

STATEMENT OF ALISON L. KREBS**LEPRINO FOODS COMPANY**

at the

FEDERAL MILK MARKETING ORDER HEARING**Docket No 23-J-0067; AMS-DA-23-0031****Carmel, IN****September 19, 2023**

I am Alison Krebs, Director of Dairy and Trade Policy for Leprino Foods Company (Leprino), headquartered in Denver, Colorado. As I have previously provided my full introduction in prior testimony during this hearing, that information has already been entered into the record so I will not repeat it here. In this tranche of testimony, I will address Proposals 10 through 12.

Opposition to Proposals 10, 11, and 12: Yield Factor Adjustments

Leprino Foods opposes the three proposals from Select Milk: Proposal 10: to update butterfat recovery to 93 percent, Proposal 11: to update specified yield factors to reflect actual farm-to-plant shrink, and Proposal 12: to update the nonfat solids factor from 0.99 to 1.03.

Leprino's opposition to these proposals rests primarily on the fact that a more comprehensive review of the yield assumptions and the losses throughout the balance of the manufacturing process must be completed in conjunction with any changes. The VanSlyke yield formulas (which form the basis of the current cheddar yield factors) and the Select Milk proposal are premised on components in a vat. That yield formula does not address the other losses that occur throughout the production process. While we do not dispute that some cheddar plants achieve the 93% fat retention that is proposed, this was also the case at the time the current factors were established. The question is whether the vats that facilitate this higher fat capture have been fully implemented and whether the proposed capture rate is achievable across the broader industry. The broad industry data needed to make such updates is not currently available. Even more importantly, Select Milk does not address the fact that the current formula assumes that all fat not captured in finished cheddar is processed into Grade AA butter. This assumption neither recognizes in-plant milk component losses nor that butter manufactured from whey cream is not legal under standards for Grade AA butter.

In summary, these proposals essentially "cherry-pick" yield factors within the formula. If some of the yield factors are to be evaluated, then all yield factors should be considered. Finally, if this hand-picked group of factors is updated without broad, publicly available data, it would directly conflict with the logic USDA provided in the following quote from the 2013 Final Decision regarding the valuation of whey cream (p. 9274):ⁱ

"While there is record evidence from some manufacturers as to their individual saleable volumes and values of whey cream, that limited data does not provide for a reasonably complete assessment of the national market for whey cream and its various competing uses. Accordingly, Proposals 9 and 10 are not proposed to be adopted."

If, after a thorough vetting of all yield assumptions in the Class III formula in a future rulemaking proceeding, record evidence supports the proposed increase in fat retention to 93%, Leprino Foods would not oppose that the butterfat recovery factor be moved to 93%. However, that change must be

accompanied by a broader vetting of data and recognition of in-plant losses, along with proper valuation of whey cream rather than following Select Milk's proposals that cherry-picks factors to update.

If Congress grants USDA the authority to conduct regular, mandatory cost of processing studies, yield data (including butterfat recovery) could become part of this process, as well. When that study data is available, the industry would then have broad publicly available data from which to update these factors.

There is an important caveat for cheese if mandatory studies are used to standardize yield factors. Vat component data needs to be detailed in order to accurately identify yield drivers, including from fortification ingredients, rather than assuming that the vat components mirror those of the incoming raw milk. Fortification is the process of including other, more concentrated milk products such as NFDM, condensed skim, or ultra-filtered milk in the cheese vat along with milk. Fortifying the cheese make process with these products enables cheese makers to improve productivity and plant utilization, manage raw ingredient inventories, and manage input economics based on market price relationships.

If sufficiently detailed vat component and yield information is captured as part of a mandatory industry survey for the purpose of updating these factors in milk pricing formulas, Leprino Foods would be open to considering use of such mandatory study data to update relevant formula factors going forward. At a minimum, such data, if accurately collected, could validate both the yields and the losses that are inherent to manufacturing cheese and its related products.

Specific to Proposal 11, the proposal to eliminate the allowance for farm-to-plant shrink, many of the same principles noted immediately prior also apply here. The key difference being that instead of yields, we're considering the difference between the components and volume that are measured at the farm bulk tank vs. what is delivered to the manufacturer. The starting point of the VanSlyke yield formula is the dairy components in a cheese vat at the start of cheesemaking. However, milk priced under Federal Milk Marketing Orders is sampled for components and measured for volume at the farm. Elimination of the allowance for the farm-to-plant shrink denies the reality that not all volume or components measured at the farm make it into cheese vats. Losses occur prior to delivery to the manufacturer's milk silos, in addition to within the production process.

We applaud that Select Milk Producers has limited their own farm-to-plant volume losses. A simple calculation of average farm size using the data on their website suggests that their members deliver on average 231,898 pounds and assemblers are shipping multiple full truckloads from single locations daily.ⁱⁱ This contributes to significantly lower losses than the industry norm. Additionally, many Select Milk members scale their milk, weighing the trucks before and after loading and eliminating the measurement of milk that is lost in the transfer process between the milk bulk tank (or silo) and the truck.

While Select Milk's performance in this regard is laudable and aspirational, it is not reflective of the broader dairy industry. The average farm size in most milksheds is significantly smaller than that of the Select Milk's dairies. The 2017 Census of Agriculture noted just 8.8% of farms produced at least 39,500 pounds of milk per day.ⁱⁱⁱ Trucks hauling milk from multiple farms per load continue to suffer the same losses that existed at the time the farm to plant loss assumption in the formula was first established.

Milk volume and fat loss may differ significantly between the largest farms and smaller operations. For much of the equipment that is used even today, a hose full of milk is still lost on every farm between the farm's bulk tank and the truck. For cheese makers buying milk from smaller farms where a load includes multiple stops, this volume loss remains significant. Some milksheds are solely comprised of small farms, and those losses are consistent. Others have more diversity in size. If the current volume allowance is removed, this would incentivize cheese makers to buy from larger farms or penalize farms

that fail to provide a full load of milk. Creating this motivation would be detrimental to the smaller farms across our rural communities.

The characteristic of fat clinging to the inside of stainless is no different today for most farms than when the farm-to-fat plant loss was first acknowledged in the formula. Many milksheds are still dominated by smaller farms where the fat that remains on the inside walls of the farm bulk tank is meaningful relative to the volume of milk. Flushing farm bulk tanks with water is considered adulteration and is therefore illegal so the fat clinging to the inside of the bulk tank remains at the farm.

Similar to the volume loss differences across farm sizes, Select Milk can be considered an anomaly with regards to fat losses. Many of these large dairies sample each tanker for components directly from the tanker immediately after loading since the tanker is either being direct-filled or may represent a portion of the volume of a milk silo. Consequently, one would expect lower differences in fat tests than typically occur when components are sampled in the bulk tank and fat is left clinging to the interior surface of the tank, as is the case across most farms in the US.

There is no evidence that volume and fat losses do not occur between the farms and plants. While milksheds dominated by large dairies shipping full truckloads of milk tend to have less significant losses than their smaller counterparts, those reduced losses are not universal across all milksheds or Orders. The evidence clearly does not support adoption of Proposal 11; volume and fat loss still exist across the industry, even at today's most efficient and innovative plants. It is important that the farm to plant loss assumptions embedded in the cheddar yield calculation continue to recognize these losses to maintain orderly marketing.

Leprino also opposes proposal 12 because it does not reflect the realities of manufacturing. Similar to the cheddar yield factor, however, it is based upon a theoretical yield approach that assumes a perfect system with no losses before or after the conversion of solids non-fat ("SNF") into NFDM. In-plant losses exist not just with average, but with even the best manufacturing practices. For example, it is well known that cream includes some SNF in addition to butterfat and water. Therefore, one cannot assume all SNF is captured in NFDM. Since cream is sold on fat value, there is no direct value assigned to the skim solids in cream. Therefore, milk could be overpriced relative to its value leaving the market ripe for disorderly marketing. This was well-stated in the February 7, 2013 Final Decision (p. 9273):^{iv}

It is important that the product-price formulas reflect current plant conditions, not plant conditions that may be possible but not reflective of general industry wide conditions.

For these reasons, Leprino Foods opposes proposals 10, 11 and 12.

ⁱ USDA AMS Final Decision, February 7, 2013

ⁱⁱ Select Milk website: <https://selectmilk.com/>.

ⁱⁱⁱ 2017 USDA Census of Agriculture:

[https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1, Chapter_1_US/st99_1_0017_00_19.pdf](https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_US/st99_1_0017_00_19.pdf)

^{iv} USDA AMS Final Decision, February 7, 2013.