



# National Milk Producers Federation

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October 31, 2003

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Order Formulation and Enforcement  
USDA/AMS/Dairy Programs  
Stop 0231, Room 2971-S  
1400 Independence Avenue, SW  
Washington, DC 20250-0231

Re: Docket No. AO-14-A72, et al.; DA-03-08 (Reclassification of evaporated or sweetened condensed milk in a consumer-type container; reclassification of bulk inventories.)

Dear Ms. Carter,

The National Milk Producers Federation represents nearly three-quarters of America's 70,000 commercial dairy farmers, through our 34 member cooperative associations.

We support the adoption, on an emergency basis, of proposals 1 and 2 discussed at the hearing held October 21, 2003. We believe, with the proponents, that evaporated and sweetened condensed milk in consumer-type containers are more appropriately associated with milk powders and butter, than with cheeses. It is, essentially, a storable form of milk that can be applied to various uses. This is distinct from the uses of most Class III skim milk in products that are irreversibly processed into cheese and similar products.

Regarding Proposal 3, to classify bulk fluid milk and cream inventories at the lowest priced class, we have concerns about the details required for implementations. These concerns compel us to oppose its adoption on an emergency basis. This apparently simple and justifiable proposal requires a series of complicated conforming changes to each order whose effect cannot be judged before USDA has offered a proposed rule including such changes.

Our positions on these proposals are detailed in the attached brief.

If you or your colleagues have any questions, please call me. Thank you for the opportunity to comment on these proposals.

Sincerely,

Roger Cryan  
Director of Economic Research

e-cc: Richard McKee, Deputy Administrator  
Clifford Carman, Associate Deputy Administrator

**Post-Hearing Brief**  
**On Docket No. AO-14-A72, et al.; DA-03-08**  
**Reclassification of evaporated or sweetened condensed milk in a consumer-type container; reclassification of bulk fluid inventories**

**Introduction**

The National Milk Producers Federation, headquartered in Arlington, VA, develops and carries out policies that advance the well-being of U.S. dairy producers and the cooperatives they collectively own. The members of NMPF's 34 cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of 60,000 dairy producers.

The Federation is submitting this brief in support of proposals 1 and 2, providing for the reclassification of evaporated and sweetened condensed milk in consumer-type containers from Class III to Class IV.

However, regarding Proposal 3, providing for the classification of fluid milk and bulk fluid cream inventories in the lowest price class for the month, we are opposed to handling this proposal on an emergency basis. We cannot judge this proposal without the conforming changes to other sections which it requires.

**Proposals 1 & 2**

These proposals, by O-AT-KA Milk Products Cooperative, Inc., Diehl, Inc., and Milnot Holding Corporation, call for the reclassification of "evaporated or sweetened condensed milk in a consumer-type package" from Class III to Class IV.

Class III is fundamentally a class for cheeses and their substitutes, consistent with the cheese-based price formula. Class IV is a class for milk ingredients such as butter and milk powders. Bulk condensed or evaporated milk are intermediate products which are appropriately followed to their ultimate use; however, when these products are packaged for consumer use, they are more appropriately assigned to Class IV, as other "finished" milk ingredients are. They bear no resemblance to cheese, and are more similar to butter and instant milk powder packaged for consumer use. On this basis alone, the reclassification of these products is justified.

In addition, we encourage USDA to consider the complementarity of Federal order regulation with state regulation, where such complementarity contributes to the general and national objective of the Agricultural Marketing Agreement Act "to establish and maintain orderly marketing conditions for agricultural commodities in interstate commerce", and especially where such complementarity contributes to orderly marketing within the designated Federal milk markets, as in this case. A order amendment, such as this proposal, must be reasonable in and of itself; however, its compatibility with state regulation can contribute to orderly marketing both in and outside of Federal milk marketing areas, and so contribute to the Act's objectives.

We support handling this action on an emergency basis to remove the competitive disadvantage now imposed on a Federally-regulated, producer-owned handler.

### **Proposal 3**

This proposal, by New York State Dairy Foods, Inc., calls for reclassification of inventories of bulk fluid milk and cream products from Class IV to the "lowest price class for the month". We must oppose the granting of this proposal on an emergency basis and request that, if positive action is to be taken on it, a proposed rule be issued, with generous opportunity to comment on such proposed rule.

Superficially, Proposal 3 is a reasonable change, allowing processors to avoid advancing money to the pool that could be returned for ultimate use in a lower priced class. We also believe that the "lower-of" concept for inventories is supportable as an analog to the "higher-of" principle for Class I milk.

However, the requested change to §1000.40(d)&(e) requires conforming changes to §§1000.44(a)(7), 1001.60(f), 1005.60(c), 1006.60(c), 1007.60(c), 1030.60(g), 1032.60(g), 1033.60(g), 1124.60(f), 1126.60(g), 1131.60(c), and 1135.60(f). These changes are complicated enough, and their implications serious enough, that the effect of this proposal cannot be judged without them.

Only a preliminary review reveals the complexity of the current provisions dealing with inventories, which would be further complicated by the proposed change. Under the current language, inventories are treated as follows:

- 1) Ending inventories are assigned to Class IV. (§1000.40(d)(2))
- 2) Beginning inventories are allocated to class utilization after several other sources of milk, so that the Class IV utilization represented by ending inventories may be allocated to other supplies of milk, even if there is no decrease in inventory from beginning to end of the month. This means that last month's Class IV inventories are often up-allocated to higher classes. (§1000.44(a)(7))
- 3) The handler's obligation to the pool is increased by the difference between this month's Class I, II, or III price and last month's Class IV price, times the volumes up-allocated to each Class. (§1xxx.60)

It is unclear exactly how the second step and, especially, the third step would be revised to accommodate the lower-of pricing for inventories, particularly in months when the lower price class changes.

If a proposed rule is contemplated by the Department, several questions must be answered to the proposed change. Following the same steps as above:

- 1) Under the proposal, ending inventories are assigned to lowest price Class. (§1000.40(d)(2))

2) Presumably, beginning inventories would be allocated in series from the lowest price class to the highest price class. This is simplest and most consistent with the principal underlying the proposal, especially since there exists the possibility that Class II or I could also be the lowest price class. Inventories would still often be up-allocated to higher classes. (§1000.44(a)(7))

3) This step seems to offer three logical conforming options in §1xxx.60. The handler's obligation to the pool is increased by the difference between this month's Class I, II, III, or IV price and last month's lowest class price, times the respective volumes of milk designated in one of the three following ways:

a) Any milk changing class at this step. For example, if the lowest price class changes from III to IV, then inventories that fall into the lowest price class in the second month would be credited/debited for the difference in this month's Class IV price and last month's Class III price.

b) Any milk not remaining in the lowest price class at this step. For example, if the lowest price class changes from III to IV, then inventories that fall into the lowest price class in the second month would not be credited/debited for the difference in this month's Class IV price and last month's Class III price, but inventories that are up-allocated to Class III would be credited/debited for the difference between this month's and last month's Class III prices.

c) All milk allocated at this step. That is, all milk allocated at this step would be credited/debited for the difference between this month's class price and last month's lowest class price.

This decision is too complicated not to allow the industry an opportunity to comment on the conforming choices made by the department. For this reason, Proposal 3 should not be adopted on an emergency basis.

## **Summary**

The National Milk Producers Federation supports the adoption of Proposals 1 and 2 on an emergency basis, recognizing the potential harm to regulated handlers and their producer-owners associated with any delay.

At the same time we cannot support Proposal 3 without additional detail, and we urge the Department to issue a proposed rule, if positive action is contemplated on this proposal. Although the underlying concept of the proposal is justifiable, the costs of further complication to Federal order regulation may not be worth its apparently modest benefits.