

EXPRESS TERMS

1 NYCRR 21.16(a)(1) is amended to read as follows:

(1) that except as provided in paragraph (2) of this subdivision, any milk products in fluid or frozen form containing less than nine percent butterfat and 6.5 percent or more nonfat solids or 2.25 percent or more true milk protein that are in bulk or are packaged, distributed and intended to be used as beverages. Sources of such nonfat solids/protein include but are not limited to: casein, whey protein concentrate, milk protein concentrate, dry whey, caseinates, lactose, and any similar dairy derived ingredient. Such products include, but are not limited to: milk, fat-free milk, lowfat milk, light milk, reduced fat milk, milk drinks, eggnog, and cultured buttermilk, including any such beverage products that are flavored, cultured, modified with added or reduced nonfat milk solids, sterilized, concentrated, or reconstituted. As used in this paragraph, the term concentrated milk means [meaning] milk that contains not less than 25.5 percent and not more than 50 percent total milk solids[, or reconstituted].

1 NYCRR 21.16(a)(2)(i) is amended to read as follows:

(i) any product that contains less than 6.5 percent nonfat milk solids and contains less than 2.25 percent true milk protein; whey; plain or sweetened evaporated milk/skim milk, sweetened condensed milk/skim milk[,]; yogurt containing beverages with 20 or more percent yogurt by weight and kefir; [formulas] products especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically sealed containers[,]; and products that meet the compositional standards specified in paragraph (1) of this subdivision but contains no fluid milk

products included in paragraph (1) of this subdivision. [any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and]

1 NYCRR 21.16(a)(2)(ii) is amended to read as follows:

(ii) the quantity of skim milk equivalent in any modified product specified in paragraph [(2)] (1) of this subdivision that is greater than an equal volume of an unmodified product of the same nature and butterfat content.

1 NYCRR 21.19 is repealed.

1 NYCRR 21.20 is amended to read as follows:

Each marketer shall report monthly so that the commissioner receives the report on or before the [ninth] 10th day after the end of the month, in the detail and on the prescribed forms, as follows. The commissioner shall audit for mathematical correctness and obvious errors the reports that are submitted.

A new subdivision (d) is added to 1 NYCRR section 21.30 to read as follows:

(d) Any skim milk used in ultra-pasteurized or aseptically processed and packaged fluid milk products shall be allocated in combination with Class I milk and the quantity of producer milk eligible to be priced shall be limited to available Class I producer milk classified pursuant to section 21.34 (a) of this Part.

1 NYCRR Section 21.31 (b)(3)(iv) is amended to read as follows:

(iv) [eggnog,]custards, puddings, pancake mixes, buttermilk biscuit mixes, coatings and other buttermilk for baking that contains food starch in excess of 2 percent of the total solids, batter and similar products;

1 NYCRR 21.31(c)(1)(ii) is amended to read as follows:

(ii) plastic cream, anhydrous milkfat and butteroil; and

1 NYCRR 21.31(c)(1)(iii) is amended to read as follows:

(iii) any concentrated milk product in bulk form that is used to produce a Class III product[; and]

1 NYCRR 21.31(c)(1)(iv) is repealed.

1 NYCRR 21.31(d)(1) is amended to read as follows:

(1) used to produce:

(i) butter; [and]

(ii) evaporated or sweetened condensed milk in a consumer-type package; and

(iii) any milk product in dried form;

1 NYCRR 21.40 is amended to read as follows:

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 subdivisions (a), (b), (c), (e), (f) and (g) [(g)] of this section shall be based on a weighted average of the most recent two weekly prices announced by the [National Agricultural Statistical Service (NASS)] Agricultural Marketing Service (AMS), United States Department

of Agriculture 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 subdivisions (g)-(o) of this section shall be based on a weighted average for the preceding month of weekly prices announced by [NASS] AMS on or before the fifth day of the month and shall apply to milk received during the preceding month. The price described in subdivision (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 fifth day of the month following the month to which it applies.

1 NYCRR 21.40(f) is amended to read as follows:

(f) *Class II nonfat solids price.* The Class II nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the Class II skim milk price divided by 9. Effective December 1, 2025, the Class II skim milk price shall be divided by 9.3 in place of 9.

1 NYCRR 21.40(i) is amended to read as follows:

(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] multiplied by 3.1 plus the other solids price per pound [times] multiplied by 5.9. Effective December 1, 2025, the protein price per pound shall be multiplied by 3.30 in place of 3.1; and the other solids price per pound by 6.00 in place of 5.9.

1 NYCRR 21.40(k) is amended to read as follows:

(k) Class IV skim milk price. The Class IV skim milk price per hundredweight, rounded to the nearest cent, shall be the nonfat solids price per pound [times] multiplied by 9. Effective December 1,2025, the Class IV skim milk price shall be multiplied by 9.3 in place of 9.

1 NYCRR 21.40(l) is amended to read as follows:

(l) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average [NASS] AMS AA Butter survey price reported by the U.S. Department of Agriculture for the month less [11.4] 22.72 cents, with the result [divided] multiplied by [0.82] 1.211.

1 NYCRR 21.40(m) is amended to read as follows:

(m) *Nonfat solids price.* The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average [NASS] AMS nonfat dry milk survey price reported by the U.S. Department of Agriculture for the month less [13.7] 23.93 cents, with the result [divided] multiplied by [1.02] 0.99.

1 NYCRR 21.40(n) is amended to read as follows:

(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 subparagraphs (i) and (ii) of this paragraph:

(i) the U.S. average [NASS] AMS survey price for 40-pound block cheddar cheese reported by the U.S. Department of Agriculture for the month; [and

(ii) the U.S. average NASS survey price for 500-pound barrel cheddar cheese (39 percent moisture) reported by the U.S. Department of Agriculture for the month plus 3 cents;]

(2) subtract [17.02] 25.19 cents from the price [computed] pursuant to paragraph (1) of this subdivision and multiply the result by [1.405] 1.383;

(3) add to the amount computed pursuant to paragraph (2) of this subdivision an amount computed as follows:

(i) subtract [17.02] 25.19 cents from the price [computed] pursuant to paragraph (1) of this subdivision and multiply the result by 1.58[2]9;

(ii) subtract 0.91 times the butterfat price computed pursuant to paragraph (1) of this subdivision from the amount computed pursuant to subparagraph (i) of this paragraph; and

(iii) multiply the amount computed pursuant to subparagraph (ii) of this subdivision by 1.[28]17.

1 NYCRR 21.40(o) is amended to read as follows:

(o) *Other solids price.* The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average [NASS] AMS dry whey survey price reported by the U.S. Department of Agriculture for the month minus [13.7] 26.68 cents, with the result [divided] multiplied by [0.968] 1.03.

1 NYCRR 21.40(q) is amended to read as follows:

(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 weighted average of the two most recent [NASS] AMS U.S. average weekly survey 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 subdivisions (n) and (o) of this section, but using the weighted average of the two most recent [NASS] AMS U.S. average weekly survey prices announced before the 24th day of the month, compute a protein price and an other solids price;

(ii) multiply the protein price computed in subparagraph (i) of this paragraph by 3.1 (effective December 1, 2025, multiply by 3.30 in place of 3.1);

(iii) multiply the other solids price per pound computed in subparagraph (i) of this paragraph by 5.9 (effective December 1 2025, multiply by 6 in place of 5.9); and

(iv) add the amounts computed in subparagraphs (ii) and (iii) of this paragraph.

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

(i) following the procedure set forth in subdivision (m) of this section, but using the weighted average of the two most recent [NASS] AMS U.S. average weekly survey prices announced before the 24th day of the month, compute a nonfat solids price; and

(ii) multiply the nonfat solids price computed in subparagraph (i) of this paragraph by 9
(effective December 1, 2025, multiply by 9.30 in place of 9).

(3) An advanced butterfat price per pound, rounded to the nearest one-hundredth cent, shall be calculated by computing a weighted average of the two most recent U.S. average [NASS] AMS AA Butter survey prices announced before the 24th day of the month, subtracting [11.4] 22.72 cents from this average, and [dividing] multiplying the result by [0.82] 1.211.

A new subdivision (r) is added to 1 NYCRR section 21.40 to read as follows:

(r) *Class I Extended Shelf Life (ESL) adjustment.* The Class I ESL adjustment, whether positive or negative, rounded to the nearest cent, shall be computed as follows:

(1) Compute the simple average of the advanced pricing factors computed in paragraphs (q)(1) and (2) of this section.

(2) Add the following:

(i) determine the higher of the advanced pricing factors computed in paragraphs (q)(1) and (2) of this section, for each of the preceding 13 to 36 months;

(ii) calculate the average of the advanced pricing factors computed in paragraphs (q)(1) and (2) of this section, for each of the preceding 13 to 36 months;

(iii) for each of the preceding 13 to 36 months, subtract the amount computed in paragraph (r)(2)(ii) of this section from the amount computed in paragraph (r)(2)(i) of this section; and

(iv) compute the average of the differences computed in paragraph (r)(2)(iii) of this section.

(3) subtract the higher of the advanced pricing factors computed in paragraphs (q)(1) and (2) of this section.

(4) Each month, the commissioner shall compare the Western New York ESL adjustment with that which is announced pursuant to the Federal Milk Marketing Order, Code of Federal Regulations, Title 7, Section 1000.50. If a variance exists, the Commissioner may announce a Federal Order ESL Adjustment to account for discrepancies.

1 NYCRR 21.42 is amended to read as follows:

(a) The Class I differential adjusted for location to be used in section 21.40(b) and (c) of this Part shall be as follows:

County in New York	Differential
Allegany	[2.30] <u>3.90</u>
Cattaraugus	[2.10] <u>3.90</u>
Cayuga	[2.30] <u>3.90</u>
Chautauqua	[2.10] <u>3.90</u>
Erie	[2.20] <u>3.90</u>
Genesee	[2.20] <u>3.90</u>
Livingston	[2.30] <u>3.90</u>
Monroe	[2.30] <u>3.90</u>
Niagara	[2.20] <u>3.90</u>
Ontario	[2.30] <u>3.90</u>
Orleans	[2.20] <u>3.90</u>
Seneca	[2.30] <u>3.90</u>
Steuben	[2.30] <u>3.90</u>

Wayne	[2.30] <u>3.90</u>
Wyoming	[2.20] <u>3.90</u>
Yates	[2.30] <u>3.90</u>

(b) If the location of a plant is not in one of the counties listed in [section] subdivision [21.42](a) of this [Part] section, the Class I differential for that location is as specified in the Code of Federal Regulations, title 7, section 1000.52 of the General provisions of Federal Marketing Orders (revised as of January 17, 2025; United States Printing Office Washington, DC 20240 [which appears at 64 FR 70868-70912 (December 17, 1999) as amended by 64 FR 73386-73387 (December 30, 1999)], electronically available at the following link: <https://www.ecfr.gov/on/2025-01-17/title-7/subtitle-B/chapter-X/part-1000/subpart-G/section-1000.52>, and copies of which are available for public inspection at the Department of Agriculture and Markets, Division of Milk Control and Dairy Services, 10B Airline Drive, Albany, New York 12235, and at the Department of State, 99 Washington Avenue, Suite 650, Albany, New York 12231, during regular business hours. [Division of Dairy Industry and Producer Security, Department of Agriculture and Markets, One Winners Circle, Albany, NY 12235.]

1 NYCRR 21.50 is amended to read as follows:

For the purpose of computing the net pool obligation of any marketer operating a pool plant and any collecting cooperative which has arranged to make the reports and payments with respect to the milk producers each month, the commissioner shall determine for each month the value of milk of each marketer with respect to each of the marketer's pool plants and of such a collecting cooperative with respect to milk that was not received at a pool plant by adding the amounts computed in subdivisions (a) through [(h)] (i) of this section and subtracting from that total amount the value computed in

subdivision [(i)] (j) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in section 21.34 of this Part and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order shall be excluded from pricing under this section.

Subdivision (i) of 1 NYCRR section 21.50 is re-lettered to subdivision (j) and a new subdivision (i) is added to read as follows:

(i) Compute an adjustment for eligible Class I producer milk pursuant to section 21.30(d) of this Part by multiplying the Class I skim milk price adjuster computed in section 21.40(r) of this Part by the pounds of skim milk eligible in Class I.

1 NYCRR 21.51(a)(2) is amended as follows:

(2) Compute a Class I differential price by subtracting the Class III price from the current month's applicable Class I price. Multiply the pounds remaining after the computation in subparagraph (1)(iii) of this subdivision by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the marketer's plant except that neither the adjusted Class I differential price nor the adjusted producer price differential shall be less than zero.

1 NYCRR 21.51(a)(3) is amended as follows:

(3) Unless the payment option described in subdivision (d) of this section is selected, add the amount obtained from multiplying the pounds of labeled reconstituted milk included in subparagraph

(1)(iii) of this subdivision by any positive difference between the applicable Class I price [applicable] at the location of the plant (less \$1.00 if the reconstituted milk is labeled as such) and the Class IV price.

1 NYCRR 21.51(c) is amended to read as follows:

(c) The operator of a plant that is subject to market-wide pooling of returns under a milk classification and pricing program that is imposed under the authority of a State government shall pay on or before the 25th day after the end of the month (except as provided in section 21.92 of this Part) to the market administrator for the equalization fund an amount computed as follows: After completing the computations described in subparagraph (a)(1)(ii) of this section, determine the value of the remaining pounds of fluid milk products disposed of as route disposition in the marketing area by multiplying the hundredweight of such pounds by the amount, if greater than zero, that remains after subtracting the State program's class prices applicable to such products at the plant's location from the applicable Class I price [applicable] at the location of the plant pursuant to section 21.42 of this Part.

1 NYCRR 21.52(e) is amended to read as follows:

(e) deduct any reserve which the commissioner may deem necessary to cover a deficit in Reserve for Contingencies in the calculation, and/or any item or items in litigation or substantial controversy, which reserve the commissioner is hereby authorized to establish and from which he shall subsequently make payment or distribution in an equitable manner;

1 NYCRR 21.53 is amended to read as follows:

On or before the [13]14th day after the end of the month, or up to two additional business days thereafter if the 14th occurs on non-business day, the commissioner shall announce the following prices and information:

1 NYCRR 21.64 is amended to read as follows:

Each marketer shall make payment to the equalization fund in a manner that provides receipt of the funds by the commissioner no later than [the 15th day after the end of the month] two days after the announcement of the producer price differential and the statistical uniform price pursuant to section 21.53 of this Part (except as provided in section 21.92 of this Part). Payment shall be the amount, if any, by which the amount specified in subdivision (a) of this section exceeds the amount specified in subdivision (b) of this section.

1 NYCRR 21.65 is amended to read as follows

[On or before the 16th day of each month] No later than the day after the due date required for payment to the commissioner pursuant to section 21.64 of this Part (except as provided by section 21.92 of this Part), the commissioner or a person authorized by him shall direct the fiscal agent to make payment out of the equalization fund to each marketer operating a pool plant and each collecting cooperative which has arranged to make the reports and payments with respect to the milk of producers, the amount by which the value of milk computed pursuant to section 21.64(b) of this Part exceeds the value computed pursuant to section 21.64(a) of this Part. If, at such time, the balance in the equalization fund is insufficient to make all such payments, the commissioner shall reduce uniformly such payments and shall direct the completion of such payments as soon as the necessary funds are available. No marketer who, on the day he is required to make payment

pursuant to section 21.60(c) of this Part shall be deemed to be in violation of such section if he reduces his payments to producers by not more than the amount of the reduction in payment from the equalization fund.