

United States Department of Agriculture Before the Secretary of Agriculture

In re: Docket No. 23-J-0067; AMS-DA-23-0031

Milk in the Northeast and Other Marketing Areas

Testimony From:

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Regarding: Class III and Class IV Formula Factors

Proposal 8 submitted by Wisconsin Cheese Makers Association

My name is John Umhoefer and I am here today on behalf of Wisconsin Cheese Makers Association (WCMA) in support of Proposal 8 which seeks to update current make allowances with a 4-year phase-in implementation schedule. While Proposal 8 was developed in conjunction with the International Dairy Foods Association, which has submitted the identical proposal as its own Proposal 9, Proposal 8 was subject to Wisconsin Cheese Makers Association's independent review and approval processes.

I serve as Executive Director of the Wisconsin Cheese Makers Association and in that role I oversee a committee of manufacturer members who discussed and recommended changes for federal milk marketing order during meetings held throughout 2021, 2022 and into 2023. The WCMA Board of Directors, including 17 dairy manufacturers, two dairy converters (processors) and two industry suppliers, accepted recommendations from this committee and voted on Association activities related to this rulemaking and hearing.

WCMA, as a whole, includes 81 dairy manufacturers, cooperative and private companies, that process milk into fresh dairy products at 249 locations. These member dairy manufacturers have headquarters in 16 states, and manufacturing sites in 32 states. These manufacturers, as well as companies that further process dairy products or sell goods and services to the industry – more than 600 entities in total – voluntarily join the Association via annual payment of dues.

In a March 28, 2023 petition, supplemented by a letter dated April 14, 2023, WCMA requested that USDA hold a hearing to amend all make allowances in the Federal Milk Marketing Order (FMMO) program administered by USDA 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. Some farmer-owned cooperatives 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 will include a new cost study from Dr. Mark Stephenson, and a study by Dr. William Schiek.

Dr. Stephenson has now completed his study, which is entered in this hearing as IDFA Exhibit 1. This 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 determination of the cost of manufacture are comparable to the 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 study is entered in this hearing as IDFA Exhibit 2.

On June 20, 2023, based on these data sets from Dr. Stephenson and Dr. Schiek, WCMA asked the Secretary to consider for adoption make allowances equal to a simple average of the costs of manufacture as determined by the 2023 Stephenson study and the 2022 Schiek study.

Because make allowances have not been regularly updated during the last 16 years, this proposal seeks to adopt these new make allowances using a phase-in period to spread the impact of these make allowance changes across a reasonable amount of time, rather than installing these proposed up-to-date cost of production allowances immediately in a final hearing decision. As the chart indicates below, and as our proposed language changes to the orders detail below, these changes implement half of the increase in each make allowance in the first year of implementation, and then implement the remaining 50 percent of the increase across three equal steps in the subsequent three years.

It was only after considerable debate that WCMA’s Board of Directors agreed to support this staggered implementation. Current costs of manufacture would come into effect in Year 4, and WCMA could have requested that current costs be implemented fully and immediately in Year 1. The proposal to delay full implementation for 4 years is intended to be an accommodation to our WCMA members’ dairy farmer suppliers.

However, I now understand that some parties at this hearing are proposing a one year, or even longer, delay before any of the proposed federal order amendments are implemented. WCMA strongly opposes any such delay, given that current make allowances are already so far out of date. Such a delay would mean that WCMA members would continue for an entire additional year to suffer the financial stress currently being inflicted by today’s out-of-date make allowances. If USDA were for some reason to agree to such a delayed implementation – which as noted, WCMA strongly opposes – then the Year 4 make allowances set forth below should be implemented in Year 1. In other words, if there is to be a one-year delay in implementation, there should no longer be a staggered implementation of the new make allowances.

Proposed Make Allowance Levels

Product	Current	Year 1	Year 2	Year 3	Year 4
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

Proposed Order Language

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:

§ 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 AMS AA Butter survey price reported by the Department for the month, less 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 AMS nonfat dry milk survey price reported by the Department for the month, less 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 AMS survey price for 40-lb. block cheese reported by the Department for the month; and

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

(2) Subtract 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 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

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(o) Other solids price. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average AMS dry whey survey price reported by the Department for the month minus 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.

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(q) Advanced pricing factors.

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(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 AMS AA Butter survey prices announced before the 24th day of the month, subtracting 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.

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(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.

The proposal for a new section “r” to §1000.50 provides authority for these proposed make allowances to be supplanted by new regulations that could create a new program of audited dairy product cost studies, executed by USDA staff, of all manufacturers of products used to set Class III and Class IV prices and then adopt make allowances from that audit program.

WCMA fully supports the concept of USDA-led dairy product cost studies executed biennially or triennially so that make allowances can be updated on a regular basis. Today’s 16-year gap in updating make allowances in Class III and Class IV formulas proves that a regular, agency-led system is needed to revisit milk price formulas.

WCMA members will testify in support of Proposal 8 and provide USDA with data, in addition to the Stephenson study and the Schiek study, on their cost of production for cheddar cheese.