

**TESTIMONY OF THE INTERNATIONAL DAIRY FOODS ASSOCIATION WITH
RESPECT TO MAKE ALLOWANCE PROPOSALS 7, 8 AND 9
AUGUST-SEPTEMBER 2023 FEDERAL MILK ORDER HEARINGS
DOCKET NO. 23-J-0067; AMS-DA-0031**

This testimony is submitted on behalf of the International Dairy Foods Association (IDFA) with respect to proposals relating to make allowances, Proposals 7, 8 and 9.

IDFA represents the nation's dairy manufacturing and marketing industry, which supports more than 3.2 million jobs that generate \$49 billion in direct wages and \$794 billion in overall economic impact. IDFA's diverse membership ranges from multinational organizations to single-plant companies, from dairy companies and cooperatives to food retailers and suppliers, all on the cutting edge of innovation and sustainable business practices. Together, they represent manufacturers of cheese, milk proteins, ice cream, yogurt, cultured products, and dairy ingredients produced and marketed in the United States and sold throughout the world.

As buyers and processors of milk, the members of IDFA have a critical interest in these hearings. Most of the milk bought and handled by IDFA members is purchased under the Federal milk marketing orders promulgated pursuant to the Agricultural Marketing Agreement Act of 1937 (the "AMAA").

I am Mike Brown, Chief Economist for IDFA since January 2023. I have testified on other proposals earlier in this hearing, and at that time described my professional and educational background. My testimony now will address the reasons why Proposals 8 and 9 (which are substantively identical) should be adopted, and Proposal 7 should be rejected.

A. The Fundamental Features of Product Price Formulas.

Let me begin by pointing out some fundamentals of the current minimum price setting mechanisms, which IDFA believes provide critical insights into the approach that USDA must utilize when addressing the proposals before us and resolving any disagreements or uncertainties as to the underlying factual data. IDFA has made these same points in its testimony at prior milk order amendment hearings addressing product price formulas, and USDA has in fact reflected these points in its own decision-making. But given the lapse of time since the most recent milk order amendment hearings, these fundamental principles definitely bear repeating.

Since January 2000, federal milk marketing orders have utilized the price of finished products to determine the minimum milk prices that must be paid to farmers, through a mechanism commonly referred to as a "product price formula." Oversimplifying slightly, a product price formula sets the minimum price that farmers must be paid for their milk (at least by proprietary handlers) as the price handlers receive for their finished products (cheddar cheese, dry whey, butter and nonfat dry milk) minus the costs handlers incur in turning farm milk into those finished products (commonly referred to as the "cost of manufacture" or the "make allowance"). In performing this calculation, USDA must make assumptions as to how much of the finished products can be made from a given quantity of milk (the "yield factors").

In general terms, a make allowance is the difference between the wholesale sales value of a manufactured dairy product and the cost to purchase the raw milk necessary for that product's production. This make allowance is used by the processor for many economic purposes, e.g., to pay for the use of the capital necessary to build and maintain

the dairy processing plant, to cover the non-milk costs relating to obtaining raw milk, to pay for marketing the processed dairy product, to pay wages to employees of the manufacturing plant, to pay utility companies for the water, electricity and natural gas used to manufacture the dairy product, to buy ingredients other than raw milk, and to cover a wide variety of other expenses such as plant maintenance, equipment, and insurance.

A simple example may help explain the concept of make allowances in product price formulas. Assume the example where the wholesale price of fresh “short hold” cheddar cheese is \$2.00 per pound and the total costs of manufacturing and marketing that cheese is 28 cents per pound of cheese. A manufacturing plant facing these assumed economic factors would be able to pay up to \$1.72 (\$2.00 minus \$0.28) for the raw milk needed to manufacture each pound of cheese.

What if this hypothetical plant is regulated under a federal order? If the make allowance specified in the regulated minimum price is 28 cents, this plant can pay all the costs associated with manufacturing and marketing cheese after paying the regulated minimum milk price to the milk producers supplying the raw milk. If, on the other hand, the make allowance specified in the regulations was 20 cents, the plant would be required to pay a minimum price of \$1.80 (\$2.00 minus \$0.20) to milk producers supplying milk. In this scenario, the plant would still receive the wholesale cheese price of \$2.00, but after being required to pay the minimum milk price of \$1.80 would only have 20 cents left to cover the total costs of turning that milk into cheese. But with actual total costs of manufacturing and marketing cheese of 28 cents, the plant would be unable to pay for

one or more factors of manufacturing and marketing. Obviously, the plant could not continue to operate like this for any extended period.

With commodity cheese, any increase in price would be picked up in the NDPSR commodity price survey used to set FMMO milk component values. This in turn would raise the reference price by the same amount. The handler cannot escape from its conundrum by raising its finished product prices, either. We can see why this is so by returning to our example. Recall that the handler is selling cheese for \$2.00, the make allowance is 20 cents, and the minimum price of milk is therefore \$1.80. The handler is losing 8 cents for every pound of cheese it makes because its true costs of manufacturing is 28 cents, but it only has 20 cents left over after it pays for its milk. In our example, before any finished product price increase, the minimum milk price was \$2.00 minus 0.20 equals \$1.80. After the finished product price increase, the minimum milk price is \$2.08 minus 0.20 equals \$1.88. Thus, all of the 8 cents derived from the increase in the finished product price has gone directly to the farmer, through the Federal order pricing formulas. None of the money derived from the finished product price increase is retained by the handler. After paying the now higher minimum milk price, the handler still only has 20 cents left over—precisely the same - and inadequate - amount as before it raised its finished product prices.

This phenomenon has been fully recognized by USDA. As USDA stated when it last revised make allowances in 2008:

The ability of a manufacturer to offset cost increases is limited by the level of make allowances in the Class III and Class IV price formulas. Manufacturing processors are charged the FMMO minimum price for producer milk used to produce Class III and Class IV products. However, plant manufacturing cost increases may not be recovered because Class III and Class IV product-price formulas use make allowances that are fixed regardless of market conditions and change only by regulatory action.

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, 35,323 (June 20, 2008).

Indeed, NMPF itself recognized in its May 1, 2023 proposal that “[h]aving accurate and updated plant processing costs, or ‘make allowances,’ and appropriate product yield factors are critical for this indirect method of determining milk prices, which is a principal function of the Federal Order Program.” (As I will discuss later, NMPF’s own make allowance proposal fails its own standard.)

Similarly, if the formulas overestimate how much finished product is being obtained from a given quantity of raw milk, i.e., the yield factors, the formulas are dooming manufacturers to incurring losses, because the formulas will assume that processors are selling more finished product, and thus obtaining greater revenues in the marketplace, than is in fact the case.

The foregoing aspects of the use of product price formulas illustrate how much heavier USDA’s responsibilities have been since 2000. Or, to put it more bluntly, these aspects reveal how much damage can result if make allowances are set at an inadequate level.

Before 2000, USDA utilized a system which based minimum prices on the competitive pay price paid by manufacturing plants in Minnesota and Wisconsin to producers of unregulated Grade B (manufacturing grade) milk to set regulated prices; this was known as the M-W price series, eventually becoming the Basic Formula Price (BFP). Thus a surveyed unregulated market for farm milk set the regulated price and resulted in an implicit make allowance for each manufacturing plant, equal to the difference between the wholesale value received for the dairy product minus the value paid for the raw milk used to make that dairy product. This varied over time based on many economic factors such as the capacity utilization of the plant, variability in the cost of inputs other than raw milk like wage rates, energy costs and interest rates, and of course the competitive environment for raw milk. Market conditions automatically and continuously determined what the raw milk price should be, and how much of the finished product price a processor would retain. USDA did not have to make those determinations; the market did so. To a large extent, the system was on autopilot, until the Grade B milk supply declined to less than 10% of the total Minnesota and Wisconsin Milk supply by the mid-1990's.

Since initiation of Federal Order Reform in 2000, USDA tries to mimic these market forces through product price formulas -- and market forces cannot step in to fix the situation if USDA has assumed finished product prices that are too high; established yield factors that are too high; or established make allowances that are too low. A processor in any of those scenarios will be required to pay a minimum milk price that leaves it an inadequate amount of money to cover its true costs of manufacture; and the processor cannot raise its prices in the marketplace to try to compensate, because that will only increase the minimum milk price the processor owes.

Neither Congress nor USDA intended to threaten the economic viability of the US manufacturing industry by forcing manufacturers to lose money on every pound of dairy products produced, or potentially injure dairy producers by eliminating these important outlets for farm milk. However, the current system of FMMO regulated price formulas, fixes the difference between the value cheese, butter, whey and nonfat dry milk manufacturers obtain in the marketplace for their products and the minimum price they must pay for the milk used to make those products based on the industry costs as they existed at or before a May 2000 hearing at which the make allowances were established and then modified after a January 2006 hearing and again after hearings convened over several month from February through July 2007. Thus, current make allowances are based upon cost data submitted more than 16 years ago. Unless those make allowances are adjusted in response to changes in industry costs, manufacturers are trapped in either losing money on every pound of product produced or stopping production entirely.

There should be relatively little concern that applying the principles discussed above will result in make allowances that are too high, yield factors that are too low, or product prices that are too low, such that producers will be “cheated” out of a rightful price for their milk.

We are only dealing here with minimum milk prices. Cooperative associations will pass on to their milk producer members, or put to other business uses, all of the wholesale sales value of dairy products in excess of that needed to cover the total costs of manufacturing. Since cooperative associations are significant players in the manufacturing of dairy products, they are a considerable force to be reckoned with in the marketplace. To remain competitive in the marketplace for raw milk, a proprietary plant

would have to pay an amount at least equal to the cooperative association in the above example, as an over-order premium. In short, over time, market forces have resulted in over order premiums that will adjust the amount being paid to producers if make allowances are set at a level higher than the actual cost of production, yield factors are set at a level below actual yields, or product prices are assumed to be lower than they really are. There is nothing revolutionary about relying on the market for these purposes -- after all, that is exactly what federal orders did for the first 67 years of their existence, before an adequate supply of surveyable manufacturing milk dissipated to tiny amounts by the mid-late 1990's .

It is also a mistaken notion that the product pricing system provides a fixed margin for processors but no safety provision for farmers, or that the system somehow forces farmers to bear the cost of cost increases at the manufacturing level. Make allowances are based upon the average weighted cost of manufacture. Processors whose costs are above the make allowances must either reduce their costs, suffer losses, or go out of business; and processors whose costs are below the make allowances will face competitive pressures for milk supplies that will result in over order premiums.

As for producers, they must be subject to price signals that will cause them to produce more milk when rising market demand for finished dairy products dictates the need for more milk, and to produce less milk when falling product demand so dictates. No purpose can be served by regulated milk prices that incentivize increased production without any market outlet.

Balancing this economic necessity is the fact that, unlike regulated processors, producers are not subject to regulations that fix the maximum margin between their output

price and input costs. Indeed, one can only imagine the protest if dairy producers had been required by regulation to pass on those higher milk prices to their suppliers of grain or other inputs.

USDA itself has already recognized the fallacy of these arguments against make allowance increases. AS USDA explained when it last increased make allowances in 2008:

Opponents of increasing make allowances argue a number of points— that they are already set at too high a level, that dairy farmer production costs also have increased significantly due to higher energy and feed costs, that processors should look beyond asking dairy farmers to receive less for their milk by charging more for manufactured products, and that make allowance increases should be made only when all dairy farmer production costs are captured in their milk pay price. These are not valid arguments for opposing how make allowances should be determined or what levels make allowances need to be in the Class III and Class IV product-pricing formulas. The record demonstrates that current make allowance levels are not reflective of the costs manufacturers incur in processing raw milk into the finished products of cheese, butter, NFDM and dry whey.

Additionally, the Class III and Class IV product-price formulas establish derived classified prices for producer milk that are used nationally in all Federal milk orders. When dairy farmer production costs exceed the value for which products are sold in the marketplace, no source of revenue from the marketplace is available to cover those costs.

In the aggregate, the costs of producing milk are reflected in the supply and demand conditions for the dairy products. When the supply of milk is insufficient to meet the demand for Class III and Class IV products, the prices for these products increase as do regulated minimum milk prices paid to dairy farmers because the milk is more valuable, and this greater milk value is captured in the pricing formulas. Dairy farmers face no regulatory minimums in their costs and face no regulated minimum payment obligation in the way that regulated handlers must pay dairy farmers for milk.

It is reasonable to conclude that the make allowances used in the Class III and Class IV product-price formulas should be updated to reflect changes in the costs manufacturers incur in producing cheese, butter, dry whey, and NFDM. It is necessary to reflect changes in manufacturing costs so that with the prevailing market prices for manufactured products, minimum Federal order classified prices can be set.

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, 35,324 (June 20, 2008).

The urgent need to promptly address and update manufacturing allowances cannot seriously be denied. No one thinks the current manufacturing allowances remotely reflect current manufacturing costs. And manufacturing allowances are the one aspect of milk orders that entirely replaces market forces for milk supplies with regulated prices. Regulated manufacturers of Class III and IV products must put into the pool the entirety of the amount received selling those products, minus the manufacturing allowances.

B. USDA'S Historical Approach to Setting Make Allowances Remains the Correct Approach.

IDFA Proposal 9 addresses the disorderly marketing and economic hardships imposed on cheese, nonfat dry milk, butter and whey manufacturers due to the dramatically higher costs of manufacturing these products since USDA last established the current manufacturing cost factors (make allowances) in 2008 based on industry cost data from 2005–2006.

As I have described above, the product pricing formulas can only work if they incorporate make allowances that are consistent with actual costs of manufacture. **That is a fundamental principal USDA has adopted and applied ever since USDA more**

than twenty years ago began using component pricing to set minimum milk prices for manufactured (Class III and IV) products. The Department has applied a straightforward, overriding principle: minimum manufacturing product prices must incorporate a “make allowance” consistent with the average manufacturing cost for the core commodity Class III and IV products, as determined by the most recently available reliable cost data. As USDA explained when it first adopted this approach effective January 1, 2000:

The make allowances contained in the proposed rule were developed primarily from make allowance studies conducted at and published by Cornell University and an analysis of manufacturing plant size in relationship to the data contained in the Cornell studies. Audited cost of production data published by the California Department of Food and Agriculture was also used in determining a reasonable level of make allowances.

....

... Both handler and producer interests argued that failure to cover processors’ costs of converting milk to finished products results in a disincentive to produce finished dairy products. They expressed concern that the disincentive would discourage investment in the manufacturing sector, leading to reduced manufacturing capacity and reduced outlets for producers’ milk.

Milk in the New England and Other Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders, 64 Fed. Reg. 16,026, 16,096 (Apr. 2, 1999).

Since that initial implementation of product pricing formulas, USDA has on four separate occasions held hearings to amend make allowances. In every instance, USDA has updated (increased) the make allowances to reflect more recent weighted average cost of production data. As shown by the following excerpts from the Department’s decision-making, the Department has without exception continued to apply the same

foundational principle: make allowances should reflect the weighted average of actual manufacturing costs:

1. December 2000 USDA Decision Raising the Make Allowances:

As supported by most of the hearing participants, the make allowances incorporated in the component price formulas under the Federal milk orders should cover the costs of most of the processing plants that receive milk pooled under the orders. . . .

. . . .

. . . . [M]anufacturing costs used to determine appropriate make allowances for cheddar cheese, butter and nonfat dry milk in this proceeding are calculated primarily from a weighted average of the RBCS [Rural Business Cooperative Service] and CDFA [California Department of Food and Agriculture] surveys, with a check against the NCI [National Cheese Institute] survey cost of manufacturing cheddar cheese. The cost of manufacturing nonfat dry milk continues to be used as the cost of making whey powder due to the nature of the information in the hearing record about the actual costs of drying whey.

Milk in the Northeast and Other Marketing Areas; Tentative Decision on Proposed Amendments and Opportunity to File Written Exceptions to Tentative Marketing Agreements and to Orders, 65 Fed. Reg. 76,831, 76,839–40 (Dec. 7, 2000).

2. November 2002 USDA Decision Raising the Make Allowances:

As supported by most of the hearing participants, the make allowances incorporated in the component price formulas under the Federal milk orders should cover the costs of most of the processing plants that receive milk pooled under the orders. In part, this approach is necessary because pooled handlers must be able to compete with processors whose milk receipts are not priced in regulated markets. The principal reason for this approach, however, is to ensure that the market is cleared of reserve milk supplies.

. . . .

This final decision finds that continuing to use an average make allowance of dairy manufacturing plants' costs is

appropriate. Reliance on product-price formulas necessitates the need to reflect and to offset the manufacturing costs incurred and is supported by the record even though there is disagreement on exactly how to accomplish this. Using an average make allowance provides a reasonable measure to reflect and offset manufacturing costs and is the only reasonable measure that can be supported by the record evidence.

Milk in the Northeast and Other Marketing Areas; Decision on Proposed Amendments to Tentative Marketing Agreement and To Orders, 67 Fed. Reg. 67905, 67915 (Nov. 7, 2002).

3. November 2006 USDA Decision Raising the Make Allowances:

This tentative final decision proposes to adopt, on an interim final and emergency basis, changes to the manufacturing allowances contained in the Class III and Class IV product price formulas applicable to all Federal milk marketing orders.

...

.....

The price formulas used to compute Class III and Class IV prices contain a factor called a manufacturing (make) allowance. The make allowance factor represents the cost manufacturers incur in making raw milk into one pound of product. . . . The [current] make allowances were last amended in 2003 and were determined on the basis of a California Department of Food and Agriculture (CDFA) and a USDA Rural Business Cooperative Service (RBCS) survey of 1998 manufacturing costs. The current make allowances were computed by taking a weighted average of the CDFA and RBCS surveys and adjusting for return on investment, general and administrative costs and marketing costs.

.....

This tentative final decision finds that combining the weighted average manufacturing costs of the [most recent] CDFA survey and CPDMP [Cornell Program on Dairy Markets and Policy] study for cheese, nonfat dry milk and butter into a single weighted average is appropriate for updating make allowances for those three products. The CPDMP study weighted average manufacturing cost of dry whey (without California) should be used for the dry whey make allowance.

Milk in the Northeast and Other Marketing Areas; Tentative Final Decision on Proposed Amendments and Opportunity To File Written Exceptions to Tentative Marketing Agreements and Orders, 71 Federal Register 67,467, 67,469–70, 67,487 (Nov. 22, 2006).

4. June 2008 USDA Decision Raising the Make Allowances:

This tentative final decision adopts on an interim basis, a proposal published in the hearing notice as Proposal 1 which seeks to amend the manufacturing allowances for butter, cheese, nonfat dry milk (NFDM) and dry whey using the most currently available data

. . . .

The make allowances adopted represent national manufacturing cost averages for cheese, butter, NFDM and dry whey. As found and determined in previous rulemakings on this issue, an estimation of manufacturing costs for national application requires that national production volumes of these commodities be considered in determining the level of make allowances to be relied upon and used in the Class III and Class IV product-pricing 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, 35,308, 35,325 (June 20, 2008).

In short, by setting both the original make allowances, and by amending the make allowances to reflect current costs on four separate occasions, USDA has consistently has updated the make allowances to reflect the most recent and reliable weighted average cost of production data.

C. The Need for Immediate Action.

Over 15 years have passed since make allowances were last updated. As I have already described, and as USDA has fully embraced, accurate and up to date make allowances are critical to a properly functioning FMMO program. Yet the current make allowances were established by USDA based on evidence presented at FMMO hearings

held in 2006 and 2007. The evidence presented was based on industry cost data from the periods 2005–2006, the most recent data available at that time. Actual cheese, butter, whey and nonfat dry milk plant manufacturing and related costs have risen significantly in the sixteen-plus years since. However, as noted, FMMO regulations strictly prevent these dairy product manufacturers from in any way recovering any portion of those higher costs through higher sales prices or other means.

The dairy manufacturing industries urgently need immediate relief from the current and highly inadequate fixed dollar relationship between product prices and the minimum regulated milk prices that does not reflect current industry costs. The existing use of fixed out-of-date make allowances is a major problem for all dairy product manufacturers producing cheese, butter, whey and nonfat dry milk. These everyday losses are impossible to sustain. IDFA members include farmer-owned cooperatives who are routinely returning dairy farmer payments with significant deductions from FMMO uniform minimum prices because of these losses. Proprietary members of IDFA are also absorbing losses, attempting to sell specialty cheeses at prices designed to mitigate losses, and/or otherwise failing to invest in plants and facilities. In fact, investments in plants overall are stagnant. This is not sustainable for the plants, nor for dairy farmers who depend on these plants as outlets for their raw milk.

IDFA is not alone in observing the need for action. In January 2023, CoBank Cooperative, one of the largest private providers of credit to the rural economy, acknowledged the need to update make allowances in their Knowledge Exchange publication, “Updating Make Allowances is Central to the Future of Federal Milk Marketing Orders,” which is posted in the Knowledge Exchange section of the CoBank website.

<https://www.cobank.com/knowledge-exchange/dairy/updating-make-allowances-is-central-to-the-future-of-federal-milk-marketing-orders>. I will repeat the title of this publication, because it really says it all: “Updating Make Allowances is Central to the Future of Federal Milk Marketing Orders.”

Noting that “make allowances were last updated in 2008 and were based on data from as far back as 2006,” the CoBank publication cited several federal statistics on cost increases. “Labor costs in dairy product manufacturing climbed 48% per unit of production, according to the U.S. Bureau of Labor Statistics. From 2006 to 2022, the industrial rate prices for electricity rose 64%. The CoBank publication concluded that “Cost structures among handlers will continue to change over time, requiring future adjustments in make allowances. While updating make allowances does not guarantee more investment in new processing assets with every handler, not updating them may result in lost growth opportunities for the dairy industry over the long term.”

Indeed, in its May 1, 2023 petition at p. 8, NMPF itself recognized that “[i]nadequate make allowances challenge manufacturing operations’ abilities to pay minimum announced milk prices and still operate their facilities at reasonable rates of return. This discourages the plant investment needed to provide market demand on a daily, seasonal and annual basis.”

D. USDA’S Historical Use of Survey Data to Determine the Weighted Average Cost of Manufacture and Establish the Make Allowances Remains the Correct Methodology.

IDFA proposes that the same basic methodology be employed in setting new make allowances as has consistently been employed in the past. The method employed following the May 2000 hearing to establish make allowances used a weighted average

(by volume of dairy product production) of two sources of industry cost data. The first was the annual published summary of the industry cost audit conducted by the California Department of Food and Agriculture (“CDFA”). The second was based on the results of a survey of dairy cooperative manufacturing plant costs conducted by the Rural Business Cooperative Service of USDA (“RBCS”). Milk in the Northeast and Other Marketing Areas; Tentative Decision on Proposed Amendments and Opportunity To File Written Exceptions to Tentative Marketing Agreements and to Orders, 65 Fed. Reg. 76,831, 76,839–40 (Dec. 7, 2000).

At the 2006 and 2007 hearings, proponents presented updated data from CDFA and RBCS. In addition, proponents introduced evidence provided by Dr. Mark Stephenson from Cornell University who presented a research study conducted by the Cornell Program on Dairy Markets and Policy. CPDMP assessed the cost of cheddar cheese, dry whey, butter, and nonfat dry milk.

AMS concluded after the 2006 proceeding that CPDMP presented a more comprehensive set of FMMO costs than RBCS, and AMS declined to further use RBCS. AMS also concluded that combining the CPDMP data with the CDFA data for California plants generally established a superior set of data on which to determine revised make allowances. AMS thus decided to use a single weighted average of milk volumes studied by CDFA and CPDMP for three of the products - cheese, butter and nonfat dry milk plus a fixed marketing cost of \$0.0015. As to dry whey, AMS concluded that it would be best to use the CPDMP manufacturing costs plus the same marketing cost of \$0.0015. AMS chose not to rely on CDFA study for whey costs due to plant “outliers.” Milk in the Northeast and Other Marketing Areas; Tentative Final Decision on Proposed

Amendments and Opportunity To File Written Exceptions to Tentative Marketing Agreements and Orders, 71 Federal Register 67,467, 67,486 (Nov. 22, 2006).

AMS in its 2008 decision combined the CPDMP survey report of weighted average costs with the average cost data from the most recent CDFA survey in setting the butter and NFDM make allowances. AMS relied upon the CDFA survey to set the make allowance for cheese, and the CPDMP survey to set the make allowance for dry whey. 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, 35,325-26 (June 20, 2008).

In short, USDA has consistently set make allowances based upon cost of manufacture survey data from two surveys. It has consistently used the CDFA audited cost data as one of the two data sources. It has consistently used another, unaudited cost data survey as the other data source.

E. USDA Should Amend the Current Make Allowances Using the Average of the 2023 Stephenson Cost Survey and the 2022 Schiek Cost Study Utilizing CDFA Audited Cost Data.

Dr. Mark Stephenson has been involved in dairy processing cost studies for more than 30 years. Early work at Cornell University dated back in the 1970s and 80s included the Dairy Information Management System, or DMIS, which was a project to collect and summarize monthly fluid milk plant processing costs. Later work by the Cornell Program on Dairy Markets and Policy (CPDMP) included studies on the cost of processing cheese, whey, butter, nonfat dry milk powder, again fluid milk and then ultra-filtered milk. Cost of processing projects were again conducted in 2006 and 2007 when the results were

offered as testimony in Federal Milk Marketing Order hearings, upon which USDA relied in setting make allowances following the 2006 and 2007 hearings. Dr. Stephenson has conducted an updated 2023 cost survey using the same fundamental methodology.

In addition, while the California state milk order was replaced by the California federal milk order effective November 1, 2018, CDFA study data of the precise kind relied on in the 2006 and 2007 formal rulemaking proceedings is available through 2016. Dr. William Schiek examined that data and then utilized standard regression analysis techniques to update that cost data through 2022.

These two cost studies closely parallel the cost studies USDA had previously found sufficiently reliable to establish make allowances, and IDFA's proposal utilizes them to calculate appropriate updated make allowances.

1. The 2023 Dr. Mark Stephenson study.

AMS itself requested Dr. Mark Stephenson (formerly at Cornell and then at the University of Wisconsin) to perform a new cost of manufacture study using the techniques and methodologies employed by CPDMP when it prepared and submitted the cost of manufacture studies previously relied upon by AMS in setting make allowances. Dr. Stephenson and AMS published the results of that 2021 study, which was based mostly on 2018 data, on February 14, 2022. See Federal Milk Marketing Orders, Agricultural Marketing Service, 2021 Cost of Processing Study, <https://www.ams.usda.gov/rules-regulations/moa/dairy> (last visited Mar. 27, 2023); Mark Stephenson, *Cost of Processing in Cheese, Whey, Butter and Nonfat Dry Milk Plants* (Dec. 2021), https://dairymarkets.org/cop/Report/2021_COP_Report.pdf.

Given that manufacturing costs have continued to rise since 2018, IDFA and the Wisconsin Cheese Makers Association (WCMA) jointly commissioned Dr. Stephenson to update his 2021 study data using more current (mostly calendar year 2022) data. Furthermore, in his 2021 study, Dr. Stephenson had partitioned unallocated costs between butter and nonfat dry milk differently than the methodology previously used by CDFA or CPDMP. IDFA and WCMA requested, and Dr. Stephenson agreed, to use the same allocation methodology in his new 2023 study as had previously been used by CDFA and CPDMP. Thus, unallocated costs were partitioned in the new 2023 study solely based on the milk solids in the products produced. I note this change in part because NMPF in its May 1, 2023 proposal at p. 7 raised Dr. Stephenson's 2021 allocation methodology as a purported reason not to rely upon his survey or to accept the IDFA proposal. That shortcoming, assuming it existed, has been eliminated in the 2023 Stephenson study upon which the IDFA proposal relies.

In Dr. Stephenson's most recent 2023 round of cost calculation, there were 15 participating firms with ownership of 45 different plants. Eight of the firms were cooperative ownership with the remaining seven being proprietary. Thirteen of the plants processed butter, fifteen processed nonfat dry milk, eighteen processed cheddar cheese, and nine processed dry whey for a total of 55 plant-product observations. Plant locations were geographically dispersed across all regions of the country except the Southeast where few manufacturing plants exist with reportable products.

Dr. Stephenson will appear as a neutral hearing witness and provide additional details regarding his study. A brief summary follows.

USDA-NASS and Stephenson Cost Survey Dairy Product Volumes

USDA NDPSR Cost Survey Products	USDA-NASS 2022 Annual Production	2023 Stephenson Cost Survey			Survey Production Share of USDA NASS Production
		Participating Plants	Average Annual Production	Total Survey Annual Production	
Cheddar Cheese	3,963,741,000	18	122,404,426	2,203,279,668	55.6%
Whey (Human)	885,929,000	9	49,986,287	449,876,583	50.8%
Nonfat Dry Milk	1,968,364,000	15	119,615,524	1,794,232,860	91.2%
Butter	2,058,737,000	13	126,906,009	1,649,778,117	80.1%

Data Sources: Dairy Products 2022 Summary April 2023. USDA NASS ISSN: 1057-784X PP11,23,29. Cost of Processing in Cheese, Whey, Butter and Nonfat Dry Milk Plants, Mark Stephenson, Ph.D., June 2023

Participation in the 2023 Stephenson survey was very robust, covering both a large number of plants and a very substantial percentage of the production of the relevant commodities: The chart on the next page shows that Dr. Stephenson’s 2023 cost study encompassed surpassed 50% of all 2022 NASS production for the four commodity products, with the applicable percentages for butter and NFDM reaching a whopping 80% and 91%, respectively.

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

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

2. The 2022 Dr. William Schiek cost study.

In 2022, IDFA retained Dr. William Schiek to analyze and update the CDFA audited cost survey data, which as noted runs through the year 2016. Dr. Schiek is well suited to this task, having received a Bachelor of Science degree in Applied Economics and Business Management from Cornell University, a Master of Science degree in Food and Resource Economics from the University of Florida, and a PhD in Food and Resource Economics from the University of Florida. He has served as a Cooperative Relations Specialist (Economist) for the New York-New Jersey Milk Market Administrator, USDA from 1982 through 1987; a Research Assistant in the University of Florida Food and Resource Economics Department from 1989 to 1991; an Assistant Professor of Agricultural Economics at Purdue University from 1991 to 1997; the Chief Economist of the California Dairy Institute from 1997 to 2022; and the Executive Director of the California Dairy Institute from 2022 to the present.

As Dr. Schiek will explain in much greater detail, he used CDFA audited annual dairy manufacturing cost data from 2003-16 to estimate 2022 manufacturing costs for butter, NFDM, and cheddar cheese. Dr. Schiek employed econometric techniques that have been widely used for modeling and forecasting purposes. In simple terms, Dr. Schiek examined how changes in labor costs, utility costs and other costs had historically affected dairy manufacturing costs, as reflected in the actual, historical, audited dairy manufacturing data. Based on those relationships, Dr Schiek applied modeling to determine how changes in those costs since 2016 have affected dairy manufacturing costs through 2022. Whey manufacturing costs were then calculated by adding an incremental drying cost of \$0.03 per pound to the NFDM cost estimate, based upon the

approximately \$0.03 per pound difference between the NFDM and dry whey manufacturing allowances currently used in the FMMO pricing formulas.

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

Dr. Schiek will appear as a hearing witness and provide additional details regarding his study.

3. The appropriate utilization of the two studies.

IDFA proposes that make allowances be based upon an equal weighting of the results of the 2023 Stephenson study and the 2022 Schiek study, adding to the costs reflected in those studies an additional \$0.0015 for marketing costs. Marketing costs were not included in the 2023 Stephenson study or the 2022 Schiek study, and USDA has consistently added \$0.0015 for marketing costs in setting make allowances.

The resulting make allowances are as follows:

Cheese:	\$0.2840
Dry whey:	\$0.3172
NFDM:	\$0.2716
Butter:	\$0.2785

IDFA is not aware of any comparable - much less better - cost data information. IDFA urges USDA to adopt these make allowances and implement them under the following schedule.

4. The implementation of the new make allowances.

IDFA reasonably could ask USDA to adopt as soon as possible the new make allowances set forth above. USDA has historically implemented with dispatch make allowances established by the most up to date, reliable, available cost data. The 2023 Stephenson study and the 2022 Schiek study cost figures constitute that data.

Furthermore, as discussed in detail earlier in my testimony, product pricing formulas trap dairy product manufacturers into a fixed make allowance with no opportunity to cover their higher costs no matter the price of their dairy products. The 2023 Stephenson study and the 2022 Schiek study reflect real costs and make allowances at any lower-level cause dairy processors to face financial losses, risk financial ruin, and/or lack appropriate financial incentive either to re-invest in their plants or build new plants at a proper level. 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.

Nevertheless, IDFA is aware that, with current make allowances being based on 2005 and 2006 cost data, the 2022 cost data established by the 2023 Stephenson 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. In the spirit of accommodation and possible consensus, IDFA's proposal is 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.

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 the 2023 Stephenson study and the 2022 Schiek study would go into effect 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 Transition					
Product	Current Make Allowance	Year 1 Make Allowance	Year 2 Make Allowance	Year 3 Make Allowance	Year 4 Make Allowance
Cheese	\$0.2003	\$0.2422	\$0.2561	\$0.2701	\$0.2840
Whey	\$0.1991	\$0.2582	\$0.2778	\$0.2976	\$0.3172
NFDM	\$0.1678	\$0.2198	\$0.2370	\$0.2544	\$0.2716
Butter	\$0.1715	\$0.2251	\$0.2428	\$0.2607	\$0.2785

This IDFA proposal for a staggered implementation of the new make allowances is conditioned upon the proposed Year 1 make allowances being implemented shortly after USDA issues its final decision. The National Milk Producers Federation and others have proposed that no changes be implemented for a year or more after the final decision. IDFA strongly opposes any such delay. Such a delay would mean that IDFA members would for an entire additional year (or longer) suffer the financial damage being caused by the current inadequate make allowances.

If USDA were nonetheless to adopt such a delay, IDFA would no longer support a staggered implementation of its proposed make allowances. Rather, if such a delay were adopted, the make allowances shown above for Year 4 should go into effect in their entirety at the beginning of Year 1.

A majority of cheese manufacturers have fewer than 1,250 employees and therefore qualify as “small businesses.” The inadequacy of current make allowances therefore has a negative impact on these manufacturers, and IDFA’s Proposal 9 will be especially beneficial to them.

5. The possible enactment and implementation of legislation allowing USDA to conduct mandatory, audited cost of manufacture surveys.

IDFA endorses 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, but it may be included in the upcoming Farm Bill. Accordingly, IDFA’s proposed make allowance amendments 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 and funding for mandatory audited cost surveys of all manufacturers of products used to set Class III and Class IV prices, and USDA has

promulgated regulations implementing that authority and adopted make allowances pursuant thereto.¹

F. The criticisms lodged against IDFA's proposed make allowances are not well-taken, and the NMPF's make allowance proposal 7 should be rejected.

The various criticisms that have been lodged against IDFA proposal 9 are not well taken, and the alternative NMPF make allowance proposal 7 should be rejected.

1. The impact on dairy farmers. IDFA understands and appreciates the concerns of our members' dairy farmer patrons for whom increased make allowances mean lower regulated minimum prices. However, make allowances that materially understate the actual cost of manufacture are a disaster for all, as they inhibit needed investment in plant capacity, and the resulting loss of viable outlets for farmer milk, and decline in competition, causes greater pain for everyone, including dairy farmers. Such losses of plant capacity result in the disorderly marketing conditions that FMMOs are designed to alleviate not exacerbate. Lack of plant capacity in the Upper Midwest created the need to dump significant amounts of milk this past winter and spring. IDFA cooperative members and other dairy product manufacturers that serve as nearby outlets for local dairy farmer milk and as balancers of billions of pounds of FMMO milk cannot come close to covering their costs under current FMMO provisions. This is simply unsustainable.

¹ The IDFA proposal also amends the existing make allowance provisions to substitute "AMS" for "NASS" wherever "NASS" appears, in order to reflect that AMS now conducts the product pricing surveys.

As detailed above, USDA has repeatedly recognized that make allowances must reflect the average cost of manufacture, and that principle cannot be overcome by arguments regarding farmer production costs or purported unfairness. USDA put it better than I could:

“Opponents of increasing make allowances argue a number of points— that they are already set at too high a level, that dairy farmer production costs also have increased significantly due to higher energy and feed costs, that processors should look beyond asking dairy farmers to receive less for their milk by charging more for manufactured products, and that make allowance increases should be made only when all dairy farmer production costs are captured in their milk pay price. These are not valid arguments for opposing how make allowances should be determined or what levels make allowances need to be in the Class III and Class IV product-pricing 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, 35,324 (June 20, 2008).

There is no reason to abandon these principles now.

As noted in its March 28, 2023 submittal to USDA, IDFA advanced its make allowance proposal only after it had undertaken an extensive effort with NMPF, including several separate meetings involving technical and leadership personnel, to try to reach consensus on the appropriate contours of order revisions. It was only after both parties concluded that such consensus could not be achieved that IDFA submitted its proposal. Nonetheless, there is consensus in both organizations that make allowances need to be addressed even if IDFA and NMPF do not agree on the degree of change.

While NMPF has asserted that the IDFA proposal would reduce the all milk price by \$1.42/cwt, this unsubstantiated assertion ignores two critical facts: (1) FMMO prices are regulated minimums and USDA has in the past recognized that prices actually received by dairy farmers will vary from regulated minimums; and (2) dairy farmers with investments in cheese, nonfat dry milk, butter and whey facilities bear the burden of these increased costs which then depress prices paid to the very dairy farmers who own the facilities. The fact that cooperatives must in turn pay less than the blend price to their dairy farmer owners establishes that those dairy farmers are already incurring these costs, bearing an unequal burden as compared to dairy farmers who do not own this critical infrastructure.

2. NMPF make allowance proposal 7 should be rejected. NMPF make allowance proposal 7 is woefully inadequate. The make allowances proposed are not grounded in any data regarding actual costs of manufacture, but simply arguments regarding the impact of increased make allowances on dairy farmers, which I have addressed in the section above.

Indeed, NMPF in its May 1, 2023 petition at p. 5 openly admitted that it “does not contend that these increases fully correct for the increases in butter, NFDM, cheddar cheese and dry whey manufacturing costs experienced by manufacturers since 2008, when the current make allowances were implemented.”

And while NMPF contends that “these make allowance increases represent a fair balance between the producer impact of higher make allowances and the processor impact of make allowances more closely reflecting the current cost of manufacturing commodity style butter, nonfat dry milk, cheddar cheese and dry whey,” that position

simply ignores USDA's repeated recognition that make allowances must reflect actual costs of production. NMPF's arguments that doing so will reduce producer prices to levels that would narrow margins and negatively impact the availability of adequate supplies of milk" are belied by USDA's repeated recognition that make allowances are not based upon farmer costs of production, and that an adequate supply of milk is achieved because---

the costs of producing milk are reflected in the supply and demand conditions for the dairy products. When the supply of milk is insufficient to meet the demand for Class III and Class IV products, the prices for these products increase as do regulated minimum milk prices paid to dairy farmers because the milk is more valuable, and this greater milk value is captured in the pricing formulas. Dairy farmers face no regulatory minimums in their costs and face no regulated minimum payment obligation in the way that regulated handlers must pay dairy farmers for milk.

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, 35,324 (June 20, 2008).

Furthermore, it bears repeating that the federal milk order system is not a price support program or income support program, and that minimum milk prices must reflect the market price of finished dairy products. This is a point that has been repeatedly made by USDA itself. In her September 17, 2012 letter responding to a request to hold a federal order hearing (Attachment A hereto), AMS Deputy Administrator for Dairy Programs Dana Coale observed that "the Federal Milk Marketing Order (FMMO) program is not designed to be a price or income support program since it is not authorized to establish minimum prices above the relative market value of the products of milk. Instead, the FMMO program is a marketing tool that helps dairy farmers maintain a better balance in

negotiating with processors by enforcing market-based minimum prices, monitoring the accuracy of milk weights and tests, and providing extensive market information to producers and processors to assist in market negotiations.”

Many other similar statements have been made by USDA, see May 16, 2018 USDA presentation (presented by Dana Coale) at KY and TN Farm Bureau meeting: “FMMOs are not a price or income support program.” (slide 13 of 91) (Attachment B hereto); Statement of Lloyd Day, Administrator, AMS, USDA, accompanied by Dana Coale, Deputy Administrator, AMS, USDA, and Ron Bosecker, Administrator, Agricultural Statistics Service, USDA (April 24, 2007) before the House Committee on Agriculture Subcommittee on Livestock, Dairy, and Poultry – Hearing to Review Federal Milk Marketing Rulemaking Procedures: “It should be noted that the Federal Milk Marketing Order Program is a marketing program, not a price or income support program” (available at <https://www.govinfo.gov/content/pkg/CHRG-110hrg41525/html/CHRG-110hrg41525.html>).

Set forth below are the actual cost of production as established by the Stephenson and Schiek studies; the make allowances proposed by NMPF; and the dollar and percentage shortfall between actual costs and NMPF make allowance Proposal 7:

<u>Commodity</u>	<u>2022 Cost of manufacture</u>	<u>NMPF Proposed Make Allowances</u>	<u>Shortfall in NMPF Proposed Make Allowances As Compared to Actual Costs</u>
Cheese	\$0.2840	\$0.2400	\$0.0440
Dry whey	\$0.3172	\$0.2300	\$0.0872
NFDM	\$0.2716	\$0.2100	\$0.0616
Butter	\$0.2785	\$0.2100	\$0.0685

As these shortfalls indicate, the NMPF proposal is out of step with USDA's consistent commitment to the utilization of actual average cost of production to set make allowances.

3. The use of audited and unaudited survey data. AFBF's criticism in its June 20, 2023 letter at pp. 3-4, of the surveys as non-audited is without merit for two reasons. First, the 2022 Schiek report relied upon the CDFA survey of dairy processing costs, which was an audited survey. Dr. Schiek, as he will explain further, used well-recognized and widely employed economic methods to update those costs to the present.

Second, as discussed above, and as Dr. Stephenson will explain further in his testimony, the 2023 Stephenson survey uses the exact same methodology he had previously used in conducting the Cornell surveys that USDA found sufficiently reliable to utilize in setting make allowances, both in 2007 and in 2008. While the 2023 Stephenson survey was not audited, neither were the Stephenson surveys found acceptable by USDA in 2007 and 2008.

4. The survey size and scope. AFBF's criticism in its June 20, 2023 letter at p. 4, that the Stephenson survey purportedly has too small a sample size, and participation arguably self-selected to achieve particular results, was directed at the 2021 Stephenson

survey, not the 2023 Stephenson survey that is the basis of IDFA's petition. AFBF argues that the 2021 Stephenson survey "represents only 60% of the nonfat dry milk plants participating in the NDPSR, 29% of the dry whey plants, 24% of the cheddar cheese plants, and 20% of the butter plants. The conclusion is that it would be unfair to increase the make allowances based on this survey."

IDFA would agree that the 2021 Stephenson survey for cheese, which represented less than 20% of NASS reported cheddar volumes, would be inadequate. This is now a moot point, because as noted above and shown again on the following page, the 2023 Stephenson survey upon which the IDFA proposal is based covered the manufacturing costs of more than 50%, and up to 80% or even 91%, of the total volume of NASS production for each of the four commodities surveyed: And because the average size of these plants is far above average, they also are well represented by large manufacturing plants:

USDA-NASS and Stephenson Cost Survey Dairy Product Volumes

USDA NDPSR Cost Survey Products	USDA-NASS 2022 Annual Production	2023 Stephenson Cost Survey			Survey Production Share of USDA NASS Production
		Participating Plants	Average Annual Production	Total Survey Annual Production	
Cheddar Cheese	3,963,741,000	18	122,404,426	2,203,279,668	55.6%
Whey (Human)	885,929,000	9	49,986,287	449,876,583	50.8%
Nonfat Dry Milk	1,968,364,000	15	119,615,524	1,794,232,860	91.2%
Butter	2,058,737,000	13	126,906,009	1,649,778,117	80.1%

Data Sources: Dairy Products 2022 Summary April 2023. USDA NASS ISSN: 1057-784X PP11,23,29. Cost of Processing in Cheese, Whey, Butter and Nonfat Dry Milk Plants, Mark Stephenson, Ph.D., June 2023

Furthermore, the AFBF petition at p. 4 acknowledges the utility of the CDFA survey results, and as shown by Dr. Schiek, those 2016 survey results can appropriately be updated to the current period.

For all of these reasons, USDA should adopt IDFA Proposal 9, which provides for the following revisions to the current federal milk order provisions relating to make allowances:

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 strikethroughs; 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~~ **AMS** AA Butter survey price reported by the Department for the month, less ~~17.15 cents~~ **22.51 cents effective January 1, 2025, 24.28 cents effective January 1, 2026, 26.07 cents effective January 1, 2027, and 27.85 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~~ **AMS** nonfat dry milk survey price reported by the Department for the month, less ~~16.78 cents~~ **21.98 cents effective January**

1, 2025, 23.70 cents effective January 1, 2026, 25.44 cents effective January 1, 2027, and 27.16 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) Compute a weighted average of the amounts described in paragraphs (n)(1)(i) and (ii) of this section:

(i) The U.S. average ~~NASS~~ **AMS** survey price for 40-lb. block cheese reported by the Department for the month; and

(ii) The U.S. average ~~NASS~~ **AMS** survey price for 500-pound barrel cheddar cheese (38 percent moisture) reported by the Department for the month plus 3 cents;

(2) Subtract ~~20.03 cents~~ **24.22 cents effective January 1, 2025, 25.61 cents effective January 1, 2026, 27.01 cents effective January 1, 2027, and 28.40 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~~ **24.22 cents effective January 1, 2025, 25.61 cents effective January 1, 2026, 27.01 cents effective January 1, 2027, and 28.40 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~~ **AMS** dry whey survey price reported by the Department for the month minus ~~19.91 cents~~ **25.82 cents effective January 1, 2025, 27.78 cents effective January 1, 2026, 29.76 cents effective January 1, 2027, and 31.72 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~~ **AMS** AA Butter survey prices announced before the 24th day of the month, subtracting ~~17.15 cents~~ **22.51 cents effective January 1, 2025, 24.28 cents effective January 1, 2026, 26.07 cents effective January 1, 2027, and 27.85 cents effective January 1, 2028** from this average, and multiplying the result by 1.211.

* * * * *

(r). The increase in the amounts subtracted from the AMS 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 additional funding to conduct audited dairy product cost studies of all manufacturers of products used to set Class III and Class IV prices, has promulgated regulations implementing that authority, and adopted make allowances pursuant thereto.



1400 Independence Avenue, SW.
Room 2968-S, STOP 0225
Washington, DC 20250-0225

September 17, 2012

Ms. Dori Klein

Dear Ms. Klein:

Thank you for the petition you submitted requesting a national hearing to address the current situation facing America's dairy farmers. Clearly this is an issue of great importance to the Secretary of Agriculture as he conveyed directly in his letter to you. Like the Secretary, I am deeply concerned regarding the current economic situation that many dairy farmers are facing.

With regards to your specific request to hold a hearing, I would like to take this opportunity to discuss the program with you further. First, the Federal Milk Marketing Order (FMMO) program is not designed to be a price or income support program since it is not authorized to establish minimum prices above the relative market value of the products of milk. Instead, the FMMO program is a marketing tool that helps dairy farmers maintain a better balance in negotiating with processors by enforcing market-based minimum prices, monitoring the accuracy of milk weights and tests, and providing extensive market information to producers and processors to assist in market negotiations.

Section 608c (18) of the Agricultural Marketing Agreement Act of 1937, as amended, outlines the criteria and procedure by which the Secretary establishes and adjusts minimum prices in the FMMO program. Through a public hearing, the Secretary of Agriculture evaluates the marketing conditions in an area and considers the price of feeds, the available supply of feeds, and other economic conditions that affect the market supply and demand for milk and its products in a marketing area. Based upon evidence presented at the hearing, the Secretary sets minimum milk prices that are reflective of all the economic factors, will ensure a sufficient supply of milk, and will be in the public interest.

In section 1504 of the 2008 Farm Bill, Congress established specific timelines and additional requirements for conducting Federal order hearings. To ensure that these congressionally mandated timeframes are met, it is critically important that proposals to amend FMMOs be fully developed. Since the petition you sent does not contain a proposal, the U.S. Department of Agriculture (USDA) cannot approve your request. I have enclosed the Supplemental Rules of Practice regulations and a summary sheet of required information to provide you with additional assistance.

Ms. Klein
Page 2

As demonstrated through Secretary Vilsack's letter, we will continue to evaluate all options currently available to USDA that could provide assistance to dairy producers during this difficult time. We are available to help you and any other interested party by providing specific information or data needed as you develop a comprehensive proposal that can begin the hearing process and address dairy industry concerns. Please do not hesitate to contact me if you would like additional assistance.

Thank you for ensuring that America's dairy farmers are represented during this extremely difficult period.

Sincerely,



Dana H. Coale
Deputy Administrator
Dairy Programs

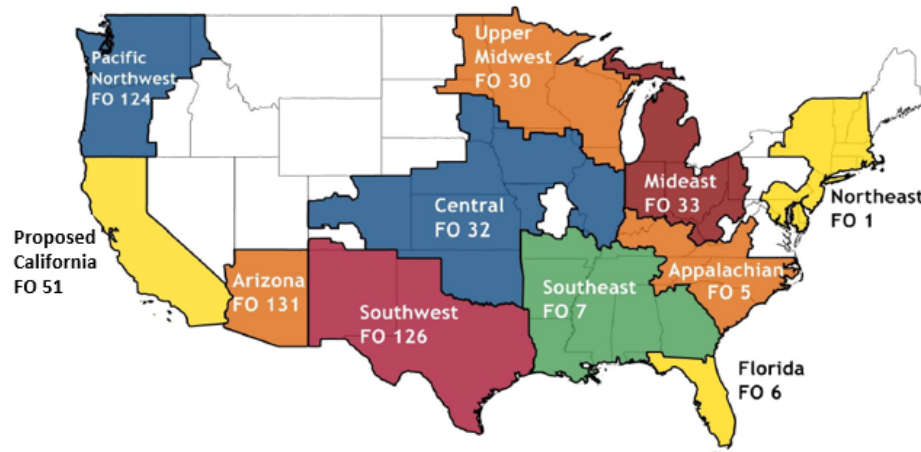
Enclosures



KY and TN Farm Bureau Meeting

Knoxville, TN

May 16, 2018



Presented by:

- Dana Coale, Deputy Administrator, Dairy Program
- Harold Friedly, Market Administrator, Appalachian Marketing Area
- Erin Taylor, Acting Director, Dairy Program Order Formulation and Enforcement
- Shawn Boockoff, Assistant Market Administrator, Northeast and Southeast Marketing Areas
- Steven Duprey, Supervisory Economist, Southeast Marketing Area
- John Herbert, Agricultural Economist, Appalachian Marketing Area

FMMO Authorization

- Authorized by the Agricultural Marketing Agreement Act of 1937, as amended (AMAA). The AMAA enables USDA to:
 - Establish and maintain orderly marketing conditions
 - Establish classified prices based on how milk is used (handler)
 - Establish uniform blend prices (producer)
- FMMOS are permanent law
- FMMOs are not a price or income support program.
- USDA is not authorized to administer regulation beyond the scope of authority provided by Congress