



Via U.S. Mail and Email

April 3, 2023

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

Dear Administrator Summers:

We are writing to respond to the March 29, 2023 letter to you from the National Milk Producers Federation (NMPF), which comments upon the proposals submitted separately by the International Dairy Foods Association (IDFA) and the Wisconsin Cheese Makers Association (WCMA) on March 28, 2023, to hold hearings to update the manufacturing allowances in the FMMO pricing formulas. Given that the NMPF letter purports to identify alleged deficiencies in the proposals, this letter also serves to supplement IDFA's submission.

As noted in its March 28 submittal, IDFA advanced its 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. Moreover, IDFA's members and policy-making leadership include farmer-owned cooperatives, some of which support the IDFA position for USDA to update make allowances as it always has in the past.

The need promptly to 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 with regulated prices. By regulation, manufacturers of Class III and IV products must pay dairy farmers the entirety of the amount received selling those products, minus the manufacturing allowances. As farmer cooperative Agri-Mark observed in submitting the proposal that led to the 2006 order hearings and updated manufacturing allowances:

Dairy product manufacturers [of Class III and IV products] under Federal Milk Orders are trapped into a fixed make allowance with no opportunity to cover their higher costs no matter what the price of their dairy products are. If manufacturers raise their product prices to cover higher costs, those higher

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prices automatically lead to higher milk prices, leaving no additional net income to apply to the higher costs.

Upon receiving hearing proposals such as those submitted by IDFA and WCMA, USDA has followed a consistent practice of issuing a public notice inviting others to submit proposals as well. As one of many examples, Foremost Farms USA Cooperative, Inc., National Farmers Organization, Inc., and Dairy Farmers of America, Inc. in 2011 requested that USDA hold a public hearing to consider a proposal to amend the definition of the pool distributing plant provision in the Mideast Milk Marketing Order. On July 15, 2011, USDA issued a public notice referencing the proposal and then stating that “[b]efore deciding whether a hearing will be held, USDA is providing the opportunity for interested parties to submit additional proposals regarding the amending of the pooling standards for a pool distributing plant in the Mideast Milk Marketing Order.”

IDFA anticipates USDA will take the same approach here, and nothing in its proposal suggested otherwise. USDA will evaluate whether any proposals submitted meet its stated criteria for a hearing proposal, and if so, how best to organize the proceedings. NMPF indicates in its letter an intention to submit a proposal in April 2023, which such an approach would easily accommodate.

NMPF also observes that the IDFA proposal does not set forth specific proposed new manufacturing allowances. That is true. IDFA’s proposal: (a) makes the overwhelming case that current manufacturing allowances are much too low, and (b) proposes that USDA set new manufacturing allowances based upon the best evidence presented at the hearing regarding manufacturing costs. This is precisely the approach taken the last two times manufacturing allowances were revised, in 2007 and 2008, in both cases in response to an Agri-Mark proposal that the allowances be set based upon a survey that was underway but had not yet been completed or released. For example, the manufacturing allowances were revised in 2008 after hearings held in response to Agri-Mark’s December 19, 2006 proposal to “Amend cheese, whey powder, butter and nonfat dry milk make allowances provisions using the latest plant cost survey information available at the time of the hearing,” which would “allow Cornell or others to provide the most current cost data...” Furthermore, the manufacturing allowance revisions that USDA adopted in both 2007 and 2008 relied upon the kind of survey results that USDA undertook through Cornell University’s Dr. Stephenson in 2019 and which IDFA seeks to utilize to update to 2022.

The IDFA proposal nonetheless does set forth the specific manufacturing costs determined in the most recent cost survey performed by Dr. Stephenson -- a survey *conducted under USDA’s own auspices* -- as well as econometric projections by Dr. Bill Schiek of what those costs are now. This is more than sufficient for any preliminary analysis of the IDFA and WCMA proposals, with the hearing evidence to include the results of an updated cost survey by Dr. Stephenson that is currently underway. NMPF’s assertion that such a survey is insufficiently reliable is belied by USDA’s explicit reliance upon such a Cornell survey when it adjusted manufacturing allowances in 2007 and 2008, based upon the 2006 and 2007 hearings.

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This letter also serves to supplement IDFA's March 28, 2023 submission, which we believe covers each of the subparagraphs requested pursuant to 7 C.F.R. § 900.22, paragraph (g). IDFA concludes that since the proposal presents nothing new in terms of USDA policy regarding setting manufacturing allowances, a pre-hearing information session is not necessary. Nonetheless, IDFA does not object to a pre-hearing information session.

The impacts on small businesses as defined by the U.S. Small Business Administration are described throughout both the IDFA and WCMA petitions in that the current artificially low manufacturing allowances necessarily adversely affect the financial conditions of both cooperative and proprietary businesses, resulting in an inability to recover these costs. See for instance, the CoBank discussion on page 8 of the IDFA Petition. These burdens are imposed on dairy farmers and non-dairy farmers alike with investment in plant facilities. The increased costs from just 2019 to 2022 are especially well described on page 6 of the WCMA petition.

The NMPF March 29 letter asserts 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) as detailed in both the IDFA and WCMA Petitions, 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.

Finally, responses to overlapping paragraphs (d) and (f) are already addressed in the IDFA and WCMA petitions. Adoption of the proposal, consistent with how USDA has modified manufacturing allowances repeatedly since 2000, would properly align costs built in the Class III and IV formulae, thus decreasing costs to handlers and producers with plant investments as well as costs to consumers. There should be no effect on costs to the program, the market administrators or the Secretary.

Please let us know if we can provide any additional information that would be of utility to USDA.

Sincerely,



Mike Brown

Chief Economist

International Dairy Foods Association

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