance implementing the Act. Furthermore, the revised interpretation will not give dairy farmers or handlers any guidance as to when or how milk prices will be affected. In fact, the Secretary's new unjustified interpretation will create greater ambiguity in the application of the statute. No longer will dairy farmers be able to rely on the fact that the price they are paid for their milk will only be adjusted when economic conditions warrant the changes. Rather, the Secretary will now be able to adjust the price that dairy farmers are paid for their milk without any economic guidance whatsoever.

Although judicial deference to administrative action is commonly recognized as the norm in the United States,²¹⁸ it was inappropriate in the instant case. The *Chevron* and *Rust* decisions of the Supreme Court are distinguishable from the instant case. In both *Chevron* and *Rust* the administrative agencies, whose decisions were being reviewed, had been granted much broader interpretive discretion than the Secretary of Agriculture.²¹⁹ In *Rust*, the question surrounded the Secretary of Health and Human Services' interpretation of Title X of the Public Health Service Act.²²⁰ In upholding the Secretary's interpretation of the statute, the Court found that Congress provided the Secretary of Health and Human Services "broad" directives for implementing the Act.²²¹ Further, the Court found that the legislative history was "highly generalized" and contained "conflicting statements" making the Secretary's interpretation all the more reasonable.²²² Additionally, due to the highly political nature of the actions of the Department of Health and Human Services (with respect to abortion, birth control, etc.) it was reasonable that the administrator should receive wide latitude in implementing the ever-changing policies of the Department.

In *Chevron*, the Supreme Court was faced with reviewing the administrative action of an agency that had been granted broad discretion in interpreting its enabling statute.²²³ The Supreme Court determined whether the Environmental Protection Agency's ("EPA") revised interpretation of the term "stationary source" was reasonable.²²⁴ In upholding the EPA's revised interpretation, the Court held that the interpretation was consistent with the notion that the EPA had "broad discretion in implementing" the policy of the Act.²²⁵

The Department of Agriculture, unlike both the EPA and the Department of Health and Human Services, has never been granted such broad discretion. In fact, as previously mentioned, the Supreme Court has indicated that the Sec-

218 Schuck & Elliot, *To the Chevron Station: An Empirical Study of Federal Administrative Law*, 1990 DUKE L.J. 984 (finding that affirmation of agency decisions rose from 71% to 81% in the year immediately following the *Chevron* decision). *Id.* at 1031.

219. See *supra* notes 97-98 and accompanying text.

220. *Rust*, 500 U.S. at 176.

221. *Id.* at 184.

222. *Id.* at 185.

223. *Chevron*, 467 U.S. at 837.

224. *Id.*

225. *Id.* at 838.

retary of Agriculture is limited in his or her discretion in interpreting the AMAA.²²⁶ Since the discretion of the Secretary of Agriculture is limited by the AMAA, its legislative history, and the United States Supreme Court, the Secretary's interpretation in the instant case is not the type of administrative action that comes within the full purview of *Chevron*. Thus, although the *Chevron/Rust* analysis is helpful to gain a general understanding of the review of administrative actions, it is controlling only in cases where the particular agency has been granted the same broad delegation of powers as the agencies at issue in *Chevron* and *Rust*.

The Department of Agriculture is not the same type of administrative agency contemplated in either *Chevron* or *Rust*. Its unique place among agencies requires a more careful review of the actions of its administrator. In the instant case, the Secretary of Agriculture has been granted only limited interpretive powers by the AMAA.²²⁷ Therefore, the Secretary is bound by the "guidance" provided in section 608c(18) when making location adjustments pursuant to section 608c(5).²²⁸ A ruling to the contrary will have the effect of permitting the Secretary to operate in a vacuum without the intended limitations of section 608c(18), and without providing a reasoned explanation for any changed interpretation of the AMAA.

C. The Impact of the Decision

The court's decision in *Lansing Dairy* will have numerous effects on the Plaintiffs who brought the suit, as well as dairy farmers throughout the country.²²⁹ As previously mentioned, the adversely affected Plaintiffs in *Lansing Dairy* are losing up to \$50,000 per month.²³⁰ In an industry where profit margins are extremely small,²³¹ the effect of the Secretary's decision may eliminate profit almost entirely in some cases. Additionally, the *Lansing Dairy* decision permits the Secretary to set the actual minimum price of milk that is paid to producers without considering any standards at all. Consequently, the decision will likely have an enormous impact on the dairy industry in general, as location adjustment becomes a preferred tool for setting the price of milk. The Secretary's delegated authority has been greatly expanded beyond the standards set by the AMAA. Allowing the Secretary to reduce minimum prices paid to producers, through location adjustments, is in direct contradiction to the pur-

226. *Zuber*, 396 U.S. at 185. The Court stated that "[i]t is clear that Congress was not conferring untrammelled discretion on the Secretary and authorizing him to proceed in a vacuum." *Id.* See also *supra* notes 143-146 and accompanying text.

227. See *supra* notes 143-146 and 87-91 and accompanying text.

228. See *supra* notes 91-92 and accompanying text.

229. The impact of this decision is substantial. Currently, the Secretary is considering merging seven existing milk marketing orders in the South East into one order. 58 Fed. Reg. 47,653 (to be codified at 7 C.F.R. pts. 1007, 1093-94, 1096, 1108) (proposed Sept. 10, 1993). Because this decision marks a major change in the Secretary's delegated authority, and the AMAA covers over two-thirds of the milk marketed in the United States, the decision has the potential to impact a large proportion of the milk marketed in the United States.

230. See *supra* note 34 and accompanying text.

231. A dairy farmer's typical profit margin is between one and two per cent. Telephone Interview with Benjamin Yale, Attorney for Plaintiffs (Jan. 25, 1995). See also Appellant's Brief on Petition for Rehearing at 9, *Manitowoc Milk Producers* (Nos. 92-2231, 92-2232, 92-2233, 92-2448, 92-2449).

pose of the AMAA.²³²

The political forces at work in the *Lansing Dairy* decision mark an unprecedented turning point in the history of the AMAA. Because of the economic factors enumerated in section 608c(18) and the standards found elsewhere in the Act, the dairy industry has been generally immune from political pressures. By requiring that economic conditions warrant changes in the pricing of milk, there has always been a relatively objective method of ensuring that milk producers, large and small, are on relatively equal footing. The AMAA was enacted, in part, to counter the destructive, competitive effects created by the seasonal nature of milk production.²³³ The regulations have had the effect of stabilizing the milk markets making it possible for dairy farmers to coexist in such an unstable industry.²³⁴ Without the restriction of section 608c(18), the Secretary has the unbridled freedom to set the minimum price of milk, at the whim of politically influential groups (such as the P.E.C.),²³⁵ without consideration of its economic value to the market, simply by expressing the change as a "location adjustment."

The decision also marks a substantial departure from the requirements of judicial review of administrative decisions as enumerated in *Chevron* and *Rust*.²³⁶ As previously mentioned, the Secretary is no longer required to explain a revised interpretation of a long-standing agency policy, and does not need to give notice of the revised interpretation.²³⁷ Consequently, handlers and producers who may be adversely affected by a revised interpretation of the Secretary will find it extremely difficult, if not impossible, to successfully challenge an act of the Secretary.²³⁸ After all, how can an aggrieved dairy farmer challenge a novel action of the Secretary which is not required to be based upon any reasonable objective criteria, nor even explained?

V. CONCLUSION

The *Lansing Dairy* decision emasculates the clear language of the AMAA, and the intent of Congress. It alters the principles of judicial review of agency actions as recognized by the Supreme Court. No longer is the AMAA to be interpreted narrowly and no longer does the Secretary need to explain a revised interpretation of the AMAA. The decision allows the Secretary to change the long standing policy and interpretation of the Act. The decision grants the Secretary the freedom to reallocate money, in the form of location adjustments, not because economic conditions warrant the changes, but because dominant,

232. *Lehigh Valley Coop. Farmers, Inc. v. United States*, 370 U.S. 76, 79-81 (1962) (stating that the purpose of the AMAA is to ensure a sufficient price for producers); see also *supra* note 16 and accompanying text.

233. See *supra* notes 14-16 and accompanying text.

234. See *supra* notes 25-28 and accompanying text.

235. See *supra* note 29 and accompanying text.

236. See *supra* notes 97-112 and accompanying text.

237. See *supra* notes 212-217 and accompanying text.

238. Telephone Interview with Benjamin Yale, Attorney for the Plaintiffs (Jan. 25, 1995); Telephone Interview with Lynn Hayes, Attorney, Farmers Legal Action of Minn. (Feb. 5, 1995). See also Appellant's Brief on Petition for Rehearing at 13-14, *Manitowoc Milk Producers* (Nos. 92-2231, 92-2232, 92-2233, 92-2448, 92-2449).

politically influential groups want to profit at the expense of their competitors.

Unfortunately, the words of Robinson, quoted at the beginning of this Note, ring hauntingly true at its close.²³⁹ The Secretary has insisted that his revised interpretation is simply working out the true purposes for which the Department of Agriculture was intended. Yet, the consequence of the *Lansing Dairy* decision will be to move the Department in the direction of greater ambiguity. Freed from the limitations of section 608c(18), the Secretary may now proceed in the very vacuum the Supreme Court condemned twenty-five years ago in *Zuber v. Allen*.²⁴⁰ The decision is an impermissible expansion of the Secretary's delegated authority, as well as an improper application of the principle of judicial review of an agency's action.

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239. See *supra* note 1 and accompanying text.

240. *Zuber v. Allen*, 396 U.S. 168, 183 (1969). See also *supra* note 152 and accompanying text.

241. The author wishes to acknowledge his parents, John and Susan Kastner, without whose love this would not have been possible.