

June 30, 2003

Deputy Administrator
USDA/AMS/Dairy Programs,
STOP 0225, Room 2968-S,
1400 Independence Avenue, SW,
Washington, DC 20250

Re: Classification Proposal

Dear Deputy Administrator:

Dairy Farmers of America is concerned about the increase in fluid consumable milk products being produced and marketed that are classified as Class II because of the formulation standard present in 1000.15(b)(1), "... any product that contains by weight less than 6.5 percent nonfat milk solids, ...". It appears that this segment of the dairy case is growing rapidly.

The original intent of the Order program was to allow dairy farmers to share in the market returns of higher valued fluid consumable products. We support the position that any product formulated from milk solids for beverage consumption should be regulated as Class I product and would propose that Federal Order provisions be modified to reflect that reality.

As a part of the recent call for proposals dealing with evaporated milk (known generally to the industry as the O-AT-KA proposal) we would like to submit a request for a proposal to deal with this classification issue also. Currently fluid milk products in bulk inventory are Class IV. Given that the fluid milk product definition directly impacts what is included in Class IV inventories, it is appropriate to incorporate proposals on amending the fluid product definition with this hearing notice.

We have discussed this issue with other of our supplier partners and feel that this is an appropriate direction to take. As such we would request that the following language be included in the hearing that may be called to discuss the O-AT-KA proposal.

§1000.15

- (a) Except as provided in paragraph (b) of this section,
fluid milk product means any product containing milk

or milk products in fluid or frozen form containing less than 9 percent butterfat that are intended to be used as beverages. Including any beverage products that are flavored, cultured, modified with added nonfat solids, sterilized concentrated, or reconstituted. As used in this Part, the term concentrated milk means milk that contains not less than 25.5 percent, and not more than 50 percent, total milk solids.

(b) The term fluid milk product shall not include:

- 1) Plain or sweetened evaporated milk/skim milk, sweetened condensed milk/skim milk, formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers, and whey; and
- 2) The quantity of skim milk equivalent in any modified product specified in paragraph (a) of this section that is greater than an equal volume of an unmodified product of the same nature and butterfat content.

We may wish to provide some additional language to further refine our position but it would not compromise the intent of our premise that products "intended to be consumed in fluid form" be classified and priced as Class I.

For the purpose of a record, we would support separating the O-AT-KA proposal and testimony, from the proposal we are making if such action helps to move along the O-AT-KA request in the hearing process.

If you have any questions about our proposal please call me directly.

Sincerely,

Elvin Hollon
Director of Fluid Marketing and Economic Analysis
Dairy Farmers of America