

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

In re:

Milk in the Northeast and Other Marketing
Areas

7 CFR Parts 1000 *et seq.*

Docket No. 23-J-0067;
AMS-DA-23-0031

CARMEL, INDIANA
AUGUST 2023

**TESTIMONY OF SALLY KEEFE, PART I
REGARDING NATIONAL HEARING ON
FEDERAL MILK MARKETING ORDER PROPOSALS**

ISSUE I

August 29, 2023

I. BACKGROUND

I am the owner and principal of skFigures, a company that provides dairy consulting services to all verticals of the dairy industry. I am here today as a representative of the Milk Innovation Group (“MIG”).

I received my B.A. in Economics from Middlebury College and my M.B.A. in finance and entrepreneurship from the University of Colorado. Before entering the organic dairy field, I worked as an environmental economics and policy consultant. Beginning in 1996, I worked in Operations and Milk Procurement for Horizon Organic Dairy. I joined Aurora Organic Dairy as Supply Chain Director in 2003 and was a key member of the team who launched that new, innovative organic dairy company. I served in this and other roles in supply chain management before I became the Vice President of Legal & Government Affairs for Aurora Organic Dairy in 2007. I served in this role until 2012. In this capacity, I directed the company’s legal, regulatory, and legislative activities, and was active in both the dairy and organic industry arenas.

In 2012, I left Aurora Organic Dairy and founded skFigures. I provide management consulting services as well as technical and policy expertise to agriculture and food businesses. I have particular expertise in Federal Milk Marketing Orders and have testified in prior FMMO proceedings. My clients include farmers, agricultural cooperatives, dairy processors, corporations, trade associations, and investors.

As part of my work as a consultant, I routinely work with data from both processors and FMMO Market Administrator (“MA”) reports. I am very familiar with handler reporting of receipts and utilization to the MAs, the monthly handler obligation statements as well as producer payroll reporting and related FMMO reports and data. As a routine part of this work for my clients (and when I was a processor employee), I regularly consider the components in milk, both at test and on a skim basis.

II. OPPOSITION TO PROPOSALS 1 AND 2

As a representative of MIG, I am here today to testifying opposition to Proposals 1 and 2.¹ My testimony is based on my analysis of both USDA’s data on the component tests in producer milk by order (Exhibits 17) and data I collected from fluid milk plants on their producer milk receipts.

A. First, I considered the current skim milk formula factors, the fluid milk standards of identity, and a comparison of those to Proposal 1.

In the table below, I compare four relevant standards for milk component factors. The current skim formula component factors are found at 7 C.F.R. §1000.50. Then, I review the skim formula factors from Proposal 1. Next are the federal and California composition standards for fluid milk. The federal fluid milk standard of identity is found at 21 C.F.R. §131.110. The California composition standards are found at: https://www.cdffa.ca.gov/ahfss/Milk_and_Dairy_Food_Safety/Milk_Standards.html.

The federal and California fluid milk composition standards are expressed for milk, not skim in those regulations. For an “apples to apples” comparison with the current and proposed milk component factors in the FMMO skim milk price formulas, I converted these to a skim basis.

SKIM	Nonfat Solids lb / cwt skim	Protein lb / cwt skim	Other Solids lb / cwt skim	Butterfat lb / cwt skim	Skim lb / cwt skim
Current	9.00	3.10	5.90	0.00	100.00
Proposals 1 & 2	9.41	3.39	6.02	0.00	100.00
Federal Standard	8.53	n/a	n/a	0.00	100.00
California Standard	9.02	n/a	n/a	0.00	100.00

¹ I will refer here only to Proposal 1, as Proposals 1 and 2 propose the same standards. Where I reference Proposal 1, it is inclusive of both proposals.

MILK	Nonfat Solids lb / cwt milk	Protein lb / cwt milk	Other Solids lb / cwt milk	Butterfat lb / cwt milk	Skim lb / cwt milk
Current	8.69	2.99	5.69	3.50	96.50
Proposal	9.08	3.27	5.81	3.50	96.50
Federal Standard	8.25	n/a	n/a	3.25	96.75
California Standard	8.70	n/a	n/a	3.50	96.50

B. Second, I examined USDA’s data in Exhibit 17 (USDA Table 2) and summarized USDA’s order-wide average component data.

I then examined USDA’s Exhibit 17, which includes monthly producer milk component data across the seven Multiple Component Pricing (“MCP”) orders. As above, I converted this data to a skim basis for comparison. I used USDA’s data and created a table that shows each orders’ monthly component data for a 24-month period, January 2021 – December 2022. I then compared that data to the current skim milk formula factors and the Proposal 1 factors. The current skim milk formula factors are in yellow, and the Proposal 1 factors are in orange. These charts are found in Exhibit MIG - 5A to my testimony on pages 1 to 4.

This data shows that some orders, like Order 1 (“NE”), are as a whole below the Proposal 1 protein level. Then other orders, like Order 124 (“PNW”) are as a whole higher, but still dip below the Proposal 1 level at different points in time. The other five multiple component orders bounce above and below the Proposal 1 levels.

C. Fluid Milk Plant Component Survey Methodology

Next, I wanted to examine actual milk receipts for fluid milk plants and compare this to Exhibit 17. Before USDA Dairy Programs posted Tables 1 – 6 and Charts 1 – 3 in response to industry requests on Issue I (milk composition), on behalf of MIG and under the direction and control of Davis Wright Tremaine, MIG’s lawyers, I conducted a survey of fluid milk plant receipts. The survey data is from MA report receipts and utilization submissions made by these plants and handler obligation statements received by them. All data was and is kept confidential

from all other submitters. In addition to the MIG members, I received under confidentiality terms, the same kind of market administrator report information from two non-MIG members, Albertsons and Kroger. I carefully input and double checked the data from all participants.

The survey dataset includes 36 fluid plants from across the country. Of the 36 plants, 32 had skim component information available. The primary data source was each plant's receipts as reported to and audited by the Market Administrator. A secondary data source I used in conjunction with the MA data was the plants' internal milk receiving component test records. I analyzed the 24-month period of January 2021 to December 2022. Exhibit MIG - 5A page 28 lists the participants, the order they are regulated under, and total counts of participants by order.

D. Fluid Milk Plant Component Survey Results

After analyzing the data, I developed charts graphing component levels for four orders and a summary chart for all the survey plants in MCP orders – Exhibit MIG - 5A pages 5 to 23. There are not individual charts for Orders 33 and 126 as there are not enough participants to maintain confidentiality. However, data for survey plants in Orders 33 and 126 is included in the four MCP orders summary charts.

I developed four charts for Orders 1, 32, 51, 124, and the MCP orders as a group. Each order has a chart that shows the surveyed plants' weighted average protein, other solids, nonfat solids, and butterfat component levels. These actual fluid plant receipts are compared to the same data for the order as a whole (i.e., the data from Exhibit 17), the current skim formula factor, and the Proposal 1 skim milk formula factor.

In each chart, I track the USDA order-wide data (Exhibit 17) in green and the survey participants' data in blue. Like the prior charts, the current skim milk formula factors are in yellow, and the Proposal 1 factors are in orange. My goal was to compare how actual fluid plant receipts compare to order-wide component data. I also wanted to compare how actual fluid plant receipts compared to current and proposed skim milk formula factors.

Then I looked on a plant-by-plant basis to see whether or not the skim components were above or below the proposal levels by month for the 24-month period. For this, I looked at the 32 plants for which skim component data was available.

My three key take aways from this data are:

- 1. Class I plants routinely receive component levels below the average level for the order.**
- 2. Class I plants routinely receive component levels below the Proposal 1 levels.**
- 3. The component levels vary remarkably seasonally and geographically.**

This data affirms what can be logically inferred from the incentives created by the current FMMO skim component pricing factors (and that would be exacerbated under Proposal 1) – that suppliers are maximizing revenue by supplying higher-component milk to manufacturing classes.

E. Actual fluid milk plant receipts show USDA must reject Proposal 1.

The fluid milk plant survey data – like the FMMO data – does not support a national standard set at the Proposal 1 levels. Exhibit MIG - 5A pages 25 to 27 clearly show that much of the time, most of the fluid milk plants surveyed are below the skim milk component factor levels in Proposal 1. The components received by Class I plants are not consistent – they vary from FMMO to FMMO and seasonally within each order. Interestingly, even in the wintertime, there are survey plants receiving milk with components below the proposal levels.

FMMOs are a minimum pricing system and should recognize that Class I plants do not receive the components found in Proposal 1 on an average basis; moreover, seasonal variation means that there are months that they are receiving components closer to the current levels.

Even though we have seen increases in components over the last 20 years, fluid milk is still on a downward trajectory. Likewise, we have not seen fluid milk products touting increases in skim components. The only products out there that do make such claims either must undertake significant investment in technologies like ultrafiltration to concentrate the protein and/or other

solids in the milk or add solids. All of that comes as a significant cost beyond the milk itself. If more could be done, we can presume Class I processors would have pivoted in that direction. But the component increases claimed by NMPF and NAJ don't change the value of the fluid milk, and raising Class I prices based on components would be taking more money from Class I that it cannot recover in the market.

III. CONCLUSION

Proposals 1 and 2 presume that Class I fluid milk is similar to Class III and IV when it comes to component valuation. This is simply not true – as we heard yesterday from Dr. Van Amburgh, changing genetics also increases the volume of milk that cows can produce – that is the value Class I plants obtain from the genetics improvements – and Class I plants pay for those additional cwts. But Class I plants not only do not derive value from anything other than butterfat, they also do not receive annually, let alone consistently and seasonally those components. The proposals need to be denied.

DATED this 29th day of August, 2023.

By /s/ Sally Keefe
SALLY KEEFE