

Via U.S. Mail and Email

May 30, 2023

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

Re: Petition of the International Dairy Foods Association For a Hearing to Amend Federal Milk Marketing Order Make Allowances

Dear Administrator Summers:

By letter dated March 28, 2023, as supplemented by letter dated April 3, 2023, the International Dairy Foods Association (“IDFA”) petitioned the Secretary of Agriculture to institute a proceeding to amend all current Federal Milk Market Orders (FMMOs), 7 C.F.R. Parts 1000–1135, by updating the current manufacturing cost factors (make allowances), which were established based on industry cost data from 2005–2006, so that the make allowances will reflect current manufacturing costs. This petition was in keeping with USDA’s consistent practice of holding hearings to update make allowances when so requested, which USDA had done on four prior occasions since product formulas, including make allowances, were first implemented in 2000.

In its petition, IDFA referenced three data sources for more recent manufacturing costs: the USDA-commissioned study “Cost of Processing Study for Cheese, Whey, Butter and Nonfat Dry Milk Plants” released by Dr. Mark Stephenson in early 2022, which was based on Dr. Stephenson’s survey of mostly 2018 cost data; a 2022 cost study by Dr. William Schiek, CEO of the Dairy Institute of California, that projected 2022 costs based upon California Department of Food and Agriculture audited costs surveys performed in 2016 and data regarding changes in relevant cost factors since that time; and a soon-to-be completed new cost survey by Dr. Stephenson that would update his 2022 survey (which as noted was a survey of mainly 2018 cost data) using 2022 cost data.

By letter to IDFA dated April 28, 2023, USDA indicated that it needed additional information regarding the specific make allowance values that IDFA is requesting the Secretary consider for adoption. By letter to USDA dated May 8, 2023, IDFA confirmed that it would comply fully with USDA’s request and indicated that Dr. Stephenson was nearing the completion of the updated cost study, which would provide IDFA with the data sets necessary for IDFA to provide the requested “specific make allowance values” that IDFA is asking the Secretary to consider for adoption.

IDFA is pleased to inform USDA that Dr. Stephenson has now completed the 2023 survey of 2022 manufacturing costs. The survey was quite robust, covering both a large number of plants and a very substantial percentage of the production of the relevant commodities:

2023 Stephenson survey of 2022 manufacturing costs	Number of plants surveyed	Percentage of 2022 NASS production
Cheese	18	56%
Whey	9	51%
NFDM	15	91%
Butter	13	80%

Dr. Schiek’s similar 2022 report of 2022 manufacturing costs benefits from its being based upon a Government audited survey of manufacturing costs, updated using reliable data as to the changes since that audit was performed in the salient cost factors such as labor, energy, etc.

Consistent with past USDA practice, IDFA has concluded that make allowances should be based upon a weighting (equal) of the results of the 2023 Stephenson study and the 2022 Schiek study, and now presents that data pursuant to USDA’s request, below.

Dr. Stephenson’s 2023 cost study establishes the following 2022 costs of manufacture:

Cheese: \$0.2643
 Dry whey: \$0.3361
 NFDM: \$0.2750
 Butter: \$0.3176

Dr. Schiek’s 2022 cost study establishes the following 2022 costs of manufacture:

Cheese: \$0.3006
 Dry whey: \$0.2953
 NFDM: \$0.2653
 Butter: \$0.2364

The average of the results of the 2023 Stephenson study and the 2022 Schiek study are as follows:

Cheese:	\$0.2825
Dry whey:	\$0.3157
NFDM:	\$0.2701
Butter:	\$0.2770

IDFA is not aware of any comparable, much less better, sets of cost data, and certainly no party has submitted such data at this time.

The “specific make allowance values” that IDFA is asking the Secretary to consider for adoption.

IDFA reasonably could ask USDA to adopt as soon as possible the new make allowances based on the average of the results of the 2023 Stephenson study and the 2022 Schiek study, as set forth above. USDA has historically and repeatedly utilized whatever data sets constituted the most up to date and reliable cost data to set make allowances. The 2023 Stephenson study and the 2022 Schiek study cost figures constitute that data.

Furthermore, as discussed in detail in IDFA’s March 28, 2023 petition, dairy product manufacturers under Federal Milk Marketing Orders are trapped into a fixed make allowance with no opportunity to cover their higher costs no matter the prices of their dairy products. If manufacturers attempt to raise their product prices to cover higher costs, those higher prices automatically lead to higher milk prices, leaving no additional net income to apply to the higher costs.

USDA has fully embraced this observation, noting that “[t]he ability of a manufacturer to offset cost increases are limited by the level of make allowances in the Class III and Class IV price formulas.” Milk in the Northeast and Other Marketing Areas; Tentative Partial Final Decision on Proposed Amendments and Opportunity To File Written Exceptions to Tentative Marketing Agreements and Orders, 73 Federal Register 35,305, 35323 (June 20, 2008).

IDFA is aware that, with current make allowances being based on 2005 and 2006 cost data, the 2022 cost data established by the Stephenson 2023 study and the 2022 Schiek study, if implemented immediately as the new make allowances, would represent a material increase, depending on the specific product at issue. IDFA repeats that the 2023 Stephenson study and the 2022 Schiek study reflect real costs, and make allowances at any lower level, as are now in effect, cause dairy processors to face financial losses, to risk financial ruin, and/or to lack appropriate financial incentive either to re-invest in their plants or build new plants at a proper level.

Nevertheless, in the spirit of accommodation and possible consensus, IDFA formally proposes that the make allowance increases be taken in steps. The amendment proposed by IDFA would adopt as step one make allowances effective January 1, 2025 that would capture 50% of the difference between the current make allowances and make allowances based upon the average of the results of the 2023 Stephenson study and the 2022 Schiek study.

The make allowances effective January 1, 2025 would therefore be:

Cheese: \$0.2414
 Dry whey: \$0.2574
 NFDM: \$0.2190
 Butter: \$0.2243

Then, on January 1 of each of the next three years, the make allowances for each of the four products would be increased by one-third of the difference between the January 1, 2025 make allowances and the make allowances based upon the average of the results of the 2023 Stephenson study and the 2022 Schiek study. Thus, the full make allowances based upon the average of 2023 Stephenson study and the 2022 Schiek study would not go into effect until January 1, 2028, three years after the initial make allowance increase on January 1, 2025. The specific resulting make allowances would be as follows:

Proposed Make Allowance Levels					
Product	Current USDA	Year 1	Year 2	Year 3	Year 4
Cheese	\$0.2003	\$0.2414	\$0.2551	\$0.2688	\$0.2825
Whey	\$0.1991	\$0.2574	\$0.2768	\$0.2963	\$0.3157
NFDM	\$0.1678	\$0.2190	\$0.2360	\$0.2531	\$0.2701
Butter	\$0.1715	\$0.2243	\$0.2418	\$0.2594	\$0.2770

Furthermore, as stated in its April 28, 2023 petition, IDFA fully endorses and supports the position of several farmer organizations that the current ad hoc review and revision of make allowances based upon third party surveys should be replaced by a system providing USDA the authority and funding to conduct regular, audited mandatory dairy product cost studies, resulting in the periodic updating of make allowances. Legal authority to do this does not yet exist.¹ Accordingly, the IDFA proposed

¹ The statutory provision upon which the American Farm Bureau Federation has relied for the contrary view, 7 U.S.C. Section 608d(1), provides that "**all handlers subject to an order**, shall severally, from time to time, upon the request of the Secretary, furnish him with such information as he finds to be necessary to enable him to ascertain and determine the extent to which such agreement or order has been carried out or has effectuated the declared policy of this chapter" and that "(f)or the purpose of ascertaining the correctness of any report made to the Secretary pursuant to this subsection, or for the purpose of obtaining the information required in any such report, where it has been requested and has not been furnished, the Secretary is authorized to examine such books, papers, records, copies of income-tax reports, accounts, correspondence, contracts, documents, or memoranda, as he deems relevant..." (emphasis added).

make allowance amendments set forth below include a proviso that the make allowance increases set forth in the chart above 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.

IDFA urges that USDA hold a hearing as soon as possible and move expeditiously to a decision. IDFA specifically requests the following amendment to the manufacturing cost allowances found in the four basic component price formulas as part of the request to the Secretary to call a hearing pursuant to 7 C.F.R. § 900.1, *et seq.*, to, *inter alia*:

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) ...

However, most proprietary plants are not "handlers subject to an order." Rather, proprietary plants mainly purchase milk from dairy coops that are themselves "handlers subject to an order." As a result, Section 608d(1) does not authorize USDA to gather cost data information from most proprietary plants. This would mean that most proprietary plants, which would include many (probably most) large plants, would not be covered by any cost survey conducted pursuant to Section 608d(1).

This same issue was presented when product price formulas were first used to set minimum milk prices, and USDA needed data as to the price and quantity at which cheese, etc. was sold. USDA could not rely upon its authority under Section 608d(1), because many (probably most) sellers of Class III and IV products were proprietary plants that were not regulated handlers and therefore were not subject to Section 608d(1). Legislation had to be passed, the Dairy Market Enhancement Act of 2000, authorizing USDA to obtain product price and quantity data from all plants, authorization that now appears in 7 U.S.C. Sections 1637 -1637b. But that authority only covers sales prices, volumes and moisture content; it does not allow for product cost surveys.

(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.

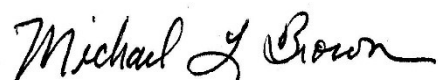
* * * * *

(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.

Respectfully Submitted,



Mike Brown
Chief Economist
International Dairy Foods Association
1250 H Street NW, Suite 900
Washington, DC 20005
202-737-4332

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