

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

[Docket No. AO-14-A69, et al.; DA-00-03]

Milk in the Northeast and Other Marketing Areas; Notice of Hearing on Class III and Class IV Milk Pricing Formulas

7 CFR Part	Marketing area	AO Nos.
1001	Northeast	AO-14-A69.
1005	Appalachian	AO-388-A11.
1006	Florida	AO-356-A34.
1007	Southeast	AO-366-A40.
1030	Upper Midwest	AO-361-A34.
1032	Central	AO-313-A43.
1033	Mideast	AO-166-A67.
1124	Pacific Northwest	AO-368-A27.
1126	Southwest	AO-231-A65.
1131	Arizona-Las Vegas	AO-271-A35.
1135	Western	AO-380-A17.

AGENCY: Agricultural Marketing Service, USDA.

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

SUMMARY: A public hearing is being held in response to a mandate from Congress via the Consolidated Appropriations Act, 2000, which requires the Secretary of Agriculture to conduct a formal rulemaking proceeding to reconsider the Class III and Class IV milk pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The legislation requiring the hearing describes the proceeding as an emergency. Any changes to the formulas resulting from the required proceeding are to be implemented on January 1, 2001.

DATES: The hearing will convene at 8 a.m. on May 8, 2000.

ADDRESSES: The hearing will be held at the Embassy Suites Hotel, 1900

Diagonal Rd., Alexandria, Virginia 22314, (703-684-5900).

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Programs, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-2357, e-mail address Connie.Brenner@usda.gov.

Persons requiring a sign language interpreter or other special accommodations should contact David Walker at (703) 549-097003; email dwalker@fedmilk1.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 Embassy Suites Hotel, 1900 Diagonal Rd., Alexandria,

Virginia 22314, beginning at 8 a.m., on Monday, May 8, 2000, 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 re-consideration of the Class III and Class IV milk pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The mandate from Congress via the Consolidated Appropriations Act, 2000 (Pub. L. 106-113, 115 Stat. 1501), requires the Secretary of Agriculture to conduct a formal

rulemaking proceeding to reconsider the Class III and Class IV milk pricing formulas included in the final rule for the consolidation and reform of Federal milk orders and to implement any changes on January 1, 2001.

To ensure a comprehensive consideration of these pricing formulas, the Department invited all interested persons to submit proposals. As detailed below, 32 proposals (and any appropriate modifications thereof) will be heard. A number of other proposals were rejected in that they lacked authority, were beyond the purpose of the hearing, or were otherwise inappropriate. The proposals received are available for public inspection at USDA/AMS/Dairy Programs, Room 2968, South Building, 14th and Independence Ave., SW., Washington, DC 20250.

The legislation requiring the hearing describes the proceeding as an emergency. It should be noted that an emergency rulemaking proceeding omits a recommended decision with the opportunity to file comments thereon. Evidence will be taken 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 the proposal.

Initial Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of the proposed amendment on small entities and has prepared this initial regulatory flexibility analysis. The RFA provides that when preparing such analysis an agency shall address: the reasons, objectives, and legal basis for the anticipated proposed rule; the kind and number of small entities which would be affected; the projected recordkeeping, reporting, and other requirements; and federal rules which may duplicate, overlap, or conflict with the proposed rule. Finally, any significant alternatives to the proposal should be addressed. This initial regulatory flexibility analysis considers these points and the impact of this proposed regulation on small entities. The legal basis for this action is discussed in the preceding section.

This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational 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 \$500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the \$500,000 per year criterion was used to establish a production guideline of 326,000 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 as small businesses approximately 66,327 of the 71,716 dairy producers (farmers) that have their milk pooled under a Federal order. Thus, small businesses represent approximately 92.5 percent of the dairy farmers in the United States. On the processing side, there are approximately 1,200 plants associated with Federal orders, and of these plants, approximately 720 qualify as "small businesses," representing about 60 percent of the total.

During January 2000, there were approximately 240 fully regulated handlers (of which 186 were small businesses), 43 partially regulated handlers (of which 28 were small businesses), and 71 producer-handlers of which all were considered small businesses for the purpose of this initial regulatory flexibility analysis, submitting reports under the Federal milk marketing order program. This volume of milk pooled under Federal orders represents 72 percent of all milk marketed in the U.S. and 74 percent of the milk of bottling quality (Grade A) sold in the country. Forty-four distributing plants were exempt from Federal order regulation on the basis of their small volume of distribution.

Producer deliveries of milk used in Class I products (mainly fluid milk products) totaled 3.965 billion pounds in January 2000—38.8 percent of total Federal order producer deliveries. More than 200 million Americans reside in Federal order marketing areas—approximately 77 percent of the total U.S. population.

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. Chapter 35). In light of this review, it was determined that these proposed

amendments would have little or no impact on reporting, recordkeeping, or other compliance requirements because these would remain identical to the current Federal order program. No new forms have been proposed, and no 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. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than 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 negative impacts. Possible changes to the Class III and Class IV price formulas should not have any special impact on small handler entities. All handlers manufacturing dairy products from milk classified as Class III or Class IV would remain subject to the same minimum prices regardless of the size of their operations. Such handlers would also be subject to the same minimum prices to be paid to producers. These features of minimum pricing should not raise barriers to the ability of small handlers to compete in the marketplace. It is similarly expected that small producers would not experience any particular disadvantage to larger producers as a result of any of the proposed amendments.

Interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

Preliminary Analysis

In order to assist the industry in considering the effects of various types of proposals, the Department conducted a preliminary analysis. While the proposals seek to amend the product pricing formulas used to price milk

regulated under Federal milk marketing orders and classified as either Class III or Class IV milk, these product price formulas also would affect the prices of regulated milk classified as Class I and Class II. Of those proposals submitted, six were selected for preliminary quantitative analysis. Selection of a proposal for analysis should not be considered to be a judgement on the merit of a proposal. Proposals were selected either as reflective of a significant number of proposals received or to capture the possible range of impacts of the proposals submitted. For a number of reasons, including lack of authority, lack of detail presented by the proponent, and lack of data, all proposed amendments could not be analyzed.

Scope of Analysis. The scope of the proposed amendments were segmented into four categories for analysis. The categories were: (A) Butter and Butterfat Prices and Factors; (B) Cheese and Protein Prices and Factors; (C) Whey Powder and Other Solids Prices and Factors; and (D) Nonfat Dry Milk and Nonfat Solids Prices and Factors.

A. Butter and Butterfat Prices and Factors

The first proposal selected for analysis would subtract six cents from the National Agricultural Statistic Service (NASS) Grade AA butter price prior to inputting it into the Class IV and Class III formulas for purposes of establishing Class II, Class III, and Class IV butterfat prices, as well as the advanced Class I butterfat price.

The second proposal selected for analysis would substitute the make allowance determined by a study performed by the Rural Business-Cooperative Service (RB-CS) for the current butter make allowance. As a proxy for a study result expected to be presented at the hearing, the butter make allowance result of the most recent RB-CS study available was used in the analysis.

B. Cheese and Protein Prices and Factors

One proposal was selected for preliminary analysis. The selected proposal would reduce the make allowance per pound of cheese from the current level of \$0.1702 to \$0.142. The proposed make allowance of \$0.142 is the level determined by the most recent RB-CS study available of costs of manufacturing cheddar cheese before the addition of marketing costs or return on investment.

C. Whey Powder and Other Solids Prices and Factors

One proposal was selected for preliminary analysis. The selected proposal would increase the make allowance for dry whey from \$0.137 per pound to \$0.171 per pound.

D. Nonfat Dry Milk and Nonfat Solids Prices and Factors

The first proposal selected for preliminary analysis would replace the current make allowance for nonfat dry milk of \$0.137 per pound with a make allowance of \$0.1563 per pound.

The second proposal selected for analysis would replace the current make allowance, \$0.137, with the make allowance determined by an RB-CS study expected to be made available at the hearing. The most recent RB-CS study available of the cost of manufacturing nonfat dry milk placed the cost at \$0.126 per pound before the addition of a marketing cost or a return on investment.

Scope of Analysis. Impacts were measured as changes from the model baseline as adapted from the USDA dairy baseline. That baseline—a national annual projection of the supply-demand-price situation for milk and dairy products—was the basis for the model projection. Both the USDA baseline and the model baseline assume: (1) The price support program would end on December 31, 2000; (2) the Dairy Export Incentive Program would continue to be utilized; and (3) the Federal Milk Marketing Order Program would continue unchanged.

It was necessary to make some simplifying assumptions in order to provide some preliminary analysis prior to the hearing. It is anticipated that the proponents of the various proposals will provide some analysis as to their expectations of the adoption of their proposals. At this point in time, AMS has made no judgement of the impacts of any proposal on orderly marketing of milk, including the willingness or ability of manufacturers to accept regulated milk for manufacturing, or of the long term existence of sufficient capacity to clear the market of milk surplus to the fluid market. The Federal order share of U.S. milk marketings is about 67 percent. About 60 percent of all milk manufactured is marketed under Federal order regulation. Given the prominence of Federal order marketings in the U.S. milk manufacturing industry, prices paid for manufactured milk under Federal orders cannot get too far out of alignment with the value of milk for manufacturing in the rest of the United States. Similarly,

the fluid prices in non-Federal order markets are largely reflective of Federal order minimum Class I prices. Therefore, U.S. milk marketings are estimated as a function of the U.S. all-milk price, and the Federal order share is estimated as a function of the Federal order all-milk price relative to the U.S. all-milk price.

Cooperatives manufacture about 40 percent of the cheese and about 70 percent of the butter and nonfat dry milk manufactured nationally, and sell such dairy products in wholesale and retail markets in competition with other manufacturers. In estimating the change in the all-milk price and in cash receipts from milk marketings, it is assumed that these proposals will have a lesser effect on farm prices and receipts of member milk processed and marketed by cooperatives than on prices and receipts of milk manufactured by proprietary processors. A baseline assumption is that a cooperative passes through to its members the best price and best return on investment that it can. A higher minimum Federal order price could result in cooperatives paying higher monthly prices for milk, but would result in lower returns on investments paid at the end of the year. Total cash receipts for member milk marketings processed by the cooperative would be changed only by changes in wholesale product prices. The proposals under consideration are expected to have a minimal secondary impact on the wholesale prices for butter, cheese or nonfat dry milk. Therefore, total revenues from the sale of these products by manufacturers will be virtually unchanged.

In addition to altering the sharing of manufacturing proceeds between manufacturing plants and producers, these proposals have an impact on Class I and Class II prices. Class II prices move in concert with changes in Class IV. The effects on the Class I price depend upon how proposals affect the Class III price relative to the Class IV price since Class I prices are based on the higher of the Class III or IV prices.

We have assumed that plants would pay a higher or lower minimum price and that plant pooling decisions would be unchanged from the baseline. Changes in pay prices and cash receipts to cooperative members for raw milk marketed by cooperatives or to non-members for milk marketed to proprietary handlers would be fully reflected by changes in the Federal order blend price, given changes in Federal minimum class prices and uses. Changes in pay prices and cash receipts to cooperative members for milk manufactured by cooperatives are

additionally influenced by the changes in market prices for manufactured milk resulting from changes in manufactured product prices. For the 40 percent of the Class III milk and 70 percent of the Class IV milk manufactured by cooperatives, it is assumed that differences between the model generated average price for manufactured milk and the average of the Class II, Class III, and Class IV prices would be passed on to producer-members in the form of higher or lower pay prices. In the case of proprietary plants, it is assumed that the differences would be absorbed by the plants. However, in the case of a loss, proprietary manufacturing plants could de-pool milk to equalize their margins with cooperative plant margins. We hope proponents will shed some light on this issue.

Retail prices of fluid milk and Class II soft manufactured products are assumed to respond penny for penny to changes in the milk cost of these products. Wholesale and retail margins are assumed unchanged from baseline for all proposals analyzed. Demands for products in these classes are functions of price, per capita consumption and population. Wholesale prices for cheese, butter and nonfat dry milk reflect supply and demand for these products. The milk supply for manufacturing these hard products is the result of milk marketings minus the volumes demanded for Class I and Class II products. The remaining volume is allocated to Class III and Class IV according to returns to manufacturing in each class. Demands for products in these classes are functions of price, per capita consumption and population.

Summary Preliminary Results

The results of the proposed amendments to the Class III and Class IV formulas are summarized using six-year, 2001–2005, average changes from the model baseline. Averages tend to mask year-to-year changes in the variables. These results in 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. In addition, the advanced Class I price mover is driven by the higher of the Class III or Class IV prices; both of which are used over the period, and do switch depending on the scenario. The preliminary results are summarized in Table 1.

Changes in Class III and Class IV minimum pricing formulas have secondary effects beyond the initial price change because of the impacts on Class I and Class II prices and uses. If

Class III or Class IV minimum prices are reduced, minimum Class I or II prices are also reduced. These lower prices result in increased use of milk in Class I or II, reducing the volume of milk available for Class III and Class IV uses. In turn, the prices for cheese, butter, and nonfat dry milk increase. The market prices for milk in manufactured uses increase with manufactured product price increases. The opposite can be the case with a proposal that increases either the minimum Class III or Class IV price. Thus, the market does tend to offset large changes over time and move the results towards the baseline.

Butter and Butterfat Prices and Factors

The butter pricing scenarios are similar in effect and direction, differing only in magnitude in the butterfat price equation ($BF \text{ price} = (\text{NASS butter price} - 0.114) / 0.82$). Using February 2000 prices and holding them constant, increases in the make allowance from \$0.114 to \$0.133 per pound reduces the Class IV price by \$0.08 per hundredweight. Subtracting 6 cents from the NASS butter price before use in the formula yields a \$0.26 reduction in the Class IV price.

For the 2001–2006 period, subtracting 6 cents from the butter price has about double the effect on marketings and cash receipts of raising the make allowance by 1.9 cents. The butterfat price and minimum Class IV and Class II prices fall in turn. The Class III price is increased slightly with the inverse effect on the butterfat price in the cheese protein price calculation. The increase in Class II use in response to the price decline reduces milk allocated to Class III and Class IV. This results in slight wholesale price increases for cheese, butter, and nonfat dry milk.

Producers. Changing the make allowance from \$0.114 to \$0.133 results in a decline of \$0.002 per hundredweight in the Federal order blend for the 2001–2006 period. The average all-milk price for producers in Federal orders declines by only \$0.001, reflecting the slightly higher prices for cheese, butter, and nonfat dry milk. Marketings decrease by 39.8 million pounds and cash receipts decrease by \$7.0 million from baseline receipts of \$16,116.8 million.

Deducting 6 cents from the NASS butter price decreases the 6-year Federal order blend by \$0.006 per hundredweight and decreases the average all-milk price for Federal order producers by only \$0.003, reflecting the higher cheese, butter, and nonfat dry milk prices. Cash receipts decrease by \$14.0 million.

Milk Manufacturers and Processors. Soft product manufacturers benefit from the lower minimum Class II prices, driven by a lower average Class IV price. Federal order manufacturing receipts decline by \$8.7 million with the \$0.133 make allowance, and \$24.6 million with the 6-cent deduction in the butter price. The decrease in total Federal order marketings and an increase in Class II use results in less milk moving to Class III and IV in the Federal order marketing areas. Thus, the reduction in the volume of milk used in Class III and Class IV results in increases in the wholesale prices for cheese, butter, and nonfat dry milk. In the case of Class IV, handlers benefit as well from lower Class IV prices. Cheese manufacturers face an increased Class III price.

Consumers. The fluid milk price increases by \$0.004 with the \$0.133 increase in make allowance, and is increased by \$0.027 per hundredweight with the 6-cent reduction in the NASS butter price. The larger change converts to 0.3 cents per gallon. Thus, the retail price increase would be expected to be no greater than one cent per gallon.

Cheese Make Allowance Reduction

Reducing the cheese make allowance from \$0.1702 to \$0.142 affects the Class III price through the protein price. The Class III formula is: $\text{Protein Price} = ((\text{Cheese price} - 0.1702) \times 1.405) + (((\text{Cheese price} - 0.1702) \times 1.582) - \text{Butterfat price}) \times 1.28$. Using February 2000 prices, reducing the make allowance results in a \$0.29 per hundredweight increase in the Class III price.

For the 2001–2006 analytical period, the Class III price increases by an average of \$0.21 per hundredweight, and Class II and IV prices drop by \$0.09. The Class III price increase results in an increase in the Class I price of \$0.19 per hundredweight. Consumers respond to the Class I price increase by reducing fluid consumption and Class I use declines. The reduction in Class I use is diverted to Class III and Class IV use. Consumers require lower prices for cheese, butter, and nonfat dry milk to clear the product markets of higher volumes. While the blend price increases, the increase in the all-milk price for Federal order producers is somewhat smaller because the lower product prices drive manufactured milk values below Federal order prices, and this is reflected in cooperative producer pay prices.

Producers. Reducing the cheese make allowance from \$0.1702 to \$0.142 results in a \$0.15 increase in Federal order blend prices. The average all-milk price for Federal order producers,

however, increases by \$0.09 per hundredweight, reflecting the lower cheese, butter, and nonfat dry milk prices. Marketings increase by about 627.9 million pounds, on average, and cash receipts increase by \$198.2 million from baseline average receipts of \$16,116.8 million.

Milk Manufacturers and Processors. Soft product manufacturers benefit from the lower minimum Class II prices, driven by a lower average Class IV price. Federal order manufacturing receipts increase by \$123.5 million, with increases in the use of Class III and Class IV milk, and a Class III price increase.

Consumers. The fluid milk price increase of \$0.19 per hundredweight, on average, converts to 1.6 cents per gallon. Thus average retail fluid price increases would be expected to be no greater than 2 cents per gallon for the 2001–2006 period.

Whey Make Allowance Reduction

Increasing the whey make allowance from \$ 0.137 to \$0.171 affects the Class III price through the other solids price formula: Other Solids Price = (Dry whey price—0.137)/0.968. Using February 2000 prices, increasing the make allowance results in a \$0.20 per hundredweight reduction in the Class III price.

For the 2001–2006 analytical period, the Class III price decreases by an average of \$0.17 per hundredweight and the Class I price drops by \$0.07. Consumers respond to the Class I price decline by increasing fluid consumption and Class I use increases, resulting in reduced milk in Class III and Class IV use. The reduced volumes on the product markets result in higher prices for cheese, butter, and nonfat dry milk. While the blend price decreases, the decrease in the all-milk price received by Federal order producers is somewhat smaller because of the higher product prices.

Producers. Increasing the whey make allowance from \$ 0.137 to \$0.171 results in an average \$0.09 decrease in Federal order blend prices. The average all-milk price for producers in Federal orders, however, declines by an average of only \$0.06 per hundredweight, reflecting the higher cheese, butter, and nonfat dry milk prices. Marketings decline by an average of about 329.0 million pounds and cash receipts decrease by an average \$113.1 million from baseline receipts of \$16,116.8 million.

Milk Manufacturers and Processors. Soft product manufacturers face a slightly higher minimum Class II price,

driven by a slightly higher average Class IV price. Federal order manufacturing receipts decrease by an average of \$86.3 million, with a decrease in Class III and Class IV uses and a Class III price decrease. Wholesale prices for cheese, butter, and nonfat dry milk increase with reduced volumes of product.

Consumers. The average fluid milk price decrease of \$0.07 per hundredweight converts to 0.6 cents per gallon. Thus retail fluid prices would be expected to be about 1 cent per gallon lower for 2001–2006.

Nonfat Dry Milk Make Allowance Changes

Two nonfat solids price (NFS price=(NASS NDM price—0.137)/1.02) proposals were analyzed, in which the make allowance was increased by 1.9 cents to \$0.156 per pound in one case, and decreased by 1.1 cents to \$0.126 per pound in the other. Using February 2000 prices, increasing the nonfat dry milk make allowance to \$0.156 decreases the minimum Class IV price by \$0.16 per hundredweight. Decreasing the make allowance to \$0.126 results in an increase of \$0.09 per hundredweight in the Class IV price.

For the 2001–2006 analytical period, increasing the make allowance in the nonfat solids price decreases the Class IV price and therefore the Class II price. With less milk available to make cheese, the Class III price increases slightly due to an increase in the cheese price.

On the other hand, a decrease in the make allowance would increase the Class II and Class IV minimum prices during 2001–2006. This increase in Class IV price leads the Class IV price to be the Class I price mover during several of the years during the period of the analysis. With less milk going to Class I and Class II due to higher prices, the Class III price decreases slightly due to more milk available for cheese, resulting in slightly lower wholesale prices for cheese, butter, and nonfat dry milk.

Producers. The average all-milk price for producers in Federal orders would decrease by \$0.007 per hundredweight during the analytical period with the make allowance increased to \$0.156 per pound. Marketings decrease by 102.0 million pounds, on average, and cash receipts decrease by an average of \$22.7 million from baseline receipts of \$16,116.8 million.

The average all-milk price increases by \$0.007 per cwt. with the make allowance reduced to \$0.126 per pound, which leads to an annual average increase in milk marketings of 78.9

million pounds in the Federal order system. Total cash receipts increase by an average of \$19.2 million over the six-year period.

Milk Manufacturers and Processors. With the nonfat dry milk make allowance at \$0.156, Class II price declines, on average, by \$0.14 per hundredweight from the baseline, benefitting soft product manufacturers with increased consumption of Class II dairy products. The decrease in total marketings and the increase in Class II volume is sufficient to reduce Class III and Class IV volumes and cause a slight increase in the wholesale prices for cheese, butter, and nonfat dry milk. The value of milk for manufacturing in the Federal orders decrease by \$23.5 million, on average, over the 2001–2006 period.

When decreasing the nonfat dry milk make allowance to \$0.126, Class I prices increase by \$0.02 per hundredweight, Class II prices increase by \$0.07 per hundredweight, and about 16 million pounds moves into Class III and IV use. Coupled with the increase in marketings of 79 million pounds, the total volume of milk available for manufacturing would increase by about 87 million pounds annually. The value of milk used to manufacture dairy products increases by an annual average of \$12.1 million.

Consumers. The increase in the fluid milk price with an increase in the make allowance to \$0.156 is less than a half cent per hundredweight. Reducing the make allowance proposals for the nonfat solids price to \$0.126 would increase the fluid milk price \$0.02 per hundredweight, which translates into a retail price increase of less than a cent for a gallon of milk. Consumers would spend \$0.8 million more on fluid milk products under the \$0.156 make allowance, and \$7.1 million more under the \$0.126 make allowance. Consumption of fluid milk products would decrease slightly under both proposals. The consumption of manufactured products would decrease on average by 101.5 million pounds under the make allowance of \$0.156 and increase on average by 94.7 million pounds under the make allowance of \$0.126.

Interested parties are invited to present evidence or testimony at the hearing concerning the economic impact of any of the proposals on producers, handlers, or the national economy.

TABLE 1.—SUMMARY OF IMPACTS OF CLASS III/IV PRICING PROPOSAL ON ALL FEDERAL ORDERS, SIX-YEAR AVERAGE, 2001–2006

Change in	Units	Baseline	Butter make allowance of \$0.133 per pound	NASS butter price minus \$0.06	Cheese make allowance of \$0.142 per pound	Whey make allowance of \$0.171 per pound	NDM make allowance of \$0.156 per pound	NDM make allowance of \$0.126 per pound
Federal order minimum prices:								
Class I price	\$/cwt	15.25	0.004	0.027	0.193	-0.069	0.002	0.018
Class II price	\$/cwt	13.14	-0.072	-0.232	-0.092	0.033	-0.142	0.071
Class III price	\$/cwt	12.57	0.017	0.046	0.211	-0.170	0.021	-0.018
Class IV price	\$/cwt	12.44	-0.072	-0.232	-0.092	0.033	-0.142	0.071
Blend price	\$/cwt	13.70	-0.002	-0.006	0.145	-0.093	-0.012	0.010
All-milk price, F.O. producers ¹	\$/cwt	14.07	-0.001	-0.003	0.094	-0.058	-0.007	0.007
U.S. Product prices:								
Cheese price	\$/lb	1.4148	0.0009	0.0022	-0.0079	0.0031	0.0021	-0.001
Butter price	\$/lb	1.3095	0.0017	0.0042	-0.0170	0.0059	0.0040	-0.0041
NDM price	\$/lb	0.9992	0.0003	0.0007	-0.0022	0.0009	0.0006	-0.0005
Whey price	\$/lb	0.1850	0.0000	0.0001	-0.0006	0.0001	0.0001	-0.0002
Federal order class use:								
Class I use	mil. lbs	45,545.4	-1.5	-11.5	-83.4	30.4	-0.4	-8.0
Class II use	mil. lbs	13,499.6	12.4	47.1	95.6	-46.4	22.1	-7.8
Class III use	mil. lbs	50,229.8	-4.8	-11.7	40.7	-15.9	-11.0	9.6
Class IV use	mil. lbs	5,096.2	-45.9	-101.1	574.9	-297.2	-112.6	85.1
Total marketings	mil. lbs	114,371.1	-39.8	-77.3	627.9	-329.0	-102.0	78.9
Federal order cash receipts:								
Total	mil. dol	16,116.8	-7.0	-14.0	198.2	-113.1	-22.7	19.2
Fluid	mil. dol	7,314.1	1.6	10.6	74.7	-26.8	0.8	7.1
Manufacturing	mil. dol	8,802.8	-8.7	-24.6	123.5	-86.3	-23.5	12.1

¹ Reflects Federal order minimum prices and over order premiums.

Civil Rights Impact Statement

A public hearing is being held in response to a mandate from Congress via the Consolidated Appropriations Act, 2000, that requires the Secretary of Agriculture to conduct a formal rulemaking proceeding to reconsider the Class III and Class IV milk pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The consolidated orders were implemented on January 1, 2000.

Pursuant to Departmental Regulation (DR) 4300-4, a comprehensive Civil Rights Impact Analysis (CRIA) was conducted and published with the final decision on Federal milk order consolidation and reform. That CRIA included descriptions of (1) The purpose of performing a CRIA; (2) the civil rights policy of the U.S. Department of Agriculture; and (3) basics of the Federal milk marketing order program to provide background information. Also included in that CRIA was a detailed presentation of the characteristics of the dairy producer and general populations located within the former and current marketing areas.

The conclusion of that analysis disclosed no potential for affecting dairy farmers in protected groups differently than the general population of dairy farmers. All producers, regardless of race, national origin, or disability, who

choose to deliver milk to handler regulated under a Federal order will receive the minimum blend price. It also was concluded that "one of the reasons for success of the Federal milk order program is that all producers benefit through assistance in developing steady, dependable markets, reducing price instability and unnecessary price fluctuations, and assurances of a minimum price for their milk. With this assurance, producers are more willing to make the significant cost investments in milk cows and equipment needed to produce high-quality milk. Federal orders provide the same assurance for all producers, without regard to sex, race, origin, or disability. The value of all milk delivered to handlers competing for sales within a defined marketing area is divided equally among all producers delivering milk to those handlers."

The issue of the hearing being announced is an issue that was addressed as part of Federal milk order consolidation and reform. Establishing a representative make allowance in the formulas that price milk used in Class III and Class IV dairy products is an issue that affects the obligations of handlers of those products to the Federal milk order pool, and similarly the pool obligations of Class I and Class II handlers. However, the process of

dividing the pool among all producers delivering milk to those regulated handlers is not affected. Therefore, USDA sees no potential for affecting dairy farmers in protected groups differently than the general population of dairy farmers.

Decisions on proposals to amend Federal milk marketing orders must be based on testimony and evidence presented on the record of the proceeding. Thus, testimony concerning any possible civil rights impact of the proposals being considered should be presented at the hearing.

Copies of the Civil Rights Impact Analysis can be obtained from AMS Dairy Programs at (202) 720-4392; any Milk Market Administrator office; or via the Internet at: www.ams.usda.gov/dairy/.

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, any handler subject to an order may request modification or exemption from such order by filing with the Secretary 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 Secretary 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 Secretary'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.

Request for Public Input

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.

List of Subjects in 7 CFR Parts 1001 Through 1135

Milk marketing orders.

PARTS 1001 THROUGH 1135— [AMENDED]

The authority citation for 7 CFR Parts 1001 through 1135 continues to read as follows:

Authority: 7 U.S.C. 601-674, 7253, Pub. L. 106-113, 115 Stat. 1501.

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

Proposed by Western States Dairy Producers Trade Association, Dairy Producers of New Mexico, Texas Association of Dairymen, Milk Producers Council, California Dairy Campaign, Western United Dairymen, Idaho Dairymen's Association, Utah Dairymen's Association, Continental Dairy Products, Inc., Elite Milk Producers, Inc., Select Milk Producers, Inc.; and National Farmers Organization:

Proposal No. 1: In § 1000.50, amend the introductory text and paragraph (q) by changing the source of product prices in the pricing formulas from the National Agricultural Statistical Service (NASS) to the Chicago Mercantile Exchange (CME), as follows:

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

Class prices per hundredweight of milk containing 3.5 percent butterfat, component prices, and advanced pricing factors shall be as follows: The prices and pricing factors described in paragraphs (a), (b), (c), (e), (f), and (q) of this section shall be based on a simple average of the most recent 2 weekly prices announced by the Chicago Mercantile Exchange (CME) before the 24th day of the month. These prices shall be announced on or before the 23rd day of the month and shall apply to milk received during the following month. The prices described in paragraphs (g) through (p) of this section shall be based on a simple average for the preceding month of weekly prices announced by CME on or before the 5th day of the month and shall apply to milk received during the preceding month. The price described in paragraph (d) of this section shall be derived from the Class II skim milk price announced on or before the 23rd day of the month preceding the month to which it applies and the butterfat price announced on or before the 5th day of the month following the month to which it applies.

* * * * *

(q) Advanced pricing factors. For the purpose of computing the Class I skim milk price, the Class II skim milk price, the Class II nonfat solids price, and the Class I butterfat price for the following month, the following pricing factors shall be computed using the 2 most recent CME average weekly prices announced before the 24th day of the month:

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

(i) Following the procedure set forth in paragraphs (n) and (o) of this section, but using the 2 most recent CME average weekly prices announced before the 24th day of the month, compute a protein price and an other solids price;

* * * * *

(2) * * *
(i) Following the procedure set forth in paragraph (m) of this section, but using the 2 most recent CME average weekly prices announced before the 24th day of the month, compute a nonfat solids price; and
(ii) Multiply the nonfat solids price computed in paragraph (q)(2)(i) of this section by 9.

(3) An advanced butterfat price per pound, rounded to the nearest one-hundredth cent, shall be calculated by computing the 2 most recent CME average AA Butter prices announced before the 24th day of the month,

subtracting 11.4 cents from this average, and dividing the result by 0.82.

Proposed by Pam Festge:
Proposal No. 2: Remove the marketing allowance from the manufacturing allowance factor in all product price formulas.

Butter/Butterfat Price Proposals

Proposed by Suiza Foods Corporation, Milk Industry Foundation (MIF), International Ice Cream Association (IICA), and Wells' Dairy, Inc.:

Proposal No. 3: (To affect Class II, III and IV butterfat prices). Reduce the NASS AA Butter survey price used in the butterfat price computation by 6 cents (the Wells' Dairy proposal does not specify an amount) before computing the butterfat price, as follows:

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

* * * * *

(l) Butterfat price. The 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, minus 6 cents, less 11.4 cents, with the result divided by 0.82.

* * * * *

Proposed by MIF, IICA, and Wells' Dairy, Inc.:

Proposal No. 4: (Reduce the butterfat price for Class I). Reduce the NASS AA Butter survey price used in the advanced butterfat price computation by 6 cents (the Wells' Dairy proposal does not specify an amount) before computing the advanced butterfat price, as follows:

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

* * * * *

(q) * * *
(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 minus 6 cents, less 11.4 cents, and dividing the result by 0.82.

* * * * *

Proposed by Schreiber Foods, Inc.:

Proposal No. 5: Reduce butterfat prices by reducing the CME butter price by 9 cents before computing the butterfat price, as follows:

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

* * * * *

(l) Butterfat price. The butterfat price per pound, rounded to the nearest one-

hundredth cent, shall be the simple average for the preceding month of weekly prices announced by CME less 9 cents, minus 11.4 cents, with the result divided by 0.82.

* * * * *

Proposed by National Milk Producers Federation (NMPF):

Proposal No. 6: Substitute a make allowance using the plant cost data in the Rural Business-Cooperative Service (RB-CS) survey report to be issued in March 2000, plus a marketing cost allowance of \$.0015, for the make allowance in the current rule, as follows:

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

* * * * *

(l) Butterfat price. The 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 less the RB-CS survey report manufacturing cost for butter plus \$.0015 cents, with the result divided by 0.82.

* * * * *

Proposed by South East Dairy Farmers Association (SE Dairy Farmers):

Proposal No. 7: Substitute a make allowance using the plant cost data in the Rural Business-Cooperative Service (RB-CS) survey report to be issued in March 2000 for the make allowance in the current rule, as follows:

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

* * * * *

(1) Butterfat price. The 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 less the RB-CS survey report manufacturing cost for butter, with the result divided by 0.82.

* * * * *

Proposed by NMPF, South East Dairy Farmers Association (SE Dairy Farmers), Land O'Lakes, Inc., and Dairy Farmers of America, Inc. (DFA):

Proposal No. 8: Incorporate a Class IV butterfat price in the pricing structure by subtracting 6 cents from the butterfat price, inserting a new paragraph (l) and renumbering the current paragraphs § 1000.50.(l) through (q) as paragraphs § 1000.50.(m) through (r), as follows:

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

* * * * *

(l) Class IV butterfat price. The Class IV butterfat price per pound shall be the

butterfat price pursuant to paragraph (m) of this section less \$.06.

* * * * *

Cheese/Protein Price Proposals

Proposed by Deer River Bulk Milk Cooperative, Jefferson Bulk Milk Cooperative, Lowville Producers Dairy Cooperative, and Henry L. Parr (Headspring Farm):

Proposal No. 9: To return the Class III (protein) make allowance to its previous (proposed rule) level, as follows:

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

* * * * *

(n) Protein price. * * *

(2) Subtract 12.7 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.405;

(3) Add to the amount computed pursuant to paragraph (n)(2) of this section an amount computed as follows:

(i) Subtract 12.7 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.582;

* * * * *

Proposed by Western States Dairy Producers Trade Association, Dairy Producers of New Mexico, Texas Association of Dairymen, Milk Producers Council, California Dairy Campaign, Western United Dairymen, Idaho Dairymen's Association, Utah Dairymen's Association, Continental Dairy Products, Inc., Elite Milk Producers, Inc., Select Milk Producers, Inc.:

Proposal No. 10: To modify the protein price by using the CME 40-lb. block cheddar cheese price, reduce the manufacturing allowance from .1702 to .142, and change the 1.582 factor in the butterfat portion of the protein price formula to 1.61, as follows:

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

* * * * *

(n) Protein price. The protein price per pound, rounded to the nearest one-hundredth cent, shall be computed as follows:

(1) Compute the simple average CME price for 40-lb. block cheese reported for the month;

(2) Subtract 14.2 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.405;

(3) Add to the amount computed pursuant to paragraph (n)(2) of this section an amount computed as follows:

(i) Subtract 14.2 cents from the price computed pursuant to paragraph (n)(1)

of this section and multiply the result by 1.61;

* * * * *

Proposed by National Farmers Organization:

Proposal No. 11: Change the 1.582 factor in the butterfat portion of the protein price formula to 1.60, as follows:

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

* * * * *

(n) * * *

(3) * * *

(i) Subtract 17.02 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.60;

* * * * *

Proposed by the National Cheese Institute:

Proposal No. 12: Include price data for cheddar cheese in 640-pound blocks in addition to 40-pound blocks and 500-pound barrels, and to use adjustors for the 640-pound block and 500-pound barrel prices based on actual industry data on the difference in manufacturing costs between cheddar cheese packaged in blocks and barrels, as follows:

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

* * * * *

(n) Protein price. The protein price per pound, rounded to the nearest one-hundredth cent, shall be computed as follows:

(1) Compute a weighted average of the amounts described in paragraphs (n)(1)(i) through (iii) of this section:

(i) The U.S. average NASS survey price for 40-lb. block cheese reported by the Department for the month;

(ii) The U.S. average NASS survey price for 500-pound barrel cheddar cheese (39 percent moisture) reported by the Department for the month plus the difference between the 40-lb. block price and the 500-pound barrel price; and

(iii) The U.S. average NASS survey price for 640-pound block cheddar cheese reported by the Department for the month plus the difference between the 40-lb. block price and the 640-pound block price;

* * * * *

Proposed by National Farmers Organization, Cyrus S. Cochran, James R. Davis, Peter L. Hardin, Tom Landis, and Sean W. Nolan:

Proposal No. 13: Adjust 40-pound block cheese prices for moisture, as follows:

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

* * * * *

(n) Protein price. The protein price per pound, rounded to the nearest one-hundredth cent, shall be computed as follows:

(1) Compute a weighted average of the amounts described in paragraphs (n)(1)(i) through (iii) of this section:

(i) The U.S. average NASS survey price for 40-lb. block cheese (39 percent moisture) reported by the Department for the month;

* * * * *

Proposed by National Milk Producers Federation:

Proposal No. 14: In the protein price formula, substitute a make allowance using the plant cost data in the Rural Business-Cooperative Service (RB-CS) survey report to be issued in March 2000, plus a marketing cost allowance of \$.0015, for the make allowance in the current rule, and to amend the 1.582 factor in the butterfat portion of the protein price formula to 1.60, as follows:

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

* * * * *

(n) Protein price. * * *

(2) Subtract the sum of the RB-CS survey report manufacturing cost for cheddar cheese plus \$.0015 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.405;

(3) Add to the amount computed pursuant to paragraph (n)(2) of this section an amount computed as follows:

(i) Subtract the sum of the RB-CS survey report manufacturing cost for cheddar cheese plus \$.0015 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.60;

* * * * *

Proposed by Dairy Farmers of America, Inc.:

Proposal No. 15: Reduce the manufacturing allowance used in the protein price formula from .1702 to .1508, (and support the amendment of the 1.582 factor in the butterfat portion of the protein price formula to 1.60), as follows:

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

* * * * *

(n) Protein price. * * *

(2) Subtract 15.08 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.405;

(3) Add to the amount computed pursuant to paragraph (n)(2) of this section an amount computed as follows:

(i) Subtract 15.08 from the price computed pursuant to paragraph (n)(1)

of this section and multiply the result by 1.60;

* * * * *

Proposed by the American Farm Bureau Federation and SE Dairy Farmers:

Proposal No. 16: Replace the current \$.1702 manufacturing allowance for cheddar cheese with the RB-CS survey cost, reviewed annually. In addition, the American Farm Bureau Federation proposed that if California plants are not adequately represented in the survey, published California costs of manufacture be weighted with the RB-CS cost.

Proposed by Michigan Milk Producers Association:

Proposal No. 17: Simplify the Class III protein price formula, as follows:

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

* * * * *

(n) Protein price.

(2) Subtract 17.02 cents and the quantity obtained by multiplying the butterfat price by .3732 from the price computed pursuant to paragraph (n)(1) of this section and divide the result by .2915;

* * * * *

Proposed by Cyrus S. Cochran, James R. Davis, Peter L. Hardin, Tom Landis, and Sean W. Nolan:

Proposal No. 18: Include as a component of the Class III price a value for butterfat in whey cream.

Whey Powder/Other Solids

Proposed by Western States Dairy Producers Trade Association, Dairy Producers of New Mexico, Texas Association of Dairymen, Milk Producers Council, California Dairy Campaign, Western United Dairymen, Idaho Dairymen's Association, Utah Dairymen's Association, Continental Dairy Products, Inc., Elite Milk Producers, Inc., and Select Milk Producers, Inc.:

Proposal No. 19: Change the source of the dry whey price used to calculate the other solids price from the NASS survey to the CME average dry whey price, as follows:

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

* * * * *

(o) Other solids price. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the average CME dry whey price for the month minus 13.7 cents, with the result divided by 0.968.

* * * * *

Proposed by the National Cheese Institute:

Proposal No. 20: Replace the \$.137 manufacturing allowance for whey powder with an actual industry cost of manufacturing this product; i.e., \$.171, as follows:

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

* * * * *

(o) Other solids price. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month minus (the actual industry cost of manufacturing whey powder), with the result divided by 0.968.

* * * * *

Proposed by National Milk Producers Federation:

Proposal No. 21: Substitute a dry whey make allowance using the plant cost data in the Rural Business-Cooperative Service (RB-CS) survey report to be issued in March 2000, plus a marketing cost allowance of \$.0015, for the make allowance in the current rule, as follows:

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

* * * * *

(o) Other solids price. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month, minus the sum of the RB-CS survey report manufacturing cost for dry whey plus \$.0015 cents, with the result divided by 0.968.

* * * * *

Proposed by SE Dairy Farmers:

Proposal No. 22: Substitute a dry whey make allowance using the plant cost data in the Rural Business-Cooperative Service (RB-CS) survey report to be issued in March 2000 for the make allowance in the current rule, as follows:

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

* * * * *

(o) Other solids price. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month, minus the sum of the RB-CS survey report manufacturing cost for dry whey with the result divided by 0.968.

* * * * *

Nonfat Dry Milk/ Nonfat Solids

Proposed by National Milk Producers Federation:

Proposal No. 23: Replace the nonfat dry milk make allowance in the current

rule with one using the plant cost data in the Rural Business-Cooperative Service (RB-CS) survey report to be issued in March 2000, plus a marketing cost allowance of \$.0015, as follows:

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

* * * * *

(m) Nonfat solids price. The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month, minus the sum of the RB-CS survey report manufacturing cost for nonfat dry milk plus \$.0015 cents, with the result divided by 1.02.

* * * * *

Proposed by SE Dairy Farmers:

Proposal No. 24: Replace the nonfat dry milk make allowance in the current rule with one using the plant cost data in the Rural Business-Cooperative Service (RB-CS) survey report to be issued in March 2000, as follows:

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

* * * * *

(m) Nonfat solids price. The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month, minus the sum of the RB-CS survey report manufacturing cost for nonfat dry milk, with the result divided by 1.02.

* * * * *

Proposed by Associated Milk Producers, Inc.:

Proposal No. 25: Increase the current nonfat dry milk make allowance of 13.7 cents to 15.63 cents, as follows:

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

* * * * *

(m) Nonfat solids price. The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month less 15.63 cents, with the result divided by 1.02.

* * * * *

Proposed by Western States Dairy Producers Trade Association, Dairy Producers of New Mexico, Texas Association of Dairymen, Milk Producers Council, California Dairy Campaign, Western United Dairymen, Idaho Dairymen's Association, Utah Dairymen's Association, Continental Dairy Products, Inc., Elite Milk Producers, Inc., and Select Milk Producers, Inc.:

Proposal No. 26: Multiply the CME nonfat dry milk price minus the manufacturing allowance by 1.02 instead of dividing by 1.02, as follows:

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

* * * * *

(m) Nonfat solids price. The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the average CME nonfat dry milk price extra grade for the month less 13.7 cents, with the result multiplied by 1.02.

* * * * *

Proposed by National Farmers Organization:

Proposal No. 27: Divide the CME nonfat dry milk price minus the manufacturing allowance by .99 instead of by 1.02, as follows:

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

* * * * *

(m) Nonfat solids price. The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the average CME nonfat dry milk price extra grade for the month less 13.7 cents, with the result divided by .99.

* * * * *

Proposed by Cyrus S. Cochran, James R. Davis, Peter L. Hardin, Tom Landis, and Sean W. Nolan:

Proposal No. 28: Divide the nonfat dry milk price minus the manufacturing allowance by .975 instead of by 1.02, as follows:

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

* * * * *

(m) Nonfat solids price. The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month less 13.7 cents, with the result divided by .975.

* * * * *

Incorporate Cost of Production Factor In Class III and IV Prices

Proposed by Cyrus S. Cochran, James R. Davis, Peter L. Hardin, Tom Landis, Kenneth Mahalko, National Farmers Union, Sean W. Nolan:

Proposal No. 29: Incorporate cost of production into Class III and Class IV formulas.

Class I Price

Proposed by Family Dairies, USA, and Midwest Dairy Coalition:

Proposal No. 30: Assure that any increases resulting from changes to the Class III and Class IV price formulas not be allowed to result in increases in Class I prices

Class II Skim and Butterfat Prices

Proposed by Galloway Company and Hershey Foods:

Proposal No. 31: Although the Class II price formula is not at issue in this proceeding, proponents expressed concern about the effect that any changes made to the Class IV formula that would increase the Class IV skim milk and butterfat prices would have on the Class II prices. They want to assure that any such increases would result in a corresponding reduction in the Class II differential. Galloway and Hershey urged that the current relationship between Class II prices and the prices for manufactured dairy products that are alternative ingredients in Class II products not be changed.

Proposed by Dairy Programs, Agricultural Marketing Service:

Proposal No. 32: 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.

Class III and Producer Butterfat Prices

Proposals to change the Class IV butterfat price that would not also result in changes to the Class III butterfat price raise the issue of whether the butterfat price for milk used in Class III should be based directly on the value of butterfat in cheese instead of the value of butterfat in butter. One of the primary considerations for incorporating some of the value of butterfat in cheese into the protein price was to maintain a single butterfat price for milk used in manufactured products. Changing the protein price calculation to reflect only the value of protein in cheese, with a separate Class III butterfat price calculation is an issue that should be considered at the same time as the proposals to reduce the Class IV butterfat price. Data and testimony concerning yield factors specific to butterfat in cheese would be appropriate additions to the hearing record.

In addition, the possibility of having four different butterfat prices raises the issue of whether the component pricing orders, like the four orders that price and pool only skim and butterfat, should pool butterfat values for payment to producers instead of passing through the Class III butterfat price. Testimony on this issue also would be appropriate.

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, Room 1083, South Building, United States Department of Agriculture, Washington, D.C. 20250, 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 decisionmaking 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: April 6, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00-9172 Filed 4-13-00; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-SW-78-AD]

Airworthiness Directives; Eurocopter France Model AS 332C, L, L1, and L2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to Eurocopter France Model AS 332C, L, L1, and L2 helicopters, that currently requires conducting a filter clogging warning test, and, if necessary, replacing a jammed valve with an airworthy valve. This action would require the same corrective actions as the existing AD and would add another fuel filter part number to the applicability. This proposal is prompted by jammed fuel filter by-pass valves. The actions specified by the proposed AD are intended to prevent engine power loss due to fuel starvation, an engine

flameout, and a subsequent forced landing.

DATES: Comments must be received on or before June 13, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99-SW-78-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed AD may be obtained from American Eurocopter Corporation, Technical Support, 2701 Forum Drive, Grand Prairie, Texas 75053-4005, telephone 800-232-0323, fax 972-641-3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Regulations Group, Southwest Region, 2601 Meacham Blvd, Fort Worth, Texas 76137, telephone (817) 222-5296, fax (817) 222-5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed

comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99-SW-78-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Regional Counsel, Southwest Region, Attention: Rules Docket No. 99-SW-78-AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On June 8, 1999, the FAA issued AD 99-13-02, Amendment 39-11195 (64 FR 32399, June 17, 1999), applicable to Eurocopter France Model AS 332C, L, L1, and L2 helicopters. AD 99-13-02 requires, within 25 hours time-in-service (TIS) and any subsequent time that the fuel filter clogged caution lights illuminate, conducting a filter clogging warning test, and, if necessary, replacing a jammed valve with an airworthy valve. That action was prompted by reports of jammed fuel filter by-pass valves discovered during routine maintenance. That condition, if not corrected, could result in engine power loss due to fuel starvation, an engine flameout, and a subsequent forced landing.

Since the issuance of that AD, the Direction Generale De L'Aviation Civile (DGAC) has issued revised AD's that add another fuel filter to the previous applicability list. The revised DGAC AD's apply to helicopters with the following fuel filters installed:

Vendor Part No.	Eurocopter France Part No.
-4020P25	(704A44620031)
-4020P25-1	(704A44620034)
-4020P25-2	(704A44620035)
-4020P25-3	(704A44620036)
-4020P25-11	(704A44620037)

The DGAC, the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter France Model AS 332C, C1, L, L1, and L2 helicopters. The DGAC advises that jammed valves could result in power loss due to fuel starvation, which could cause one or both engines to flameout. The DGAC issued AD's 1998-318-071(A)R2 and 1998-319-012(A)R2, both dated July 28, 1999, applicable to Eurocopter France Model AS 332C, C1, L, L1, and L2 helicopters. (Model AS 332C1 does not have a United States type certificate.)

The FAA has reviewed Eurocopter France Service Telex 00087 (Service