

September 29, 2006

Hearing Clerk
United States Department of Agriculture
Stop 9200
Room 1031
South Building
1400 Independence Ave., S.W.
Washington, DC 20250-9200

Docket No. AO-14-A74, *et al.*; DA-06-01

Kraft Foods submits this post-hearing brief regarding the proposed updating of the Class III and IV make allowances. I testified in person at the January 2006 make allowance hearings. At that time, I explained why the current make allowances, which are based on 1997 through 1999 cost data, had become very outdated, and failed to reflect the true costs of processing. I also explained why it was crucial that USDA act expeditiously to update the make allowances, in light of the fact that most processors of Class III and IV products must rely entirely on make allowances to cover all of their costs of processing. This is so because the federal milk order system requires by law that 100% of the proceeds received from the sale of commodity products, minus the make allowance, be passed on to producers in the form of minimum milk price.

Unfortunately, eight months have now passed without any change in the make allowances. The federal order system therefore continues to operate as if processors still faced 1997-99 costs, when their true costs are sharply higher. Very substantial recent increases in energy costs have only made things worse.

USDA recently reopened the make allowance hearing to receive evidence regarding a recently completed Cornell University study of the costs of producing the products used by USDA to set minimum milk prices. We understand that Dr. Stephenson of Cornell testified at

the hearing as to the reliability of that data and the way in which it can be used to set make allowances.

We believe the data submitted in January was more than adequate to update the current, outdated make allowances and provide relief. However, given that the Cornell data is the only truly national (outside of California) data source regarding the costs of processing these products, we believe that it provides the best available data for setting make allowances. We therefore support its use by USDA for that purpose.

We understand the Dr. Stephenson presented a “total population” weighted average cost of processing for commercial cheese plants outside of California. Because that is the population to which the make allowances will apply, that weighted average cost (20.28 cents per pound) should be the starting point for setting cheese make allowances. Dr. Stephenson’s weighted average cost of processing for the surveyed whey (19.41 cents), butter (11.08 cents) and nonfat dry milk (14.23 cents) plants should be the starting point for setting the make allowance for those products.

Because none of Dr. Stephenson’s data includes marketing costs, we urge USDA to add 0.15 cents to the surveyed cost data for each of the commodities surveyed, in order to capture this necessary expense in the make allowance. USDA took this same step when it last set make allowances.

We also understand that Dr. Stephenson presented data with which one can update the energy costs components of the make allowance, in order to reflect increased energy costs between the time periods covered by his survey data and the end of 2005. We strongly urge that USDA include that energy adjustment, but also urge that the USDA leave consideration of ongoing, future adjustments to make allowances to a later hearing.

Finally, we urge USDA in the strongest possible terms to issue a decision as soon as possible. We believe that the emergency need for action, as to which significant evidence was presented last January, has only gotten worse. We therefore urge USDA to issue an interim final decision as soon as possible that will adopt make allowances no lower than those reflected in Dr. Stephenson's data as to the costs of processing, adjusted for marketing costs and increased energy costs.

Sincerely,

Michael McCully

Michael McCully
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Kraft Foods