

BEFORE THE UNITED STATES DEPARTMENT
OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

In re:)
Milk In the Northeast and) Docket Nos.:
Other Marketing Areas) AO-14-A72, et al
) DA-03-08
)

**POST HEARING COMMENTS SUBMITTED ON BEHALF OF O-AT-KA
MILK PRODUCTS COOPERATIVE, INC.**

I. INTRODUCTION

Thess comments are submitted on behalf of O-AT-KA Milk Products Cooperative, Inc., with respect to the proposals heard October 21, 2003, in Alexandria, Virginia. O-AT-KA is a federated cooperative owned by the dairy farmers of Upstate Farms Cooperative, Inc., Dairylea Cooperative Inc., and Niagara Milk Producers Cooperative, Inc. O-AT-KA owns and operates a manufacturing plant at Batavia, New York which produces evaporated milk products, nonfat dry milk, butter, and other specialty products.

These post-hearing comments are filed on behalf of O-At-Ka with respect to proposals 1 and 2 in the hearing.¹

**II. PROPOSALS 1 AND 2 SHOULD BE ADOPTED TO CORRECTLY CLASSIFY
MILK AND CREAM USED TO PRODUCE EVAPORATED AND SWEETENED
CONDENSED MILK PRODUCTS**

O-At-Ka requested this hearing for the urgent purpose of amending all federal orders to

¹ O-At-Ka joins in and supports the comments of ADCNE with respect to Proposal 3.

correctly classify and price milk and cream used to produce evaporated and sweetened condensed milk products in consumer type packages. The classification of these products should be changed from Class III to Class IV. O-At-Ka thanks the Department for the opportunity to address this problem which is of significant and urgent importance to it and its dairy farmer owners. The basis for adopting the proposals can be succinctly summarized, without reiterating in full the uncontested testimony of the witnesses at the hearing:

1. Evaporated and sweetened condensed milk products in consumer type packages have been in the lowest use classification for decades in the federal order system. This was clearly explained in the 1974 classification decision where USDA rejected a higher classification, noting: “A Class II classification should not apply to evaporated or condensed milk or skim milk in consumer-type containers Such storable products should remain in the lowest price class. A Class III classification for producer milk in these products will permit such uses to remain as a competitive outlet for milk surplus to the needs of the Class I market. Such products made from milk regulated under these orders must compete over wide areas with same products processed from ungraded milk or milk [not priced under the federal orders].” 49 Fed. Reg. At 8491 (March 5, 1974). This rationale remains applicable today.

2. The Federal Order reform implemented in 2000 moved the system to end-product, multiple component pricing for manufactured products in the federal orders. Class III pricing is now for cheese products. Class III prices are derived from the price of cheese, make allowances for cheese, and yields for cheese. Evaporated and sweetened condensed milk products in no way compete with cheese in product use. They are similar to powdered milk in the length of shelf life; they do not need refrigeration; and their yield is based on nonfat solids and not based on protein. Thus, these products fit in the same class as powdered milks in the reformed federal

order system, given their properties of storeability, nonfat solids-based yields, and long shelf life.

3. Current order pricing does not assure handler price uniformity for these uses.

Because the products are solids based, not protein based, pricing ingredients on a protein basis provides the context for unequal prices among federal order handlers since product yields are not based on protein while ingredient cost is protein based. With higher protein content typically in the fall, it is difficult to recover the cost difference associated with the protein price under Class III. This is made up for to some extent in the spring and summer when protein is lower than average but it simply makes more sense to price the components that are of value; nonfat solids, not protein and lactose. Changing these products to Class IV will place the federal order manufacturers of evaporated milk on a level playing field in terms of their incoming milk composition.

4. While federal order reclassification is necessary on its own terms, the absolutely devastating competitive inequities with the largest producer of evaporated milk products located in California provides an added, and urgent, basis for changing the federal order classification. For the month of September, the price difference between the California 4a and the Federal Order Class III price is more than \$4.00 per hundredweight. On a finished product basis, this amounts to about \$1.72 per case (24/12 oz), a difference which guarantees that federal order manufacturers are basically shut out of any markets which the California manufacturer chooses to compete for on the basis of price.²

5. All of the federal producers of these products are small businesses. The major

² In the interest of the competitive bidding process for government and other contracts, federal order prices should accommodate more than one company's submission of competitive bids by putting the potential bidders on a fair and equitable regulatory basis. As testimony demonstrated, that is not the case at present.

non-federal competitor is a large, multi-national enterprise. Without the adoption of these proposals, federal policy would de facto tilt against the small businesses, a result which must be avoided. This is but another important reason for the adoption of proposals 1 and 2.

The record in support of proposals 1 and 2 is clear, concise, and uncontested. The proposals should be adopted.

III. PROPOSALS 1 AND 2 SHOULD BE ADOPTED ON AN EMERGENCY BASIS

It is imperative that proposals 1 and 2 be implemented at the earliest possible time. The current differences in price between Class III and IV are causing irreparable harm to the federal order manufactures of evaporated and sweetened condensed milk products. There is the real threat of permanent loss of sales to non-federal order producers, a result which is not in anyone's interest, including the federal government which is a major consumer of these products.

The record of this hearing – detailed justification of the proposals, support from both propducer and handler interests, urgent economic circumstances, and no controversy over the merits of the proposals – is a clear basis for the most expedited rulemaking procedures.

O-At-Ka urges the Department to go directly to a final decision, omitting a recommended or interim decision, and implement the proposals at the earliest possible date.

IV. CONCLUSION

On the basis of the foregoing comments, and on the basis of all the uncontested evidence presented at the hearing, O-At-Ka requests that proposals 1 and 2 be adopted immediately on an emergency basis.

RESPECTFULLY SUBMITTED,

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