

BEFORE THE UNITED STATES DEPARTMENT OF AGRICULTURE

In the Matter of:) **DOCKET NO. AO-14-A73, et al.; DA-03-10**
MILK IN THE NORTHEAST)
AND OTHER)
MARKETING AREAS)

COMMENTS BY SELECT MILK PRODUCERS, INC. AND CONTINENTAL DAIRY PRODUCTS, INC. ON RECOMMENDED DECISION

I. Introduction, Standing, and Summary

Select Milk Producers, Inc. (Select) and Continental Dairy Products, Inc. (Continental) generally support the Recommended Decision¹ and agree with the comments submitted by National Milk Producers Federation. (NMPF)

Select is a milk marketing cooperative that pools milk in the Southwest Milk Marketing Area, Southeast Milk Marketing Area, Central Milk Marketing Area, and Arizona-Las Vegas Milk Marketing Area.² Select has a pecuniary interest in the various producer settlement funds of those orders. Select also operates several plants that fractionate milk into different components through ultra-filtration, nano-filtration, and reverse osmosis technology resulting in an end product that is subject to Class I pricing. Continental is a milk marketing cooperative with milk marketed in the Mideast Milk Marketing Area, Southeast Milk Marketing Area, and Appalachian Marketing Areas.³

For purposes of these comments, Select and Continental rely upon the arguments submitted by(NMPF) regarding the appropriateness of and disagreeemnt with the Recommended Decision.

Select and Continental take the following positions:

¹ 71 Fed. Reg. 285 (May 17, 2006).

² (7 C.F.R. Parts 1126, 1007, 1032, and 1131).

³ (7 C.F.R. Parts 033, 1007, and 1005).

— Support the adoption of a 2.25% true protein basis for determining if a product is a fluid milk product.

— Support pricing milk protein concentrate used to produce fluid milk products by up classifying and charging products when reconstituted in to fluid milk products just the USDA does for non-fat dry milk which is reconstituted.

— Oppose excluding casein and caseinate from the pricing of Class I milk because for purposes of manufacturing dairy products there is distinction between milk protein concentrate and casein or caseinate.

— Oppose giving USDA broad latitude to define products that fall outside of the compositional standards proposed in the Recommended Decision.

— Oppose changing the definition of “meal replacement.”

— Oppose the exemption of “kefir” and “yogurt containing beverages” from the fluid milk definition.

Rather than restate NMPF’s well-reasoned arguments in support of these positions, Select and Continental will address just several of the issues by providing additional arguments.

There is no difference between casein, caseinate, and milk protein concentrates to justify a distinction in the fluid milk product definition. The fractionization of milk is now commonplace, not rare. SNF is thought of in terms of its component protein, lactose and minerals or casein proteins, whey proteins, lactose, calcium and other minerals or even specific proteins. Some of these components, generally the protein, are valuable and some are not valuable, generally lactose. The ability to further separate casein proteins from non-casein proteins is commonly known and available technology. Casein makes up the greatest part of the milk protein (approximately 87.5% of the true protein). The technology also exists to replace milk protein concentrates with casein or caseinate (in fact the term milk protein concentrate includes casein as a member).

Thus, there is no technological barrier to use casein as a replacement for milk protein concentrates. The Recommended Decision will create an economic incentive for the use of casein over fresh milk protein concentrates. This will be because there will be no Class I regulatory cost to the use of casein and casein's are readily available for import at often heavily discounted prices. Thus, the Recommended Decision will adversely impact producers and also create incentives to continue to skirt regulation.

Focusing on intended use for purposes of determining if a product is a fluid milk product or not is an inappropriate means of determining classification. From a standpoint of policy, intended use may be a factor used by the Secretary in establishing a regulation, but once the definition is established it must be subject to objective, not subjective terms. As NMPF points out in its comments, a person can determine the presence of protein or casein in a product independent of the Secretary's own statement, . The ability to measure the amount of that protein is readily available. Adding a criteria which is whether the Secretary determines if the "intent" is to be used as beverage or not, removes the classification of such milk products from the transparency of objective tests, to a hidden world in which decisions are made and producers have no way of knowing what the actual classification of the product is. It should be noted that at the hearing, proponents of the exemption would not acknowledge if their products were even now being classified under Classes I, II, or IV.

The use of "intent" in the process allows the introduction of a new level of information for which the Department is not equipped. Uses of focus groups, marketing questionnaires, product price-sales sensitivity, and other measures will further complicate, not simply the current system.

II. Summary

Select and Continental urge the Department to issue a Final Decision for approval by producers that will:

- Adopt a 2.25% true protein basis for determining if a product is a fluid milk product.
- Price milk protein concentrate used to produce fluid milk products by up classifying and charging products when reconstituted in to fluid milk products just the USDA does for non-fat dry milk which is reconstituted.
- Retain casein and caseinate in pricing Class I milk because for purposes of manufacturing dairy products there is distinction between milk protein concentrate and casein or caseinate.
- Require that products which fall outside of the compositional standards proposed in the Recommended Decision be consistently and definitively classified.
- Maintain the current definition of “meal replacement”
- Not exempt “kefir” and “yogurt containing beverages” from the fluid milk definition simply because they contain these ingredients.

Respectfully submitted,
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