Select Milk Producers, Inc.

Testimony of Chris Allen

In Support of Proposal 10

1. Introduction

My name is Chris Allen. I serve as the Senior Director for Industry Relations and Analytics at Select Milk Producers, Inc. I hold a Bachelor's and Master's degree in Economics from The University of Texas at Arlington. I have worked in the dairy industry since 2008. Among my responsibilities are market analysis and economic policy. In conjunction with Select's staff, I have analyzed and developed the three proposals submitted by Select and noticed for consideration at this hearing. My testimony today addresses Proposal 10 related to butterfat recovery.

2. Overview of the Proposal

Select's Proposal 10 would update the factors for butterfat recovery in the formulas for protein and cheese to reflect the currently achievable (and actually achieved) factor of 93%. The change necessitates a corresponding increase in the butterfat yield in cheese to 1.624. This change to the butterfat yield in cheese does not consider the correction of farm-to-plant shrink.

3. Discussion of Past USDA Decisions

The current butterfat recovery factor of 90% originated with the adoption of the 2002 Final Rule, which reasoned:

> The recommended decision stated that even though many cheese makers may be able to achieve a higher fat retention in cheese, the use of the 1.582 factor representing 90 percent fat recovery in cheese continued to be appropriate. The recommended decision also stated that as a result of the 90 percent level, butterfat in cheese was not overvalued, and those cheese makers who fail to recover more than 90 percent of the fat would not suffer a competitive disadvantage. The

> preponderance of the record indicates that most cheese manufacturers should be able to obtain a 90 percent butterfat recovery.[1]

In the hearing preceding the 2002 Final Rule, Select and others argued that the factor should be higher, relying "on hearing testimony that butterfat recovery in cheddar cheese generally ranges between 90 and 93 percent, although Kraft testified that their butterfat recovery is lower. The commenters favored use of a factor that reflected 91 or 92 percent fat recovery because that level of recovery is common."[2]

This argument was again presented in the 2007 formula hearing. Again, USDA declined to increase the recovery factor. In its reasoning then, USDA concluded:

> While the record contains evidence of what butterfat recovery in cheese production is possible by the use of more modern manufacturing methods and technology, the preponderance of evidence reflects that many cheese manufacturers generally achieve butterfat recovery near 90 percent. It is important that the product-price formulas reflect current market conditions, not market conditions that may be possible but not widely achieved or not reflective of general industry wide conditions. Accordingly, this decision rejects adoption of [a 94% butterfat recovery factor].[3]

4. Rationale for Proposal 10.

Select thanks USDA for noticing Proposal 10 to consider this element of the pricing formulas. Select's motivation for changing the butterfat recovery factors is the same as its rationale for Proposals 11 and 12. We seek to have each element of the formulas accurately reflect the current state of the industry.

---

[1] Milk in the Northeast and other Marketing Areas, 67 Fed. Reg. 67906, 67929 (November 7, 2002) (referred to throughout as the "2002 Final Decision").

[2] 2002 Final Decision, 67 Fed Reg. at 67,929.

[3] Milk in the Northeast and Other Marketing Areas, 73 Fed. Reg. 35306, 35327, June 20, 2008 (referred to throughout as "2008 Tentative Partial Final Decision").

As with Select's other proposals, the formula changes that would result from the adoption of proposal 12 will have an impact on the components, class, and producer prices sent by the federal milk marketing orders. Our intent, however, is not principally driven by increasing prices, but by achieving formulas that arrive at both an accurate and precise measurement of the value of producer milk. Some of the proposals under consideration in this hearing result in lowering the component, class, and producer prices. Others will have the opposite effect. Yet USDA's consideration of all these proposals should be guided not by the impacts on the prices but on the determination as to whether the adoption of any proposal will result in formulas that better reflect the actual value of milk produced by the nation's farmers.

5. Analysis of Price Impacts

The adoption of Proposal 10, as measured by an analysis of five and 10-year averages, are reflected in the following table. Based on this analysis, we would expect modest increases in the value of protein and in the Class III price overall.

Five Year Average

	Current	Proposal 10 (Butterfat Recovery)
Butterfat Price	$2.3960	$2.3960
Protein Price	$2.6961	$2.7104
Class III Price	$17.98	$18.02

Ten Year Average

	Current	Proposal 10 (Butterfat Recovery)
Butterfat Price	$2.3475	$2.3475
Protein Price	$2.6505	$2.6646
Class III Price	$17.68	$17.72

I note also that the surveyed prices for butter and cheddar cheese could result in higher or lower Class III prices as a result of adopting proposal 10. The following table demonstrates the impacts of changing the butterfat recovery factor at various cheese and butter prices.

Class III Impacts of 93% Butterfat Recovery at Various Commodity Prices

	Butter Price						
	$1.50	$1.75	$2.00	$2.25	$2.50	$2.75	$3.00
Cheese Price							
$1.50	0.067	0.035	0.004	(0.028)	(0.060)	(0.092)	(0.124)
$1.75	0.113	0.081	0.049	0.017	(0.015)	(0.046)	(0.078)
$2.00	0.158	0.126	0.094	0.063	0.031	(0.001)	(0.033)
$2.25	0.203	0.172	0.140	0.108	0.076	0.044	0.013
$2.50	0.249	0.217	0.185	0.153	0.122	0.090	0.058

Depending on the relationship between cheddar and butter, adopting Proposal 10 will reduce prices in certain circumstances. Despite this fact, Select believes this change is warranted, in fact, it is compelled by, our desire to have formulas that accurately reflect current realities. As noted in my statements, ensuring the accuracy of the formulas is more important than the result.

6. Supporting Evidence

It is imperative that we introduce into this record the fact that Select and the majority of producer entities do not possess, or have not been authorized to introduce evidence they do possess, regarding the actual butterfat recoveries in the manufacturing of commodity cheddar cheese. The nature of federal milk marketing order hearings is such that the protection of proprietary or otherwise confidential business information precludes USDA from compelling manufacturers to offer evidence about their actual butterfat recoveries and other relevant data regarding costs and yields. Select fully supports efforts to implement mandatory, audited reporting of make costs, yields, and other relevant data for those firms subject to reporting sales to the NDPSR. USDA should not, however, defer action on updating the formulas while we optimistically wait for Congress to act.

While we respect the protection of such information and the confidentiality constraints upon Select which preclude us from submitting more probative evidence, such prohibitions illustrate the disadvantage facing the dairy farmer community. The fact is that producers are left to shadowbox opponents who are not obligated to engage. Select absolutely knows that not only is butterfat recovery at or above 93% achievable, we know that it is actually achieved.

Select has modeled its own cheese plants for the production of commodity cheddar and other cheeses. Select is part of multiple joint ventures that manufacture commodity cheddar. Select has conducted diligence regarding the acquisition of or partnerships with multiple cheese plants in

various locations throughout the country. Select employees and employees of Select's subsidiary companies have experience in manufacturing cheese in various styles. Our claims here are neither speculative nor theoretical; they are based on actual observations and experience.

We fully expect that opponents of increasing the butterfat recovery factors will offer testimony arguing that 90% remains a rational benchmark. And as testimony offered under oath, we do not doubt its veracity. But we must note that where there is no ability to compel testimony, there is little incentive for those market participants who achieve greater butterfat recoveries than those currently utilized in the minimum price formulas to testify.

The Van Slyke formula, upon which the entire Class III pricing formula is premised,[4] was first developed in 1894. Van Slyke observed actual butterfat retention achieved by New York cheese manufacturers.[5] This fact was testified to by Dr, David Barbano in the hearing preceding the 2002 Final Decision:

> The values selected for percent fat recovery in the cheese for calculation can be debated. However, a 93 percent fat recovery in the cheese is achievable with modern cheese-making equipment and was achievable in the mid-1890s when Van Slyke developed his cheese yield formula based on observations of cheddar cheese-making practice in many factories in central New York over a two-year period.[6]

A well-recognized academic text on cheese manufacturing teaches a "basic" Van Slyke formula incorporating the 93% butterfat recovery observed by Van Slyke. That formula, is set forth as:

---

[4] 2002 Final Decision, 67 Fed. Reg. at 67,928.

[5] Barbano, 1984; Kosikowski and Mistry, 1997, Bozic and Mykrantz, 2022

[6] Milk in the Northeast and Other Milk Marketing Areas, Transcript, p. 523-24 (May 9, 2000) online at https://www.ams.usda.gov/sites/default/files/media/DYTranscriptMay92000IIIVHearing2000.pdf

((0.93 Fat + Casein – 0.1) * 1.09) / (1.00 - % Moisture) = Cheese Yield[7]

Additionally, journal articles, research, and other publications utilize the same 93% recovery factor for analysis or reference.

Without the ability to introduce data establishing that commodity cheddar manufacturers can and do achieve butterfat recoveries of 93% or greater, Select will provide expert testimony to establish these facts. Professor Emeritus Dr. Nana Y. Farkye, Dairy Products Technology Center, Dairy Science Department, California Polytechnic State University, San Luis Obispo will testify about his research and observations on butterfat recoveries, as well as available equipment and technologies for optimizing butterfat recovery.

7. Regulatory Language

The adoption of Proposal 10 would require the following amendment to 7 C.F.R. Part 1000. Deletions are noted with strikethrough ext. Additions are boldfaced and underlined.

> 7 C.F.R. § 1000.50 (n)(3) Add to the amount computed pursuant to paragraph (n)(2) of this section an amount computed as follows:
>
> (i) Subtract 20.03 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by ~~1.572~~ **1.624**; and
>
> (ii) Subtract ~~0.9~~ **0.93** times the butterfat price computed pursuant to paragraph (l) of this section from the amount computed pursuant to paragraph (n)(3)(i) of this section; and

8. Conclusion

a. Recovery of 93% of butterfat used in the manufacturing of cheddar cheese was documented in the late 19th Century and incorporated in the formula, which provides the basis for the Class III pricing formula.

---

[7] Frank V. Kosikowski & Vikram V. Mistry, Cheese and Fermented Milk Foods, Vol. 1: Origins and Principles, p. 622-24 (3d ed., F.V. Kosikowski, L.L.C. 1997).

b. The 2008 Final Decision recognized that butterfat recoveries higher than 90% were achievable. In the intervening 15 years, there must be a recognition that what USDA recognized as achievable by some is now achievable by most.

c. While the industry consensus seems to be that a mandatory survey of manufacturing costs and yields is desirable, USDA should not delay adjusting the pricing formulas based on the possibility of obtaining legislative authority that might never come to pass.