



WISCONSIN  
CHEESE MAKERS  
ASSOCIATION  
EST. 1891

May 30, 2023

Mr. Bruce Summers  
Administrator  
Agricultural Marketing Service  
U.S. Department of Agriculture  
1400 Independence Avenue, S.W.  
Washington, D.C. 20250

Dear Administrator Summers:

**Re: Petition of the Wisconsin Cheese Makers Association (“WCMA”) For a Hearing to Amend Federal Milk Marketing Orders**

In its March 28, 2023 Petition, as supplemented by letter dated April 14, 2023, the Wisconsin Cheese Makers Association (“WCMA”) requested that USDA hold a hearing to amend all make allowances in the Federal Milk Marketing Order (“FMMO”) program administered by Dairy Programs. We pointed out that accurate and up-to-date make allowances are absolutely critical to a properly functioning FMMO program, given that for Class III (cheese) and Class IV (butter and nonfat dry milk) products, a manufacturer is legally required by the FMMO to pay the farmers supplying it milk the money the manufacturer receives from selling its finished products to customers (as determined by monthly audited surveys of actual finished product prices for the core Class III and IV products), minus the cost incurred in making those products, as set forth in the FMMO regulations (the “make allowance”).

Thus, it is critical that make allowances reflect the accurate, current cost of making these products. Yet the current make allowances were set in 2007 and 2008 based upon 2005 and 2006 cost data. Actual manufacturing and other costs considered in make allowances have risen dramatically during the past 16 years, since make allowances were last revised. FMMO provisions have effectively stopped manufacturers from covering these higher costs through make allowances.

We pointed out that this is a major problem for dairy product manufacturers like the plant operator members of WCMA, where the current make allowances are insufficient to cover plants’ costs. These everyday losses and significant cost increases are impossible to sustain. Farmer-owned cooperatives in this region are routinely returning dairy farmer payments with significant deductions from FMMO uniform minimum prices. Proprietary members of WCMA are absorbing losses, attempting to sell specialty cheeses at prices designed to mitigate losses, and/or otherwise failing to invest in plants and facilities. This is not sustainable for the plants, nor for dairy farmers who depend on these plants as outlets for their raw milk.

WCMA's proposal asked that USDA take the requisite "regulatory action" and amend the manufacturing allowances for Class III and Class IV product formulas, as enumerated in 7 C.F.R. § 1000.50, in order to reflect the substantial increase in plant manufacturing costs since make allowances were last revised in 2008. WCMA indicated that the amendment should be based on record evidence that WCMA anticipates will include a new cost study that Dr. Stephenson was undertaking, and a study by Dr. William Schiek.

By letter dated April 28, 2023, you indicated that USDA needed additional information regarding the specific make allowance values that WCMA is requesting that the Secretary consider for adoption. WCMA responded by letter dated May 8, 2023, stating that WCMA would comply with your request fully. We explained our understanding that Dr. Stephenson would soon complete his updated cost study, and that with that information in hand, WCMA would have the data sets necessary to provide the requested "specific make allowance values" that WCMA is asking the Secretary to consider for adoption.

Dr. Stephenson has now completed that study. The 2023 Stephenson survey is especially robust, relying upon cost data from 18 cheese plants, 9 dry whey plants, 15 NFDm plants and 13 butter plants.

Dr. Stephenson's 2023 cost study establishes the following 2022 weighted average costs of manufacture:

Cheese: 26.43 cents    Dry whey: 33.61 cents    NFDm: 27.50 cents    Butter: 31.76 cents

Dr. Stephenson's determination of the 2022 cost of manufacture are comparable to the 2022 cost study by Dr. Schiek, which projected 2022 costs based upon California Department of Food and Agriculture audited costs surveys performed in 2016 and the changes in relevant cost factors since that time. Dr. Schiek's 2022 cost study establishes the following 2022 weighted average costs of manufacture:

Cheese: 30.06 cents    Dry whey: 29.53 cents    NFDm: 26.53 cents    Butter: 23.64 cents

WCMA is asking the Secretary to consider for adoption make allowances equal to the average of the costs of manufacture as determined by the 2023 Stephenson survey and the 2022 Schiek survey. These averages are as follows:

Cheese: 28.25 cents    Dry whey: 31.57 cents    NFDm: 27.01 cents    Butter: 27.70 cents

However, in the spirit of cooperation with the dairy farmer community, WCMA is asking that the Secretary phase in these new make allowances over time. The first step would be to adopt make allowances effective January 1, 2025 equal to 50% of the difference between the current make allowances and the average of the costs of manufacture established by the 2023 Stephenson study and the 2022 Schiek survey. This would establish the following make allowances effective January 1, 2025:

Cheese: 24.14 cents    Dry whey: 25.74 cents    NFDm: 21.90 cents    Butter: 22.43 cents

Then, on January 1 of each of the next three years, the four make allowances would increase

by one-third of the difference between the January 1, 2025 make allowances and the average of the costs of manufacture established by the 2023 Stephenson study and the 2022 Schiek survey. Under this approach, the full make allowances based upon the 2023 Stephenson survey and the 2022 Schiek survey would go into effect January 1, 2028, three years after the initial make allowance increase on January 1, 2025.

One final observation. Both processor and farmer groups have called for a replacement of the current system of updating make allowances on an unscheduled, episodic basis in reliance upon third party surveys, with a system providing USDA the legal authority and funds necessary to conduct regular, audited mandatory dairy product cost studies, resulting in the scheduled, periodic updating of make allowances. WCMA supports these proposals. In its proposed milk order amendments set forth below, WCMA has included a provision under which the make allowance increases set forth in the WCMA proposal would not come into effect in any given year if, prior to the start of that year, Congress has enacted legislation providing authority for mandatory audited cost surveys, and USDA has promulgated regulations implementing that authority and adopted make allowances pursuant thereto.

### **WCMA's Specific Proposed Order Amendments.**

Consistent with the foregoing, WCMA requests the following amendment be included by the Secretary in calling a hearing pursuant to 7 C.F.R. § 900.1, *et seq.*:

**Amend 7 C.F.R. § 1000.50(l), (m), (n), (o), and (q), and add a new subsection 1000.50(r), applicable to all federal milk marketing orders, to provide (deletions appear as strike-throughs; additions appear in red font):**

#### **§ 1000.50 Class prices, component prices, and advanced pricing factors.**

\* \* \* \* \*

(l) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA Butter survey price reported by the Department for the month, less ~~17.15 cents~~ **22.43 cents effective January 1, 2025, 24.18 cents effective January 1, 2026, 25.94 cents effective January 1, 2027, and 27.70 cents effective January 1, 2028**, with the result multiplied by 1.211.

(m) *Nonfat solids price.* The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month, less ~~16.78 cents~~ **21.90 cents effective January 1, 2025, 23.60 cents effective January 1, 2026, 25.31 cents effective January 1, 2027, and 27.01 cents effective January 1, 2028** and multiplying the result by 0.99.

(n) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be computed as follows:

\* \* \* \* \*

(1) ...

(2) Subtract ~~20.03 cents~~ **24.14 cents effective January 1, 2025, 25.51 cents effective January 1, 2026, 26.88 cents effective January 1, 2027, and 28.25 cents effective January 1, 2028** from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.383;

(3) Add to the amount computed pursuant to paragraph (n)(2) of this section an amount computed as follows:

(i) Subtract ~~20.03 cents~~ **24.14 cents effective January 1, 2025, 25.51 cents effective January 1, 2026, 26.88 cents effective January 1, 2027, and 28.25 cents effective January 1, 2028** from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.572; and

\* \* \* \* \*

(o) *Other solids price.* The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month minus ~~19.91 cents~~ **25.74 cents effective January 1, 2025, 27.68 cents effective January 1, 2026, 29.63 cents effective January 1, 2027, and 31.57 cents effective January 1, 2028**, with the result multiplied by 1.03.

\* \* \* \* \*

(q)(3) An advanced butterfat price per pound rounded to the nearest one-hundredth cent, shall be calculated by computing a weighted average of the 2 most recent U.S. average NASS AA Butter survey prices announced before the 24th day of the month, subtracting ~~17.15 cents~~ **22.43 cents effective January 1, 2025, 24.18 cents effective January 1, 2026, 25.94 cents effective January 1, 2027, and 27.70 cents effective January 1, 2028** from this average, and multiplying the result by 1.211.

\* \* \* \* \*

(r). **The increase in the amounts subtracted from the NASS survey prices effective January 1 of each year as set forth in 7 C.F.R. § 1000.50(l), (m), (n), (o), and (q) shall not become effective if prior to January 1 of that year the United States Department of Agriculture has been provided authority and funding to conduct audited dairy product cost studies, has promulgated regulations implementing that authority, and adopted make allowances pursuant thereto.**

Please let me know if you have any questions.

Sincerely,



John Umhoefer, Executive Director  
Wisconsin Cheese Makers Association

cc: Dana Coale, Administrator, Dairy Programs, AMS/USDA  
Erin Taylor, Director, Order Formulation and Enforcement Division, AMS/USDA