

CHAPTER 51-03-03
STABILIZATION PLANS FOR MARKET AREAS 2, 5, 7, AND 8

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51-03-03-01. Authority, savings, and scope.

1. The provisions and prices contained in this stabilization plan are promulgated pursuant to authority delegated to the North Dakota milk marketing board as set forth in North Dakota Century Code sections 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16.
2. If any provision of this stabilization plan is hereafter ruled to be illegal or invalid by any tribunal of superior jurisdiction, such ruling shall not affect the balance of this plan as a whole or any part thereof which can be given effect without the provision so ruled to be invalid or illegal.
3. Any person subject to this stabilization plan shall be considered in violation hereof if he or it engages in such violation, directly or indirectly, or through an agent, employee, trust, subsidiary, or affiliated company or corporation.

History: Amended effective August 1, 1995; September 1, 1996.

General Authority: NDCC 4.1-26-01, 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16, 4.1-26-35, 28-32-03.1(3)

Law Implemented: NDCC 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16

51-03-03-02. Terminology.

Names of products and finished product test specifications set forth herein are classifications for price purposes under the Milk Stabilization Act only and are not intended to interfere with or supersede applicable labeling, packaging, weights and measures, and sanitation laws and regulations.

History: Amended effective August 1, 1995; September 1, 1996.

General Authority: NDCC 4.1-26-01, 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16, 4.1-26-35, 28-32-03.1(3)

Law Implemented: NDCC 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16

51-03-03-03. Contract termination.

Any existing institutional contracts must be renegotiated in compliance with the prices ordered herein within ninety days after the effective date of this stabilization plan or on the new bid date, whichever is sooner.

History: Amended effective August 1, 1995; September 1, 1996.

General Authority: NDCC 4.1-26-01, 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16, 4.1-26-35, 28-32-03.1(3)

Law Implemented: NDCC 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16

51-03-03-04. Prices to public institutions.

Bid prices for milk products and shake and soft serve sold to state institutions in market areas 2, 5, 7, and 8 must not be below the minimum wholesale prices as stated herein by this stabilization plan.

History: Amended effective April 14, 1980; November 1, 1980; November 1, 1983; August 1, 1995; September 1, 1996.

General Authority: NDCC 4.1-26-01, 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16, 4.1-26-35, 28-32-03.1(3)

Law Implemented: NDCC 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16

51-03-03-05. Classification of milk usage.

1. Class I usage will include the following:

- a. Raw milk, regular or creamlike milk, standard milk, whole pasteurized milk, special milk, homogenized milk, fortified milk, plain or creamed buttermilk, flavored milk, flavored skim milk, skim milk, low fat milk, concentrated milk, milkshake and ice cream mixes containing less than twenty percent total solids and plant shrinkage attributable to dairy farmer and other source milk in excess of two percent of current dairy farmer receipts, plant overages, and closing packaged inventories.
- b. Any product which contains milk solids not fat, butterfat, or a milk derivative, and which is manufactured in the semblance of one of the products listed in subdivision a.

2. Class II usage will include the following: milk used in the manufacture of half and half, coffee cream, cottage cheese, creamed cottage cheese, whipped cream, sour cream, low fat cottage cheese, dry curd cottage cheese, yogurt, eggnog, and all frozen dairy products as defined in North Dakota Century Code section 4.1-26-01.

3. Class III usage will include the following: milk used in the manufacture of butter, cheese (other than cottage cheese or creamed cottage cheese), nonfat dry milk, skim condensed milk, whole dry milk, dried cream, evaporated milk, sweetened condensed milk, skim milk separated and dumped and plant shrinkage of two percent or less of current dairy farmer receipts and closing bulk inventories.

General Authority: NDCC 4.1-26-01, 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16, 4.1-26-35, 28-32-03.1(3)

Law Implemented: NDCC 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16

51-03-03-06. Prices to be paid dairy farmers and others - Midpoint, differential, and multiple component pricing.

1. Class I (market areas 2, 5, 7, and 8). Commencing July 1, 2000, the minimum price to be paid by milk processors to dairy farmers and others coming within the scope of this plan f.o.b. the processor's plant for milk which is ultimately utilized in class I (milk products) shall be the hundredweight price as established by the formula below. However, the minimum price to be paid by milk processors to dairy farmers and others coming within the scope of this plan f.o.b. the processor's plant for milk which is ultimately utilized in class I (milk products) shall not be less than \$13.76 per hundredweight.

The following formula shall be used when the federal market order no. 30 class I dairy farmer hundredweight price increases or decreases to the next higher or lower federal market order no. 30 class I dairy farmer hundredweight trip point. Minimum North Dakota class I dairy farmer and wholesale and retail prices to be adjusted by using the current federal market order no. 30 class I dairy farmer price on the formula below. Move to the next higher increment and utilize the North Dakota minimum class I dairy farmer price as listed on the formula below. Adjustments, if required, will be monthly.

Market Areas 2, 5, 7, and 8		
Federal Market Order No. 30 Class I Dairy Farmer Price	North Dakota Minimum Class I Dairy Farmer Price	Minimum Wholesale Price Per On-Half Gallon 2 Percent Milk
18.59	19.22	1.541
18.38	19.01	1.531
18.17	18.80	1.521
17.96	18.59	1.511
17.75	18.38	1.501
17.54	18.17	1.491
17.33	17.96	1.481
17.12	17.75	1.471
16.91	17.54	1.461
16.70	17.33	1.451
16.49	17.12	1.441
16.28	16.91	1.431
16.07	16.70	1.421
15.86	16.49	1.411
15.65	16.28	1.401
15.44	16.07	1.391
15.23	15.86	1.381
15.02	15.65	1.371
14.81	15.44	1.361
14.60	15.23	1.351
14.39	15.02	1.341
14.18	14.81	1.331

13.97	14.60	1.321
13.76	14.39	1.311
13.55	14.18	1.301
13.34	13.97	1.291
13.13	13.76 Base	1.281

Based on \$.21 per hundredweight increments and butterfat differential of \$.053.

Differentials above or below the midpoint of 3.5 percent will be those used in federal market order no. 30.

Adjustments in wholesale and retail prices for other sized containers should also increase or decrease, or both, proportionally to the one-half gallon use.

2. Class II. Commencing July 1, 2000, the minimum price to be paid by milk processors to dairy farmers and others, coming within the scope of this stabilization plan f.o.b. the processor's plant after the effective date of this plan for milk which is ultimately utilized in class II, shall be the class II price per hundredweight for federal market order no. 30, adjusted to a 3.5 percent butterfat basis. Butterfat differentials above or below the midpoint of 3.5 percent will be those used in federal market order no. 30.
3. Class III. Commencing July 1, 2000, the minimum price to be paid by milk processors to dairy farmers and others coming within the scope of this stabilization plan f.o.b. the processor's plant for milk, which is ultimately utilized in class III, except that used in the manufacture of butter, shall be priced under a "multiple component pricing" system to include protein, other solids, and somatic cell count. The respective prices for these components, in a given month, and computations thereon will be those used by federal market order no. 30. Two additional components, butterfat and producer price differential, will use as a basis the class III price per hundredweight for federal market order no. 30 less a four percent administrative and transportation allowance to the nearest full cent adjusted to a 3.5 percent butterfat basis. Butterfat differentials above or below the midpoint of 3.5 percent will be those used in federal market order no. 30. Commencing July 1, 2000, the minimum price to be paid by milk processors to dairy farmers and others coming within the scope of this stabilization plan, f.o.b. the processor's plant for milk and cream which is ultimately used in class III for the manufacture of butter, shall be the monthly national agricultural statistical service (NASS) survey butter price less a \$.05 per pound administrative and transportation allowance rounded to the nearest cent.

If a processing plant pays to its dairy farmers and others a premium above the class III minimum raw milk price as established herein, such price including the premium, shall become the minimum class III raw milk price for audit purposes for said plant, and said plant shall not be entitled to dilute the class I and class II raw milk prices for payment of said premiums on said class III raw milk.

4. The foregoing class I, II, and III dairy farmer prices shall be automatically adjusted each month, without further amendment to this stabilization plan based upon the prices ordered for federal market order no. 30.

History: Amended effective July 1, 2000.

General Authority: NDCC 4.1-26-01, 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16, 4.1-26-35, 28-32-03.1(3)

Law Implemented: NDCC 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16

51-03-03-07. Prices and hauling allowances for bulk milk in interarea and interstate commerce.

No allowance for freight may be charged to dairy farmers on bulk milk shipped interarea or interstate between plants.

General Authority: NDCC 4.1-26-01, 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16, 4.1-26-35, 28-32-03.1(3)

Law Implemented: NDCC 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16

51-03-03-08. Hauling rates from farm to plant.

Any substantial or significant increase or raising of the rates charged to dairy farmers for hauling their milk from farm to plant after the effective date of this stabilization plan and without good cause shown may be considered to be dilution of the prices paid said dairy farmers for their raw milk and subject to investigation by the board to determine if there is a violation of this stabilization plan.

History: Amended effective August 1, 1995; September 1, 1996.

General Authority: NDCC 4.1-26-01, 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16, 4.1-26-35, 28-32-03.1(3)

Law Implemented: NDCC 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16

51-03-03-09. Products not specified.

Any unassigned quantity of new products hereafter marketed but not specifically priced under this plan shall be assigned a price which will be the logical multiple or fraction of the nearest quantity or product to which a specific price has been fixed by this stabilization plan until a specific price is ordered by this board as a result of the regular hearing procedure and based upon actual cost experience of the industry. This board must be given thirty days' written notice prior to the introduction of a new product in the market area.

History: Amended effective August 1, 1995; September 1, 1996.

General Authority: NDCC 4.1-26-01, 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16, 4.1-26-35, 28-32-03.1(3)

Law Implemented: NDCC 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16

51-03-03-10. Minimum wholesale and retail prices for class I milk products - Market areas 2, 5, 7, and 8.

Publication of this section would be inexpedient because it changes frequently on an emergency basis.

Copies of this section may be obtained by forwarding a request to:

Director
North Dakota Milk Marketing Board
410 East Thayer Avenue, No. 2
Bismarck, ND 58501-4049

51-03-03-11. Minimum wholesale and retail prices for class II milk products - Market areas 2, 5, 7, and 8.

Publication of this section would be inexpedient because it changes frequently on an emergency basis.

Copies of this section may be obtained by forwarding a request to:

Director

North Dakota Milk Marketing Board
410 East Thayer Avenue, No. 2
Bismarck, ND 58501-4049

51-03-03-12. Minimum wholesale prices for shake and soft serve mix.

Publication of this section would be inexpedient because it changes frequently on an emergency basis.

Copies of this section may be obtained by forwarding a request to:

Director
North Dakota Milk Marketing Board
410 East Thayer Avenue, No. 2
Bismarck, ND 58501-4049

51-03-03-12.1. Minimum dock price for market area 8.

Repealed effective July 1, 2000.

51-03-03-13. Authorized discounts on milk products - Market areas 2, 5, 7 and 8.

The following authorized maximum volume discounts are authorized on sales of milk products. Said discounts must be based upon the average total monthly purchases of milk products from all suppliers for the preceding year.

Monthly Volume	Discount Rate	
	Full Service	Limited Service
0 gal. to 799 gal.	0%	3%
800 gal. to 1600 gal.	2%	5%
1601 gal. to 2400 gal.	3%	6%
2401 gal. to 3200 gal.	4%	7%
3201 gal. to 8000 gal.	5%	9%
8001 gal. and over	7%	11%

A limited service program should be authorized in market areas 2, 5, 7, and 8 for grocery store retailers. This limited service program should consist of the following:

1. Maximum delivery of three times per week to store cooler.
2. All orders preordered prior to delivery.
3. No in-store service, i.e., cleaning cases, stamping products, etc.
4. Personnel for store resets will be limited to dairy case setting only.
5. No returns on merchandise, except when product is found to be damaged or defective at time of delivery check-in.
6. No callback on delivery days.
7. No volume discounts from processors or distributors will be allowed on charged sales not paid by a retailer within four weeks (twenty-eight days) of the statement date. All statements must be on a weekly basis, the weekly cutoff date must remain the same.

A full service program should be authorized in market areas 2, 5, 7, and 8 for retailers whose total monthly purchases of milk products from all suppliers for the preceding year exceed eight hundred gallons [3028.33 liters] per month. This full service program should consist of the following:

1. Supplier will be responsible for maintaining adequate supply of product.
2. Product will be stocked and displayed on delivery days.
3. Product will be sold on a guaranteed sales basis.
4. Personnel for store resets will be limited to dairy case resets only.
5. No volume discounts from processors or distributors will be allowed on charged sales not paid by a retailer within four weeks (twenty-eight days) of the statement date. All statements must be on a weekly basis, the weekly cutoff date must remain the same.

History: Amended effective April 14, 1980; November 1, 1980; July 1, 1981; June 26, 1989; February 1, 1992; August 1, 1993.

General Authority: NDCC 4.1-26-01, 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16, 4.1-26-35, 28-32-03.1(3)

Law Implemented: NDCC 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16

51-03-03-13.1. Minimum dock pickup provisions - Market areas 2, 5, 7, and 8.

Market areas 2, 5, 7, and 8 will have a minimum dock pickup price list as determined by subsection 11 of twelve percent or twenty-three percent off the respective market areas minimum established wholesale price list (except cultured products) less an additional two percent prompt payment. Prices will change as per section 51-03-03-06. The following stipulations apply to receive this dock price:

1. "Dock" means dock at the plant of a processor where milk products are actually processed and packaged.
2. Hauling of milk products must be done with refrigerated truck equipment that is contracted with a third party or is owned and operated or a lease purchase option that is operated by the same corporation or owner that owns the retail outlet. Refrigerated truck equipment, whether owned or contracted, must comply with regulations defined by federal and North Dakota state agencies.
3. This program will be available to any single retail place of business and no combination orders by multiple retail places of business shall be permitted.
4. On all charge sales by retailer not paid for within fourteen days from statement date, processor will charge retailer the difference between dock pickup price and wholesale price.
5. All orders must be preordered by retailers prior to dock pickup.
6. No in-store service, i.e., cleaning cases, stamping products, etc., shall be provided by processors.
7. Processor personnel for store resets will be limited to dairy case setting only.
8. No returns on merchandise shall be made by processors, except when product is found to be damaged or defective at time of dock pickup.
9. Delivery of product by processor due to incorrect ordering by customer or special orders shall be charged at wholesale price less appropriate volume discount.

10. All contracts between processors and retailers under this program shall:
 - a. Require delivery at destination being the retailer's place of business;
 - b. Provide that title to said milk products shall pass from the seller (processor) to the buyer (retailer) upon delivery at the buyer's place of business; and
 - c. Provide that the place where the sale of said milk products occurs shall be at the retailer's place of business.
11. Each retail place of business must make a minimum order of twenty-seven to forty-four full cases to each processor to qualify for the twelve percent discount dock pickup program or a minimum of forty-five full cases to each processor to qualify for the twenty-three percent discount dock pickup program. Deliveries of less than twenty-seven full cases to a retailer's place of business may only be made by a licensed distributor.
12. Retailer must pay contract or third-party hauler direct.
13. Direct billing of product will be completed by the processor and all qualified discounts will be paid by the processors.

History: Effective September 1, 1996; amended effective August 31, 1998; July 1, 2000.

General Authority: NDCC 4.1-26-01, 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16, 4.1-26-35, 28-32-03.1(3)

Law Implemented: NDCC 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16

51-03-03-14. Price filings on frozen dairy products.

Repealed effective July 1, 2000.

51-03-03-15. Authorized discounts for prompt payment.

Processors and distributors may grant a two percent discount to retailers who make timely payment for milk products, shake, soft serve mix, and frozen dairy products within fourteen days of the statement date. All statements shall be on a weekly basis, and the weekly cutoff date shall remain the same. Said discount shall not be allowed if a retailer is participating in a central billing service plan as permitted by section 51-02-02-12.

History: Amended effective August 1, 1993.

General Authority: NDCC 4.1-26-01, 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16, 4.1-26-35, 28-32-03.1(3)

Law Implemented: NDCC 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16

51-03-03-16. Formula to determine changes in the class I wholesale and retail prices.

Based upon the class I formula as ordered in section 51-03-03-06, for each hundredweight price change to dairy farmers for raw milk or an increase or decrease of \$.001 in the federal market order no. 30 butterfat differential based on \$.053, the following factors will be used in determining adjustments in the class I wholesale and retail prices. If the first of the month falls on a Monday, Tuesday, or Wednesday, minimum wholesale and retail prices go in effect that Monday. If the first of the month falls on a Thursday, Friday, Saturday, or Sunday, minimum wholesale and retail prices go in effect the following Monday.

Item	Hundredweight Factor	B.F. Factor
Whole milk ½ gallon	\$.0098900	\$(.0001075)
2% milk	.0099130	(.0006465)
1% milk	.0099130	(.0010775)

Skim Milk	.0099245	(.0012945)
Buttermilk	.0099245	(.0012945)
Whole chocolate	.0094645	(.0001029)
2% chocolate	.0094875	(.0006188)
1% chocolate	.0094875	(.0010313)
Skim chocolate	.0094990	(.0012390)

All price adjustments at the retail level should be made to the nearest one cent per unit: wholesale to the nearest \$.001 per unit. Wholesale and retail price increases or decreases shall be adjusted for volume discounts. The foregoing class I formula price changes shall be automatically adjusted without further amendment to this stabilization plan.

History: Amended effective November 1, 1983; June 26, 1989; June 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; August 1, 1995; September 1, 1996; July 1, 2000.

General Authority: NDCC 4.1-26-01, 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16, 4.1-26-35, 28-32-03.1(3)

Law Implemented: NDCC 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16

51-03-03-17. Formula to determine changes in the class II wholesale and retail prices.

For each federal market order no. 30 class II price increase or decrease of fifteen cents per hundredweight above, or price increase or decrease of twenty-three cents per hundredweight below the twelve dollars and seventeen cents base class II hundredweight price, or an increase or decrease of \$.001 in the federal market order no. 30 butterfat differential based on \$.162, the following factors will be used in determining adjustments in the class II wholesale and retail prices:

Item	Hundredweight Factor	B.F. Factor
Half half - pint	\$.0016	\$.0008
Whipping cream - ½ pint	.0016	.0015
Sour cream - 8 ounce	.0008	.0008
Cottage cheese - 1 pound	.0140	(.0012)
Yogurt - 8 once	.0008	.0008

All price adjustments at the wholesale and retail levels should be made to the nearest one cent per unit.

Item	Hundredweight Factor	B.F. Factor
1 gallon shake mix	\$.0110	\$.0004
1 gallon soft serve mix	.0110	.0021

All price adjustments at the wholesale level should be made at four cents per gallon increments.

History: Amended effective June 1, 1979; November 1, 1983; April 1, 1984; July 1, 2000.

General Authority: NDCC 4.1-26-01, 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16, 4.1-26-35, 28-32-03.1(3)

Law Implemented: NDCC 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16

51-03-03-18. Emergency.

This stabilization plan is declared to be an emergency pursuant to North Dakota Century Code section 28-32-02. The reason for said emergency is to permit the orderly marketing of milk and milk products.

History: Effective August 1, 1995; amended effective September 1, 1996.

General Authority: NDCC 4.1-26-01, 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16, 4.1-26-35, 28-32-03.1(3)

Law Implemented: NDCC 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16

51-03-03-19. Effective date.

These rules are effective at 12:01 a.m., July 1, 2000, and all prior stabilization plans for market areas 2, 5, 7, and 8 are hereby repealed.

History: Effective August 1, 1995; amended effective September 1, 1996; August 31, 1998; July 1, 2000.

General Authority: NDCC 4.1-26-01, 4.1-26-09, 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16, 4.1-26-35, 28-32-03.1(3)

Law Implemented: NDCC 4.1-26-10, 4.1-26-11, 4.1-26-12, 4.1-26-13, 4.1-26-14, 4.1-26-15, 4.1-26-16