glanbia FOODS

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Hearing Clerk
Stop 9200 - Room 1031
United States Department of Agriculture
1400 Independence Avenue, S.W.
Washington, D.C. 20250-9200

Re: *Milk in the Northeast and Other Marketing Areas; Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments to Marketing Agreements and Orders* [Docket No. AO-14-A73, et al.; DA-03-10]

Dear Sir or Madam:

Thank you for this opportunity to submit comments in opposition to the proposed rule and recommended decision to change the fluid milk product definition for all Federal milk marketing orders. Glanbia strongly objects both to the recommendation to incorporate an equivalent 2.25 percent true protein criteria in determining if a product meets the fluid milk product definition, as well as to the increase in discretion provided to the Department in making a Class I determination.

If promulgated, the new rule would encourage the substitution of non-milk proteins in place of milk-derived proteins and thus depress demand for raw milk and dairy ingredients. As a result, producer prices would ultimately fall and undermine the future of companies such as Glanbia, Inc., which has invested its future stake in the global dairy market on the great potential of U.S. dairy production.

I. WHO WE ARE

Glanbia, Inc. is the nation's largest producer of American-style cheese and one of the largest producers of whey-based food ingredients. Indeed, when you purchase a cheeseburger at Wendy's or McDonald's, you're probably buying Glanbia's cheese. Our operations are located primarily in Idaho, under the banner of Glanbia Foods, as well as in New Mexico, where we recently opened a new facility, Southwest Cheese, in Clovis. We also are seeing rapid growth in the nutritionals segment through Glanbia Nutritionals, based in Wisconsin. Overall, we employ nearly a thousand people while our manufacturing facilities are supplied by nearly 250,000 dairy cows.

Glanbia Foods, Inc.

Headquartered in Twin Falls, Idaho, Glanbia Foods is one of the fastest growing and most successful dairy companies in the United States with over 500 employees. It comprises two cheese plants and two whey plants in southern Idaho that use over 11 million pounds of milk every day, or nearly 4 billion pounds annually, which are turned into 370 million pounds of American-style cheese and 108 million pounds of dairy ingredients.

Our facility in Gooding, Idaho is the largest barrel cheese plant in the country, consuming a staggering 8.4 million pounds of milk per day. That translates into 120,000 cows producing enough milk to supply this plant every day of the year. Over 270 million pounds of American-style cheese is produced here annually. In addition, the Gooding whey plant produces 86 million pounds of dairy ingredients annually, including lactoferrin, lactoperoxidase and co-isolate.

In Twin Falls, we process another 2.6 million pounds of milk daily, converting it into 103 million pounds of cheese blocks every year, including colored cheddar, white cheddar, Monterey jack, pepper jack, Colby and Colby jack. Finally, our Richfield whey plant is one of the largest dedicated whey processing plants in the United States producing 22 million pounds of dairy ingredients annually.

Glanbia cheeses also consistently rank at the top in quality. In spring 2006, Glanbia won three gold Best of Class Awards, one silver award and one bronze award at the World Cheese Championship Contest, winning their categories out of 1795 entries from 15 countries. Glanbia whey is processed from the equivalent of 3.8 billion pounds of raw whey into more than 100 million pounds of value-added ingredients, which are marketed throughout the world.

Southwest Cheese, L.L.C.

In 2005, we opened one of the largest dairy processing plant investments in the world - a state of the art, $200 million cheese and whey plant in Clovis, New Mexico, in a joint venture with Dairy Farmers of America and Select Milk Producers, Inc. We anticipate the plant will generate sales of $340 million a year and directly employ over 225 people. The plant has the capacity to produce 260 million pounds of American-style cheese, in addition to 16.5 million pounds of high value-added whey protein isolate and whey protein concentrate (specifically, whey protein concentrate 80), for both domestic and foreign sale. This scale of production will draw from the milk supplied by more than 100,000 dairy cows. We have very high hopes for this joint venture, and believe that its commercial success will dramatically augment the success already enjoyed by our Idaho facilities.

Glanbia Nutritionals, Inc.

Headquartered in Monroe, Wisconsin, this division of Glanbia is one of the global market leaders in dairy-based nutritional solutions. The key to our success in this growing segment has been a strong commitment to investments in research and development. For example, we have a dedicated Research and Development Center located in Idaho with highly trained staff focused on advancing the market potential and value to customers of a range of dairy-based nutritional ingredients. Our nutritionals often undergo clinical trials and we work closely with customers to customize complex and technologically advanced nutritional solutions for a broad range of food and health consumers. For example, Glanbia Nutritionals develops ingredients that are used to make some of the leading sports performance, weight management, and specialized bone and anti-viral fortifiers. More than half of our nutritionals ingredients are destined for export to Asia, South America, and Europe.

II. OUR STAKE IN THE U.S. DAIRY MARKET

Glanbia's Idaho operations process about one-third of that state's milk supply and, when combined with Southwest cheese, Glanbia consumes roughly 3.7% of the total U.S. milk production. The Idaho facilities were acquired in 1990, but their production dates back to the 1940s. Glanbia's investments in these facilities contributed to sales growth worth more than $625 million, a more than a 12-fold increase over sales occurring when Glanbia took over the operations sixteen years ago. More importantly, Glanbia's success accounts for approximately $500 million of revenue to its Idaho milk suppliers. We anticipate the same kind of success for New Mexico producers who provide the raw milk to Southwest Cheese, in Clovis.

Our confidence in the future of the U.S. dairy industry is immense. We believe through smart investments in technology and market development, U.S. dairy producers can be among the most competitive in the world. The potential for growth exists not only in cheese and other traditional dairy products, but also in the burgeoning nutritional market. In fact, we believe that growth in dairy ingredients and dairy-based nutritional products can become a cornerstone of U.S. dairy success, especially under the right conditions.

Our investments in whey production reflect this confidence. Glanbia is the leading US dairy company when it comes to investment in ingredients research and development, which in turn has meant substantial investments in plant and equipment, so that we can be prepared to bring innovations to market. Our focus on research and development has made Glanbia one of the three largest suppliers of lactose and whey protein (all categories, including isolate, 34% concentrate and 80% concentrate) in the country, as well as the leading supplier of the specialty ingredients lactoferrin and milk calcium. Our success here at home helps us maintain a significant position globally and pushes our long-term horizons toward the export market, opening an important new outlet for future U.S. dairy production.

It is for all of these reasons that we have invested so much in the future of U.S. dairy production. It is also why we believe our stake in the U.S. dairy industry is wedded to the future of U.S. dairy production. We will not succeed unless U.S. dairymen thrive alongside us.

Unfortunately, we are also deeply worried that the recently proposed rule to incorporate a 2.25 percent milk protein equivalent in the definition of fluid milk threatens to undermine the vast potential we see in the United States market.

III. CONCERNS WITH THE PROPOSED RULE

The proposed rule would pose many dangers to the U.S. dairy industry. Disturbingly, and despite the clear dangers it would pose, the proposed rule appears to offer no apparent benefit.

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First, as many witnesses testified at the Department's hearings in June 2005, the inclusion of a true milk protein standard could stifle innovation in milk fractionation technology and other dairy industry uses where we have been focused. Several observers already noted the rapid growth over the past few years of market demand for vegetable proteins, particularly soy, versus even the growth in consumption of milk proteins. (*see* Post-Hearing Brief of Fonterra (USA), Inc.) In part, this is due to the relative cost of soy protein compared to milk-derived ingredients. The price disparity itself is a result not only of the costs of milk fractionation, but also the much higher regulatory costs already imposed on dairy processors.

The proposed rule would significantly exacerbate this trend to the detriment of dairy producers and processors, by further depressing the cost disadvantage suffered by milk proteins versus vegetable substitutes. The substitution can only mean lower demand for milk proteins, and thus reduced demand for milk products, as a whole, precisely when this specific segment of demand has been growing and is an area where U.S. competitive strength in the world is logical. Previous USDA policymakers apparently agreed with this conclusion when they declined to amend the fluid milk product definition in January 1998. No disruptions to the orderliness of the dairy market have occurred since then to justify a change of mind.

No evidence exists to suggest how consumers would respond to a change in the definition regarding the use of milk proteins. Witnesses for neither USDA nor producer groups could offer specific evidence to explain how a change would affect consumers, producers or processors. At a minimum, the lack of analytical information warrants an abandonment of the proposed rule.

Nevertheless, the lack of an apparent benefit to producers begs one to wonder why a change is even desired. The witness for the National Milk Producer Federation argued that he was aware of no current product that would be immediately impacted by an incorporation of a true milk protein. If no current products would be affected, and no disruptions to the current market have occurred, then it would seem difficult to craft a convincing argument that a change should be made.

Unfortunately, Glanbia believes the proposed rule would have an enormous and immediate impact on the market. We agree with others in the processing sector that products already on the market, such as *Carb Countdown*, could potentially be affected. Introduced by HP Hood a few years ago, *Carb Countdown* consists of water, ultra-filtered fat-free milk, cream, calcium caseinate, whey protein isolate and buttermilk. The beverage contains 5.0% protein but only 1.3 % total sugars, for a total non-fat milk solids content of 6.3 %. *Carb Countdown* has been a very successful product in the marketplace, and is responsible for consumption of a significant quantity of whey protein isolate. The success of *Carb Countdown* and its demand for whey protein isolate has stimulated further investment in R&D and plant expansions in the dairy ingredients sector. If the proposed rule had been in place in 2002 when *Carb Countdown* was developed, the product's developers might well have chosen to incorporate soy protein rather than whey and milk protein, in order to save money and enhance potential profits. Certainly, the proposed rule would have encouraged such a choice.

It is possible that anxieties over possible changes to federal milk pricing policy are already affecting market innovation, as reflected by a shifting market focus on lower protein dairy beverages, such as Starburst dairy beverages from Bravo Foods. This product is made from milk, cream, whey protein isolate, and nonfat milk, translating to a 1.8 % milk-derived protein content. We believe manufacturer concerns over the stability of federal policy is one reason why there is a push for lower dairy protein products.

If promulgated, the new rule will immediately encourage beverage makers to substitute vegetable proteins in place of milk proteins, in order to avoid both higher costs and higher regulatory burdens.

Further, the discretion claimed by USDA in this proposed rule will further discourage investment into dairy processing technology. The less predictable a rule, the more threatening to investment. Since even the proposed criteria will not be definitive in the determining whether a product meets the Class I definition, then food processors are faced with a less predictable regulatory environment. Food processors would likely resort to increased use of non-dairy ingredients in an attempt to lower the risk that a new product will later be pigeon-holed into Class I. If this happens, inevitably research investment will pour into development of non-dairy ingredients, and away from dairy-derived ingredients. Moreover, the encouragement of soy protein substitution for milk-derived proteins will also negatively affect the nutritional quality of beverage products. This is because soy protein is inferior to milk and whey protein, when evaluated across most nutritional measures.

Regardless of the intent behind the proposed rule, it sends a simple, unavoidable signal to the food industry: the more dairy ingredients you use, the more likely that your product will be ensnared by future changes to dairy's regulatory environment, and thus the more unpredictable are your future costs. It is hard to imagine how this can accrue to the benefit of dairy producers or processors.

IV. CONCLUSION

Glanbia strongly opposes the proposals to incorporate a true protein standard and to expand USDA's discretion in determining whether a product should be classified as fluid milk. The proposals would discourage the use of milk proteins, raise costs on dairy processors, deter investment into future dairy technology, and limit opportunities for growth within the dairy sector. In short, the proposals are good for neither dairy producers nor dairy processors. If the U.S. dairy industry is to realize its potential as an efficient, competitive player both in global dairy markets and at home, then dairy policy must encourage innovation and growth. The proposed rule would accomplish neither.

Sincerely,

Jeff Williams
President & CEO
Glanbia Foods, Inc.