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What is Milk?

Recently, USDA announced its recommended decision regarding the definition of fluid milk. At the core of the “What is Milk?” debate is the introduction of low-carb milk-like beverages in half-gallons and gallons that look like milk, sit on a retail shelf next to milk, and compete with milk. Initially USDA classified these beverages as Class I, the highest-valued category, even though these products cannot be labeled as milk and do not meet USDA’s fluid milk standard of containing 6.5 percent milk solids.

In October 2005, a USDA administrative law judge determined that the low-carb beverage is not a class I product because it contained, by weight,

less than 6.5 percent milk solids as required by federal regulation. As a result, the manufacturers of these low-carb beverages are entitled to a refund of more than \$2.5 million which reflects the difference between the Class I and Class II value that they paid as a result of the agency’s initial classification.

Even before the judge’s decision, efforts were underway to broaden the Class I fluid milk definition. USDA, at the request of the largest dairy cooperative, Dairy Farmers of America (DFA), held a hearing in June 2005 to reconsider which dairy products should be classified as Class I fluid milk products. DFA contended that many fluid consumable milk products are currently classified as Class II products because of the current formulation

standard.

What’s the big difference between Class I and Class II? Well, it’s *money*. Class I has the highest regulated milk price, which is reserved for fluid milk. Milk used in Class I fluid milk products is the only milk that must be “pooled” under the federal order system. Class II products include yogurt and ice cream. The price of milk used to manufacture Class II products averaged about \$2.75/cwt. less than the average Class I price from 2000 to 2005. Clearly, DFA is interested in claiming as much of the \$2.75/cwt. as possible for its members.

USDA considered 12 proposals, listened to 4 days of testimony,

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KEN’S CORNER



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USDA’s recommended decision on the fluid milk definition appears

to have something in it for most parties. First, it allows USDA greater subjectivity in classifying milk products.

Second, it allows dairy producers to capture a little bit more of the Class I market. And, third it clearly defines drinkable yogurts as a Class II product.

What the decision doesn’t do is also clear. The decision provides for more regulation not less. The decision places milk protein concentrate at a negative

competitive position vs. whey protein concentrate. And as soda machines are being ushered out of the schools, the dairy industry needs to seize the opportunity to capture the nutritional beverage market. This is better done through product innovation than by regulating or pricing ourselves out of this market. **MCT**

On the wane

The Memorial Day weekend kicked-off the summer grilling season in a big way as warm temperatures were posted across most of the nation. As temperatures rise, milk production will fall from spring's peak levels into the seasonal summertime lows. At the same time, the cheese and butter markets are expected to creep higher while the powder markets

MCT Forecast					
	Block*	Barrel*	Class III	Butter*	Class IV
May	1.1861	1.1669	10.85	1.1775	10.35
Jun	1.2350	1.2100	11.30	1.1875	10.50
Jul	1.2550	1.2300	11.50	1.2150	10.70
Aug	1.2850	1.2600	11.75	1.2425	10.85
Sep	1.3325	1.3075	12.10	1.2750	11.00
Oct	1.3500	1.3250	12.50	1.3000	11.15

** Block, barrel and butter are monthly averages of CME prices.*

continue to decline. May was a big month for government purchases of nonfat dry milk

powder, with more than 27.2 million pounds going into government storage. **MCT**

Key changes...

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and reviewed 16 post-hearing briefs prior to releasing its recommended decision earlier this month. USDA's recommended decision includes some key changes and some room for interpretation. In the decision, USDA maintains the current requirement that fluid milk contain 6.5 percent nonfat solids, but also incorporates an equivalent 2.25 percent true protein standard in determining whether a product meets the fluid milk definition. True protein measures the actual protein in milk and does not include the non-protein nitrogen.

In addition, USDA adds that the minimum 6.5 percent nonfat solids and the 2.25 percent true protein criteria are not intended to be absolute determinates of whether a product meets the fluid milk product definition. The department's primary criteria will be the "form and intended use" of the product as required by the Agricultural Marketing Agreement Act.

In other words, even if a new beverage does not meet the minimum nonfat solids and protein criteria, but it looks like milk and is used like milk, USDA will likely classify it as Class I milk.

USDA proposes to measure all milk-derived ingredients, such as casein, calcium, sodium caseinates and whey and whey proteins to calculate the percent of true protein and nonfat milk solids contained in the product. However, these ingredients will not be priced at the Class I solids not fat price.

This is not the case for nonfat dry milk (NFDM) and milk protein concentrate (MPC). For example, if a fluid bottler enhances the nonfat solids in a gallon of milk by adding NFDM or MPC, the bottler will pay the market price for the NFDM and MPC, but also pay into the Federal Order pool the differential in the skim price from the Class IV to Class I.

Other Key Points

USDA's recommend decision exempts drinkable yogurts containing

at least 20 percent yogurt by weight, as well as Kefir from being classified as Class I. In addition, infant formulas and dietary use formulas are exempt from class I, regardless of packaging, as long as they are sold to the health care industry. This has given rise to the question whether infant formula sold at a retail outlet will be classified differently than infant formula sold to a hospital.

Just how does the recommended decision sit with industry? National Milk Producers Federation and DFA applauded USDA's decision while the International Dairy Foods Association expressed disappointment. The producer interest notes that the decision will prevent further farm revenue losses while IDFA is concerned that the recommended decision is going to discourage the use of some value-added dairy proteins in beverages.

Comments on USDA's recommended decision are due to USDA by July 17, 2006. USDA will review the comments and issue a final decision. **MCT**

