UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

IN RE:	)	
	)	
MILK IN THE NORTHEAST AND	)	
OTHER MARKETING AREAS;	)	Docket Nos
PROPOSED AMENDMENTS TO	)	AO-14-A69, et al.;
TENTATIVE MARKETING	)	DA-00-03
AGREEMENTS AND ORDERS	)	

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LEPRINO FOODS COMPANY'S BRIEF AND PROPOSED FINDINGS AND CONCLUSIONS IN REGARDS TO PROPOSALS ON CLASS III AND CLASS IV MILK PRICING FORMULAS

I. INTRODUCTION AND SUMMARY.

There is pending before the United States Department of Agriculture ("Department") proposed amendments that would, among other things, modify the Class III and Class IV milk pricing formulas. The hearing on these matters was held May 8 - 12 in Alexandria, Virginia ("Hearing"). Leprino Foods Company ("Leprino") is submitting this Brief to assist the Department in its analysis of the testimony provided at the Hearing regarding Class III and IV milk pricing.

Evidence presented at the Hearing supports the following conclusions:

A. Product yields should be based on reasonably attainable yields under standard plant conditions.

B. Class III yield factors should account for product losses and cheese yield factors should be based on the VanSlyke theoretical cheddar yield formula adjusted for losses.

   1. The cheese yield from fat factor of 1.582 in the Class III protein price equation should be retained.
   2. The cheese yield from protein factor of 1.405 in the Class III protein price equation should be reduced to 1.367.
   3. The butterfat to protein relationship factor of 1.28 in the Class III protein price equation should be reduced to reflect the fat to protein ratio in average producer milk, which is approximately 1.19.
   4. The whey yield assumption should not be increased.

C. Manufacturing allowances should account for all costs, exclusive of the raw milk price, of acquiring raw milk and converting it into marketable finished products.

1. The make allowance for cheese should be set no lower than 16.87 cents per pound of cheese.
2. The make allowance for dry whey should be set no lower than 15.92 cents per pound of dry whey.

D. NASS price surveys should continue to be used to collect finished product price data for the purposes of the Class III and IV price formulas.

1. The NASS survey of cheddar cheese prices should be expanded to include 640-pound blocks.
2. The adjustment to the NASS survey price of cheddar cheese in 500-pound barrels should be reduced from three cents per pound of cheese to less than one cent per pound of cheese, especially if the moisture at which the barrel price is quoted is adjusted from 39% to 38%.

E. Class III and IV butterfat should be priced equally.

F. The Department should issue a recommended decision, followed by a period for written comments prior to issuing a final decision on this proceeding.

II. LEPRINO HAS A VESTED INTEREST IN THE OUTCOME OF THESE PROCEEDINGS.

Leprino operates eight mozzarella manufacturing facilities that receive milk regulated by the Federal Milk Marketing Orders ("FMMOs") to be amended by the Hearing process. These facilities are located in Waverly, New York; Allendale and Remus, Michigan; Ravenna, Dodge, and Hartington, Nebraska; Fort Morgan, Colorado; and Roswell, New Mexico. Additionally, Leprino operates plants in Tracy and Lemoore, California that are regulated by the state of California.

III. THE CONSEQUENCE OF A MINIMUM REGULATE PRICE THAT IS TOO HIGH IS DISORDERLY MARKETING.

There is little cost associated with setting the regulated minimum price too low since the market will compensate through the development of over-order premiums. (Stephenson (Cornell) Testimony, Tr. 1004 - 1005; Yonkers (IDFA) Testimony, Tr. 254 - 278; Taylor (Leprino) Testimony, Tr. 1718 - 1720; Hollon (DFA) Testimony, Tr. 1608 - 1614). However, there are substantial costs associated with setting the regulated price too high: a regulated minimum price that is too high results in disorderly marketing by encouraging additional milk production in a market that does not have a ready outlet for it. In the absence of existing plant capacity, cooperatives that are not subject to minimum price provisions step into the void and either transport the milk out of the region at great cost or build otherwise unneeded local plant capacity.

The potential for the minimum regulated price to generate disorderly marketing is increased under an end product price formula. End product price formulas contrast with survey-based milk prices in their rigidity. Since finished product prices are directly captured in the milk price, any adjustments made to the sales price to adjust for competitive or cost issues unrelated to milk will be reflected in the milk price. The rigid constraints of end-product price formulas based on yields that are too high or make allowances are too low will dramatically impact the investment, and therefore the plant capacity, of the industry. Therefore, if a regulated price is established by an end-product price formula, it is important to set that regulated price at a level that allows other market forces to work and adjustments to occur outside of the regulated system. (Yonkers (IDFA) Testimony, Tr. 254 - 278; Taylor (Leprino) Testimony, Tr. 1718 - 1720).

IV. PRODUCT YIELDS SHOULD BE BASED ON REASONABLY ATTAINABLE YIELDS UNDER STANDARD PLANT CONDITIONS.

Current pricing formulas utilize yield factors that represent the theoretical yield of a finished product from a given level of components at the vat, churn, or dryer. However, milk regulated by the FMMOs is priced at the weights and tests measured at the farm. Therefore, yield assumptions employed in the Class III and Class IV product price formulas must account for the losses inherent in the transportation, transfer, and conversion of milk into marketable finished products, including the losses that occur during farm to plant transfer, as well as within plant product losses.

Component losses between farms and plants occur in two forms: (1) components lost in proportion to general volume losses, and (2) fat lost due to its propensity to cling to surfaces, including the farm bulk tank, transmission hoses, and on the walls of the bulk truck tank. The volume losses are cited as ranging from 0.15% in regions dominated by large dairies to over 0.25% in regions dominated by small dairies (Taylor (Leprino) Testimony, Tr. 1728), with some processors experiencing losses up to 0.33% (Reinke (Kraft) Testimony, Tr. 1056). Fat losses are higher than protein losses proportionately because fat has a propensity to cling to surfaces. Differences between farm tests and plant fat tests average 0.015. (Taylor (Leprino) Testimony, Tr. 1728).

Additionally, significant component losses within plants related to transmission between vessels, as well as necessary cleaning protocols, are unavoidable. Similar to farm to plant losses, the loss of butterfat within a plant exceeds the loss of other components because of the propensity of butterfat to cling to surfaces. Within a plant, losses occur during receiving, pasteurization and separation, in piping, and other vessels throughout the cheese production and finishing process, and throughout the whey and whey cream recovery and finishing process. (Barbano (Cornell) Testimony, Tr. 651 - 654, 707 - 710, 749 - 750).

An expert witness from Ecolab testified that these within plant losses are in excess of 2%. Based on an analysis of the Biological Oxygen Demand ("BOD") in the effluent leaving 51 cheese plants, an average cheese plant loses 2.35% of the plant's BOD intake. The source of incoming BOD to a cheese plant is attributable to dairy ingredients. Importantly, the loss of 2.35% <u>understates</u> the overall milk component loss through the plant because it does not account for high BOD waste streams that are diverted to animal feed, land application or other disposal methods rather than being discharged to the wastewater treatment systems. (Lenahan (Ecolab) Testimony, Tr. 1251 - 1256).

The milk component losses inherent in assembling milk from farms and manufacturing that milk into finished products must be accounted for within the milk pricing system. Dr. Barbano advocated reflecting the losses as a cost factor in the make allowance. (Barbano (Cornell) Tr. 595 - 597). However, the cost associated with component and product loss is not constant; rather, it varies with the market value of the lost finished product yield. Since the loss directly impacts the actual yield from 100 pounds of milk measured at the farm, it is most logical to reflect these losses in the yield factor within the milk price calculations.

V. CLASS III YIELD FACTORS SHOULD ACCOUNT FOR PRODUCT LOSSES AND CHEESE YIELD FACTORS SHOULD BE BASED ON THE VANSLYKE THEORETICAL CHEDDAR YIELD FORMULA ADJUSTED FOR LOSSES.

The VanSlyke theoretical cheddar yield formula, upon which the current yield factors in the Class III protein price formula are based, estimates the quantity of cheese produced from components present in a cheese vat. As Dr. Barbano recognized, the formula itself does not allow for losses prior to the cheese vat. (Barbano (Cornell) Testimony, Tr. 598). The formula does recognize that not all protein or fat present in the vat is captured in the cheese, indirectly allowing for component losses after the vat. However, the pricing of all Class III butterfat at the butter value fully negates the allowance made through the VanSlyke yield formula for fat that is not captured in the cheese.

A. The cheese yield from fat factor of 1.582 in the Class III protein price equation should be retained. The 1.582 yield factor assumes that 90% of the fat present in the vat is retained in cheddar cheese. The 90% factor in the current formula reflects the many cheese vats still in use that were installed prior to the late 1980s and implicitly accounts for some of the farm to plant and within plant losses noted above.

Although testimony indicates that modern vats are capable of retaining 90% - 93% of the vat fat in the cheese, with an average retention of 91.5% (Barbano (Cornell) Testimony, Tr. 578), plants representing significant capacity operate today with fat retention at or below 90%. Prior to the technology introduced in the late 1980s and early 1990s that increased fat retention to the average 91.5%, fat retentions ranged from 82% to 89.5%. (Id., Tr. 638). Given the useful life and high capital cost of cheese vats, many of the less efficient cheese vats remain in use. (Reinke (Kraft) Testimony, Tr. 1070). Setting the fat yield factor above 1.582 effectively assumes a fat retention factor that exceeds the capability of significant existing plant capacity. To ensure continued orderly marketing of milk, it is important to set minimum regulated milk prices based on assumptions that are achievable by existing manufacturing plant capacity.

The 91.5% fat retention factor advocated by Dr. Barbano does not allow for any losses of fat prior to the vat. (Barbano (Cornell) Testimony, Tr. 598). The VanSlyke formula itself allows for the loss of the residual fat not retained in the cheese (in the case of a 91.5% fat retention, the 8.5% balance is potentially lost). However, the valuation of all farm-measured raw milk fat at the butter value through the Class III butterfat price eliminates the accommodation for losses that exists in the VanSlyke yield formula. Aggressive vat level theoretical fat retention assumptions are inappropriate for use in the context of farm to plant and within plant fat losses.

It is also important not to set the cheese yield of fat too high since fat that is sold in the form of whey cream is overvalued. (Taylor (Leprino) Testimony, Tr. 1761). Whey cream is generally sold at a discount to sweet cream. Historically, whey cream sales were indexed to the grade B butter market, which averaged $0.09 - $0.10 below the grade AA butter market. Additionally, whey cream does not command as large a multiplier as sweet cream. At a 135% multiplier, whey cream commands $0.135 per pound fat less than sweet cream. Since Class III butterfat is priced relative to the grade AA butter market, cheese maker returns on whey cream in this scenario are $0.135 below the returns contemplated under the price formula for sweet cream. This issue could be addressed technically by calculating the Class III butterfat price from a combination of the grades AA and B values (90% AA and 10% B, for example). However, this approach is not a proposal under consideration at this Hearing. Therefore, it is critical that the cheese yield of fat assumption not be increased to further exacerbate the overvaluation of fat. (Reinke (Kraft) Testimony, Tr. 1041, 1055-1057).

B. The cheese yield from protein factor of 1.405 in the Class III protein price equation should be reduced to 1.367. The protein yield assumption of 1.405 incorporated in the current formula is too high. The 1.405 yield factor assumes that true protein contains 83.3% casein. This assumption is higher than the casein composition of true protein in the general milk supply, which contains 82.2% to 82.4% casein. (Barbano (Cornell) Testimony, Tr. 525).

The theoretical vat cheese yield per pound protein calculated by the VanSlyke cheddar yield formula assuming 82.3% casein in 2.99 pounds true protein per cwt milk is 1.388 rather than the 1.405 that exists in the current formula. With typical farm to plant losses of 0.25%, the factor drops to 1.385 per pound of producer protein. Reducing the vat protein by half of the plant loss of 2.35% results in a yield of 1.367 per pound of producer protein. This is far less than the 1.405 incorporated in the current price formula and still does not fully account for losses within the system.

Methodologies discussed at the Hearing that establish yields based on an incremental yield analysis (Barbano (Cornell) Testimony, Tr. 527 - 533) are inappropriate for use in a multiple component pricing system because FMMOs are pricing all of the protein in milk at the yield, rather than the incremental protein relative to an average level. The incremental yield approach assumes that all of the 0.1 casein loss occurs only in the base protein and no losses occur on the incremental protein. The incremental approach would price a greater volume of cheese than can be expected from a given milk composition.

To illustrate this problem, the yields based on adoption of factors calculated on the incremental approach can be compared with the yields that are calculated directly using the VanSlyke formula.

The protein yield factor based on Dr. Barbano's incremental approach and assuming 82.3% casein is 1.446 as follows:

Cheese yield from 2.9915 # true protein = 4.1526 pounds
Cheese yield from 3.0915 # true protein = 4.2972 pounds
Incremental yield per 0.1# change in true protein = 0.1446
Incremental yield per 1.0# change in true protein = 1.446

The use of the protein yield factor of 1.446 and the fat yield factor of 1.582 while pricing 2.9915% true protein and 3.5% fat standardized milk results in the pricing of 9.86 pounds of cheese [(2.9915 * 1.446) + (3.5 * 1.582) = 9.86].

This factor can be tested by comparison with the yield result of the Van Slyke yield equation assuming the same milk composition. The VanSlyke formula is broadly accepted as an estimate of yields that can be attained from vat components and is used broadly by the industry to evaluate plant performance. Calculating the theoretical yield by applying the underlying assumptions of 90% fat retention and 82.3% casein in total protein to the VanSlyke yield formula calculates a yield of 9.690 as follows:

$$\text{Van Slyke cheddar yield} = \frac{[(0.90 * 3.5) + (.823 * 2.9915) - 0.1] * 1.09}{0.62}$$

$$= \frac{[3.15 + 2.4620 - 0.1] * 1.09}{0.62}$$

$$= \frac{5.512 * 1.09}{0.62}$$

$$= \frac{6.008}{0.62}$$

$$= 9.690$$

Therefore, adopting the incremental approach to estimating cheese yield of protein overestimates yield by 0.17 pounds cheese per hundred pounds of standardized milk [9.86 - 9.69 = 0.17] whereas using the average yield approach precisely calculates what can be produced from standardized milk. Therefore, the incremental approach should not be adopted and the average yield approach should be adopted.

However, the use of the average protein yield factor of 1.388 and the fat yield factor of 1.582 while pricing 2.9915% true protein and 3.5% fat milk results in the pricing of 9.69 pounds of cheese [(2.9915 * 1.388) + (3.5 * 1.582) = 9.69]. Clearly, using the average yield approach to calculating a protein yield factor is more consistent with plant operations and the results obtained using the VanSlyke yield formula.

C. The butterfat to protein relationship factor of 1.28 in the Class III protein price equation should be reduced to reflect the ratio in average producer milk, which is approximately 1.19. The incremental value of fat in cheese relative to butter is overstated by the 1.28 ratio in the current Class III formula because it overstates the average fat to protein content of producer milk. It results in significant distortions in the hundredweight price of milk. Effectively, at constant cheese and whey prices, the minimum regulated price of milk at average producer composition declines as butter prices increase. (Barbano (Cornell) Testimony, Tr. 517).

A review of FMMO data indicates that a more appropriate factor is 1.19. (Exhibit 52). This analysis is based on limited true protein data. USDA should review all available data and implement a butterfat to protein ratio that is reflective of producer milk in the Orders with significant Class III utilization.

D. The whey yield assumption should not be increased. Analysis presented by Dr. Barbano overstates whey yields in two significant ways. (Barbano (Cornell) Exhibit 17). One source of error is the result of an assumption that the cheese yield factor for protein has been based on a 75% casein in total protein. In doing a mass balance, he assumes the residual protein is available for sweet whey production. Since the 75% assumption is inconsistent with the current system (Brown (NAJ) Testimony, Tr. 1648 - 1667), he overstates the whey yield.

Additionally, Dr. Barbano's analysis assumes that all nonfat solids that are not captured in cheese are captured in whey. (Id.) Since it is not possible using commercially available technology to separate fat from the whey stream without other nonfat solids coming into the skim portion of the whey cream, this assumption is erroneous. Nonfat solids are disposed of in the form of whey cream and those solids are not available for the production of sweet whey.

VI. MANUFACTURING ALLOWANCES SHOULD ACCOUNT FOR ALL COSTS, EXCLUSIVE OF THE RAW MILK PRICE, OF ACQUIRING RAW MILK AND CONVERTING IT INTO A MARKETABLE FINISHED PRODUCT.

In addition to plant operational costs, these costs include management, interest, cost of capital, and marketing costs, among other things. These costs are all necessary aspects of producing and marketing the finished products for which prices are collected.

Although cost studies are critical references in making policy decisions related to make allowances, make allowances should not be adjusted lock-step to match a simple or weighted average cost from a study. By setting a make allowance at the simple average cost of manufacturing, inherently half of the plants are in a position of not recovering their costs. By setting a make allowance at the weighted average cost of manufacturing, inherently half of the plant capacity is in a position of not recovering costs. Over the long term, both scenarios discourage the kind of innovation and investment the industry needs. (Marshall (Northwest Dairy Association) Testimony, Tr. 1795). Therefore, USDA should use cost studies as reference points and set make allowances at levels no lower than the weighted average.

A. <u>The make allowance for cheese should be set no lower than 16.87 cents per pound of cheese</u>. USDA should use a combination of the California Department of Food and Agriculture ("CDFA") and National Cheese Institute ("NCI") survey results in establishing the make allowances for cheese. These studies are comprehensive and have been completed using sound data collection and auditing techniques. The calculated weighted average of the CDFA and the NCI cost studies is 16.87 cents per pound cheese. (Yonkers (IDFA) Testimony, Tr. 291). While USDA should consider implementing a higher make allowance in the interest of reducing the market intrusiveness of the minimum regulated milk price (see above concerning disorderly marketing), the make allowance should not be set any lower than the 16.76 cent weighted average of the CDFA and NCI studies.

The CDFA manufacturing cost surveys are the most comprehensive cost studies currently available. CDFA employs an accounting staff whose primary responsibility is collecting and analyzing cost information. The resulting cost studies are based on audited data compiled according to a consistent methodology. These studies have been fine-tuned, through many years of data collection and use, to support policy decision-making as to the appropriate level of make allowance used in the end-product price formulas used in California's regulated system. (Taylor (Leprino) Testimony, Tr. 1736 - 1737. Schiek (Dairy Institute) Testimony, Tr. 1155 - 1163). The CDFA study is highly reliable and should be used. (Coughlin (NMPF) Testimony, Tr. 194 - 195; Yonkers (IDFA) Testimony, Tr. 287, 293). A marketing cost should be added to the CDFA cost study since marketing costs are excluded from the study and marketing costs are incurred in order to sell the finished product. (Coughlin (NMPF) Testimony, Tr. 195). Specifically, the marketing cost from the NCI survey should be used since it is the only survey data in the record on marketing costs. (Yonkers (IDFA) Testimony, Tr. 291).

Although the methodology used in the CDFA studies results in the most accurate cost studies currently available, these costs are representative of California plants only and, therefore, may not be representative of the broader geography regulated under the FMMOs. To broaden the data set geographically, the NCI cost study conducted by Association Services Group should be used in conjunction with the CDFA data.

The NCI cheese study captures data from the geographic area outside California and was subject to review by economists with statistical backgrounds. The data collection and review methods are sound. Statistical outliers were identified for additional follow-up to ensure accuracy. This survey is more comprehensive in identifying costs associated with converting raw milk into marketed finished products than the Rural Business Cooperative Service ("RBCS") study. Furthermore, the NCI survey was mailed to all cheese plants identified on the USDA plant lists, regardless of ownership form, outside of California to capture the broadest possible population without being redundant with the CDFA cost study. (Yonkers (IDFA) Testimony, Tr. 289).

The RBCS study should not be directly used for the purposes of establishing the appropriate make allowance. The RBCS survey excludes costs, such as milk procurement staff, plant management costs, administrative costs, corporate overhead, marketing costs, interest costs, and capital costs that are necessarily incurred in the process of producing and marketing finished products. (Ling (USDA) Testimony, Tr. 69; Hollon (DFA) Testimony, Tr. 1594 - 1596; Olson (AFBF) Testimony, Tr. 842 - 845). The RBCS survey participants were restricted to cooperatively owned plants, limiting participation and the representation of data.

B. <u>The make allowance for dry whey should be set no lower than 15.92 cents per pound of dry whey</u>. The NCI whey cost study conducted by Association Services is the only current whey manufacturing cost study available. Consistent with the cheese study, the NCI whey study was subject to review by economists with statistical backgrounds. Statistical outliers were identified for additional follow-up to ensure accuracy. Additionally, the NCI survey was conducted through a broad solicitation of the industry, regardless of ownership form and location. Since CDFA does not conduct a whey cost study, California plants were included in the solicitation for participation. (Yonkers (IDFA) Testimony, Tr. 289 - 290; Taylor (Leprino) Testimony, Tr. 1737 - 1738). The NCI whey study shows a cost of $0.1592 per pound and the whey make allowance should be set at no less than that amount.

The whey cost study results are supported by analysis provided by expert witness, C.K. Venkatachalam, that shows that incremental energy and equipment costs alone comprise an additional $0.026 per pound processing costs relative to nonfat dry milk. The $0.026 understates the incremental cost of processing whey relative to nonfat dry milk since it does not include the additional staffing, cleaning, and maintenance associated with the additional equipment required for whey production that is not required for nonfat production. (Venkatachalam (Leprino) Testimony, Tr. 1386 - 1414). NMPF proposed that, in the absence of a whey study, the whey make allowance be set by adding an allowance to reflect these incremental costs for energy and equipment. (Coughlin (NMPF) Testimony, Tr. 190, 198). If this general methodology is applied to NMPF's new nonfat dry milk make allowance proposal of

$0.14, the resulting make allowance would be $0.1656 per pound whey. While it is not necessary to adopt this methodology because a sound whey make cost study does exist, this approach does serve to indicate that the whey cost study conducted by NCI does not overstate whey manufacturing costs.

VII. NASS PRICE SURVEYS SHOULD CONTINUE TO BE USED TO COLLECT FINISHED PRODUCT PRICE DATA FOR THE PURPOSES OF THE CLASS III AND IV PRICE FORMULAS.

The NASS survey volume represents a significantly larger volume of transactions than the Chicago Mercantile Exchange cash market. The NASS witness testified that "NASS has averaged eight to ten million pounds weekly compared with the CME which was for the most part I think they averaged between 300,000 and 400,000 pounds weekly" for 500 pound barrel volume, and "NASS has averaged roughly 45 million pounds weekly compared with the CME also somewhere on an average between 300,000 and 400,000 pounds weekly" for 40# blocks. (Milton (USDA) Testimony, Tr. 35).

Additionally, the NASS survey reflects fluctuations in premiums and discounts relative to the Exchange that are reflective of overall nationwide supply and demand conditions. The NASS prices are weighted within the month (Id, Tr. 53). This weighting of prices by volume serves to capture overall price trends more accurately by reflecting the week to week fluctuations in volume sales that often accompany moving markets.

A. The NASS survey of cheddar cheese prices should be expanded to include 640-pound blocks. Expanding the cheddar price by adding the 640 pound block series adds statistical validity to the survey and thus the regulated price. It is estimated that 640# block cheddar represents 27% of total U.S. cheddar production. (Reinke (Kraft) Testimony, Tr. 1043).

B. The adjustment to the NASS survey price of cheddar cheese in 500-pound barrels should be reduced from three cents per pound of cheese to less than one cent per pound of cheese, especially if the moisture at which the barrel price is quoted is adjusted from 39% to 38%.

Dr. Barbano noted the inconsistency between adjusting the barrel price to a 39% moisture price while grossing up its milk value assuming the lower yield associated with 38% moisture cheddar and recommended that either the price or the yield be changed to be consistent with the other. (Barbano (Cornell) Testimony, Tr. 540, 558). While, on the surface, this appears to be a flaw in the current system, it is not a flaw when considered in combination with the 3¢ barrel price add-on. In essence, under the current rule, the couple cents that the cheese price is reduced between 38% moisture and 39% is added back as part of the 3¢. (Taylor (Leprino) Testimony, Tr. 1723 - 1727).

The 3¢ historic block - barrel price spread is due to a combination of the difference in manufacturing cost between blocks and barrels (less than a penny), and the price moisture adjuster that is available to barrel sellers, but not block sellers in the marketplace. Cheddar barrels are typically produced at lower moisture levels but are priced in the marketplace based on dry matter. In other words, barrels are sold on a price per pound dry matter calculated by dividing the 39% moisture adjusted price on the Chicago Mercantile Exchange by 61% dry matter. Therefore, barrel pricing effectively credits the cheesemaker for every additional pound of dry matter above 61%. In contrast, to remain within legal specifications for cheddar, block makers produce current blocks at a moisture content that averages approximately 38%. They are not directly compensated for the reduced yield associated with this lower moisture level since cheddar block prices are not adjusted to the actual moisture content in the marketplace. At the average cheddar barrel price from 1990 - 1999 of $1.3009, this moisture adjuster equates to 2.13¢ per pound cheese. (Taylor (Leprino) Testimony, Tr. 1723 - 1727). Changing the pricing moisture of the NASS barrel survey to 38% would effectively be adding a couple cents that is already incorporated in the Class III price formula as part of the $0.03 addition. This duplication should be rejected.

VIII. CLASS III AND IV BUTTERFAT SHOULD BE PRICED EQUALLY.

Products currently in Class III, such as anhydrous and cream cheese, compete with butter. Additionally, whey cream does not get reclassified under the Order. Adjusting the butterfat price for Class IV without similarly adjusting the butterfat price for Class III would lead to cheese makers needing to further discount whey cream in order to compete with sweet cream.

IX. THE DEPARTMENT SHOULD ISSUE A RECOMMENDED DECISION, FOLLOWED BY A PERIOD FOR WRITTEN COMMENTS PRIOR TO ISSUING A FINAL DECISION ON THIS PROCEEDING.

The issues under consideration through this Hearing are complex and the potential implications of the decision are enormous. The issuance of a recommended decision with an accompanying comment period provides a critical opportunity for all sectors of the industry to provide input that will help refine and improve the final decision.

Respectfully submitted,

Sue M. Taylor

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