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April 29, 2004

Hearing Clerk, United States Department of Agriculture
Room 1083 – STOP 9200
1400 Independence Avenue, SW.
Washington, DC 20250-9200

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 Hearing Clerk,

This letter is sent in response to your solicitation for public comment regarding the request, on an emergency basis, to amend the classification of milk used to produce evaporated and/or sweetened condensed milk in consumer-type packages from Class III to Class IV in the Federal Marketing Areas.

Upon review of the transcript of proceedings of the hearing held on October 21, 2003 in Alexandria, VA, Nestlé USA believes that the request for emergency reclassification is based on data and statistics that do not reflect appropriately on the longer term historical reality and may not be in the best immediate and future interests of the consumer – both commercial customers as well as federal aid recipients through USDA purchasing programs.*

In view of the selective use of Class III and Class IV price data, USDA bid award data, and instances of contradictory information and projections within the hearing transcript, Nestlé recommends further investigation to ensure adoption of a decision that best represents the long-term needs of all parties.

Therefore, Nestlé respectfully requests that this decision be postponed for 90 days.



Louise Hilsen, Director Government Relations

* See Addendum "A"

Addendum "A"

The examples provided below are illustrative, not exhaustive, in nature. All page numbers refer to the transcript of the proceedings from the October 21, 2003 hearing conducted by the USDA Administrative Law Judge in Alexandria, Virginia. Nestlé is prepared to provide additional examples of the selective/faulty and contradictory data and/or conclusion cited by hearing participants.

Pages 35,36,37,39 - Class III and Class IV milk prices entered as Exhibit 7A for September 2003 only – this gives very limited view of price variances that have existed, generally with Class III lower, for 10 years.

Page 61 – In answer to the question “what is the right classification for evaporated milk?”, O-AT-KA representative answers: “There is no question in our minds that evaporated milk is a cheese”. This being the case, proper FMMO classification for evaporated milk would be Class II – for soft cheese, or Class III – for hard cheese.

Page 71 - Addressing, in its prepared statement, its disadvantage as an FMMO Class III milk user, Milnot states – “The most recent evidence of this disparity, being the award of 100 percent of October through December 2003 USDA bid evaporated milk to Nestle Food Company, who utilizes California Class IVa milk in the manufacture of their evaporated milk”. This statement fails to mention that in the previous Quarter (July through September 2003) 84.9% of the bid was awarded to FMMO Class III milk users.

Pages 100,101,102 – The economic consultant representing New York State Dairy Foods, Inc. gives a broader and more objective view of the Class III and Class IV price variance history as well as a longer-term view of future potential milk values that certainly seems contrary to the data and opinions used by other hearing participants as the basis for the need for emergency reclassification.