

# 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-A74, et al.; DA-06-01]

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

| 7 CFR part | Marketing area          | AO Nos.     |
|------------|-------------------------|-------------|
| 1001       | Northeast .....         | AO-14-A74.  |
| 1005       | Appalachian .....       | AO-388-A18. |
| 1006       | Florida .....           | AO-356-A39. |
| 1007       | Southeast .....         | AO-366-A47. |
| 1030       | Upper Midwest .....     | AO-361-A40. |
| 1032       | Central .....           | AO-313-A49. |
| 1033       | Mideast .....           | AO-166-A73. |
| 1124       | Pacific Northwest ..... | AO-368-A35. |
| 1126       | Southwest .....         | AO-231-A68. |
| 1131       | Arizona-Las Vegas ..    | AO-271-A40. |

**AGENCY:** Agricultural Marketing Service, USDA.

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

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

**DATES:** The hearing will convene at 8:30 a.m., Tuesday, January 24, 2006.

**ADDRESSES:** The hearing will be held at Sheraton Suites Old Town Alexandria, 801 North Saint Asaph Street, Alexandria, Virginia 22314. Telephone Number: (703) 836-4700.

**FOR FURTHER INFORMATION CONTACT:** Jack Rower, Marketing Specialist, USDA/

AMS/Dairy Programs, Order Formulation and Enforcement Branch, 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 Richard F. Sarna, Assistant Market Administrator, at (703) 549-7000; e-mail address: [rsarna@fedmilk1.com](mailto:rsarna@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 Sheraton Suites Old Town, Alexandria, VA, beginning at 8:30 a.m., on Tuesday, January 24, 2006, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Northeast and other marketing areas.

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

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

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

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

### Initial Regulatory Flexibility Analysis

Actions under the Federal milk order program are subject to the Regulatory

Flexibility Act (5 U.S.C. 601 *et seq.*). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information collection requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees (13 CFR 121.201). Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and information collection impact of the hearing proposals on small businesses. Also, parties may suggest modifications of the proposals for tailoring their applicability to small businesses.

USDA has identified that during 2004 approximately 49,160 of the 52,425 dairy producers whose milk is pooled on Federal orders are small businesses. Small businesses represent about 94 percent of the dairy farmers who participate in the Federal milk order program.

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

The fluid use of milk represented more than 43.8 percent of total Federal milk marketing order producer deliveries during January 2005. More than 234 million Americans reside in Federal milk marketing areas, representing about 80 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. 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. If these proposals are adopted, income will decline for all dairy farmers. However, possible changes to the Class III and Class IV price formulas (or concomitant manufacturing allowances) 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 pricing should not raise barriers regarding the ability of small handlers to compete in the marketplace. It is similarly expected that small producers would not experience any particular disadvantage compared to larger producers as a result of the proposed amendments.

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 Analysis

The Department has conducted a preliminary analysis in order to assist the industry in considering the effects of increasing manufacturing allowances, commonly referred to as "make allowances". While the proposal seeks to amend the product pricing formulas used to price Class III or Class IV milk pooled under Federal milk marketing orders, changes in these formulas also would affect the prices of Class I and Class II milk pooled on Federal milk marketing orders.

Current make allowances relied on to establish Class III and Class IV prices for all Federal orders are based on three sources: (1) *1998 Dairy Product Plant Costs*, USDA/Rural Business Cooperative Service (RBCS) Technical Assistance Project, (2) *Weighted Average Manufacturing Costs for Butter, Nonfat Powder, and Cheddar Cheese January 1997 to April 1999*, California Department of Food and Agriculture (CDFA), and (3) *Dry Whey Total Costs*

*of Manufacturing, 1999*, National Cheese Institute (NCI)-sponsored survey. The make allowances for cheese, butter, and nonfat dry milk are based on the data from the first two sources and have been in effect since January 2001. The dry whey make allowance is based on data from the third source and it has been in effect since April 2003.

The following preliminary analysis is quantitative and based on the changes in processing costs for butter, cheese, and nonfat dry milk reported by the CDFA for 1997–1999 and 2004. The analysis, which was conducted for illustrative purposes, includes an increase in the whey make allowance of 10 percent as CDFA did not begin surveying costs of manufacturing whey powder until 2003. California cheese-making costs over the same period increased by a much smaller amount.

#### Manufacturing Cost Data

Currently, the most comprehensive data available concerning dairy manufacturing costs are provided by CDFA's California Survey of Weighted Average Manufacturing Costs (CDFA survey, various issues). The updated RBCS manufacturing cost survey is not yet available. Current Federal order make allowances are partially based upon data provided in the CDFA survey released in February 2000 covering the period from January 1997 through April 1999 (CDFA 1997–1999 survey). The most recent CDFA Survey was released on November 18, 2005, and covers the 2004 period (CDFA 2004 survey). Table 1 illustrates the changes in manufacturing costs as reported in the CDFA 1997–1999 and 2004 surveys.

Table 1. California Department of Food and Agriculture Survey  
Weighted Average Manufacturing Costs for Butter, Nonfat Powder, and Cheese

| Date of Release | Dates of Coverage       | Cost Per Pound |               |        |
|-----------------|-------------------------|----------------|---------------|--------|
|                 |                         | Butter         | Nonfat Powder | Cheese |
| February 2000   | Jan. 1997 to April 1999 | 0.0957         | 0.1356        | 0.1693 |
| November 2005   | Jan. 2004 to Dec. 2004  | 0.1368         | 0.1571        | 0.1769 |
| Cost Increase   |                         | 0.0411         | 0.0215        | 0.0076 |

#### Economic Analysis Framework

The following estimated impacts of increasing make allowances were measured as changes from the 2004 USDA dairy baseline (*USDA Agricultural Baseline Projections to 2014, OCE-2005-1*; <http://www.usda.gov/agency/oce/waob/commodity-projections/proj.htm>). The analysis was accomplished using an econometric model of the dairy industry developed by Dairy Programs. The

USDA baseline and the model baseline assume: (1) The Milk Price Support Program will continue unchanged; (2) the Dairy Export Incentive Program will be utilized at the maximum extent allowed beginning in the 2005/06 fiscal year; and (3) the Federal Milk Marketing Order Program will continue unchanged.

During the last five years, milk marketings under the Federal order milk program have been about 68 percent of

total U.S. milk marketings. Marketings under the Federal milk order program have accounted for about 61 percent of all milk used for manufacturing. Given the prominence of Federal order marketings in the U.S. dairy manufacturing industry, prices paid for manufactured milk under Federal orders are consistent with the value of milk for manufacturing in the rest of the United States. Similarly, the fluid prices in non-Federal order markets reflect fluid

prices established as Federal order minimum Class I prices. Therefore, U.S. milk marketings in this analysis are estimated as a function of the U.S. all-milk price. For the USDA baseline period, the Federal order share of total U.S. milk marketings is estimated as a proportion from recent data.

The econometric model used in this preliminary analysis includes demands for fluid milk products and manufactured dairy products. The demand for fluid milk products and for manufactured dairy products are functions of price, per capita consumption, and population. 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 the USDA baseline for all proposals analyzed. Wholesale prices for cheese, butter, nonfat dry milk, and dry whey reflect

supply and demand conditions for each of 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.

The model and Federal order price formulas use national manufactured dairy product prices to establish the Class prices. Class prices, quantities of milk marketed through the Federal order system, a blend price, and Federal order cash receipts are projected.

The quantity of milk supplied is a function of the all-milk price, feed prices, cow slaughter prices, and trend. The all-milk price, i.e., the average price paid for milk on an f.o.b. plants basis, is estimated as a function of the wholesale prices for dairy products and Federal order prices. The relationship implicitly reflects average

manufacturing costs, over-order payments for milk, and prices paid for milk outside of the Federal order system.

#### Make Allowance Scenarios

Three illustrative scenarios are presented that estimate the impact on producers, consumers, and processors. Each scenario includes make allowance increases of 36 percent for butter, 15 percent for nonfat dry milk, and 10 percent for dry whey. The cheese make allowance is increased successively in each scenario by 1 cent per pound (6 percent), 2.5 cents (15 percent), and 4 cents (24 percent). These successive cheese make allowance scenarios illustrate the interaction of the protein and butterfat prices and the effects on the Class III and Class IV prices. All three scenarios and the illustrative changes in make allowances beginning with fiscal year 2005/06 are detailed in Table 2.

**Table 2. Scenarios Used to Analyze Illustrative Make Allowances Changes (\$ per lb.)**

|                   |                          | Cheese        | Butter        | NDM           | Whey          |
|-------------------|--------------------------|---------------|---------------|---------------|---------------|
| <b>Baseline</b>   | <b>Make Allowance</b>    | <b>0.1650</b> | <b>0.1150</b> | <b>0.1400</b> | <b>0.1590</b> |
| <b>Scenario 1</b> | <b>Make Allowance</b>    | <b>0.1750</b> | <b>0.1561</b> | <b>0.1615</b> | <b>0.1749</b> |
|                   | <b>Change</b>            | <b>0.0100</b> | <b>0.0411</b> | <b>0.0215</b> | <b>0.0159</b> |
|                   | <b>Percentage change</b> | <b>6</b>      | <b>36</b>     | <b>15</b>     | <b>10</b>     |
| <b>Scenario 2</b> | <b>Make Allowance</b>    | <b>0.1900</b> | <b>0.1561</b> | <b>0.1615</b> | <b>0.1749</b> |
|                   | <b>Change</b>            | <b>0.0250</b> | <b>0.0411</b> | <b>0.0215</b> | <b>0.0159</b> |
|                   | <b>Percentage change</b> | <b>15</b>     | <b>36</b>     | <b>15</b>     | <b>10</b>     |
| <b>Scenario 3</b> | <b>Make Allowance</b>    | <b>0.2050</b> | <b>0.1561</b> | <b>0.1615</b> | <b>0.1749</b> |
|                   | <b>Change</b>            | <b>0.0400</b> | <b>0.0411</b> | <b>0.0215</b> | <b>0.0159</b> |
|                   | <b>Percentage change</b> | <b>24</b>     | <b>36</b>     | <b>15</b>     | <b>10</b>     |

#### Results

The results of the increased make allowances in the Class III and Class IV formulas are summarized using five-year, 2005/06 to 2009/10, average changes from the baseline. Results in the Federal order system are in the context of the larger U.S. market.

Increased make allowances generally result in reduced Class III and Class IV milk prices and pool revenues. Increased make allowances also have an impact on Class I and Class II prices. Class II prices at 3.5 percent butterfat decline in concert with changes in Class IV prices. The Class I price reduction depends upon the resulting higher of the reduced Class III or IV advanced values. The small increases in the quantity of fluid milk demanded are not sufficient to offset the effects of the

price decline, and a lower all-milk price and reduced milk marketings result. Reduced marketings result in slightly increased dairy product prices, tempering the all-milk price decline.

Across the three scenarios, all Federal order class and blend prices fall, the U.S. all-milk price falls, and dairy product prices increase. The interaction between the butterfat and the protein prices determines the relative effects on the Class III and Class IV prices. As the cheese make allowance increases from one scenario to the next, the protein price impact shifts from an increase to a decline while the butterfat price impact shifts from a decline to an increase.

These preliminary results generally can be divided into two periods, the first two years and the last three years

of the 5 year projection period, due to the lagged adjustments in the milk supply responses. Once producers respond to lower prices with less production, the effects on the all-milk price and the average Federal order blend price stabilize at levels less than initial changes from the USDA baseline. The differences are more notable for Scenarios 2 and 3, with the greater increases in the cheese make allowance.

#### Scenario 1

For Scenario 1, the butter make allowance is increased by \$0.0411 per pound (to \$0.1561), and the nonfat dry milk make allowance is increased by \$0.0215 per pound (to \$0.1615). These increases, which are for illustrative purposes, match the changes in

manufacturing costs from the CDFA 1997–1999 and 2004 surveys.

It is not feasible, for purposes of this analysis, to use the CDFA survey as a basis to consider changes to the make allowance for whey. The 1997–1999 CDFA survey did not include dry whey. The most recent CDFA survey shows the manufacturing cost for whey is \$0.2673 per pound. A make allowance of \$0.20 per pound is used by CDFA in the California Class 4b formula. The baseline average price for dry whey during the five-year projection period is \$0.1863 per pound.<sup>1</sup> While the Federal order formulation allows for a negative other solids price, it does not seem realistic to set up a scenario for which the other solids price is usually negative. For the purpose of our analysis, the whey make allowance for Scenario 1 is simply increased by 10 percent (\$0.0159) to \$0.1749 per pound.

The change in manufacturing costs for cheese reflected in the CDFA surveys released February 2000 to November 2005 was \$0.0076 per pound. Anecdotal evidence suggests that manufacturing costs for cheese on average throughout the United States may have increased by more than the CDFA survey value. To illustrate the effects of changing the cheese make allowance relative to the other make allowances, the cheese make allowance varies for each scenario. Scenario 1 increases the cheese make allowance by \$0.01 per pound to \$0.1750 (Table 3).

Under this scenario, protein prices increase while butterfat prices decline. Increases in make allowances result in declines in the Class prices and the all-milk price. The accompanying decrease in milk marketings causes wholesale dairy product prices to rise. However, the negative effect on the protein price of this relatively small change in the cheese make allowance is more than offset by the positive effect of the decline in the butterfat price. Thus, while the butterfat, other solids, and nonfat solids prices fall due to make allowances increases, the increase in the cheese make allowance is not sufficient to keep the protein price from rising.

#### *Producers*

The all-milk price at test falls by an average \$0.03 per cwt over the (5-year) 2005/06–2009/10 projection period. Producers respond by reducing milk marketings by an annual average 120 million pounds. Producer revenue falls by \$72 million on average per year.

<sup>1</sup> The whey price has increased significantly in recent months. Baseline projections for whey, developed in November 2004 appear to be lower than expected given current conditions.

The Federal order blend price for milk testing at 3.5 percent butterfat falls by \$0.05 per cwt averaged over the five-year period, and by \$0.03 per cwt over the last three years. Federal order cash receipts fall by a five-year average of \$77 million, and by an average \$53 million during the last three of the five years, as compared to a five-year baseline average of \$18.491 billion. The greatest average reduction is in Class IV receipts (\$28 million), and the smallest reduction is in Class I receipts (\$8 million).

#### *Milk Manufacturers and Processors*

Wholesale prices of manufactured products rise slightly as the milk supply is reduced. The protein price increases in each of the five years, by about \$0.046 per pound in the last two years. The butterfat price declines in all years, and by about \$0.012 per pound in the last three years.

The Class IV price at 3.5% butterfat falls by \$0.18 per cwt on average. Since Class IV advanced value is the mover for Class II, the Class II price at 3.5% butterfat falls by the same amount. The Class III price at 3.5% butterfat is reduced by \$0.02 per cwt, with the decreases in the butterfat and other solids prices largely offset by the protein price increases. The Class I price at 3.5% butterfat falls by \$0.03 per cwt. While the baseline indicates the Class IV advanced value as the mover in the 2005/06 fiscal year with the Class III advanced value as the mover in the other years, for Scenario 1 Class III becomes the mover throughout the projection period. Class uses on average rise for Classes I and II and fall for Classes III and IV.

Class I prices decline and use increases in the first two years. However, for the last three years, the Class III and Class I skim milk prices increase slightly, as does the Class I milk price at class butterfat test which is less than 3.5 percent. Thus, Class I use rises slightly in the first two years, and declines slightly in the last three.

The aggregate obligation of processors and manufacturers to the Federal order revenue pools fall by a 5-year average of \$77 million, with 30 percent of the savings to soft product manufacturers, 22 percent accruing to cheese manufacturers, and 36 percent accruing to butter and nonfat dry milk manufacturers.

#### *Consumers*

On average, the retail fluid milk price is virtually unchanged, falling by \$0.0017 per gallon, during the

projection period.<sup>2</sup> Increases in Federal order Class I use are projected in the first two years while small decreases are projected in the last three years, averaging an increase of 4 million pounds. Federal order Class II use increases slightly each year (less than one percent).

Consumers of manufactured dairy products face slightly higher average prices. Price increases are \$0.0181 per pound (1.2 percent) for cheese, \$0.0324 per pound (1.8 percent) for butter, \$0.0054 per pound (0.6 percent) for nonfat dry milk, and \$0.0005 per pound (0.3 percent) for dry whey. This is caused by a 5-year average U.S. decline of 181 million pounds of milk available for cheese, butter, and nonfat dry milk (0.17 percent decline).

#### **Scenario 2**

Scenario 2 has the same make allowances as Scenario 1, except for cheese which is increased to \$0.1900 per pound, \$0.0250 above the current level (Table 3). At these levels, the protein price change starts out negative, becoming positive in the last 3 years. Butterfat prices decline in all but one year.

#### *Producers*

The all-milk price at test falls by \$0.06 per cwt on average and \$0.03 per cwt for the last three years. Producers respond with a 5-year average decrease in milk marketings of 226 million pounds. Producer revenue falls by \$140 million on average per year.

The average Federal order blend price at 3.5 percent butterfat test falls by \$0.09 per cwt averaged over 5 years and by an average \$0.06 in the last 3 years. Federal order cash receipts fall by an average \$135 million and by an average \$101 million over the last 3 years, as compared to a baseline 5-year average of \$18.491 billion. The greatest 5-year average reductions are in Class III receipts at \$60 million followed by Class I receipts at \$38 million. The smallest reduction is in Class II receipts (\$13 million).

#### *Milk Manufacturers and Processors*

Wholesale prices of manufactured products rise as the milk supply is reduced. As expected, the increase in product prices are greater when compared to Scenario 1. The protein price falls in the first two years of the projection period but rises thereafter, reaching about \$0.018 per pound in the last two years. The projected butterfat

<sup>2</sup> Throughout this discussion, we make the simplifying assumption that changes in prices are passed on to consumers in constant margins.

price falls in all but one year, falling by about \$0.005 per pound in the last two years.

Class III is the Class I price mover for all projection years except 2005/06. On average, the Class I price (at 3.5 percent butterfat) falls by \$0.09 per cwt, the Class III price falls by \$0.10 per cwt, and the Class II and IV prices fall by \$0.11 per cwt. Class I and II uses rise each year in response to price declines. Class III and IV uses fall as available milk volume declines. The aggregate obligation of processors and manufacturers to Federal order pools falls by a 5-year average of \$135 million, with 44 percent savings accruing to cheese manufacturers and 28 percent accruing to fluid processors.

#### *Consumers*

There is little change in the price of fluid milk at retail, averaging a decrease of \$0.0076 per gallon for the five year projection period. Federal order Class I use increases a 5-year average of 17 million pounds per year as compared to a baseline average of 45.928 billion pounds. Federal order Class II use increases by 27 million pounds per year as compared to a baseline average of 15.675 billion pounds.

Consumers of hard manufactured dairy products face slightly higher average prices. Price increases are \$0.0245 per pound (1.6 percent) for cheese, \$0.0385 per pound (2.1 percent) for butter, \$0.0098 per pound (1.1 percent) for nonfat dry milk, and \$0.0006 per pound (0.3 percent) for dry whey. This is caused by a U.S. decline of 278 million pounds of milk available for cheese, butter, and nonfat dry milk (0.26 percent decline).

#### **Scenario 3**

Scenario 3 uses the same make allowances as the first two scenarios with the exception of cheese which is increased by \$0.0400 per pound above the baseline to a level of \$0.2050 (Table 3). At these levels, the protein price falls below baseline levels throughout the projection period while the butterfat price rises above baseline levels in all but the first year of the projection period.

#### *Producers*

The all-milk price at test falls by an average \$0.09 per cwt over 5 years, and by about \$0.05 per cwt for the last 3 years. Producers respond with a decrease in average milk marketings of 327 million pounds. Producer revenue falls by \$207 million on average per year.

The average Federal order blend price at 3.5 percent butterfat falls by \$0.13 per cwt averaged over 5 years and by an average \$0.09 per cwt in the last 3 years. Federal order cash receipts fall by an average \$191 million over 5 years, and by an average \$147 million over the last 3 years, as compared to a baseline 5-year average of \$18.491 billion. The greatest 5-year average reductions are in Class III receipts at \$103 million, followed by Class I receipts at \$65 million, and the smallest reduction is in Class II receipts (\$3 million).

#### *Milk Manufacturers and Processors*

Wholesale prices of manufactured products rise as the milk supply is reduced. As expected, the increase in product prices is greater than for either of the other two scenarios. The protein price falls in all years, averaging \$0.0336 per pound below baseline levels but the reduction is attenuated to \$0.0086 per pound by the last year. The butterfat price rises above baseline levels in all years except the first, averaging an increase of \$0.0039 per pound above baseline levels.

As with the baseline, the Class III price is the Class I price mover for all years except 2005/06. While Class I and III prices fall in all years, Class II and IV prices at 3.5 percent butterfat fall below baseline levels in the first 2 years and are virtually unchanged in the final 3 years. Class IV and Class II prices at class butterfat tests increase in the last 3 years of the period. Class II use rises in the first 2 years and declines slightly in the last 3 years with the slight increases in the Class II price at class butterfat test.

The aggregate obligation of processors and manufacturers to the Federal order revenue pools falls by a 5-year average of \$191 million, with 54 percent of the savings accruing to cheese

manufacturers and 34 percent accruing to fluid processors.

#### *Consumers*

As with the other scenarios, there is little change in retail fluid milk prices which fall \$0.0130 per gallon on average over the projection period. Class I use increases an average of 29 million pounds per year, compared to a baseline average of 45.928 billion pounds. Class II use increases by negligible amounts on average during the projection period.

Consumers of hard manufactured dairy products face slightly higher average prices. Price increases are \$0.0309 per pound (2.1 percent) for cheese, \$0.0444 per pound (2.5 percent) for butter, \$0.0142 per pound (1.6 percent) for nonfat dry milk, and \$0.0008 per pound (0.4 percent) for dry whey. This is caused by a U.S. decline of 370 million pounds of milk available for cheese, butter, and nonfat dry milk (0.35 percent decline).

#### **Preliminary Conclusions**

Increasing the make allowances will generally result in lower Federal order class and blend prices, lower all-milk prices, slightly higher manufactured dairy product prices, and slightly lower fluid milk prices. Federal order cash receipts and U.S. producer revenues decline slightly. Manufacturing plants have higher dairy product prices on the revenue side and lower Federal order class and all-milk prices on the cost side.

The scenarios also demonstrate that seemingly small changes in the relative values of the various make allowances can result in possibly unexpected changes in the relative values of the manufacturing class prices. This is caused in part by the interaction between the quantities of milk supplied and the demands for nonfat solids and butterfat in the various dairy products. Further, the inverse relationship between the butterfat price and protein price in the Federal order protein formula also contributes to these circumstances.

**BILLING CODE 3410-02-P**

Table 3. Summary of Differences from Baseline for Three Scenarios  
Six-year Averages, 2005/06 through 2009/10

|                                | Units     | Baseline | Differences from Baseline |            |            |
|--------------------------------|-----------|----------|---------------------------|------------|------------|
|                                |           |          | Scenario 1                | Scenario 2 | Scenario 3 |
| Make Allowance                 |           |          |                           |            |            |
| Cheese                         | \$/pound  | 0.1650   | 0.0100                    | 0.0250     | 0.0400     |
| Butter                         | \$/pound  | 0.1150   | 0.0411                    | 0.0411     | 0.0411     |
| NDM                            | \$/pound  | 0.1400   | 0.0215                    | 0.0215     | 0.0215     |
| Whey                           | \$/pound  | 0.1590   | 0.0159                    | 0.0159     | 0.0159     |
| F.O. Minimum Prices, 3.5% BF   |           |          |                           |            |            |
| Class I                        | \$/cwt.   | 16.46    | -0.03                     | -0.09      | -0.14      |
| Class II                       | \$/cwt.   | 13.98    | -0.18                     | -0.11      | -0.05      |
| Class III                      | \$/cwt.   | 13.73    | -0.02                     | -0.10      | -0.18      |
| Class IV                       | \$/cwt.   | 13.28    | -0.18                     | -0.11      | -0.05      |
| Blend                          | \$/cwt.   | 14.76    | -0.05                     | -0.09      | -0.13      |
| Average Class Butterfat Test   |           |          |                           |            |            |
| Class I                        | % of milk | 2.04     | 0.00                      | 0.00       | 0.00       |
| Class II                       | % of milk | 8.29     | 0.00                      | 0.00       | 0.00       |
| Class III                      | % of milk | 3.53     | 0.00                      | 0.00       | 0.00       |
| Class IV                       | % of milk | 5.14     | 0.00                      | 0.01       | 0.02       |
| F.O. Minimum Prices at Test    |           |          |                           |            |            |
| Class I                        | \$/cwt.   | 13.63    | -0.02                     | -0.09      | -0.15      |
| Class II                       | \$/cwt.   | 23.32    | -0.22                     | -0.12      | -0.03      |
| Class III                      | \$/cwt.   | 13.79    | -0.02                     | -0.10      | -0.18      |
| Class IV                       | \$/cwt.   | 16.50    | -0.20                     | -0.10      | 0.00       |
| Blend                          | \$/cwt.   | 15.18    | -0.06                     | -0.10      | -0.13      |
| Product Prices                 |           |          |                           |            |            |
| Cheese                         | \$/pound  | 1.4999   | 0.0181                    | 0.0245     | 0.0309     |
| Butter                         | \$/pound  | 1.7920   | 0.0324                    | 0.0385     | 0.0444     |
| NDM                            | \$/pound  | 0.8658   | 0.0054                    | 0.0098     | 0.0142     |
| Whey                           | \$/pound  | 0.1863   | 0.0005                    | 0.0006     | 0.0008     |
| Retail fluid milk <sup>1</sup> | \$/gallon |          | -0.0017                   | -0.0076    | -0.0130    |
| Federal Order Component Prices |           |          |                           |            |            |
| Protein                        | \$/pound  | 2.1824   | 0.0372                    | 0.0018     | -0.0336    |
| Butterfat                      | \$/pound  | 2.0123   | -0.0104                   | -0.0031    | 0.0039     |
| Other solids                   | \$/pound  | 0.0281   | -0.0159                   | -0.0157    | -0.0156    |
| Nonfat solids                  | \$/pound  | 0.7186   | -0.0160                   | -0.0116    | -0.0072    |
| Class I skim price             | \$/cwt.   | 9.66     | 0.00                      | -0.08      | -0.16      |
| Class II skim price            | \$/cwt.   | 7.17     | -0.14                     | -0.10      | -0.06      |
| Class III skim price           | \$/cwt.   | 6.93     | 0.02                      | -0.09      | -0.20      |
| Class IV skim price            | \$/cwt.   | 6.47     | -0.14                     | -0.10      | -0.06      |

Table 3 continued on next page.

Table 3 Continued. Summary of Differences from Baseline for Three Scenarios  
Six Year Averages 2005/06 through 2009/10

| Six Year Averages 2003/04 through 2008/09 |             |          |                           |            |            |
|---|-------------|----------|---------------------------|------------|------------|
|   | Units       | Baseline | Differences from Baseline |            |            |
|   |             |          | Scenario 1                | Scenario 2 | Scenario 3 |
| Federal Order Class Uses                  |             |          |                           |            |            |
| Class I                                   | mil. pounds | 45,928   | 4                         | 17         | 29         |
| Class II                                  | mil. pounds | 15,675   | 48                        | 27         | 7          |
| Class III                                 | mil. pounds | 50,163   | -57                       | -81        | -105       |
| Class IV                                  | mil. pounds | 9,954    | -54                       | -89        | -123       |
| Total F.O. Marketings                     | mil. pounds | 121,719  | -58                       | -126       | -192       |
| Federal Order Cash Receipts               |             |          |                           |            |            |
| Class I                                   | mil. \$     | 6,261    | -8                        | -38        | -65        |
| Class II                                  | mil. \$     | 3,655    | -23                       | -13        | -3         |
| Class III                                 | mil. \$     | 6,936    | -17                       | -60        | -103       |
| Class IV                                  | mil. \$     | 1,639    | -28                       | -25        | -21        |
| Total                                     | mil. \$     | 18,491   | -77                       | -135       | -191       |
| All Milk Price                            | \$/cwt.     | 15.19    | -0.03                     | -0.06      | -0.09      |
| U.S. Marketings                           |             |          |                           |            |            |
| Class I                                   | mil. pounds | 55,738   | 5                         | 21         | 35         |
| Class II                                  | mil. pounds | 18,333   | 56                        | 32         | 8          |
| Class III                                 | mil. pounds | 91,371   | -103                      | -148       | -191       |
| Class IV                                  | mil. pounds | 14,532   | -78                       | -130       | -179       |
| Total                                     | mil. pounds | 179,973  | -120                      | -226       | -327       |
| U.S. Producer Revenue                     | mil. \$     | 27,360   | -72                       | -140       | -207       |

<sup>1</sup> Retail fluid milk prices are not projected in the baseline. Projected impacts are calculated by multiplying the Class I price per pound at test by 8.62 pounds of milk per gallon.

#### BILLING CODE 3410-02-C

Parties interested in additional detail of these analyses can obtain them from the Appendix to this preliminary analysis located at <http://www.ams.usda.gov/dairy/hearings.htm>.

#### 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 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

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

#### Proposed by Agri-Mark Dairy Cooperative

##### Proposal No. 1

This proposal seeks to amend the manufacturing allowances for Class III and Class IV product formulas, as enumerated in § 1000.50 based on record evidence that may include the most current California State dairy products manufacturing cost survey and a recently updated survey of manufacturing costs conducted by the USDA Rural Business and Cooperatives Service (RBCS). 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.

**Proposed by Dairy Programs,  
Agricultural Marketing Service**

*Proposal No. 2*

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 1083, 1400 Independence Avenue, SW., Washington, DC 20250—9200, or may be inspected there.

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

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

- Office of the Secretary of Agriculture.
- Office of the Administrator,  
Agricultural Marketing Service.
- Office of the General Counsel.
- Dairy Programs, Agricultural  
Marketing Service (Washington office)  
and the Offices of all Market  
Administrators.

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

Dated: December 30, 2005.

**Lloyd C. Day,**  
*Administrator, Agricultural Marketing  
Service.*

[FR Doc. 05-24707 Filed 12-30-05; 4:31 pm]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2005-23374; Airspace  
Docket No. 05-ACE-34]

#### Proposed Establishment of Class E5 Airspace; David City, NE

**AGENCY:** Federal Aviation  
Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing a Class E airspace area extending upward from 700 feet above the surface at David City Municipal Airport, NE.

**DATES:** Comments for inclusion in the Rules Docket must be received on or before January 27, 2006.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2005-23374/Airspace Docket No. 05-ACE-34, at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Brenda Mumper, Air Traffic Division, Airspace Branch, ACE-520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329-2524.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2005-23374/Airspace Docket No. 05-ACE-34." The postcard will be date/time stamped and returned to the commenter.

##### Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at <http://dms.dot.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at <http://www.faa.gov> or the Superintendent of Documents' Web page at <http://www.access.gpo.gov/nara>.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA-400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267-9677, to request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

##### The Proposal

This notice proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing a Class E airspace area extending upward from 700 feet above the surface at David City Municipal Airport, NE. The establishment of a Very High Frequency Omni-directional Range (VOR)/Distance Measuring Equipment (DME) Instrument Approach Procedure (IAP) to Runway (RWY) 32 and Area Navigation (RNAV) Global Positioning System (GPS) IAPs to RWYs 14 and 32 have made this action necessary. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules operations at David City Municipal Airport, NE. The area would be depicted on appropriate aeronautical charts.

Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9N, dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR