

# 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 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131

[Docket No. AO-14-A77, et al.; DA-07-02]

### 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 numbers
1001 ....	Northeast .....	AO-14-A77.
1005 ....	Appalachian .....	AO-388-A21.
1006 ....	Florida .....	AO-356-A42.
1007 ....	Southeast .....	AO-366-A50.
1030 ....	Upper Midwest .....	AO-361-A43.
1032 ....	Central .....	AO-313-A52.
1033 ....	Mideast .....	AO-166-A76.
1124 ....	Pacific Northwest .....	AO-368-A38.
1126 ....	Southwest .....	AO-231-A71.
1131 ....	Arizona .....	AO-271-A43.

**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 proposals seeking to amend the Class III and Class IV product price formulas applicable to all Federal milk marketing orders.

**DATES:** The hearing will convene at 9 a.m., Monday, February 26, 2007.

**ADDRESSES:** The hearing will be held at the Holiday Inn Select—Strongsville, 15471 Royalton Road, Strongsville, Ohio 44136, phone (440) 238-8800.

**FOR FURTHER INFORMATION CONTACT:** Jack Rower, Marketing Specialist, 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: [jack.rower@usda.gov](mailto:jack.rower@usda.gov).

Persons requiring a sign language interpreter or other special accommodations should contact Paul Huber, Assistant Market Administrator, at (330) 225-4758; e-mail: [pghuber@fnmaclev.com](mailto:pghuber@fnmaclev.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 Holiday Inn Select, Strongsville, Ohio, beginning at 9 a.m. on Monday, February 26, 2007, 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.

### 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 about 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. It is expected that small producers would not experience any particular disadvantage compared to larger producers as a result of the proposed amendments. Similarly, it is expected that small handlers would not experience any particular disadvantage compared to larger handlers as a result of the proposed amendments. Possible changes to the Class III and Class IV price formulas should not have any special impacts 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. Minimum prices should not raise barriers regarding the ability of small handlers to compete in the marketplace.

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 and Detailed Analysis Information**

A preliminary economic analysis as well as additional detailed analysis, data and information used in developing the preliminary economic analysis are presented at the AMS Dairy Programs Web site, <http://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 (7 U.S.C. 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.

#### **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 read as follows:

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

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

#### **Proposed by Agri-Mark Dairy Cooperative**

##### *Proposal 1*

This proposal seeks to amend the manufacturing allowances for Class III and Class IV product formulas, as enumerated in § 1000.50 that may include the most current plant cost survey information available. Specifically, this proposal seeks to amend § 1000.50 milk price formulas by revising the existing manufacturing allowances for butter, nonfat dry milk, cheese, and whey powder based upon

evidence obtained from the hearing record. Amendments to these manufacturing allowances would directly affect the milk component values used in Federal order milk price formulas for all classes of milk.

##### *Proposal 2*

This proposal seeks to amend the Class III and Class IV product formulas to annually update the manufacturing allowances using an annual manufacturing cost survey of cheese, whey powder, butter and nonfat dry milk plants (located outside of California.) The proposed amendments would grant authority to the Market Administrator to administer the survey, select the sample plants, and collect, audit and assemble cost information. The proposal seeks to use the annual manufacturing cost survey data to annually update manufacturing allowances at a level that is the higher of the following:

(1) Manufacturing costs would be set at a level that would allow minimum percentages of milk volume used and plants in the entire Class III and Class IV manufacturing plant population outside of California to cover their costs; or

(2) Manufacturing allowances would be set at a level that would allow minimum percentages of the milk used by Class III and Class IV manufacturing plants and the number of plants in any specific Federal order pooling at least 2 billion pounds of milk annually to cover their costs.

#### **Proposed by Dairy Producers of New Mexico**

##### *Proposal No. 3*

This proposal seeks to amend the manufacturing allowances contained in the Class III and Class IV product price formulas. Specifically, this proposal seeks to change the butter make allowance butter from 11.5 cents to 11.08 cents, change the nonfat dry milk make allowance from 14 cents to 14.10 cents, change the cheese make allowance from 16.5 cents to 16.38 cents, and change the dry whey make allowance from 15.9 cents to 14.98 cents.

1. Amend § 1000.50 by:
  - (a) revising paragraph (l);
  - (b) revising paragraph (m);
  - (c) revising paragraph (n)(2) and (n)(3)(i);
  - (d) revising paragraph (o); and
  - (e) revising paragraph (q)(3).

The revisions read 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 11.08 cents, with the result multiplied by 1.20.

(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 14.10 cents and multiplying the result by 0.99.

(n) \* \* \*

(2) Subtract 16.38 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.383;

(3) \* \* \*

(i) Subtract 16.38 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.572; and

\* \* \* \* \*

(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 14.98, with the result multiplied by 1.03.

\* \* \* \* \*

(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, subtracting 11.08 cents from this average, and multiplying the result by 1.20.

**Proposed by Dairy Producers of New Mexico**

*Proposal No. 4*

This proposal seeks to amend the Class III and Class IV product price formulas by establishing a Class III butterfat price that would be based on the Chicago Mercantile Exchange (CME) price for 40-lb. block cheese.

1. Amend § 1000.50 by revising paragraph (l) and removing paragraph (n)(3) to read as follows:

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

\* \* \* \* \*

(l) *Butterfat Price.* The butterfat price shall be as follows:

(1) The Class IV butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the CME AA Butter price reported by the Department's Dairy Market News for the month less 11.5 cents, with the result multiplied by 1.20.

(2) The Class III butterfat price per pound, rounded to the nearest one-hundredth cent shall be the AA Butter price reported by the Department's Dairy Market News for 40-lb. block cheese for the month, less 16.5 cents and multiply the result by 1.572.

\* \* \* \* \*

**Proposed by Dairy Farmers of America**

*Proposal No. 5*

This proposal seeks to amend the butterfat shrink adjustment contained in the Class III and Class IV product price formulas by adjusting the yield factor contained in the butterfat price computation from 1.20 to 1.215.

1. Amend § 1000.50 by revising paragraphs (l) and (q)(3), to read 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 11.5 cents, with the result multiplied by 1.215.

\* \* \* \* \*

(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, subtracting 11.5 cents from this average, and multiplying the result by 1.215.

**Proposed by Dairy Producers of New Mexico**

*Proposal No. 6*

This proposal seeks to amend the Class III and Class IV product price formulas by changing the butterfat shrink adjustment and yield factor from 1.20 to 1.211, and the butterfat recovery percentage from 90 percent to 94 percent.

1. Amend § 1000.50 by:  
 a. revising paragraph (l);  
 b. revising paragraph (n)(3)(i) and (n)(3)(ii); and  
 c. revising paragraph (q)(3).  
 The revisions read 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 11.5 cents, with the result multiplied by 1.211.

\* \* \* \* \*

(n) \* \* \*

(3) \* \* \*

(i) Subtract 16.5 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result from 1.653; and

(ii) Subtract 0.94 times the butterfat price computed pursuant to paragraph (1) of this section from the amount computed pursuant to paragraph (n)(3)(i) of this section; and

\* \* \* \* \*

(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, subtracting 11.5 cents from this average, and multiplying the result by 1.211.

*Proposal No. 7*

This proposal seeks to amend the Class III and Class IV product price formulas by eliminating the farm-to-plant shrink and butterfat shrink adjustments to the yield factors.

*Proposal No. 8*

This proposal seeks to amend the Class III and Class IV product price formulas by changing the nonfat solids yield factor from 0.99 to 1.02 and changing the protein price yield factors for cheese from 1.383 to 1.405 and for butter from 1.572 to 1.653.

1. Amend § 1000.50 by revising paragraphs (m), (n)(2), and (n)(3)(i) to read 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 nonfat dry milk survey price reported by the Department for the month less 14 cents and multiplying the result by 1.02.

(n) \* \* \*

(2) Subtract 16.5 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.405;

(3) \* \* \*

(i) Subtract 16.5 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.653;

\* \* \* \* \*

**Proposed by International Dairy Foods Association**

*Proposal No. 9*

This proposal seeks to amend the Class III and Class IV product price formulas by adjusting the protein price formula to reflect the lower value and reduced volume of butterfat recoverable as whey cream.

**Proposed by Agri-Mark Dairy Cooperative**

*Proposal No. 10*

This proposal seeks to amend the Class III and Class IV product price formulas by reducing the protein price to reflect the lower price of whey butter.

2. Amend § 1000.50 by adding a new paragraph (n)(4), to read as follows:

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

\* \* \* \* \*

(n) Subtract the difference between the per pound value of AA butter and whey butter from the price computed in paragraph (n)(3) of this section.

\* \* \* \* \*

*Proposal No. 11*

This proposal seeks to amend the Class III and Class IV product price formulas by reducing the adjustment for cheese manufactured in 500-pound barrels contained in the protein price formula from 3 cents to 1.5 cents.

1. Amend § 1000.50 by revising paragraph (n)(1)(ii), to read as follows:

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

\* \* \* \* \*

(n) (i) The U.S. average NASS survey price for 500-pound barrel cheddar cheese (38 percent moisture) reported by the Department for the month plus 1.5 cents;

\* \* \* \* \*

**Proposed by International Dairy Foods Association**

*Proposal No. 12*

This proposal seeks to amend the Class III and Class IV product price formulas by eliminating the 3-cent cost adjustment for cheese manufactured in 500-pound barrels contained in the protein price formula.

1. Amend § 1000.50 by revising paragraph (n)(1)(ii), to read as follows:

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

\* \* \* \* \*

(n) \* \* \*

(1) \* \* \*  
(ii) The U.S. average NASS survey price for 500-pound barrel cheddar cheese (38 percent moisture) reported by the Department for the month;

**Proposed by Dairy Farmers of America and Northwest Dairy Association**

*Proposal No. 13*

This proposal seeks to amend the Class III and Class IV product price formulas by removing the barrel cheese price as a cost component of the protein price formula.

1. Amend § 1000.50 by:  
(a) revising paragraph (n) introductory text; and

(b) removing paragraphs (n)(1), (n)(1)(i) and (n)(1)(ii).

The revision reads as follows:

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

\* \* \* \* \*

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

\* \* \* \* \*

**Proposed by Agri-Mark Dairy Cooperative**

*Proposal No. 14*

This proposal seeks to amend the Class III and Class IV product price formulas by using a combination of the weekly NASS and CME cheese price series to determine the cheese price to be used in the Class III and Class IV product price formulas.

**Proposed by Dairy Producers of New Mexico**

*Proposal No. 15*

This proposal seeks to use a combination of the NASS price series and the CME price series to determine the price of butter, cheese, nonfat dry milk and dry whey to be used in the Class III and Class IV product price formulas. In addition, this proposal would direct NASS to survey total milk components purchased and their prices during the NASS Dairy Product Price Survey.

1. Amend § 1000.50 by:  
(a) revising the introductory text;  
(b) revising paragraph (l);  
(c) revising paragraph (m);  
(d) revising paragraph (n)(1); and  
(e) revising paragraphs (q) introductory text, (q)(1)(i), (q)(2)(ii), and (q)(3).

The revisions read 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) as reported in Dairy Market News and the prices described in paragraph (o) of this section shall be based on a weighted average for the preceding month of the weekly prices announced by the National Agricultural Statistical Service (NASS) 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 (n) and (p) of this section shall be based on a simple daily average for the preceding month of weekly prices announced by the CME as reported in Dairy Market News and the prices described in paragraph (o) of this section shall be based on a weighted average for the preceding month of the weekly prices announced by NASS. These prices shall be announced 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.

(l) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the simply daily average AA Butter survey price reported by the CME as reported in Dairy Market News for the month less 11.5 cents, with the result multiplied by 1.20.

(m) *Nonfat solids price.* The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the simply daily average nonfat dry milk survey price reported by the CME as reported in Dairy Market News for the month less 14 cents and multiplying the result by 0.99.

(n) \* \* \*

(1) Compute a simple daily average of the amounts described in paragraphs (n)(1)(i) and (ii) of this section:

(i) The U.S. average NASS survey price for 40-lb. block cheese reported by the CME as reported in Dairy Market News for the month; and

(ii) The U.S. average NASS survey price for 500-pound barrel cheddar

cheese (38 percent moisture) reported by the CME for the month plus 3 cents;

(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 simple daily average of the 2 most recent CME average prices for butterfat, cheese, and nonfat dry milk as reported in Dairy Market News and the NASS weighted average dry whey price from weekly survey prices announced before the 24th day of the month:

(1) \* \* \*

(i) Following the procedure set forth in paragraphs (n) and (o) of this section, but using the simple daily average of the 2 most recent weeks' CME prices for cheese and butter and the weighted average of the 2 most recent average weekly survey prices for dry whey 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 simple daily average prices of the 2 most recent weeks CME prices as reported in Dairy Market News before the 24th day of the month, compute a nonfat solids price; and

\* \* \* \* \*

(3) An advanced butterfat price per pound, rounded to the nearest one-hundredth cent, shall be calculated by computing a simple daily average of the 2 most recent weeks' CME AA Butter prices as reported in Dairy Market News announced before the 24th day of the month, subtracting 11.5 cents from this average, and multiplying the result by 1.20.

**Proposed by National All-Jersey Inc.**

*Proposal No. 16*

This proposal would amend the Class III and Class IV product price formulas by eliminating the other solids price and adding the equivalent value of dry whey to the protein price formula.

1. Amend § 1000.50 by:

- (a) revising paragraph (i);
- (b) adding new paragraph (n)(4);
- (c) removing paragraph (o);
- (d) revising paragraph (q)(1)(i); and
- (e) removing paragraphs (q)(1)(ii) and (q)(1)(iv).

The additions and revisions read as follows:

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

\* \* \* \* \*

(i) *Class III skim milk price.* The Class III skim milk price per hundredweight, rounded to the nearest cent, shall be the protein price per pound times 3.1.

\* \* \* \* \*

(n) \* \* \*

(4) Add to the amount computed pursuant to paragraph (n)(3) of this section the U.S. average NASS dry whey survey price reported by the Department for the month minus 19.56 cents, with the result multiplied by 1.96, rounded to the nearest one-hundredth cent.

\* \* \* \* \*

(q) \* \* \*

(1) \* \* \*

(i) Following the procedure set forth in paragraph (m) 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, compute a protein price;

\* \* \* \* \*

2. Amend § 1000.53 by removing paragraph (a)(10) and redesignating paragraph (a)(11) as (a)(10).

**Proposed by National Milk Producers Federation**

*Proposal No. 17*

This proposal seeks to amend the Class III and Class IV product price formulas to incorporating a monthly energy cost adjustment based on monthly changes in the producer price indices for industrial natural gas and industrial electricity as published by the Bureau of Labor Statistics.

1. Amend § 1000.50 by:

- (a) revising paragraph (l);
- (b) revising paragraph (m);
- (c) revising paragraph (n)(2); and
- (d) revising paragraphs (n)(3) introductory text, (n)(3)(i) and (o).

The revisions and additions read 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:

(1) The U.S. average NASS AA Butter survey price reported by the Department for the month,

(2) Less a manufacturing cost allowance equal to:

- (i) 12.02 cents plus,
- (ii) 0.5 cents times a figure equal to the latest monthly Producer Price Index for Industrial Natural Gas reported by the Bureau of Labor Statistics minus 201.7 and divided by 201.7 plus,
- (iii) 0.9 cents times a figure equal to the latest monthly Producer Price Index for Industrial Electricity reported by the

Bureau of Labor Statistics minus 147.2 and divided by 147.2;

(3) With the result multiplied by 1.20.

(m) *Nonfat solids price.* The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be:

(1) The U.S. average NASS nonfat dry milk survey price reported by the Department for the month,

(2) Less a manufacturing cost allowance equal to:

- (i) 15.7 cents plus
- (ii) 3.0 cents times a figure equal to the latest monthly Producer Price Index for Industrial Natural Gas reported by the Bureau of Labor Statistics minus 201.7 and divided by 201.7, plus
- (iii) 1.5 cents times a figure equal to the latest monthly Producer Price Index for Industrial Electricity reported by the Bureau of Labor Statistics minus 147.2 and divided by 147.2;

(3) With the result multiplied by 0.99.

(n) \* \* \*

(2) From the price computed pursuant to paragraph (n)(1) of this section subtract a manufacturing cost allowance equal to:

- (i) 16.82 cents, plus
- (ii) 0.7 cents times a figure equal to the latest monthly Producer Price Index for Industrial Natural Gas reported by the Bureau of Labor Statistics minus 201.7 and divided by 201.7 plus,
- (iii) 0.8 cents times a figure equal to the latest monthly Producer Price Index for Industrial Electricity reported by the Bureau of Labor Statistics minus 147.2 and divided by 147.2;

(3) Multiply the amount computed to paragraph (n)(2) of this section by 1.383, then an amount computed as follows:

- (i) Subtract the manufacturing cost allowance computed pursuant to paragraph (n)(2) of this section from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.572;

(o) *Other solids price.* The other solids price per pound, rounded to the nearest one-hundredth cent, shall be:

(1) The U.S. average NASS dry whey survey price reported by the Department for the month,

(2) Less a manufacturing cost allowance equal to:

- (i) 19.56 cents plus,
- (ii) 2.3 cents times a figure equal to the latest monthly Producer Price Index for Industrial Natural Gas reported by the Bureau of Labor Statistics minus 201.7 and divided by 201.7 plus,
- (iii) 1.5 cents times a figure equal to the latest monthly Producer Price Index for Industrial Electricity reported by the Bureau of Labor Statistics minus 147.2 and divided by 147.2;

(3) With the result multiplied by 1.20.

(3) With the result multiplied by 1.03.

\* \* \* \* \*

### Proposed by Maine Dairy Industry Association

#### Proposal No. 18

This proposal seeks to incorporate a factor to account for any monthly spread between component price calculations for milk and a competitive pay price for equivalent Grade A milk.

The proposal seeks to derive a factor by using an updated version of the Department's 1994–1996 simulated analysis of a competitive pay price for Grade A milk. The proposal would modify the previously used survey to adapt it to regulatory changes, specifically related to component pricing. The proposal seeks an outcome whereby a survey of plants located in nine States, including California, as performed to develop a competitive Grade A price series, would be used to identify a spread, if any between the component and competitive values of Grade A raw milk. That spread, in whole or in part, would be incorporated into Federal order minimum prices.

### Proposed by Dairy Programs, Agricultural Marketing Service

#### Proposal No. 19

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.

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 1031, 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: February 5, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–570 Filed 2–6–07; 11:54 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

#### 10 CFR Part 430

[Docket No. EE–RM/STD–01–350]

RIN 1904–AA78

#### Energy Conservation Program for Consumer Products: Energy Conservation Standards for Residential Furnaces and Boilers

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of data availability and reopening of comment period.

**SUMMARY:** A notice of proposed rulemaking (NOPR) to amend the current minimum energy conservation standards for residential furnaces and boilers was published in the **Federal Register** on October 6, 2006. 71 FR 59204. On October 30, 2006, the Department of Energy (DOE) held a public meeting for interested parties to provide comments and discuss relevant issues. At the public meeting, DOE indicated it would respond to two particular questions that stakeholders raised regarding DOE's NOPR estimates for potential energy savings associated with regional standards for non-weatherized gas furnaces in Northern regions, and regarding new installation costs for oil-fired furnaces. This notice both addresses the stakeholders questions and reopens the comment period to provide an opportunity for public review and comment on DOE's response to each question.

**DATES:** DOE will accept comments until February 26, 2007.

**ADDRESSES:** DOE will accept comments, data, and information regarding the proposed rule no later than the date

provided in the **DATES** section. Any comments submitted must include the docket number EE–RM/STD–01–350 and/or Regulatory Information Number (RIN) 1904–AA78. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

2. *E-mail:* ResidentialFBNOPRComments@ee.doe.gov. Include the docket number EE–RM/STD–01–350 and/or RIN 1904–AA78 in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed original paper copy.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC, 20585. *Telephone:* (202) 586–2945. Please submit one signed original paper copy. Electronic comments must be submitted in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (ASCII) file format. Avoid the use of special characters or any form of encryption.

Copies of public comments may be examined in the Resource Room of the Appliance Standards Office of the Building Technologies Program, Room 1J–018 in the Forrestal Building at the U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards-Jones at the above telephone number for additional information about visiting the Resource Room.

**Please note:** the DOE's Freedom of Information Reading Room (formerly Room 1E–190 at the Forrestal Building) is no longer servicing rulemakings.

**FOR FURTHER INFORMATION CONTACT:** Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121, (202) 586–7892, *E-mail:* [Mohammed.Khan@ee.doe.gov](mailto:Mohammed.Khan@ee.doe.gov); or Francine Pinto, U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mailstop GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7432, *E-mail:* [Francine.Pinto@ee.doe.gov](mailto:Francine.Pinto@ee.doe.gov).

#### SUPPLEMENTARY INFORMATION:

I. Background