

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131

[Docket No. AO-14-A76, et al.; DA-07-01]

Milk in the Northeast and Other Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR Part	Marketing Area	AO Nos.
1001	Northeast	AO- 14-A76
1005	Appalachian	AO-388-A20
1006	Florida	AO-356-A41
1007	Southeast	AO-366-A49
1030	Upper Midwest	AO-361-A42
1032	Central	AO-313-A51
1033	Mideast	AO-166-A75
1124	Pacific Northwest	AO-368-A37
1126	Southwest	AO-231-A70
1131	Arizona	AO-271-A42

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; Notice of public hearing on proposed rulemaking.

SUMMARY: A national public hearing is being held to consider and take evidence on a proposal seeking to amend the Class I and Class II milk price formulas applicable to all Federal milk marketing orders. Evidence also will be taken at the hearing to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)).

DATES: The hearing will convene at 1:00 p.m., Monday, December 11, 2006.

ADDRESSES: The hearing will be held at the Sheraton Station Square Hotel, 300 West Station Square Drive, Pittsburgh, Pa. 15219. Telephone number: (412) 261-2000.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Associate Deputy Administrator for Order Formulation and Enforcement, USDA/AMS/Dairy Programs, Stop 0231-Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250-0231, (202) 720-2357, e-mail - address: gino.tosi@usda.gov.

Persons requiring a sign language interpreter or other special accommodations should contact David Walker, Market Administrator, at (330) 225-4758; email: dwalker@fmmaclev.com before the hearing begins.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Sheraton Station Square Hotel, Pittsburgh, PA, beginning at 1:00 p.m. on Monday, December 11, 2006, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Northeast and other marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Evidence will be taken at the hearing to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to any proposed amendments.

Also, since the proponent of the proposed amendment has requested that the hearing be held on an expedited basis, under the rules of practice and procedure (7 CFR 900.4(a)), it is determined that less than 15 days notice is reasonable under the circumstances.

Initial Regulatory Flexibility Analysis

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information collection requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees (13 CFR 121.201). Most parties subject to a milk order are considered as a small business.

For the purposes of determining which dairy farms are "small businesses," the \$750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

USDA has identified that during 2005 approximately 51,060 of the 54,652 dairy producers whose milk is pooled on Federal orders are small businesses. Small businesses represent about 93 percent of the dairy farmers who participate in the Federal milk order program.

On the processing side, during June 2005 there were approximately 350 fully regulated plants (of which 149 or 43 percent were small businesses) and 110 partially regulated plants (of which 50 or 45 percent were small businesses). In addition, there were 48 producer-handlers, of which 29 were considered small businesses for the purposes of this initial regulatory flexibility analysis, who submitted reports under the Federal milk order program during this period.

The fluid use of milk represented more than 45.0 percent of total Federal milk marketing order producer deliveries during January 2006. Almost 237 million Americans, approximately 80 percent of the total U.S. population reside within the geographical boundaries of the 10 Federal milk marketing areas.

In order to accomplish the goal of imposing no additional regulatory burdens on the industry, a review of the current reporting requirements was completed pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) In light of that review, it was determined that these proposed amendments would have little or no impact on reporting, record keeping, or other compliance requirements because these requirements would remain identical to those currently in effect under the Federal order program. No new or additional reporting would be necessary.

This notice does not require additional information collection that requires clearance by the OMB beyond the currently approved information collection. Information currently collected through the use of OMB-approved forms and the primary sources of data used to complete the forms are routinely used in business transactions. The forms require only a minimal amount of information that can be provided without data processing equipment or trained statistical staff. Thus, the information collection burden is relatively small. Requiring the same reports from all handlers does not disadvantage any handler that is smaller than the industry average.

No other burdens are expected to fall upon the dairy industry as a result of overlapping Federal rules. This proposed rulemaking does not duplicate, overlap, or conflict with any existing Federal rules.

To ensure that small businesses are not unduly or disproportionately burdened based on these proposed amendments, consideration was given to mitigating any negative impacts. Minimum pricing should not raise barriers regarding the ability of small handlers, including milk manufacturers and processors, to compete in the marketplace. It is similarly expected that small producers would not experience any particular disadvantage compared to larger producers as a result of the proposed amendments.

The following economic analysis discusses impacts of the proposed amendments on market participants, including producers and milk manufacturers and processors. Interested parties are invited to present evidence on the probable regulatory and information collection impact of the hearing proposals on small businesses. Also, such parties may suggest modifications of the proposal for tailoring its applicability to small businesses.

Preliminary Economic Analysis

In order to assess the impact of National Milk Producers Federation (NMPF) proposed changes to Federal order Class I and II pricing formulas, the Department has conducted an economic analysis. While the proposed changes have effects on Class I and II prices, they also have effects on the milk supply, product demand, and milk allocation. These dynamic effects impact all Federal order class prices.

Scope of Analysis

Impacts of increasing Class I and II price movers were measured as changes from the USDA Agricultural Baseline Projections to 2015 (OCE-2006-1, http://www.usda.gov/oce/commodity/ag_baseline.htm). The baseline projections are “a Departmental consensus on a long-run scenario for the agricultural sector.” Included is a national, annual projection of the supply-demand-price situation for milk. The USDA baseline and the model baseline assume: (1) The Milk Price Support Program (MPSP) will continue unchanged; (2) The Dairy Export Incentive Program will be utilized to the maximum extent

allowed beginning in the 2006/07 fiscal year; (3) The Milk Income Loss Contract (MILC) program will continue through September 2007¹; and (4) The Federal Milk Marketing Order Program will continue unchanged. This analysis maintains the first three assumptions as unchanged. The only changes to the Federal Milk Marketing Order Program are those that proposed by NMPF. Since the model is an annual model, a simplifying assumption is made that the proposed changes become effective January 1, 2007.

Demands for fluid milk and manufactured dairy products are functions of per capita consumption and population. Per capita consumption for the major milk and dairy products are estimated as functions of own prices, substitute prices, and income. Retail margins are assumed unchanged from the baseline. The demands for fluid milk and soft manufactured products are satisfied first by the eligible supply of milk. The milk supply for manufactured hard products is the volume of milk marketings remaining after satisfying the volumes demanded for fluid and soft manufactured products. Milk is manufactured into cheese, butter or nonfat dry milk (NFD) according to returns to manufacturing in each class. Wholesale prices for cheese, butter, NFD and dry whey reflect supply and demand for these products. These manufactured dairy product prices underlie the Federal order pricing system.

Discussion of Effects of NMPF Proposal on Federal Order Formulas

The NMPF proposal effectively would increase current Class I and II price movers by constant amounts in Federal order formulas. The Class I skim milk pricing factor would increase by \$0.73 per hundredweight (cwt.). The Class I butterfat pricing factor would increase by an equivalent \$0.0073 per pound. While the Class I skim milk and butterfat pricing factors would be increased by the same amount, the Class II skim milk and butterfat pricing factors would increase by different amounts. The Class II skim pricing factor would increase by \$0.0074 per cwt., much smaller than the proposed Class I skim milk pricing factor. The Class II butterfat pricing factor would increase by \$0.0163 per pound, an amount larger than the proposed Class I butterfat pricing factor increase.

The proposed increases to Class I and II movers have the same effect as increasing Class I and II differentials at all locations by the effective proposed changes. Although NMPF proposes butterfat and skim milk prices for Class I and II that differ from Class III and IV, the differences are by constant amounts. Class II prices at 3.5 percent butterfat would still change over time in lock step with Class IV advanced pricing factors as currently used in Federal order formulas. Class I prices at 3.5 percent butterfat would still change over time in lock step with the higher of Class III or IV advanced pricing factors as currently used in Federal order formulas.

Summary of Results for Proposed Changes to Class I and II Movers Combined

The impacts of the changes to the Class I and Class II formulas that are set forth in NMPF's proposal are summarized using annual and nine-year, 2007-2015, average changes from the model baseline (Table 1). This section discusses the model results of increasing both the Class I and Class II price movers together. The following section discusses the model results of proposed changes to Class I and II movers analyzed separately. The results presented for the Federal order system are in the context of the larger U.S. market. In particular, the Federal order price formulas use national manufactured dairy product prices.

¹ Dairy producers are not eligible to choose September 2007 as a month for which MILC payments are to be applied. This provision was included so that it would not be necessary to include MILC payments in the Federal budget for fiscal year 2007-08.

Producers. Over the nine-year period, the average Federal order minimum blend price for milk at test increases \$0.11 from a baseline level of \$14.71 per cwt. The average U.S. all-milk price increases by about \$0.06 from a baseline level of \$14.79 per cwt. Federal order marketings increase by an average 144 million pounds annually due to the production increase in response to higher producer milk prices. Federal order milk cash receipts increase by an average \$167 million annually from baseline receipts of \$19,165 million. U.S. milk marketings increase by an average of 227 million pounds annually, yielding an average annual producer revenue increase of \$146 million from an average baseline value of \$28,396 million.

Table 1. Model Results for National Milk Producers Federation Proposed Class I and Class II Changes
 Nine-year averages, 2007 through 2015

	Units	Baseline	Class I Movers Increase	Class II Movers Increase	Class I and II Movers Increase ¹
Changes to Pricing Factors					
Class I skim	\$/cwt.		0.7300	----	0.7300
Class II skim	\$/cwt.		----	0.0074	0.0074
Class I butterfat	\$/pound		0.0073	----	0.0073
Class II butterfat	\$/pound		----	0.0163	0.0163
F.O. Minimum Prices, 3.5% BF					
Class I	\$/cwt.	16.46	0.60	-0.02	0.58
Class II	\$/cwt.	12.71	-0.13	0.04	-0.09
Class III	\$/cwt.	13.75	-0.13	-0.02	-0.15
Class IV	\$/cwt.	12.01	-0.13	-0.02	-0.15
Blend	\$/cwt.	14.37	0.12	0.00	0.12
Average Class Butterfat Test					
Class I	% of milk	2.04	0.00	0.00	0.00
Class II	% of milk	8.16	0.00	0.00	0.00
Class III	% of milk	3.49	0.00	0.00	0.00
Class IV	% of milk	4.37	-0.03	0.00	-0.03
F.O. Minimum Prices at Test					
Class I	\$/cwt.	14.10	0.65	-0.01	0.64
Class II	\$/cwt.	20.34	-0.28	0.09	-0.19
Class III	\$/cwt.	13.73	-0.13	-0.02	-0.15
Class IV	\$/cwt.	13.42	-0.21	-0.02	-0.23
Blend	\$/cwt.	14.71	0.12	0.00	0.11
Product Prices					
Cheddar	\$/pound	1.4594	-0.0112	-0.0019	-0.0131
Butter	\$/pound	1.5325	-0.0275	-0.0051	-0.0327
Nonfat dry milk (NFDN)	\$/pound	0.8444	-0.0018	0.0001	-0.0017
Whey	\$/pound	0.2750	-0.0015	-0.0002	-0.0017
Mozzarella	\$/pound	1.7915	-0.0071	-0.0012	-0.0083
Retail ice cream	\$/ half gal.	3.8555	-0.0230	0.0075	-0.0156
CPI, other dairy products	index value	121.4	-0.5	0.1	-0.3
Retail fluid milk ²	\$/gal.		0.0560	-0.0011	0.0549
Federal Order Component Prices					
Protein	\$/pound	2.3797	-0.0013	0.0004	-0.0009
Class III and IV butterfat	\$/pound	1.7010	-0.0330	-0.0062	-0.0392
Class I butterfat	\$/pound	1.7010	-0.0257	-0.0062	-0.0319
Class II butterfat	\$/pound	1.7010	-0.0330	0.0101	-0.0229
Other solids	\$/pound	0.1195	-0.0015	-0.0002	-0.0018
Nonfat solids	\$/pound	0.6973	-0.0018	0.0001	-0.0017
Class I skim price	\$/cwt.	10.7921	0.7169	0.0000	0.7169
Class II skim price	\$/cwt.	6.9758	-0.0159	0.0083	-0.0076
Class III skim price	\$/cwt.	8.0821	-0.0131	0.0000	-0.0131
Class IV skim price	\$/cwt.	6.2758	-0.0159	0.0009	-0.0150

Table 1 Continued. Model Results for National Milk Producers Federation Proposed Class I and Class II Changes
 Nine-year averages, 2007 through 2015

	Units	Baseline	Class I Movers Increase	Class II Movers Increase	Class I and II Movers Increase
Federal Order Class Uses					
Class I	mil. pounds	45,875	-70	1	-68
Class II	mil. pounds	17,489	63	-20	43
Class III	mil. pounds	51,152	30	4	34
Class IV	mil. pounds	15,694	144	-9	135
Total F.O. Marketings	mil. pounds	130,211	167	-24	144
Federal Order Cash Receipts					
Class I	mil. \$	6,470	288	-6	282
Class II	mil. \$	3,561	-37	12	-25
Class III	mil. \$	7,026	-61	-10	-71
Class IV	mil. \$	2,108	-14	-4	-18
Total	mil. \$	19,165	176	-8	167
All Milk Price	\$/cwt.	14.79	0.07	-0.01	0.06
U.S. class use ³					
Class I	mil. pounds	55,674	-85	2	-83
Class II	mil. pounds	20,455	74	-24	50
Class III	mil. pounds	93,173	55	7	63
Class IV	mil. pounds	22,911	210	-13	197
Milk Cows	1000s	8,890	8	-1	7
Yield per Cow	pounds	21,668	9	-1	8
U.S. Marketings ⁴	mil. pounds	191,855	254	-27	227
Government removals of NFDN					
Quantities	mil. pounds	290	13	-1	12
Outlays ⁵	mil. \$		10	-1	10
U.S. Producer Revenue ⁶	mil. \$	28,396	158	-21	146

¹ Separate effects of increasing Class I and II movers do not necessarily add up to the combined effects due to differences in the dynamics over time.

² Retail fluid milk prices are not projected in the model. Projected impacts are calculated by multiplying the Class I price per pound at test by 8.62 pounds of milk per gallon.

³ Total U.S. class use does not add to U.S. Marketings due to the presence of imported ingredients.

⁴ U.S. Marketings differs from U.S. milk production due to farm use of milk.

⁵ MPSP outlays are not projected in the model. For this table, outlays are computed by multiplying NDM net removal quantities by the NDM support price of \$0.80. No attempt is made to estimate changes in storage, handling, transportation, processing, and

⁶ U.S. Producer Revenue includes MILC payments for 2007.

Milk Manufacturers and Processors. Increasing Federal order Class I and II movers as proposed has the combined effect of increasing Class I prices and decreasing prices for the

manufacturing milk classes. The retail price of fluid milk increases by \$0.0549 per gallon. Since milk is less scarce due to increases in milk production, and reductions in Class I use, more milk moves into manufactured uses. As a result dairy product prices decrease to clear markets of production increases. Over the nine-year projection period, wholesale dairy product prices decrease as follows: \$0.0131 per pound for cheddar cheese, \$0.0327 for butter, \$0.0017 for NFDM, \$0.0017 for dry whey, and \$0.0083 for mozzarella. The retail price for ice cream decreases by \$0.0156 per half-gallon. The CPI for other dairy products decreases by a value of 0.3. Most Federal order component prices decrease on average over the nine-year projection period: \$0.0009 per pound for protein, \$0.0017 for nonfat solids, and \$0.0018 for other solids.

The average Class III and IV butterfat price decreases by an average \$0.0392 per pound over the nine-year projection period. The average Class I butterfat price decreases by an average \$0.0319. The difference between the Class III and IV and Class I butterfat prices is \$0.0073, the effective proposed formula change. The Class I butterfat price decreases because the proposed increase in the Class I butterfat pricing factor is not enough to offset the butter price decrease. The average Class II butterfat price decreases by \$0.0229 per pound over the nine-year projection period. The difference between the Class IV butterfat price and the Class II butterfat price is \$0.0163, the effective proposed formula change. The Class II butterfat price decreases because the proposed increase in the Class II butterfat pricing factor is not enough to offset the butter price decrease.

The average Class III and IV skim milk prices decrease by an average \$0.0131 and \$0.0150 per cwt. respectively over the nine-year projection period. The average Class I skim milk price increases by an average \$0.7169. The difference between the Class III and Class I average skim milk prices is \$0.7300, the effective proposed formula change. The Class I skim milk price increases because the proposed formula change for the Class I skim milk pricing factor more than offsets the price decreases in the component prices used in pricing Class I and III. The average Class II skim milk price decreases by \$0.0076 per cwt. over the nine-year projection period. The difference between the Class IV skim price and the Class II skim price is \$0.0074, the effective proposed formula change. The Class II skim milk price decreases because the proposed formula change for the Class II skim milk pricing factor is not enough to offset the price decreases in the component prices used in pricing Class II and IV.

There are notable differences between changes in Federal order class prices at 3.5 percent butterfat and changes in Federal order class prices at class butterfat percentages. Butterfat tests for the four Federal order milk classes differ from one class to another due to the mix of products within each class. Butterfat proportions are higher for Class II and IV milk than for Class I and III milk. Differences between prices at test and prices at 3.5 percent butterfat are greatest for Class II. The lower butterfat price plays a greater role in the Class II price at test because of the higher average fat content of the products in the class. While the Class II price at 3.5 percent butterfat decreases by an average \$0.09 per cwt., the Class II price at test decreases by an average \$0.19 per cwt.

Consumers. The expected \$0.64 per cwt increase in the minimum nine-year average Class I price at test results in an average \$0.0549 per gallon increase in the price of fluid milk for consumers. Consumers decrease consumption of fluid milk products, resulting in a decrease of 68 million pounds in Federal order Class I marketings. Consumers increase consumption of manufactured dairy products in response to lower dairy product prices. The manufacturing

Federal order class marketings increase as follows: 43 million pounds for Class II, 34 million pounds for Class III, and 135 million pounds for Class IV. U.S. class marketing increase as follows: 50 million pounds for Class II, 63 million pounds for Class III, and 193 million pounds for Class IV.

Government Outlays. In 2007, with higher Class I prices, MILC payments decrease by \$82 million below the baseline level of \$190 million. This impact rounds to approximately \$0.04 per cwt. averaged over all of the milk production.

With the proposed increases to Federal order Class I and II pricing factors, milk production increases, dairy product prices decrease, and government removals increase relative to baseline levels. Over the projection period, government removals of NFDm increase by an annual average of 12 million pounds per year. Government outlays related to government removals increase by an average of \$10 million over the projection period.

Contrasting Effects of Increasing Class I and II Movers

Effects of increasing Class I price movers differ significantly from effects of increasing Class II price movers. The differences are mainly due to the differences in price elasticity of demand² of fluid milk versus Class II products. Model parameters indicate that fluid milk has a very inelastic demand price elasticity of -0.05. Class II products are much more price elastic with respect to demand. Model parameters indicate that frozen Class II products and other Class II products have demand price elasticities of -0.50 and -1.18 respectively. To examine these effects, model scenarios were run to examine the effects of proposed changes to Class I and Class II movers separately.

Effects of Changes to Class I Movers: Increasing Class I movers as proposed by NMPF results in higher Federal order Class I pool receipts of \$288 million. Federal order Class I producer revenue increases because the increase in the Class I price at test (\$0.65 per cwt.) more than offsets the decrease in Class I use (70 million pounds) that results from the higher price. With the proposed increases in Class I movers, the average Federal order blend price at test increases by \$0.12 per cwt., the average all-milk price increases by \$0.07 per cwt., and producer revenues increase by \$158 million.

Effects of Changes to Class II Movers: With the proposed increases in Class II movers, Federal order Class II use decreases by 20 million pounds. As Class II use decreases, relatively more milk is allocated to other products, lowering their prices. Product prices decrease for cheddar cheese (\$0.0019 per pound), butter (\$0.0051 per pound), and fluid milk (0.0011 per gallon). Since these demands have relatively low price elasticities, consumption does not increase very much for these products. Although Federal order Class II receipts increase by \$12 million, the increase is not enough to offset decreases in cash receipts for the other classes, and total Federal order class receipts fall by \$8 million. The average reduction in the Federal order blend price at test rounds to zero. The all-milk price decreases by \$0.01, and average U.S. producer revenue decreases by \$21 million.

Detailed Analysis Information

² Price elasticity of demand is the percentage change in consumption corresponding to a 1 percent change in price.

A complete Preliminary Economic Analysis, NMPF Proposed Changes to Class I and II Mover, is available at <http://www.ams.usda.gov/dairy/hearings.htm>. For further information contact Howard McDowell, Senior Economist, USDA/AMS/Dairy Programs, Office of the Chief Economist, Room 2753, South Building, U.S. Department of Agriculture, Washington, DC 20250, (202)720-7091, e-mail address howard.mcdowell@usda.gov.

Executive Order 12988, Civil Justice Reform

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 8c(15)(A) of the Act (7 USC 608c (15)(A)), any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (Department) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with (6) copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

The proposed amendments, as set forth below, have not received the approval of the Department.

Proposed by National Milk Producers Federation (NMPF):

Proposal 1

Proposal 1 would change how the Class I skim milk price is determined for setting and moving Class I prices. Proposal 1 continues to essentially use the higher of the current advance Class III or advance Class IV skim milk price per hundredweight (cwt) in setting and moving Class I prices, but adds an adjustment factor of \$0.73. The \$0.73 per cwt factor is intended to reflect the increases in costs associated with supplying the Class I market. The proposal seeks to accomplish this objective by replacing the current Class I price mover (where all prices are U.S. average prices as reported by the National Agricultural statistical Service (NASS)) with the higher of:

- a. Nonfat dry milk price x 8.9 - \$0.52; or
- b. Cheese price x 10.0 + Dry whey price x 6.1 - Butter Price x 3.9 - 1.44

Proposal 1 would eliminate direct reference to the advanced Class III and Class IV skim milk prices in the formula for determining the Class I skim milk price. While the make allowance factors used in determining Class III and Class IV formulas are under consideration for change in a separate rulemaking proceeding, the formulas above would be changed to reflect any future amendments made to product make allowances or product yield factors for cheese, nonfat dry

milk, butter and dry whey as the result of formal rulemaking. The proposed formulas are based on current make allowances used in determining Class III and Class IV prices. The \$0.52 and \$1.44 factors presented in the above formulas are not revised make allowance factors. They represent the mathematical simplification of adjusting current advanced Class III and Class IV prices by a factor of \$0.73.

Proposals 2 and 3

In order to use the simplified formulas in Proposal 1, the proposed use of an advanced cheese skim milk price per cwt, an advanced butter-powder skim milk price per cwt and an advanced butterfat price per pound would be used to replace the current advanced Class III and Class IV skim milk prices per cwt. Additionally, the proposed advanced butterfat price per pound would be determined differently than it is currently.

Proposal 2 would change the current advanced Class III skim milk pricing factor per cwt to an advanced cheese skim milk price per cwt factor. The cheese skim price per cwt would be determined by:

- a. Multiplying the weighted average of the 2 most recent NASS average weekly prices for block and barrel cheese by 10; multiplying the weighted average of the 2 most recent NASS average weekly survey prices for dry whey announced before the 24th day of the month times 6.1;
- b. Multiplying the weighted average of the 2 most recent NASS weekly survey prices for butter announced before the 24th day of the month times 3.9;
- c. Adding the amounts computed in a. above; and subtracting the butter price per pound in b. above; and
- d. Subtracting \$1.44.
- e. The advanced butterfat price per pound would be determined by multiplying the weighted average of the 2 most recent NASS survey prices for butter by 1.20; and from this product subtracting \$0.1307.

Proposal 3 would change referring to the current advanced Class IV skim milk pricing factor per cwt to a butter-powder skim milk price per cwt. The advanced butter-powder skim milk price (nonfat dry milk) per cwt would be determined by:

- a. Multiplying the weighted average of the 2 most recent NASS weekly survey prices for nonfat dry milk announced before the 24th day of the month by 8.9; and
- b. From the product subtracting \$0.52.

Proposal 4

This proposal would change the way the Class II milk price is computed without noticeably changing the level of pricing. While the skim portion of milk used in Class II would continue to be announced in advance, it is proposed to be computed by:

- a. Multiplying the weighted average of the 2 most recent NASS survey prices for nonfat dry milk per pound announced before the 24th day of the month by 8.9; and
- b. From the product subtracting \$0.54.

Proposal 5

This proposal would change how the current Class II butterfat price is determined. As proposed the Class II butterfat price per pound would be the NASS AA Butter survey price reported by the Department for the month multiplied by 1.2; and from the product subtracting \$0.1147. (Instead of adding \$0.70 to the butterfat price (the current Class II differential), this

proposal would add \$1.53 per cwt).

The five aforementioned proposals would modify the current provisions of all Federal milk marketing orders as follows:

- 1. Amend § 1000.50 by:
 - a. Revising paragraph (e)
 - b. Revising paragraph (g); and
 - c. Revising paragraph (q) (1) (2) (3)

The revisions and additions read as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(e) Class II skim milk price. The Class II skim milk price per hundredweight shall be the weighted average of the 2 most recent U.S. average weekly survey NASS nonfat dry milk prices announced before the 24th day of the month, times 8.9, then subtracting from this product \$0.54.

(g) Class II butterfat price. The Class II butterfat price per pound, rounded to the nearest one hundredth cent, shall be the U.S. average NASS AA butter survey price reported by the Department for the month, multiplied by 1.20, then subtracting from this product \$0.1147.

* * *

(q) * * *

(1) An advanced cheese skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(i) Following the procedure set forth in paragraph (n)(1) of this section, but using the weighted average of the 2 most recent NASS U.S. average weekly survey prices announced before the 24th day of the month, multiply the resulting cheese price by 10.

(ii) Multiply the weighted average of the 2 most recent NASS U.S. average weekly survey dry whey prices announced before the 24th day of the month by 6.1.

(iii) Multiply the weighted average of the 2 most recent NASS U.S. average weekly survey butter prices announced before the 24th day of the month by 3.9.

(iv) Add the amounts computed in paragraphs (q)(1)(i) and (ii), subtract the amount in paragraph (q)(1)(iii), and subtract \$1.44.

(2) An advanced butter-powder skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(i) Multiply the weighted average of the 2 most recent NASS U.S. average weekly survey prices for nonfat dry milk announced before the 24th day of the month by 8.9; and

(ii) From the amount computed in paragraph (q)(2)(i) subtract \$0.52.

(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 AA butter survey prices announced before the 24th day of the month, multiplying the result by 1.20, then subtracting \$0.1307.

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Proposed by Dairy Programs, Agricultural Marketing Service:

Proposal No. 6

For all Federal Milk Marketing Orders, make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

List of Subjects in 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131.

Milk marketing orders.

The authority citation for 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131 continues to read as follows:

Authority: 7 U.S.C. 601-674, and 7253.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid marketing areas, or from the Hearing Clerk, United States Department of Agriculture, STOP 9200 – Room 1083, 1400 Independence Avenue, SW., Washington, DC 20250-9200, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture

Office of the Administrator, Agricultural Marketing Service

Office of the General Counsel

Dairy Programs, Agricultural Marketing Service (Washington office) and the Offices of all Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: November 17, 2006

Lloyd C. Day

Administrator

Agricultural Marketing Service