

5

Assembly Hearing Slip

(Please print plainly)

Date: 2-7-00
Bill No. AB 483
Or
Subject
John Manske
(Name)
30 W. Mifflin
(Street Address or Route Number)
Madison WI 53703
(City & Zip Code)
WT Fed. of Coops
(Representing)

- Speaking in favor:
- Speaking against:
- Registering in favor:
- Registering against:
- Speaking for information only:
- Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

4

Assembly Hearing Slip

(Please print plainly)

Date: 2-7-2000
Bill No. A-483
Or
Subject
Cory SS A
Cass A
(Name)
643 N
(Street Address or Route Number)
Beldenville WI 53510
(City & Zip Code)
Economic Union
(Representing)

- Speaking in favor:
- Speaking against:
- Registering in favor:
- Registering against:
- Speaking for information only:
- Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

Pheri
715-293-4213

3

Assembly Hearing Slip

(Please print plainly)

Date: 2.7.00
Bill No. AB483
Or
Subject
John Umhoefer
(Name)
P.O. Box 2133
(Street Address or Route Number)
Madison WI 53701
(City & Zip Code)
Wis. Cheese Makers Assn.
(Representing)

- Speaking in favor:
- Speaking against:
- Registering in favor:
- Registering against:
- Speaking for information only:
- Neither for nor against:

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Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

AB483
pt 2a?
25

2

Assembly Hearing Slip

(Please print plainly)

Date: 2/7/00
Bill No. AB483
Or payment of different prices to
Subject producers

John Norton
(Name)
2811 Agriculture Dr.
(Street Address or Route Number)
Madison, WI 53708
(City & Zip Code)

DATCP
(Representing)

- Speaking in favor:
- Speaking against:
- Registering in favor:
- Registering against:
- Speaking for information only; Neither for nor against:

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Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

1

Assembly Hearing Slip

(Please print plainly)

Date: AB 2-7-00
Bill No. AB 483
Or
Subject

REP WARD
(Name)
304-N
(Street Address or Route Number)
(City & Zip Code)

(Representing)

- Speaking in favor:
- Speaking against:
- Registering in favor:
- Registering against:
- Speaking for information only; Neither for nor against:

Please return this slip to a messenger promptly.

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Room 411 West
State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 2-7-00
Bill No. AB 483
Or
Subject

Richard Keller
(Name)
1454 Keller Rd.
(Street Address or Route Number)
MT. Horeb WI 53572
(City & Zip Code)

(Representing)

- Speaking in favor:
- Speaking against:
- Registering in favor:
- Registering against:
- ~~Speaking for information only;~~ Neither for nor against:

Please return this slip to a messenger promptly.

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State Capitol
Madison, WI 53702

Assembly Hearing Slip

(Please print plainly)

Date: 11-18-99

Bill No. AB 483

Or
Subject _____

Annex Winters
(Name)

2820 Walton Commons West
(Street Address or Route Number)

Madison WI 53718
(City & Zip Code)

WI Agribusiness Council
(Representing)

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only;
Neither for nor against:

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Room 411 West
State Capitol
Madison, WI 53702

7

Assembly Hearing Slip

(Please print plainly)

Date: 11/18/99

Bill No. AB 483

Or
Subject _____

Paul Zimmerman
(Name)

1212 Deming Way
(Street Address or Route Number)

Madison WI 53705
(City & Zip Code)

Wisconsin Farm Bureau
(Representing)

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only;
Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms:
Room 411 West
State Capitol
Madison, WI 53702

6

Assembly Hearing Slip

(Please print plainly)

Date: 11-18-99

Bill No. AB 483

Or
Subject _____

Carliss Hendricksak
(Name)

643rd
(Street Address or Route Number)

Bellevue WI 53511
(City & Zip Code)

Parent Emergency Committee
(Representing)

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only;
Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

5

Assembly Hearing Slip

(Please print plainly)

Date: 11-18-99
Bill No. A.B. 483
Or
Subject _____

Andy Huppert
(Name)
116430 State Road 29
(Street Address or Route Number)
54022
(City & Zip Code)
54022
(Representing)

Wisconsin Farmers Union
Speaking in favor: Union
Speaking against:
Registering in favor:
Registering against:
Speaking for information only:
Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms:
Room 411 West
State Capitol
Madison, WI 53702

(4)

Assembly Hearing Slip

(Please print plainly)

Date: 11/18/99
Bill No. _____
Or
Subject AB-483

Sec. Brancel + John Martin
(Name)
2811 Laurel Avenue
(Street Address or Route Number)
Madison 53704
(City & Zip Code)
WDATOP
(Representing)

Speaking in favor:
Speaking against:
Registering in favor:
Registering against:
Speaking for information only:
Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms:
Room 411 West
State Capitol
Madison, WI 53702

(3)

If you can call me @
UP with Brad Legner
John Umhoefer I'd
Assembly Hearing Slip appreciate
17/1

(Please print plainly)

Date: 11-18-99
Bill No. AB 483
Or
Subject _____

John Manske
(Name)
30 W. Miffin Suter
(Street Address or Route Number)
Madison WI 53703
(City & Zip Code)
W.I. Federation of Coops
(Representing)

Speaking in favor:
Speaking against:
Registering in favor:
Registering against:
Speaking for information only:
Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms:
Room 411 West
State Capitol
Madison, WI 53702

2B

Assembly Hearing Slip

(Please print plainly)

Date: 11/18/99

Bill No. AB 483

Or Subject

Brad Leyneid

(Name)

8383 Greenway Blvd

(Street Address or Route Number)

Middleton 53562

(City & Zip Code)

WI Dairy Products Assn

(Representing)

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

2A

Assembly Hearing Slip

(Please print plainly)

Date: 11.18.99

Bill No. AB 483

Or Subject

John Unkwefer

(Name)

Pbox 2133

(Street Address or Route Number)

Madison WI 53701

(City & Zip Code)

Wis. Cheese Makers Assn

(Representing)

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

1

Assembly Hearing Slip

(Please print plainly)

Date: 11-18-99

Bill No. AB 483

Or Subject MILK PREMIUMS

REP WARD

(Name)

304-N

(Street Address or Route Number)

(City & Zip Code)

(Representing)

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702

6

Assembly Hearing Slip

(Please print plainly)

Date: 2/7/00
Bill No. AB 483
Or
Subject

Brad Legreid
(Name)

8383 Greenway Blvd.
(Street Address, or Route Number)

Middleton 53562
(City & Zip Code)

WI Dairy Products Assn
(Representing)

- Speaking in favor:
- Speaking against:
- Registering in favor:
- Registering against:
- Speaking for information only; Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms
Room 411 West
State Capitol
Madison, WI 53702



WISCONSIN FEDERATION OF COOPERATIVES • 30 West Mifflin Street, Suite 401 • Madison, WI 53703 • Phone (608) 258-4400

DATE: **November 18, 1999**

TO: **Assembly Committee on Agriculture**

FROM: **John Manske, Director of Government Relations**

RE: **Assembly Bill 483**

Since the promulgation of the "volume premium rule" in 1996, several events were set in motion that most certainly were unintended by promoters of the rule. Among these are the loss of Wisconsin dairy producer milk from Wisconsin plants and the resulting decreased plant efficiency. The Dean Foods Co. lawsuit against the state rule resulted in legal decisions that left a "stick in the eye" for the Wisconsin milk procurement arena. To their credit, Representative Ward and DATCP Secretary Brancel clearly have indicated that the unfair situation should not and cannot be allowed to stand. Though Dean Foods Co. won the legal challenge to the rule, we are hopeful that together with you Wisconsin milk procurers and producers can face a more fair and free future concerning milk premium payments.

WFC's Dairy Legislative and Regulatory Committee represents eight major Wisconsin milk procurers. These dairy cooperatives recently formulated positions on the milk premium payment subject. While it is not before you today, deregulation of this key marketplace issue remains their number one priority. With regard to Assembly Bill 483, the committee made the following two recommendations:

1. We must retain s. 100.22(3) Wisconsin Statutes, justification defense. Wisconsin procurers need to have the ability to respond to offers from individual competitors and to defend such offers. Giving all producers in a pay category the exact same amount is not realistic for a competitive response being made to an individual offer to one producers. Without an ability to respond to those offers individually, AB 483 only extends the unfairness created by the outcome of Dean Foods Co. vs. the State of Wisconsin.
2. Proposed language in the substitute amendment relating to milk payment based on milk testing should be eliminated as it seems to reference ATCP 80.26. Since language in ATCP 80.26 is outdated and inconsistent with language in the federal Pasteurized Milk Ordinance (PMO), a better alternative may be to adopt PMO language as part of AB 483.

We have appreciated the efforts of Representative Ward and Secretary Brancel in working with us on our concerns and suggestions. At this point in time, it would appear that interested parties are not far from agreement on acceptable language. WFC looks forward to working with the committee as this process moves forward.



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536

Telephone: (608) 266-1304

Fax: (608) 266-3830

Email: leg.council@legis.state.wi.us

DATE: February 8, 2000

TO: MEMBERS OF THE ASSEMBLY COMMITTEE ON AGRICULTURE

FROM: Mark C. Patronsky, Senior Staff Attorney

SUBJECT: 1999 Assembly Bill 483, Relating to Payment of Different Prices to Milk Producers

This memorandum contains a brief summary of the current statute regarding payment of different prices to milk producers and a description of how Assembly Substitute Amendment 2 to 1999 Assembly Bill 483 changes current law.

Current Statute

Current s. 100.22, Stats., prohibits discrimination in the purchase of milk. Under this statute, the *general rule* is that no person engaged in the business of buying milk from producers for the purpose of manufacturing, processing or resale may discriminate between producers in the price paid for milk.

The current statute provides an *exception* to this general rule. A buyer may pay producers different prices in the purchase of milk based on differences in milk quality. The statute sets forth several criteria that the buyer must follow in order to pay different prices based on milk quality.

In addition, the statute provides the buyer with a *defense to prosecution* for violating the statute if the difference in price was done "in good faith to meet competition" or was justified on the basis of actual differences in milk quantity, transportation charges or marketing expenses.

A federal court case has made it clear that the Wisconsin statute only applies to milk that is purchased within Wisconsin. Buyers in other states are not bound by the Wisconsin statute if the milk is delivered by the producer outside of the state boundaries and the sale is consummated in another state. [*Dean Foods v. Brancel*, 187 F. 3d 609 (1999).]

Assembly Substitute Amendment 2 to 1999 Assembly Bill 483

Assembly Bill 483, as modified by Assembly Substitute Amendment 2, *does not affect* the general rule in the current statute that prohibits discrimination in the purchase of milk. The substitute amendment *modifies the exception* to the general rule so that it is not limited to differences in milk quality, but rather allows a person who buys milk to pay producers different prices for milk based on any criteria specified by the buyer. As in the current statute, the buyer must comply with procedures specified in the statute:

- The buyer must announce the payment method to all producers from whom milk is purchased.
- The buyer must use the ^{posted publicly} announced payment method when purchasing milk from producers.
- The payment method may not be part of a scheme to discriminate among producers.
- Any payment method based on milk tests must comply with rules of the Department of Agriculture, Trade and Consumer Protection concerning payment based on milk tests.

The substitute amendment also retains the defense provided in the current statute that allows differential pricing that is done in good faith to meet competition.

Effect of the Substitute Amendment

Testimony on Assembly Substitute Amendment 2 during the January 7, 2000 hearing of the Assembly Committee on Agriculture noted the following purposes for the legislation:

- The substitute amendment retains the prohibition on milk price discrimination but expands the exception. Some testimony noted an alternative approach which would involve repealing the statute rather than expanding the exception.
- The substitute amendment adds flexibility to the current statute by allowing premiums other than those based on milk quality. One of the premiums mentioned was cheese yield. It was suggested that other premiums may be offered in the future.
- Each buyer may have a unique set of premiums based on the objectives of the buyer.
- The substitute amendment does not negate the effect of the federal court case noted above. The statute, as amended by the substitute amendment, continues to apply only to sales of milk that occur within Wisconsin. The intent of the substitute amendment is to give greater flexibility to Wisconsin buyers to allow more successful competition with out-of-state buyers.

Assembly Substitute Amendment 2 to 1999 Assembly Bill 483

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- The buyer must announce the payment method to all producers from whom milk is purchased.
- The buyer must use the ^{posted publicly} announced payment method when purchasing milk from producers.
- The payment method may not be part of a scheme to discriminate among producers.
- Any payment method based on milk tests must comply with rules of the Department of Agriculture, Trade and Consumer Protection concerning payment based on milk tests.

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- The substitute amendment adds flexibility to the current statute by allowing premiums other than those based on milk quality. One of the premiums mentioned was cheese yield. It was suggested that other premiums may be offered in the future.
- Each buyer may have a unique set of premiums based on the objectives of the buyer.
- The substitute amendment does not negate the effect of the federal court case noted above. The statute, as amended by the substitute amendment, continues to apply only to sales of milk that occur within Wisconsin. The intent of the substitute amendment is to give greater flexibility to Wisconsin buyers to allow more successful competition with out-of-state buyers.



Al Ott

State Representative • 3rd Assembly District

MEMORANDUM

TO: Members, Assembly Committee on Agriculture

FROM: Representative Al Ott, Chair

DATE: January 14, 2000

There will be a joint public hearing of the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform and the Assembly Committee on Agriculture on Monday, February 7, 2000 at 1:30 p.m. in Room 417 North.

SB 358 The Committees will hear discussion on LRB 3853/2 (Wisconsin Animal Health Laboratory) and an Executive Session may be held.

Following the joint meeting, the Assembly Committee on Agriculture will take up the Assembly Substitute Amendment to Assembly Bill 483 (Rep. Ward-Milk Prices Based on Volume). The Committee may go into Executive Session on AB 483.

It is important that you plan to attend these meetings. The date was the only mutually available date for the joint hearing. Please advise Linda in my office (266-5831) regarding your attendance at these meetings.

Attached you will find copies of LRB 3853/2 and the Assembly Substitute Amendment to AB 483.

ARO:ln
Attachments



BILL SUMMARY

AB 483: Milk Pricing Based On Volume

Date: March 7, 2000

BACKGROUND

Current law, as a general rule, prohibits a milk buyer from discriminating between milk producers in the price paid for milk. Current law provides an exception to the general rule by authorizing a person to pay producers different prices for milk based on differences in milk quality if certain conditions are satisfied. A defense for violating this prohibition is that the discrimination in price was done in good faith to meet competition or was commensurate with an actual difference in the quantity of, or transportation charges for, the milk purchased.

SUMMARY OF AB 483 (AS AMENDED BY COMMITTEE)

Assembly Bill 483 (as affected by Assembly Substitute Amendment 2) does not affect the general rule in the current statute that prohibits discrimination in the purchase of milk. The Substitute Amendment modifies the exception to the general rule so that it is not limited to differences in milk quality, but rather allows a person who buys milk to pay producers different prices for milk based on any criteria specified by the buyer. Both under the current statute and under the Substitute Amendment, the buyer must comply with procedures specified in the statute in order to pay different prices for milk based on the exception to the general rule. The Substitute Amendment retains the defense provided in the current statute that allows differential pricing that is done in good faith to meet competition.

AMENDMENTS

Assembly Substitute Amendment 2 to Assembly Bill 483 modifies the exception to the general rule so that it is not limited to differences in milk quality, but rather allows a person who buys milk to pay producers different prices for milk based on any criteria specified by the buyer. [adopted 14-0-0].

FISCAL EFFECT

No fiscal estimate was required for Assembly Bill 483.

PROS

1. The bill adds flexibility to the current statute by allowing premiums other than those based on milk quality. For example, one of the premiums mentioned in testimony was cheese yield.
2. AB 483 will allow each buyer to have a unique set of premiums based on the objectives of the buyer.
3. The flexibility provided by the bill will allow Wisconsin milk buyers to compete more effectively with out-of-state milk buyers.

CONS

1. The bill only affects sales of milk that occur within Wisconsin, but a federal court case has made it clear that the Wisconsin statute only applies to milk that is purchased within Wisconsin. The Legislature cannot affect this court case.
2. According to some testimony, the bill does not go far enough and some suggested that the statute should be repealed rather than made more flexible.

SUPPORTERS

Rep. David Ward, author; Sen. Kevin Shibilski, lead Senate co-author; Secretary Ben Brancel, DATCP; John Norton, DATCP; Paul Zimmerman, Wisconsin Farm Bureau; Amy Winters, WI Agribusiness Council;

OPPOSITION

Corliss Hendrickson, Pierce County Farmers Union; Andy Huppert, Wisconsin Farmers Union.

HISTORY

Assembly Bill 483 was introduced on September 28, 1999 and referred to the Assembly Committee on Agriculture. A public hearing was held on November 18, 1999. On February 8, 2000, the Committee voted 14-0-0 to recommend passage of AB 483 as amended by Committee.

CONTACT: Linda Narveson, Office of Rep. Al Ott.



Testimony of the Wisconsin Cheese Makers Association

AB 483 Milk Price Premium Bill

John T. Umhoefer, Executive Director, WCMA

P. O. Box 2133
Madison, WI 53701
3 S. Pinckney St. Suite 620
Madison, WI 53703

Phone
(608) 255-2027

Fax
(608) 255-4434

E-mail
office@wischeesemakersassn.org

Wisconsin Cheese Makers Association, representing two-thirds of Wisconsin's cheesemaking industry, supports AB 483.

The bill is necessary to bring Wisconsin law in synch with the recent court ruling which gave out-of-state dairy processors the right to offer any milk price premium within our state. Based on this ruling, Wisconsin dairy manufacturers are vulnerable to raids on their milk supply that they cannot legally answer.

This bill addresses this inequity. And it is forward thinking in two key areas:

First, this substitute amendment is far-sighted enough to look at volume premiums and **beyond** volume premiums. Rather than deregulating one type of premium, the bill looks forward to other premiums coming down the line, such as bonuses for the amount of cheese yielded from milk, or bonuses for milk with high kappa casein. This amendment exempts **all** premiums that are properly noted in written form and offered to **all** producers. It's a great feature of this bill, and one reason this bill is good for Wisconsin.

The second key feature of this bill involves the so-called "meeting competition" clause. It is imperative that our dairy plants retain the right to meet a competitor's price, especially competitors from out of state. The right to meet a competitor's bid, and retain your dairy producer patrons, is a long-term protection for Wisconsin's milk supply. With that right, we can keep our dairy farmers shipping milk **in** Wisconsin. We simply cannot afford to let processors in Minnesota, Iowa and Illinois offer prices that we are forbidden to match. This bill removes caps on Wisconsin premiums and allows Wisconsin processors to meet competition and keep Wisconsin milk in Wisconsin.

Thank you.

In Regards to Assembly
Bill 483 amendment proposed
by David Ward

Submitted by
James Tostenson
W925 County Rd H
Fremont, Wis 54940
Phone 920-987-5631

As expected much political hay has been made by politicians, bureaucrats, and farmer organizations on account of an obsolete federal dairy policy, it is an easy and safe way to make noise, but when we have opportunity to strengthen Wisconsin's dairy industry by requiring that payments made to milk producers be based on actual economic factors, they develop legislation and administrative rules that encourage milk plants to pay prices determined by fads and foolishness that have little, if any, relationships to the costs or potential profits to be made by doing business with a producer.

About 1981 a well intentioned legislature passed an act called Section 100.22 which required the justification of different prices being paid to patrons of a milk plant. Had they known how perverse, deceptive, and ignorant some persons involved in the procurement of milk and their government counterparts would be, they would have been more specific. Administrative rules developed by the P.A.T.C.P. (AKA the Volume premium law) were designed to be as convoluted perplex and onerous as possible, and enforced so as to create as much dissension and grief as possible for the dairy plant and producer. The express intent of the P.A.T.C.P. has been, and is, to negate the intent and purpose of Sec 100.22. The Wis. dairy industry would be in much better condition had reasonable and responsible administrative rules been developed to enforce Sec. 100.22

(2)

About 1991 a misguided legislature exempted milk quality premiums by amending Sec 100.22. Good information regarding the cheese yield of milk at various somatic cell counts was not available at that time, now the Federal Minimum Milk Price includes an adjuster calculated from the protein value and the differing cheese yield caused by the SCC. The adjustment for 50,000 to 750,000 SCC has been between 40¢ and 65¢ per hundredweight. Dairy Co-ops are not required to pay the Federal Minimum Price, and have developed premium and deduct pay plans with as much as a 3 dollar spread. The first dime paid for milk with a low bacteria (Standard Plate Count) did more to clean up Wisconsin's milk than all the big money schemes since. Quality makes good talk at the co-op meeting, or when a price complaint is made, the field man can say, 'if you kids did a better job, you would get a better price'. Most Wis. cheese is competing with western cheese on price, not quality, excessive quality payments simply shift money away from butterfat and protein payments, no new wealth is generated. In order to sell cheese cheap the vats are fortified with cheap powdered milk and worked at too low a temperature, enzymes are added to fake ageing and the result is a high yield of high moisture, high acid, pasty, goopy cheese, not pleasant to eat young and rotted before it gets aged, fit only to be used as an ingredient. A taste of such cheese discourages consumers from buying better cheese to eat (as is). Dairy plants truly interested in quality, establish low SCC and SPC limits, not wanting low quality ^{fat} _{milk} at any price.

(3)

D.A.T.C.P. Secretary Ben Bronce has publicly stated that he will not enforce Sec. 100.22, that created the potential for lawsuits against Mr. Bronce and the D.A.T.C.P., understandably this is an undesirable situation to be in. Coming to his rescue is Assemblyman David Ward with an amendment to Sec. 100.22 which would, for all practical purposes, require that nothing of consequence be done by the D.A.T.C.P. to establish or enforce fair trade practices in the dairy industry or what's left of it. This is certainly unacceptable.

It is unfortunately necessary for government to regulate some business practices, a person's stand needs to be sanitary, other than that we don't care if it makes a fortune or goes broke. However in an industry such as dairy, the effect of devious, ignorant or corrupt dealings and practices are so far reaching and sometimes catastrophic that it is appropriate for government to enforce some ethics. It makes no sense for the D.A.T.C.P. to embrace an 'anything goes' policy, and then wonder what happened when an outfit like Kesson Cheese goes bust and the legislature gives money to its former patrons after determining that the D.A.T.C.P. was negligent. Other dairy plants have patrons that would like a check from the state too, Kesson paid the highest premiums in the area, those of us that accepted less over a longer period of time were short some income also, a little each month instead of all at once.

Competitive payments must be made possible by real economic factors such

(4)

as, a low cost of manufacturing, ~~the~~ better marketing of the finished product, or a better product to sell at a premium price. Competitive payment ~~the~~ ^{offers} should be designed in a way that allows the processor to recover that money from the market or as a cost saving efficiency. Other competitive payments are a shell game, no new wealth is created, it is just shifted around, such payments are damaging to honest competitors, can be very damaging to individual producers and weaken the entire industry on account of creating an artificial market, some producers receive money in excess of the profits generated by the milk plant from their milk while other producers have their profits pilfered. Eventually real economics rule and businesses which rely on the subsidy crash, those who were cheated have gone away and the entire industry is in sad shape.

I would suggest that the Wisconsin legislature repeal the exception for quality premiums (QM) in Statute 100.22 and rewrite (3) Justification Defense to read, 'It is a defense to a prosecution for violation of this section or a special order issued under this section to prove that the discrimination in price or services was done in good faith to all comparable producers from whom the person purchases milk, to meet competition and, or was commensurate with, and in like manner

And proportion to the actual difference in the quality of or transportation charges or marketing expenses or processing expenses for the milk purchased?

Of no consequence is the fact that processors of class 1 milk pay more for milk purchased directly from producers than handlers which pay a blended class price. If a milk handler is not capable of determining appropriate milk payments a comptroller or consultant can be hired.

Operating a dairy plant is a business, not a form of entertainment, and it should be managed as such, our legislators need to be aware of that fact as they consider changes to Sec. 100.22 and as they are currently considering changing milk check security requirements, it doesn't make sense to condone poor business practices and then wonder how best to pick up the pieces.

Thank You

James E. Tostenson

Note

I would rather this paper were not so long but it takes a lot ~~of~~ to offset all the rubbish put out by lobbyist and others that don't rely on a milk check to pay the bills. I will do what I can to address any shortcomings pointed out by others regarding this proposal. JT

Volume pricing

By Ann Barsness
STAFF WRITER

the largest producers selling to Mid-Am.

Since then, he has contacted the attorney general's office, informed other farmers and attended hearings.

"The big thing we've accomplished so far is that farmers are realizing what's happening," Huppert said. "It's simply stealing money from all these small farmers to keep a few big farmers

Turn to MILK, page 2

River Falls area dairy farmer Andy Huppert first heard of volume milk pricing about 10 years ago when he received a letter from Mid-America Dairymen Inc.

At that time, volume pricing was dropped, then reinstated. While attending a meeting in 1989, he realized he was receiving 26.5 cents per hundredweight less than

for the dairy and food section in the Division of Trade and Consumer Protection. He and his staff determine whether volume pricing is justified.

"There is no hard and fast set of requirements that we have. This isn't rocket science. It's a qualitative judgment," he said.

Based on cost data, Furniss said he anticipates that a volume schedule which pays premiums in the upper 40-cents range is probably cost justifiable.

The final proposal for a permanent rule could come by late May.

"There is a general theory there is so much that the dairy industry can afford to pay for milk. Discriminatory prices reward some people with a higher (payment) than others. Whether that is occurring, I can't say," he said.

"If price discrimination is going on, someone is being

happy, and there's no justification." Gene Quast, manager of Mid-Am's northern division, declined to comment.

Huppert's herd of 50 Holstein cows produces about 90,000 pounds of milk per month. That makes it hard to compete with the large producers, who may sell 100,000 to 300,000 pounds per month.

According to the Department of Agriculture, volume premiums are currently as high as 70 to 90 cents per hundredweight. Small producers could lose between \$4,800 and \$9,600 in annual income due to the practice.

The Wisconsin Agriculture Board's Committee on Agricultural Services this month passed an emergency rule prohibiting higher payment for volume premiums that cannot

be cost justified. Provisions requiring the Department of Agriculture to preapprove volume milk premiums over 30 cents per hundredweight were dropped.

Huppert said the rule should have enforced the law to the fullest. Wisconsin prohibits those who buy milk from producers for processing or resale from discriminating in the price paid.

Prices may differ depending on tested milk quality. The law does allow for price discrimination to meet competition or to deal with transportation and marketing expenses.

A public hearing was scheduled for this morning in Madison to discuss problems and suggestions regarding volume pricing.

Milk

Continued from page 1

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Andy Huppert of River Falls Township has opposed volume milk pricing since he first learned about the practice 10 years ago. He says his goal is to alert other farmers to the practice. — staff photo by Ann Barsness

injured."

Huppert said small farmers are being injured, but companies must compete for large-scale producers.

Ken McMahan is general manager at Ellsworth Co-op Creamery. That is where Huppert began sending his milk when he dropped Mid-Am in October.

"Ellsworth is more like a family. Everybody's getting treated the same," he said.

Top volume premium at Ellsworth is 15 cents per hundredweight. McMahan said that reflects savings in checking, sampling, bookkeeping and field services.

"We don't think that even 30 cents can be justified," he said. "We've tried to treat everyone fairly and that seems to be working well for us."

Competition includes about 14 creameries in Wisconsin and five in Minnesota.

Current Pricing System Called Unfair

MCP, from page 1

there that determines the amount of money paid to producers." Jesse forecasts that over-order premiums for protein, volume, quality and other factors will continue to be paid by plants.

But, at least in theory, some producers will be paid more, and others less, under MCP. Dairy analysts say that a farm with a 3.3% butterfat test and 2.9% protein will likely receive less federal order money than under the current mechanism. If over-order premiums remained the same, that low-test farm would see a smaller total milk check, too.

Almost all major dairy organizations in the region support MCP. This form of pricing will give producers a better idea of the true value of their milk in the marketplace, says Paul Christ, vice-president in charge of dairy planning for Land O'Lakes cooperative. He says MCP will

bring order pricing system rewards for milk solids back to the level seen several years ago, before butterfat differentials were drastically slashed.

The current order pricing system with its low butterfat differential is not fair to producers providing the most valuable milk, Christ contends. He says the current competitive climate for milk is skewing payment programs, and that major milk buyers here believe multiple component pricing will improve that situation.

Yet there is some speculation in the region that it will be very difficult for plants to pay less money to certain farms because of MCP. In general, big farms with high total milk herd averages tend to carry butterfat and protein tests that are lower than the market average.

If the big farms start complaining about lost dollars due to MCP, plants may start

altering their payment schemes to compensate. That happened in Indiana, where the AMPI Morning Glory Farms Region stopped paying according to that order's MCP plan after some big producers noted that their pay prices dipped by up to \$1 per hundredweight under the new regimen. Morning Glory used its authority under the Capper-Volstead Act to pay less than the order minimum for protein, and directed the extra money to low-test producers.

That could happen here, Christ says. Co-ops could decide to underpay for protein, while raising volume or some other premium to avoid losing larger farms.

"There is no way to anticipate the programs that will be offered by competitors," the Land O' Lakes official says. "Our intent is to deal with producers based on the dollar value of their milk. I've high expectations that (MCP) will work." *Agri-View Nov 4, 1994*

MILK PRODUCTION COSTS in 1998 on Selected WISCONSIN DAIRY FARMS

by Gary Frank and Jenny Vanderlin¹

July 23, 1999

Introduction

Total cost of production per hundredweight equivalent of milk (\$14.90) was less than the US average milk price in 1998 (\$15.41). This is the first year (since our study of milk production costs began in 1992) that the milk price has exceeded total economic costs. The total economic costs in 1997 were \$14.14 and the milk price was \$13.36.

The overall cost of producing a hundredweight equivalent of milk increased in 1998 when compared to 1997, but is still lower than costs were in 1996. In addition, farms with 51 to 75 cows continued to have near the lowest "Basic Cost" of any of the six farm size groups studied. Basic Costs are all cash and non-cash costs except labor and capital.

In this study of 1998 records, 780 dairy farms averaged a basic cost of \$8.23 per hundredweight equivalent (CWT EQ) on income of \$15.41 per CWT EQ (U.S. average per hundredweight milk price in 1998). In 1997, the basic cost was \$7.86 per CWT EQ on income of \$13.36 (The U.S. average milk price in 1997.). Basic costs were 53.4 percent of income in 1998. In 1997 and 1996 basic costs were 57.6 and 58.0 percent of income, respectively.

In 1998, the total allocated expenses per CWT EQ of milk sold averaged \$12.42. Total allocated expenses do not include a charge for unpaid labor and management or a return to equity capital. When these opportunity costs are calculated at \$8.50 per hour for unpaid labor, \$10.00 per hour for unpaid management, plus five percent return on the fair market value of equity capital, the total cost of production is \$14.90 per CWT EQ.

Data Source

Lakeshore Farm Management Association, Fox Valley Management Association and Wisconsin County Agents² originally collected this data. Personnel affiliated with these associations helped individual farm managers reconcile their financial data. Individual farm managers used a number of different manual and computerized record keeping systems to enter the initial financial records, including the Agricultural Accounting and Information Management System (AAIMS©).

In 1998, 950 financial data sets were received from Lakeshore Farm Management and Fox Valley Associations and 55 data sets from those participating in the Dairy Farm Business Summary (DFBS) program. Some of these records had milk income that was less than 60 percent of their total income. Those farms are not included in this analysis. However, the dairy farms left in the study still had a total of more than 77,500 cows and produced more than 1,566,000,000 pounds of milk.

¹ Center for Dairy Profitability, College of Agricultural and Life Sciences, and Cooperative Extension, University of Wisconsin-Madison. They are grateful to Arlin Brannstrom, Bruce Jones for their constructive comments.

² The authors wish to thank Rolyn Jorgenson and other members of the Lakeshore Farm Management Association staff, Phil Christman and members of the Fox Valley Management Association as well as Nate S. Splett, UW-RF, and various county agents for their cooperation.

Table 3
Milk Production Costs per Farm in 1998

Range in Herd Size	<=50 cows	51 to 75	76 to 100	101 to 150	151 to 250	>250 cows
Number of Farms	210	266	132	85	37	50
Pounds Milk Sold per Cow	18,083	19,243	19,984	20,410	20,042	22,038
Average Number of Cows	41	62	87	122	187	471
Total Crop Acres Farmed	174	244	339	438	510	1,037
Milk Price Received	14.97	15.27	15.37	15.37	15.57	15.79
Cost of Resale Livestock Sold	54	1,755	211	1,096	-	2,910
Auto & Truck Expense	1,391	1,661	1,385	1,525	1,909	3,338
Crop Chemicals	2,336	3,862	6,531	8,646	9,392	27,560
Custom Heifer Raising	13	97	584	4,181	7,159	42,224
Custom Hire (Other)	2,518	4,211	8,799	11,223	20,909	44,705
Feed Purchased	19,906	32,904	48,292	73,656	130,830	421,196
Fertilizer & Lime	4,804	7,901	9,552	16,854	20,421	35,197
Freight & Milk Hauling	721	944	1,110	1,300	4,094	8,947
Fuels & oil	2,610	3,641	5,291	7,009	9,017	23,327
Insurance	2,043	2,813	4,049	5,094	6,051	15,275
Milk Marketing & Hedging	1,349	2,167	3,103	4,569	6,360	20,751
Rent/Lease Equipment	305	897	1,222	3,273	7,159	18,249
Rent-Farm & Pasture	3,759	6,967	12,097	15,676	26,409	49,684
Repair & Maintenance	9,236	13,420	21,610	30,907	37,759	84,770
Seed & Plants Purchased	3,469	5,450	8,141	11,832	13,855	32,853
Supplies	4,811	7,129	10,038	12,758	16,447	42,344
Taxes	3,114	3,874	5,201	7,145	9,264	15,382
Utilities	2,922	4,217	5,817	7,928	10,147	22,844
Vet & Medicine	3,530	5,017	8,010	12,353	17,837	53,287
Breeding Fees	1,717	2,507	3,652	4,943	5,611	10,720
Other Farm Expenses	1,030	1,524	2,438	4,952	5,670	14,093
Other Crop Expenses	997	1,489	1,695	2,462	3,213	6,861
Other Livestock Expenses	1,080	2,378	4,487	10,038	17,264	68,225
Accounts Payable Adjustment	-489	-1,032	-1,561	-2,522	-3,968	-8,433
Prepaid Expense Adjustment	-929	-2,668	-4,337	-7,195	-10,128	-33,856
Basic Costs	72,245	111,373	167,205	248,608	372,681	1,019,543
Livestock Depreciation	1,814	4,224	5,030	7,856	20,669	71,398
<i>Basic Cost + Lvst Depr</i>	<i>74,059</i>	<i>115,597</i>	<i>172,234</i>	<i>256,464</i>	<i>393,351</i>	<i>1,090,941</i>
Mortgage Interest	4,121	6,332	10,009	13,502	18,199	57,008
Other Interest	4,165	6,220	8,320	11,213	25,518	68,620
SST & Employee Benefits (Dep)	3,047	4,148	4,162	3,679	3,137	4,401
SST & Employee Ben (Non-Dep)	488	948	2,099	4,425	5,515	28,834
Labor Hired (Dependents)	3,812	6,342	7,327	7,403	10,496	19,150
Labor Hired (Non-Dependents)	1,643	4,166	12,767	27,467	41,559	178,659
Other Depreciation	15,159	25,437	32,162	39,880	58,371	129,252
Total Allocated Costs	106,493	169,191	249,080	364,032	556,146	1,576,865
Total Income	135,183	219,039	324,164	454,314	674,093	1,862,729
Net Farm Income from Operations	28,689	49,849	75,083	90,281	117,947	285,865

Table 8
Milk Production Cost per CWT EQ in 1998

Range in Herd Size	<=50 cows	51 to 75	76 to 100	101 to 150	151 to 250	>250 cows
Number of Farms	210	266	132	85	37	50
Pounds Milk Sold per Cow	18,083	19,243	19,984	20,410	20,042	22,038
Average Number of Cows	41	62	87	122	187	471
Total Crop Acres per cow	4.21	3.91	3.89	3.60	2.73	2.20
Total Crop Acres Farmed	174	244	339	438	510	1,037
Cost of Resale Livestock Sold	0.01	0.12	0.01	0.04	-	0.02
Auto & Truck Expense	0.16	0.12	0.07	0.05	0.04	0.03
Crop Chemicals	0.27	0.27	0.31	0.29	0.21	0.23
Custom Heifer Raising	0.00	0.01	0.03	0.14	0.16	0.35
Custom Hire (Other)	0.29	0.30	0.42	0.38	0.48	0.37
Feed Purchased	2.27	2.31	2.30	2.50	2.99	3.48
Fertilizer & Lime	0.55	0.56	0.45	0.57	0.47	0.29
Freight & Milk Hauling	0.08	0.07	0.05	0.04	0.09	0.07
Fuels & oil	0.30	0.26	0.25	0.24	0.21	0.19
Insurance	0.23	0.20	0.19	0.17	0.14	0.13
Milk Marketing & Hedging	0.15	0.15	0.15	0.15	0.15	0.17
Rent/Lease Equipment	0.03	0.06	0.06	0.11	0.16	0.15
Rent-Farm & Pasture	0.43	0.49	0.58	0.53	0.60	0.41
Repair & Maintenance.	1.05	0.94	1.03	1.05	0.86	0.70
Seed & Plants Purchased	0.40	0.38	0.39	0.40	0.32	0.27
Supplies	0.55	0.50	0.48	0.43	0.38	0.35
Taxes	0.35	0.27	0.25	0.24	0.21	0.13
Utilities	0.33	0.30	0.28	0.27	0.23	0.19
Vet & Medicine	0.40	0.35	0.38	0.42	0.41	0.44
Breeding Fees	0.20	0.18	0.17	0.17	0.13	0.09
Other Farm Expenses	0.12	0.11	0.12	0.17	0.13	0.12
Other Crop Expenses	0.11	0.10	0.08	0.08	0.07	0.06
Other Livestock Expenses	0.12	0.17	0.21	0.34	0.39	0.56
Accounts Payable Adjustment	-0.06	-0.07	-0.07	-0.09	-0.09	-0.07
Prepaid Expense Adjustment	-0.11	-0.19	-0.21	-0.24	-0.23	-0.28
Basic Costs	8.24	7.84	7.95	8.43	8.52	8.43
Livestock Depreciation	0.21	0.30	0.24	0.27	0.47	0.59
<i>Basic Cost + Lvst Depr</i>	<i>8.44</i>	<i>8.13</i>	<i>8.19</i>	<i>8.70</i>	<i>8.99</i>	<i>9.03</i>
Mortgage Interest	0.47	0.45	0.48	0.46	0.42	0.47
Other Interest	0.47	0.44	0.40	0.38	0.58	0.57
SST & Employee Benefits (Dep)	0.35	0.29	0.20	0.12	0.07	0.04
SST & Employee Ben (Non-Dep)	0.06	0.07	0.10	0.15	0.13	0.24
Labor Hired (Dependents)	0.43	0.45	0.35	0.25	0.24	0.16
Labor Hired (Non-Dependents)	0.19	0.29	0.61	0.93	0.95	1.48
Other Depreciation	1.73	1.79	1.53	1.35	1.33	1.07
Total Allocated Costs	12.14	11.90	11.84	12.35	12.71	13.05
Total Income	15.41	15.41	15.41	15.41	15.41	15.41
Net Farm Income from Operations	3.27	3.51	3.57	3.06	2.70	2.36

product or product contact surface shall be clean, safe and free of contaminants. The system used to generate and supply pressurized air and steam shall comply with applicable "3-A Sanitary Standards" and "3-A Accepted Practices" listed in APPENDIX A to this chapter.

Note: The "3-A Sanitary Standards" and "3-A Accepted Practices" listed in APPENDIX A are published jointly by the International Association of Milk, Food and Environmental Sanitarians, Inc., and the Food and Drug Administration, Public Health Service, United States Department of Health and Human Services. Copies are on file with the department, the secretary of state and the revisor of statutes. Copies may be purchased from the International Association of Milk, Food and Environmental Sanitarians, Inc., 6200 Aurora Avenue, Suite 200 W., Des Moines, Ia 50322.

(9) FIRE, FLOOD OR CASUALTY DAMAGE. If a dairy product or ingredient is subjected to possible contamination in a fire, flood or other casualty, no person may sell or reprocess that product or ingredient for human consumption unless the department first inspects the product or ingredient and authorizes its sale or reprocessing for human consumption. A dairy plant operator shall notify the department whenever dairy products or ingredients in the operator's possession have been subjected to possible damage or contamination because of fire, flood or other casualty.

History: Cr. Register, November, 1994, No. 467, eff. 12-1-94.

Subchapter IV — Dairy Plant Records and Reports

ATCP 80.24. Milk quality standards. (1) RAW MILK FROM DAIRY FARMS. Raw milk from dairy farms shall comply with the milk quality standards specified under s. ATCP 60.15.

(2) MILK HELD AT DAIRY PLANT; BACTERIAL COUNT. The bacterial count of grade A milk held at a dairy plant prior to pasteurization may not exceed 300,000 per ml. The bacterial count of grade B milk held at a dairy plant prior to pasteurization or processing may not exceed 750,000 per ml.

(3) PASTEURIZED DAIRY PRODUCTS. (a) The bacterial count of pasteurized milk and dairy products may not exceed 20,000 per ml. This paragraph does not apply to cultured dairy products or frozen desserts containing nuts or other bulky flavors.

(b) The coliform count of pasteurized dairy products, other than cultured dairy products, may not exceed 10 per milliliter.

(c) In pasteurized milk or dairy products, there shall be less than one microgram of phosphatase per ml. as determined by the Sharer rapid method, or less than 500 milliunits of phosphatase per liter as determined by the fluorometric procedure.

(4) FORTIFIED DAIRY PRODUCTS. Whenever milk or a fluid milk product is fortified with vitamin A or D, the fortification shall comply with Appendix O to the "Grade A Pasteurized Milk Ordinance — 1993 Recommendations of the United States Public Health Service/Food and Drug Administration."

Note: Copies of Appendix O to the "Grade A Pasteurized Milk Ordinance — 1993 Recommendations of the United States Public Health Service/Food and Drug Administration" are on file with the department, the secretary of state and the revisor of statutes. Copies may be obtained from the department at cost.

History: Cr. Register, November, 1994, No. 467, eff. 12-1-94.

ATCP 80.26 Milk quality testing. (1) REQUIRED TESTING. (a) A dairy plant operator shall test raw milk from dairy farms as required under subch. IV of ch. ATCP 60.

Note: Under subch. IV of ch. ATCP 60, a dairy plant operator must perform milk quality tests including bacteria counts, drug residue tests and somatic cell tests. A dairy plant operator or milk hauler must also screen milk for coarse sediments. A dairy plant operator must report test results and reject milk shipments as required.

(b) A dairy plant operator shall test milk and dairy products held or processed at a dairy plant for compliance with standards specified under s. ATCP 80.24 (2) and (3). The dairy plant operator shall test the milk and dairy products as often as necessary to provide reasonable statistical assurance of compliance.

(2) PAYMENT BASED ON MILK COMPONENT TESTS. No dairy plant operator may adjust the price paid to any milk producer based on the results of any milk component test or somatic cell test unless the dairy plant operator does both of the following:

(a) Bases the price adjustment on the arithmetic average of all test results obtained for that producer during the pay period to which the price adjustment applies.

(b) Tests at least 3 milk shipments from that producer at regular intervals throughout the pay period to which the price adjustment applies, or tests composite samples representing all milk shipments from that producer during that pay period.

History: Cr. Register, November, 1994, No. 467, eff. 12-1-94.

ATCP 80.28 Persons authorized to perform milk quality tests. (1) GENERAL. (a) Except as provided under par. (b), milk quality tests shall be performed in a laboratory that is both of the following:

1. Approved by the department to conduct milk quality tests.
2. Certified by the state of Wisconsin department of health and family services under s. 252.22, Stats., or by an equivalent certifying agency in another state, to conduct milk quality tests.

Note: A "milk quality test," as defined under s. ATCP 80.01 (23), means a bacteria count, somatic cell count, drug residue test, milk component test, or other analytical test which is used to determine compliance with milk quality standards under s. ATCP 80.24, or which may affect the price that a dairy plant operator pays a milk producer for milk. Laboratory evaluation forms used in certifying laboratories under s. 143.15, Stats., may be obtained from the department or from the Laboratory Certification Officer, Wisconsin Department of Health and Family Services, 1414 E. Washington Avenue, Room 96, Madison, WI 53703.

(b) Bulk load tests for drug residues under s. ATCP 60.19 (2) shall be conducted at the receiving dairy plant by either of the following:

1. An individual approved by the department and certified by the Wisconsin department of health and family services to conduct drug residue tests.

2. An individual who performs drug residue tests only under the direct supervision of an individual approved and certified under subd. 1.

Note: Approval of individuals to perform drug residue tests will become effective only after a certification program for individuals is developed by the Wisconsin department of health and family services.

(c) The department may withdraw its approval under par. (a) or (b) for cause, regardless of whether the department of health and family services withdraws its certification. Cause may include false or inaccurate test results or reports, or failure to conduct tests according to required procedures.

(2) MILK COMPONENT TESTING; LICENSED TESTER. (a) No person may perform any milk component test unless that person is licensed to perform milk component tests, either as a buttermaker or cheesemaker under s. 97.17, Stats., or as a milk and cream tester under s. 98.145, Stats.

(b) No person may use an automated testing device to perform any milk component test unless that person is trained and qualified to use automated testing devices, and that fact is stated on his or her license under s. 97.17 or 98.145, Stats.

Note: A "milk component test," as defined under s. ATCP 80.01 (20), means a test which determines the amount of milkfat, protein, total solids, solids-not-fat or other valuable components in milk, and which may affect the price that a dairy plant operator pays a milk producer for milk.

History: Cr. Register, November, 1994, No. 467, eff. 12-1-94; corrections made under s. 13.93 (2m) (b) 6., Stats., Register, January, 1998, No. 505.

ATCP 80.30 Test samples. (1) GENERAL. (a) Whenever a dairy plant operator performs a milk quality test on a bulk milk shipment from a milk producer, the dairy plant operator shall perform that milk quality test on a test sample collected under s. ATCP 82.12.

(b) Whenever a dairy plant operator performs a milk quality test on a can milk shipment from a milk producer, the dairy plant operator shall perform that milk quality test on a test sample collected under sub. (3).

(c) Notwithstanding pars. (a) and (b), a dairy plant operator may use a composite sample under sub. (4) to perform a Babcock test for milkfat, or to perform another milk quality test approved