



United States
Department of
Agriculture

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1400 Independence Ave., SW
Washington, DC
20250

SEP 13 2006

Mr. Kevin J. Brosch, Esq.
Legal Counsel
National Milk Producers Federation
2120 Wilson Boulevard, Suite 400
Arlington, Virginia 22201

Dear Mr. Brosch:

We are in receipt of the comments filed by National Milk Producers Federation (NMPF) in response to the notice announcing the Department's intent to reconvene the Class III and Class IV manufacturing ("make") cost allowance hearing published in the *Federal Register* on June 28, 2006. The NMPF requests that:

1. An interim decision be issued on the basis of the record of the public hearing held in January 2006 prior to the reconvened hearing.
2. The Secretary reverse and vacate the Administrative Law Judge's (ALJ) decision ruling that NMPF's modification to the proposal to amend make allowances used in setting Class III and Class IV prices was beyond the scope of the hearing. NMPF's modification would restrict changes to the make allowance to only affect Class III and Class IV pricing.

After careful consideration of these requests, they are denied.

An interim decision will not be issued prior to reconvening the hearing. Issuing an interim decision on the basis of the January 2006 record is contrary to the notice of June 28, 2006, announcing the intent to reconvene the hearing. As indicated in the June notice, the purpose of the reconvened hearing is to assure that any changes to the manufacturing allowances used in Class III and Class IV product price formulas are appropriate and reflective of manufacturing costs. The notice also provided that the reconvened hearing would take into evidence only data on plant manufacturing costs compiled by Cornell University and any other publicly available pertinent data or information specifically addressing plant manufacturing costs.

The Secretary supports the ruling of the ALJ that Dr. Cryan's proposed modification to updating the Class III and Class IV product price make allowances was beyond the scope of the hearing notice announcing the January 2006 hearing and the proposals that were to be considered. Proposal 1 of the hearing notice sought to amend the manufacturing allowances for Class III and Class IV product formulas based on the most current California State dairy products

Mr. Kevin J. Brosch
Page 2

manufacturing cost survey (2004) and the recently updated survey of manufacturing costs conducted by the Rural Business and Cooperative Service (RBCS). Delinking Class I and Class II prices from Class III and Class IV pricing as NMPF proposed in its modification, was not within the scope of that proposal or the hearing notice. Accordingly, NMPF's request to reverse and vacate the ALJ ruling is denied.

We encourage you to submit proposals for consideration in a separate rulemaking hearing on Class III and Class IV product formulas, as solicited in the notice of intent to reconvene, by September 30, 2006.

A copy of the comments submitted by NMPF and this reply will be filed with the hearing clerk and added to Dairy Programs' website.

We look forward to NMPF's participation at the reconvened hearing on September 14, 2006, and in all other future hearings.

Sincerely,

A handwritten signature in black ink, appearing to read "Lloyd C. Day", is written over a horizontal line.

Lloyd C. Day
Administrator