

Docket: 23-J-0067
UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
POST-HEARING BRIEF OF WISCONSIN CHEESE MAKERS ASSOCIATION (WCMA)
April 1, 2024

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This Post-Hearing Brief is being submitted on behalf of the Wisconsin Cheese Makers Association (WCMA). 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.

WCMA supports Proposal 8 to increase manufacturing make allowances used in Federal Order Milk Price Formulas to 2022 cost of production levels.

Proposal 8, submitted by WMCA, is identical to proposal 9 submitted by the International Dairy Foods Association (IDFA)

WCMA opposes the following proposals:

Proposal 7, which provides inadequate make allowance adjustments.

Proposal 4, which would include 640 pound blocks in the NDPSR Cheese Price Survey

Proposal 6, which would include Mozzarella cheese in the NDPSR Cheese Price Survey

Proposal 11, which would remove the farm to plant component loss adjustments from the component price formulas.

Make Allowances Updates Included in Proposals 8 & 9 are Justified

WCMA supports adoption of proposals 8 & 9 which are identical in their operation. These proposals would move current make allowances to the most recent survey and study data available – for calendar year 2022. This data is 15 years more current than the make allowances currently in place.

WCMA's testimony supporting Proposal 8 summarized the importance of the serious economic hardship caused by lack of updates to the Federal Order Make Allowances:

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.

Source: WCMA Exhibit 1. John T. Umhoefer representing Wisconsin Cheese Makers Association, p. 1-2.

In their testimony, WCMA further noted:

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.

Source: WCMA Exhibit 1. John T. Umhoefer representing Wisconsin Cheese Makers Association, p. 2.

This Stephenson survey covered a larger amount of dairy product production than any previous Stephenson survey, adding credibility to the survey results.

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

Source: *USDA Hearing Exhibit. 215. IDFA Testimony Regarding Make Allowance Proposals 7-9, p21.*

The Stephenson survey and Schiek study determined the 2022 manufacturing costs for the four commodities used to determine federal order milk prices to be:

Commodity	Stephenson	Schiek
Cheese:	\$0.2643	\$0.3006
Dry whey:	\$0.3361	\$0.2953
NFDM:	\$0.2750	\$0.2653
Butter:	\$0.3176	\$0.2364

Sources: *IDFA Hearing Exhibit. 1. Cost of Processing in Cheese, Whey, Butter, and Nonfat Dry Milk Plants, p. 5. (Stephenson)*

IDFA Hearing Exhibit 2. Forecasts of California Dairy Manufacturing Costs Using Regression Analysis of Audited Dairy Manufacturing Cost Data, p. 12. (Schiek)

These cost changes were consistent with testimony from many cheese manufacturing companies that participated in the hearing. Many processors, both cooperative and proprietary, noted significant increases in costs, consistent with the Stephenson and Schiek studies.

Among the processors that testified at the hearing is Nasonville Dairy, in Marshfield, Wisconsin. Nasonville Dairy is a medium size processor producing approximately 60 million pounds of cheese a year, 27% of which are colored cheddar 40-pound blocks. Nasonville submitted detailed cost information showing that it incurs a cost of \$0.3226 to produce colored cheddar in 40-pound blocks, well in excess of the \$0.2840 cheese make allowance being sought in Proposals 8 and 9.

Source: Hearing Exh. 203 (WCMA Exh. 2), testimony of K. Heiman (Nasonville Dairy).

Steve Schlangen, witness for Associated Milk Producers, Inc. (AMPI) noted “the high-level percent change for AMPI bulk cheese products is 47% higher in 2022 than 2008. General plant expenses are up 62%.

Source: (IDFA Exhibit 25. Testimony of Steve Schlangen, AMPI in support of proposals 8 & 9: IDFA and WCMA proposal, p. 4.)

Foremost Farms testified that the 2023 Stephenson survey reported average costs that were “representative” of their own costs.

Source: (D. Hanson (Foremost Farms) Tr. 2754 line 25 - 2754 line 8.)

Darigold noted that their 2022 data showed manufacturing cost increases of over 80% since 2008. (NMPF Exhibit 19, Testimony of Monty Schilter, P. 2)

Maryland and Virginia Milk Producers testified to a 64 % increase in their costs to process nonfat dry milk over the last twelve years.

Source: (NMPF Exhibit 23. Support for Increasing the Make Allowance – Supporting the NMPF Proposal # 7, (Michael John) p.7.)

Other witnesses documented higher costs, including Leprino Foods, Hilmar Cheese, Glanbia Nutritionals, Saputo USA, and Cedar Grove Cheese. Robert Wells, representing Cedar Grove Cheese, noted the broader challenges of inadequate make allowances in his testimony:

The combination of using cost statistics to define an appropriate make allowance value and viewing make allowances as a tug-of-war between processors and farmers, creates a bias toward setting a lower increase. This is a false tradeoff. At market prices, a market order pool only generates a certain amount of total product sales. The formulas are complicated, but ultimately the money available to pay farmers is no more than those sales less the cost of making the products. The market order make allowances do not determine either consumer purchase decisions or the cost of producing those goods. If the make allowances do not cover the cost of production, then processors must either pay less than the market order minimum price or stop producing.

Source: Exhibit WCMA-3, Regarding Class III and IV Formula Factors, pp 1-2.

IDFA and WCMA discussed the timing of new make allowances prior to submitting their proposals to USDA.

It was only after considerable debate that WCMA’s Board of Directors agreed to support this staggered implementation. ... The proposal to delay full implementation for four years is intended to be an accommodation to our WCMA members’ dairy farmer

suppliers. Source: *WCMA Exhibit 1, Testimony of John T. Umhoefer, Wisconsin Cheese Makers Association, p 3.*

IDFA shared similar concerns, as did USDA in a 2008 decision when butter make allowances were increased by over 42% at once.

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.

Source: (IDFA Exhibit 6, Testimony of IDFA with respect to make allowance proposals, p.24.)

Some IDFA members would prefer that the make allowance increase be implemented all at once. And large make allowance increases are not unprecedented. For example, USDA in 2008 adopted a 42.7% increase in the make allowance for butter, which was made effective immediately, on an emergency basis.

Source: (M. Brown (IDFA) Tr. 4249 line 17 - 4250 line 23), (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 35306 (June 20, 2008) (raising the butter make allowances from \$0.1202 to \$0.1715 per pound).

USDA should not adopt proposal 4, which would add 640-pound cheddar blocks to the NDSPR cheese price.

Multiple trade associations testified against proposal 4, which would add mozzarella cheese prices to the NDPSR Cheese price, including the National Milk Producers Federation (NMPF), the International Dairy Foods Association (IDFA), and the Wisconsin Cheese Makers Association (WCMA), in addition to several cheese manufacturers. WCMA's testimony against inclusion of 640-pound blocks cited several reasons why they should not be added to the survey:

Feedback from members included the concern that 640-pound blocks do not have a unique price discovery mechanism, and thus add no new price information. The industry uses the 40-pound block price to price 640s, and that price is already used in the protein formula. Members also expressed concern that the development of a 640-pound cash market would create another thinly-traded dairy product market with very few buyers and sellers. The kind of price volatility and divergence seen with the use of the Cheddar barrel and block price series would be made even more complex and frustrating with the addition of yet another price series. Members also noted that a cash market for 640s would not be attractive to non-direct end users, keeping the stable of buyers in a cash market pit very small. Relatedly, the return of wooden or plastic structural packaging

would deter potential buyers. For these reasons, our association opposes adoption of Proposal 4

Source: WCMA Exhibit 4, Opposition Testimony to Hearing Proposals 4 and 6

USDA should not adopt proposal 6, would mozzarella to the NDSPR cheese price.

Multiple parties also testified against proposal 6, which would add mozzarella cheese prices to the NDPSR Cheese price, including the National Milk Producers Federation, the International Dairy Foods Association, the International Dairy Foods Association, Foremost Farms, and Saputo, along with Leprino Foods) oppose the addition of mozzarella to the Class III protein price formula. WCMA noted in their testimony that:

Feedback from members included the concern that mozzarella cheese is produced in dozens, if not hundreds, of shapes, sizes, weights, moistures, fats, flavor profiles and functional profiles. Members uniformly note that there is no standard mozzarella cheese that could be surveyed by the government or created as a cash market for price discovery. The wide variety of forms and functionality of each unique “make” of mozzarella cannot be overstated. Individual manufacturers report producing multiple mozzarella types throughout the year based on each customers’ unique needs. For these reasons, our association opposes the adoption of Proposal 6.

Source: WCMA Exhibit 4, Opposition Testimony to Hearing Proposals 4 and 6, p. 1.

Submitted,

John Umhoefer

Executive Director

Wisconsin Cheese Makers Association

CERTIFICATE OF SERVICE

Milk in the Northeast and Other Marketing Areas

Docket No.: 23-J-0067

Having personal knowledge of the foregoing, I declare under penalty of perjury that the information herein is true and correct, and this is to certify that a copy of the POST-HEARING BRIEF OF WISCONSIN CHEESE MAKERS ASSOCIATION (WCMA) has been furnished and was served by electronic mail upon the following parties on April 4, 2024 by the following:

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