



WISCONSIN
CHEESE MAKERS
ASSOCIATION
EST. 1891

June 20, 2023

Ms. Dana H. Coale
USDA/AMS/Dairy Programs
U.S. Department of Agriculture
STOP-0225 -Room 2530
1400 Independence Avenue, S.W.
Washington, D.C. 20250-0225

Re: Modified Petition of the Wisconsin Cheese Makers Association for a Hearing to Amend Federal Milk Marketing Order Make Allowances

Dear Deputy Administrator Coale:

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

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

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

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

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

Dr. Stephenson has now completed that study. The 2023 Stephenson survey is especially robust, relying upon cost data from 18 cheese plants, 9 dry whey plants, 15 NFDm plants and 13 butter plants. Dr. Stephenson's determination of the cost of manufacture are comparable to the 2022 cost study by Dr. Schiek, which projected 2022 costs based upon California Department of Food and Agriculture audited costs surveys performed in 2016 and the changes in relevant cost factors since that time.

On May 30, 2023, based on these data sets from Dr. Stephenson and Dr. Schiek, WCMA asked the Secretary to consider for adoption make allowances equal to the average of the costs of manufacture as determined by the 2023 Stephenson survey and the 2022 Schiek survey.

During the June 16, 2023, Pre-hearing Information Session, USDA raised certain points of clarification regarding WCMA's proposed language changes for federal order milk pricing. Consistent with the schedule set by the Secretary, WCMA, by this letter, is modifying its make allowance proposal, to address the following issues:

1. We have modified the WCMA proposal so that it now 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.
2. We have modified the WCMA proposal to make clear that the "audited surveys" that would replace WCMA's proposed make allowances (if authorized by Congress), would be paid for by "additional" funding, not by existing funding, and would extend to all manufacturers of products used to set Class III and Class IV prices.
3. We have modified the WCMA proposal to add \$0.0015 to the make allowances, to reflect marketing costs that are not reflected in the 2023 Stephenson cost study and the 2022 Schiek cost study.
4. We are confirming that the make allowances as set forth in the WCMA proposal reflect a simple average of the costs of manufacture as determined by the 2023 Stephenson study and the 2022 Schiek study.

WCMA's modified proposal is as follows (inclusive of all proposed revisions):

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~~ **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.**

Respectfully Submitted,



John Umhoefer, Executive Director
Wisconsin Cheese Makers Association

cc: Mr. Bruce Summers, Administrator, AMS/USDA
Erin Taylor, Director, Order Formulation and Enforcement Division, AMS/USDA