UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

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

Milk in the Northeast and Other Marketing Areas, 7 CFR Parts 1000 *et seq*

2024 Proposed Rule Published at 89 Fed. Reg. 57,580 (July 15, 2024)

Wisconsin Cheese Makers Association's Exceptions to and Comments on the 2024 Proposed Rule

Wisconsin Cheese Makers Association ("WCMA") offers these comments on the proposed rule issued in this proceeding, Milk in the Northeast and Other Marketing Areas; Proposed Amendments to Marketing Agreements and Orders, 89 Fed. Reg. 57,580 (July 15, 2024).

WCMA, as a whole, includes 81 dairy manufacturers, cooperative and private companies, that process fresh farm milk into fresh dairy products at 249 locations. These member dairy manufacturers have headquarters in 16 states, and manufacturing sites in 32 states. Most of the milk procured by these manufacturers is purchased under the federal milk marketing orders.

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.

Below, WCMA offers exceptions to and comments on the make allowance values proposed by USDA in the proposed rule.

Comment Summary:

> For the calculation of make allowances used in FMMO milk pricing formulas, USDA should exclusively use the 2023 "non-transformed" Survey conducted by Dr. Mark Stephenson at the University of Wisconsin.

Comment Background and Exceptions:

WCMA here references the exhibit "*Cost of Processing in Cheese, Whey, Butter and Nonfat Dry Milk Plants*," created by Mark Stephenson, Ph.D., Director of Dairy Policy Analysis, University of Wisconsin, Madison, December 2021 (Exhibit-NMPF-18C) and described here and in USDA's proposed rule as the "2021 Survey."

WCMA also references "Cost of Processing in Cheese, Whey, Butter and Nonfat Dry Milk Plants," Mark Stephenson, Ph.D., June 2023 (IDFA Exhibit 1) and described here and in USDA's proposed rule as the "2023 Survey."

In the national hearing's Proposal 8, WCMA argued for the use of an equal weighting of the 2023 Survey and the 2022 regression analysis performed by Dr. Bill Schiek to set new make allowances in FMMO milk price formulas. USDA described the 2022 regression analysis as the "CA Forecast" in the proposed rule. USDA rejected the use of this data set, stating that "...this decision does not find justification for using the CA Forecast in determining appropriate make allowances levels." [Federal Register Vol. 89. No. 135 July 15, 2024, Page 57622-23]

WCMA disagrees with USDA's opposition to the CA Forecast, but if the agency maintains this position, then USDA should exclusively use the 2023 Survey to set the make allowance values noted here:

- The average, non-transformed cost of manufacture for cheddar from the 2023 Stephenson study is $0.2643.
- The average, non-transformed cost of manufacture for butter from the 2023 Stephenson study is $0.3176.
- The average, non-transformed cost of manufacture for nonfat dry milk from the 2023 Stephenson study is $0.2750.
- The average, non-transformed cost of manufacture for dry whey from the 2023 Stephenson study is $0.3361.

Make allowances values must attempt to reasonably reflect actual, current costs of production. The FMMO system requires handlers producing commodity manufacturing products to turn over to farmers 100 percent of the selling price of those commodities, minus only the make allowances. Thus, make allowances provide the only means by which dairy product manufacturers can cover their costs of operation and make possible the necessary maintenance, replacement and expansion of manufacturing facilities within the FMMO system.

Below, WCMA offers arguments for the exclusive use of the 2023 Survey to set new make allowances and offers reasons why the USDA should reconsider the data it chose for each make allowance in the proposed rule.

Cheddar Cheese

The 2021 Survey noted 10 participants in the cheddar cheese Survey, producing an average of 61,050,768 pounds of product annually. The 2023 Survey had 18 participants, producing an average of 122,404,426 pounds annually. The 2023 Survey represented 2,203,279,668 pounds of cheddar cheese production in the U.S. vs. 610,507,680 pounds of cheddar cheese in the 2021

Survey. As a result, the more recent 2023 Survey captured 1.59 billion more pounds of production, making the data more representative of cheddar cheese production costs in the U.S.

USDA did not select the average 2023 Survey data to fashion a new make allowance for cheddar cheese. The agency selected a simple average of the 2021 Survey average value and the 2023 Survey average value. As noted above, the 2023 Survey data is clearly more inclusive of cheese plant sites and national production.

In its discussion of the cheddar cheese make allowance, USDA notes that the two surveys are used to temper higher costs in 2022: "…this decision finds it appropriate to utilize an average of the 2023 and 2021 non-transformed Survey results to ensure the recommended cheese make allowance is not disproportionately affected by higher 2022 costs that have since moderated." [Federal Register Vol. 89. No. 135 July 15, 2024, Page 57623] Yet, USDA names only two minor costs – lumber and corrugated materials – as examples of higher costs in 2022.

These particular costs, clearly delineated in the testimony of Nasonville Dairy (WCMA Exhibit 2, Page 8, 9), are a portion of cheese packaging costs, and at cheddar cheese maker Nasonville Dairy, all packaging costs represent only 14 percent of this manufacturer's total cheddar make allowance. In the proposed rule, USDA states it needed to add lower 2021 Survey costs because of minor packaging cost increases in 2023 Survey data. Meanwhile, USDA fails to mention that other costs in the 2023 Survey data remain inflated today, namely labor, insurance and ingredient costs.

Average cost data solely from the 2023 Survey can and should be used to set the make allowance for cheddar cheese.

Butter

The 2021 Survey noted 12 participants in the butter survey, producing an average of 136,365,557 pounds of product annually. The 2023 Survey had 13 participants, producing an average of 126,906,009 pounds annually. The 2023 Survey represented 1,649,778,117 pounds of butter production in the U.S. vs. 1,636,386,684 pounds of butter in the 2021 Survey. Here, the surveys are nearly identical in number of plants and volume of product surveyed.

USDA did not select the average 2023 Survey data to fashion a new make allowance for butter. The agency selected a simple average of the 2021 Survey average value and the 2023 Survey average value. The agency again favors adding the older 2021 Survey data to moderate higher costs in the 2023 Survey data. However, USDA also notes: "The 2023 Survey captured data from both smaller and larger plants while the 2021 Survey consisted of a more homogenous sample of larger and more efficient plants." [Federal Register Vol. 89. No. 135 July 15, 2024, Page 57624] This statement from USDA supports use of the 2023 Survey data as more representative of all butter manufacturing in the U.S.

USDA cites the Producer Price Index for All Commodities (PPIACO) published by the U.S. Bureau of Labor Statistics to make its case that the 2023 Survey "...covered a period of relatively high inflation and rising input costs." [Federal Register Vol. 89. No. 135 July 15, 2024, Page 57624] Yet this index is not markedly lower now than in 2022. In 2022, the PPIACO averaged 264. For the first seven months of 2024, this index is averaging 255. These similar levels can be compared to the ten-year average of the PPIACO from 2011 through 2020, which was 197. USDA states: "According to the Producer Price Index for All Commodities (PPI), published by the Bureau of Labor Statistics, prices have moderated since their June 2022 peak." [Federal Register Vol. 89. No. 135 July 15, 2024, Page 57624] Comparing the index in 2024 to the single month of June 2022 is not statistically relevant. The 2023 Survey includes cost of production data from throughout 2022. The PPIACO for the entire year of 2022 is more relevant, and that average is quite close to 2024's average index – just 9 points different as noted above.

Average cost data solely from the 2023 Survey can and should be used to set the make allowance for butter.

Nonfat Dry Milk

The 2021 Survey noted 27 participants in the nonfat dry milk survey, producing an average of 44,425,802 pounds of product annually. The 2023 Survey had 15 participants, producing an average of 119,615,524 pounds annually. The 2023 Survey represented 1,794,232,860 pounds of nonfat dry milk production in the U.S. vs. 1,199,496,654 pounds of nonfat dry milk in the 2021 Survey. As a result, the more recent 2023 Survey captured 594 million more pounds of production, making the data more representative of nonfat dry milk production costs in the U.S.

USDA did not select 2023 Survey data to fashion a new make allowance for nonfat dry milk. The agency selected older data – a simple average of the 2021 Survey average value and the 2016 California manufacturing cost survey results for 2016. In its discussion of the proposed rule, USDA states that "… the 2023 Survey captured the historically high energy costs, particularly natural gas, that have since moderated." [Federal Register Vol. 89. No. 135 July 15, 2024, Page 57624]

It is inaccurate to describe natural gas prices as "historically high" in 2022 – the data year associated with the 2023 Survey. According to the U.S. government's U.S. Energy Information Administration, the United States Natural Gas Industrial Price averaged $7.73 per thousand cubic feet in 2022, while this price reached an average of $9.66 in 2008 and $7.82 in 2006. Natural gas prices consistently rise and fall, and USDA should consistently choose the most recent Survey – the 2023 Survey – to represent the cost of dairy product production at this time.

USDA's decision to reach back – solely for this make allowance – to nine-year-old data found in the 2016 California manufacturing cost survey is unjustified and deviates from any defensible, standardized methodology for determining these four make allowances. No evidence in the national hearing suggests that 2016 California manufacturing cost survey bear any resemblance to current costs of production. Indeed, the $0.2082 nonfat dry milk cost of production in the 2016 California survey is over 15 percent below even the $0.2454 cost assessed in the 2021 Survey (non-transformed cost).

In order the maintain a defensible methodology reflecting the most recent data, average cost data solely from the 2023 Survey can and should be used to set the make allowance for nonfat dry milk.

Dry Whey

The 2021 Survey noted 8 participants in the dry whey survey, producing an average of 35,666,405 pounds of product annually. The 2023 Survey had 9 participants, producing an average of 48,986,287 pounds annually. The 2023 Survey represented 440,876,583 pounds of dry whey production in the U.S. vs. 285,331,240 pounds of dry whey in the 2021 Survey. As a result, the more recent 2023 Survey captured 155 million more pounds of production, making the data more representative of dry whey production costs in the U.S.

USDA did not select the average 2023 Survey data to fashion a new make allowance for dry whey. The agency selected a simple average of the 2021 Survey average value and the low-cost survey result from the 2023 Survey. Here, again, the agency deviates from the use of the overall average of the non-transformed data from the 2021 Survey and 2023 Survey. By cherry-picking low-cost survey data, USDA has created a dry whey make allowance that deviates from a consistent methodology. Because USDA did not consistently apply overall average data to drive its decisions, the agency fails to have a defensible methodology to produce this set of make allowances.

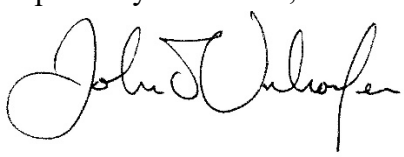
USDA again uses high energy costs to rationalize its lack of consistent methodology: "Similar to NFDM, dry whey production is heavily energy dependent, and the same concerns regarding the 2023 Survey results exist for dry whey." [Federal Register Vol. 89. No. 135 July 15, 2024, Page 57624] As noted above, natural gas prices (which USDA also focused on in its dry whey discussion) tend to consistently rise and fall, and a higher price in 2022 is no more relevant that a lower price in 2023 when looking at a make allowance that will be effective in 2025, 2026 and subsequent years with natural gas prices that cannot be known in advance.

More relevant than snapshots of individual data points, such as the "Henry Hub Natural Gas Spot Price" that USDA homes in on its dry whey discussion, is the complete data gathered in the 2023 Survey – a survey that captured far more dry whey production than the 2021 Survey. If USDA would use the most recent, most encompassing data set, then the agency could have a defensibly consistent methodology for setting make allowances. And this methodology – using the most

recent data, and the overall average of costs in that data – could be a guidepost for how USDA can set make allowances in the future.

Average cost data solely from the 2023 Survey can and should be used to set the make allowance for dry whey.

Respectfully Submitted,



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